

Citation: The Animal Control Officer (CSR) v. Burger
2025 BCPC 247

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File No: 26457-1
Registry: Salmon Arm

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

**In the Matter of Section 49 of the
Community Charter, S.B.C. 2003, Chapter 26, and
Section 321 of the *Local Government Act*, R.S.B.C., Chapter 1**

**And in the Matter of an Application to Destroy “Luna”,
a Neutered Female Pit Bull/Mastiff Type Dog**

BETWEEN:

**THE ANIMAL CONTROL OFFICER FOR THE
COLUMBIA SHUSWAP REGIONAL DISTRICT**

APPLICANT

AND:

COLIN BURGER AND SANDRA BURGER

RESPONDENTS

**ORAL REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE G. LEVEN**

Counsel for the Applicant:

M. Voelle

Appearing on their own behalf:

C. Burger, S. Burger

Place of Hearing:

Salmon Arm, B.C.

Dates of Hearing:

November 3, 4, December 15, 2025

Date of Judgment:

December 16, 2025

[1] THE COURT: These are my reasons on an application by the Animal Control Officer of the Columbia Shuswap Regional District pursuant to s. 49(10) of the *Community Charter* that Luna, a female Mastiff Rottweiler cross-type dog belonging to Colin and Sandra Burger, be destroyed. The Animal Control Officer relies on s. 49 of the *Community Charter* and seeks findings that Luna is a dangerous dog and likely to kill or seriously injure a person. "Serious injury" is defined as "an injury that punctures the skin and requires medical attention". If these findings are made, I must make an order pursuant to s. 49(10) of the *Community Charter* that the dog be destroyed.

[2] "Dangerous dog" is defined in s. 49(1) of the *Charter*. Section 49(1)(a) says:

"**dangerous dog**" means a dog that

(a) has killed or seriously injured a person . . .

[3] The District is relying on that definition, but also on a definition contained in 49(1)(c) which says a dangerous dog is one which "an animal control officer has reasonable grounds to believe is likely to kill or seriously injure a person".

[4] The trial commenced on November the 3rd, 2025 and continued on November the 4th. It concluded yesterday. I promised reasons today. These are oral reasons and I reserve the right to make minor edits to wording and to readability in the event a transcript is ordered. The substance of my reasons would remain the same.

[5] In total five witnesses testified.

[6] First, Lynn Retzer testified about an incident that occurred in October of 2024 when she says she was attacked by Luna.

[7] Christiaan Smit, the Animal Control Officer for the Columbia Shuswap Regional District, also testified. He was the author of an affidavit filed in this matter on December the 17th, 2024. That affidavit, with attached exhibits, is approximately 350 pages in length and includes many business records retained by the Columbia Shuswap Regional District. Mr. Smit also provided some additional evidence and was available for cross-examination on his evidence and on the materials contained in the affidavit.

[8] The next witness was Dr. Rebecca Sharp, also known as Rebecca Ledger. She was qualified as an expert after a *voir dire* in companion animal behaviour and on the welfare and clinical management of aggressive dogs. She did not testify on behalf of either party but rather gave independent expert evidence to assist the court. She made it clear that she was not partial to the views of any of the litigants. She also prepared an affidavit and filed it with the court on February the 17th, 2025, to which she attached a behavioural assessment report of Luna.

[9] Sandra Burger and Colin Burger both testified about steps that they had recently taken to contain Luna. Sandra Burger and Colin Burger dispute the allegation that Luna is a dangerous dog and say that if she is found to be a dangerous dog, that her destruction is not necessary because of steps that they have taken to reduce or eliminate the likelihood that she will kill or seriously injure a person in the future.

Legal Standard

[10] This is a hearing and not a trial. The findings to be made are on the civil standard of a balance of probabilities and not the criminal standard of beyond a reasonable doubt. An application under s. 49 may be conducted by affidavit evidence: see *Animal Control Officer for the FVRD v. Badke*, 2024 BCPC 128.

Facts

[11] On June 19, 2024, Stephen Jefferys, a 75-year-old person, sent an incident report to the Bylaw or the Animal Control Officer. These are excerpts from his report:

I was cycling about 10 metres in front of my cycling companion, Cherry Patterson. We became aware of several dogs running and barking along a fence on the private property side. Two dogs jumped the fence. I think the fence was damaged at that point. The dogs were large, one black and white. I think they were the size of pit bulls.

The dogs ran towards the bikes and got between the wheel and frame of my bike and I crashed. Immediately the black dog started biting the left side of my face. I put up my left hand to protect myself and was bitten on the little finger side of my left hand. This seemed to be the worst bite. I managed to stand up and yelled. The dogs scampered back over the fence. . . .

We saw the property owner in the window of the house who appeared to be waving us away. I sustained abrasions on the left elbow and bruising to the right hip from the fall. . . .

On returning to Kelowna, I visited the Urgent Care Centre. Dr. Daphne Green and the nurses there cleaned the wounds. Three stitches were given to the left hand. Tetanus injection was given. A prescription medication for antibiotics was given. The right hand remains tender and reddened.

[12] The next incident occurred two days later on June the 21st of 2024. A person by the name of Joy-Ann Sinclair reported the following to the Animal Control Office:

I was walking on path and dog jumped fence and bit me on the arm. The dog then jumped back into yard and continued to bark and look aggressive. The owner Colin Burger came out and said he saw me but did not intervene. I went back to take pictures of the fence that the dog jumped. It is pushed down and . . . not keeping and holding the dogs in the yard.

[13] On June the 21st at about 15:14, Animal Control Officers Jakowski and Smit attended at the residence of the Burgers on Salmon River Road following the receipt of the complaints over the last two days about the dog attacks. They say that, while they were there, they witnessed a situation where somebody appeared in a vehicle and in a hostile manner confronted Mr. Burger. This person was upset, shouting profanities, and seemed to be related to one of the people that had been attacked by the dogs.

[14] The Animal Control Officers had a discussion with Mr. Burger. He acknowledged that the fence that runs the perimeter of the property had holes that allow his dogs to escape and run at large. He observed a female pedestrian earlier in the day who was hitting Luna but he was unaware that the female pedestrian was attacked by Luna and did not express concern for the pedestrian's wellbeing after being informed about the attack. He admits that the dogs run at large occasionally, and he gets notified by neighbours that they found his dogs on their property. He informed the Animal Control Officers that he had purchased shock collars for the dogs with one-kilometre ranges. He then demonstrated their effectiveness by activating a remote. The officers say they observed the dogs and observed that their behaviour appeared unaffected by the activation of the remote.

[15] The officers cautioned Mr. Burger that there would be an investigation and that if one or more of the dogs were deemed to be responsible for the attacks, that there might be a future application both to have them declared as dangerous dogs and to impound them, to which Mr. Burger allegedly responded, "That's not going to happen. We'll leave here before that happens". Matters were left there.

[16] The Columbia Shuswap Regional District Animal Control recorded another complaint about a person on a longboard being chased by a dog in front of or near the Burger residence on July the 15th, 2024. No further evidence was produced about this incident and it is unclear which dog this was, and whether it even belonged to the Burgers.

[17] The next incident occurred on October the 3rd, 2024. On this day, a person by the name of Lynn Retzer provided a statement. She also testified in court and said essentially the same thing she put in her statement. On October 3, 2024, while passing the Burgers' residence, 1353 Salmon River Road, there were four dogs on the other side of a fence, two black ones, one medium and one large, and two smaller white ones. The dogs were following her along the fence. She was riding her bicycle. A black dog jumped the fence. She said:

I tried to get away by steering up towards the road but was not fast enough. The big black dog ... bit/grabbed my right wrist and pulled me off the bike so now I was laying on the road [and] all I could think of was that this was it for me and I curled up in a ball. I could hear the dogs barking all around and big black dog Dog #1 was nipping at me. I was yelling at them to go home. Luckily a truck came around the corner at that time and scared him/them away. Somebody from the property put the dogs in the house. Two couples were helping me as I was very shaken police and ambulance were called and I believe a CSRSD officer was notified. . . . Police arrived first and then the Ambulance arrived [and] checked out my wounds. . . . The injuries I sustained are a puncture wound to the back of my left leg. My right wrist has four puncture wounds and one of the wounds required two stitches. The police took pictures of my injuries. I am stiff and sore today and cannot use my right hand much but happy it was not worse.

[18] There was some confusion in Ms. Retzer's evidence about which dog this was. That confusion was clarified during the course of the trial and there is no opposition to a finding, and in fact Mrs. Burger indicated, that the dog in question was Luna.

[19] Four other people were present during the altercation involving Ms. Retzer. One of the people was Trent Tucker. Mr. Tucker indicated that he was in the vicinity when he observed this happening and that the attack or the threat to Ms. Retzer ended when he took a baseball bat and fended the dog off. The dog then retreated.

[20] The affidavit of Animal Control Officer Smit said that, days later, on October the 7th, there was a public town hall meeting where the subject of the Burgers' dogs was discussed and approximately 70 people from the community attended that meeting. On October 10th, Luna was seized and impounded in the Enderby Pound. She has been impounded in the Enderby Pound ever since, awaiting the outcome of these proceedings.

[21] Counsel for the Columbia Shuswap Regional District on behalf of the Animal Control Officer next wrote a letter to the Burgers. This letter was dated October 22, 2024. That letter confirmed that Luna had been seized pursuant to s. 49 of the *Community Charter* and that the Regional District Animal Control Officer was going to be seeking a finding that Luna was a dangerous dog and seeking an order that Luna be destroyed. In that letter, they wrote the following:

While we act exclusively in the interest of our client and cannot and will not provide any legal advice to you, if you wish to oppose this application or otherwise seek for "Luna" to be returned to you, you must demonstrate to the Animal Control Officer, and if necessary, the Court that you have developed and implemented a management plan for "Luna". Such a plan must sufficiently ensure that "Luna" does not pose an unacceptable risk to the public - that is - it must demonstrate how you will ensure that "Luna" is not likely to seriously injure in the future. We urge you to obtain independent legal advice in this regard.

[22] The next witness was Dr. Rebecca Sharp, also and perhaps better known as Dr. Rebecca Ledger. Dr. Ledger prepared an affidavit that was filed in the proceedings on February the 21st, 2025. Dr. Ledger testified as an expert witness. She made it clear

that she was not testifying for either party but rather as an independent witness in an attempt to assist the court. She was qualified as an expert on companion animal behaviour and the welfare and clinical management of aggressive dogs. She first testified in court on November the 4th and again on December the 15th in response to the evidence presented by Mr. and Mrs. Burger.

[23] I consider Dr. Sharp/Ledger to be highly qualified. She has provided expert opinions in legal cases involving animal cruelty and animal behaviour more than 220 times in Canada since 2010. Her affidavit that was also relied on in the proceedings was filed on February the 21st, 2025. It was disclosed to the Burgers within days of filing.

[24] Dr. Ledger met with and assessed Luna, and made a number of observations. She looked at incident reports, not all of which I have mentioned here and not all of which necessarily involved Luna. She considered that on October the 14th, 2024, at 1353 Salmon River Road, there appeared to be dogs repeatedly lunging and aggressively charging the fence towards a pedestrian. She opined that the motivation for this behaviour was most likely territorial aggression.

[25] She referred to another incident where there was a report of dogs being at large; that one of the dogs had pursued a cyclist on the Salmon River parallel trail. Dr. Ledger's impression was that this was also territorial aggression.

[26] She then considered the incident of June the 19th, 2024, involving Stephen Jefferys. She says the motivation for this behaviour was likely territorial aggression with Luna's arousal heightened due to Stephen Jefferys' cycling or movement during cycling. For the June 21st incident involving Joy-Ann Sinclair, Dr. Ledger opined that the motivation for this behaviour was most likely territorial aggression with Luna's arousal heightened by the walking movement of Joy-Ann Sinclair.

[27] For the October 3rd incident, Dr. Ledger opined, once again, that the motivation for this behaviour was likely territorial aggression with Luna's arousal heightened due to the cycling motion.

[28] She opined that Luna is both territorial and movement triggered; that Luna was living with three dogs at that time; that dogs can elevate each other's arousal through something that she referred to as pack mentality. She notes that Luna has been teased and abused by people from the property which heightened her arousal and suspiciousness of people. She notes that Luna appeared not to have responded to training. Her conclusions were based on observations of Luna and materials in the file.

[29] She said that the perimeter fence around the property contained holes which in part was due to another dog leaning on it. She concluded that Luna is a large and fit dog who was sometimes able to jump over the fence. She also says that, despite knowing that Luna and other dogs had escaped from the property, the Burgers failed to sufficiently maintain the perimeter and secure their property to prevent her escape.

[30] Dr. Ledger also opined and considered three scenarios about what could be done with Luna.

[31] The first was that Luna could be found to be a dangerous dog but nevertheless be returned to the Burgers. She indicated that there would need to be a suitable plan in place for this to happen, a plan that would protect the public.

[32] Dr. Ledger had a discussion with Sandra Burger about how to keep members of the public safe from Luna. This was: the spending of thousands of dollars on a fence; instructing the children to leave Luna in the house; that Sandra Burger would be the only caregiver and would walk Luna; that Luna would be secured in the house after walks; that she would be fitted with a muzzle; she would either be contained in a large outdoor area or inside the house or on a leash; and in the report, Dr. Ledger wrote:

While this list is a good start, it is by no means complete or sufficiently detailed to be able to determine how effectively LUNA would be contained and managed. Other considerations not addressed include (but are not limited to):

- The height, construction and maintenance of perimeter fences;
- The height, construction, security and maintenance of an enclosure/arena;

- How LUNA would be prevented from threatening passers-by through the perimeter fencing;
- Protocols that would prevent LUNA's accidental escape due to oversights by other people living or visiting the house;
- How to address the 'pack effect' of LUNA living with 2 other dogs, who are also highly motivated to threaten passers-by through the fence;
- The retainer of a dog trainer who is able to provide effective rehabilitation for LUNA (and also PEPPER and ZEUS, due to the 'pack effect');
- The restraint equipment that would be used to restrain LUNA on walks;
- A plan for LUNA's care should Sandra BURGER not be present to care for LUNA (e.g. during periods of illness, vacations, etc.);
- A way to ensure that the neighbours and public feel safe, knowing that LUNA has been returned to her owners;
- The commitment of ALL people living with LUNA to implement such a plan. It is important to note that even a robust plan will fail if any caregivers are not committed to implementing a plan fully;
- [and finally] The financial resources available to fund this plan.

[33] Dr. Ledger opined:

Until these additional issues have been suitably addressed, the risk of LUNA again escaping from her home, and threatening and injuring passers-by, should still be considered significant.

[34] The second scenario considered by Dr. Ledger would be rehoming Luna to a responsible owner. She noted that this would be a difficult plan to implement and as far as she knew, there was no such plan. No such plan was presented to the court.

[35] The other and third scenario is for Luna to be humanely euthanized. Dr. Ledger says and concludes in her report this would be:

. . . a very disappointing outcome given that Luna is also a very friendly, playful, obedient, and affectionate girl.

[36] Sandra Burger and Colin Burger both testified.

[37] Sandra Burger testified that they have, since the last court appearance, retained or gotten the services of a dog trainer, somebody named Cindy Reid, referred to them through the Salmon Arm Veterinary Clinic.

[38] She also played a video and showed several photographs to the court about an enclosure and plan to keep Luna securely contained in that enclosure or in their residence. The enclosure is a large arena that had previously been used for horses. It includes an indoor space with doors that close and can be secured. It also includes an electrified enclosure on the outside from where the Burgers say she could not escape. The plan would be that she be taken directly from the arena by way of a leash into the home. She would then be confined in the home and not be released where she would be a risk to the public.

[39] Sandra Burger testified she did not consider Luna to be vicious. She testified that Luna was merely protecting her territory. She testified in quite emotional terms that she was concerned that Luna had been imprisoned for over one year; that there had been no checklist or help from any authorities provided to them as a guideline of how to go forward. She indicated that the electric fence and the arena would keep Luna away from the public and secure.

[40] In cross-examination, Sandra Burger acknowledged that she was not always home. She worked four days on, two days off. Her shifts varied between 7:00 and 3:00 and 9:00 and 11:00.

[41] She acknowledged that she was aware of the incidents that occurred on June 19, 21st, and October the 3rd. She admitted there was another incident after October of 2024 where another one of their dogs, Dexter, had escaped. It was put to her in the letter from counsel for the Regional District of October the 22nd, 2024, that she was urged to get independent legal advice. It was also suggested to her that she had the evidence of Dr. Ledger from her report that made it clear to the Burgers what they needed to do in the event that the dog was found to be dangerous and they wished the dog to be returned.

[42] Colin Burger testified with similar evidence. He testified that they had prepared this arena and built an enclosure. He believed that the enclosure was safe and that the dog would be walked from the enclosure to the house and showed a leash and how that would be expected to occur.

[43] Colin Burger testified that the electric fence is backed up with a battery; that he considers it reliable; that there is also a backup system involving GPS controlled shocking collars that would keep Luna within the confines of the property.

[44] After the Burgers testified, Dr. Ledger was re-called and provided some rebuttal evidence. I will qualify all the opinions given by Dr. Ledger. I do not accept those opinions at face value. A court, of course, must form its own opinion about whether a dog is a dangerous dog or whether a dog is likely to seriously injure somebody. Having said that, I find Dr. Ledger to be very knowledgeable and qualified to give opinion evidence. Her evidence, in my view, carries significant weight.

[45] She voiced concerns about the plan the Burgers had presented. She would have expected that any person with expert qualifications would have provided a report to the court. She did not recognize Cindy Reid as an expert in the area of animal behaviour.

[46] She also testified that an electric fence and shock collars are prone to failure. I will note the demonstration of shock collars that was apparently made by Mr. Burger in front of the Animal Control Officers did not appear to be working or reliable or, if they were, they had no effect on the dogs. That is concerning. The second thing Dr. Ledger said is that electric fence enclosures and/or shock collars are not humane. Her concern was that these devices are not approved by the SPCA and, in fact, the effect of shocking a dog can be to make the dog even more aggressive and potentially more dangerous.

[47] It was put to Dr. Ledger that the Burgers did not have any guidance in terms of what was expected from them if they wished to have the dog returned. Dr. Ledger's response to that was: "It was your responsibility to put together a management plan".

Dr. Ledger indicated that she had put great detail in her report what would have been required of the Burgers and that these steps were simply not followed.

[48] The first question I have to answer is whether Luna is a dangerous dog. I make that finding under s. 49(1)(a) of the *Community Charter*. She has bit and, by definition, seriously injured two people by virtue of the incidents of June the 19th and October the 3rd, 2024.

[49] The second question which I will not spend a lot of time on is whether the definition of "dangerous dog" under section 49(1)(c) of the *Community Charter* has been met. This section defines "dangerous dog" as an animal whom the Animal Control Officer "has reasonable grounds to believe is likely to kill or seriously injure a person". Counsel for the District says that I need to give some deference to the opinion of Officer Smit. Officer Smit does voice that opinion. He did so both in the courtroom and in his affidavit. The court's role, after giving deference to the opinion of the officer, is to determine whether that opinion is reasonable. For all of the reasons I have already discussed, it is a reasonable opinion. Furthermore, I do not need to decide that issue, having already decided that the definition under s. 49(1)(a) has been met.

[50] Having decided that Luna is a dangerous dog, I could nevertheless return her to Sandra and Colin Burger if I find that doing so does not pose an unacceptable risk to the public.

[51] I consider all the three incidents, the two from June and the one from October, two of which involved serious injuries to people. I consider that, despite the first two incidents and the meeting with the Animal Control Officers from June the 21st incident, nevertheless, a further serious incident occurred in October.

[52] What do I make of the Burgers' evidence that they have an ability to control Luna, that they have an arena, that they have an electric enclosure, that they plan to keep her in the house? I, once again, consider the opinion of Dr. Ledger. She gave her opinion of what would be required of the Burgers to control Luna and mitigate or eliminate the risk she poses to the public. She says that the plan she had suggested

has not been implemented. She voices great scepticism about the containment plan and, in her report and in her evidence and particularly in her latest evidence, indicated that that plan would not be adequate and would not be considered humane or secure.

[53] Counsel for the Columbia Shuswap Regional District argues that the Burgers have been given ample time to come up with an effective management plan. They cite the three incidents. They cite the meeting that the Animal Control Officers had with the Burgers on June the 21st. They cite the letter that they wrote on behalf of the Columbia Shuswap Regional District in October of 2024 advising them to get legal advice. They also rely on the expert report of Dr. Ledger, which they say was disclosed on February the 21st of 2025. They say that any steps that the Burgers have taken do not address that management plan and do not address the safety of the community. I have considered all of that.

[54] I have also considered, very importantly, the attitude of the Burgers here and things that they expressed not only to the Animal Control Officers, but also to the people that were injured, and in court. Mrs. Burger, for example, describes the injuries suffered by these people as "minor injuries"; describes Luna, as "not dangerous"; uses terms such as Luna being "imprisoned", and being "murdered". These are all emotional terms that cause the court some concern. They show a minimization of the dangerousness that Luna has presented in the community. They also deflect the blame of what is happening to Luna from themselves onto others.

[55] This decision is about two things. This is about Luna and this is about Luna's owners. The responsibility for the decision I make today is, first and foremost, with Luna's owners who have had ample time to reflect the proper attitude and make sure that she is safely kept, and that the community is safe. This has simply not happened.

[56] Mr. Voell, on behalf of the Regional District, points the court to a case where they say a court considered what should happen where owners of a dangerous dog wish to prevent its destruction. That decision is *Burnaby (City) v. Nagra*, reported at 2010 BCPC 34. Judge Dhillon of this Court, at paragraph 31, wrote:

[31] More relevant, in my view, is the fact that the Nagras are highly motivated owners who experts believe can be trained to handle and control their dog. They have accepted personal responsibility for their dog's dangerous conduct by having apologized quickly and before the City's legal proceedings were commenced. They apologized to Max's owner and apparently they have expressed their sorrow for their dog's behaviour. They have taken proactive steps to build a secure pen on their property and this was done shortly after the incident. They have also taken training with Ms. Prewitt and have retained another expert, Ms. Ledger, to continue with a planned program of safety management.

[31] I find and conclude that they are responsible dog owners who have shown a marked determination to do all that is right to address the public safety concerns in this case.

[57] That has simply not occurred here.

[58] I find on all of the evidence before me that Luna is a dangerous dog. She has seriously injured two people. That definition is a legal definition, and I am bound by it. Having decided that, I also find that she cannot safely be returned to the Burgers. If she were returned to the Burgers, she would remain likely to seriously injure or kill another person.

[59] The only decision, really, that I can make, according to *Santics v. Vancouver (City) Animal Control Officer*, 2019 BCCA 294, at paragraph 56, is for the destruction of Luna. I am not able to pronounce any conditions that would prolong the issue. I agree, that the interpretation of *Santics* is that all steps necessary to protect the community need to have been taken prior to the court hearing. There is nothing I can do to prolong this matter beyond the court hearing if the tests for destruction of the dog have been met. I find that those tests have been met.

Order

[60] I make the following order: that the dog known as Luna be humanely euthanized by or under the supervision of a licenced veterinarian and that this is to occur no sooner than 14 days after the making of this order.

[61] Mr. Voell will draft that order.

[62] Those are my reasons.

(ORAL REASONS FOR JUDGMENT CONCLUDED)