



January 18, 2019

File: PCAA/FileP1809

**DELIVERED BY EMAIL**

Randip (Randy) Bagga  
[REDACTED]

Chris Rhone  
Branch MacMaster LLP  
1410 - 777 Hornby Street  
Vancouver, BC V6Z 1S4

Dear Sirs:

**RANDIP BAGGA VS. BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (the “Society”)**

The Appellant has applied to adjourn the January 22, 2019 hearing of the above noted appeal for a week’s time in order to secure witnesses to provide evidence in this hearing.

**Overview**

BCFIRB’s intent with appeals under the *Prevention of Cruelty to Animals Act*, c. 372 (*PCAA*) is to have a fair process for all parties, while recognizing that timeliness is important for animal care and animal welfare and health issues. Timely hearings and decisions are in the best interests of the animals. Timely hearings and decisions also minimize the costs for caring for animals while in the Society’s custody.

The British Columbia Farm Industry Review Board (BCFIRB) has issued a [Practice Directive](#) dated December 11, 2013, [Fact Sheet](#) (March 2013) and [Notice of Appeal Application Form](#) which set out the time sensitive nature of appeals. BCFIRB wrote to the Appellant on December 21, 2018 to establish the schedule for this appeal. Unfortunately there was an error in the letter which BCFIRB corrected by correspondence of December 27, 2018, confirming that the date of the telephone hearing would be January 22, 2019.

The reality is that from the day an appeal is filed until the day a decision is rendered for *PCAA* appeals is less than 30 days, with rare exception. The appellant is asking that this be an exception because as of today he will be the sole witness for his case at the hearing.

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**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](mailto:firb@gov.bc.ca)  
Website: [www.firb.gov.bc.ca](http://www.firb.gov.bc.ca)

### **Chronology of Correspondence Regarding Extensions of Time and Date of Hearing**

- December 21 - the Appellant filed the appeal of the Society's December 19, 2018 decision not to return the two dogs seized on December 4, 2018. The Appellant's filing fee arrived December 21, 2018, perfecting his appeal.
- December 27 -BCFIRB emails an appeal process letter setting the hearing date of January 22, 2019 and the submission schedule, along with the Preparing for a Hearing Handout.
- January 10, -Appellant requests extension to Monday January 14, 2019 to file documents which Counsel for the Society consented to provided the Society could have an additional day to respond to the Appellant's document disclosure.
- January 11 -BCFIRB grants Appellant's request for an extension to January 14, 2019 and gave the Society until January 16, 2019 to provide their final disclosure by email, with hard copies to follow on January 17, 2019.
- January 17 -BCFIRB receives email from Appellant requesting adjournment due to witness unavailability, proposing a delay of one week to January 29, 2019
- January 17 -BCFIRB receives submission from Counsel for the Society opposing adjournment.

### **Submissions on Adjournment**

The Appellant advised BCFIRB on January 17, 2019 that he could no longer rely on the witnesses he planned to rely on for the hearing. He advised that these witnesses who are his tenants, advised him that if they gave testimony, it may be contrary to the Appellant's interests and the outcome he seeks on appeal.

Counsel for the Society opposes the adjournment application and seeks an order or direction from BCFIRB that the hearing proceed on January 22, 2019, as scheduled. The Society suggests that some of the concerns that the Appellant expressed about the Appellant's witnesses are irrelevant to the substance of the hearing and further, it is unclear how an adjournment will assist the Appellant in presenting his case. Counsel for the Society indicated that he would not be available for a hearing during the week of January 28, 2019.

### **Analysis and Decision**

Section 39 of the *Administrative Tribunals Act* c. 45 requires tribunals such as BCFIRB to consider the following factors on an application for adjournment:

- (a) the reason for the adjournment;

- (b) whether the adjournment would cause unreasonable delay;
- (c) the impact of refusing the adjournment on the parties;
- (d) the impact of granting the adjournment on the parties;
- (e) the impact of the adjournment on the public interest.

I proceed to consider the factors listed above and the Appellant's request based on an understanding that the decision as to whether to grant an adjournment is discretionary. Further, I must exercise this discretion to avoid procedural unfairness to the party seeking the adjournment with due consideration for the procedural fairness for the respondent Society. In addition, I am mindful that it is in the public interest to resolve animal seizure disputes as quickly as is practicable while ensuring that both parties have a reasonable opportunity to prepare for the hearing and to present their respective cases. It is in the best interests of the animals involved, in this case two dogs, which must await a final outcome in unfamiliar surroundings. In the immediate term while in the custody of the Society, the Society bears the costs of their care and these costs increase daily. The costs and the party to pay for the costs will be matters for consideration in the hearing.

None of the participants involved have the luxury of time in *PCAA* appeals; not the Appellant, not the Society, and not BCFIRB. The hearing time line of 30 days is strictly adhered to unless there is good reason to do otherwise. The human participants in the appeal process are all labouring under strict timelines in order to ensure that the best interests of the animals are paramount, which is the intent of the legislation and is in the public interest.

To meet timelines in the best interests of the animals and in the public interest, BCFIRB established the hearing process as outlined in correspondence of December 27, 2019. The Appellant asked for an extension of time to provide documents and BCFIRB granted that extension while maintaining the hearing date. The Appellant now requests an adjournment of the hearing date to secure witnesses.

Given the Society's availability, the delay of a week requested by the Appellant would become a longer delay. This creates uncertainty regarding the potential length of the delay. Uncertainty in process is never a satisfactory outcome and one that BCFIRB strives to avoid in the *PCAA* hearing schedules. An extension of over a week's time may prove to be unreasonable in this appeal.

The impact of granting an adjournment would certainly meet the immediate wishes of the Appellant, but would impact the Society. The Society's facilities would be used for a longer period than necessary and an extension adds to the costs for care of the dogs. The delay would certainly be for more than a week which could have a serious negative impact on the Appellant from a cost perspective and offset any benefit the Appellant may acquire from the delay while he seeks out witnesses.

If I refuse to order an extension of the time for the hearing, the Appellant still has four days in which to find witnesses. The flexibility of the teleconference process makes it relatively convenient for any of his witnesses to give evidence on January 22, 2019. The evidence of

primary importance in these hearings regarding animal seizures is usually the evidence regarding standards of care for animals, potential distress of animals and the ability of the owner to meet the standards of care. Appellant's evidence is often critical to making determinations about these matters. I do not expect this appeal to be any different. The Appellant is a key witness regarding these matters and available for the hearing date. Also I have no way of knowing whether or not, even with an extension, the Appellant can find witnesses to provide relevant evidence regarding the critical issue of the alleged distress of the animals at the time of seizure. Further, maintaining the scheduled hearing date, works in both parties' favour regarding costs.

As noted previously, an expeditious schedule of 30 days from date of Appeal to release of a decision, is in the best interests of the animals involved and achieves the public interest as established by the *PCAA*.

For the reasons noted above and in the circumstances of this appeal, I conclude that the Appellant's request for more time to find additional witnesses, which witnesses may not even exist, is insufficient grounds to grant an adjournment. Therefore it is my order that the hearing proceed as scheduled.

I order that the schedule as set out December 27, 2018 is confirmed with the hearing on January 22, 2019.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Daphne Stancil  
Presiding Member