



April 26, 2017

File: PCAA #17-07

DELIVERED BY EMAIL

Terry Ridland
[REDACTED]
[REDACTED]

Shawn Eccles
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RIDLAND VS. BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (BCSPCA) - TIMING OF APPEAL DECISION

Decision

In the interest of clarity in this matter, I am placing my decision in this matter here in front of my reasons. For the reasons I provide below, this appeal will not be heard, having been found to be out of time.

Introduction

On April 21, 2017, BC Farm Industry Review Board (BCFIRB) received an appeal that was filed by Terry Ridland, regarding the March 25, 2017 seizure of his dog Farley. The right of appeal to BCFIRB is established by statute and is set out in s. 20.3(2) of the *PCAA*:

20.3 (1) A person who owns, or is an operator in relation to, an animal, or a person from whom custody of an animal was taken under section 10.1 or 11, may appeal to the board one or more of the following:

(b) if action has been taken under section 20.2(4)(b), the decision to affirm a notice under section 19 that the animal will be destroyed, sold or otherwise disposed of;

20.3(2) A person referred to in subsection (1) may file a notice of appeal with the board as follows:

(b) in respect of an appeal under subsection (1) (b), within 4 days after receiving reasons under section 20.2(5)(a).(emphasis added)

**British Columbia
Farm Industry Review Board**

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Section 20.2(4) and (5) of the *PCAA* state as follows:

20.2(4) The society, following a review, must

(a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting

(i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and

(ii) any matter that the society considers necessary to maintain the well-being of that animal, or

(b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.

(5) The society must provide to the person who requested the review

(a) written reasons for an action taken under subsection (4), and

(b) notice that an appeal may be made under section 20.3.

In short, a person has a right of appeal from the Society's written review reasons provided they appeal within 4 days after receiving the Society's written reasons. BCFIRB has no power to extend the time to appeal. I am not permitted any discretion in determining when the four days ends. Jurisdiction here is defined by the four-day period.

The Timeline and Submissions on the Timing of Receiving the Written Reasons

The written reasons of the BC SPCA were dated April 11, 2017. In those reasons, the BCSPCA determined that the dog, Farley, for reasons that are immaterial to this preliminary matter, would not be returned to Mr. Ridland, as it was determined by the BCSPCA that Farley was in distress and would be found to continue to be in distress if returned.

In those written reasons, Ms. Moriarty, the BCSPCA's Chief Prevention and Enforcement Officer, writes that the dog was seized on March 25, 2017. I note there is a hole in the timeline. It is unclear to me where Farley was between March 23, when an incident occurred, and the March 25, 2017 seizure of Farley, but I have noted there is a two-day gap and find that this gap is immaterial to this preliminary decision. However, in Mr. Ridland's Notice of Appeal, it states that a Williams Lake Court Judge instructed Mr. Ridland to retrieve his dog on March 25, 2017.

I should note here that whatever matter the Judge in Williams Lake was dealing with is not this matter. When a dog or any animal is seized pursuant to section 11 of the *PCAA*, the method of review and appeal is set out in the legislation and there is no mechanism for a seizure to be brought before a Judge regarding the animal's return, prior to an appeal.

The BCSPCA's written reasons go on to state that Ms. Moriarty spoke to Mr. Ridland on March 27, 2017 and received submissions from him on March 29, 2017.

Mr. Ridland, with the assistance of his new representative Michael Clarke, filed his Notice of Appeal to BCFIRB on April 21, 2017 which states:

This Letter is in regards to a letter Mr. Ridland received from Marcie Moriarty when he finally got his email on April 18, 2017, when he came home to B.C. as he is in the process of moving. He would like to appeal her decision on the following facts...

Given the uncertainty around whether Mr. Ridland's Notice of Appeal was received within the statutory timeline set out above, BCFIRB wrote to the parties on April 21, 2017 providing an opportunity to explain the circumstances around when the BCSPCA's written review was "received."

Mr. Ridland's April 22, 2017 submission to BCFIRB, through his representative Mr. Clarke, states that a Judge instructed that the dog be returned prior to its seizure. Mr. Ridland sought (at that time) the assistance of different representative, Mr. Granlund (a legal advocate), on March 29, 2017 "for help getting his dog back." The submission states that Mr. Granlund withdrew his assistance "on or about a week later" telling Mr. Ridland he wanted nothing more to do with this "thereby releasing himself from helping Mr. Ridland." The submission states that the BCSPCA should not have had further contact with this representative and that the representative should have stopped communication with the BCSPCA.

Yet, on April 10, 2017, an email to the BCSPCA from Mr. Granlund says:

Sorry, I only just heard from Mr. Ridland that he had faxed documents yesterday so it sound like that is what he is seeking to rely on.

I note here that the submission regarding this out of time matter does not provide any documentation to support the allegation that Mr. Granlund had "withdrawn" nor does the submission address Mr. Ridland's efforts to make the BCSPCA aware that Mr. Granlund had withdrawn. For certainty, materials suggest that Mr. Ridland and his legal advocate Mr. Granlund did speak on April 9, 2017.

The submission does say that Mr. Ridland was out of the province and had his home phone forwarded to his cell and received a hostile phone call from Mr. Granlund who advised that he himself had received an email from the BCSPCA and wanted to know if he could send it to Mr. Ridland. The submission says that "Mr. Ridland said yes it could be sent by email, at no time did he tell Mr. Granlund he saw it".

The submission says Mr. Ridland was in the midst of moving 1500 km, and also says:

His computer usually one of the first things you move, was at his house in [REDACTED]. Since he was picking up household goods in Alberta, there was no way for him to get his email at that time. And being of the older generation Mr. Ridland is not one of those hip Grandpa's with the newest phone there would be no email received on his because it as it's a old (sic) Nokia flip phone, where you have to press one key 3-4 times to get the right letter. Realistically information that is that time sensitive should have been sent by registered mail, as email cannot be verified as to when it was received. As well the BCSPCA who had all of Mr. Ridland's contact info did not call him personally to verify that he received this time sensitive information, why is that?

As part of the submission, there is the April 24, 2017 sworn statement of Terry Michael Ridland that states, in part:

I arrived very late the night of April 17, 2017 and went directly to bed as driving the 15 hours straight was not the best idea. In the morning of April 18, 2017 as I was having my coffee I remembered that Mr. Granlund said he was sending something. I went up to my office and was amazed the internet was working it's usually down 50% of the time here. That was when I received the horrific news from the BCSPCA; I also remember a conversation with Mrs. Moriarty where she stated it would take 2-3 weeks to reach a decision. When I left for Alberta I was very confident that I would have plenty of time to make the trip before a decision was reached.

The BCSPCA provides copies of several emails. One email to Mr. Ridland via his legal representative Mr. Granlund dated April 11, 2017 at 9:41 am stated the written reasons (decision) regarding Farley were attached, and requested confirmation that Mr. Ridland has read the written reasons (decision). Another email is dated April 12, 2017 at 10:19 am from Mr. Granlund to the BCSPCA saying:

Hi Louise. I spoke with Mr. Ridland this morning and I can confirm he has received and read the BCSPCA decision.

As part of this further submission process, the BCSPCA also included some hand-written notes which it says are from Chief Prevention and Enforcement Officer Marcie Moriarty's phone call of March 30th, 2017 with Mr. Granlund explaining the dispute procedure and confirming that Mr. Granlund is Mr. Ridland's legal advocate. The BCSPCA does not speak to the allegation that Mr. Granlund subsequently withdrew his services as legal representative.

Analysis

It is not disputed that the Notice of Appeal was received by BCFIRB on April 21, 2017. I am not permitted any discretion, as I said earlier, in extending the four-day time period to file an appeal, however I am permitted to determine when the BCSPCA written reasons were "received" which is when the four-day clock begins.

For me, the word "received" does not necessarily mean when the written reasons were delivered into someone's hands or read on a computer screen or even when a letter is opened. Instead, when a decision is "received" could involve circumstances where a letter or email remains unopened or a voicemail unheard if, as here, it had been available to be received, but for the inaction or conduct of the recipient. One could, I'm sure, imagine a situation where someone could delay indefinitely the receipt of material simply by refusing to open an email, for instance.

We are dealing here with email communications. There is case law on email communications arising out of other contexts before administrative tribunals. In *Zare v. Canada (Citizenship and Immigration)*, 2010 FC 1024, (para 36-38), the Court had to consider the effect of lost email communications between an Immigration Officer and a visa applicant:

The jurisprudence on email follows jurisprudence established for mail and telephone facsimile transmissions. An applicant has the burden of ensuring his or her application is complete and, where an applicant provides an address, post, facsimile or email, the risk of

non-delivery rests with the applicant provided there is no indication that the communication may have failed. *Ilahi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1399 (CanLII), 2006 FC 1399, *Shah v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 207 (CanLII), 2007 FC 207, *Yang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 124 (CanLII), 2008 FC 124, *Kaur v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 935 (CanLII), 2009 FC 935 and *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 75 (CanLII), 2010 FC 75.

In the above cases, the issue turns on a finding of fault by one of the parties. Where the visa officer could not prove that he had sent notice, the Respondent is to bear the risk for missed communications. *Ilahi* Where the visa officer had proved that he had sent the notice, but the communication was missed due to an error on the part of the applicant (such as discontinuance of an email address or blocking by spam filter), the applicant is to bear the risk. *Kaur*”

Kaur involved email communications. In that case Justice Barnes set out a qualification in respect of the applicant’s burden. He stated at para. 12:

In summary, when a communication is correctly sent by a visa officer to an address (email or otherwise) that has been provided by an applicant which has not been revoked or revised and where there has been no indication received that the communication may have failed, the risk of non-delivery rests with the applicant and not with the respondent. (emphasis added)

In the case at hand, there is evidence the crucial June 26, 2009 email communication failed. (emphasis added)

I find this analysis helpful. In this case, I am satisfied that the BCSPCA correctly sent the written reasons to the address (email or otherwise) of the legal representative of Mr. Ridland. There is no evidence before me that Mr. Ridland notified the BCSPCA that Mr. Granlund was no longer acting on his behalf. In fact, to the contrary, I find that the BCSPCA’s email communications of April 10, 11, and 12, 2017 taken together show that Mr. Granlund was still communicating with Mr. Ridland and still assisting him with the review process.

As for the timing of the decision, Mr. Ridland’s sworn statement provides:

I also remember a conversation with Ms. Moriarty where she stated it would take 2-3 weeks to reach a decision. When I left for Alberta I was very confident that I would have plenty of time to make the trip before a decision was reached.

Mr. Ridland does not say when this conversation was supposed to have occurred. In my view, the evidence supports the conclusion that Mr. Ridland knew or ought to have known at the time of his departure on April 10, 2017 that the BC SPCA’s decision was imminent given the BCSPCA’s April 10 email at 2:05 pm advising that the decision would be out tomorrow, and Mr. Granlund’s same day email in response at 4:26 pm confirming he had “just heard from Mr. Ridland that he had faxed documents yesterday.” As of April 10, or even April 9, (the

“yesterday” referred to in above the April 10, 2017 email), Mr. Ridland was in contact with his representative, Mr. Granlund.

So, although I accept Mr. Ridland’s submission that he was travelling during the pertinent dates, and despite the fact that he might have an old cellular phone, those things do not excuse him from checking his communications, whether that be his email or calling his representative.

Decision

Based on the circumstances of this case, I accept the evidence of the BCSPCA that it delivered its decision on April 11, 2017 and that it was received by Mr. Ridland’s legal representative by April 12, 2017 and was, according to Mr. Granlund, delivered to and read by Mr. Ridland as confirmed by Mr. Granlund on April 12, 2017. This timing is supported by Mr. Ridland’s submission that he received a hostile phone call from Mr. Granlund who advised that he had received an email from the BCSPCA and wanted to know if he could send it to Mr. Ridland who advised yes, by email (even though I understand Mr. Ridland’s assertion that he did not confirm that he had actually read the email). Further, Mr. Ridland does not dispute that he had this telephone conversation with Mr. Granlund on April 12, 2017. I find that at that point in time, at the very least, Mr. Ridland would have been aware that the BCSPCA had submitted correspondence and sent it by email.

If I had any doubt as to whether or not the above unfolding of facts was the case, and I don’t, such doubt would be removed by Mr. Ridland’s sworn statement that when he woke April 18 and was drinking his coffee, he remembered that Mr. Granlund was sending something, and only then did he check his email inbox. I find that he could have checked his inbox on April 12, 2017 when he was advised that there was something there by his representative and, for whatever reason, he chose not to do so.

In the circumstances of this matter, Mr. Ridland’s choice of when to access his email does not extend the time for the delivery of the written reasons. He does not have the luxury of holding onto the delivery of such a time-sensitive email until it is convenient for him to read it, then claiming the clock begins only upon reading it. In my view, the BCSPCA delivered its decision on April 11, 2017 and it was received by Mr. Ridland on April 12, 2017 and the fact that Mr. Ridland did not open his email was his own decision and his own fault and he must accept any risk that goes with his decision.

As I have found that Mr. Ridland received the BCSPCA’s written reasons on April 12, 2017, and that Mr. Ridland filed his Notice of Appeal on April 21, 2017, I also find that the Notice of Appeal was filed too late. In order to have been filed on time, the Notice of Appeal would have needed to be received within four days of Mr. Ridland receiving the written reasons, meaning BCFIRB would have had to receive the Notice of Appeal by the close of business on April 18, 2017, allowing for an extra day due to the fact that BCFIRB was closed Monday April 17, 2017.

As the Notice of Appeal was received on April 21, 2017, it is out of time and the appeal will not be heard.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Corey Van't Haaff". The signature is written in a cursive, flowing style.

Corey Van't Haaff, Vice Chair
Presiding Member