



November 29, 2017

File: P1714

DELIVERED BY EMAIL

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Marcie Moriarty
Chief Prevention and Enforcement Officer
BC Society for the Prevention of
Cruelty to Animals
1245 East 7th Ave
Vancouver BC V5T 1R1

Dear Sir/Mesdames:

**NOVEMBER 23, 2017 DECISION OF THE BC SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS (BC SPCA) REGARDING THE SEIZURE OF ONE DOG
AND ONE CAT**

The BC Farm Industry Review Board (BCFIRB) has received a Notice of Appeal with respect to the above captioned decision on Monday, November 27, 2017 at 4:31pm. The issue before me is whether the Notice of Appeal was received within the statutory time limit.

Legal Test

Under the *Prevention of Cruelty to Animals Act* RSBC 1996, c. 372 (*PCAA*), a person aggrieved by a seizure decision of the BC SPCA may appeal to the BC Farm Industry Review Board (BCFIRB). Section 20.3(2)(b) of the *PCAA* requires appeals from BC SPCA review decisions to be filed, within four days of the decision. In the interest of timeliness in addressing animal welfare issues, there is no provision under the *PCAA* to extend the filing time for appeals.

In order for this to be a valid appeal, the Notice of Appeal must be received within 4 days of the review decision being “received”.

Background

BCFIRB received an email from the BC SPCA enclosing the Review Decision of Chief Prevention and Enforcement Officer Ms Moriarty in the above captioned matter on

**British Columbia
Farm Industry Review Board**

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5
Telephone: 250 356-8945
Facsimile: 250 356-5131

Location:
780 Blanshard St
Victoria BC V8W 2H1
Email: firb@gov.bc.ca
Website: www.firb.gov.bc.ca

November 23, 2017 at 10:59 am. Later on that same day, ██████████ contacted BCFIRB and spoke with Gloria Chojnacki, Case Manager. Ms. Chojnacki explained the appeal process and advised she would follow up with ██████████ in writing with the necessary information.

On November 23, 2017 at 2:37pm, Ms. Chojnacki sent an email to ██████████ enclosing a Notice of Appeal Form and stating as follows:

I will reiterate the timelines discussed with you if you file an appeal:

1. Notice of appeal needs to be filed with BCFIRB by **Monday, November 27, 2017 at 4:30pm**. Please be advised that there are no exceptions to warrant late filing of appeals. See attached notice of appeal form.
2. The \$100.00 filing fee is due in our office **Wednesday, November 29, 2017 at 4:30pm**. The cheque must be received within this timeline, **or your appeal may not be accepted**. It is recommended that the notice of appeal and filing fee are sent **via courier or priority post** to ensure they are received by the deadline. Or as discussed you may make your payment at a FrontCounter office, see link for locations near you.

FrontCounter:

<https://portal.nrs.gov.bc.ca/web/client/locations>

Please advise if you choose to use a FrontCounter location so that I may contact them in advance.

Do not hesitate to contact me if you have any questions with respect to the above.

There is no issue that ██████████ received the Review Decision on November 23, 2017.

On Friday, November 24, 2017, ██████████ contacted BCFIRB and spoke with Amy Khangura, Assistant Case Manager, who again explained the appeal process and reminded ██████████ of the deadline for filing a Notice of Appeal.

On Monday, November 27, 2017, ██████████ again contacted BCFIRB and spoke with Ms Khangura. As it was 4:00 pm, Ms Khangura again advised ██████████ of the 4:30 pm deadline and advised that if an appeal was not received by 4:30 pm, there was nothing BCFIRB could do.

At 4:31 pm, BCFIRB received an email from ██████████ with a Notice of Appeal attached. For completeness I attach the address and time portion of the cover email showing when BCFIRB received the email:

From: ██████████ (via Google Docs) ██████████
Sent: Monday, November 27, 2017 4:31 PM
To: FIRB AGRI:EX
Subject: FIRB@GOV.CA

On November 28, 2017, ██████████ sent an email to BCFIRB inquiring about the status of her appeal, acknowledging it was sent close to the cut off time. She attached a screen shot of her email sending her Notice of Appeal:

From: ██████████ (via Google Docs) ██████████

> Subject: Copy of firb@gov.ca
> To: ██████████, firb@gov.bc.ca, firb@gov.ca, mmoriarty@spca.bc.ca
> Date: Tuesday, November 27, 2017, 4.29 PM
██████████
> ██████████ has attached the following document: Copy of
> firb@gov.ca Google

Decision

Under the *PCAA*, a person aggrieved by a seizure decision of the BC SPCA may appeal to BCFIRB. Section 20.3(2)(b) of the *PCAA* requires appeals from such decisions to be filed within four days of the decision being received. BCFIRB's jurisdiction to hear an appeal is defined by this 4 day period. The definition of "day" in the *Interpretation Act* RSBC 1996, c. 238 defines "day" by reference to the office's "regular business hours". Further, there is no provision under the *PCAA* to extend the filing time for appeals.

██████████ received the Review Decision on November 27, 2017. Further, she was advised both in telephone conversations and in writing that BCFIRB's office closes at 4:30 pm and the Notice of Appeal would need to be received by 4:30 pm on November 27, 2017 and there were no exceptions. In my view, as 4:30 pm is the deadline, it does not matter whether the Notice of Appeal was received one minute, one hour or one day late.

As the Notice of Appeal was not received within the required statutory time period (before 4:30pm Monday November 27, 2017), BCFIRB is unable to accept your appeal for filing.

If a filing fee is received by this office, it will be returned to you.

Yours truly,



Kirsten Pedersen
Executive Director/Registrar

CORRIGENDUM

Released: December 6, 2017

[1] This is a corrigendum to the Registrar's Decision issued November 29, 2017. The second full paragraph on page 3 under the heading **Decision** should have read as follows:

█ received the Review Decision on November 23, 2107. Further, she was advised both in telephone conversations and in writing that BCFIRB's office closes at 4:30 pm and the Notice of Appeal would need to be received by 4:30 pm on November 27, 2017 and there were no exceptions. In my view, as 4:30 pm is the deadline, it does not matter whether the Notice of Appeal was received one minute, one hour or one day late.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD



Kirsten Pedersen
Executive Director/Registrar