

2020 Annual Chair's Report for the Dangerous Dog Review Tribunal for the Economic and Community Development Committee

2020 was a difficult year due to the COVID pandemic. Hearings for March, April, May, June, July, August and October were cancelled. In August a training session was held to prepare members for doing virtual hearings with members working remotely from home. As the City was running several committees remotely, October had its sole appeal moved to November due to a lack of City resources needed to run remote sessions. This means the panel sat for appeals in January, February, September and November. No hearings were scheduled for December.

Statistically the Tribunal had 7 Appeals and 3 Reviews broken down as follows:

- Of the 7 appeals
 - 5 were confirmed unanimously
 - 1 was confirmed by split decision
 - 1 was deferred at the request of the Appellant.
- Of the 3 Reviews
 - 1 from an Appellant had the Request for Review denied
 - 1 from the City had decision to rescind reversed
 - 1 from the City had the decision to confirm reversed

Items for Consideration

This report includes four issues for the consideration of the Economic and Community Development Committee.

First, in several hearings the Tribunal wrestled with the meaning of the word “severe” in reference to a dangerous act in Section 349-15 of the Toronto Municipal Code. On more than one occasion in an appeal, individual members of the Tribunal viewed the severity of a specific dangerous act differently. It is important because in order for a Dangerous Dog Order to be issued on the first instance of a dangerous act, the act must be deemed to be severe.

One possible resolution would be to amend 349-15 to include a definition of severe. For example, the Dog Owner's Liability Act Subsection 1 (1) recently has been amended by adding the following definition:

“severe physical injury” means a physical injury to a person that results in muscle tears or disfiguring lacerations or that requires multiple sutures or corrective or cosmetic surgery.

This could work for an animal attack on a person while a similar definition could be added for an animal to animal attack.

The Tribunal would like to see the definition of “severe” defined in Section 349-15

Second, in hearings it has become evident that appellants seem to need a better understanding of the hearing process and how the grounds for appeal are limited to items including whether or not the dog for which the order was issued is the correct dog, whether the dog was acting in self defence, whether the victim was in the process of committing a criminal act and in the case of a first offence whether the injury was severe. There seems to be little understanding that the dog's behaviour after the act on an on-going basis is not included in grounds for appeal.

In the interests of procedural fairness, the Tribunal would like to see the information package that goes to appellants include and explain relevant grounds for appeal under the legislation.

Third, is the issue of the lifetime nature of the Dangerous Dog Order. One of the jurisdictions Toronto consulted with when the Tribunal was being created allows for an Appeal of an order after a specified time period. With this in mind an option suggested by some members of the Tribunal is to define two levels of Dangerous Dog Orders. The first would be the order as it is today, while the second would be a Re-considerable Dangerous Dog Order. Such an order does not exist today but we now have this situation as a Dangerous Dog Order being issued for two separate **non severe** attacks. The Re-considerable Order would give the owner of such a dog the opportunity to request revisiting the order after a specific defined time period, say two years.

Both orders would be subject to appeal by an appellant or Review of a Tribunal decision as is the case today. The difference in which order is applicable is the Re-considerable Dangerous Dog Order could only be issued when no severe

dangerous acts have been committed by the dog in question. To use the human analogy there are some situations in the criminal justice system when a lifetime sentence without the possibility of parole is justified. In other situations, depending on the severity of the crime and the nature of the charge, such as the difference between manslaughter and first-degree murder, a more lenient sentence is appropriate. This is in accordance with the principles of ensuring any punishment is not cruel or unusual.

It would be appreciated if the Economic and Community Development Committee could evaluate the idea of a Re-considerable Dangerous Dog Order and request City staff to bring forward a proposal in conjunction with Animal Services to implement such an order.

Fourth, is an item that was in last year's Chair's Report but likely due to increased workload and disruption due to COVID was not addressed by the Economic and Community Development Committee. The Tribunal feels it is an important item concerning equal access to justice.

There were unanimous concerns on the Tribunal that if an applicant could not pay the Appeal fee, it could have an impact on access to justice. Putting it another way, no human or dog should be put at risk due to financial trouble. The discussion looked at other areas of justice where fees are scaled to ability to pay such as in some divorce proceedings. Even within the City there are examples of the availability of reduced fees such as in some Parks and Recreation programs.

Any reduced fee structure could be based on defined criteria in a program that must be met to receive the reduction or it could be based on a sliding scale geared to income. A third option would be a reduced fee evaluated on a case by case basis. The later two would require much more administration.

One factor to consider includes the impact of the potential revenue decrease for Animal Services given the fees today do not even fully cover hearing preparation and operational costs. It is less than full cost recovery now. Another is how and by whom would such a reduced fee program be administered.

This analysis could include looking at the impact on Appeal numbers when there was no fee prior to 2019 and numbers since the fee became applicable in 2019. For example, prior to 2019, the City averaged 45 to 50 Appeals per year while in approximately 6 months in 2019 with a fee in place there were only 17 appeals. Numbers from 2020 are undoubtedly skewed by COVID and hence are probably

not relevant for the analysis. Compounding the analysis is the fact the dangerous dog designation criteria have changed from when appeals were heard by a committee of City staff to the current situation with a Council appointed citizen Tribunal.

The Tribunal would like the Committee to look into this access to justice issue and request City staff to bring forward a proposal. Regardless of what staff recommend, City Council would be the final decision maker.

The Tribunal would like to express their appreciation to Jennifer Forkes, Manager, Committees and Boards, City Clerk's Office, Amanda Wahl, Dangerous Dog Review Tribunal Secretary, Carlie Turpin, Dangerous Dog Review Tribunal Administrator and the staff of the Dangerous Dog Review Tribunal for their invaluable help and guidance. Special thanks to all those involved in defining and implementing the procedures for the virtual hearings.

Respectfully submitted this 5th day of December, 2020

Rick Ross

Chair, Dangerous Dog Review Tribunal