



May 2, 2014

File: PCAA/#14-02

DELIVERED BY EMAIL

Kari Simpson

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

Dear Mesdames:

**APRIL 22, 2014 DECISION OF THE BC SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS (BC SPCA) REGARDING THE SEIZURE OF A DONKEY**

Under the British Columbia *Prevention of Cruelty to Animals Act (PCAA)*, a person may appeal a decision of the BC SPCA affirming a Notice of Disposition (issued upon taking an animal into custody) to the BC Farm Industry Review Board (BCFIRB).

Background:

1. On March 27, 2014 the BC SPCA seized a donkey owned by Kari Simpson pursuant to s. 11 of the *PCAA* as outlined in its Notice of Disposition. On April 22, 2014, in a letter sent to Ms. Simpson by email, the BC SPCA advised of its decision to affirm its Notice of Disposition and not return the donkey with written reasons.
2. In the BC SPCA's written submissions filed on the issue of the timeliness of the appeal, Marcie Moriarty states that she advised Ms. Simpson in an email dated April 17, 2014 that she would send her decision by April 22, 2014 stating in part "you will have my decision regarding Amos by the end of the work day on Tuesday...Once again, any appeal from my decision is to the BC Farm Industry Review Board."
3. Ms.Moriarty also submits that on April 23, 2014 she left a telephone message for Ms. Simpson confirming that the decision had been delivered the previous day and that it was time sensitive.

**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

4. In her written submissions, Ms. Simpson states that she discovered the copy of the decision attached to an email in her “Junk Folder” on April 28, 2014 and says that she “was a bit taken aback that (Ms. Moriarty) would email her decision”. Ms. Simpson also submitted that she had no reason to believe that the decision would be delivered to her by email and that there was no agreement to receive documents in that manner.
5. On April 29, 2014, BCFIRB received an appeal from Ms. Simpson along with a written submission that she did not receive the BC SPCA’s decision until April 28, 2014.

Decision:

6. Pursuant to section 20.3(2)(b) of the *PCAA*, an appeal of a decision of the BC SPCA to take an animal into custody must be filed with BCFIRB, complete with filing fee, within four (4) days of receiving the decision. In the interest of timeliness in addressing animal welfare issues, there is no provision under the *PCAA* to extend the time to file appeals. The Notice of Disposition served on an owner at the time of seizure explains the procedure for disputing the removal of an animal and the right to appeal a dispute decision to BCFIRB and expressly sets out the time sensitive nature of the appeal.
7. Ms. Simpson does not dispute that the BC SPCA’s decision was issued on April 22, 2014 however her position is that she did not receive it until April 28, 2014 because she did not discover until that date that it had been sent. However, Ms. Simpson acknowledges communicating with the BC SPCA by way of email correspondence since March 28, 2014 (including the BC SPCA’s email of April 17, 2014 notifying Ms. Simpson that the decision would be delivered to her by April 22, 2014). As well, Ms. Simpson did not respond to the BC SPCA’s submission that it left a telephone message with Ms. Simpson on April 23, 2014 advising her that the decision had in fact been delivered.
8. Further, when Ms. Simpson did not receive the decision on April 22, 2014 as advised and as her donkey had not been returned to her, a reasonable inference was that her request for a review of the decision to take the animal into custody had been unsuccessful. Given that she had been advised of the time sensitive nature of the decision, she could have contacted the BC SPCA for further information but she did not do so.
9. The panel also finds it significant that Ms. Simpson could have emailed a notice of appeal on April 28, 2014 when she submits that she discovered that the BC SPCA’s decision had been sitting in her “Junk Folder” since April 22, 2014. At that point, she was aware that the decision had in fact been sent on April 22 as she had been advised. Further, the decision itself reiterated that appeals were time sensitive. Given the foregoing, a reasonable person would understand the need to act quickly to preserve the right of appeal. Had Ms. Simpson done so, the notice would have been filed within the 4 days required under the *PCAA*.¹ However she instead delayed another day before filing her appeal.

¹ Four days are calculated starting from April 23 but given that April 26 was a Saturday the date for filing is extended to the next business day, Monday April 28, 2014.

10. In coming to my decision, I have had an opportunity to review case law on the issue of email service. While there are no cases on point arising out of the *PCAA*, this is an issue that has arisen in other contexts. In *Zare v. Canada (Citizenship and Immigration)*, 2010 FC 1024, (para 36-38), the Court had to consider the effect of lost email communications between an Immigration Officer and a visa applicant:

The jurisprudence on email follows jurisprudence established for mail and telephone facsimile transmissions. An applicant has the burden of ensuring his or her application is complete and, where an applicant provides an address, post, facsimile or email, the risk of non-delivery rests with the applicant provided there is no indication that the communication may have failed. *Ilahi v. Canada (Minister of Citizenship and Immigration)*, [2006 FC 1399 \(CanLII\)](#), 2006 FC 1399, *Shah v. Canada (Minister of Citizenship and Immigration)*, [2007 FC 207 \(CanLII\)](#), 2007 FC 207, *Yang v. Canada (Minister of Citizenship and Immigration)*, [2008 FC 124 \(CanLII\)](#), 2008 FC 124, *Kaur v. Canada (Minister of Citizenship and Immigration)*, [2009 FC 935 \(CanLII\)](#), 2009 FC 935 and *Zhang v. Canada (Minister of Citizenship and Immigration)*, [2010 FC 75 \(CanLII\)](#), 2010 FC 75.

In the above cases, the issue turns on a finding of fault by one of the parties. Where the visa officer could not prove that he had sent notice, the Respondent is to bear the risk for missed communications. *Ilahi* Where the visa officer had proved that he had sent the notice, but the communication was missed due to an error on the part of the applicant (such as discontinuance of an email address or blocking by spam filter), the applicant is to bear the risk. *Kaur*”

Kaur involved email communications. In that case Justice Barnes set out a qualification in respect of the applicant’s burden. He stated at para. 12:

In summary, when a communication is correctly sent by a visa officer to an address (email or otherwise) that has been provided by an applicant which has not been revoked or revised and where there has been no indication received that the communication may have failed, the risk of non-delivery rests with the applicant and not with the respondent. (emphasis added)

In the case at hand, there is evidence the crucial June 26, 2009 email communication failed.

11. While not directly on point, I do find this case of some assistance. Here Ms. Simpson knew that the decision of the BC SPCA following a review was imminent and the right of appeal was time sensitive. She was told when the decision would be forthcoming and advised of her right to appeal to BCFIRB. She was further advised in a telephone message that the decision had been sent and advised of its time sensitive nature. When she discovered that the decision had indeed been sent on April 22, she could have filed her appeal in time on April 28 but delayed in doing so. In my view, the missed communication is due to Ms. Simpson’s error and such she must bear this risk.
12. In the circumstances, the panel finds that Ms. Simpson received the BC SPCA’s decision dated April 22, 2014 on April 22, 2014 but that she did not file her appeal of that decision with BCFIRB within 4 days (or by April 28, 2014) as required by s. 20.3(2)(b) of the *PCAA*. Consequently, having found that the appeal period has expired, BCFIRB cannot now accept the appeal.

13. In accordance with s. 57 of the *Administrative Tribunals Act*, “an application for judicial review of a final decision of the (Provincial board) must be commenced within 60 days of the date the decision is issued.”

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Carrie H. Manarin, Presiding Member