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# ONTARIO REPORTS THIRD SERIES

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## Pryor v. Ontario Society for the Prevention of Cruelty to Animals

*Superior Court of Justice, Del Frate J. August 7, 2007*

**Administrative law — Appeals — Section 18(2) of Ontario Society for the Prevention of Cruelty to Animals Act providing that appeal from decision of board must be launched within 15 business days of receipt of decision — Fifteen-day period commencing to run from date that copy of decision was faxed to appellant and not from date of service of signed copy of decision — Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, s. 18(2).**

On December 19, 2006, the board upheld the Society's decision to remove four of the appellant's horses. An unsigned copy of the board's decision was faxed on the same day to counsel for the appellant. The decision was subsequently signed by the board members, and a copy of the signed decision was served on the appellant on January 10, 2007. A notice of appeal was filed on January 24, 2007, and the Society was served on January 29, 2007. Section 18(2) of the *Ontario Society for the Prevention of Cruelty to Animals Act* provides that an appeal must be launched within 15 days of receipt of the decision. The Society brought a motion to dismiss the appeal for delay, or alternatively for failure to file the appeal in the time prescribed by the Act.

**Held**, the motion should be granted.

The limitation period in s. 18(2) of the Act commenced to run from the date that a copy of the decision was faxed to the appellant, and not from the date the signed copy of the decision was served.

*Brandt v. Armour (Township)*, [2002] O.J. No. 3092, 167 O.A.C. 308, 115 A.C.W.S. (3d) 918 (S.C.J.), **apld**

### Other cases referred to

*OSPCA v. Belair*, unreported, August 11, 2006 (Nadeau. J.)

### Statutes referred to

*Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, ss. 17(3) [as am.], (7), 18(2) [as am.]

**MOTION** to dismiss an appeal.

*B. Armstrong*, for appellant.

*J. Friedman*, for respondent.

[1] DEL FRATE J.: — The Society brings this motion to dismiss the appellant's appeal for delay or alternatively for his failure to file the appeal in the time prescribed by the statute.

### *Background*

[2] On December 14, 2006, a board hearing was held in Sudbury, Ontario to determine whether a notice of removal of four of the appellant's horses was proper.

[3] On December 19, 2006, the board rendered a decision ruling that the Society was legitimate pursuant to the Act. It also ruled that the subject horses could be returned upon the appellant fulfilling a number of conditions.

[4] An unsigned copy of the decision was faxed on the same day to Blaine Armstrong, counsel for the appellant, and to Jennifer Friedman, counsel for the Society.

[5] On the same date, Ms. Friedman sent a confirming letter to Mr. Armstrong in regards to the decision of the board and the accrual of the boarding costs.

[6] The decision was subsequently signed by the board members on December 22, 2006 and January 7, 2007.

[7] On January 3, 2007, Mr. Armstrong wrote the board asking for a copy of the signed decision. That copy was served on Mr. Armstrong on January 10, 2007.

[8] The notice of appeal was filed in Gore Bay on January 24, 2007. A representative of the Society was served on January 29, 2007.

#### *Issues*

[9] Does the limitation period prescribed by the Act commence to run from the date that a copy of the decision was faxed to the appellant, or does it commence to run once the signed copy of the decision was served?

#### *Position of the Society*

[10] Section 18(2) of the *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36 prescribes that an appeal must be launched within 15 business days of receipt of the decision. Since the appellant had received notice of the decision by fax on December 19, 2006, and subsequently by a letter dated the same date, the prescribed period for appealing the decision would have lapsed on January 15, 2007.

#### *Position of the Appellant*

[11] The appellant contends that the period does not commence running until such time as he received a copy of the signed decision. That would have been on January 10, 2007. Accordingly, the appeal was filed well within the time prescribed by the statute.

#### *Discussion*

[12] No one takes issue with s. 18(2) of the Act that an appeal must be served within 15 business days of the rendering of the

decision. The issue is whether the unsigned copy dated December 19, 2006 which was faxed to Mr. Armstrong would constitute the notice required by s. 17(7) of the Act.

[13] Section 17(7) states:

17(7) Notice of the decision of the Board made under subsection (6), together with reasons in writing for its decision, shall be served forthwith upon the Society and the owner or custodian in the manner prescribed for service of a notice in subsection (3).

[14] Subsection (3) states:

17(3) Within five business days of the receipt of a notice under subsection (1) or (2), the chair of the board shall,

- (a) fix a time, date and place at which the board will hear the matter;
- (b) notify the Society and the person who issued the notice of the time, date and place fixed under clause (a) either personally or by registered mail addressed to the Society at its head office and to the person who issued the notice at that person's last known place of address.

[15] In *Brandt v. Armour (Township)*, [2002] O.J. No. 3092, 167 O.A.C. 308 (S.C.J.), I determined that the time period for appealing generally runs from the date of the pronouncement of the judgment or order unless there are any substantial matters that remain to be determined as a result of the judgment or order (para. 15). In that case, the judgment had been pronounced but it had not been formally issued until sometime later.

[16] In my view, this case is similar to *Brandt*. The decision, although not signed, due to logistics of the members residing in different locations, was provided "forthwith" as prescribed by s. 17(7) of the Act. The signed decision did not alter in any way the unsigned version. It was an administrative procedure and the substantial aspect of the decision remained the same.

[17] In matters of this nature, especially when the welfare of the animals is at stake, the parties must be notified as quickly as possible and in an expeditious manner as well. The cost of boarding these animals would escalate and prejudice could ensue to the owner. In my view, no prejudice resulted from the sending of the unsigned copy of the decision.

[18] The other issue is whether the fax copy would constitute personal service on the appellant. The board has adopted a practice to forward unsigned copies immediately to notify the parties of its decision, with signed copies forwarded at a later date.

[19] In *OSPCA v. Belair*, released August 11, 2006, Nadeau J. determined that facsimile service would constitute personal service as required by the Act. I agree with that proposition especially when there is no issue that the appellant would have



received notice on the dates outlined in the affidavits. In this case, not only was there service by facsimile but also by correspondence dated the same day.

[20] As stated by Nadeau J. in the *Belair* decision at para. 6:

... Specific provisions of the operative statute are not particularly precise on the issues of notice or what constitutes service.

In my view, there is no miscarriage of justice by having service accomplished in this fashion considering that the intent of the legislation is to allow the parties to react to the decision of the board in an expeditious and economical fashion.

[21] Were I to be wrong in this reasoning, I would have granted the motion in any event since the appellant has not perfected the appeal within the 30 days of filing of the notice of appeal. At the very earliest, this appeal would now be heard some time in 2008, making it more than one year since the decision was rendered. This delay further compromises the position of both parties since the cost of boarding the animals is ongoing. This results in prejudice to both parties in that the Society must continue to pay the expenses for boarding the animals. The appellant may not be able to pay for the costs incurred by the Society in maintaining these animals until the appeal has been heard.

[22] It is just and proper that finality be applied to this case for the benefit of all parties involved. Accordingly, the motion is granted and the appeal is dismissed.

[23] Should the parties not be able to agree on costs, written submissions on the issue may be forwarded within 15 days.

*Motion granted.*

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### **United States of America v. Price et al.**

[Indexed as: United States of America v. Price]

*Court of Appeal for Ontario, Sharpe, Blair and Lang J.J.A.*  
July 10, 2007

**Criminal law — Mutual legal assistance — Sending order — Search and seizure — Applicant bringing application for sending order under s. 15 of Mutual Legal Assistance in Criminal Matters Act in respect of material seized pursuant to search warrant — Application judge finding that search warrant was facially overbroad and that seizure exceeded terms of warrant — Application judge not erring in concluding that he had discretion to send requesting state those materials that could properly have been seized under valid warrant — Mutual Legal Assistance in Criminal Matters Act, R.S.C. 1985, c. 30 (4th Supp.), s. 15.**