

TRIBUNALS ONTARIO

Animal Care Review Board

**TRIBUNAUX DÉCISIONNELS
ONTARIO**

**Commission d'Étude des Soins
aux Animaux**



Citation: Pakzad v. Chief Animal Welfare Inspector, 2022 ONACRB 13

Date: 2022-03-28
File Number: 13796/ACRB

Appeal under sections 38(1) and 38(2) of the *Provincial Animal Welfare Services Act, 2019*, R.S.O. 2019, c.13

Between:

Mustafa Pakzad

Appellant

and

Chief Animal Welfare Inspector

Respondent

DECISION AND ORDER

Adjudicator: Raymond Ramdayal, Member
Animal Care Review Board

Appearances:

For the Appellant: Mustafa Pakzad (Self-represented)

For the Respondent: Sara Munoz, Regional Supervisor
Animal Welfare Services

Heard by Videoconference: January 24, 2022

REASONS FOR DECISION AND ORDER

BACKGROUND

- [1] The appellant appeals a Statement of Account (“SOA”) which he was issued by Animal Welfare Services (“AWS” or the “respondent”) on January 5, 2022 and updated on January 20, 2022. The SOA is in relation to the removal of 28 dogs from his residence on December 22, 2021. The dogs, all Pitbull-type of various genders and ages, were removed for the purposes of relieving their distress.
- [2] On October 15, 2021, AWS inspectors began their investigation after receiving an anonymous call to the Ontario Animal Protection Call Center. The complainant expressed concern for 23 dogs at the residence having become aware of the fact that the owner declined to surrender the dogs despite being visited by the Durham Region Humane Society.
- [3] Between October 15, 2021, and November 17, 2021, AWS inspectors attempted to contact the residents of the home to assess whether the animals were in distress. Finally, AWS was able to enter the unit on the afternoon of November 17, 2021. At the time of their inspection, there were 18 dogs in the apartment unit. The appellant explained that a number of dogs had been re-homed since October. The inspectors noted a strong ammonia-like smell in the unit and observed unsanitary conditions throughout the apartment including multiple piles of fecal matter throughout. In addition, 3 dogs were noted to be underweight. AWS issued a Compliance Order to the appellant requiring him to complete the following before December 1, 2021, at 12:00 pm:
- a. Have the animal(s) examined by a veterinarian with special attention to; overall body condition, possible internal parasites; Clifford, unknown male yellow, unknown male fawn;
 - b. Provide the animal welfare inspector with documentation from the veterinarian outlining the examination findings, and the treatment recommended and undertaken; and

- c. Every animal must be provided adequate and appropriate sanitary conditions (high level of ammonia detectable likely due to organic matter, urine, feces).

- [4] AWS attempted to contact the appellant throughout November and early December 2021 to determine if he had complied with the order. Despite their best efforts, AWS was unable to contact the appellant. As a result, a warrant pursuant to s.28 (2) and (3) of the *Provincial Animal Welfare Services Act ("Act")* was applied for and granted.
- [5] On December 22, 2021, AWS inspectors attended the appellant's residence to execute the warrant. They then determined that the animals were still in distress due to the unremediated poor sanitary conditions and large amount of fecal matter throughout the apartment. Furthermore, the appellant had failed to comply with taking the three dogs (puppies), previously identified as being underweight, to a veterinarian.
- [6] During their inspection, AWS observed numerous other dogs to be underweight and requiring examination by a veterinarian. Additionally, a fight ensued between numerous dogs while the AWS were present. Inspectors took action to break up the altercations between the dogs and separated them with reasonable force. While some animals appeared in need of veterinary care as a result of the fighting, others did not require medical attention. All dogs were removed as a result of the appellant failing to comply with the requirements of the previous order.
- [7] Although he would eventually like to have some of his dogs returned to him, the appellant did not appeal the removal of the animals by AWS. He appeals the SOA he was served on January 5, 2022 (and later updated on January 20, 2022), for providing the dogs with medical care, boarding and other necessities. The total amount is \$31,639.68, the majority of which is for boarding. The appellant stated that he is not able to pay everything at once and is interested in

setting up a payment plan. He also asked for a full accounting of the veterinary costs, which was later presented at the hearing.

ISSUE

- [8] The issue to be determined in this appeal is whether the SOA should be confirmed, varied, or revoked.

RESULT

- [9] For the reasons that follow, I find that the SOA should be varied to \$22,819.68. I have also calculated the costs only for “Batch” the appellant’s original dog. This may allow the appellant to pay the SOA as it relates to Batch and have Batch returned.

LAW

- [10] Section 24(1)(b) of the *Act* permits an animal welfare inspector to enter and inspect any place for the purpose of determining compliance with an order to relieve an animal’s distress under s.30. Section 24(2) of the *Act* requires, if the place to be entered is a dwelling, that the inspector have a warrant or the consent of the occupier to the entry.
- [11] Section 31(1)(c) provides that an animal welfare inspector may remove an animal in distress and take possession of the animal for the purposes of providing it with necessaries to relieve its distress if, among other things, an order respecting the animal has been made under s.30 of the *Act* and the order has not been complied with.
- [12] Distress is defined in s. 1(1) as “a 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.”
- [13] Section 35(1) states that if the Chief Animal Welfare Inspector has provided an animal with necessaries to relieve its distress, it may “from time to time, serve on

the owner or custodian of the animal a statement of account respecting the cost of the necessaries.”

- [14] Section 38(1) provides a right of appeal of a decision for removal by an animal welfare inspector and s.38 (2) allows an appeal of a statement of account.
- [15] Section 38(9) gives the Board authority, among other things, to order that an animal be returned to the owner and to confirm, revoke or vary a statement of account served under s. 35(1).
- [16] Pursuant to s. 35(4) if an Owner does not appeal an SOA or if an owner does appeal and the Board varies or confirms the amount, and the appellant does not pay it within a prescribed period of 10 days from the date of the SOA or Order, then the animal is forfeited to the Crown.
- [17] Under s. 35(5) the Chief Animal Welfare Inspector can enter into an agreement with an owner to reduce the amount owing on a SOA or extend the time for paying or both, whether on an initial SOA or after an amount has been confirmed or varied by the Board.

PRELIMINARY ISSUES

- [18] Oral evidence and testimony were relied on at the hearing. Both parties were given the opportunity to make submissions and respond to oral evidence. The appellant provided disclosure which he did not rely upon. It contained pictures of what appears to be an outdoor railing which he claims was damaged by AWS officer using batons to strike the dogs. This claim was not discussed at great length at the hearing, however, there was nothing to indicate that excessive force was used against the animals. Furthermore, it was not relevant to the issue in dispute.

EVIDENCE AND ANALYSIS

- [19] The respondent called as witnesses Dr. Tamara Dzikewicz from King Hopkins Pet Hospital and Inspector Michael Gallagher from Animal Welfare Services. The

appellant testified on his own behalf and also called his mother, Amina Pakzad as a witness.

- [20] The testimony provided by Dr. Dzikewicz depict animals who were in a state of distress. Some dogs suffered injuries as a result of the fight that occurred, and others were very anxious. Some of the dogs were relatively young ranging in age from 8-10 weeks which required extra care and individual feeding. Dr. Dzikewicz noted that one of the puppies did present differently than the others. This particular puppy (identified as Puppy #3) in the exhibits, suffered from a gag action (i.e., wanting to vomit) and was generally unwell. This required additional treatment, including abdominal imaging and quarantine, which I find reasonable in the circumstances. Once the puppy was feeling better, it was re-introduced to its brothers and sisters.
- [21] Dr. Dzikewicz also described treatment for an injured adult dog (known as Pitbull #3) which sustained a serious bite during the fight. The witness described the wound as a bite to the face with the lip torn in half. The animal required sedation, medication and suturing of her lip and ear.
- [22] Another dog (known as Mister) also sustained injuries but not as severe as Pitbull #3. Antibiotics and pain medication was also administered to Mister and a number of other animals to make them calmer and more comfortable.
- [23] There was also another group of dogs that included a mother (known as Mama) and her 6 puppies who were all a day old. Dr. Dzikewicz stated that it was her intention to treat them and get them out as soon as possible so as to not add stress to the mother or newly born puppies. As a result, boarding costs were not attributed to these animals.
- [24] Finally, Dr. Dzikewicz stated that the injuries presented at the emergency clinic were consistent with dogs fighting with one another as they consisted of bite marks and puncture wounds. There was nothing to suggest that the dogs were struck with a baton or other blunt objects. She also stated that the dogs appeared

to have lots of aggression towards each other based on their behaviour at the hospital.

- [25] The majority of the dogs that were seen at the hospital on December 22, 2021, were discharged the following day. Dr. Dzikewicz stated that although it was for a relatively short period of time, there was a significant demand on staff and the 24-hour care that was required for the large number of dogs present.
- [26] Inspector Gallagher also testified on behalf of the respondent. He described his observations on both site visits he attended and further confirmed his findings in orders dated November 17, 2021, and December 22, 2021. It appears that Inspector Gallagher was trying to work with the appellant to give him the opportunity to come into compliance with the *Act*. I also find that he was justified in his action of removing the animals and taking some to King Hopkins Pet Hospital and others to the Ontario Humane Society.
- [27] I found both of the respondent's witnesses to be credible and acting in the best interest of the animals. They performed their duties in accordance with the *Act* and there was nothing to indicate that the treatment received by the veterinarian, or the action taken by the inspector was unreasonable or unwarranted. As a result, reasonable medical costs were attributed based on the veterinarian's testimony and details outlined in the invoice.
- [28] While the removal for non-compliance appears to be justified, the delay in returning at least some, if not all, of the animals to the appellant remains unclear. It is apparent that the dogs were under different degrees of distress as a result of the living conditions. However, the original Compliance Order from November 2021 does not identify all dogs as being in need of veterinary attention. The additional emergency veterinary care arose solely due to the AWS inspection and the fight that broke out among the dogs during the removal.
- [29] Additionally, the need for boarding of dogs which are not in need of extended veterinary care and follow-up suggests that the dogs can be returned to the

appellant once the sanitary living conditions improve. There was no evidence to suggest follow up compliance inspections to expedite the possible return of the animals to the appellant. During the hearing, the appellant further stated that he did not wish to receive all of the dogs back. I find that a return of some animals could have been negotiated since they were deemed in good health and discharged from veterinary care.

- [30] The appellant appeared as a self-represented party. He explained that he did not anticipate the total number of dogs in his care to grow to the number it did. He explained that some dogs became pregnant and had large litters. He was not able to find suitable homes for all of them but continues to try. He explained that he was going to take the dog known as Mama to the veterinarian the night she went into labour, but he fell asleep and did not end up going.
- [31] The appellant was passionate and credible in describing his affection for his dogs and how they helped change his life. He described his relationship with his dog known as Batch. He stated that Batch helped him to turn his life around as he was “not on the best path.” He explained that since he had Batch, he has not incurred any new charges to add to his criminal record. He has also been able to make positive changes by going back to school and pursuing an apprenticeship as an automotive technician.
- [32] The appellant’s mother appeared as a witness and was able to corroborate his recent success since getting Batch. I accept both the appellant and appellant’s mother’s testimony. I note that the appellant has improved his personal circumstances for which he should be commended. However, I find it troubling that he would not comply with an order from the AWS inspector, particularly since his compliance would have been in the best interest of his animals.
- [33] During his testimony, the appellant did not dispute the condition of the unit and the fact that the dogs were under distress. He admits to he has encountered some difficult times and he is currently on social assistance. He explained that he receives approximately \$743.00 per month. The appellant has sold puppies in the

past, usually for approximately \$1,500.00 each. During the hearing, he explained that he is not able to pay the entire SOA but would prefer arranging an installment schedule. He currently has no savings but is optimistic about securing work in his field in the near future. He explained that he is currently awaiting his certificate from his school so that he may start to apply for positions.

Whether the Statement of Account should be Confirmed, Varied, or Revoked.

- [34] The appellant was issued a Statement of Account in the amount of \$31,639.68 which was broken down as: \$29,880.00 for boarding, \$1,759.68 for veterinary costs, and \$60.00 for other animal care costs of two medications.
- [35] My first task is to consider whether the costs claimed on the Statement of Account are reasonable and for the purpose of alleviating the dogs' distress
- [36] It is clear that veterinary care was required for some of the animals based on their symptoms and injuries. During the hearing, the appellant did not object to any veterinary cost but simply wanted a breakdown of the care provided. After receiving an accounting of the service provided, I find that the veterinary costs are reasonable.
- [37] I find that the boarding cost of \$35.00 per day is high, particularly for dogs who are relatively healthy and require no further veterinary care. The boarding costs are also not feasible when weighed against the appellant's means. Furthermore, there was no evidence to show why boarding was in the amount stated on the account. It is obvious to assume that there are costs associated with the care of an animal, however, when weighed with the fact that the appellant is able to care for the animals for substantially less than what AWS is requesting, it suggests that the price per day is simply unreasonable. Furthermore, if the true costs for boarding an animal is anywhere in the realm of what AWS is suggesting, that would present as a significant barrier to many animal owners in Ontario.
- [38] In *Tanis v. Chief Animal Welfare Inspector, 2021 ONACRB 22*, the boarding costs were assessed based on \$25.00/day for standard boarding and \$35.00/day

for intensive care boarding. The latter suggesting more care and attention being needed based on the animal's medical condition. In this case, most of the appellant's animals were released shortly after being brought to emergency care. There was no indication that any were placed in intensive care for an extended period of time.

- [39] I find that the appellant should be held to some account regarding payment of the SOA. Furthermore, the appellant accepted responsibility for the condition of his unit and acknowledged the fact that some costs were necessary to house his animals. However, his appeal is centred around the fact that the SOA is excessive, particularly given that only a small portion of the animals required veterinary care. Most animals could have been returned to the appellant, contingent on compliance with the Order, thereby avoiding ongoing costs for boarding.
- [40] Based on the above, I find it appropriate to vary the boarding costs on the SOA from \$35.00 per day to \$25.00 per day.
- [41] It is clear from the evidence that the appellant will not be able to pay even this varied amount.
- [42] The appellant has requested that he be allowed to pay over time. I agree that he might benefit from a payment plan however the AWS says it will not agree to this.
- [43] If the appellant cannot pay the account, the animals will be forfeited as per 35(4) of the *Act*. This happens if there is non-payment of the account after 10-days of non-payment.
- [44] However, I do not think the appellant should be in an all or nothing situation especially since he had one primary dog ("Batch") and he could at least get that dog back. During the hearing, the appellant expressed great affection for Batch and explained how his relationship with his pet assisted him in turning his life around. The appellant's mother corroborated this claim and testified that her son was able to improve his personal circumstances, avoid criminal behaviour and

complete a college program as a result of the emotional support Batch offered. Therefore, I recognize there is some collateral benefit of allowing the appellant to have Batch returned if he is able to provide a safe and healthy environment for the animal. Under these circumstances the animal may continue to have a positive impact on the appellant's outlook and future.

- [45] Looking at the bills, I do not see that Batch required extensive veterinary care. Based on the total veterinary cost of \$1,759.68 + \$60.00 (cost for Metronidazole/Pepcid, each dog would be apportioned a cost of \$64.99. The boarding costs are varied to \$25.00 per day. Therefore, the total cost for the care of Batch for 30 days is \$814.99.

ORDER:

- [46] For the reasons set out above, the Board varies the Statement of Account to \$22,819.68. This amount is arrived at by: 28 dogs x \$25.00/day boarding for 30 days plus veterinary costs of \$1.759.68 + \$60.00 (Metronidazole/Pepcid) = \$22,819.68.
- [47] If the appellant is not be able to pay the full amount of the varied SOA, he may pay \$814.99 which is the cost apportioned for Batch alone.
- [48] If paid within 10-days, then Batch should be returned provided the appellant is in compliance with all outstanding AWS Orders to ensure the animal is not subjected to an environment that would cause it distress.

Released: March 28, 2022

Raymond C. Ramdayal, Member