



October 18, 2017

DELIVERED BY EMAIL

James Richard Bruvall
Revelstoke Petting Zoo
[REDACTED]

Marcie Moriarty
Chief Prevention and Enforcement Officer
BCSPCA
1245 East 7th Avenue
Vancouver BC V5T 1R1

Dear Sir/Mesdame:

RE: Potential appeal involving James Richard Bruvall (2012064 Alberta Ltd.) and BC Society of Prevention of Cruelty to Animals

On October 13, 2017, a preliminary hearing was conducted in the above captioned matter to determine whether Mr. Bruvall had in fact requested a review of an August 2, 2017 decision of the BC Society for the Prevention of Cruelty to Animals (BC SPCA) under 20.2(2)(b)(ii) of the *Prevention of Cruelty to Animals Act (PCAA)* such that he has a right of appeal to the British Columbia Farm Industry Review Board (BCFIRB).

In preparing for the conference call, I reviewed the following documents:

1. September 28, 2017 letter from Mr. Bruvall to BCFIRB
2. Email from BCFIRB staff to Bruvall at 5:43 pm September 28
3. Email to BCFIRB from someone on behalf of Mr. Bruvall at 2:59 pm September 29
4. Email with attachments (2 letters from Mr. Bruvall and a Timeline) from SPCA 1:19 pm October 2, 2017
5. Email to BCFIRB from "James" at 7:40 am October 6
6. Email to BCFIRB from "James" at 2:53 pm October 10
7. October 12, 2017 Email to BCFIRB from Marcie Moriarty with attached Message Trace Report.

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.gov.bc.ca/BCFarmIndustryReviewBoard

Background

Prior to the conference call, I sent a letter to the parties setting out the relevant background relating to Mr. Bruvall's communication with BCFIRB. I do not intend to repeat that entire history here but in brief, the relevant history is as follows.

On September 28, 2017, BCFIRB received an email from Mr. Bruvall advising that the BC SPCA had seized certain animals in his custody on August 2, 2017 and that on August 14, 2017, he had allegedly requested a review of that decision under 20.2(2)(b)(ii) of the *PCAA*. The email further advised that Mr. Bruvall did not receive a decision from the BCSPCA within 28 days (September 11, 2017) and he was seeking the return of the animals seized on August 2, 2017 to their owners. The September 28 email from Mr. Bruvall did not attach the August 14, 2017 request for review.

By email dated September 28, 2017, BCFIRB staff advised Mr. Bruvall that in order for there to be a valid appeal before BCFIRB, an appellant must demonstrate that a request for review was delivered to the BC SPCA within the 14 days required under the *PCAA*. Mr. Bruvall was asked to provide a copy of his August 14 request for review and confirmation of how the request was delivered to the BC SPCA by the close of business September 29, 2017. The BCSPCA was given one business day to provide its response.

On September 29, 2017, BCFIRB received an email from an unknown person identified on the email as "2012064 Alberta Ltd." advising that Mr. Bruvall was in custody and could not send the August 14 email but he would be able to do so October 5, 2017.

On October 2, 2017, the BC SPCA provided a chronology of events related to the seizure of August 2, 2017 and a subsequent seizure of September 12, 2017. The BC SPCA's position was that as no dispute had been received by the BC SPCA, on August 19th, 2017 the animals seized became the legal property of the BC SPCA.

BCFIRB did not hear from Mr. Bruvall on October 5, 2017 but did receive an email on October 6, 2017 inquiring as to what steps he needed to take to get his animals back. He did not include the August 14, 2017 email.

On October 10, 2017, BCFIRB staff contacted Mr. Bruvall to respond to voice mails he had left inquiring about the status of the August 2 seizure and to confirm that they had not received anything from him beyond his email of October 6, 2017 wherein he inquired about the steps necessary to get his animals back. Mr. Bruvall indicated that he had in fact sent BCFIRB an email with a screen shot of the August 14, 2017 email (however no such document had been received by BCFIRB). Subsequently, at 2:53 pm on October 10, 2017, BCFIRB received a cover email which stated:

Hello,

I have forwarded the original message to you,

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Please understand when I sent this I was hurt, and angry. I look forward to working with you to get my animals back. Please confirm receipt of this message with the forwarded message sent to the SPCA regarding the first seizure.

James

The attached email stated:

From: **Revelstoke Horseback Adventures** <revelstokehorsebackadventures@gmail.com>
Date: Tue, Aug 14, 2017 at 1:47 PM
Subject: THEFT OF MY ANIMALS
To: mmoriarty@spca.bc.ca
SPCA,

I am disputing the illegal seizure of my horses, lamb, pony, and pot bellied pig. I want my animals back you thieves.

JAMES

--

Revelstoke Horseback Adventures
www.revelstokehorsebackadventures.com

BCFIRB staff forwarded the above email to the BC SPCA on October 12, 2017. Its response was as follows:

Good Afternoon Ms. Chojnacki,

Thank you for the forward e-mail that you received from Mr. Bruvall in relation to his alleged dispute sent on August 14th 2017. As I did not receive this e-mail in my inbox or my junk mail folder I inquired with our IT Specialist. A message trace report was run to see if we could locate this dispute e-mail. The message trace report can locate all outgoing and incoming mail that was sent or received from or by the BC SPCA's server.

The report was run for the dates of August 13th – August 16th 2017, searching under the e-mail address that Mr. Bruvall has provided to the BCFIRB. Please find attached the report and the breakdown of the report.

In light of the above, we again stand by our position that we did not receive a dispute pertaining to the first seizure.

The email also attached a Message Trace Report document. This email and attachment was copied to Mr. Bruvall.

Given the above exchange of information and the contradictory positions of Mr. Bruvall and the BC SPCA, I advised the parties that the following preliminary issues would need to be resolved before any further steps could be taken:

1. Did the BC SPCA receive a timely request for a review of the August 2, 2017 seizure decision pursuant to s. 20.2(2)(b)(ii) of the PCAA.

20.2 (2) A request for a review may be made to the society

(b) within,

(ii) if section 18 applies, 14 days after notice is given as required by that section.

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:

(a) if no action has been taken under section 20.2(4) within 28 days after a request for a review is made, the decision to take custody of the animal under section 10.1 or 11;

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

(a) in respect of an appeal under subsection (1) (a), no earlier than 28 days after the request for a review is made.

2. What is the status of the animals seized on August 2, 2017? What impact does that have on potential proceedings before BCFIRB?

I conducted a hearing by conference call on October 13, 2017 with Mr. Bruvall and Ms. Moriarty on behalf of the BC SPCA. The call was recorded.

Position of the Parties

Mr. Bruvall testified that in mid-July, he received a notice from SPC Chapman to contact him. SPC Chapman provided Mr. Bruvall with a list of actions to be taken on the animals in his custody to be in compliance. Mr. Bruvall says that despite taking all the actions, the BC SPCA came on August 2, 2017 and seized the animals. A vet was on-site when the animals were seized but Mr. Bruvall did not agree with her conclusions. He says he got upset and left.

On August 4, 2017, Mr. Bruvall says he picked up the Notice of Disposition from the RCMP. He acknowledges these documents outlined conditions that he needed to comply with and listed the animals seized (pot belly pig, lamb, percheron horse, sorrel gelding, sorrel mare, bay gelding, bay female, miniature horse). He agrees the Notice described how to dispute the seizure, gave BC SPCA contact information including an email address and the 14 day deadline.

Mr. Bruvall says that on August 13, 2017, he drafted two emails that his staff reviewed. He says the email of August 14, 2017 was sent from his tablet to Ms. Moriarty disputing what he calls an “illegal seizure”. Mr. Bruvall could not provide any proof that his email had in fact been received by the BC SPCA and says that “whether or not the email was received is irrelevant”. During the course of his testimony, Mr. Bruvall asked me to issue a subpoena to confirm that his email had in fact been sent.

Mr. Bruvall agrees that he did not at any time follow up on his August 14, 2017 email with the BC SPCA. He agrees he never heard back from the BC SPCA and says he thought they had 28 days to decide. He says he read the literature (that came with the Notice of Disposition) and assumed the animals would be returned and there was no reason to follow up.

Mr. Bruvall says that on August 26, 2017, he was arrested in an unrelated matter and incarcerated for 45 days. During this time, he was not able to follow up but his staff kept him updated. They told him his animals had been sold and advised of a second seizure on September 12, 2017. He says the BC SPCA should have phoned him or followed up with him prior to getting rid of the animals.

In response to my questions, Mr. Bruvall indicated that he authorized Tammy Sutherland to act on his behalf to find out where the horses were and inquire into the process but it took 10 days to get the authorization to the BC SPCA. He referred to a letter dated September 17, 2017 addressed “to whom it may concern” giving Ms. Sutherland his “approval to deal with the animals as she feels is necessary and appropriate”. In a further letter dated September 20, 2017, Ms. Sutherland asked the BC SPCA to return the animals seized on August 2 referring to the “appeal filed immediately after receiving the paperwork for the seizure that took place on August 2, 2017”. In response to a question from Ms. Moriarty, Mr. Bruvall agreed that he had access to a satellite phone after the August 14 email had been sent.

Mr. Bruvall says that there is an onus on the BC SPCA to follow up with him although he acknowledges the Notice of Disposition makes it clear that the onus to follow up is on the owner of the animals. Mr. Bruvall’s evidence is that he assumed the animals would be returned to him, that the situation would resolve itself, and that he had lots of other distractions related to his incarceration. After his release from custody on October 4, 2017, Mr. Bruvall made his inquiries of BCFIRB, both in relation to the August 2 seizure and the further seizure of September 12.

Ms. Moriarty, Chief Prevention and Enforcement Officer, testified on behalf of the BC SPCA. She says a warrant was obtained on August 2, 2017 and the animals (noted above) were seized. There was no suggestion by Mr. Bruvall at that time that any of the animals belonged to someone else. Ms. Moriarty testified that at no time did anyone on behalf of the BC SPCA receive an email disputing the August 2 seizure. When Mr. Bruvall sent BCFIRB a copy of his purported email on October 10, 2017, after checking her email accounts, Ms. Moriarty requested the BC SPCA’s IT staff to conduct a Google sweep of all their email accounts. This sweep generated a “Message Trace Report” that indicated that no message from Mr. Bruvall had been received by the BC SPCA during the time period August 13-16, 2017.

Ms. Moriarty says that having received no dispute, the BC SPCA acted in good faith when it adopted out the animals. The only seized animals remaining in its possession are 3 horses that belong to people other than Mr. Bruvall. She argues that the onus is on the animal owner to confirm that his or her Notice of Dispute has been received. She points to the BC SPCA's Procedure for Disputing (s.11) which was included in the package of material given to Mr. Bruvall with the Notice of Disposition which states in part:

STEP 1: NOTICE OF DISPUTE – Format

An owner, operator, or custodian of the animal(s) who seeks to dispute or review a decision to take custody of animal(s) and seeks a return of animal(s), must do so in writing within 14 days of receiving the notice of disposition. The written request must be addressed to the attention of **Marcie Moriarty, Chief Prevention and Enforcement Officer**, and sent via mail, fax or email to the below::

- a) Mailing address: 1245 East 7th Avenue, Vancouver, BC, V5T 1R1
- b) Fax: 604-681-7022
- c) Email: mmoriarty@spca.bc.ca

Please contact the Chief Prevention and Enforcement Officer at 1-800-665-1868 to ensure your dispute notice has been received within the 14 day deadline. [emphasis added]

She says the document clearly outlines the dispute process and that animal owner needs to confirm that the Notice of Dispute was received by the Chief Prevention and Enforcement Officer by the 14 day deadline.

DECISION

In order for there to be a right of appeal, Mr. Bruvall needs to demonstrate his compliance with section 20.2 of the *PCAA* which provides:

- 20.2** (1) The society may review a decision of an authorized agent to take custody of an animal under section 10.1 or 11
- (a) on request of a person who owns, or is an operator in relation to, the animal,
 - (b) on request of a person from whom custody of the animal was taken under section 10.1 or 11,
- (2) A request for a review may be made to the society
- (a) in the form required by the society, and
 - (b) within,...
- (ii) if section 18 applies, 14 days after notice is given as required by that section.

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:

(a) if no action has been taken under section 20.2(4) within 28 days after a request for a review is made, the decision to take custody of the animal under section 10.1 or 11;

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

(a) in respect of an appeal under subsection (1) (a), no earlier than 28 days after the request for a review is made.

From these sections, I conclude that Mr. Bruvall (as either the owner or the person from whom custody was taken) must make a request of the BC SPCA in the form required by the BC SPCA within 14 days after the Notice of Disposition has been given.

Has Mr. Bruvall made a request in the form required by the BC SPCA pursuant to s. 20.2(2)(a)?

On the evidence, I conclude that Mr. Bruvall received the Notice of Disposition on August 4, 2017. That Notice of Disposition attached instructions on how to appeal the removal and seek the return of the animals. That document stated:

IMPORTANT:

You have 14 days after you receive this notice to dispute the removal of your animal(s). Full custody of the animal(s) will transfer to the BC SPCA if the BC SPCA has not received a written dispute in the format required as set out in the attached instruction document within 14 days after you receive this notice.

Further, the attached Procedure for Disputing (s. 11) document which I include in its entirety below sets out the format required by the BC SPCA as contemplated by s. 20.2(2)(a) as well as the timeline for submissions and BC SPCA decision:

STEP 1: NOTICE OF DISPUTE – Format

An owner, operator, or custodian of the animal(s) who seeks to dispute or review a decision to take custody of animal(s) and seeks a return of animal(s), must do so in writing within 14 days of receiving the notice of disposition. The written request must be addressed to the attention of **Marcie Moriarty, Chief Prevention and Enforcement Officer**, and sent via mail, fax or email to the below::

- a) Mailing address: 1245 East 7th Avenue, Vancouver, BC, V5T 1R1
- b) Fax: 604-681-7022
- c) Email: mmoriarty@spca.bc.ca

Please contact the Chief Prevention and Enforcement Officer at 1-800-665-1868 to ensure your dispute notice has been received within the 14 day deadline. (emphasis added)

STEP 2: SUBMISSION TIMELINE

Once the BC SPCA has received your written dispute, a file will be opened and you will be provided with a letter confirming receipt of your dispute and confirmation of the timelines for the dispute.

The BC SPCA will provide you with full disclosure of all of the documents in their possession which relate to your file. You will then have an opportunity to provide written submissions to the BC SPCA to include a clear statement as to why you say the animal(s) should be returned to you and, to address concerns set out in the Information to Obtain a Search Warrant, a copy of which will have been provided to you.

STEP 3: BC SPCA DECISION [complete within 28 days following receipt of dispute]

The Chief Prevention and Enforcement Officer will review and consider all of the submissions and documentation and will decide whether to return the animal(s) to you based upon the animal(s)' best interests. . If the decision is to return any, or all, of the animal(s), an agreement for the return of the animal(s) will be sent to you for signature. As well, costs of care owed pursuant to s.20 of the Act must be received by the BC SPCA before the animal(s) are returned to you. If the owner, operator or custodian of the animals wishes to dispute the amount of those costs, they may appeal to the BC Farm Industry Review Board (BCFIRB) at the address noted below.

If the decision is to refuse a return the animal(s), the owner, operator or custodian of the animal has the right to appeal the decision to BCFIRB. *Appeal process is time sensitive.* For information about BCFIRB's appeal process, please contact BCFIRB directly at (250) 356-8945, firb@gov.bc.ca or visit their web site at <http://www.gov.bc.ca/BCFarmIndustryReviewBoard>

There does not appear to be any dispute that Mr. Bruvall received these documents. In his testimony before me and in his correspondence with BCFIRB, he was aware of Ms. Moriarty's email address, the need for his dispute to be filed within 14 days and the 28 days the BC SPCA had to provide its decision. Mr. Bruvall did not however acknowledge the requirement that he "contact the Chief Prevention and Enforcement Officer at 1-800-665-1868 to ensure your dispute notice has been received within the 14 day deadline".

On the evidence before me, I find that Mr. Bruvall did send an email with the intention of disputing the seizure. But in my view, this is not determinative as the Society, as part of the "form required", advises the disputant to contact the Chief Prevention and Enforcement Officer to confirm that the Notice of Dispute has in fact been received.

Mr. Bruvall's position appears to be that having sent an email he was under no further obligation to do anything. I find this position completely unreasonable given that the instruction document both advises a potential disputant to ensure that the Notice of Dispute has been received and also

explains the process that follows the receipt of that Notice. This process includes receiving a letter from the BC SPCA confirming receipt of the dispute, confirmation of the timelines for the dispute, full disclosure of all of the documents in the possession of the BC SPCA and then an opportunity to provide written submissions to the BC SPCA including a clear statement as to why the animal(s) should be returned and to address concerns set out in the Information to Obtain a Search Warrant. It makes clear that all of this will happen within 28days.

Mr. Bruvall says that after sending his email, he assumed the animals would be returned to him and that the situation would resolve itself. I find nothing in the Notice of Disposition or supporting documents which would support this belief. Instead, any reasonable person reading these documents would conclude that a Notice of Dispute triggers a timely, comprehensive, multi-step review process. It does not contemplate a month of silence.

I understand that after the August 2, 2017 seizure, Mr. Bruvall had a period of incarceration during which time his ability to send or receive information was restricted. However, I note that his incarceration did not begin until August 26, 2017, more than 10 days after he says he sent his email. He acknowledges having access to a satellite phone and having staff. Yet neither he nor anyone on his behalf made any timely attempts to contact the BC SPCA to find out the status of his request for a review, the whereabouts of a letter confirming receipt of his Notice of Dispute and the disclosure of all documents in his file. In these circumstances, the period of incarceration is not relevant to the matter before me.

Mr. Bruvall further argues that the onus was on the BC SPCA to contact him directly when the decision was made to dispose of his animals. Given that Mr. Bruvall's position is that having sent an email disputing the seizure, he had met the requirements of the *PCAA*, this position is perhaps understandable. However, I accept the evidence of the BC SPCA and its "Message Trace Report" that while Mr. Bruvall may have sent an email seeking to dispute the seizure, the BC SPCA did not receive that email.

Had Mr. Bruvall contacted Ms. Moriarty after sending his email to confirm its receipt as set out in the Procedure for Disputing (s. 11) , he would have been made aware of that no such email had been received, at which time he could have confirmed his intention to dispute the seizure within the time periods required by the *PCAA*. But having chosen to do nothing, the fault here rests with Mr. Bruvall who seems to have been content to do nothing assuming his animals would simply be returned with no further action despite the very clear statements in the Notice of Disposition package to the contrary.

As I have found that no review was requested in accordance with subsection 20.2(2), there is no basis upon which Mr. Bruvall can appeal the actions of the BC SPCA to BCFIRB under the appeal provisions of the *PCAA*.

What is the status of the animals seized on August 2, 2017? What impact does that have on potential proceedings before BCFIRB?

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Ms. Moriarty testified that having received no Notice of Dispute, the animals seized on August 2, 2017 have been adopted out by the BC SPCA in good faith. She says that the three horses that remain in BC SPCA custody belong to other people not Mr. Bruvall. Mr. Bruvall did not contradict this evidence.

I have already found no basis for an appeal based on the reasons set out above. I would also agree with Ms. Moriarty that as the seized animals have been disposed of, the issues raised by Mr. Bruvall are academic and the issues raised before me by Mr. Bruvall are moot.

Yours truly,

A handwritten signature in black ink, appearing to read "John Les", written in a cursive style.

John Les, Chair