

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS CONCERNING THE SEIZURE OF 1 DOG

BETWEEN:

CS

APPELLANT

AND

BRITISH COLUMBIA SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

Date: July 25, 2018

RE: Application under section 42 of the Administrative Tribunals Act (ATA)

Introduction

1. This decision addresses the Society's July 24, 2018 application under section 42 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (ATA):
 - 42 The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.
2. This application must be understood in light of the Society's general statutory duty in s. 20.3(4) of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372: (PCAA):
 - 20.3 (4) On receiving notice under subsection (3), the society is a party to the appeal and must provide to the board, as soon as reasonably practicable, every bylaw and document in relation to the matter under appeal.
3. These sections, read together, impose a duty on the Society to provide the BC Farm Industry Review Board (BCFIRB) with an unredacted version of all documents that relate to the appeal, but also allow the Society to apply for an order that certain parts of the record be considered in confidence to the exclusion of the Appellant the Society can establish that the nature of the information requires that direction to ensure the proper administration of justice.
4. In support of its section 42 application, the Society has provided BCFIRB with the unredacted record, together with a redacted version of the Record it seeks leave to provide to the Appellant.
5. The Society relies on the Provincial Court Sealing Order and the rationale for that Order. The Sealing Order states:

IT IS ORDERED that all records in the custody or control of a Justice relating to the above mentioned Warrant/Production Order/Authorizations/Preservation Order not be accessed or disclosed to any interested party or member of the public until further Court Order.

IT IS FURTHER ORDERED that all records relating to the above mentioned Warrant/Production Order/Authorizations/Preservation Order and the material filed in support of this application be placed in a sealed packet and kept in a secure place within the Court Registry at Nanaimo British Columbia until further Court Order.

IT IS FURTHER ORDERED that any party may apply to the Justice or Judge who made the order or a Judge of the Court to set aside or vary this order, on three (3) clear days notice being given to the Attorney General of British Columbia, Crown Counsel, or an agent for the Attorney General of Canada at Nanaimo British Columbia.

6. The Appellant is aware of the Sealing Order. Ms. Moriarty's July 13, 2018 decision makes reference to it, and the Sealing Order is also included in the Redacted Record the Society proposes to provide to the Appellant.
7. Pursuant to the Sealing Order and its rationale, the Society has proposed that four pages of the redacted record include text that is blacked out, with the remainder of the pages (10) excluded.
8. The Society notes that, pursuant to BCFIRB's time-sensitive process of the hearing of appeals, its disclosure is due on July 26, 2018.

Decision

9. While section 42 orders are exceptional, I am satisfied that such an order is properly made in this case to ensure the proper administration of justice. Since this application was made *ex parte*, and this decision is going to be provided to both parties, I will frame my reasons in a way that does not disclose the information being protected.
10. It is apparent to me that the Court made the Sealing Order for a reason related to the administration of justice, and that disclosing the same information to the Appellant would undermine that reason. It would in my view be contrary to the proper administration of justice to disclose the same documents in this process. While the Appellant is entitled to procedural fairness, procedural fairness is subject to clear exceptions, and the circumstances of this case reflect one of those exceptions.
11. I am also satisfied that any prejudice to the Appellant in not having the redacted information is minor. As BCFIRB has noted in previous decisions, this appeal is *not* about whether the warrant to enter the property was valid: *Viitre v. BCSPCA* (January 10, 2017 at para. 154); *Binnersley v. BCSPCA* (April 15, 2014, at paras. 23-26). I also note that since information contained in an ITO package is hearsay, BCFIRB prefers direct evidence given at the hearing in any event: *Viitre*, para. 155.
12. The issues on this appeal will not be whether the Society lawfully entered the property. They will be whether, once there, the Society had reasonable grounds to remove the animal, and whether the animal should be returned. While the Appellant will be deprived of some information, it is obvious from a review of the record that the issues in this case

are very specific and the Appellant has full access to and will have the opportunity to test the evidence of the Society's observations on the site together with the veterinary reports that relate to the key issues.

13. If the Sealing Order is modified or lifted for any reason prior to the disposition of this appeal, I would be prepared to revisit this ruling. However, I am not prepared to consider adjourning or delaying this appeal for that purpose unless a strong case can be made for doing so on application by one of the parties. This reflects that the strict timelines we follow in *PCAA* are in the best interests of animals and also in the financial interests of the parties. Delays add to the Society's costs in caring for an animal and, importantly, they also potentially add to an Appellant's care cost liability under s. 20(1) of the *PCAA*, as an Appellant is subject to greater financial liability for care costs if the appeal is dismissed.
14. I therefore grant the Society's application to provide the disclosure package to the Appellant with the redactions it has proposed and pursuant to the July 26, 2018 deadline BCFIRB previously imposed.

Per:

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD



Peter Donkers, Presiding Member