

Dog Ownership Disqualification Appeal - Jennifer Layton

TO	Judicial Committee
FROM	Marion Smith - Group Manager Community Environment
DATE	18 November 2014
SUBJECT	Dog Ownership Disqualification Appeal - Jennifer Layton

1 Purpose of Report

This report is in response to an appeal received from Jennifer Layton of Whitianga to the disqualification of ownership for five years of a dog dated from 8th April 2014.

2 Background

On 8th April 2014 Jennifer Layton pleaded guilty in the Thames District Court to a charge of owning a Giant Schnauzer dog named Boris who attacked a female guest on 2nd October 2013 at a Bed & Breakfast property owned by Jennifer and Bryan Layton at 29 Albert St, Whitianga.

Section 25 (1) (b) of the Dog Control Act 1996 states a territorial authority must disqualify a person from owning a dog if that person is convicted of an offence against the Act.

Section 25 (3) of the Dog Control Act 1996 states a disqualification under subsection (1) continues in force for a period specified by the territorial authority not exceeding 5 years from the date of the offences in respect of which the person is disqualified.

3 Issues

The incident of the dog attack that resulted in the conviction of Jennifer Layton cannot be viewed in isolation when the overall owner history of the dog Boris and the owner's responses to those incidents is to be considered.

14th July 2012

It was alleged that Boris bit an elderly gentleman on his left elbow. This incident was reported to Council by a Whitianga police officer via email on 25th July 2012. The email was forwarded to Peninsula Community Services a contractor who was responsible for dog control at that time. Council's records do not provide any information on the incident being investigated by the contractor. Council brought its dog control services "in house" on September 1st 2012 and the matter was not known by the Compliance Team to be outstanding at that time.

The incident was raised with Council again in May 2013 and was subsequently investigated by a Compliance Officer on 11th May 2013. Statements were taken from the victim and an eye witness who was walking with the victim past the Layton property. Correspondence from a visitor to the property at the time of the attack acknowledged that the incident occurred but her version of events differed from the victim and another witness. Legal action could not be pursued on this incident due to the lack of action at the time of the attack. The incident was raised with Jennifer Layton on 18th October 2013 after the attack on the elderly guest at the Bed & Breakfast on 2nd October 2013. Her response was that "Boris does not bite people".

18th March 2013

A police officer was bitten by Boris on the right thigh after he knocked on the front door of the Layton's house. In response to this incident Jennifer Layton was issued with an infringement for failing to control the dog and the dog was classified as dangerous under section 31 of the Dog Control Act 1996.

As a consequence of the Dangerous Dog classification Jennifer Layton was notified by Council on 2nd May 2013 that:

You are required,—

(a) within 1 month after receipt of this notice, to ensure that the dog is kept within a securely fenced portion of your property that it is not necessary to enter to obtain access to at least 1 door of any dwelling on the property; and

(b) not to allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without—

(c) the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and

(d) the dog being controlled on a leash (except in a designated dog exercise area);

In response to the classification the Layton's and acquaintances circulated a petition in Whitianga to request that Council overturn the Dangerous Dog classification. In the petition it was stated that "Dogs have likes and dislikes with people and Boris is afraid of big men in uniform who kick out at them". The police officer bitten by Boris on 18th March 2013 only kicked at the dog as a defence after he had been bitten.

It was further stated in the petition that the man (bitten on the elbow on 14th July 2012) was "nipped, that he obviously hated dogs and he shook his fist at the dog over the fence." These were reactions by the victim only after he had been bitten.

It was identified by Layton's Counsel Mr Leith that the statement provided by the police officer in support of the Dangerous Dog Classification was not correctly sworn as required by the Dog Control Act 1996. The classification was validated once the officer's statement was consequently sworn and delegations confirmed.

2nd October 2013

A 66 year old female guest staying at the Layton's Bed & Breakfast was bitten on the left leg above the knee after the dog broke free from its collar. The incident was reported to Council on 18th October 2013 by the victim's employer the Arthritis Foundation after the victim had lodged a report to her employer on her leg injury.

As the dog Boris was then classified as dangerous and it was questionable as to why the Layton's would move him from the rear of the property to the front of the house without him being muzzled as it was technically a public place where the public had legal right of access. Had he been wearing a muzzle and / or left at the rear of the property the bite to the victim would not have occurred.

In response to the complaint Compliance Officers impounded Boris on 18th October 2013 under section 57 of the Dog Control Act 1996.

Two Compliance Officers met Jennifer Layton at the Mercury Bay Service Centre later the same day and explained the situation to Mrs Layton and the possible consequences of the latest attack.

The Compliance Officers later stated that Jennifer Layton had told them that the dog had not bitten anyone including the latest victim, that the police officer had kicked the dog and man walking past the property had yelled at the dog.

The complainant stated that "Jennifer Layton had told me after the attack that I had frightened Boris and it was my fault".

5th November 2013

Five elderly Whitianga residents visited the Mercury Bay Service and asked to speak with Steve Hart the Compliance Team Leader. The group all alleged past incidents where either they or their partners had witnessed or been bitten, knocked over or rushed at by Boris. They were also acquaintances of the Layton's and therefore did not wish to lodge a formal complaint. The basis of their concern was that the dog was currently impounded by Council and they were afraid that he might be released back to into the care of the Layton's. The meeting discussion was recorded in a signed Compliance Officers Incident Statement but the complainants were not identified at their request.

The Compliance Team Leader Steve Hart met with Bryan Layton at the Mercury Bay Service Centre soon after the meeting with the five elderly residents and informed him of the allegations. Bryan Layton responded that he was not happy with the rumours being spread in Whitianga about Boris and implied that he did not believe what was alleged.

28th November 2013

On hearing an appeal from Jennifer Layton the Judicial Committee agreed to release Boris into the care of Animal Trainer Mark Vette. Release of Boris to Mark Vette was conditional on the following:

That the dog is retained under section 71 of the Dog Control Act 1996 subject to:

- a. The dog shall remain in the Thames pound until a place is available at Mark Vette's Animal Behaviour clinic.*
- b. That the dog shall remain in Mark Vette's Animal Behaviour clinic until written confirmation is received from Mr Vette that the dog no longer poses a risk to the public.*

Boris was released to Mark Vette on 2nd December 2014 and confirmed this by email to Steve Hart the Compliance Team Leader.

On 12th December 2014 Mark Vette sent an email to the Steve Hart providing an update on his progress. He informed Steve Hart that he would take him to the Layton's home the following week for further therapy.

Over the weekend of 21-22nd December 2013 Council were informed that the Layton's were observed walking Boris (muzzled) in Albert St, Whitianga. Steve Hart sent a text to Bryan Layton requesting urgent written confirmation from Mark Vette that Boris no longer posed a risk from the public (as required by the Judicial Committee conditional on the release of Boris).

Bryan Layton responded with an angry phone message to Steve Hart that the report was sent last Friday.

On Monday 23rd December 2013 an email was received from Mark Vette apologising that the report was in fact not sent and attached the report.

The report concluded that Mark Vette was satisfied with the progress of Boris for fear induced aggression however Boris was to be muzzled when meeting people in the home or outside of the home.

24th January 2014

It was reported to Council that on 17th January 2014 that Boris "rushed" at a small child when the dog was at the On Fire Restaurant with the Layton's. He was muzzled at the time and no contact was made with the child. The complainant stated that "the dog jumped up and growled /snapped at the kid".

The parents of the small child did not witness the attack. Compliance Officers spoke to several witnesses who confirmed the dog was at the restaurant at that time but did not witness any incident.

When Compliance Officers interviewed Jennifer Layton she stated that the "Little girl was carrying what looked like a stick and appeared to poke the dog. The dog spun around and growled with getting a fright".

While no action was taken in regard to the incident (due to conflicting reports) it was questioned why a dog owner would take a dog classified as dangerous on a social outing to a restaurant.

8th April 2014

Jennifer Layton pleaded guilty to the charge of owning a dog that attacked a person.

Concluding the court conviction of Jennifer Layton Council immediately notified Jennifer Layton that she is disqualified from owning a dog for five years under section 25 (1) of the Dog Control Act 1996.

The disqualification was appealed by Layton's legal Counsel on 21st April 2014 but subsequently withdrawn on 8th May 2014.

30th April 2014

The court made an order during sentencing for the euthanizing of Boris.

This decision resulted in significant comments in both social (Facebook) and print media over the following days.

1st May 2014

Jennifer Layton emailed the elderly victim of the attack that resulted her conviction.

The emails stated "I hope you are satisfied. After 8 months of hell with 3 court cases we finally lost, have to pay you, pay the fine, lawyer and have to our beloved dog down after spending 3500.00 to remove him from 7 weeks in the pound for retraining. I hope you go through the same hell one day.

5th May 2014

As a result of a media report in the NZ Herald on May 5th 2014 Council were contacted by another complainant regarding Boris "lunging" at a child while he was with the Layton's at a private social event on 31st December 2013.

The complainant stated that her 5 year old granddaughter went to give her a flower when Boris came from under the table and lunged at the girls face.

The incident was investigated but it was decided that as the dog Boris was euthanised on 7th May 2014 no further action was necessary. The complainant agreed to this course of action and the investigation was concluded at this point.

7th May 2014

Boris was euthanized by a vet in Whitianga at the request of the Layton's.

14th April 2014

Information was received from the Auckland City Council on a Bull Terrier Dog named Jade owned by Jennifer Layton.

History on this dog included:

1995 - uncontrolled biting people

1995 - Muzzle notice refer to above incident

1996 - Uncontrolled dog

1998 - S57 attacking person

1998 - Infringement notice re above incident

2000 - complaint S53 (uncontrolled)

15th May 2014

Jennifer Layton emailed the Compliance Team Leader "I will further add I hope I never set eyes on you again in this life, a sentiment shared by many. The Karma will get you soon."

4 Discussion

The incidents involving the dog Boris, owned by Jennifer Layton show a similar pattern whereas when the dog Boris attacks, lunged or bit either the victims or others were blamed for the dog's behaviour and no apology was received by the victims. In fact in one case an elderly victim was subject to an abusive email from Jennifer Layton.

In hindsight had the incident in July 2012 where an elderly man was bitten by Boris was fully investigated (by Council's contractor responsible for dog control at that time) then it might be possible the series of incidents that followed involving Boris may have been avoided.

However the response from Jennifer Layton when told that her dog had bitten the elderly man, was not to apologise to the victim or to offer him medical attention, it was to blame him for the incident to the point he had to seek assistance from the police who were parked nearby.

The history of a previous dog called Jade owned by Jennifer Layton showed a history of attacking, biting and being uncontrolled from 1995 to 2000. It is believed Mark Vette also provided behavioural training to this dog (per comm Bryan Layton)

Blame for what had occurred, the process and the court outcomes was continuously directed at Council's Compliance staff who were charged with upholding the Dog Control Act 1996, Councils bylaws and ensuring the Health & Safety of the public was a priority. There seemed to be little separation between staff simply fulfilling their duty and the outcomes of investigations.

Interestingly Layton's legal Counsel Scott Leith emailed Council's legal team on 13th May 2014 and commented "Thank you to Marion, Steve and your team for their professionalism during this difficult matter."

There is no doubt that the case involving Boris and the Layton's has had a significant impact on the community of Whitianga with conflicts occurring between friends and neighbours inspired by a high media interest and a high emotional attachment between owners and a dog. The sad reality is that the victims of the attacks by Boris were not offered the same sympathy by the owner and those who chose to support her without full knowledge of the facts.

Compliance Officers made considerable effort to work with Bryan and Jennifer Layton but due to Jennifer Layton making the issue personal against others it was decided that Bryan Layton would be the contact / mediator for the Layton's. This resulted in several discussions / meetings between the Compliance Team Leader and Bryan Layton on the incidents involving Boris.

Judge D A Ongley did not take into consideration any previous aggressive behaviour history involving Boris when sentencing Jennifer Layton on the conviction of owning a dog that attacked (to which she pleaded guilty). This was due to these incidents not being proven by Council. It should be noted that Jennifer Layton was issued an infringement under section 52 of the Dog Control Act 1996 for the attack on a police officer. This infringement had been paid.

The conviction and the subsequent disqualification of Jennifer Layton for owning a dog and the order for destruction of Boris was based solely on the attack on the elderly female guest staying at the Layton's Bed & Breakfast Lodge.

The five year disqualification of Jennifer Layton by Council on 8th April 2014 was a consequence of the court conviction and not on the significant owner history of Jennifer Layton. Council has subsequently been provided with additional information on incidents involving the two dogs Jade & Boris belonging to Jennifer Layton.

This matter needs careful consideration regarding the history of a dog owner rather focusing on the aggressive behaviour of previous of dogs owned by Jennifer Layton. As any professional dog trainer will confess the behaviour of a dog is only as good as the training it receives. If an owner decides that it is acceptable for a dog to misbehave or act aggressively then the dog will not be in position to improve its behaviour. There is no doubt that Jennifer Layton is compassionate about dogs but when dogs are humanised and not kept in context as canine animals to be supported cared for and trained by their human companions the dogs behaviour may become confused and aggressive behaviour affected by fear or domination.

The dog Boris owned by Jennifer Layton over a two year period resulted in eleven (x11) incidents of aggressive behaviour being reported to Thames Coromandel District Council. This resulted in eleven (x11) known victims of a dog attacking / rushing and would be the worst dog owner history on Councils records.

Aggressive Dog Behaviour - Enforcement Guidelines

The Compliance Team currently use the following guideline when considering enforcement action on incidents involving aggressive dog behaviour. A significant part of the scoring mythology focuses on the actions of the owner rather than the dog's actions.

These guidelines were introduced after the Boris incidents concluded and are considered reasonably accurate but individual circumstances also need to be applied.

Owner / Dog Actions	Score Levels	Score
Level of aggressive behaviour - as per levels sheet	Add 5 per level = (minimum) 5 - 30 (maximum)	
Previous History of Known Aggressive Behaviour	Add 3 to Total known incidents	
Owner Immediate Action Minimising Risk	Level of Satisfaction (excellent) 1-10 (unsatisfactory)	
Owner Taking Responsibility For Dogs Actions	Level of Satisfaction (excellent) 1-10 (unsatisfactory)	
Owner Actions to Change Dogs Behaviour	Level of Satisfaction (excellent) 1-10 (unsatisfactory)	
Owner Willingness to Work With Council	Level of Satisfaction (excellent) 1-5 (unsatisfactory)	
Owner Apology / Offer Reparation to Victim	Level of Satisfaction (excellent) 1-10 (unsatisfactory)	

Scoring for Recommended Enforcement Action

- 12 - 15 = formal written warning
- 15- 20 = Formal written warning and infringement
- 20 - 25 = Infringement & classify menacing
- 25 - 30 = Seizure, S71, Infringement, classify dangerous & possible prosecution
- 30 - 61 = Seizure, S71 & recommended prosecution.

Councils current Dog Control Policy 2009 states

The Disqualification of Owners

Council will not use any discretion available to it under section 25 of the Act: Disqualification of Owners; and will immediately disqualify any owner who meets the tests of that section.

In considering an appeal under Section 26 of the Dog Control Act 1996 the committee must have regard to the following:

26 Objection to disqualification

(1) Every person disqualified under section 25—

(a) may object to the disqualification by lodging with the territorial authority a written objection to the disqualification; and

(b) shall be entitled to be heard in support of the objection.

(2) An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification.

(3) In considering any objection under this section, the territorial authority shall have regard to—

(a) the circumstances and nature of the offence or offences in respect of which the person was disqualified; and

(b) the competency of the person objecting in terms of responsible dog ownership; and

(c) any steps taken by the owner to prevent further offences; and

(d) the matters advanced in support of the objection; and

(e) any other relevant matters.

(4) In determining any objection, the territorial authority may uphold, bring forward the date of termination, or immediately terminate the disqualification of any person and shall give written notice of its decision, the reasons for it, and the right of appeal under section 27 to the objector.

5 Suggested Resolution(s)

That the Judicial Committee:

1. Receives the report.
2. Upholds the five year disqualification, or
3. Brings forward the disqualification, or
4. Immediately terminates the disqualification and
5. Shall give written notice of its decision, the reasons for it, and the right of appeal under section 27 to the objector.