



BC Farm Industry Review Board

March 12, 2021

File: P2102

DELIVERED BY EMAIL

Louise McAnerin
[REDACTED]

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 Parties:

McANERIN VS. BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (BCSPCA)

Decision

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

Introduction

On March 5, 2021, the British Columbia Society for Prevention of Cruelty to Animals (Society) issued its review decision of a seizure of two dogs owned by Louise McAnerin and delivered it to her personal email address.

The right of appeal to the British Columbia Farm Industry Review Board (BCFIRB) is established by statute and is set out in s. 20.3(2) of the *Prevention of Cruelty to Animals Act (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;

(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).

Web:

Email: firb@gov.bc.ca

Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

Phone:

Info: 250 356-8945

Fax: 250 356-5131

Mail:

PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5

Location:

2975 Jutland Rd
Victoria, BC V8T 5J9

Sections 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?

In this case, Ms. McAnerin contacted BCFIRB on March 10, 2021 advising of her intention to file an appeal of the Society's review decision. Ms. McAnerin was advised by case management staff that the deadline for filing her appeal was March 9, 2021 and as such her appeal was out of time. Ms. McAnerin advised that she had not received the Society's decision until March 10, 2021.

BCFIRB case management staff asked Ms. McAnerin to provide details of when she received the decision. The Society was contacted, advised of Ms. McAnerin's position, and requested to provide details of how it provided the decision to Ms. McAnerin.

Chronology of Events

BCFIRB has put together the following chronology of events based on the documents received from the parties:

- On February 12, 2021, Ms. McAnerin wrote to the Society requesting the return of her dogs.
- On February 16, 2021, the Society wrote to Ms. McAnerin at her personal email to explain the review process, disclose documents, and set a submission deadline of February 23, 2021.
- On February 24, 2021 at 12:42 p.m., the Society delivered more documents to Ms. McAnerin at her personal email and after noting the submission deadline had passed, granted an extension to February 26, 2021.

- On February 24, 2021 at 2:00 p.m., Ms. McAnerin emails the Society agreeing she needs more time.
- On February 24, 2021 at 2:23 p.m., the Society emails Ms. McAnerin and confirms the deadline for submissions has been extended to February 26 and all of “Sassy’s” veterinary records have been provided.
- On February 25, 2021, Ms. McAnerin emails the Society at 12:01 p.m. advising that “I will not have access to email much longer, so do u have a phone number to contact u at?”
- On February 26, 2021 at 9:39 am, the Society advises all submissions must be made in writing. “if you will be without internet at your home we recommend accessing your public library or getting assistance from a friend.”
- On February 26, 2021 at 11:51am, Ms. McAnerin emails the Society stating “don’t put me in a difficult situation. I live in an isolated area n have no internet access nor can I travel to a library, or even a post office. U need to give me a decision on the return of my dogs and not drag this painful situation out any longer. I’m sending my final submission today as per the deadline, but I haven’t received the vet bill for the Shepperd X. kindly send today. I fail to see why that’s the only vet bill that I haven’t received? Any future submissions from the spca can be sent to [REDACTED]. (Ms. [REDACTED] is copied on this email exchange).
- On February 26, 2021 at 1:27 p.m., Ms. McAnerin emails the Society asking how long it will be until she gets her dogs back.
- On February 27, 2021 at 11:43 a.m., Ms. McAnerin emailed her submission to the Society copied to [REDACTED]. The email chain shows another email address for a D. Allen.
- The Society’s issued its review decision March 5, 2021 to Ms. McAnerin’s personal email. 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.
- On March 10, 2021, Ms. McAnerin contacts BCFIRB advising that she just received the Society’s decision and wants to file an appeal.
- On March 11, 2021 at 11:02 am, Ms. McAnerin write to BCFIRB stating:

I have been at home since Friday, February 26/2021 but with no phone, or internet till Wednesday, March 10/2021. I did inform the spca before I left town, that I wouldn’t have access to internet once I was back in [REDACTED], on February 26. The spca replied that I could go to a library, friend’s, or neighbor’s. I told the spca that I had no way to get to a library, friends’s, or neighbor. This is a very isolated area and extremely inhospitable place to live. I hope this covers the immediate questions u folks have. Pls contact me if u have any other questions, or concerns.

On March 11, 2021 at 12:48 p.m., the Society advised of its position as follows:

Ms. McAnerin is intimately aware of the procedures and process surrounding seized animal cases, given that she has gone through the process 3 times previously.

We explained to her that all communication would be via her email and that it was her responsibility to ensure that she was checking her email on a regular basis, especially for something so important as a decision regarding her pets. This was set out in the Introductory Letter sent February 12th and was again emphasized to her in an email sent February 26th. While we did receive her submissions on February 26th and at the very bottom she does request to send to [REDACTED] email, when she continued to send emails the following day from her address, and as we had not agreed to a change from the process set down in our previous email, we feel it was reasonable for us to believe she would have access to the decision sent Friday, March 10th....

Analysis

When was the Society's review decision received?

There does not appear to be any dispute that Ms. McAnerin received the decision on March 10, 2021 when she opened her email. There does not appear to be any suggestion it was opened earlier and not acted upon. The real question here is the reasonableness of the conduct of the parties in these circumstances.

Who is at fault for the late receipt of the reasons?

The Society argues that despite Ms. McAnerin's warning on February 25, 2021 that she would not have access to internet much longer, the fact that she continued to use her personal email on February 26 and 27th was taken as an indicator that she was indeed able to receive emails at her personal email address. They say she is familiar with the Society's processes and it was up to her to check her email knowing that a decision was imminent. While they acknowledge being given Ms. [REDACTED] email address, they say they had not agreed to change their process.

Ms. McAnerin says she lives in an isolated and inhospitable area of the province and she does not have ready access to a library, friends or neighbours.

I have considered the respective positions of the parties and the law in respect of when an emailed decision is received as set out in *Ridland v. SPCA*, BCFIRB, April 26, 2017 which looked at the issue according to the respective faults of the parties, whether the email was correctly sent to an email address provided by the applicant, and which had not been revoked or revised.

In these circumstances, I find that I am in agreement with Ms. McAnerin. In response to Ms. McAnerin's advice that she would be losing her internet access, the Society suggested she get the assistance of a friend. Ms. McAnerin gave the Society an email address for Ms. [REDACTED] and the Society chose not to use it given Ms. McAnerin's continued use of her own email address. In the circumstances of the remoteness of the

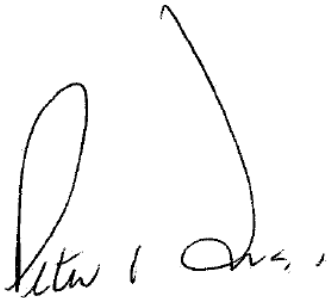
location and the express notice that Ms. McAnerin would be losing her internet, it is unclear why the Society would not, out of an abundance of caution, copy Ms. McAnerin's friend as instructed.

Further, the Society does not appear to have tried to telephone Ms. McAnerin to advise her that they had issued a decision and she would need to access her email. Finally, I also observe that the Society knew where Ms. McAnerin lived, given that its officers attended at her residence to seize her dogs, and could have delivered the decision to her directly to ensure timely delivery.

Had the Society taken the step of copying Ms. McAnerin's friend on the email attaching the review decision and then sought to bring her appeal on March 10th, that appeal would in all likelihood have been found out of time. In such a case, fault for not receiving the emailed decision from the person who she directed the decision to would rest with Ms. McAnerin.

In these circumstances however, I accept that Ms. McAnerin received the Society's decision on March 10, 2021. Accordingly, she is still within the time to file an appeal. Her notice of appeal must be received by **4:30 p.m. Monday, March 15, 2021** and the filing fee is due by **4:30 p.m. Wednesday, March 17, 2021**.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Donkers". The signature is written in a cursive style with a large, sweeping initial "P".

Peter Donkers, Chair

cc: Aliz Horvath
Seized Animal Liaison Administrator
BC Society of Prevention of Cruelty to Animals