

2021 Annual Chair's Report for the Dangerous Dog Review Tribunal for the Economic and Community Development Committee

Overview

2021 was a little more normal than 2020 in that in 2020 we had a reduced number of hearings due to COVID. Although this year we rendered the same number of decisions we would normally would without COVID, we held all hearings remotely.

Statistically the Tribunal heard 12 Appeals of Dangerous Dog Orders, confirming 9 and rescinding 3 with one appeal being withdrawn at the request of the applicant.

Applicants made 5 Requests for Review with 2 being accepted to be heard and 3 being refused as they did not meet the criteria set out in the Tribunal Rules under Section 21, Power to Review. Of the 2 we heard, the original decision upholding the order was reversed in one of them and upheld in the other.

The City made 3 Requests for Review with 2 being accepted to be heard and 1 being refused as it did not meet the criteria set out in the Tribunal Rules under Section 21, Power to Review. Of the 2 we heard, the original decision rescinding the order was reversed in one of them and upheld in the other.

Tribunal Rules

The Tribunal held a Special Meeting September 28 to address some wording in the Tribunal Rules to clarify the role of the Executive Director of Municipal Licensing and Standards and the Executive Director's representative. At the same meeting the Tribunal changed the Tribunal member who would determine whether to accept a Request for Review. Instead of this power residing in the Chair, it now falls on a designated member who did not sit for the hearing for which the Review is being requested. In addition, in the interest of fairness, the 2 non-chair members, subject to scheduling constraints, who did not sit for the hearing for which the Review is being requested, will sit for the Review if it is granted.

Items for Consideration

This report includes 2 issues for the consideration of the Economic and Community Development Committee.

First, given that a Dangerous Dog Order can be issued because of two minor dangerous acts or one serious dangerous act, *the Tribunal Chair is requesting that the legislation be changed by City Council in the interests of fairness to*

- 1. Allow for the appeal of a first offense within 30 days of the Notice of Caution being issued. Today there is no mechanism to allow a dog owner to even challenge whether the right dog was named, or if the act was dangerous or in self defense.*
- 2. With respect to a finding of self defense, it not count it as a second act when coupled with another dangerous act towards a Dangerous Dog Order. The finding of self defense should however continue to stay on record.*

Second, given the Tribunal only has the power to confirm or rescind a Dangerous Dog Order, the Tribunal Chair performed an analysis, at the request of Deputy Mayor Thompson, to evaluate what procedures other jurisdictions have implemented.

As background for the analysis, the Tribunal Chair considered the municipalities in the jurisdictional scan of municipalities in Ontario and North America outlined in the September 7, 2016 report to Licensing and Standards from the Executive Director of MLS. This report was part of the basis of setting up the Dangerous Dogs Review Tribunal as a citizen tribunal. Some of those municipalities have updated their approach since then so the Chair worked with their latest information.

Some cities like Vancouver Chicago and New York use the courts for their appeal process, while others like Calgary take a similar approach to appeals that Toronto does. Several cities have less of a blunt instrument approach resulting in a fairer appeal process giving their Tribunals significantly more power than Toronto does.

These powers include exempting an owner from part of the order, imposing conditions or requirements the Tribunal deems appropriate and, even allowing for a review of the order after a fixed time such as one or two years. As outlined in the following paragraph, several municipalities of varying sizes have allowed their

Tribunals flexibility beyond simply upholding or rescinding an order with appropriate safeguards in place.

For example, with quotes taken directly from the municipality's websites:

- Mississauga's Tribunal “may uphold the muzzle order or exempt the owner in whole or in part from the requirements of the order and may impose any conditions the Tribunal deems appropriate”.
- Ottawa's Animal Control Tribunal “may exempt the owner from the muzzling or leashing requirement or both”.
- Vaughan's Hearing Officer "may confirm, vary or rescind the muzzle requirement of an order".
- Caledon's Appeal Board “may confirm the order or exempt the person named in the order in whole or in part with the conditions of the order”.
- Waterloo's Appeal body can "affirm or rescind, substitute its own designation of the dog as dangerous or substitute its own requirements of the owner of a potentially dangerous dog".
- The Township of Wellesley in the Regional Municipality of Waterloo provides for appeals to council who have the power to “lift the order requiring the pet be supervised outdoors with failure to comply reinstating the order”.
- New Westminster British Columbia has a policy where "after one year of receiving notice that their dog is an aggressive dog the owner may apply for relief from the muzzle and leashing requirements provided the City has received no further complaints of aggressive behavior and documentation is provided that the owner and dog have successfully completed a course by a recognized and accredited institution or trainer to address the dog's aggressive behavior. If a dog displays aggressive behavior again after relief has been granted the requirements of the original order shall permanently apply".

After reviewing what other municipalities are doing, the Tribunal Chair is requesting that the legislation be changed by City Council to allow the Dangerous Dog Review Tribunal to attach conditions it sees fit in upholding an order. There was an extensive and rigorous selection process conducted by the City's Public Appointments office to nominate a competent Tribunal and the decision was ratified by Council. It is instructive to note that Toronto City Council has allowed at least one of its delegated bodies, namely the Committee of Adjustment, to attach appropriate conditions to its decisions.

A few examples may help to understand the type of conditions that would be appropriate. The Tribunal has adjudicated cases where elderly owners are no longer able to control their dogs while walking them. In such a situation today, the Tribunal has no choice but to simply uphold the order. A better alternative would be to require that a responsible adult other than the owner be required to walk the dog. We have even had owners ask for that condition and had a dog walker offer to sign an undertaking to do so!

Another example would be eliminating the requirement of the order in specific circumstances, "to post a warning sign on the owners' private property in the form and location required by the Executive Director, Municipal Licensing and Standards. Many condominiums have bylaws that prohibit posting any notices on an individual condo owner's door. In the case of a dog owner who lives in such a condominium unless this condition was dropped, we would be putting the condo owner in a position of not being able to comply with all the terms of the order.

A third example would be in the case of two non severe bites to attach a condition that the order could be reviewed in a specified time subject to conditions like what New Westminster has implemented.

In the past Animal Services has resisted allowing the Tribunal any power other than upholding or rescinding a Dangerous Dog Order. They state that "the complex nature of investigations underscores the importance of the Dangerous Dog Tribunal in providing independent review of Dangerous Dog Orders issued by the City". We believe that the independent review should provide, as it has in several other municipalities, the ability to go beyond a one size fits all simple upholding or rescinding of the order. Enforcement of conditions imposed by the Tribunal would be no more difficult than enforcement of the current muzzle order.

Animal Services stated, "there is no way to reasonably conclude that a dog has been rehabilitated and therefore no way to determine whether the dog would be safe to be un-muzzled in a public setting". To the contrary, several municipalities both large and small have solved this problem as outlined earlier in this report. In the human justice system, there is no way for parole boards to have 100% certainty that no one on parole will ever re-offend, but as a society we have chosen to empower a qualified board to evaluate the risk and not keep every one convicted of a crime to be locked up for life.

Final Comments

In conclusion, the Tribunal would like to thank the Tribunal Secretaries, Amanda Wahl and Bradley Bartlett, and their manager Carlie Turpin, as well as the legal support of Scott Nowoselski and the technical support provided by Fortis Chiu.

Respectfully submitted this 15th day of December 2021

Rick Ross

Chair, Dangerous Dog Review Tribunal