



## **Ombudsman Toronto Report**

An Enquiry into how Toronto Animal Services Handled a  
Dangerous Dog Investigation and Appeal

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Susan E. Opler, Ombudsman

Genevieve Currie, Ombudsman Investigations Counsel

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## **EXECUTIVE SUMMARY**

### **The Incident**

In June 2017, a young boy was injured in an incident involving two dogs owned by his neighbour. His parents reported to the City that he had been attacked after the dogs broke away from their owner and rushed at the child in their shared front yard.

Although some of what happened was disputed, there is no question that the seven-year old child received a dog bite to his forearm and another wound to his upper arm. He was also terrified. Because the family, the dogs and the dog owner all lived close to each other, how the City responded was essential to everyone's comfort and well-being.

### **The City's Response to the Incident**

After investigating the incident, the City's Animal Services department (part of the Municipal Licensing and Standards division) issued a dangerous dog order against one of the two dogs. Among other restrictions, the order required that the owner muzzle that dog whenever off the owner's property, for the life of the dog.

When the family complained that Animal Services had issued the order against the wrong dog, Animal Services then withdrew the original dangerous dog order and issued one against the dog the family said was responsible for their child's injuries.

The dog owner then appealed that order to a decision-making body that the Executive Director of Municipal Licensing and Standards had established for hearing such appeals (the former Dangerous Dog Review Tribunal). No one told the family the dog owner was asking for the order to be revoked or that they had a right to participate in that process.

The former Dangerous Dog Review Tribunal revoked the order, without giving adequate reasons for its decision. No one told the family, who only learned about the appeal and its result after they saw both dogs unmuzzled and called Animal Services.

When the father got the appeal documents through a Freedom of Information request, he also discovered that someone had deleted from his witness statement his description of which dog hurt his child.

The family complained repeatedly to Animal Services about their handling of the case.

### **Ombudsman Toronto's Enquiry**

We conducted an extensive Enquiry into Animal Services' response to and investigation of the incident, and the appeal process that followed. We reviewed Animal Services' response to the family's complaints, the applicable law and Animal Services' records,

procedures and guidance materials. We also spoke to the parents of the child involved and to representatives of Animal Services management.

## **Findings**

After reviewing the evidence, we found unfairness in three areas: Animal Services' investigation of the incident, administration of the appeal process, and response to the family's complaints.

In Animal Services' initial investigation of the incident, staff did not adequately record a statement of the evidence from the injured child, identify that there was conflicting evidence about which dog injured the child, or promptly interview a different child who witnessed the incident. For a fair investigation, staff should have done each of those things.

Someone at Animal Services changed the father's written statement about the incident (describing the dog his child said had attacked him) without telling him.

We also found that Animal Services did not communicate with the child's family in a clear or timely way. Most significantly, no one told them about the dog owner's appeal or that they were entitled to participate. Then no one told them the appeal had resulted in the dangerous dog order being revoked.

Further, we found that how the City handled this appeal fell short of what fairness requires. It was difficult for anyone to obtain clear information about the tribunal or to understand what evidence it would consider in making its decisions.

Animal Services also did not fairly or effectively present their evidence and arguments supporting their decision to issue the dangerous dog order or respond to the dog owner's arguments. The tribunal did not issue reasons to explain its decision on the key issues in this case (which were required) until we asked for them. And it applied the wrong test by considering irrelevant factors in reaching its decision.

Before we became involved, Animal Services had identified several problems and had taken steps intended to improve its investigations and communication with victims.

However, we identified a need for several additional improvements.

## **Recommendations During the Enquiry**

In response to the Ombudsman's recommendations during the Enquiry, Animal Services took a number of positive steps to improve how it handles dangerous dog cases. They:

- provided training to all investigative staff about how to interview child witnesses

- recommended that City Council appoint a new independent tribunal to conduct appeals of dangerous dog orders and apply the City's rules, which City Council accepted and has since implemented (the new Dangerous Dog Review Tribunal has been operating since May 2019)
- started sharing information with the public about how it assesses the severity of a dangerous act by a dog
- directed its management staff to appear at appeal hearings to present evidence and arguments supporting dangerous dog orders
- developed written guidance for staff on how to prepare for an appeal hearing
- developed written guidance for staff specifying who is responsible for promptly communicating certain crucial information to victims, including whether a dangerous dog order will be issued, whether the dog owner appeals and the outcome of any appeal

The Ombudsman also recommended twice during our Enquiry that Animal Services ask the tribunal to review its decision, because of the problems we had identified in the appeal process and the resulting unfairness to the family. Despite this, Animal Services did not ask the tribunal to review its decision.

### **Further Recommendations**

At the conclusion of our Enquiry, we made two further recommendations:

- Animal Services should further apologize to this child and his parents, thank the family for pursuing their concerns and explain the many positive steps the City has taken to prevent similar problems from happening in the future, all as a result of their complaint.
- Animal Services should make publicly available their guidance scale(s) for determining whether a dog's dangerous act is severe.

### **The City's Response to Ombudsman Toronto**

Municipal Licensing and Standards accepts the findings in this Enquiry. It agrees with the outstanding recommendations and has committed to implementing them by the end of 2019.

### **Follow Up**

Ombudsman Toronto will follow up to ensure that Municipal Licensing and Standards implements the recommendations.

## INTRODUCTION

1. The City of Toronto is home to many people, pets and wildlife, including an estimated 2.9 million people (as of 2018)<sup>1</sup> and 230,000 dogs (as of 2013)<sup>2</sup>.
2. To promote a safe and enjoyable community for all, City Council has created rules<sup>3</sup> about the care and control of animals. Animal Services, a specialized team of employees within the City's Municipal Licensing and Standards division, administers these rules.
3. One of Animal Services' responsibilities is to investigate reports of potentially dangerous dogs.
4. This work is important and frequent. In 2018 alone, Animal Services responded to 1,256 reports of bites, attacks or other alleged dangerous acts by dogs against humans or other animals. In 842 of these reported incidents, a dog bit or otherwise injured a person. In 419 other incidents, a dog bit or injured another dog or pet.
5. How Animal Services investigates and applies the City's rules in response to such reports affects both public safety and quality of life. If Animal Services does not administer the rules effectively, dangerous dogs may go on to injure more people or animals in incidents that could have been avoided. Alternatively, dogs and their owners may have their privileges unfairly curtailed for the remainder of the dog's life.
6. This report details an Ombudsman Toronto Enquiry into Animal Services' response to one incident involving a young child who was injured in June 2017. His parents reported he had been attacked by two dogs living in a neighbouring apartment, after the dogs broke away from their owner and rushed at the child in their shared front yard.
7. Although some of what happened was disputed, there is no question that the child received a dog bite to his forearm and another wound to his upper arm. He was also terrified. Because the family, the dogs and the dog owner all lived close to each other (in the same house, in fact), how Animal Services responded was essential to everyone's comfort and well-being.
8. Unfortunately, many things went wrong with Animal Service's investigation of the incident, their follow up of related complaints from the family and the appeal process they offered. This report describes that.

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<sup>1</sup> City of Toronto, July 2018 figures, online: City of Toronto <https://www.toronto.ca/city-government/data-research-maps/toronto-at-a-glance/>

<sup>2</sup> Henry Stancu "Rules and Regs: Pet Ownership" *Toronto Star* April 16, 2016, citing a 2013 Ipsos Reid survey, online: Toronto Star <https://www.thestar.com/life/homes/2016/04/16/rules-and-regs-pet-ownership.html>. Ombudsman Toronto could not locate an updated estimate but believes that that the number of dogs in the City is likely higher now, given that the population has grown.

<sup>3</sup>See the by-law passed by City Council, City of Toronto, *Toronto Municipal Code*, Chapter 349 – Animals, online: City of Toronto [https://www.toronto.ca/legdocs/municode/1184\\_349.pdf](https://www.toronto.ca/legdocs/municode/1184_349.pdf)

9. As we detail below, Animal Services management has now resolved many of the concerns identified in this case and has made significant systemic improvements to its processes for handling dangerous dog cases. It took some steps as soon as the family brought problems to its attention. It took additional steps in response to Ombudsman Toronto questions, concerns and recommendations.
10. We are satisfied that the changes made by Animal Services in response to this complaint and Ombudsman Enquiry should help prevent the same problems from happening again in the future.
11. However, as explained further below, the Ombudsman believes that Animal Services needs to do more to acknowledge the unfairness experienced by the family at the centre of this incident and to provide clearer public information about how it determines whether a dog's dangerous act is severe.

## **BACKGROUND**

### **The Incident**

12. On Saturday, June 10, 2017, a family was entertaining friends at their home, a house in which they rented an apartment. The parents were on the side lawn. Their seven-year old son was playing on the front lawn with two friends, a six-year old and a two-year old.
13. Another tenant of the house exited the front door with his two dogs on leashes. One dog was a mostly grey Husky and German Shepherd mix. The other dog was a black and brown Doberman Pinscher.<sup>4</sup>
14. The seven-year old, who is afraid of dogs, screamed when he saw the dogs coming out the door.
15. The dog owner dropped the leashes and both dogs ran barking to the seven-year old. The child either dropped or fell to the ground. One of the two dogs bit the child on the forearm. The child also received an injury to his upper arm from a dog, although whether this injury was caused by teeth or claws was disputed. The dog owner pulled his dogs away and the child ran to his parents.
16. The parents promptly took their child to hospital for medical treatment and reported the incident to Animal Services.
17. The three children and the dog owner were the only people present at the time of the incident. There were no other witnesses.

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<sup>4</sup> The dog owner provided these descriptions of breeds and colours when he registered his pets with Animal Services.



## The City's Dangerous Dog Rules

18. Chapter 349 of the Municipal Code defines a dangerous act by a dog as "[a]ny bite, attack, act of menacing behaviour or any combination of a bite, attack or act of menacing behaviour."<sup>5</sup>
19. After a dog commits a second dangerous act, or a first dangerous act that is "severe", Animal Services must consider whether the dog was acting in self-defence.<sup>6</sup> If it finds the dog was acting in self-defence, Animal Services has the discretion to decide whether or not to issue a "dangerous dog order". If it finds the dog was not acting in self-defence, Animal Services has no choice and must issue a dangerous dog order.<sup>7</sup>
20. A dangerous dog order imposes significant restrictions on a dog and additional responsibilities on its owner. It requires that:
  - the dog must always be muzzled when off the owner's property
  - the dog may not enter designated leash-free areas of City parks
  - a warning sign must be posted on the owner's private property
  - the dog must receive any training required by Animal Services within 90 days
  - the dog must be photographed, microchipped and wear a special identifying tag

These restrictions are not time-limited. They continue for the life of the dog.<sup>8</sup>

21. A dog owner can appeal a dangerous dog order.
22. At the time of this incident, the by-law said that the Executive Director of Municipal Licensing and Standards would decide each appeal by stating whether the order should be confirmed or revoked.
23. Since then, the City has changed the by-law to say that the Dangerous Dog Review Tribunal will make this decision.<sup>9</sup>
24. If the City wants a stronger sanction than a dangerous dog order, it has additional options. Animal Services can:
  - lay charges under a different section of its by-law and impose a fine;

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<sup>5</sup> *Toronto Municipal Code*, Chapter 349, *supra* note 3 at subsection 349-1

<sup>6</sup> *Ibid* at subsection 349-15 C

<sup>7</sup> *Ibid* at subsection 349-15 B

<sup>8</sup> *Ibid*, at subsection 349-15.1

<sup>9</sup>*Ibid*, at subsection 349-16

- start a civil court proceeding under the provincial *Dog Owner's Liability Act*,<sup>10</sup> which permits a court to make a broad range of orders including the destruction of a dog; or
- ask police to investigate the possibility of criminal charges.

The City did not exercise any of these additional options in the case we reviewed. They are therefore beyond the scope of this Enquiry.

### **Animal Services' Investigation of the Incident**

25. An Animal Control Officer from Animal Services investigated on Tuesday, June 13, 2017, within a few days of the family's initial report.
26. The investigating officer spoke with both the injured child and his father.
27. The officer did not take or record a witness statement from the child. The officer requested and got a written statement prepared by the father about what he had observed and what his child had told him.
28. The officer also requested and got from the father a copy of a document medical staff gave them when they left the hospital after receiving treatment for the child's wounds.
29. The father emailed his witness statement to the officer. In it, the father said he and his wife were on the side lawn and did not see the dogs attack their son. He included a description of the dog that bit the child (based on what the child had told him) as "black with brown stomach" and said he believed his child had been bitten twice.
30. The father also said that the incident was "extremely traumatic" for his child, who was now afraid to "go out on the front lawn of the property he has lived at his entire life." The father explained they shared both a yard and a parking area with the owner of the dogs. He said he was particularly concerned because the dogs' owner "could not manage to control the animal he owns when three small children (two of whom were unknown to him) were present."
31. The officer wrote down firsthand observations of the child's injuries:
  - "Right forearm: punctures and abrasions, bruising"
  - "Right upper arm: 2 dragging wounds"
  - "2 separate wounds from dog bites"

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<sup>10</sup> R.S.O. 1990, c.D.16

32. The officer also took photographs of the child's injuries.



33. The officer classified the bite as a "Level 3" injury according to the guidance scale used by Animal Services at the time.

34. According to this scale, a Level 3 injury was "[o]ne to four punctures from a single bite, with at least 1 deep puncture (deeper than ½ the length of the dog's canine tooth. May include a deep bruising around the wound...)." Animal Service's written instructions directed staff to issue a dangerous dog order "[w]here the dangerous act is level 3, 4, or 5... "

35. The officer did not interview either of the other children who witnessed the incident, who were six years old and two years old.

36. The officer spoke to the owner of the dogs, who admitted he lost control of them.

37. The owner told the officer his dog "Betty"<sup>11</sup> was responsible for the child's wounds. Betty is the grey Husky and German Shepherd dog, not the owner's black and brown Doberman Pinscher named "Harry." However, in contrast, the father's statement, based on information from his injured child, described the black and brown dog as responsible for biting his son.

38. Nothing in Animal Services' investigation file suggests that the investigating officer recognized at that time that the injured child and the dog owner disagreed about which dog caused the injuries.

39. Animal Services had no records of any previous report about either dog.

40. On the same day the officer spoke to the victim and the dog owner, the officer issued a dangerous dog order with respect to Betty.

41. Among other things, the dangerous dog order required Betty to be muzzled anytime she was off the owner's property.

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<sup>11</sup> We have used pseudonyms for both dogs.

42. After speaking with the investigating officer, the family understood that Animal Services would be issuing a dangerous dog order. The family thought this meant that the black and brown dog they believed hurt their child would be muzzled from then on. They believed this fact would protect them from a dog that they would encounter regularly, because they continued to live in the same house.
43. The family had no idea that Animal Services had issued the dangerous dog order against the grey dog, not the black and brown dog.

#### **The Family Complained to Animal Services that Dog Not Muzzled**

44. Four days later, on June 17, 2017, the family complained to Animal Services that they had seen both dogs unmuzzled on their front lawn.
45. The officer who had done the initial investigation contacted the family within a few days. The officer told them a dangerous dog order had been served on the owner on June 13<sup>th</sup> and that Animal Services would follow up with the dog owner about their complaint he had not muzzled his dog as the order required.
46. However, the officer did nothing to follow up and did not contact the dog owner.

#### **The Family Complained to Animal Services that the Wrong Dog Muzzled**

47. On July 31, 2017, the family made a new report to Animal Services that they had seen both dogs and the wrong dog was muzzled.
48. On August 2, 2017, the mother gave a written statement to Animal Services, saying that she, her son and the same six-year old child who was present at the time of the first attack had encountered the owner and his two dogs in their shared parking area on July 30, 2017. They saw that the grey dog was muzzled, not the black and brown dog.
49. The mother also said she had asked each child, separately, which dog had bitten the seven-year old. Both had said it was the black and brown dog, not the grey dog.
50. The same day the mother provided her statement, a second Animal Control Officer asked the injured child which dog had injured him. The injured child repeated what he had said at the time, namely that it was the black and brown dog who bit him, not the grey dog.
51. The next day, August 3, 2017, the first officer, who had initially investigated, issued a new dangerous dog order against Harry the black and brown dog and revoked the order against Betty the grey dog.
52. An Animal Services manager then contacted the family and told them about the changes to the orders.

53. On August 17, 2017, the second investigating officer interviewed the six-year old child witness, who also said that it was the black and brown dog who had injured the seven-year old.

### **The Family Met Both Dogs Unmuzzled in the Dark**

54. In late November 2017, the family unexpectedly encountered both dogs unmuzzled in their shared parking area after dark. This encounter frightened the child and upset both parents.
55. The parents promptly made a new report to Animal Services that the owner had not muzzled the black and brown dog as required by the second dangerous dog order.
56. In response, an Animal Services employee told the mother that almost a month earlier, on October 28, 2017, an "independent tribunal" (a court-like body for making decisions) had decided on an appeal of the dangerous dog order to remove the muzzle requirement on the dog, while maintaining the order's other requirements (see para 20, above).
57. According to the family, the Animal Services employee also said the family had not been permitted to participate in the appeal because the City considered them to be "biased parties".
58. Soon after speaking with the mother, the same Animal Services employee left a voicemail for the father to correct the information she had just given to the mother. The employee said that the tribunal had revoked all requirements of the dangerous dog order, not just the muzzle requirement.
59. Besides not telling the family before they complained in November about seeing the dog unmuzzled that the tribunal had revoked the dangerous dog order, Animal Services had also never told the family that the owner was appealing the dangerous dog order and that the result could be that the order would be revoked.

### **The Family Got the Tribunal Decision and Related Documents through an FOI Request**

60. After Animal Services told the family that Animal Services could not give them documents related to the case, the family applied under the *Municipal Freedom of Information and Protection of Privacy Act* to access them, including the tribunal's decision.

### **The Tribunal's Decision Did Not Explain How It Decided the Issues on the Appeal**

61. The tribunal's decision said that it was revoking the dangerous dog order but did not explain why. It said only: "The Panel concurs that a "dangerous act" occurred; however the panel also concurred that the owner be exempt from compliance with

Section 349-15.1 [the section of the City by-law listing all the requirements of a dangerous dog order]."

### **The Father Discovered that Someone Had Deleted the Description of the Dog from His Statement**

62. When the father read the documents provided in response to their Freedom of Information requests, he saw that someone had altered his written statement to Animal Services about the incident.
63. In his witness statement, the father had repeated his child's description of the dog that bit him as "black with brown stomach".
64. He found that someone had deleted that description of the dog from the copy of his witness statement that Animal Services had presented to the tribunal with the other evidence in the Animal Services Investigation file. The rest of his witness statement was left untouched.

### **Animal Services Did Not Tell the Family about Their Right to Present Information to the Tribunal**

65. The family saw from the appeal records that the dog owner in this case had made detailed written arguments to the tribunal, explaining why he believed Animal Services had issued the order to the wrong dog, why a dangerous act had not occurred and why he believed there should be no dangerous dog order in this case.
66. Among other things, the dog owner argued:<sup>12</sup>
  - "There were no signs of aggression such as snarling or growling. My dog [Betty, the grey dog] did playfully nip the boy's arm in two spots. She was clearly not attacking him because her tail was still wagging when I grabbed her and my other dog."
  - "I don't believe my dogs attacked or displayed any menacing behaviour. I also have difficulty characterizing [Betty's] nipping as a bite. Her response was clearly generated by the boy's panic, but given her history (well-socialized, properly trained and consistent history at off-leash parks over 4 years on busy days), including extensive activity with small children and other dogs, I do not believe she acted in an aggressive manner towards the boy. Her multiple dogwalkers can all confirm this information."

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<sup>12</sup> The dog owner started two appeals. He appealed the first order against Betty, and, after the order against Betty was withdrawn and a new order made against Harry, he appealed the order against Harry. He made a series of arguments and asked that all his arguments, including those made with respect to the order against Betty, be considered in his appeal of the order against Harry.

- "Even if the nipping is considered a bite for the purposes of the City's new bylaw, many of the same information [sic] clearly supports that the incident was not severe. The incident occurred quickly. The boy required no medical attention. Any notion of this being severe is entirely inconsistent with her behaviour around other children and dogs. I'd also note that she is a very social dog and loves going to off-leash parks. This has been a part of her daily routine since birth. I believe she requires the ability to use the off-leash parks for both exercise and her own happiness and well-being."
- He said the child's injury should also not be considered severe because a neighbour told him she saw the child playing baseball the following day and he looked fine.
- "If you refer to the photos and doctor's description of the wounds, despite the many references made by [the investigating officer] and by the complainant to multiple bites, it is clear that there was in fact only one bite to the lower arm, with a single shallow puncture, teeth marks and some bruising. The wound to the upper arm was referred to as a dragging wound, and judging by the photo and the description was likely from [Betty]'s paw. There were no teeth marks or bruising whatsoever to suggest a dog's mouth made contact with his upper arm or a bite, which would imply pressure (which would cause bruising etc). This is very basic detective work, and it shouldn't be this difficult to dismiss the notion of severity if it is based on this alone."
- He regretted not holding the leashes more tightly and said he would be more careful when leaving his home.
- With respect to which dog injured the child, he said it did not matter to him or the dogs which one was subject to the order, but was adamant that he saw his grey dog [Betty] "make contact with the child's arm," while the black and brown dog [Harry] barked "a foot or so back" from the child. He also suggested that the child who was injured could not see which dog made contact because he was covering his face at that time.
- He provided two emails from his dog walkers, including one who said she was a former veterinary technician with work experience in the shelter system. Both dog walkers said they had not seen the grey dog Betty behave aggressively towards other dogs or people.
- He said his dog walkers were also willing to be contacted about his black and brown dog, Harry.

67. The dog owner said he had been trying to find out how Animal Services interpreted "severe" and who at Animal Services was making decisions about his case, both by contacting Animal Services directly and through his City Councillor. He said his City Councillor's staff told him Animal Services said the bite was severe because there were two bites and multiple punctures.
68. In his written arguments to the tribunal, the dog owner also expressed concerns about whether Animal Services had adequately gathered evidence in this case, who was making decisions about the case and whether there was adequate evidence to support Animal Services' decisions, for example about which dog had injured the child.
69. The family complained to Animal Services that it had not given them an opportunity to participate in the appeal. They said they would have provided information to the tribunal and would have disputed the dog owner's assertions. They questioned whether the City had discriminated against their son because of his young age.

### **Animal Services' Response to a Written Complaint from the Family**

70. The family made a written complaint to Animal Services on November 27, 2017, summarizing the problems they had encountered up to that time.
71. Representatives of Animal Services senior management met with the parents on December 21, 2017, to learn more about the parents' concerns. They then gathered additional information from staff about what had happened and provided a written response to the family on February 14, 2018.
72. Animal Services apologized to the family "for the poor experience you and your family received."
73. Animal Services also explained that the City had revised the dangerous dog rules in March 2017, only a few months before the incident. Animal Services said it would use the family's complaint as an opportunity to review and improve its processes to administer the new rules, both with respect to investigation and communication with victims.
74. In its response, Animal Services told the family it had taken the following corrective actions:
  - It had addressed deficits in note-taking with the Animal Control Officer who did the initial investigation and provided training on good note-taking to all Animal Control Officers.
  - It confirmed that an Animal Services staff member had altered the father's witness statement to delete his son's description of the dog that bit him. Animal Services also told the family that "[t]he gaps in the documentation have been addressed with the officer." It said



that the tribunal had received two copies of this witness statement, both the altered copy and a second unaltered copy that contained the child's description of the dog.

- Animal Services acknowledged the family's concern that the Animal Control Officer had failed to follow up on their June 17 complaint that the dog owner had not muzzled his dog. Animal Services said again that they had addressed the individual Animal Control Officer's performance.
- Animal Services also said that the officer had been confused about how to apply the order in circumstances where the dog's owner lived in an apartment with shared property. Animal Services had therefore taken the opportunity to train all staff on this question and to revise their documentation to require officers to clearly state where an owner should post a dangerous dog order.
- With respect to the family's concern that they were not given an opportunity to participate in the appeal or respond to statements made by the dog owner to the tribunal, Animal Services responded that "[t]he appellants [the dog owners challenging the orders made against their pets] and the City are typically the only parties to those proceedings. It is not a unique scenario where a victim of an incident does not participate as a party to a proceeding and thus does not receive disclosure in the same manner as parties to that proceeding."
- Animal Services denied they discriminated against the child because of his age.
- Animal Services agreed that they had made a mistake by not promptly telling the family about the tribunal's decision to revoke the dangerous dog order.
- Animal Services said they had since instructed all their Animal Control Officers to tell victims when they issue a dangerous dog order. They also said they would amend their pamphlets and information available to the public to provide information about appeals.

75. Although they did not tell the family at the time, Animal Services also took some additional steps:

- They began a challenging process of reviewing job classifications for their staff to ensure that Animal Control Officers charged with responding to dangerous dog reports have the necessary investigation skills

- They instructed staff that victims and other members of the public do not need to make formal Freedom of Information requests to obtain copies of decisions of the Dangerous Dog Review Tribunal

76. In their response to the family's written complaint, Animal Services said "we will make the required improvements based on what we have learned so that the same situation is not repeated in the future."

77. Despite receiving Animal Services' written apology for their poor experience, the child's parents believed more should be done. They therefore contacted Ombudsman Toronto.<sup>13 14</sup>

## OMBUDSMAN TORONTO'S ENQUIRY

78. Ombudsman Toronto staff reviewed:

- Animal Services' records relating to their investigation, the appeal and the family's complaint
- The applicable law, namely:
  - Chapter 349 – Animals, *Municipal Code*
  - *City of Toronto Act, 2006*, S.O. 2006, c.11, section 107, "Muzzling of Dogs"
  - *Dog Owner's Liability Act*, R.S.O. 1990, c. D.16
- Animal Services' related policies, procedures and guidance materials
  - Standard Operating Procedure Animal Services-40, Dangerous Dog Investigation
  - Standard Operating Procedure Animal Services-85, Conducting Investigative Interviews
  - Standard Operating Procedure Animal Services, Hearing Requests for Dangerous Dog Orders
  - Dangerous Act – Injury Scale Guidelines
  - Canine Bite Levels Poster
- Relevant Animal Services training materials
- Information for the public posted on Animal Services' website
- Dangerous Dog Review Tribunal Rules of Procedure
- City of Toronto Staff Report "Amendments to Chapter 349, Animals – Dangerous Dogs," November 16, 2016

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<sup>13</sup> The family had earlier contacted both their local City Councillor and Ombudsman Toronto for help in resolving their concerns. Ombudsman Toronto asked the family to give Animal Services an opportunity to respond and did not begin this Enquiry until Animal Services management had finished responding to the family.

<sup>14</sup> The family also complained about a breach of their son's privacy with respect to the City's disclosure to the dog owner of the document they received from the hospital after the child received treatment. Animal Services explained that where there is an appeal to the Dangerous Dog Review Tribunal, they disclose all relevant documents to the dog owner so that he or she can respond to the order. Because the family has asked the Information and Privacy Commissioner of Ontario to review this concern, Ombudsman Toronto has not reviewed it.

- City of Toronto Staff Report "Improved Dangerous Dog Tribunal", dated June 27, 2018

79. Ombudsman Toronto staff also spoke to the parents of the child involved and to representatives of Animal Services management.

## **ANALYSIS, FINDINGS AND RECOMMENDATIONS**

80. After reviewing the evidence, we found unfairness in Animal Services' investigation of the incident, their response to the family's complaints, and the administration of the appeal process.

### **Problems with Animal Services' Investigation of the Incident and Response to June 17 Complaint**

81. We identified several concerns with Animal Services' initial investigation of the incident. Staff did not:

- take or record a statement of the evidence from the injured child
- identify that there was conflicting evidence from the owner and the child about which of the two dogs injured the child
- promptly interview a different child who witnessed the incident.

82. For a fair investigation, staff should have done each of those things.

83. We found that Animal Services should have followed up on the family's June 17, 2017 complaint that they saw the dog that injured their child unmuzzled on their front lawn.

84. We found that Animal Services staff should not have deleted the description of the dog from the father's witness statement in the Animal Services investigation file.

85. We closely examined the evidence of the steps taken by Animal Services in response to the family's written complaint, to confirm that they had done what they told the family they would do. We learned that, besides the steps described above, Animal Services management had also taken the initiative in response to questions we raised to provide training to all their investigators about how to obtain and record evidence from child witnesses.

86. Ombudsman Toronto is satisfied that all the actions Animal Services management has taken in response to the family's complaint should help ensure that the problems with their investigation (including not responding to victims' concerns and poor record keeping) will not occur again. We acknowledge and commend Animal Services management for initiating many of these steps before Ombudsman Toronto became involved.

87. However, we also identified several other administrative fairness issues that took more time to resolve with Animal Services.

## How the Tribunal Operated Was Unclear

88. Provincial law requires City Council to offer a dog owner an appeal if staff issue a muzzle order.<sup>15</sup> At the time our Enquiry began, City Council had passed a by-law delegating authority for conducting such appeals to the Executive Director of the Municipal Licencing and Standards division “or any person acting under his or her authority.”<sup>16</sup>
89. The Executive Director could delegate the responsibility for deciding dangerous dog appeals to any person acting under his or her authority. There was no requirement to establish a tribunal or to delegate authority to anyone who was “independent” of the Executive Director or of Municipal Licensing and Standards.
90. However, Animal Services told us and emphasized repeatedly throughout our Enquiry that an “independent tribunal” had been created, which operated separately and distinctly from their management.
91. Animal Services management had asked some of their staff, staff from other parts of the Municipal Licensing and Standards division and staff from other City divisions to form the Dangerous Dog Review Tribunal.<sup>17</sup>
92. The Chair of the Dangerous Dog Review Tribunal was an employee of Animal Services. She reported to the Director of Animal Services with respect to her regular duties, apart from her work on the tribunal.
93. We found two fairness problems with how the Dangerous Dog Review Tribunal was created and how it operated.
94. First, although Animal Services told us that an independent tribunal had been created, we were concerned about the possibility of bias and conflict of interest.
95. Tribunal members were deciding cases involving the work of their colleagues. Because the chair and other tribunal members over the years were also employees of Animal Services, reporting to Animal Services management, there was a possibility of Animal Services management unduly influencing the tribunal, whether intentionally or not. These facts raised questions about the tribunal’s ability to make independent decisions and about actual or perceived bias and conflict of interest.
96. Second, the public needs to know who is making a decision and what criteria or test the decision maker(s) will apply. Knowing who decides and what facts matter

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<sup>15</sup>*City of Toronto Act, 2006*, S.O. 2006, c.11, Sched. A, s.107

<sup>16</sup> *Toronto Municipal Code*, Chapter 349, *supra* note 3, at subsection 349-16, as it was prior to its amendment by City of Toronto By-Law 1191-2018 on July 27, 2018

<sup>17</sup> We use “Dangerous Dog Review Tribunal” to refer to the former tribunal created by Animal Services, which was operating at the time this injured child’s case was heard. As described in paragraphs 94-95, after this Enquiry began, in July 2018, staff recommended and City Council created a new independent Dangerous Dog Review Tribunal, consisting of five members of the public appointed by Council. We refer to it as the “new Dangerous Dog Review Tribunal.”

is essential for anyone wanting to make their case and affect the outcome of the decision.

97. In this case, at the time of the appeal, it was difficult for anyone to obtain clear information about the tribunal and what it would consider in making decisions. When we asked Animal Services management what criteria the tribunal members used to decide appeals, they said they did not know.
98. After we brought these concerns to the attention of Animal Services management, they acted promptly to request that City Council appoint a new, independent Dangerous Dog Review Tribunal and to confirm that that tribunal should apply the rules established by City Council in making decisions.
99. City Council accepted this recommendation in July 2018<sup>18</sup> and five members of the public were appointed to the new independent Dangerous Dog Review Tribunal in April 2019.<sup>19</sup> The new independent Dangerous Dog Review Tribunal hearings are open to the public and it releases all decisions and reasons publicly.<sup>20</sup>

### **Inadequate Information Available About How Animal Services Determined Whether a Dangerous Act Was Severe**

100. Whether or not the act was “severe” was a key question in this case.
101. Because neither dog had committed a prior dangerous act and there was no finding that the dogs acted in self-defence, what determined the outcome of this case was whether or not the dangerous act was severe.
102. If the attack on the seven-year old was found to be a “severe” dangerous act, the City’s by-law required staff to issue a dangerous dog order, which would remain in place for the life of the dog(s) responsible.
103. However, the City’s by-law does not say how to determine whether a dog’s dangerous act is “severe.”
104. When City Council was considering changing the by-law to create these dangerous dog rules in 2016, the Executive Director of Municipal Licensing and Standards reported that public consultation had revealed people wanted to know what a “severe” dangerous act meant.
105. In the same report, the Executive Director explained that Animal Services used a guidance scale to interpret severity and committed to addressing public confusion

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<sup>18</sup> City Website, online: City of Toronto

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.LS27.1>

<sup>19</sup> City Website, online: City of Toronto <https://secure.toronto.ca/pa/decisionBody/582.do>

<sup>20</sup> City Website, online: City of Toronto

<http://app.toronto.ca/tmmis/decisionBodyProfile.do?function=doPrepare&meetingId=16655#Meeting-2019.DG7>

about what severity meant by posting this scale on their website and including it in educational materials.<sup>21</sup>

106. Despite this commitment to City Council and to the public, Animal Services did not post their severity scale on their website, include it in educational materials or otherwise make it available to the public.
107. As discussed earlier, the dog owner in this case wanted to know more about what “severe” meant and only got some explanation after asking his City Councillor to contact Animal Services on his behalf.
108. Ombudsman Toronto discovered that Animal Services had clearly established criteria (in the form of a severity guidance scale) to help their employees determine severity, but was not making this information available to the public.
109. When we first suggested that Animal Services make their severity guidance scale available to the public, they removed the scale from their written instructions for staff about how to respond to dangerous dog investigations.
110. After Ombudsman Toronto explained again that fairness requires Animal Services to tell the public what criteria they are using to make decisions, Animal Services agreed to re-insert severity criteria into their internal guidance documents and to provide some information to the public about how their staff will interpret severity.
111. They posted the following information on their website:

When the dangerous act is the first on record with the City, an officer will examine all of the circumstances of the specific dangerous act when determining if the dangerous act is severe. In assessing the circumstances, the officer may consider factors such as:

- The extent of the bite (i.e. single wound vs multiple wounds)
- The extent of the attack injury (i.e. bruising vs fracture)
- The extent of the act of menacing behavior

An officer may give different weight to each of these factors depending on the circumstances and may consider other factors as relevant. An officer will conduct an investigation and review all of the evidence in coming to a decision on severity.<sup>22</sup>

112. Animal Services told us that its staff continue to use severity scales to help them assess whether a dog’s dangerous act is severe.

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<sup>21</sup> Executive Director, Municipal Licensing and Standards, Report for Action, Amendments to Chapter 349, Animals – Dangerous Dogs, November 16, 2016, at p.4, online: City of Toronto <https://www.toronto.ca/legdocs/mmis/2016/ls/bgrd/backgroundfile-98542.pdf>

<sup>22</sup> City website, online: City of Toronto <https://www.toronto.ca/community-people/animals-pets/pets-in-the-city/dogs-in-the-city/>

113. They explained that they did not wish to share their severity scales with the public because they were concerned that doing so might cause witnesses to fabricate or tailor their evidence.
114. Animal Services' severity scales direct staff to look at factors like whether there was skin contact by the dog, the number and depth of any punctures from a dog bite, the number of bite wounds, and whether the victim survived. It is hard to see how a witness could tailor or fabricate evidence in response to these questions.
115. Besides being a matter of fairness, it would be helpful for dog owners to be able to focus their evidence and arguments on what Animal Services believes makes a dangerous act severe, rather than on irrelevant issues.
116. The new information on the website is an improvement. However, the Ombudsman believes that Animal Services should also make severity guidance scale(s) their staff use publicly available.

### **Problems with How Animal Services Handled the Appeal**

#### ***Animal Services did not fairly or effectively present their case to the tribunal***

117. At the relevant time, the tribunal rules for dog owners appealing dangerous dog orders provided for a written process only. There was no oral hearing or opportunity for anyone to address the Dangerous Dog Review Tribunal in person.
118. In this case, however, Animal Services made no written response to the dog owner's arguments and evidence. It simply submitted a copy of its investigative file to the tribunal electronically with a short covering email from a clerk to the Chair. The email said:

Please find attached the second<sup>23</sup> hearing matter for the Dangerous Dog Order issued to [Harry].

While conducting her investigation, the Officer erred [sic] in issuing a Dangerous Dog Order to [Betty]. After confirming with the victim, the Order for [Betty] was voided, and a Dangerous Dog Order was issued to [Harry].

The officer deemed the bite as a Level 3.

119. Animal Services did not send the covering email to the dog owner. That was unfair to the dog owner. He was entitled to know what Animal Services was telling the tribunal, including that the officer "deemed the bite as a Level 3."

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<sup>23</sup> It was the second "hearing" or appeal because the dog owner had earlier appealed the order against Betty. The first appeal was never actually decided by the tribunal, because the order against Betty was revoked before the tribunal considered that appeal.

120. Ombudsman Toronto also finds that this covering email and the way in which Animal Services presented the file to the tribunal did not effectively convey their evidence or their reasons for issuing the dangerous dog order.
121. Animal Services did not clearly set out the evidence about which dog committed the dangerous act or make arguments about whether any dangerous act committed was "severe."

#### *Which dog injured the child*

122. As discussed above, the dog owner argued that Animal Services had issued the order against the wrong dog and that he was the only person who was able to clearly see what happened.
123. When the child's father later reviewed the appeal records, he saw that Animal Services had given the tribunal an altered copy of his written statement, deleting the child's description of the dog that bit him as "black with brown stomach."
124. In their written response to the family's complaint, Animal Services stated that they also gave the tribunal a second and complete copy of the father's statement. Unfortunately, however, it was at the end of the package of documents Animal Services submitted to the tribunal, while the altered version was at the front. Animal Services did nothing to notify the tribunal that the two versions were different, or why the altered one was included at all.
125. Which dog was responsible for hurting the seven-year old child was a matter of dispute and confusion for a long time. The decision the tribunal released on October 27, 2017 did not state which dog it had found responsible for the injury.
126. The Written Decision containing reasons that the tribunal later released in May 2018 (after the father complained to Ombudsman Toronto and our Enquiry began), clarified that it had found that Harry the black and brown dog injured the child.

#### *Whether the act was "severe"*

127. Under the City's rules, because this was a first dangerous act and there was no finding of self-defence, this case should have been decided on whether any dog's dangerous act was "severe" or not. The dog owner argued it was not severe and that the bite wound was only "a single shallow puncture".
128. Animal Services' evidence to support their conclusion that the dangerous act was severe was scattered throughout the documents it sent to the tribunal. It included photographs of the injuries, the discharge document from the hospital with some description of the injuries, handwritten notes of the investigating officer recording observations of the injuries and a notation "Level 3" at the bottom of one page.
129. The file did not however include a copy of the severity guidance scale Animal Services was using. There was nothing to explain to the tribunal (or to the dog



owner) what the "Level 3" notation meant, or that a Level 3 act required at least one deep puncture (at least half the length of the dog's canine tooth) and could include deep bruising.

130. There also were no notes in Animal Services' file or in what they sent to the tribunal that recorded the officer's observations of the depth of the punctures. Only someone who knew what "Level 3" meant would know that this notation could be evidence that the officer had observed at least one deep puncture.
131. When Ombudsman Toronto asked Animal Services management if they expected the tribunal members to know about and use the same severity scale Animal Services officers used, they said they did not know whether the tribunal members used the severity scale or not.
132. If the tribunal members did not know or agree with the details of the severity scale, then Animal Services telling them the officer deemed the bite a "Level 3" injury was meaningless evidence about the severity of the boy's injuries or about the act of the dog.
133. The tribunal ultimately accepted the dog owner's submission about the nature and extent of the child's bite wound, stating in its reasons simply that there was a "single shallow puncture."
134. On the evidence, it was open to the tribunal to make this finding and to reject the investigating officer's assessment of the wound. To be clear, Ombudsman Toronto did not make any finding about whether or not the dangerous act was severe.
135. However, given the state of the evidence and how poorly Animal Services presented the file, we find it is possible that the tribunal would have made a different finding if Animal Services had more clearly presented evidence and its arguments on this point.

*Update: The appeal process has changed to in-person hearings and Animal Services will now send a manager to present their evidence and arguments*

136. At around the time we were discussing this issue with Animal Services, the tribunal's Rules of Procedure changed.
137. The tribunal rules were changed to require oral (in person) hearings, not written hearings.
138. In response to concerns the Ombudsman raised, Animal Services has taken the following steps:
  - management decided that a manager will attend every hearing to present Animal Services' evidence and arguments and to respond to any evidence and arguments the dog owner presents

- management created written guidance for its employees to help them prepare to present Animal Services' evidence and arguments to the tribunal

***Animal Services did not tell the child's family about the appeal and their right to participate***

139. At the time, section 10.1 of the tribunal's rules said that if the dog owner, Animal Services or any "interested person" made submissions (i.e. sent evidence or arguments) to the tribunal, the tribunal would review them, including any written comments and photographs.

140. The definition section of these rules clearly included a victim within the definition of an "interested person:"

"Interested person" includes

- a) the person who claims to have been involved in the dangerous act committed by the dog and/or his legal guardian; or
- b) where a domestic animal [pet] has been the subject of the dangerous act, the owner of the domestic animal.

For greater certainty, an interested person does not have party status before the Tribunal.

141. The tribunal's reasons for their decision in this case acknowledged this right when they stated: "The tribunal panel reviewed all submissions of the appellant [the dog owner], the City *and any interested parties* in making its final written decision of this appeal."<sup>24</sup> (emphasis added)

142. However, despite this recognition in the tribunal's rules and reasons for decision of interested persons' right to participate in the appeal process, no one ever told this injured child's parents that an appeal was happening or that they could send written evidence and/or arguments to the tribunal to support the Dangerous Dog Order.

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<sup>24</sup> To be clear, no interested persons made submissions in this case.

143. As discussed above, Animal Services responded to the family's complaint about this serious omission by explaining that Animal Services is "is the respondent party in any subsequent appeal and acts on behalf of the City in support of the Dangerous Dog Order."<sup>25</sup> This was an inadequate response. The family had the right to participate in the tribunal process and Animal Services should have informed them of that right.

*Update: The appeal process changed twice during our Enquiry: to eliminate and then restore the right of interested persons to participate*

144. As part of the changes made to the tribunal process (during the course of this Enquiry, before the new tribunal was established), the right for "interested persons" to participate by presenting evidence or arguments to the tribunal was removed.

145. Animal Services management told us that since they will now attend all hearings in person to defend their orders, they believed that they could convey the victim's perspective to the tribunal and/or bring the victim as a witness.

146. On May 14, 2019, the new, independent Dangerous Dog Review Tribunal adopted Rules of Procedure that once again permit interested persons to participate.<sup>26</sup> At the hearing panel's discretion, an interested person may provide a brief oral or written statement at a hearing.

147. Regardless, Ombudsman Toronto agrees with Animal Services that they have the responsibility to defend their orders; this responsibility does not rest on the victim or another member of the public who might come forward as an "interested person."

148. As mentioned earlier, Ombudsman Toronto recommended that Animal Services develop written guidance to ensure that their staff meet this responsibility by clearly presenting the evidence and reasons for their orders, and they have done so.

149. The steps Animal Services has taken should make the appeal process fairer in future. Unfortunately, however, this does not change the fact that this victim and his family were denied their right (under the rules in effect at the time) to present evidence and/or arguments in a case where Animal Services did not effectively present their case for issuing the dangerous dog order.

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<sup>25</sup> The Rules of Procedure of both the former and new Dangerous Dog Review Tribunal have always said that the "applicant" is the dog owner, who is asking for the tribunal to cancel the Dangerous Dog Order that Animal Services issued against their dog. These Rules of Procedure have also always said that the "respondent" is "the City of Toronto, as represented by the Executive Director, Municipal Licensing and Standards." More generally, an applicant refers to a person asking for a decision maker to do something and a respondent is a person who has a right to tell the decision maker whether they agree or not to the applicant's request and explain why.

<sup>26</sup> In May 2019, the new tribunal approved new Rules of Procedure that give interested persons the right to make submissions to the tribunal.

## **The Tribunal Did Not Initially Give Reasons for Decision and Did Not Apply the Right Test**

### ***The tribunal's own rules required it to give reasons but it did not***

150. The tribunal's *Rules of Procedure* required it to provide written decisions and reasons.<sup>27</sup>
151. In this case, however, the tribunal did not initially give any reasons to explain its October 30, 2017 decision to revoke the dangerous dog order. Specifically, it did not give reasons for its decision on the key issues in the case: which dog committed any dangerous act and whether any dangerous act was severe. It said only: "The panel concurs that a 'dangerous act' occurred; however the panel also concurred that the owner be exempt from the compliance with Section 349-15.1."
152. After Ombudsman Toronto raised this lack of reasons with Animal Services, Animal Services asked the tribunal to provide reasons.

### ***The tribunal considered the wrong test***

153. In June 2018, Animal Services gave Ombudsman Toronto a document dated May 21, 2018 and titled "Written Decision."
154. Helpfully, this document answered the question of which dog the tribunal found to be responsible for the child's injuries. It clearly said that the tribunal found that Harry the black and brown dog had committed the dangerous act, because the father's statement said that shortly after the incident, the injured child had "identified the offending dog as a black and brown dog" and this information was corroborated<sup>28</sup> by the six-year old child witness.
155. The Written Decision also stated that the tribunal examined evidence about the "seriousness of the injuries caused by the biting or attack". The tribunal held:

*Based upon the evidence/documents provided to the tribunal, the injuries consisted of:*

- 1. Single shallow puncture, tooth impressions, bruising, abrasions to right lower arm.*
- 2. Two abrasions to upper right arm.*

*On the balance of probabilities, the tribunal believes the injuries sustained to the child's right forearm resulted from a single bite. The formation of the bite wound shown in the pictures coincide with that of a single bite. The formation of the bite wound shown in the pictures coincide with that of a single bite. Further, the panel believes that the marks on the child's right*

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<sup>27</sup> Section 19.2 of the new tribunal's Rules also says all decisions of the tribunal will be in writing and provide reasons.

<sup>28</sup> The tribunal used the word "collaborated", but we assume it meant "corroborated."

*upper arm are consistent of marks made from a dog's nails and not from a dogs tooth and/or teeth. The Tribunal panel concurred that a dangerous act occurred. The Tribunal did not believe that the bite was severe.*

156. In this section of its reasons, the tribunal reviewed evidence relevant to the by-law's criteria of "severity." By stating that there was a "simple shallow puncture", it appears that the tribunal made a finding of fact about the extent of the bite wound, accepting the dog owner's characterization of the forearm bite as consisting of a "single shallow puncture" over the officer's classification of that act as a Level 3 incident, which required at least one deep puncture.
157. The tribunal also clearly found that this lower arm bite was not severe and that the child's upper arm wound was not a bite. We cannot tell from the reasons whether the tribunal considered severity of the act as a whole and, if it did so, whether it considered the upper arm injury in doing so.
158. However, the Written Decision suggests that the tribunal reached its decision based not only on the identity of the dog and the severity criteria set out in the by-law, but also on irrelevant criteria.
159. In the Written Decision, the tribunal listed all the factors it had considered, noting that they were "also found within the *Dog Owner's Liability Act*, R.S.O 1990, Chapter D.16," which is provincial legislation, not part of the City's by-law.
160. After reviewing the evidence about each of these factors, including that the tribunal believed the dog owner was sincere in stating he would "take more caution" in future, the tribunal concluded that although a "dangerous act" had occurred, it "believes that the dogs [sic] behaviour was not such that the dog poses a menace to public safety and as such decided to rescind the determination of a dangerous dog order...". (wording from the provincial *Dog Owner's Liability Act* and irrelevant under the City's by-law.)
161. The test for a court to issue an order under the provincial *Dog Owner's Liability Act* is different from the test for Animal Services to issue a dangerous dog order under the City's by-law.
162. The provincial *Dog Owner's Liability Act* permits a court to make a broader range of orders than the City's by-law does. These include the destruction of a dog. The court may also consider a broader range of factors, including:
  - a dog's past and present temperament and behaviour
  - seriousness of the injuries caused by the biting or attack
  - unusual contributing circumstances tending to justify the dog's action
  - the probability that a similar act will be repeated
  - the dog's physical potential for inflicting harm
  - precautions taken by the owner to prevent similar attacks in the future and

- any other circumstance that the court considers relevant
163. This provincial law requires that after considering these factors, the court must find the following before issuing an order:
- a) either that the dog bit or attacked a person or domestic animal or that “the dog’s behaviour is such that the dog is a menace to the safety of persons or domestic animals”; and
  - b) that an order is necessary for the protection of the public.
164. By contrast, the City’s by-law looks only at what has already happened. The by-law does not ask the decision-maker to try to predict what may happen in future. The City’s by-law clearly states that Animal Services and the tribunal should look at *only*:
- whether there was a dangerous act
  - whether the dog was acting in self-defence, and,
  - if it was the first or subsequent dangerous act on record, and, if it was the first, whether the act was "severe"
165. As a matter of fairness, it is essential that whenever Animal Services issues a dangerous dog order, its staff and the public know in advance what test or criteria it has applied to make the decision whether to issue an order or not.
166. The same is true when the Dangerous Dog Review Tribunal reviews an order on appeal. The public (including the dog owner), Animal Services staff and the tribunal members must all know in advance what test or criteria the tribunal should apply to review the order.
167. Otherwise, Animal Services and the dog owner cannot know what evidence and/or arguments will be relevant to the tribunal’s decision. Furthermore, if different decision makers apply different criteria, there may be different outcomes in similar cases, which is unfair.
168. The tribunal must apply the test in the City’s by-law, not the provincial test that applies in a different context and before a different decision-making body.
169. Our review of recent decisions of the new publicly appointed and independent tribunal suggests that the new tribunal is applying the test from the City by-law, not the provincial *Dog Owner’s Liability Act*.

### **Better Communication with Victims Needed**

170. Ombudsman Toronto found that Animal Services did not communicate with this injured child and his parents in a clear or timely way. This problem occurred repeatedly.

171. In one key example, the family only learned the tribunal had revoked the muzzle order after meeting the dog unexpectedly after dark in the shared parking area. This lack of communication by Animal Services caused the family fear and upset that was avoidable, unnecessary and unacceptable.
172. We therefore recommended that Animal Services create written guidance for staff on communicating with victims, so that this does not happen again. The guidance should include when such communication should occur, what should be conveyed, and which staff is responsible. We specifically recommended that the guidelines require that Animal Services staff always inform the victim whether a dangerous dog order will be issued or not, whenever the owner appeals and the outcome of any appeals.
173. Animal Services accepted this recommendation and has implemented it. It updated its Dangerous Dog Investigation procedure and created new written guidance for staff, confirming who is responsible for communicating specified information to victims.

## **CONCLUSION, SUMMARY OF IMPROVEMENTS AND RECOMMENDATIONS**

174. A young child was injured in an incident with two dogs that lived in a neighbouring apartment. As residents of the same house, they would inevitably come into contact again. The child's family was therefore concerned about their safety and well-being – and the dog owner was concerned about the well-being and freedom of his pets.
175. This situation was not exceptional or unexpected. People in Toronto love their children and their dogs. With so many living so close together, City Council has created rules for when they come into conflict and has tasked Animal Services with administering those rules.
176. Unfortunately, Animal Services mishandled this case in several ways, as discussed above. The problems came to light only because of this family's complaint.

### **Steps Animal Services Has Already Taken**

177. This complaint has been an opportunity for Animal Services to improve its administration of the dangerous dog rules so that others will not experience the same problems in future. We commend them for seizing this opportunity.
178. In summary, Animal Services has taken the following steps:

In response to the family's complaints and before Ombudsman Toronto became involved, Animal Services:

- addressed the investigating officer's errors, including the deletion of the child's description of the dog that bit him from the father's witness statement
- provided additional training to all investigative officers about:
  - good note-taking
  - how to apply the City's rules in circumstances where a dog owner shares property with others
- instructed its staff to communicate better with victims
- undertook a review of job classifications to ensure investigating officers have the skills necessary for the role
- instructed its employees that they should give victims and other members of the public Dangerous Dog Review Tribunal decisions on request, without requiring that they make a Freedom of Information request

In response to the Ombudsman's recommendations while the Enquiry was ongoing, Animal Services:

- provided training to all investigative staff about how to interview child witnesses
- recommended that City Council appoint a new independent tribunal to conduct appeals of dangerous dog orders and apply the City's rules, which recommendation City Council accepted and implemented
- started sharing information with the public about how it assesses the severity of a dangerous act by a dog
- when the appeal process changed from a written to an oral hearing, directed its management staff to appear at appeal hearings to present evidence and arguments supporting the dangerous dog order,
- developed written guidance for staff on how to prepare for an appeal hearing
- developed written guidance for staff specifying who is responsible for promptly communicating certain crucial information to victims, including whether a dangerous dog order will be issued, whether the dog owner appeals and the outcome of any appeal



## **The Important Role of the Child and his Family**

179. The many improvements outlined in this report have all happened because of this family's pressure for answers and change. They knew what had happened in their case was wrong and they tried to fix it.
180. After the family came to us for help, Ombudsman Toronto played its part in identifying concerns and making recommendations to improve Animal Services' administration of the dangerous dog rules. But we would never have known about this case or the systemic issues it raised but for the family's tenacity. They have demonstrated how thoughtful citizens, who speak up when they feel they have been unfairly treated, can help improve the administration of the City.
181. Unfortunately, the result in their own case remains unsatisfactory. The dangerous dog order against a dog that attacked a child living in the same house was lifted after an appeal in which:
- the family was not given the opportunity to provide information and present arguments at the hearing, even though they had that right, under the rules in place at that time
  - Animal Services did not present clear evidence or arguments to support its decision to issue a dangerous dog order
  - the tribunal considered the wrong test, by referring in its decision making to irrelevant criteria from the provincial *Dog Owner's Liability Act* in addition to criteria from the City by-law.
182. All of this was unfair to the child and his family.

## **The Ombudsman's Suggestions that Animal Services Request that the Tribunal Review its Decision**

183. Ombudsman Toronto suggested to Animal Services at two different times that it ask the tribunal to reconsider the appeal in this case:
- in April 2018, soon after Animal Services had finished responding to the family's complaint and Ombudsman Toronto had begun this Enquiry; and
  - again in June 2018, shortly after Ombudsman Toronto received a copy of the tribunal's May 31, 2018 reasons for decision.
184. Animal Services initially told Ombudsman Toronto they would pursue a review of this case with the tribunal, but later informed us they had decided not to ask the tribunal for a review.

185. The Ombudsman disagrees with Animal Services' decision not to request a review in this case.
186. The tribunal's Rules of Procedure at the relevant time allowed the tribunal to waive the time limit for requesting a review "in order to secure the just determination of any matter."
187. While we do not say what the outcome of any review would have been, we found that Animal Services and the tribunal did not provide a fair process in this case by not allowing the family to be heard when the rules gave them that right.
188. It was also an error in law for the Dangerous Dog Review Tribunal to consider irrelevant evidence and criteria from the *Dog Owners' Liability Act* in reaching its decision.
189. For these reasons, even if Animal Services management believed they might not ultimately be successful, the Ombudsman believed it was incumbent on them to ask the tribunal to review this case.

### **Further Recommendations**

190. We do not repeat here as a recommendation our previous suggestions that Animal Services seek a review of this case, in all the circumstances. The family told us they believe that it would now be unfair to the dog owner to re-open this case after so much time has passed.

We recommend however that Animal Services apologize again to this child and his parents, for the unfairness they experienced in the appeal process.

191. Animal Services should thank the family for pursuing their concerns and explain the many positive steps the City has taken to prevent similar problems from happening in the future, all as a result of their complaint.
192. We also recommend that Animal Services make publicly available their guidance scale(s) for determining whether a dog's dangerous act is severe.

### **THE CITY'S RESPONSE**

193. As a matter of procedural fairness, we shared a draft of this report with Animal Services management and the Executive Director of Municipal Licensing and Standards, as well as their legal advisors. We then met with them to give them an opportunity to make representations on our findings and recommendations.
194. The Executive Director of Municipal Licensing and Standards informed the Ombudsman that the City accepts the findings in this Enquiry. It agrees with the recommendations and has committed to implementing them by the end of 2019.

## **FOLLOW UP**

195. Ombudsman Toronto will follow up to ensure that Municipal Licensing and Standards implements the outstanding recommendations.

*“Original Signed”*

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Susan E. Opler  
Ombudsman