

**TRIBUNALS ONTARIO**

**Animal Care Review Board**

**TRIBUNAUX DÉCISIONNELS  
ONTARIO**

**Commission d'étude des soins aux  
animaux**



Citation: *Kennedy v. Chief Animal Welfare Inspector*, 2024 ONACRB 15872 93

**Date: 2024-06-28**

**File Number: 15872/ACRB**

Appeal under section 38 of the *Provincial Animal Welfare Services Act*, 2019 S.O. 2019, c. 13

Between:

**Mark Kennedy**

**Appellant**

and

**Chief Animal Welfare Inspector**

**Respondent**

**DECISION AND ORDER**

**Adjudicators:**

Debra Backstein, Member

Raymond Ramdayal, Member

**Appearances:**

For the Appellant:

Mark Kennedy, Self-represented

For the Respondent:

Adrien Iafrate, Counsel

**Heard by videoconference:**

May 29, 2024

## OVERVIEW

- [1] Mark Kennedy (the “Appellant”) is the owner of Junior, a 7-year-old American Bulldog.
- [2] On May 2, 2024, Senior Investigator Alison Green of Animal Welfare Services (“AWS”) attended at the Appellant’s residence in Penetanguishene, Ontario to investigate a complaint that the appellant was physically abusing his dog, Junior.
- [3] Senior Investigator Green removed Junior and served the Appellant with a Notice of Removal (“NOR”).
- [4] Pursuant to the NOR, a veterinarian advised that Junior was in distress and the removal was necessary to relieve Junior’s distress as a result of abuse.
- [5] The Appellant appealed the removal of Junior on the basis that Junior was not in distress at the time he was removed.
- [6] On May 3, 2023, the Appellant was served with a Decision to Keep an Animal in the Chief Animal Welfare Inspector’s Care (“DTK”). The appellant did not appeal the DTK.
- [7] The Appellant appealed Junior’s removal by AWS to the Animal Care Review Board (Board) on May 3, 2024 and the matter proceeded to a videoconference hearing.
- [8] While the Appellant did not appeal the DTK, and did not file an application under s.38(4) for a revocation of an Order, the Appellant’s ongoing pleas to have Junior returned to him is interpreted by the Board as a s.38(4) Application. The Appellant requested the return of his dog as part of this appeal and therefore the reasons why AWS decided to keep the dog in care were relevant to whether the dog should be returned.

## POST HEARING ISSUE

### **Motion to Dismiss**

- [9] On June 3, 2024, following the completion of this hearing, the Respondent filed a Notice of Motion to dismiss the Appellant’s appeal of the NOR. The basis of the Motion to Dismiss was that the Appellant’s appeal was moot, as there was no remedy available to the Board because the Appellant had not filed an appeal of the Statement of Account dated May 7, 2024. It was submitted by the Respondent that

Junior was forfeited ten business days after non-payment, specifically on May 29, 2024, under s. 34(4)(a) of the PAWS Act.

- [10] The motion was denied. The Board does not view the Appellant's appeal of the NOR as moot on the basis that Junior has been forfeited. The Appellant is entitled to have his appeal of the NOR heard and decided by the Board.
- [11] The Board does not accept the Respondent's submissions that the Board is unable to grant a remedy to the Appellant because the Appellant has not appealed subsequent processes, such as the Statement of Account dated May 7, 2024.
- [12] It is clear that the lawfulness of the Respondent's actions is relevant in appeals before the Board.
- [13] The Board received evidence from both parties on the appeal of the NOR and must weigh that evidence to arrive at a decision on whether to confirm or set aside the removal of Junior. The Board must determine whether the NOR was reasonable to alleviate Junior of any distress. This issue is central to the parties' dispute and can be determined on its merits. The fact that Junior was forfeited after the NOR was filed does not relinquish the Board of its jurisdiction or duty to reach a finding in the appeal of the NOR.

## ISSUES IN DISPUTE

- [11] The issues to be decided are:
1. Was Junior in distress at the time of his removal on May 2, 2024? If so, was it necessary for the Respondent to remove Junior to alleviate his distress?
  2. Have the conditions that caused Junior to be removed from the Appellant's property on May 2, 2024, ceased to exist such that Junior should be returned to the Appellant?

## RESULT

- [12] Based on the evidence before the Board, the Board finds that:
- a. Junior was in distress at the time of his removal on May 2, 2024, and it was necessary for the Respondent to remove him to alleviate his distress.
  - b. The removal of Junior was warranted. Junior was removed in accordance with clause 31(1) *Paws Act* and therefore lawfully removed.

- c. The conditions that caused Junior to be removed from the Appellant's premises on May 2, 2024 have not ceased to exist and, as such, Junior should not be returned to the Appellant.

## ANALYSIS

- [13] In addition to the oral testimony heard from Senior Investigator Alison Green and AWS veterinarian Dr. J. Bruce Robertson, the Board also reviewed the documentary evidence, which included a video of the Appellant with Junior, Dr. Robertson's report, and the Notice of Appeal filed by the Appellant.
- [14] The Board qualified Dr. Robertson as a participant expert whose education and training in veterinary medicine were sufficient expertise supporting his opinion evidence that Junior was in distress, an opinion that was based on a review of a video of the Appellant interacting with this dog.

### **Issue 1: Was Junior in distress when he was removed on May 2, 2024? If so, was removal necessary to alleviate his distress?**

- [15] For the following reasons, the Board finds that Junior was in distress at the time he was removed as he was physically abused by the Appellant and was subject to psychological hardship. Senior Investigator Green removed Junior in accordance with clause 31(1)(a) of the *PAWS Act*, where a veterinarian advised the investigator in writing that alleviating the dog's distress necessitated the removal.
- [16] Section 1 of the *PAWS Act* defines distress as the state of being;
  - a. In need of proper care, water, food or shelter;
  - b. Injured, sick, in pain or suffering; or
  - c. Abused or subject to undue physical or psychological hardship, privation or neglect.
- [17] Senior Investigator Green testified that:
  - a. On April 5, 2024, she received a file from the Provincial Animal Welfare Call Centre in relation to a complaint from the Appellant's neighbour that a dog had been physically and emotionally abused. The complainant reported that the dog had been grabbed by the face and kicked in the head.
  - b. Later that same day, she attended the Appellant's residence but was denied entry without a warrant.

- c. On April 16, 2024, she reviewed a video received from the complainant.
- d. She confirmed the man on the video was the Appellant, whom she had spoken to on April 5, 2024 at his residence.
- e. On April 23, 2024, she called AWS veterinarian, Dr. Bruce Robertson, to view the video. Dr. Robertson viewed the video and signed a veterinary certificate recommending a medical and behavioural assessment of the abused dog in the video.

[18] We reviewed the video, dated April 23, 2024, and noted the following:

- a. The Appellant was heard yelling and swearing at Junior;
- b. The Appellant was observed swinging his fist at Junior and yelling in his face.
- c. The Appellant took a few steps away from Junior as he continued to yell. Junior followed behind him.
- d. The Appellant then turned towards Junior again and kicked him in the head in what appeared to be a stomping motion.
- e. Following the kick, Junior was then pushed down by the Appellant while the Appellant continued to yell at him.
- f. Junior then got up, shook his head and then followed the Appellant, who continued to yell and swear.

[19] During the cross-examination, the Appellant raised issues with regards to Senior Investigator Green's testimony, including that:

- a. The video did not provide the context for why he was upset with Junior;
- b. According to the Appellant, Junior had been growling at him prior to the confrontation;

- c. He stated that he was forced to use his foot to discipline Junior because he had suffered a thumb fracture and broken ribs during a skateboarding accident;
- d. By the time Junior was removed from the Appellant's home, he and Junior had "made up" and Junior had been removed from a loving home, where he was "the family dog" and acted as an unofficial support animal to the Appellant.

[20] Dr. Robertson testified that:

- a. He gave Senior Investigator Green his opinion that the conduct observed on the video was abusive and caused Junior to be in distress and provided the Veterinarian's Certificate advising removal on April 25, 2024;
- b. He had concerns about the ramifications that the Appellant's behaviour would have on Junior;
- c. Junior had made no aggressive moves in the video, nor was any barking or growling heard;
- d. The level of abuse seen in the video at the hands of the Appellant could have caused ocular damage, dental damage, ear damage, among other things;
- e. Junior's chronic ear infections could have led to even more pain when the Appellant grabbed him by the head;
- f. He advised that alleviating Junior's distress necessitated his removal from the Appellant's residence;
- g. Junior's distress was primarily caused by the physical abuse he was exposed to at the hands of his owner;
- h. When caregivers are physical abusers, there is inherently an element of psychological distress as compared to a single act of physical abuse by a random stranger whom the dog does not know;
- i. Dogs are dependent on their owners for the basic needs of life and physical abuse at the hands of an owner who they need to continue to interact with, causes psychological distress;

- j. Dogs who have been abused by their owners are conflicted by their need to be taken care of and their reluctance to interact with their abuser;
  - k. There was no behaviour of Junior to be “trained out”;
  - l. He opined that if Junior was to be returned to the Appellant, he would now associate and recognize the Appellant as a person who would likely hurt him.
- [21] The Board accepts the evidence of Senior Investigator Green and Dr. Robertson that Junior was in distress because of physical and psychological abuse. We further accept Dr. Robertson’s opinion evidence that the Appellant’s actions were not justified and were not appropriate training.
- [22] The video was overwhelming evidence of the abuse, both physical and psychological in nature.
- [23] The Board is satisfied Junior was removed to relieve his distress pursuant to clause 31(1)(a) of the *PAWS Act*. Dr. Robertson provided Senior Investigator Green a signed Veterinarian’s Certificate advising that alleviating Junior’s distress necessitated his removal. Senior Investigator Green removed Junior and provided a NOR to the Appellant pursuant to s. 31(5).

**ISSUE 2: Can Junior be returned to the Appellant pursuant to the Board’s powers in s. 38(9) of the *PAWS Act*?**

- [24] For the purposes of this appeal, the Board’s powers are limited to considering the return of Junior based on whether his removal was unwarranted and not carried out in accordance with the law. The Board finds that the removal was warranted and in accordance with s. 31(1)(a) of the *PAWS Act* and that Junior should not be returned to the Appellant.
- [25] The Board notes that s. 38(4) of the Act provides for an owner to make an application to the Board to have the animal returned if “the conditions that caused the animal to be kept in the Chief Animal Welfare Inspector’s care have ceased to exist”.
- [26] In his closing arguments, the Appellant expressed remorse over his actions and stressed that Junior was a well-loved member of the home as well as the entire

community. He stated that he was willing to take anger management courses if it would facilitate Junior's return home.

- [27] The Board did not find the Appellant's testimony to be compelling. Although he indicated a willingness to explore methods of changing the environment that Junior would be returned to, he did not give any indication whatsoever that he had actually taken any steps to remediate the situation or put any safeguards in place in order to mitigate a similar occurrence in the future.
- [28] Having reviewed the video, the Board finds it to be both jarring and compelling. Aside from the initial yelling, swearing and physical battery of Junior, the Appellant then walked a few steps away, but then turned back around in order to kick Junior in the head with what appeared to be the full force of his boot.
- [29] The Board accepts Dr. Robertson's evidence that Junior should not be returned to the Appellant's care as he has not only caused physical distress to Junior, but potentially irreparable psychological distress. The Board further accepts Dr. Robertson's opinion that to return Junior to the Appellant would be to cause additional psychological distress because he would associate the Appellant as someone who would hurt him again.

## **CONCLUSION AND ORDER**

- [30] For the reasons above, the Board finds that:
- a. Junior was in distress at the time he was removed, and it was necessary to remove him from the Appellant's residence to relieve his distress;
  - b. The removal was done in accordance with the law.
- [31] Junior should not be returned to the owner. The appeal for the return of Junior is dismissed.

Released: July 26, 2024

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**Debra Backstein, Member**

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**Raymond Ramdayal, Member**