

Citation: ☼



Date: ☼
File No: 81758
Registry: Kelowna

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

Regional District of Central Okanagan

CLAIMANT

AND:

Andrew (Drew) Panton

DEFENDANT

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE A.K. WALLACE**

Counsel for the Claimant:

T. DE SOUZA

Counsel for the Defendant:

T. DOUST

Place of Hearing:

KELOWNA, B.C.

Date of Hearing:

May 11th, 12th, June 11th and July 16th, 2015

Date of Judgment:

July 31st, 2015

[1] This is an application by the Regional District of the Central Okanagan for an Order to euthanize two dogs pursuant to *The Community Charter*, S.B.C. 2003, Chapter 26, Section 49 and *The Local Government Act*, R.S.B.C. 1996, Chapter 323, Section 707.1.

Incident which led to Application

[2] For many years, Mr. Clark and his wife were the owners of a Llapso Apso/Wheaton cross dog named Charley. At about 8:30 a.m. on January 1, 2015, ironically the first day of Mr. Clark's retirement, he took Charley for a walk. Charley was on-leash and they were walking on Ponderosa Drive in Peachland, where Mr. Clark and his wife live in a 55 years and older community. At that time Charley was 12 years old and weighed approximately 30 pounds.

[3] When Mr. Clark and Charley were about 300 meters down the road from their home, they saw a neighbour, Mr. Schalagen, approaching them with two large, unleashed dogs beside him. Mr. Clark testified he said good morning to his neighbour and then the bigger dog (Jake) came running towards him in the middle of the road. He yelled to his neighbor "What the hell are you doing? Control your dogs", to which the neighbor replied that these were not his dogs.

[4] Mr. Schalagen testified that he had gone out for a walk on Ponderosa Drive earlier that morning and encountered the two dogs out and off-leash, with no owner in sight. When they came towards him, he froze because he thought they were pit bulls and had been told that with that type of dog he should not show fear or there could be "repercussions".

[5] Mr. Schalagen continued walking and the dogs walked with him. He stopped at the first house he came to and inquired if the dogs belonged there but they did not. He stopped at his neighbour's house to ask them to call the dog pound but they were not home so Mr. Schalagen

continued to his house. The dogs followed him. He found a bucket, filled it with water and left it on driveway so that the dogs would leave his garage. It was at that point that Mr. Schalagen saw Mr. Clark walking Charley on-leash and Jake take off towards them.

[6] Mr. Clark testified that as Jake approached, he put his open hand down towards Jake but the dog ran around him and started to sniff Charley. Then, without warning, Jake bit Charley on his side. Mr. Clark testified he was shocked and kicked Jake in the head so that he backed off. Meanwhile, Charley had slumped to the ground and was whimpering.

[7] At this point Mr. Clark heard growling and looked up and saw the other dog (Buddy) running towards him. Mr. Clark kicked at him but Buddy lunged at Charley and bit him, first in the face and then on Charley's neck. Mr. Clark testified he began "pounding on" Buddy and was screaming and yelling at the dog. Buddy did back off and Mr. Clark threw himself over Charley to protect him.

[8] Mr. Schlagen's testimony confirmed that Jake sniffed Charley and then unexpectedly bit Charley in his side. Then Buddy attacked at Charley's neck and wouldn't let go. Buddy was wearing a choke chain which Mr. Schalagen pulled on but it came off so Mr. Schalagen hit Buddy with the chain as Mr. Clark was hitting Buddy with his fist. They got Buddy off Charley and Mr. Clark lay on Charley to protect him.

[9] Another neighbour, Blaine Bibby, was passing by in his truck. Mr. Bibby is a paramedic. He saw two large dogs with a male lying on road, who he recognized as Mr. Clark. Mr. Bibby thought the dogs might have attacked Mr. Clark so he stopped his truck. Mr. Bibby testified that he saw that Mr. Clark's right hand was extremely swollen and Charley looked lethargic and his eyes were glossy.

[10] He had Mr. Clark explain to him what had happened, did a head to toe survey of Mr. Clark then he called 911. Shortly thereafter the Police and an ambulance arrived. Mr. Clark and Charley were taken to vet then Mr. Clark went to the hospital for treatment of his injured hand.

[11] A Veterinarian, Dr. Moshe Oz, was called in for this emergency as the clinic was closed for New Year's Day. He sedated Charley then did a basic examination of temperature, pulse etc. and then he looked for wounds. He found multiple skin lacerations all over Charley's body - in the face, neck and abdomen - and there was a large gash 10 centimeters by 3 centimeters at Charley's right ribs. The muscle below was torn and the lungs were exposed and had been punctured.

[12] Dr. Oz treated Charley for shock, started an IV for fluids, and gave him some pain medication. He then advised the Clarks that either major surgery would be required to repair the lungs or else the dog would have to be put down. He testified that the surgery would require a drain and chest tube afterwards, several days to a week of hospitalization followed by a long recovery. Given Charley's age and the difficult recovery, the Clarks decided it was more humane to euthanize Charley. They were devastated.

[13] Leah Giesbrecht, an RDCO Bylaw Enforcement officer received the emergency call on January 1, 2015. She has been employed in dog control for 17 years,. She attended the vet clinic, met with the RCMP and was then advised that Charley had been euthanized. She confirmed that Mr. and Mrs. Clark were very emotional when she met with them.

[14] Ms. Gisbrecht went to Mr. Panton's residence but received no answer at the door or on the phone. The next day Mr. Panton called her and agreed to bring the dogs to the pound. He did so and they have remained there since.

Other information about the dogs

[15] The Court heard evidence about another incident with these two dogs 5 months prior to the incident with Charley. Ms. Sherry Keeping owned and had lived in the Peachland residence where Mr. Panton had been staying with the two dogs starting in July. Ms. Keeping's partner, Pat, was friends with Mr. Panton and had asked him to stay there because Pat and Ms. Keeping were separating.

[16] Ms. Keeping owned a border collie named Nyxie and testified she had placed Nyxie with her friend Myleen Mallach while moving out of her residence because she didn't trust Mr. Panton's dogs. On August 1, 2014, Nyxie was being returned to her. Jake and Buddy were tied up in the yard. She thought one was tethered to a piece of lawn furniture and the other to either the steps or other furniture. She was not asked where Mr. Panton was.

[17] Ms. Keeping testified that her dog jumped out of the truck and started towards her up the driveway to meet her. Ms. Mallach was standing at the bottom of driveway. Jake then snapped the rope that tethered him as did Buddy and together they came over the lawn, over a rock wall and down to the driveway. Ms. Keeping testified that without any provocation or warning, Jake lunged straight at Nyxie and tried to bite her. At that point, Nyxie was about 6 to 8 feet away from Ms. Keeping, between the vehicle and a rock wall.

[18] Ms. Keeping started yelling and ran to Nyxie and “hammered” Jake in throat to try to get him away from Nyxie. She testified that Buddy was right beside Jake trying to get Nyxie too. The women put Nyxie back into the truck then Mr. Panton arrived and took his dogs away.

[19] Ms. Mallach confirmed Ms. Keeping’s testimony that she had had Nyxie for a few weeks and was returning her that day. She testified she backed her truck into driveway and let Nyxie out. Then Mr. Panton’s dogs “came flying over the embankment and attacked Nyxie in an unprovoked and relentless manner”. She testified that at some point Mr. Panton did arrive and took the dogs away. She was there for the following four hours and didn’t hear Mr. Panton apologize and “it seemed like no big deal to him”.

[20] She described the incident as “very ferocious and traumatic and unprovoked” and stated that she had seen dogs fight in the past, but not like this. As well, Ms. Mallach had her two children with her in her truck at the time and she testified they were very upset and traumatized by the event.

[21] Ms. Keeping testified that Mr. Panton left Buddy and Jake locked in the garage, sometimes for 10-14 hours, when he went to work. When he was home with them, he used an electronic collar with a remote for discipline. For example, she had seen Buddy go after a cat and in response, Mr. Panton “zapped” Buddy with the remote. He also had electronic fencing installed, as there was no fenced enclosure on the property.

[22] Ms. Keeping testified that she observed that Mr. Panton exercised the dogs when he first moved in by walking them to the end of the road and back and that was all. Although Mr. Panton subsequently testified that he took the dogs to an acreage further up Ponderosa Drive for exercise, Ms. Keeping was not cross-examined about

that. Ms. Keeping testified there were times when Mr. Panton asked her to take care of the dogs and she would, but she never took them together.

[23] Ms. Giesbrecht received a complaint concerning this incident and attended the residence on August 22, 2014. She found one of the dogs on a lead and tethered by the front door. She told Mr. Panton that he was not to tether the dogs in the front yard unless Mr. Panton was present. Mr. Panton was issued a ticket and a warning by Animal Control.

[24] Ms. Giesbrecht also investigated for any past involvement Mr. Panton had had with Animal Control. She found a report from Langley in 2012 of a barking complaint that Mr. Panton's dogs were left outside in the backyard and barked "all day and into the evening".

[25] There were also two reports of Buddy running at large in Langley in February of 2013. Mr. Panton had also been directed several times to get his dogs licensed but he did not do so.

Mr. Panton's evidence

[26] Mr. Panton testified that he has always owned at least one dog throughout his life and has had a dozen or more dogs through his home, all which had lived with him without incident. He stated he has always had proper fencing and all his dogs were well-exercised, well-fed and loved. He also testified he has been a person to whom other dog-owners could bring their dogs for care if needed. Jake is one such dog.

[27] Mr. Panton has had Jake since he was two. The Court heard that Jake is a special breed, a Perro de Presa Canario, whom his previous owner had imported from the Canary Islands where they are bred. That owner, his wife and children lived in a rural area in B.C. and the husband had to be away often for work. So Jake was there for protection for when the husband was away, as well as being a pet. Mr. Panton understood Jake been kept penned in an outdoor enclosure. The husband and wife subsequently broke up and Jake had needed a new home, so Mr. Panton adopted Jake through an intermediary. Mr. Panton never met with Jake`s owner. As of January 1, 2015 Jake weighed 120 lbs.

[28] Buddy is described in some documents as an American Bulldog mix and in others as an American Bulldog/Pitbull. Mr. Panton has owned him since he was a puppy and raised him.

[29] Concerning the tickets in Langley, Mr. Panton testified he had resided on a fenced, one acre rental property. The City had torn down the original fencing and put up temporary fencing for a project it was working on. Buddy escaped and Mr. Panton assumed he had jumped the fence. Buddy got out again the next day at which point Mr. Panton discovered a hole in the fence and repaired it. There were no further incidents..

[30] With respect to what happened with Nyxie, Mr. Panton disagreed with the womens' evidence. He testified that he had had the dogs tied up to the patio railing and had tethered them this way many times before and never had a problem.

[31] He testified he was on the balcony and saw Ms. Mallach`s truck pull in and Nyxie get out. He testified that Nyxie was a high-strung dog and on that day was in a highly

excitable state. His evidence is that Nyxie ran up into the lawn and in amongst his dogs. Jake's only response was to put a paw on Nyxie but she yelped and then Ms. Keeping "went nuts". Mr. Panton told her to calm down, and then he "put the dogs away". He stated there was no injury and neither Buddy nor Jake attacked Nyxie and his dogs were tethered for the whole time of incident. This set of facts was put to either of the women in cross-examination.

[32] In reviewing all the evidence, I do not accept Mr. Panton's testimony on this matter. It is inconsistent with all the other evidence of Jake's behaviour around other dogs. I accept that the incident unfolded as the women testified it did.

[33] Regarding the January 1st, 2015 incident, Mr. Panton explained that on New Year's Eve he had friends visiting at that house for drinks and a hot tub. Everyone went to bed at about 3 a.m. About 8:30 a taxi arrived to pick up the friends and they came into Mr. Panton's room to say good-bye and he told them to close the door.

[34] When Mr. Panton got up at 9:30 he discovered the dogs were not home and the door was open. He went to look for the dogs and saw a Police cruiser with Jake's head out window. A police officer told Mr. Panton what had had happened then released Jake back to Mr. Panton. Buddy was found waiting for Mr. Panton at the house.

[35] Mr. Panton testified that the next day Animal control personnel called him and advised him that Charley had had to be put down. At their request, Mr. Panton took his dogs to the pound. Euthanasia for Buddy and Jake was discussed but Mr. Panton did not agree to euthanasia. He was told there would be an application for a destruction order and the dogs were lodged at the pound, where they have been ever since.

[36] Mr. Panton testified that that this had never happened before because he had always been when the dogs were tied up and he had installed underground wiring and collars for when the dogs were outside without him. He believed he was a very responsible owner and he just made a mistake that day. He feels that his dogs are his family because he has no wife or children. He tearfully apologized in Court to the Clarkes for what happened, expressing that he realized what happened to Charley was "the most devastating thing a dog owner can face".

[37] He presented to the Court the proactive plan he has taken so that the dogs never get loose again and so he can get his dogs back. As of June, 2015, Mr. Panton had rented a house in Lower Peachland for a year. He currently works as a heavy equipment operator for a company working out of Westbank and says he is home every night by 5 p.m. At this location he prepared the ground and built a six foot steel fence.

[38] Mr. Panton admitted that in the past he had exercised Buddy by having him run behind his truck. He had tried to take his dogs to dog park with a muzzle but found that other, older dog owners with smaller dogs were concerned when they saw the dogs and he "didn't want to cause stress". As an alternative he obtained permission to be on a friend's privately owned fenced and gated land so he could exercise the dogs and not to encounter other dogs or people.

[39] Mr. Panton testified that a person named Karen, from "The Not So Dangerous Dogs" organization contacted him and put in touch with Dr. Ledger, who was called as his expert at trial. He characterized meeting her as a turning point for him and that she opened his eyes about his dogs. He says he is 100% committed to his dogs and that

no matter what it takes or how much it costs he will make sure this situation never happens again. He agrees to take the training and do whatever else the expert says.

The expert evidence

[40] Ms. Plant was called by the Applicant as an expert in assessment, management, training and modification of the behavior of aggressive dogs. She has given expert evidence in Court previously. With respect to training aggressive dogs, she has worked with about 235 cases and 16 % of those cases involved a bite history. She testified she doesn't usually see the really dangerous dogs because their owners usually euthanize them voluntarily.

[41] After reviewing the file material and interviewing the staff who had been caring for the dogs, Ms. Plant did an assessment of Jake and Buddy on February 19, 2015 at the Pound in Kelowna where they were housed in separate but neighbouring kennels. All of the testing was videotaped and shown in Court.

[42] First Ms. Plant had a person unknown to the dogs walk by both dogs in their kennels. Jake was excited but showed no aggression. Buddy was more tentative and exhibited worried behavior. Next she used a fake, stuffed decoy dog, called Jack, which she had scented using her own dog. When Jack went by Jake, he acted very forcefully as if trying to get at the dog. Buddy was interested but not aggressive.

[43] Next a doll which looked like a small child was walked by Jake's kennel. Jake was excitable towards the doll for a while then redirected his attention. Buddy again was tentative.

[44] Next Jake was let loose into the secure yard on his own. When Jack was brought into the yard, the video shows Jake run quickly and directly at Jack, lunge on it and very forcefully bite it on the neck. Jake then made three more bites before his aggression lessened, seemingly because Jack wasn't reacting.

[45] Buddy wandered about the yard until Jack was introduced. Then Buddy approached and pushed himself on Jack but didn't bite. He sniffed at Jack then went elsewhere. When Jack was pushed up to him, Buddy was friendly, sniffed and after awhile walked back to the person who had let him into the yard.

[46] When the doll decoy was let into the yard, both dogs were interested but not aggressive.

[47] In coming to an opinion about the future for these dogs, she looked at the dogs histories. Buddy appeared to have been properly raised from a puppy in Mr. Panton's care. All that was known of Jake was that he was re-homed to Mr. Panton as an adult dog. She would have liked to know why the original owner had chosen this particular type of dog. As well, she was not told why Jake was walked on a muzzle. She had been told that Mr. Panton had left both dogs in a garage or bedroom for long periods.

[48] Ms. Plant characterized the attack on Charley, 5 months after the incident with Nyxie, as an escalation. She pointed out that Jake's reaction to the decoy Jack was totally consistent with Jake's pattern of behavior with Nyxie and Charley. She stated that it was a problem that Jake had caused the death of another dog because "no one can deny that if one incident occurs, there is some likelihood it will happen again". She also stated that any dog can bite but the question is "When will it bite?".

[49] In her opinion it would take a very long time to modify Jake's behaviour and would be very expensive. Mr. Panton would need to be dedicated every single day to his training. She concluded that without knowing Mr. Panton's patience level or his resources, and with his past history of his dogs roaming loose, she couldn't say returning Jake to him was a good idea.

[50] With Buddy, Ms. Plant's concern was that although he didn't start the incidents with Nyxie and Charley, he was more persistent once he got involved. She was not sure what triggered Buddy. It could have been that the real dog squealed or could have been Jake's attack first. Ms. Plant further stated that whatever is going on between the two dogs themselves has to be considered but she could not say whether one was more dominant than the other because she didn't observe the two dogs together.

[51] The Defence qualified Dr. Rebecca Ledger as an expert in the assessment, management, training and medication of aggressive dogs. Dr. Ledger has formal training as an ethologist, which is scientific training in animal behavior and psychiatric training for animals. She is recognized internationally as an expert in this field and provided a very impressive resume.

[52] Dr. Ledger also did an assessment of both dogs at the Pound, the day she was originally called to testify. She achieved similar results as Ms. Plant when it came to exposing the dogs to people - neither dog showed aggressive tendencies.

[53] For reactions to other dogs, real dogs were used as opposed to decoys. Two different on-leash dogs (a male and a female) were individually introduced to Jake. In both instances he immediately became aggressive towards them without any provocation. He lunged at both dogs as they approached his fenced enclosure.

[54] When the same situation was presented to Buddy, he was not aggressive towards either of them. When one of the dogs lunged at him, Buddy displayed avoidant behaviour.

[55] Dr. Ledger's opinion with respect to Jake is that "Jake is likely to behave in a calm and friendly manner towards people, but he may lunge at joggers and other dogs with the intent of biting them." With respect to Buddy she concluded "Buddy is likely to behave in a friendly manner towards people, and he is also unlikely to bite another dog unless highly provoked", which she meant he was stimulated to bite. Dr. Ledger further testified that she found Buddy "charming".

[56] Ms. Plant and Dr. Ledger agree that Jake is a higher risk for harm than Buddy.

Discussion

[57] This is a difficult case because clearly Charley's owners were very attached to him and thought of him as a family member. They were and still are devastated at losing him, and having lost him in such a traumatic manner.

[58] In turn, Mr. Panton testified that loves Jake and Buddy, and thinks of them as his family, all the more because he has no other family. He testified about how much he loves all dogs and broke down emotionally on the witness stand when explaining that he was also devastated about what had happened to Charley.

[59] So Charley was the Clarkes' precious pet and part of their family, and Jake and Buddy are Mr. Panton's precious pets and his only family. The strong emotions underlying this hearing were impossible to ignore. As I advised the parties at the end

of the hearing, I am a dog owner and so can empathize with all of these dog owners. However, now that this matter has been referred to this Court, it falls to me to make a decision solely on a legal basis, not an emotional one, as to what should happen next.

The Law

[60] Firstly, dealing with two simple matters of evidence, there is no dispute that Mr. Panton is the owner of Jake and Buddy and there is no issue that the two dogs that were placed in the custody of the S.P.C.A. by Mr. Panton on January 2, 2015 are the dogs that are the subject of this Application.

[61] The applicable legislation in this case is the Community Charter. The Regional District has made this application under section 49(10) of the Charter which sets out:

(10) In addition to any other authority, if an animal control officer has reasonable grounds to believe that a dog is a dangerous dog, the officer may apply to the Provincial Court for an order that the dog be destroyed in the manner specified in the order.

Section 49(1) of the Act defines a dangerous dog as follows:

"dangerous dog" means a dog that

- (a) has killed or seriously injured a person,
- (b) has killed or seriously injured a domestic animal, while in a public place or while on private property, other than property owned or occupied by the person responsible for the dog, or
- (c) an animal control officer has reasonable grounds to believe is likely to kill or seriously injure a person.

[62] Therefore the first issue is whether either Jake or Buddy or both of these dogs are dangerous dogs according to the definition in the Act. There is no dispute in the evidence about the attack on Charley and its result. Appropriately, Counsel for Mr. Panton conceded that both dogs could be classified as dangerous dogs, pursuant to the legislation. Accordingly I find they meet the definition.

[63] The next issue is whether to grant the application for euthanization. Old case law held that there were only two options for the Court, either have the dog destroyed or return it to its owner. (see *R v Dempster* [1995] BCJ 151, BCCA). However since the introduction of the Community Charter in 2004, the Courts have exercised discretion with a variety of creative alternatives to euthanization or unconditional return to owner.

[64] I have reviewed all of the cases submitted by Counsel for the Regional District and Mr. Panton. I now will refer primarily to those cases where one or more dogs had attacked other dogs or other animals.

[65] *R v Kucera* 2001 BCPC 360 is a case that also involved a Presa Canario, Jake's breed. Expert evidence was presented that this type of dog is bred as a guard dog or protection dog. This is consistent with Mr. Panton's evidence about what he told about the original owner. The expert also testified that aggression is consistent trait with this breed.

[66] The facts in the *Kucera* case were that on numerous occasions the dog had been off-leash and had, without any provocation, attacked and bitten other dogs. Despite warnings from the Animal Control officers that the dog needed to always be tied up or on-leash, the owner let the dog run loose, which led to these incidents. He was declared a dangerous dog.

[67] Judge Burdett decided that if an appropriate owner, as determined by the Animal Control officer, could be found within thirty days then the dog could be released to that person. However if no appropriate person was found by the end of the thirty days, the dog was to be destroyed.

[68] The case *City of Prince George v MacLeod*, 2004 BCPC8, followed *Kuchera* and the same order was made.

[69] In *R v Giesbrecht*, 2005 BCPC 113, the dog without provocation viciously attacked an on-leash several month old Yorkie terrier, who was seriously injured. The owner of the dog was a homeless man who the Court determined could not properly care for or control the dog. As in the *Kucera* case, the Court did not return the dog to its owner and gave the Animal Control officer time to find an appropriate owner.

[70] In *R v Thorland* 2005 BCPC 616, the court heard about numerous incidents of aggression by two dogs, a male and female, which included the killing of a cat. A fight had also occurred between the two dogs in question where the male had attacked the female. After reviewing all the evidence, the Court ordered that the male dog be destroyed and the female be returned to the owner.

[71] *New Westminster v Ash*, [2006] B.C.J. 3533 concerned a pit bull cross which while running at large viciously attacked a dog being walked on-leash. In that case the Court found that there no plan had been proposed that could reasonably keep the public safe other than a destruction order and that Order was made.

[72] In *City of Port Alberni v Smillie*, 2007 BCPC 180 the Court found two dogs were dangerous dogs after they, left untethered in the back of truck, ran up to and attacked two small dogs on a walk with their owners and bit one of the owners. No expert assessments appeared to have been done. The Court held that although the attack was severe, there was no evidence of any other incidents of these dogs running loose. The Court placed the owner of the offending dogs on a Recognizance under

section 810 of the Criminal Code. With all due respect to that Judge, I can not find the Court has jurisdiction to make an Order under the Criminal Code for breach of the Community Charter.

[73] In *City of Burnaby v Nagra*, 2010 BCPC 34, a pit bull cross had escaped from its leash and attacked a small dog being held by its elderly owner, and killed it. An expert in dog training at that trial testified as to what would be required by the owner to keep the dog secure and the training which would be required. The family who owned the dog testified that they had followed all those steps which had been recommended. The Court made an Order for destruction then immediately granted a stay for 12 months on strict conditions and left Animal Control responsible for monitoring them.

[74] *Smith v Central Okanagan (Regional District)*, 2013 BCJ 250, was an appeal by a Vernon dog owner from the decision of the Provincial Court from a destruction order. Justice Barrow found the owner of the offending dog to be “both unreliable and profoundly irresponsible” with respect to his dog. He ordered that another owner, deemed suitable by the Regional District, be found for the dog.

Discussion

[75] The goal of this legislation is to protect and keep safe the members of the public and domestic animals in public areas. As stated in *City of Abbotsford v Randay*, 2013 BCJ 811,

“this requires a balancing of the public’s interest in being reasonable safe and secure on the one hand, against the interests of owners in not having their dogs put down unnecessarily, where reasonable alternatives exist. A balancing is required, but one in which public safety is paramount.”

[76] Dr. Ledger provided a detailed, 3 part plan for what Mr. Panton needs to do to prevent his dogs from causing further harm. The first part is Mood Management and would include medications, supplements and dietary changes to address Jake's aggressive behaviour and Buddy's anxiety.

[77] The second part is Safety Management. The protocols Dr. Ledger set out include ensuring that fencing around the yard is a minimum of 5 feet high and constructed securely enough so the dog can't knock it down. The fence must be regularly maintained to ensure no means of escape and gates to the yard must be bolted and locked. The rear entry to the house must have a double door system and the front door must be kept locked at all times to prevent any unannounced opening and the dogs escaping. Dr. Ledger's report states

"if (this) management is complied with, it is my opinion that the risk of Buddy and Jake escaping will be *significantly* reduced." (emphasis mine)

[78] The third part of Dr. Ledger's plan is the retraining of Jake and Buddy by a qualified trainer. A trainer from Penticton was recommended.

[79] Both of the experts were in agreement and wholeheartedly expressed that the success of any plan for rehabilitating a dog turns on the dedication and consistency of the owner..

Mr. Panton

[80] Mr. Panton appeared to the Court to be a kind, friendly and "laid back" individual. For example he stated that money doesn't really mean anything to him and stated he just doesn't really worry about money. This was why he hadn't filed his tax return for 2014 yet.

[81] Mr. Panton has not shown much stability in his life. He reported that he lived in Langley for some time then at the end of 2013 got a job delivering beer on Vancouver Island and so moved to Nanaimo where he rented a home on an acre and a half of fully fenced property .

[82] He had the beer delivery job for about a year, until December 2014, and then he was out of work. He next obtained work in Aldergrove but commuted from Nanaimo and maintained the Nanaimo property. Sometimes the dogs went with him and sometimes the landlord's father, who lived in basement suite of the house, took care of the dogs when Mr. Panton wasn't there.

[83] That job ended and then "Pat" from Peachland called so Mr. Panton moved there to help his friend. He stated he continued to maintain the property in Nanaimo even when living in Peachland and found work there for month or two. Now he has the work in West Kelowna.

[84] Although it is evident that Mr. Panton really loves both of his dogs, his dedication to taking care of them, at least until the January incident, had been somewhat low. For example, he admitted he had exercised Buddy by having him run behind his truck, rather than walking him. Mr. Panton testified he has changed pointed to the alterations he has made where he now resides. On this basis he says his dogs should be returned to him.

[85] I find, on the basis on of Mr. Panton's history, it is questionable this will be an ongoing residence for Mr. Panton. The renovations he made are costly and would have to made at again at future accommodations he rents. He might not be able to afford this.

[86] As well, given his relaxed attitude towards money, there is reason to doubt whether Mr. Panton will be able to afford the medications and expensive ongoing training directed by Dr. Ledger, although he presently has the best intentions of doing so.

[87] Balancing the great risks to members of the public and their pets against the tremendous efforts that would have to be taken and maintained by Mr. Panton to keep Jake away from them, I am not satisfied that the burden has been met to make a conditional order that Jake be returned to Mr. Panton.

[88] The assessment of both experts is that Buddy is not generally an aggressive dog and his behaviour is attributable largely to anxiety. On all the evidence, Buddy has only exhibited aggressive behaviour when he has been in the company of Jake. I am satisfied that if he is not with Jake, not at large and off-leash, properly penned so that he is not able to escape and when walked is on-leash, on the balance of probabilities Buddy is not a risk such that he must be destroyed. However the safety precautions recommended by Dr. Ledger for Buddy must be maintained so he does not run at large.

Decision

[89] On the balance of probabilities I find that Buddy can be managed so that a destruction order is not required. Therefore Buddy shall be returned to Mr. Panton on the following conditions:

- For any yard to which Buddy has access, that property must be completely contained by a fence at least five feet high and the fence must be checked on a regular basis by Mr. Panton to ensure it is secure. Any gate to the fence must have a bolt that can not be

inadvertently opened. Mr. Panton shall post a warning sign at the gate that there is a dog on the property and is not to be released.

- The front door to Mr. Panton's residence must be kept locked at all times.
- Mr. Panton must take training with Buddy as directed by Dr. Ledger.
- If Mr. Panton moves, he shall notify B.C. Animal Control of his new address.

[90] I find that Jake is a grave danger to other dogs and will seriously injure or kill them if he is loose around them. As was the decision of Judge Rounthwaite in the **Randay** case, history speaks for itself and Jake will attack without provocation. While Mr. Panton has done what he can to get Jake back, as in the **Randay** case, there can never be a risk again of Jake escaping and there is only one of doing that. Although I am sad to do so, I order that Jake be humanely euthanized.



The Honorable Judge A.K. Wallace