



April 18, 2017

File: PCAA/File #17-06

DELIVERED BY EMAIL

Kristine Jones
[REDACTED]
[REDACTED]

Shawn Eccles
Senior Manager, Cruelty Investigations
BC Society for the Prevention of
Cruelty to Animals
1245 East 7th Av
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JONES VS. BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (BC SPCA)

Decision

In the interest of clarity in this matter, I am placing the decision in this matter here in front of my reasons. For the reasons I provide below, this appeal will be heard.

Introduction

An appeal was filed by the Appellant, Kristine Jones, regarding the seizure of her dog Ayce on March 13, 2015. 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).

**British Columbia
Farm Industry Review Board**

Mailing Address:
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Victoria BC V8W 9B5
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780 Blanshard St
Victoria BC V8W 2H1
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Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

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 review decision provided they appeal within 4 days after receiving the Society's reasons. BCFIRB has no power to extend the time to appeal.

When did the Appellant file the notice of appeal?

The notice of appeal is signed and dated April 7, 2017 and is marked as received by fax at BCFIRB on April 10, 2017 at 16:46. As the offices of BCFIRB close at 16:30, the legal rule, as set out in s. 25(3) of the *Interpretation Act*, is that the notice of appeal is deemed received the next business day: April 11, 2017. Therefore, the Notice of Appeal was received on April 11, 2017. I am not permitted any discretion in determining when the four days ends. Jurisdiction here is defined by the four-day period, and the definition of "day" in the Interpretation Act which defines "day" by reference to the office's "regular business hours". BCFIRB closes its offices at 4:30 pm. The appeal was filed 16 minutes late, and, regrettably, I am not permitted to forgive any tardiness. I am, however, permitted to determine when the Society decision was received by the Appellant.

When did the Appellant receive the Society's reasons?

The Appellant states she received the reasons on April 7, 2017. If that is correct, her appeal was received in time. If the Appellant received the reasons on April 6, 2017, her appeal is out of time. On April 11, 2017, BCFIRB requested submissions from the parties on this issue, stating as follows:

There appears to be an issue between the parties as to when the review decision was received. If the decision was received on April 6, 2017 as alleged by Ms. Moriarty, then

the Notice of Appeal was received after the expiration of the time for filing an appeal (4:30 pm, April 10, 2017). If, however, the decision was not received by Ms. Jones until April 7, 2017 as she alleges, the time for filing the Notice of Appeal may not yet be expired depending on the circumstances surrounding when Ms. Jones received the review decision. In order to clarify the above issue, BCFIRB is giving the parties an opportunity to explain the circumstances around when the review decision was received and when the time for filing the appeal expired. These submissions must be received no later than **12:00 pm April 12, 2017**. A BCFIRB panel will then determine whether the appeal has been filed in time.

The Society's written reasons letter issued under s. 20.2(5)(a) is dated April 6, 2017. The letter includes the following statement:

This decision may be appealed to the British Columbia Farm Industry Review Board ("BCFIRB") as was outlined in the Notice of Disposition you were provided. Please note the appeal is time sensitive and must be received within four days from receipt of this decision.

The face of the letter states that it was delivered to an email address at a Shelter. The Society has submitted an internal Society email dated April 6 at 1:57 pm from Ms. Moriarty to Ms. Lathey. In that email, Ms. Moriarty advises Ms. Lathey that she spoke to "M" at the Lookout Boulevard Shelter [phone number included] "who confirmed that Kristine has received the decision today. I also reviewed that any dispute to FIRB was time sensitive and must be received within 4 days and if they have any questions to call FIRB."

I note that Ms. Moriarty, on the same date, two minutes later (1:59 p.m.), sent an email to BCFIRB staff, enclosing a copy of the April 6 decision and stating "Please see another decision today. I have received confirmation that she has received the decision today." The Society has also submitted a voice message recording which it says it received on April 6, 2017 at 1:32 p.m. "confirming that they had received the decision and requesting a call back, Marcie called them back and advised the [sic] of the appeal process".

I have listened to the voice message recording. The recording is confusing because while the voice file is labelled April 6th, the caller (who is not the Appellant) begins by stating that they have "just received a dispute package **and** a veterinarian's report last night April 4th" and asked for a call back as they wished to dispute the report. The April 4th reference from the caller is confusing, but the voice mail record index clearly refers to the voice mail having been received on April 6, 2017 at 1:32 p.m. This time recording corresponds with the email strings from Ms. Moriarty stating that she telephoned the caller, all within several minutes.

I note that the Appellant in her April 11, 2017 submission includes a copy of an email dated April 6, 2017 at 11:50 a.m. from Ms. Moriarty to Shelter stating as follows *Re BCSPCA Decision re: Kristine Jones – TIME SENSITIVE*:

Please find attached the decision regarding the dog Ayce belonging to Kristine Jones.

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If you could please confirm receipt of this decision and that it has been passed on Ms. Jones that would be greatly appreciated. You can simply reply to this email to confirm delivery.

Regards,
Marcie.

The timing of this email – April 6, 2017 at 11:50 a.m. – fits in sequence with the events described above – the phone call from the Shelter to the SPCA at 1:32 p.m. and Ms. Moriarty's recording by two emails of the call back on that date.

The Appellant has denied that she received the written reasons/decision of the Society on April 6th but instead says she received it on April 7th. The Appellant referenced an unusual notation at the foot of the Shelter's copy of Ms. Moriarty's email, stating it is from Prov. Office – Copier to Marcie Moriarty sent on Friday April 7, 2017 at 1:07 p.m. The Appellant has sent a handwritten note stating "Check date on the bottom of the email page: Dated – April 7/17 Time 11:50 a.m. I didn't receive this email until April 07/17. Therefore extra day granted".

The notation, according to the Society, and I accept their explanation, is due to an error at their end. For some technical reason, emails are registered by their printer one day later on their internal clock. There is an apparent issue with the internal clock of the Konica Minolta bizhub Printer in use at the BCSPCA Provincial Office and that provides a date and time that is approximately 25 hours and 22 minutes in the future. Whatever the source of this technical error is, it does not displace the clear indication that Ms. Moriarty's email sending the decision was sent on April 6, 2017 at 11:50 a.m.

A decision in this matter, for me, does not turn on this incorrect notation. In order to clarify some of the confusion, I held a conference call attended by Shawn Eccles of the Society, Louise Lathey of the Society (Marcie Moriarty was out of the country and unable to attend), Maureen Pelke, a friend of the Appellant's at the Shelter who confirmed it was her voice mail message we are discussing (I played it for all parties and she confirmed it was hers), and the Appellant. All testimony was given under oath or affirmation.

Ms. Pelke states it was the email from Louise Lathey with the veterinarian's report and a dispute package that came in the night before her voice mail message, and acknowledges she could have misstated the date but not the sequence of events. She says she called and left two voice mail messages for the Society as she and the Appellant had questions especially since the vet report listed many "normal" things about the dog. Ms. Pelke also said the dispute package included a copy of the warrant.

Ms. Pelke denies saying she gave the decision to the Appellant as that would be done by the office and the person in the office who handles email is on vacation. Ms. Pelke said she is very clear that she left the voice mail messages for the Society the day after receiving the veterinary report. Ms. Pelke says it was Friday, April 7th that the Shelter office called the Appellant to the office as they printed an email for the Appellant who brought the printout back to the dinner table and read it, and became very upset.

The Appellant testified that she received the decision on Friday, April 7th after being called to the office, she brought a print out of the email back to the dinner table where she read it and got emotional. She recalls it saying she had a certain number of days to appeal and there is no way she would let it slide.

Ms. Lathey confirmed that she got two voice mail messages from Maureen Pelke on April 6th but could only produce one recording. She confirmed the decision was sent to the Shelter by email and fax at 11:50 am on April 6th. Ms Lathey said she was out of the office so she emailed Marcie Moriarty to follow-up on the voice mail messages, and she received the email from Ms. Moriarty confirming that Ms. Moriarty said she had spoken to Maureen who confirmed delivery of the decision to the Appellant. Ms. Lathey also confirms that she did send a veterinary report on April 4 to the Shelter as that was the late date she received it on. The vet report did list an ear infection. It was sent to the Shelter at 1:16 pm April 4. Ms. Lathey also confirms that when the written reasons/decision were sent on April 6th, it was a three-page document with a one page cover sheet and the veterinary report was not included in that delivery.

Mr. Eccles confirms he can speak to the emails but not for Ms. Moriarty. He was away from the office on April 6th, and when he returned on April 7th, Ms. Moriarty was away from the office. He confirms he explained the reason for the wrong date notation on the bottom of the email and he confirms that when he returned to the office on April 7th, he had an email from Ms. Moriarty acknowledging that she said the written reasons/decision had been received by the Appellant on April 6th.

The issue for me is when the Appellant received the written reasons/decision. The Appellant testifies that she received it on April 7th at dinner, and this was supported by the testimony of Ms. Pelke who also recalls seeing the Appellant receive the decision at the dinner table and becoming upset. I find there was confusion as to what documents were being discussed on April 6th between Ms. Moriarty and Ms. Pelke. Ms. Pelke testifies that she left the voice mail message with regard to the veterinarian's report and that she never received a copy of the decision as it was delivered directly to the Appellant, via the office, on April 7th. She refers to receiving the veterinary report the night before, and erroneously names the date as April 4th.

Ms. Lathey from the Society confirms that she delivered a veterinary report April 4th. It is apparent to me that emails going to the Shelter may take some time to be delivered to the intended recipients.

Without benefit of Ms. Moriarty's testimony, I can only assume that although she may have believed that she was discussing the written reasons/decision with Ms. Pelke, it is clear from Ms. Pelke's testimony that Ms. Pelke was discussing a different document.

It is also clear to me that in the circumstances of this case, by necessarily using an intermediary to deliver a time-sensitive document, the document may not have been afforded the importance that was intended. I find that despite the Society delivering the decision on April 6th, it was not received by the Appellant until April 7th, a completely understandable delivery delay given the

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fact the decision was delivered to a homeless Shelter via an office email, and then printed and delivered to the Appellant.

Having determined that the decision was received by the Appellant on April 7, 2017, the Appellant had until 4:30 pm April 11, 2017 to file her appeal, which she did.

She has since perfected her appeal within the time limits provided. I find that this appeal was filed on time and will be heard. Mr. Eccles confirmed at the teleconference that the dog Ayce was still being held pending the outcome of this matter.

I am attaching the Notice of Appeal letter which sets the submission schedule and includes the hearing date for the appeal.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

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

Corey Van't Haaff
Presiding Member