

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards (City of Edmonton), 2023 ABECSLAC 10003

Date: April 27, 2023

Dog Licence Number: 071159812-002

CSLAC File Number: CSLAC-23-003

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Allan Bolstad
Karen Munro

DECISION

- [1] On April 18, 2023, the Community Standards and Licence Appeal Committee (the “Committee” or “CSLAC”) heard an appeal that was filed on February 27, 2023. The appeal concerned the decision of Community Standards & Neighbourhoods to deem the dog associated with Dog Licence 071159812-002 as a Restricted Dog, pursuant to Section 14(1)(c) of the *Animal Licensing and Control Bylaw 13145*.
- [2] The appeal hearing on April 18, 2023 was held through a combination of in-person and video conference hearing. The following documents were received prior to the hearing and form part of the record:
 - The Appellant’s written request for appeal and written submissions; and
 - Record from Animal Care and Control, Community Standards & Neighbourhoods

Preliminary Matters

- [3] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [4] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [5] J. Afonne, City of Edmonton Law Branch, advised the Committee that she had a preliminary matter to raise.

Summary of Hearing on the Preliminary Matter:

- i) *Position of Animal Care and Control, Community Standards & Neighbourhoods represented by D. Korek and J. Hwan Rhee and J. Afonne, City of Edmonton Law Branch:*
- [6] The first question is whether or not the Committee has jurisdiction over a restricted dog designation pursuant to the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*” or “*MGA*”) or *Animal Licensing and Control Bylaw 13145* (the “*Bylaw*”) and further are there any limitations on jurisdiction.
- [7] Section 2(o) of the *Bylaw* states that a “Restricted Dog” means:

any dog: (i) that has chased, attacked or bitten any person or animal causing physical injury and resulting in a conviction under this bylaw; (ii) that has chased, attacked or bitten any person or animal on more than one occasion, with or without causing physical injury, and resulting in separate convictions under this bylaw; or (iii) that has been made the subject of an order under the *Dangerous Dogs Act*
- [8] According to this, a dog becomes restricted automatically by definition of the *Bylaw* which was enacted by City Council.
- [9] The issue of whether the Committee has the jurisdiction over a restricted dog designation is more of an interpretation of the *Bylaw*. To answer this question, the powers delegated by Council in the *MGA* and the *Bylaw* have to be considered.
- [10] Section 8(1) of the *Community Standards and Licence Appeal Committee Bylaw 19003* (“*CLSAC Bylaw*”) states that CSLAC may decide appeals of licensing decisions and orders.
- [11] The *CSLAC Bylaw* defines licensing decisions as a decision of the City Manager to refuse, cancel, suspend or impose conditions on a licence issued pursuant to this *Animal Licensing and Control Bylaw*. A mere reading of this section gives the Committee power

to hear all licensing decisions made by the City Manager. At the outset a restricted dog designation is not a decision that has been made by the City Manager. No decision has been made in this case.

- [12] Secondly, if a restricted dog licence had been issued by the City Manager, the jurisdiction of the Committee is limited to act in the capacity of the City Manager to refuse, cancel, suspend or impose those specific conditions set by the City Manager, basically to vary the decision. The same power designated to the City Manager is designated to the Committee.
- [13] In this case, a restricted dog licence has not been obtained. The letter from the Animal Control Officer to the Appellant dated April 23, 2021 is before the Committee. The letter advised the pet owner that the dog had been deemed restricted by operation of the *Bylaw*. The letter before the Committee mirrors the *Bylaw*. All of the conditions set out in Sections 14 to 16 of the *Bylaw* were communicated to the Appellant through the Animal Control Officer. This notice of designation issued by the Officer merely duplicates the conditions set out in the *Bylaw*.
- [14] The Committee would have the jurisdiction to hear this matter if there was a decision that was made by the City Manager to impose additional conditions other than the provisions contained in sections 14 to 16 of the *Bylaw*.
- [15] If a licence was issued or contained additional conditions other than those imposed by the *Bylaw*, this would be a contradiction of the *Bylaw* and the powers of Council, subsequently this would open up the authority of the Committee to vary that licence and decision or additional conditions set out in section 8(1) of the *CSLAC Bylaw*.
- [16] According to the facts, the Appellant's restricted dog designation has been in effect since April 2021.
- [17] In response to a question from the Chair, it was clarified that reference should be to sections 15 to 17 of the *Bylaw* not Sections 14 to 16, the regulations that apply to restricted dogs, not any licensing conditions.
- [18] Sections 15 to 17 specify conditions of the restricted dog designation and these conditions were mirrored in the letter sent to the Appellant.
- [19] The restricted dog designation has been in effect since 2021. The Appellant admits to the unfortunate circumstances of the dog attack that led to the injury of another dog. The Appellant states that he admitted the incident to the Officer and was issued a Violation Ticket. The Appellant was convicted of the offense by voluntarily entering a guilty plea. The Court accepted the guilty plea and the conviction was entered into the offense. The designation of restricted dog became automatic by definition of the term in the *Bylaw* and a notice was issued accordingly.

- [20] The Appellant has since maintained a restricted dog designation. The Appellant argues that he was not informed by the Officer that a guilty plea would lead to a restricted dog designation. The Appellant indicated that if he had been notified of the effect of the designation he would have fought the ticket. The Appellant admits to having now read the *Bylaw* and suggests that it is out of date. All City Bylaws are public documents that are available to all residents on the City of Edmonton website and ignorance of the law is not an excuse. The *Bylaw* as indicated by the Appellant has been in effect as passed by City Council for over a decade.
- [21] There is an underlying issue with respect to challenging the existence of the *Bylaw* in itself which was duly passed by Council. Pursuant to section 536 of the *MGA*, City Council has set out processes to challenge a *Bylaw*. Section 8(1)(d) of the *MGA* allows municipalities to specify appeal mechanisms on related matters. However, the Committee lacks the power to review a restricted dog designation under the *Bylaw* because an appeal mechanism has not been set out in the *Bylaw*.
- [22] There are some implications of an appeal of this nature. Upon a review of the facts, the Committee may want to consider whether or not they would vary the conviction of the Court that led to the restricted dog designation. The Committee is a quasi-judicial body appointed by Council to hear licensing decisions made by the City Manager or *MGA* Orders. It was her understanding that a licence appeal hearing is considered a de novo hearing of a licensing decision, ultimately a decision has not been made and a de novo hearing on the facts presented by the Appellant which resulted in the conviction of a strict liability offense should not be at issue in this appeal.
- [23] The Director of the Animal Control Office and the City submits that the power to pass or amend Bylaws pursuant to the *MGA* is vested in Council and there is no such delegated authority provided in the *MGA* to the Committee. Therefore, the Committee lacks the required authority to hear and entertain a restricted dog designation which is in itself a challenge to an existing Bylaw.
- [24] J. Afonne provided the following information in response to questions from the Committee:
 - a) By definition, the dog becomes a restricted dog as long as the conviction is in effect, in essence forever.
 - b) The Court decision led to the designation. No decision has been made by the City Manager. However, the City Council made a decision by passing the *Bylaw*. There are other legal avenues available to the Appellant as well as the opportunity to reach out to the ward Councillor since this is a Bylaw of Council.
 - c) As far as the City representatives in attendance know, there is no existing licence and if there was a licence it has expired.

- d) The letter dated April 23, 2021 is not a decision. It is a designation. Usually when a licence is issued, it is issued by the Director because the Director has some delegated powers from the City Manager. This is a notice or designation letter issued by an Animal Control Officer. If it was a decision, it would have been issued by a Director who has delegated authority from the City Manager. The Animal Control Officer merely notifies the owner of the designation. In this case, the Animal Control Officer merely duplicated the *Bylaw* that was passed by City Council in that letter. No additions have been made to that notice by the Officer. The designation is the only thing that was issued.
- e) The licensing decision would be issued by the Director. Once there is a conviction, the dog falls within the definition of a restricted dog. The letter notified the owner that the dog was deemed a restricted dog. This Committee has jurisdiction over licensing decisions, but not over a notification that the dog falls under different regulations. If a licensing decision was made, it would have to be reviewed in order to determine if some additional conditions not contained in the *Bylaw* were added by the City Manager. It was her opinion that there is no licensing decision in this case.

ii) Position of the Appellant,

- [25] questioned why he was not advised about the preliminary objection raised today by the City.
- [26] His dog is licensed as a restricted dog. The dog licence fee of \$250 was paid in February 2022. He contacted the Bylaw Officer via email in February 2023 to advise that he was going through the appeal process and asked that any further action be stayed until the appeal was heard. The Bylaw Officer responded and advised him that he did not have to pay the dog licence fee until after the appeal hearing.
- [27] The letter states that they made a licensing decision to restrict his dog so why would he not be able to appeal the decision.
- [28] provided the following information in response to questions from the Committee:
 - a) In preparation for his appeal, he reviewed the information contained on the CSLAC website. However, it did not contain any of the information that has been raised today. It was his opinion that specifics regarding what can and cannot be appealed should be listed on the website.
 - b) Restrictions were placed on his dog, specifically that the dog had to be chained and muzzled while in the backyard, muzzled on walks on a leash of a specific length. These conditions have always been followed.

- c) Neither the *Bylaw* or the CSLAC procedures contained on the website are explained in a way that regular citizens can understand the process. It is difficult for a layman to understand all of the legal arguments that have been raised today.
- d) He has never disagreed that his dog was the subject of a conviction pursuant to the *Bylaw*. He took full responsibility from the moment it happened. He filed the appeal because he is a Master Dog Trainer who has worked with dogs for more than 30 years. He knows how to handle dogs. His dogs are never outside in his yard alone. He is very conscientious and does not want his dogs to disturb his neighbours. This incident was an unfortunate accident.
- e) He has been told by Bylaw Officers that the *Bylaw* regulations are more than 20 years old. It was his opinion that the wording of the regulations needs to be reviewed and updated. In fact, he has been asked to serve on a panel to review the regulations.
- f) He is asking the Committee to change the designation for his dog from a restricted dog to a regular pet.
- g) He reiterated his opinion that it is not clear to a lay person either through the *Bylaw* or the CSLAC website what is appealable. He decided to take a chance and file the appeal to have the designation changed because the restricted dog designation was imposed as the result of an unfortunate incident. However, he understands the limitations of the Committee and he is prepared to live with the decision.

Decision

[29] The Committee lacks authority to change the designation of a dog as a Restricted Dog or to reduce the licence fee applicable to a Restricted Dog set out in Schedule A of the *Animal Licensing and Control Bylaw 13145* associated with Dog Licence 071159812-002.

Reasons for Decision

[30] The appeal concerns licensing of the Appellant's dog .

[31] The Appellant sought two remedies. First, he asked the Committee to bring back licensing fee from the fee for a Restricted Dog to the fee for a regular Dog. Second, he asked the Committee to reverse the designation as a Restricted Dog .

[32] The Committee's authority to hear appeals comes from the *Community Standards and Licence Appeal Committee Bylaw 19003* (the “CSLAC Bylaw”).

[33] Three provisions of the *CSLAC Bylaw* are most relevant to this appeal:

- i) Section 8(1)(a) which states that this Committee may decide appeals of “licensing decisions.”
- ii) Section 2(2)(e) which states that: “licensing decision” means a decision of the City Manager to refuse, cancel, suspend, or impose conditions on a licence issued pursuant to the City’s *Animal Licensing and Control Bylaw, Bylaw 13145* (the “*ALC Bylaw*”)
- iii) Section 8(2) which states that when deciding an appeal of a licensing decision, CSLAC has the same authority that has been granted to the City Manager under the applicable bylaw (here the *ACL Bylaw*).

[34] Based on the presented evidence and submissions, the Committee makes the following findings:

- i) An incident occurred in 2020 involving _____ and another dog who was bitten and seriously injured by _____ after _____ left the Appellant’s property through an open gate.
- ii) As a result of this incident, the Appellant was charged with an offence under section 14(1)(c) of the *ALC Bylaw*. Section 14(1) states:

The Owner or any other person having care or control of a Dog or Nuisance Dog shall ensure it does not:

- (a) damage property;
- (b) chase, attack or bite any person or animal; or
- (c) chase, attack or bite any person or animal causing physical injury.

- iii) The Appellant pled guilty to the charge and a conviction was entered against him in 2021. During the hearing before this Committee, the Appellant reiterated that he has never disagreed that his dog was the subject of a conviction pursuant to the *ACL Bylaw*.
- iv) The Appellant received a letter dated April 23, 2021 from the Superintendent - Animal Control And Park Ranger, Community Standards Peace Officer Section. The letter cited the conviction; advised the Appellant that the conviction meant _____ is now deemed to be a Restricted Dog; and listed four requirements that would now be applicable _____. The Committee notes that the “requirements” listed in the letter are the regulations applicable to Restricted Dogs found in sections 15-17 of the *ACL Bylaw* (although those sections were not specifically cited in the letter).

v) The Appellant obtained a Restricted Dog licence in February 2022.

vi) The Appellant is now in the process of renewing a licence. However, that application is pending and the fee has not been required while the Appellant pursues this appeal to change the designation and reduce the applicable licence fees.

[35] In the Committee's view, it has no authority to grant requested relief for the following reasons.

[36] The *ACL Bylaw* creates three mutually exclusive definitions applicable to dogs: Dog, Nuisance Dog and Restricted Dog. According to the *ACL Bylaw*, each category carries different legal consequences and fees.

[37] Section 2(o) of the *ACL Bylaw* states "Restricted Dog" means any dog:

- i) that has chased, attacked or bitten any person or animal causing physical injury and resulting in a conviction under this bylaw;
- ii) that has chased, attacked or bitten any person or animal on more than one occasion, with or without causing physical injury, and resulting in separate convictions under this bylaw; or
- iii) that has been made the subject of an order under the *Dangerous Dogs Act*;

[38] Sections 15-17 of the *ACL Bylaw* provide a set of regulations specific to Restricted Dogs that apply regardless of licence status and, in contrast to the licensing conditions applicable to Nuisance Dogs, there is no suggestion of any possible exemption, discretion or right of appeal from the application of Sections 15-17.

[39] In this case, there is no dispute that chased, attacked or bit an animal causing physical injury and resulting in a conviction under the *ACL Bylaw*. Based on this fact, the Committee concludes that falls squarely within the definition of Restricted Dog in section 2(o)(i) and, by operation of law, is a Restricted Dog.

[40] The Committee agrees with the City that the letter in evidence merely provides notice acknowledging that, due to the conviction, falls within the definition of Restricted Dog. The Committee finds that the letter is not a "licensing decision" as defined in the CSLAC Bylaw which is the only type of decision which may be the subject of an appeal to the Committee.

[41] In any event, the Committee notes that there is no authority in the *ACL Bylaw* authorizing the City Manager (and consequently the Committee per section 8(2) of the *CSLAC Bylaw*)

to exempt a Restricted Dog from either the definition in section 2(o) or the regulations applicable to Restricted Dogs in sections 15-17.

- [42] The Committee also considered the Appellant's request to reduce the applicable licensing fee from the level applicable to a Restricted Dog to the level applicable to a Dog.
- [43] This request is refused for two reasons. First, a licensing decision has not yet been made. The Committee has no authority to set fees or hear appeals in advance of a licensing decision being made by the City Manager or delegate. Second, as noted above, the Committee is of the view that once the conditions set out in section 2(o) of the *ACL Bylaw* were met in fact through the conviction, fell under the definition of Restricted Dog by operation of law. The fee for a Restricted Dog set out in Schedule A is mandatory and there is no authority for the City Manager or their delegate (and consequently the Committee per section 8(2) of the *CSLAC Bylaw*) to grant the requested fee reduction.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee