Date: Thursday 12 April 2018  
Time: 9.32am  
Meeting Room: Room 1, Level 26  
Venue: 135 Albert St  
Auckland

Regulatory Committee

OPEN MINUTE ITEM ATTACHMENTS

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Note: The attachments contained within this document are for consideration and should not be construed as Council policy unless and until adopted. Should Councillors require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
Public Safety and Nuisance Bylaw review

Regulatory Committee
12 April 2018
Introduction

- Review of bylaw issues reported in five groups
- First group of six issues reported in March 2018
- Subsequent reports in May and June 2018

- This report is about nine damage and obstruction issues
- Key questions:
  - is the current bylaw working?
  - are any changes necessary?
## Damaging, removing, interfering with council property (Pg. 17)

### Review outcome

<table>
<thead>
<tr>
<th>Still an issue?</th>
<th>Yes</th>
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<tbody>
<tr>
<td>Bylaw appropriate to address issue?</td>
<td>No</td>
</tr>
<tr>
<td>Bylaw form appropriate?</td>
<td>No</td>
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<tr>
<td>Unjustified Bill of Rights implications?</td>
<td>No</td>
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</table>

### Recommendations

- Revoke Bylaw clause
- Council still responds to complaints, repairs damage
- Council regulations simplified
- No change in customer experience
Polluting, damaging, obstructing a water course, storm water drain or channel (Pg. 19)

<table>
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<td>Unjustified Bill of Rights implications?</td>
<td>No</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation</th>
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</thead>
<tbody>
<tr>
<td>• Move clause from Public Safety and Nuisance Bylaw</td>
</tr>
<tr>
<td>• Insert better worded bylaw clause in Stormwater Bylaw 2015</td>
</tr>
<tr>
<td>• Statement of Proposal can amend both bylaws</td>
</tr>
<tr>
<td>• A bylaw still used to address the issue</td>
</tr>
<tr>
<td>• Council responds to complaints, repairs damage</td>
</tr>
<tr>
<td>• Streamlines regulations</td>
</tr>
<tr>
<td>• No change in the customer experience</td>
</tr>
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</table>
Placing a structure, opening a drain or disturbing a surface (Pg. 21)

<table>
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<td>Bylaw form appropriate?</td>
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</tr>
<tr>
<td>Unjustified Bill of Rights implications?</td>
<td>No</td>
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</table>

**Recommendation**

- Revoke Bylaw clause.
- Council to instead use Local Government Act 2002
- Where appropriate, continue to request Police use of Summary Offences Act 1981 or Crimes Act 1961
- Council responds to complaints, repairs damage
- Simplifies council regulations
- No change in the customer experience
### Review outcome

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<tr>
<td>Unjustified Bill of Rights implications?</td>
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### Recommendation

- Amend Bylaw to more clearly address the problem e.g. safety, nuisance, misuse of public places **not just damage**


- Bylaw still used. No change in the customer experience. Council still responds to complaints, repairs damage
### Removing or damaging trees or vegetation (Pg. 26)

<table>
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<td>Bylaw form appropriate?</td>
<td>No</td>
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<tr>
<td>Unjustified Bill of Rights implications?</td>
<td>No</td>
</tr>
</tbody>
</table>

**Recommendation**

- Amend Bylaw to more clearly address the issues of safety, nuisance, misuse of public places – **not just damage**
- Planting seeds more clearly addressed

- Local Government Act 2002 and Summary Offences Act 1981 used to address damage

- Bylaw still used to address issue
- Council responds to complaints, repairs damage
- No change in the customer experience
Placing or leaving materials or structures in a public place (Pg.28)

<table>
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<tr>
<td>Unjustified Bill of Rights implications?</td>
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<table>
<thead>
<tr>
<th>Recommendation</th>
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</thead>
<tbody>
<tr>
<td>Amend bylaw clause to apply to use of public places not just where an obstruction is caused. Term obstruction open to interpretation (exemptions may apply)</td>
<td>√</td>
</tr>
<tr>
<td>Bylaw still used to address issue</td>
<td>√</td>
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<tr>
<td>Council still responds to complaints</td>
<td>√</td>
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<tr>
<td>No change in the customer experience</td>
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<tr>
<td>Review outcome</td>
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<td>Still an issue?</td>
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<tr>
<td>Unjustified Bill of Rights implications?</td>
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</table>

**Recommendation**
- Amend bylaw clause
- Amend bylaw clause to prohibit use of public places to place or leave any material, object, thing or structure regardless of whether it causes an obstruction (exemptions may apply)
- Bylaw still used to address issue
- No change in the customer experience

**Constructing a building or structure and erecting a tent**

(Pg. 30)
### Vegetation encroachment (Pg. 32)

<table>
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<tr>
<td>Unjustified Bill of Rights implications?</td>
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>• Amend bylaw clause to more clearly address issues to include safety and not only obstruction, and nuisance, and to more clearly define ‘obstruction’</td>
<td>✓</td>
</tr>
<tr>
<td>• Bylaw still used to address issues</td>
<td>✓</td>
</tr>
<tr>
<td>• Council still responds to complaints</td>
<td></td>
</tr>
<tr>
<td>• No change in the customer experience</td>
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## Hanging a door or gate that encroaches on a public place

(Pg. 34)

<table>
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<td>Bylaw form appropriate?</td>
<td>No</td>
</tr>
<tr>
<td>Unjustified Bill of Rights implications?</td>
<td>No</td>
</tr>
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</table>

### Recommendation

Amend bylaw clause to prohibit hanging a door or gate that encroaches on a public place, unless approved by council, regardless of whether it causes an obstruction.

- Bylaw still used to address issue
- Council still responds to complaints
- No change in the customer experience

\(\checkmark\)
3 April 2018

Councillor Cathy Casey
cathy.casey@aucklandcouncil.govt.nz

Dear Councillor Casey

Auckland Transport – CAS-719190-F0B3T6 – Parking on the Berm

We reference your correspondence to Mr Shane Ellison dated 23 March 2018 regarding parking on the berm.

As your office is aware, parking on the berm is a large problem in Auckland. Auckland Transport (AT) acknowledges that parking on the berm may pose safety issues and potentially cause damage to trees and the grass. This activity impacts the ratepayer in terms of cost to repair and maintain.

When we are made aware of an area where parking on the berm is causing a large problem, the street/area highlighted is added to AT’s list of locations to be considered for installation of ‘no parking’ signs. However, due to the large number of signage requests AT has received and the resources available, these cannot all be installed instantly. If signs are installed, the area will be monitored by parking officers and infringement notices will be issued to any cars parked on the berm.

I am meeting with the Albert-Eden Local Board in May to explain the issues that we are facing. Additionally, AT has raised this issue with the Minister of Transport and asked them to place it on their workflow. To date, AT has not received an update on when this issue will be addressed.

The core provisions that establish signage is required are:

- Section 22AB(1)(m) Land Transport Act 1998 = “subject to the erection of the prescribed signs”; and
- Land Transport Rule: Traffic Control Devices 2004 r2.1(1)(a)(i) & (ii); and r4.2(2)(a) & (b)
We trust the above has clarified the issue raised, however if you have any further queries, please contact Auckland Transport at electedmember@at.govt.nz or on 09 355 3553.

Yours sincerely

John Strawbridge
Group Manager, Parking Services & Compliance

cc: Albert-Eden Local Board Chair Peter Haynes
    Mr Shane Ellison
Health and Hygiene Bylaw 2013

2018 Review

Regulatory Committee Meeting

12 April 2018
Purpose of report

Enable the Regulatory Committee to:

1. Endorse the findings of the bylaw review
2. Approve a report back on the options
Health and Hygiene Bylaw review process

April
- Research and engagement

May
- Findings Report
- Options Report
- Draft bylaw adopted by Regulatory Committee
- Full public consultation
- Deliberations
- Decision by Governing Body

Attachment A
Item 10
Health and Hygiene Bylaw framework

- **Definitions of Service Types**
  - Services that pierce the skin
  - Services that risk breaking the skin
  - Services that risk burning the skin
  - Other specified services

- **Minimum Standards**
  Identifies service types that must comply with minimum standards

- **Code of Practice**
  Enables council to make a code of practice that contains minimum standards

- **Licensing**
  Identifies service types that must be licensed

- **Exemptions**
  Identifies service providers that are exempt from the bylaw

- **Health and Hygiene Code of Practice 2013**
  Minimum Standards for specific services
<table>
<thead>
<tr>
<th>Service type</th>
<th>Exemptions</th>
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<tbody>
<tr>
<td></td>
<td>• Health practitioners</td>
</tr>
<tr>
<td></td>
<td>• Traditional tā moko</td>
</tr>
<tr>
<td></td>
<td>• Health practitioners</td>
</tr>
<tr>
<td></td>
<td>• Health practitioners</td>
</tr>
<tr>
<td></td>
<td>• Health practitioners</td>
</tr>
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</table>

| Minimum Standards     | √                                                                          |
|                       | √                                                                          |
|                       | √                                                                          |
|                       | √                                                                          |
|                       | √                                                                          |

| Licensing             | √                                                                          |
|                       | √                                                                          |
|                       | √                                                                          |
|                       | √                                                                          |
|                       | ×                                                                          |

<table>
<thead>
<tr>
<th>Other specified services</th>
<th>e.g. public pools</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk burning the skin</td>
<td>e.g. laser treatments</td>
</tr>
<tr>
<td>Risk breaking the skin</td>
<td>e.g. manicure</td>
</tr>
<tr>
<td>Pierce the skin</td>
<td>e.g. tattoo</td>
</tr>
</tbody>
</table>

Bylaw framework and regulation of services
Key Findings
Services that contact the body continue to pose health risks

- Health risks include:
  - transfer of viral and bacterial infections (e.g. hepatitis B and C, staphylococcus)
  - injury to the body (e.g. damage to eyesight, soft tissue injury)
  - Illness (e.g. cancer)

- Auckland Council received estimated 320 complaints 2014-2017
New services are emerging at a fast pace

- New services include:
  - eyeball tattoo
  - platelet-rich plasma injections
  - new laser treatments

- Operator and employee numbers are increasing
  - 19% increase in premises
  - 17% increase in employees
The Bylaw has effectively minimised most health risks

- ACC injuries decreased or not increased as quickly in Auckland
- Better compliance with sun-bed standards in Auckland
- 95% licensed premises comply with Code on inspection

- BUT...
  - manicure/pedicure services still have problems
  - not all services appropriately regulated
  - unlicensed operators
Stakeholders agree the bylaw is necessary

- Strong consensus that bylaw is necessary

"The Bylaw provides the only spotlight on those industries"

- Stakeholders support current licensing and minimum standards requirements for service types
But stakeholders consider the bylaw could be improved...

Suggestions include:

• amend service type definitions to include new services
• clarify tā moko exemption
• change definitions to more clearly recognise traditional Pacific tattoo
• require display health licences
• update Code more regularly
# Health risk matrix

## Likelihood

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<th>Consequence</th>
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<th>2</th>
<th>3</th>
<th>4</th>
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<tr>
<td>Negligible</td>
<td>Threading</td>
<td></td>
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<tr>
<td>Minor</td>
<td>Massage</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Moderate</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Major</td>
<td></td>
<td>Pulsed light/Laser</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Catastrophic</td>
<td></td>
<td></td>
<td>Body Piercing</td>
<td>Other body modification</td>
<td>Sun-beds</td>
</tr>
</tbody>
</table>

## Consequences

- **Negligible**: Threading
- **Minor**: Massage
- **Moderate**: Sleep pods, Exfoliation, Swimming pools, Colon hydrotherapy
- **Major**: Pulsed light/Laser, Eyeball tattoo
- **Catastrophic**: Body Piercing, Other body modification, Scanning, Tattoo, Sun-beds

### Legend
- Low Risk
- Moderate Risk
- High Risk
- Very High Risk
Body piercing

- Licensed and subject to minimum standards
- Health risks: transfer of blood-borne infections
- Compliance by licensed operators is good
- Number of piercing injuries has increased by 12% in New Zealand and 4% in Auckland since 2012
- Stakeholders concerned about youth being pierced by unlicensed operators
- Stakeholders consider body piercing services should be licensed and subject to minimum standards
Scarification and body modification

- Licensed and general minimum standards
- Health risks: blood borne viral and bacterial infection and permanent injury
- Stakeholders agree should be licensed and subject to minimum standards
- Minimum standards do not effectively minimise all risks (e.g. unintended permanent injury)
Tattoo

- Licensed and subject to minimum standards
- Health risks: blood-borne infections, allergic reactions and long-term ink toxicity
- Eyeball tattoo may result in blindness
- Bylaw effective at minimising risk from conventional tattoo but not eyeball tattoo
- Stakeholders consider eyeball tattoo should be prohibited
- Problems: unlicensed operators tattooing young people and the use of poor quality and toxic inks
Ta Moko

- Exemption for "traditional and non-commercial ta moko undertaken by artists on, or under the authority of, a marae in the Auckland region under tikanga-maori"
- Health risks are the same as tattoo
- Marae committees consider the exemption is working well and there is no evidence of increased health problems
- Most stakeholders consider exemption helps promote ta moko but the wording could be improved
- Some stakeholders consider that ta moko artists should comply with minimum standards
Traditional Pacific Tattoo

- Licensed and comply with minimum standards
- Health risks: blood-borne viral infections and recorded cases of life-threatening bacterial infection
- Increasing in popularity among young people
- Stakeholders consider the Bylaw needs to acknowledge the cultural significance of traditional Pacific tattoo
- Tufuga and other stakeholders consider the practice should be licensed and comply with minimum standards
- Some would like to see treated the same as tā moko
Sunbeds

- Licensed and comply with minimum standards
- Health risks: melanoma and other skin cancers
- Young people, people with pale skin and freckles and people who use sunbeds frequently are at higher risk
- Research has found compliance with the NZ sunbed standard (voluntary) is better in Auckland because of the bylaw
- Some stakeholders would prefer sunbeds were banned, as they are in Australia and Brazil
Further information from Rebecca Maud in support of her objection against a menacing dog classification on her dog Jack.

<table>
<thead>
<tr>
<th>Title</th>
<th>page</th>
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<tbody>
<tr>
<td>Report from Rebecca Maud on Jack</td>
<td>2 - 13</td>
</tr>
<tr>
<td>Emails between Auckland Councils Enforcement Legal Services and Rebecca Maud - March 2018 to April 2018</td>
<td>14 - 26</td>
</tr>
<tr>
<td>DOGiLife NZ – assessment report</td>
<td>27 - 29</td>
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</table>

Letters of supports –

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| Sharelle Sheffield | 32 |
| Jack Pecsy  | 33 |
| Jane Lewis  | 34 |
| Anne and Neil Dewar  | 35 |
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| East Auckland Dog Obedience Club | 39 |
JACK MAUD

Date Of Incident: 3rd April 2017
Complaint Number: 1876421
Service Order Number: 1752995
To whom it may concern
We are here today to discuss the issue of a vet bill which I feel I am not responsible for.

In December of 2016 the complainant’s dog was growled at by my dog for getting in his face. At this stage both dogs were on leads and we both pulled our dogs away. I asked her to keep her distance in the future and she agreed.

On Friday March 3rd I arrived at Waikaraka park in Onehunga for canine agility training with Auckland canine agility club. At this time I was a member.

I arrived around 615pm and tied my dog Jack to a stake against a stone wall. I began setting up equipment no more than 4 metres from him.

Around 625 the complainant arrived with her Weimaraner. She was walking with another member and was engaged in conversation. She entered from the carpark and turned left at the stone wall as this was a quicker route to her class.

Her dog was on a lead, however, upon seeing Jack tied up her dog crossed in front of the two people and stood over the top of Jack causing him to immediately feel threatened, due to being tied up against a wall and as a result he defended himself due to the nature of the situation in which he found himself.

I am a qualified and practicing dog trainer with knowledge of the welfare act and laws around these situations. I didn’t need the hostility so I willingly left the club and have not gone back.

The Complainant obtained my contact information from the club secretary. However, the information could just as easily have been obtained by looking at the side of my car which has my name, email addresses and phone number on the side of it.

The investigation took a week to reach a conclusion. Jack was classified as menacing and ordered to wear a muzzle in public.

I immediately contested this ruling.
It is because of my qualifications and education around dog training and the Dog Control Act 1996 and the Animal Welfare Act 1999 I felt confident enough when I told the complainant that I was not responsible for her vet bill as my dog was under control according to the Dog Control Act 1996.

The initial correspondence from Auckland Council Animal Management dated the 02 May 2017 (received on the 6th May 2017) states:

"After due consideration of all the relevant facts, we have decided to issue an infringement notice against you for failing to keep your dog under control. This offence is punishable under the Dog Control Act 1996."

However, According to the Dog Control Act 1996:

1. The owner of any dog shall keep that dog under control at all times

2. Without limiting the generality of subsection (1), a dog shall, for the purposes of this act, be deemed to be not under control
   a. If it is found at large on any land or premises other than a public place or a private way, without the consent (express or implied) of the occupier or person in charge of that land or premises. Or
   b. If it is found at large in any public place or in any private way in contravention of any regulation or law

Jack was NEVER “at large”. The incident occurred at Waikaraka Park. The council ground the agility club rents for training on a Friday evening. We therefore had permission to be on the grounds as we were full paying members at the time of the incident,

The Dog Control Act 1996 states that a dog is deemed to be NOT under control if it is at large. As Jack was on a leash and tied up, in the eyes of the law he was NOT “at large” and therefore under control.
Animal Law in New Zealand by Neil Wells offered some very helpful insight into the legalities surrounding Jacks sentence

**Controlling your dog in public places**

“Keeping your dog under control means:

- ensuring your dog is not causing a nuisance or danger
- having your dog under continuous surveillance
- being able to get an immediate and desired response from the dog by use of a leash, voice commands, hand signals, whistles or other effective means.”

- Jack was tied up less than 4 metres from where I was setting up equipment. On leash that was on a pole that was driven into the ground. Club rules state that dogs must be tied up when not running. I am not entirely certain how I was supposed to anticipate Indigo and her owner’s arrival or that they would walk through a pack of tied up dogs.

- As Jack was only 4 metres away from me, I was constantly watching him. He cries when he is tied up away from me so I always tell him what a good boy he is and approach him to give regular pats. I only lost sight of him when the Weimaraner was walked past him on a very loose lead.

- I was just turning around to talk to Jack and I saw Indigo and cross in front of her mum and approach Jack. Jack began to growl, Indigo got excited. This made Jack more scared and that’s when I gave very firm very audible voice commands.

  I had assumed Indigo’s owner would have taken firmer control of the lead once she saw Jack tied up. She knew the two dogs did not tolerate one another so I would have thought she would have taken firmer control when walking past Jack.
“Failing to Keep a Dog Under Control”

(Animal Law in NZ by Neil Wells)

The owner of a dog commits an offence if he or she fails to keep that dog under control.

A dog is deemed to be not under control if it is found at large in a public area or private way in contravention of any regulation or bylaw.

There is no specific offence or penalty if a dog is deemed to be not under control purely by breach of a by-law.

According to council bylaws Jack being tied up constitutes an under-control dog.
I also learnt what an attack really was.

**What is an “Attack”?**

*(Animal Law in NZ by Neil Wells)*

The term “attack” is not defined by the Dog Control Act 1996 but the term has been interpreted by the court. The word attack is not otherwise defined in the Act but clearly means in the ordinary sense of the word to act against with violence.

**The shorter Oxford dictionary defines “attack” -“to set upon with hostile action”**

The statute still upholds the maximum “every dog is allowed its first bite.” It is not until the bite or bite are accompanied by a hostile act that it becomes an attack.

*Even when there is a dog attack, that in itself may not be an offence if the dog was under control.* The high court considered this in *Hamilton City Council v Fairweather.* On appeal to the High Court, Baragwanath J held that “an owner is automatically liable for a dog attack if the dog is not under control.”

*If the dog attacks when it is under control, No offence is committed.*

- Jack never set upon anything with hostile action as he was tied up and under control.
Attachment A

Item 17

TUE AT 3:05 AM

good Morning,
My dog was classified as menacing recently. A sentence he should not have to live with. I am fighting the case but I need your advice to do so. You see last year a Weimaraner named Indigo (just over a year old) joined our agility club. Indigo and my dog Jack (6 year old Jack Russell foxy mix) had words as Indigo was a little too excitable for Jack as Jack has intervertebral disc disease from being beaten by disease from being beaten by his previous owner, so Jack had a growl that said “I don’t want to play” I asked that she keep Indigo away from Jack and she agreed that it was probably the best idea.

Fast forward to the 3rd of March this year. Jack and I are at agility at about 6:15 as I have to help get things set up for training. Jack is tied up about 2 metres behind me. I turn around just as Indigo and her owner are walking through the pack of 3 or 4 dogs that are all tied up.
Jack included.
Indigo was being walked with another member and his dog and when she saw Jack she crossed over the two of them, stood over the top of Jack and started wriggling and jumping excitedly.
Being tied up Jack felt threatened and felt his nose was not to escape to so he started growling and backing up but his nail caught the weimaraner under the front shoulder and split the skin.
She proceeded to train Indigo for an hour on the injury Indigo's owner insisted I pay the vet bill but I told her I

the vet bill but I told her I firmly believed I was in my rights not to as my dog felt threatened and that he could not get away from the situation that was making him so uncomfortable.
the president of the club asked Jack and I to leave the club as she was not aware how vicious Jack was.
Jack has been placed on anti anxiety medications and wears an Adaptil collar.
He was placed on these in the simple hopes that, along with positive reinforcement training, I can help him learn that puppies, young dogs,
that puppies, young dogs, french bull dogs and bull dogs are ok. At agility comps and training he is placed in a crate before and after his runs and wears 85 dollars worth of Drexil “NO DOGS” harness, collar and lead.

I think we also need to note that Jack was viciously attacked by a pit bull last year too. The pit bull(sue) was brought down to the park at peak dog time (4pm at madills) along with the families golden lab Bailey (Jacks best mate)

I knew the pit bull was dog aggressive. So did the family but sue came down to the park anyway. I kept Jack as far away as I could but curiosity got the better of him and he went to say hi to the new dog. I screamed at him as he was on his way and he turned around and came back to me and it was at this point he was jumped by sue who would not get off him. That was an extremely terrifying situation for me and Jack and I don't think this has helped his behaviours in any way. The weimaraner standing over the top of him I assume must
the top of him I assume must have felt like a flash back to the pit bull attack.

The council also inform me that I failed to keep Jack under control and this didn't help his case. I have since emailed them (I can forward this email to you if you like) asking if the definition of under control has been legally changed in the last few years as I have always believed that a tied up dog is under control.

I just need to know if, with all this information, you felt Jack acted appropriately.

I thank you in advance for your help.

It means the world to me and Jack

Rebecca Maud

TUE AT 8:29 PM

Even so Jack's reaction seems appropriate and reasonable from what you describe he will likely still be held responsible if he injured another dog, even if the other dog prompted the reaction.

I get that but have the council gone too far by classifying Jack as menacing?
Remembering that every other incident reported to the council was deemed baseless or that jack reacted appropriately to the situation.

TUE AT 8:55 PM

From what you describe it seems over the top, yes.

TUE AT 9:59 PM

Would you be ok with me including this conversation in my letter that I’m putting together to fight these charges?
Councils’ Verdict:

Christo Van Der Merwe is the team leader of Auckland City Animal Managements’ Central-East Division.

He gave me his cell phone number after Jack was wrongfully accused on a couple of occasions, and with me not being satisfied with those verdicts’, I asked to speak to the head of the department. This is when Christo contacted me and this is when Christo and I decided that we would have a conversation, dog trainer to dog trainer, if I ever found myself in a spot of trouble with Jack so we could both come to an outcome we were both happy with.

I rang Christo on the 4th March. Saturday Morning. The day after the Weimaraner incident happened.

On the 22nd May 2017, I received an email from Christo Van Der Merwe, Head of Auckland City Animal Management.

This E-mail accepted my objection to Jacks’ menacing classification and it also informed me that the accompanying infringement notice would be cancelled.
Rebecca Maud

---------- Forwarded message ----------
From: Rebecca Maud <rebeccamaud@gmail.com>
Date: 6 April 2018 at 07:13
Subject: Re: Rebecca maud
To: Vivian-Lee Rewi <vivian-lee.rewi@aucklandcouncil.govt.nz>

one minute you tell me uno report was made at the time of the incident:
"Good morning Rebecca,

I can confirm to you that there was no statement made by the Animal Control Officer at the time of the incident. Notes were recorded in an internal computer system at the time of the incident. Subsequently Legal services received the Animal Management file and requested that the Animal Control Officer completed a formal statement."

And now you are telling me there was......
"The report on the computer is typed when the AMO returns to the office after attending a call out."

which one is it?

Rebecca Maud

On 6 April 2018 at 07:02, Vivian-Lee Rewi <vivian-lee.rewi@aucklandcouncil.govt.nz> wrote:

Good morning Rebecca,

No it is not your statement that the Animal Control Officer (AMO) went with. The report on the computer is typed when the AMO returns to the office after attending a call out. As I told you yesterday, Animal Management have confirmed that they will disclose you the information again. Further to this I will personally email you both the statement and GeoOp Report when I get a chance today. The report should help you to understand that the AMO’s notes were detailed enough to be able to write the statement. Additionally if you look at the final page of the statement the AMO must sign the statement as true and correct.

Thank you
Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement
Legal Services
Fax 09 890 7723
Auckland Council, Level 11, 135 Albert Street, Auckland
Visit our website: www.aucklandcouncil.govt.nz

From: Rebecca Maud [mailto:…………]
Sent: Thursday, 5 April 2018 157 p.m.
To: Vivian-Lee Rewi
Subject: Re: Rebecca maud

2 points
1-is it my statement they went with?
2-as it has been almost 6 months since the incident how are you possibly able to trust Gina's report to be accurate?
She must have dealt with almost hundreds of cases since then.

On Thu, 5 Apr 2018, 1:18 PM Rebecca Maud, [mailto:…………] wrote:

2 points
1-is it my statement they went with?
2-as it has been almost 6 months since the incident how are you possibly able to trust Gina's report to be accurate?
She must have dealt with almost hundreds of cases since then.

On Thu, 5 Apr 2018, 12:31 PM Vivian-Lee Rewi, <vivian-lee.rewi@aucklandcouncil.govt.nz> wrote:

Hi Rebecca,

On 29 March 2018 the following statement from Animal Management was sent to you:
“The Team leader may, from time to time, look at a file and deem the statements on the file to be sufficient/adequate to prove the offence which may be the reason why the file was sent without Gina’s statement. Legal insisted on the statement from the second AMO too, the AMO had no difficulty in doing her statement due to detailed notes in GeOp – this is not uncommon.

No recordings were used.”

I further advised in that email that you can contact Animal Management directly if you have further questions surrounding their procedure. If you require further clarification on the Animal Management procedure please direct the question to denise.pieters@aucklandcouncil.govt.nz

I have also contacted Animal Management and they will send you full disclosure of your file again.

Thank you

Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement
Legal Services

Fax 09 890 7723
Auckland Council, Level 11, 135 Albert Street, Auckland
Visit our website: www.aucklandcouncil.govt.nz

From: Rebecca Maud [mailto:____________________]
Sent: Thursday, 5 April 2018 9:15 a.m.
To: Vivian-Lee Rewi
Subject: Re: Rebecca maud

You’re dodging the question

On Thu, 5 Apr 2018, 9:06 AM Vivian-Lee Rewi, <vivian-lee.rewi@aucklandcouncil.govt.nz> wrote:

Hi Rebecca,
Please refer to the previous emails where the procedure has been explained to you.

Thank you

Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement
Legal Services
Fax 09 890 7723
Auckland Council, Level 11, 135 Albert Street,
Auckland
Visit our website: www.aucklandcouncil.govt.nz

From: Rebecca Maud [mailto:]
Sent: Thursday, 5 April 2018 9:02 a.m.
To: Vivian-Lee Rewi
Subject: Re: Rebecca maud

Is it not animal management procedure to file a report at the time of the incident?

On Thu, 5 Apr 2018, 8:33 AM Vivian-Lee Rewi, <vivian-
lee.rewi@aucklandcouncil.govt.nz> wrote:

Hi Rebecca,

Yes, once I received the file I requested a formal statement from the Animal Control Officer.

Thank you

Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement
Legal Services
Fax 09 890 7723
Auckland Council, Level 11, 135 Albert Street,
Auckland
Visit our website: www.aucklandcouncil.govt.nz

From: Rebecca Maud [mailto: ]
Sent: Thursday, 5 April 2018 8:29 a.m.
To: Vivian-Lee Rewi
Subject: Re: Rebecca maud

So you requested a formal statement be made almost 6 months after the incident is that what you’re telling me?

On Thu, 5 Apr 2018, 8:25 AM Vivian-Lee Rewi, <vivian-lee.rewi@aucklandcouncil.govt.nz> wrote:

Good morning Rebecca,

I can confirm to you that there was no statement made by the Animal Control Officer at the time of the incident. Notes were recorded in an internal computer system at the time of the incident. Subsequently Legal services received the Animal Management file and requested that the Animal Control Officer completed a formal statement.

Animal Management have confirmed that there were not two statements and that you have been disclosed the entire file including the Geoop report. I will ask Animal Management to resend both documents through to you.

Thank you

Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement
Legal Services

18
There's no double checking

Re read your email

You made the implication that she had filed her report at the time of the incident

And then filed another one when you requested it.

On Thu, 29 Mar 2018, 3:10 PM Vivian-Lee Rewi, <vivian-lee.rewil@aucklandcouncil.govt.nz> wrote:

Hi Rebecca,

You have been disclosed all of the statements and the total Auckland Council file. I will also forward on your request to Animal management for them to double check their records for you.

Thank you

Vivian

Sent from my Samsung Galaxy smartphone.

-------- Original message --------

From: Rebecca Maud <rebeccamaud@gmail.com>
Date: 29/03/2018 2:55 pm (GMT+12:00)

To: Vivian-Lee Rewi <vivian-lee.rewi@aucklandcouncil.govt.nz>

Subject: Re: Rebecca maud

I’m the one you go to court here to get my dogs muzzle removed

Why do I not get access to both reports?

According to that statement you received it appears there is more than one statement

So I suggest it be found and sent to me

On Thu, 29 Mar 2018, 2:11 PM Vivian-Lee Rewi, <vivian-lee.rewi@aucklandcouncil.govt.nz> wrote:

Hi Rebecca,

I have sought answers from Animal Management about their procedure and this was the response:

“The Team leader may, from time to time, look at a file and deem the statements on the file to be sufficient/adequate to proof the offence which may be the reason why the file was sent without Gina’s statement. Legal insisted on the statement from the second AMO too, the AMO had no difficulty in doing her statement due to detailed notes in GeoP – this is not uncommon.

No recordings were used.”

As I have previously advised, you can contact Animal Management directly to clarify their procedure. From a legal aspect, there are no legal requirements for the statement to be recorded at the time. The only reason for the statement was because I requested it to assist me in my assessment of the file. I can confirm that there was no falsifying of documents.

Additionally I have been unable to find the contact details you requested.
Please inform me if you have been unable to find them yourself please let me know I will attempt to contact the call centre staff directly and find some further contacts.

Please let me know if you have any further questions.

Thank you

Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement
Legal Services
1/79 | Fax 09 990 7723
Auckland Council, Level 11, 135 Albert Street,
Auckland
Visit our website: www.aucklandcouncil.govt.nz

From: Rebecca Maud [mailto:rebecca.maud@aucklandcouncil.govt.nz]
Sent: Friday, 16 March 2018 3:43 pm
To: Vivian-Lee Rewi
Subject: Re: Rebecca maud

You're "not sure why it was not done on the date"... of the incident

Here’s my issue with that

She has had almost six months to come up with a report.

A report that is less than accurate

Are council officers not supposed to file their reports with at least 24 to 48 hours of the incident?

You're the council legal staff here.

You know the procedures yet for some reason you’re failing to disclose any of this to me

I am angry and disgusted

I want to talk to the CEO
I request to be provided with their contact information
Failure to provide me with this will mean I will have to get my own lawyers involved and go down the path of suing the council for falsifying documentation.

On Fri, 16 Mar 2018, 2:38 PM Vivian-Lee Rewi, <vivian-lee.rewi@aucklandcouncil.govt.nz> wrote:

Hi Rebecca,

I am not sure why it was not done one the date. I did not receive this file until this year and requested a formal statement. That's why she did one in February.

Thank you

Vivian.

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: Rebecca Maud [REDACTED] >
Date: 16/03/2018 2:32 pm (GMT+12:00)
To: Vivian-Lee Rewi <vivian-lee.rewi@aucklandcouncil.govt.nz>
Subject: Re: Rebecca maud

Why did she not record it back in September when the incident happened?

On Fri, 16 Mar 2018, 1:44 PM Vivian-Lee Rewi, <vivian-lee.rewi@aucklandcouncil.govt.nz> wrote:
Hi Rebecca,

It is a write up in the Auckland Council system once she reaches the Auckland Council base of what happened while she was out – a report into the Auckland Council system. It does not refer to an electronic recording of you at the time that she spoke to you.

Thank you

Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement Legal Services
Fax 09 890 7723
Auckland Council, Level 11, 135 Albert Street, Auckland
Visit our website: www.aucklandcouncil.govt.nz

From: Rebecca Maud [mailto:____________________]
Sent: Friday, 16 March 2018 1:42 p.m.
To: Vivian-Lee Rewi
Subject: Re: Rebecca maud

Electronic reporting would suggest she recorded our conversation without my permission

This is a direct breach of the privacy act

On Fri, 16 Mar 2018, 1:31 PM Vivian-Lee Rewi, <vivian-lee.rewi@aucklandcouncil.govt.nz> wrote:

Hi Rebecca,
Gina initially did not have a statement in the file, so during my check on the file I requested that she gave me a formal statement to assist in my assessment of the file.

There are no rules that regulate that 5 months after the incident is invalid. I would suggest that she used electronic reports and potentially a note book to assist in her recollection.

Thank you

Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement
Legal Services
Fax 09 890 7723
Auckland Council, Level 11, 135 Albert Street,
Auckland
Visit our website: www.aucklandcouncil.govt.nz

From: Rebecca Maud [mailto:[redacted]]
Sent: Friday, 16 March 2018 11:55 a.m.
To: Vivian-Lee Rewi
Subject: Re: Rebecca maud

What about the fact that it wasn’t filed until 5 months after the incident?

On Fri, 16 Mar 2018, 11:45 AM Vivian-Lee Rewi, <vivian
lee.rewi@aucklandcouncil.govt.nz> wrote:

Hi Rebecca,

Thank you for your email.
I have just left a voice message with you.

I have read the statement and can confirm that I have seen this statement. This is a formal statement by the Animal Control Officer based on their investigation. I was unsure if she had provided your verbal statement as an official statement made by you. As I can see she has not it makes more sense to me now. She has declared the information as true and correct and can present it at the hearings committee. You can dispute it at the hearing and the committee can make a decision based on what is heard at the hearing.

Just for clarification, in a hearing committee there are no rules of evidence that apply and the Evidence Act does not apply.

More than happy to discuss it further with you.

Thank you

Kind Regards,

Vivian-Lee Rewi | Solicitor - Enforcement
Legal Services
[Redacted]
Fax 09 890 7723
Auckland Council, Level 11, 135 Albert Street, Auckland
Visit our website: www.aucklandcouncil.govt.nz

From: Rebecca Maud [mailto:[redacted]]
Sent: Friday, 16 March 2018 11:03 a.m.
To: Vivian-Lee Rewi
Subject: Rebecca maud
CAUTION: This email message and any attachments contain information that may be confidential and may be LEGALLY PRIVILEGED. If you are not the intended recipient, any use, disclosure or copying of this message or attachments is strictly prohibited. If you have received this email message in error please notify us immediately and erase all copies of the message and attachments. We do not accept responsibility for any viruses or similar carried with our email, or any effects our email may have on the recipient computer system or network. Any views expressed in this email may be those of the individual sender and may not necessarily reflect the views of Council.
Jack – Rebecca Maud 7th March 2018

I met with Rebecca and Jack at 54a Towai Road, St Heliers, Auckland on the 7th of March 201. Jack is a male Jack Russell. He is approx. 7 years old.

Considerations
Jack has been diagnosed with Invertebral Disc Disease (vet records to confirm) which sometimes cause him pain. This is managed with pain relief when required.

Due to the neglect Jack received as a younger dog he missed out on key socialization periods (pre-adoption with Rebecca).

There are prior Animal Control reports where Jack had pinned other dogs. He was issued a menacing dog order in May 2017 which was rescinded the same month. It was then re-issued after further incident.

Jack was assessed at Complete Canine Care earlier this morning.

Analysis
Jack is a loved member of his family, he has competed in agility competitions and has been trained to a good level in general obedience. He has other dog friends he knows and plays well with (refer photos).

He has great food drive therefore has good potential to learn.

Jack was assessed at Complete Canine Care earlier this morning. I have discussed in detail with staff. He was comfortable meeting older calmer dogs and would sniff and move back to Rebecca. He wasn’t comfortable with younger, playful dogs. This can be common in older dogs and dogs with physiological issues which can cause pain. Younger, fast moving dogs can instill worry due to fear of pain. It may be that Jack has associated his pain with younger dogs approaching and sniffing him. Growling is an important warning signal and if this signal is ignored (as is typical with younger dogs/puppies who are still learning canine body language), behavior can then escalate.

Page 1
In saying that, it is also not ideal that Jack and other dogs are put into a situation where events may escalate.

Since the most recent event Rebecca has made the following changes:

- Abided by the menacing order and muzzles Jack whenever he is out of the home environment.
- Implemented training techniques when walking past dogs
- Contacted daycare professionals for assessment
- Engaged a canine behavioural and training consultant for assessment

I would recommend the following:

- Jack is not to be taken to dog parks until further assessment
- Jack is continued to be muzzled in areas where there are unknown dogs
- Jack is unmuzzled when on leash and on leash during street walks
- Jack is unmuzzled when on play dates with known dogs in private areas
- Jack is unmuzzled to play ball in areas where there are no other dogs (not dog parks or busy public places)
- Jack is unmuzzled in the show ring however muzzled until he has entered and is the only dog in the show ring
- A behaviour modification plan is committed to for three months to desensitize Jack to younger playful dogs
- His behavior is reassessed after three months by a qualified Behaviour Consultant and muzzle order is also reassessed by Council at that point.

I believe Rebecca is upset by this turn of events. She is willing to do what is required to help Jack adjust to being comfortable around all other dogs.

In summary I feel there is a lack of socialisation in Jack’s early years. I feel there may be some pain association around young playful dogs from his spinal disease. I believe he is overwhelmed by these types of dogs and is communicating the best he can to ask for space. With committed and consistent training, desensitisation, environmental management, regular exercise and stimulation he may have the potential to change this association.
Training and Behaviour Recommendations
- Desensitisation – puppies and playful dogs
- Progressively implementing self-coping strategies when faced with dogs of these types
- Owner upskilling to recognise Jacks subtle signals so that they can react appropriately
- Assessment and upskilling of response and recall cues

Environmental recommendations
- No access to dog parks
- Jack is continued to be muzzled in areas where there are unknown dogs

Please note this is subject to change if reactive behavior is seen. My recommendations are subject to change based on behaviour and environmental change. The client realizes and releases Sacha Berger and any assistants from any and all liability directly or indirectly for injuries to themselves, their dog or damage to any other property of theirs or others which arises in any way out of services provided by Sacha Berger.

The client understands that there are certain risks involved in dog training and despite precautionary care taken, Sacha Berger and my assistants cannot take any responsibility for dog fights, dog bites and/or the transmission of disease.

The client has agreed to the above conditions and Terms and Conditions as stated on the consultation form (and outlined below) which will apply to all services provided by Sacha Berger to me.

“By accepting and presenting this document, the client releases Sacha Berger and any assistants from any and all liability directly or indirectly for injuries to themselves, their dog or damage to any other property of theirs or others which arises in any way out of services provided by Sacha Berger.

Agreement to the above conditions and Terms and Conditions applies to all services provided by Sacha Berger to ‘client’.”

3 |Page

p: 021 061 8480 e: sacha@doglife.co.nz
w: www.doglife.co.nz
28 February 2018

To The Regulatory Committee
Menacing Dogs
Auckland Council

Re: Objection against a menacing dog classification. Rebecca Maud and Jack

I write in support of Rebecca Maud’s objection to a menacing dog classification for her dog Jack. I have known Rebecca for over 5 years and have always found her to be a very responsible dog minder and owner. She has a clear love of animals and treats them with both love and good discipline.

I have a Griffin and a chocolate Labrador. Rebecca has looked after my dogs on many occasions for over a week when we have gone on holiday. She has also taken them on many casual day trips. Jack has always been included when she has looked after my dogs and the 3 dogs have got on extremely well. I have never noticed any aggression from Jack towards my dogs, nor from my dogs towards Jack. My dogs are always extremely excited to see Rebecca and Jack, so there is no menacing issue whatsoever there.

I have also seen Rebecca and Jack many times down at Madills farm or at a beach in the Bays, and she has always had Jack under tight control. I have never once seen Jack be aggressive towards another dog. Rebecca often socialises Jack with other dogs, and prior to him having the muzzle on, I never witnessed an instance of him being aggressive towards another dog.

I am very surprised that Jack has been termed a “menacing dog”. I can only think that any instance of aggression that has been reported over Jack, is either a fabrication of someone wanting a personal attack on Rebecca or alternatively, Jack’s reaction to a dog that has demonstrated poor behavior towards him first.

I strongly support the objection to Jack being classified a menacing dog.

Yours sincerely

Joanna Hill
Allan Rohde

09-Jan-2018

To Whom It May Concern

JACK – REBECCA MAUD

I was asked by Rebecca Maud to write some comments on the behaviour of her dog Jack while he was attending agility classes. Firstly, I am an agility instructor at the Counties Dog Training Club and at the end of April 2017 Rebecca with Jack joined the beginner’s agility class that I instruct. During the period they have been in my class I have had no concerns about Jack’s behaviour. Rebecca brings a crate to training each night and Jack is mostly confined to that crate other than when he undertakes the set exercise. I feel Rebecca takes a responsible approach in keeping Jack under control and out of harm’s way.

A few months back Rebecca mentioned to me that Jack had had a Menacing Dog Order applied to him. From the agility class point of view, I was ok with Jack continuing on with his training as I had not experienced any situations with him which was of concern to me. However, in light of the recent events at Hibiscus Coast and at Cambridge which has put the spotlight on Jack’s classification, the Counties Dog Training Club is having to reconsider its position on Jack attending agility classes. The indication at this stage is that Jack will not be able to attend classes while the menacing dog order is in place.

In closing, I have to add that the opinions above are my own opinions, and not those of the Counties Dog Training Club. They are based on my dealings with Rebecca and Jack over the past eight months while they were attending agility classes I instruct. I would be happy to discuss any of the above further if that was required.

Regards

Allan Rohde
Agility Instructor
To whom it may concern:

I have known Jack for almost 4 years and during this time have never seen him behaving aggressively and certainly not threatening other dogs or people. Very occasionally he will growl at a puppy jumping in his face but does not show his teeth and certainly doesn’t bite. A number of senior dogs growl at puppies as a warning to them to settle down, so I couldn’t judge this as aggression.

I walk down at Madills Farm morning and evening with my dog and so know a lot of the other walkers and I can assure you no one has mentioned Jack misbehaving and I am sure it would be brought to my attention if he had as we are quite a close community with a lot of interaction with one another and our dogs.

Sharelle Sheffield
so about Jack (the dog…) I've found him playful and responsive. Plays well with bigger dogs (my one is mixed breed size of a Labrador). I've never seen anything unusual about his behaviour that would be different to any other dog. I know Rebecca has rehomed him and looks after him well.

Regards,
Jack Pecsy
To whom it may concern.

I have been walking my dog regularly twice a day at kohimarama beach (in the winter months) and Madills Farm with Jack and his owner Rebecca Maud for well over a year. Jack has never displayed any aggression towards my dog, or any other dogs. Jack is very sociable, and enjoys his walks, and I have no concerns in continuing walking with Jack and Rebecca.

Your sincerely, Jane Hill
To whom it may concern,
My name is Anne Dewar and I'm a qualified veterinary nurse and have owned and trained dogs for over 40 years. I walk my Yorkshire Terrier in the Madills Farm park every day and see Rebecca with her dog, Jack several times a week. Jack can be a bit boisterous and playful but Rebecca remains in control as he responds to her commands almost instantly. On rare occasions I have seen Jack growl at another dog but I have never seen him actually attack or even "mouthe" any living thing. Rebecca has always struck me as a very responsible and loving dog owner and quite frankly, Jack is a lively, obedient dog much liked by myself and my little Yorkie.
To even suggest that he could be a danger to other animals in no way corresponds to my experience of Jack over the last 3 years.
Yours sincerely,
Anne Dewar
5 March 2018

To whom it may concern

My name is Nichole Symons and I have a 5 year old miniature schnauzer called Poppy.

Rebecca and Jack have been looking after Poppy since she was a puppy. Sometimes Poppy will spend the day with Rebecca (and Jack) and on many occasions has stayed for more than a week. We also regularly meet up for walks and a bit of dog play time.

I have only ever experienced Jack as a well mannered, calm and friendly dog, both to humans and other dogs. He has been wonderful with Poppy and they have a lot of fun together. Rebecca adores Jack and I would never hesitate to hand over my dog into their care.

I'm more than happy to provide further comment if required.

Yours sincerely

Nichole Symons
To Whom It May Concern

Jack Maud

We have known young Jack, the Jack Russell/Fox Terrier cross for well over a year now. We used to see him almost everyday either down at Kohi Beach or Madills Farm as we walked our precious Fox Terrier Tito at these places as well. Jack and Tito used to play together. Our Tito sadly passed away just a few months ago.

In all this time that we have known Jack he has never shown any aggression or attacked any dog or person. He is a very affectionate, playful dog and loves playing with his tennis ball. He is very focused on retrieving it. He is full of energy and socialised very well with the many dogs you would see down at Kohi Beach and Madills Farm.

Yours Sincerely

Money and Lawrence Ponniah
Bridget MacDougall

To Whom It May Concern,

I am writing to confirm that Rebecca Maud has been walking my two dogs (Miniature Pincers) with her dog Jack for approximately the past 2 years. My dogs look forward to seeing Jack, they get excited when I say his name. One of my dogs, Muppet, instantly bonded with Jack the first day they met at the park. They have in the past engaged in appropriate games of chase and play. More recently, they are content to walk the park comfortably together. If you have any further questions or concerns, I can be contacted at the details below.

Kind Regards,

Bridget MacDougall
Resource Teacher of Learning and Behaviour (RTLB)
Intern Educational Psychologist, RTLB Cluster 11
To whom it may concern

This is to advise that Rebecca Maud and her dog Jack have completed our Canine Good Citizen course which was held over 8 weeks and consisted of an hours’ instruction and practical work each week. Also participating in the course with Rebecca and Jack were at least nine to twelve other dogs of differing breeds.

Rebecca is intending to undertake the Canine Good Citizen Foundation and Bronze assessment on 12 May.

Sincerely,

Sue Colvin
Secretary
Before the Regulatory Committee
Of Auckland Council

CP 2018/04394

Under ss33C and 33D of the Dog Control Act 1996

Between
Kristina Pennell
Objector

And
Auckland Council
Territorial Authority

Affidavit of Kristina Pennell
Sworn: 11 April 2018

Hearing: 12 April 2018 at 11.00am

Corban Revell Lawyers
133A Central Park Drive
Henderson
DX DP92558
PO Box 21-180
Auckland
Tel: 09 837 0550
Fax: 09 838 7187
Email: jkahukiwa@corbanrevell.co.nz
Solicitor acting: John Pera Kahukiwa

JPK-027462-5-20-V1
Affidavit of Kristina Pennell

Kristina Pennell of Huapai, West Auckland, does swear as follows:

1. I am the owner of Bree. She is an American Boxer cross.

2. Council has categorised Bree as a dog that belongs to one of the menacing breeds under schedule 4 to the Dog Control Act 1996.

3. I disagree with Council. Council’s error is also impacting prejudicially on my ownership of Bree. Bree is restricted, and we are unable to enjoy a normal life together.

4. To help prove that Council is wrong, I have gathered a number of testimonies from various experts who state that Bree is an American Boxer cross (and therefore not a menacing breed). I believe that I have already provided those testimonies to Council (through the West Auckland Animal Shelter), but I attach the same for the Committee’s ease of reference as follows-

   4.1 5 October 2017 Letter Vets North (G Ashby) (attached hereto and marked “KK1”);

   4.2 17 October 2017 Surgery Report Veterinary Specialist Group (Dr Alex Walker) (attached hereto and marked “KK2”);

   4.3 18 October 2017 Letter Hurrah (C Clements) (attached hereto and marked “KK3”);

   4.4 5 March 2018 Vet Behaviourist Report (E Flint) (attached hereto and marked “KK4”)

5. In addition to these testimonies, earlier this year I arranged for a sample of Bree’s blood to be sent to a company in Australia to test her DNA. The name of the company is BFTZA. The written report I received back is attached and marked “KK5”.

               18
6. I ask the Committee to rescind the initial and wrong categorisation of Bree, based on the evidence I have gathered, and the case I bring in opposition to that initial categorisation.

SWORN at Auckland on this 11th day of April, 2018

by the said KRISTINA PENNELL

A Solicitor of the High Court of New Zealand

Diana Fa'alaniaga Su'a
Solicitor MA/LLB
Auckland
5th October 2017

To Whom It May Concern

I have been asked by Kristina Pennell, the owner of Bree, to give an opinion on Bree's predominant breed, for the purpose of her registration with Auckland Council.

I have been Kristina’s vet for the last 10 years or more. I have examined Bree and find her physical condition consistent with her being predominantly American Bulldog. She has a lovely nature.

Animal’s Name: Bree
Species: Canine
Breed: American Bull Dog Cross
Age: 1 year old
Sex: F

Owner’s Name: Miss Krissie Pennell
Address: 55 Matua Road, Huapai

Signed

Graeme Ashby BVSc, BSc(hons), MANZCVS
Vet Communication
17-10-2017 4:09:59pm

Dear Elsa,

Bree has a cruciate deficient stifle on the right side with a grade 1 medial patella luxation. Her joint is effusive and has a demonstrable cranial drawer compared with the left. Her tibial plateau angle is steep at 29 degrees and she stands with a straight stifle which exacerbates the cranial thrust force.

I have seen American bulldogs with cranial cruciate ligament incompetence as young dogs before. The TPLO is the ideal procedure for her because it will neutralise the shear force across her stifle.

I have discussed with Krisie and she has scheduled Bree for surgery on the 15th of November here at VSG Hospital.

Thank you for your referral, please do not hesitate to call if I can be of further assistance.

Dr. Alex Walker BVSc(dist) MACVSc
Registered Specialist Small Animal Surgeon.

Health Status

<table>
<thead>
<tr>
<th>Date/Time</th>
<th>Temp(°C)</th>
<th>Heart Rate</th>
<th>Attitude</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-10-2017 10:00:00am</td>
<td>39.0</td>
<td>116</td>
<td>BAR</td>
<td>Resp. rate = pant CRT = &lt; 2 sec</td>
</tr>
</tbody>
</table>

History

16-10-2017 11:50:15am, Dr. Alex Walker

Been in owners possession for 9 months
Initially owner saw a right hindlimb lameness. Went to RV where a right hindlimb lameness presented. Has been going on for 3 weeks roughly with no improvement

Physical Exam

16-10-2017 11:51:45am, Dr. Alex Walker
Musculoskeletal

Shifting hindlimb lameness of both limbs. Pain on palpation and manipulation of both stifles. Very straight hindlimbs. Rest of orthopedic examination normal.
16-10-2017 11:51:23am, Dr. Alex Walker
Overall >> Bright and alert
Systemically well

Assessments
17-10-2017 4:19:41pm, Dr. Alex Walker
After sedation
1. right stifle unstable in cranial drawer
2. effusion in the right
   3 Grade 1 patella luxation right
4. Left stifle stable and patella stable
TDX - right cranial cruciate ligament deficiency with G 1 medial patella luxation

16-10-2017 11:52:49am, Dr. Alex Walker
Bilateral stifle pain. Differentials include inflammatory (IMPA), conformational or degenerative

Plans
16-10-2017 11:54:31am, Dr. Alex Walker
Sedated radiographs of both stifles +/ joint taps.
Bree had breakfast this morning so will be dropped of tomorrow at roughly 10am

Diagnostic Imaging Report
17-10-2017 2:50:17pm
Musculoskeletal Radiographic Report

Findings:
R stifle joint - there is a moderate-to-severe increase in intra-articular soft tissue opacity with compression of the
infrapatellar fat pad and displacement of the caudal fascial stripe. There is no evidence of periarticular new bone formation
or an osteochondral defect (OCD).

L stifle joint - a mild increase in intra-articular soft tissue opacity is also present in this joint.

Conclusions:
1. Moderate-to-severe right stifle joint effusion
2. Mild left stifle joint effusion

Comments: Considerations include an immune-mediated or septic polyarthropathy, haemarthrosis (eg coagulopathy) or
degenerative osteoarthritis (eg bilateral cruciate disease). Interpret in light of history and clinical findings; consider
arthrocentesis for synovial fluid analysis.

Dr Devon Thompson BVSc (Dist) MVS (Hon) MANZCVSc (Radiol) DipECVDI
Registered Specialist Veterinary Radiology
Therapeutics / Procedures
17-10-2017 11:38:14am, Dr. Alex Walker
Sedation
Specifics

PROCEDURE: Bilateral stifle rads and joint taps
SEDATION: Domitor and Methadone given IV
REVERSAL: Antisedan given IM

<table>
<thead>
<tr>
<th>Medication</th>
<th>Date/Time</th>
<th>Drug Name</th>
<th>Qty</th>
<th>Prescribed By</th>
</tr>
</thead>
<tbody>
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<td></td>
<td>17-10-2017</td>
<td>Methadone 10mg (Per ml)</td>
<td>0.75</td>
<td>Dr. Alex Walker</td>
</tr>
<tr>
<td></td>
<td>10:00:00am</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>17-10-2017</td>
<td>Domitor 1mg (Per ml)</td>
<td>0.25</td>
<td>Dr. Alex Walker</td>
</tr>
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<td></td>
<td>10:00:00am</td>
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<td></td>
<td>17-10-2017</td>
<td>Antisedan 10mL (Per ml)</td>
<td>0.25</td>
<td>Dr. Alex Walker</td>
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<tr>
<td></td>
<td>10:00:00am</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Hospital Notes
17-10-2017 2:26:08pm

ld wet
To whom it may concern,

My name is Chrissy Clements; I am the Founder & Trustee of HURRAH & the Desexy Revolution in Auckland. I write this letter to you in support of Kristina Pennell and her rescue dog, Bree.

I made Bree’s acquaintance back in November 2016. Back then she was a tiny puppy sitting in a Council shelter waiting for a home. The shelter contacted me to advise that they had 2 American Bulldog puppies looking for a home. Bree’s brother was quickly snapped up so we took Bree on in the capacity of a foster puppy.

Bree’s pretty markings and crisy personality quickly procured her a fan club. Her biggest fan had to be animal rescue worker, Emily who works for the SPCA. Emily was very quick to put her hand up to foster her. Bree was one of two rescue puppies in Emily’s care, alongside her own dog, Bentley and cat, Sebastian. So as you can see from a very early age Bree was socialised with others.

Her easy going temperament made her a great option for PETstock events too; she would often hang out with our volunteers in store. Here she was always met with great enthusiasm from the general public (see below).

Bree didn’t stay on our books for long; she was quickly snapped by Kristina. We were delighted with the placement because her sister is a well-known NZKC dog trainer who oversees courses such as Canine Good Citizen. A few months later Bree came back to visit me, I was delighted to see all of the tricks she’d learnt in training.

I must say I hadn’t given Bree much thought of late - she had her happy ever after - or so I believed.

A few weeks ago I was alerted to a change in Bree’s classification with Council. I wondered what on earth she could have done to earn this label.

Somewhere along the admin line her American Bulldog breed had become American Bulldog x Amstaff; this word that had no scientific basis behind it somehow changed everything. Bree was now a menace to society and needed to be muzzled in public, Kristina was devastated – she didn’t sign up for a menacing dog – and in my opinion, we did not rehome one.

The Bree you see today is the same Bree we adopted from the Council. No word or head measurement can define her personality, but it can restrict her freedom.
We respectfully request that some modicum of common sense be applied here. Council cannot adopt out menacing dogs. Bree has no history of being a menace, and her owner has fulfilled her obligations as a responsible dog owner. Bree is spayed, registered, chipped and trained.

Please request that the classification be lifted so that Bree can enjoy the freedom that all canine good citizens should be allowed to experience.

Yours faithfully,

Chrisy Clements – Founder & Trustee
HURRAH & the Desxy Revolution

Dip. Canine Behaviour & Training
Cert. PetTech First Aid & CPR
Cert. Microchipping Companion Animals
PP Guild Pet Care Professional
NZCAC Member
ASSESSMENT OF BREE PENNELL

Dr Elsa FLINT states

I, Dr Elsa Flint, veterinarian of Auckland; swear:

Qualifications

1. I hold the degree of Bachelor of Veterinary Science (Massey University, 1991).
2. I hold a Master of Science (Hons) in Behavioural Zoology (Auckland University, 1987).
3. I hold a PhD in Veterinary Science (Behaviour) (Massey University, 2013).
4. I have completed a course in Advanced Veterinary Forensics (Veterinary Information Network RACE course Sept 2017).

Membership of Professional Organisations

5. I am a member of the Australian and New Zealand College of Veterinary Scientists Chapter of Veterinary Behaviour.

Current work

6. I am a practising veterinarian registered with the Veterinary Council of New Zealand.
7. I run the Animals with Attitude behaviour clinic in Auckland, where I take animal behaviour cases referred from vets around Auckland. I also attend cases in other regions throughout New Zealand on request.
8. I am a guest lecturer at Massey University in the field of animal behaviour, and a lecturer at the Vet Nurse Plus veterinary technician training school.
9. I have published a number of academic papers on animal behaviour.
11. I have worked in the field of animal behaviour since 2001.

Code of Conduct

12. I have read the High Court Code of Conduct for Expert Witnesses, with which I agree to comply.
13. I have previously provided expert evidence for both prosecution and defence teams.
11. On 20/10/2017 I assessed Bree a 13-month-old cross bred dog, belonging to Kristina Pennell of 55 Matua Road Huapai.

12. Bree had been designated a menacing dog by Auckland Council based on their visual assessment of her as an American Staffordshire Bull terrier. No behaviour assessment had been done.

13. Bree’s owner was concerned that for the rest of her life the dog would have to be muzzled and leashed in public. Her owner felt that she was a friendly non-threatening dog that didn’t deserve to be treated that way and was concerned that this restriction would hamper her socialisation and make it difficult for her to do agility classes with her owner.

14. There was no previous history of menacing or aggressive behaviour.

15. Bree was friendly towards myself and my assistant when we entered the property. She presented toys and was keen to be patted. She was easy to handle all over. She was compliant with basic commands (sit, down and come).

16. Bree was not aggressive over toys or food.

17. Her owner had recently started walking her on a halti as she had a tendency to pull on the lead. She coped well with the halti once accustomed to it.

18. Bree walked well through a shopping area, past workmen and shoppers. She showed no sign of concern, fear or aggression even when people appeared unexpectedly.

19. Bree was excited and keen to interact with other dogs and was friendly when engaging with them.

20. Bree travelled well in the car and was not aggressive when people approached it.

21. Bree presents as a good natured well socialised dog young dog. I see no reason for her to be muzzled when out in public. Muzzling does not allow dogs to interact freely with people and other dogs and so has the potential to inhibit social development.

Dr Elsa Flint (MSc, BVSc, MANCVS, PhD)
(Veterinary Behaviourist)
it’s a Dog’s Life

Thank you for using BITSA to fetch the inside world on Bree Pennell’s breed history. Within these pages you are about to know more about Bree Pennell than ever before. The Breed Identification Through Scientific Analysis (BITSA) report may reveal:

- The breeds detected in Bree Pennell’s make-up
- Historical Information on the breeds detected
- Behavioural and personality traits likely to be exhibited by these breeds
- Potential health issues related to each breed

We hope you enjoy your BITSA experience and gain a deeper understanding of Bree Pennell. Knowing the breed history can only strengthen this relationship, providing you with insights to enrich the way you interact, train and care...

What BITSA may reveal
The inside word on the DNA test

BITSA works by applying the latest DNA science to analyse hundreds of snippets of your dog’s DNA against an extensive genetic database to provide a breed signature or a series of breed signatures. These breed signatures indicate the make-up of breeds within your dog.

Your dog’s breed history can be broken into the following categories. Please use this as a guide to interpret results.

Dominant breed
Approximately 100% of this breed was discovered. A dominant breed is most likely the breed of both of the parents.

Primary breed
Significant amounts of this breed were discovered. A primary breed is most likely the breed of at least one of the parents.

Secondary breed
Moderate amounts of this breed were discovered. A secondary result typically indicates the parents of your dog were mixed-breeds themselves, or alternatively, can mean we have identified breeds that make up the grandparents of your dog.

Distant breed
Low amounts of this breed were discovered. A distant result means we found traces of the breed in your dog’s ancestry, but we are unable to be more specific to the exact location in your dog’s family tree. Typically, distant amounts are found in great grandparents, or further beyond.

True BITSA
A True BITSA does not have a dominant, primary, secondary or distant breed, because they have been created by mixing a unique blend of a large number of dogs for so many generations that no single breed is currently detectable in its ancestry.

Q Values  What are they and what do they mean?

A Q value is an estimate of how much of an individual’s genome came from each breed.

<table>
<thead>
<tr>
<th>Q Value</th>
<th>Approximately % of that breed</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.7 or greater</td>
<td>100%</td>
<td>Dominant</td>
</tr>
<tr>
<td>0.4 to 0.699</td>
<td>50%</td>
<td>Primary</td>
</tr>
<tr>
<td>0.1 to 0.399</td>
<td>25%</td>
<td>Secondary</td>
</tr>
<tr>
<td>0.089 to 0.099</td>
<td>Trace amounts</td>
<td>Distant</td>
</tr>
</tbody>
</table>
You already know that Bree Pennell is marvellous... but now you have proof!

Your BITSA DNA test result has retrieved the following breed history for Bree Pennell.
Secondary

Neapolitan Mastiff
Mastiff type dogs were bred and developed in Tibet more than 5,000 years ago. The Neapolitan Mastiff is thought to be a direct descendent of the great Molossus war dog, a breed used by the ancient Greeks for fighting. The alert and cautious nature of the Neapolitan Mastiff makes it a fantastic guard dog, but not an attack dog. They are often strong willed and require positive reinforcement training early in their development.

Utility
Utility dogs are essentially dogs built to work. These breeds are commonly used to guard, protect, pull sleds or carts, or rescue. Utility dogs are used for these roles as they are highly intelligent and hardy, as well as easy to train. Whilst well-rounded as working dogs, they also make good companions who are affectionate and devoted to their owners. Utility breeds consist of larger dogs that have strong and/or muscular bodies.

American Staffordshire Terrier
The American Staffordshire Terrier originated in the 18th Century from their ancestors, the White English Terrier and the Old English Bulldog. One of the most famous American staffys featured in the 1930s hit The Little Rascals — his name was Pete and he was officially, one of the first recognised dogs of the breed. The breed has been known by several names, such as the American Bull Terrier, Yankee Terrier and Staffordshire Terrier among others.

Terriers
Terriers are typically small, wiry, very active and fearless dogs. The word terrier is Latin for terra, meaning earth and as the name indicates terriers love to dig. Terriers were originally bred to fight and kill rats and in some cases each other, for sport. They are known for their curious temperament and can often be quite cunning problem solvers. With a variety of long and short-legged breeds, terriers will keep you on your toes with their peculiar and bold sense of humour.
What are some of Bree Pennell’s traits

You now know what breeds make up Bree Pennell. Below we have summarised all of the behavioural and personality traits consistent with these breeds and given them a ‘Paw’ rating related to the levels you can expect to see.

<table>
<thead>
<tr>
<th>Traits</th>
<th>Bree Pennell</th>
<th>Neapolitan Mastiff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sensitivity</td>
<td>🐾🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
<tr>
<td>Predatory tendencies</td>
<td>🐾🐾</td>
<td>🐾🐾🐾</td>
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<tr>
<td>Potential for weight gain</td>
<td>🐾🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
<tr>
<td>Watchdog ability</td>
<td>🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
<tr>
<td>Dog friendly</td>
<td>🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
<tr>
<td>Affectionate with family</td>
<td>🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
<tr>
<td>Ease of training</td>
<td>🐾🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
<tr>
<td>Tendency to bark or howl</td>
<td>🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
<tr>
<td>Intelligence</td>
<td>🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
<tr>
<td>Energy</td>
<td>🐾🐾</td>
<td>🐾🐾🐾</td>
</tr>
</tbody>
</table>

Low levels of trait 🐾 Medium levels of trait 🐾🐾 High levels of trait 🐾🐾🐾

Playing with Bree Pennell

Now that we know Bree Pennell’s breed history, here are some games and activities that directly relate to the breed make-up. Have fun!

*Hide and Seek*
Let your dog sniff their favourite toy and then place it somewhere out of site, but within a close, easy distance. With regular involvement, they will get better and you can create little challenges every week by increasing the difficulty of the hiding places.

*Sprint and Retrieve*
Sporting Dogs really enjoy the physical and mental challenge of fetching and retrieving more than any other dog. Create a mentally challenging activity by having your dog catch the ball/frisbee mid-air or throwing the ball into water to retrieve (generally, Sporting Dogs are water-mad and will enjoy incorporating the beach or lake into your activities).
Health concerns which may affect Bree Pennell

Some breeds are prone to certain genetic health problems such as hip dysplasia. This does not mean every dog with that breed composition will develop those diseases, but by knowing Bree Pennell’s breed history you and your Vet are now better placed to identify potential risks.

<table>
<thead>
<tr>
<th>Potential Health Concerns</th>
<th>Metropolitan Mastiff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hip Dysplasia</td>
<td>Prone</td>
</tr>
<tr>
<td>Elbow Dysplasia</td>
<td>Prone</td>
</tr>
<tr>
<td>Cataracts*</td>
<td>Prone</td>
</tr>
<tr>
<td>Cardiomyopathy</td>
<td>Prone</td>
</tr>
</tbody>
</table>

These health conditions are for reference purposes only. They are not intended as a diagnosis. Any diagnosis of these symptoms should be carried out by a qualified Vet.

* These inherited diseases may be detected by further DNA screening. If you would like further information on these tests, please contact Animal Network on 1800 822 999 or askus@animalnetwork.com.au.
Common Questions - Big Dog, Little Dog

"My dog is over 25kg. How could BITSA state that it has Chihuahua in its breed make-up?"

Dog size is mainly determined by a single allele of the IGF1 (Insulin Growth Factor 1) gene.

- Large dogs are most likely to be IGF1+/IGF1+
- Medium dogs are most likely to be IGF1+/IGF1-
- Small dogs are most likely to be IGF1-/IGF1-

But if your dog is a very small dog, it may still have one or more very large grandparent.

**Diagram:**

Grandparents

<table>
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<tr>
<th>+/+</th>
<th>+/+</th>
<th>+/•</th>
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</thead>
<tbody>
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</table>

Mating two medium sized dogs will produce a litter containing 25% large dogs, 50% medium dogs and 25% small dogs.

Disclaimer: Each dog is unique and their physical and behavioral traits will be the result of multiple factors including genetics, training, handling and environment. The BITSA product has been designed solely to identify the genetic make-up of mixed breed dogs and no other purpose is intended, authorised or permitted. BITSA is not a test to identify purebred dogs. A number of generalisations and statements about your dog may or may not be correct. This report is intended to be an indicative guide to the most common traits or characterisation of various breeds based on breed standards and prohibited breed information. To the extent permitted by law, Genes Technologies disclaims and will not be accountable for any and all warranties, written express or implied, including but not limited to any warranty regarding performance, the implied warranty of merchantability, fitness for a particular purpose and non-infringement of third party rights with respect to the BITSA product. To see BITSA full disclaimer see www.genet.com/bitsa.
What is a Q Value?
A Q value is an estimate of how much of an individual’s genome came from each cluster, population or breed.
A Q value of 0.7 or greater for a particular breed indicates that your dog is approximately 100% of that breed.
A Q value of 0.4 to 0.69 for a particular breed indicates that the breed identified is a primary breed, that is, approximately 50% of your dog is of that breed.
A Q value of 0.1 to 0.39 for a particular breed indicates that the breed identified is a secondary breed, that is, approximately 25% of your dog is of that breed.
A Q value of 0.089 to 0.099 for a particular breed indicates that the breed identified is a distant breed, that is, a trace amount of your dog may be of that breed.
Q values of less than 0.089 for a particular breed may indicate trace amounts of that breed but may also be due to sharing of markers between dogs of similar ancestry.

Please Note: Only Q values of over 0.090 are statistically significant and are reported as a breed detected.
Your BIS4 results have identified that Bree Pernell has the following breed make-up:

Bree Pernell's Official Dog Breed Certificate

Breed Identification

**BIS4**
Before the Regulatory Committee
Of Auckland Council

CP 2018/04394

Under ss33C and 33D of the Dog Control Act 1996

Between
Kristina Pennell
Objector

And
Auckland Council
Territorial Authority

Submissions of Counsel for the Objector
Dated: 12 April 2018

Hearing: 12 April 2018 at 11.00am

Corban Revell Lawyers
133A Central Park Drive
Henderson
DX DP92558
PO Box 21-180
Auckland
Tel: 09 837 0550
Fax: 09 838 7187
Email: jkahukiwa@corbanrevell.co.nz
Solicitor acting: John Pera Kahukiwa

JPP-027462-5-25-V1
Introduction

1. The objector is Kristina Karen Pennell, of Krissie. She is the owner of a mixed breed dog, called Bree. Bree was a rescue dog, out of the Hurrah shelter Hamilton. When Krissie adopted Bree, she did not expect to take on a dog that would be categorised or labelled as a menacing breed. She wanted a dog for companionship.

2. Krissie lives in Huapai. Auckland Council is therefore the territorial authority, which among things, hold certain powers under the Dog Control Act 1996.

3. One such power, and perhaps obligation, is found under s33C, and which is the power/obligation to classify as menacing any dog that is of a certain breed or type. (Refer s33C/schedule)

4. Council has classified Bree as a dog that belongs to the menacing type of dog under schedule 4 to the Dog Control Act 1996.

5. Krissie disputes the correctness of that classification.

6. Council has the corollary power under s33D of the Act to rescind the initial classification.

7. The issue is whether the classification should be upheld, or rescinded.

Background

8. Krissie adopted Bree from Hurrah, an rescue organisation in Hamilton. The surrounding circumstances are set out exhibit KK3 to Krissie's Affidavit. It is notable that the Council there described Bree as one of two American bulldog puppies.


10. At some point application to register Bree is made to Auckland Council.

11.1 Council described Bree in terms of her primary breed as American Bulldog, and in terms of her secondary breed as Terrier, American Staffordshire. Quite how that occurred is however unclear on the facts, given that Council had not met with Krissie or Bree at all.

11.2 In turn, and more importantly, Krissie is advised that Bree has been classified as a menacing dog. The reason given is that Bree “...has been described as being wholly or predominantly of the breed type Terrier, American Staffordshire.”

12. The consequences of this classification is that Bree, and Krissie’s relationship with Bree, is restricted. Bree-

12.1 Must now be muzzled when it at large; and

12.2 Must be kept under control at all times; and

12.3 Krissie can be fined for non-compliance.

13. Krissie then objected to that classification.

14. Krissie was then invited to take Bree to Animal Management for an assessment.

15. On 2 October 2017 the first assessment was undertaken by Vicki W. Vicki W applied Council’s Identification Checklist-American Pit Bull Terrier Type, and recorded the results. (Appendix D of the Agenda). Note that American Pit Bull Terrier is a type of dog that is inherently “menacing”.

16. Let’s examine the Identification Checklist, it has 24 itemised points, each of which are assessed visually, and scored in terms of a gradation of “compliance”, that is from zero to fully. The author of the checklist is unknown.

17. In any event, Vicki W scored Bree a 49/66, which by the Identification Checklist scoring concluded that Bree substantially meets the description of an American Pit Bull Terrier type. Vick W however has recalibrated the score to 46-63, and initialled it. The basis for this amendment is unclear.

JMN-027462-5-25-V1
18. Krissie was not happy with that assessment. She was invited to undertake another.

19. On 2 October 2017 a second assessment was undertaken by Jason Sherman of the shelter in West Auckland. Jason applied the same test. Jason scored Bree 47/66, which according to the typed words of the checklist would put Bree as a dog that does not substantially meet the description of an American Pit Bull Terrier Type. But Jason too has recalibrated the score to 46-63. And again there is no evidence of the basis for that amendment.

20. In any event both assessments differ.

21. On 5 October 2017 Vets North (G Ashby) assessed Bree, in terms of her predominant breed. (KK1). Mr Ashby, a vet, stated that in his opinion Bree is predominantly an American bull dog.

22. On 6 October 2017 Krissie formally objected. (appendix 8 to the Agenda)

23. On 17 October 2017, as part of Bree’s treatment for cruciate injury, Dr Alex Walker noted that Bree is an American Bulldog, and that her injury is one that is consistent with that breed. (KK2)

24. On 18 October 2017 Chrissy Clement of Hurrah wrote an open letter. (KK3). Clement stated that Bree is an American bull dog, and the known history about Bree is consistent with that statement: Bree came from Hamilton Council shelter; Bree was described as an American Bull Dog; Hamilton Council should not be adopting out menacing dogs.

25. On 20 October 2017, dog behavioural expert, Dr Elsa Flint visited Krissie and Bree and assessed Bree’s behaviour. (KK4). The doctors assessment of Bree is that she is good natured and well socialised and does not need to be muzzled.

26. On 29 November 2017 Council wrote again to Krissie. It advised that the classification would be upheld, inspite of her objection.

27. Krissie was invited again to have another Council assessment.
28. In February 2018 Krissie sent a blood sample taken from Bree to BITSA in Australia to test for the breeds in Bree’s make up. The results are set out in KK5. The key information is that the genetic test found no primary amount (of breed), and as to secondary amount (0.12) Bree has Neapolitan mastiff (which is not a menacing breed), and a distant trace of American Staffordshire terrier (0.097).

29. On 8 March 2018 the third assessment was done by Zarene. Zarene applied the same identification check list. Zarene scored Bree 55/63, and also differed in the height of the animal. In terms of the score, Zarene recalibrated the score to 49/63 as being indicative of an American Pit Bull Terrier type. But again there is no evidence of the basis on which that amendment was done.

30. On the same day, and same time, a fourth assessment was done by a person called Fearn. Fearn applied the same identification Check List. Fearn scored Bree 56/63, and appears to have recorded the height of Bree as 50cms. In terms of the score, Fearn recalibrated the score to 49/63 as being indicative of an American Pit Bull Terrier type. But again there is no evidence of the basis on which that amendment was done.

The Law

31. This case (or the issue) engages two sequential provisions of the Dog Control Act 1996: s33C (classification); and s33D (objection), both additions to the Act in the 2003 Amendment.

32. It is submitted that these provisions are sequential in terms of the burden or onus on whom the section is directed at. In terms of s33C, the burden is on Council-

32.1 Council is obliged to classify any dog as menacing (must).

32.2 Council makes a determination (of classification) based on “reasonable grounds”- therefore within reason- not unreasonable- not arbitrary- not capricious or whimsical, as the general law tends to define “reasonable”. Rights are at stake, therefore the bar is raised as to the standard of reasonableness. It is submitted that the appropriate standard is one of correctness, which is a
positive standard- it must be correct - it engages a prudence and diligence, given the consequences for an owner (as opposed to say a lower standard of being genuinely mistaken, or being not wrong)

32.3 Council’s determination is also a “belief”, which presumably is reasonably held, and therefore not a determination that is say necessarily scientifically proved.

32.4 Council’s determination is limited to a dog that belongs wholly or predominantly to one of 4 breeds or one type of dog. That is a high evidential threshold. It does not appear to include a dog who belongs to a menacing breed in a minor way.

32.5 Council is confined to the 4 breeds, and one type of dog, listed in schedule 4 to the Act, for dog breeds that can classified as inherently menacing. Accordingly, a dog not listed in the schedule, cannot be said to be a menacing breed by Council. It is noted that American Staffordshire Bull Terrier is not listed in schedule 4.

33. In terms of s33D, the burden of proof is on the objector-

33.1 The objector/owner must provide evidence that the dog is not of a breed of type listed in the schedule.

34. In terms of the powers of Council (through this regulatory committee) under s33D, Council can either uphold or rescind the classification. But in doing so Council must have regard to-

34.1 The evidence which formed the basis for the classification;

34.2 The matters underpinning the objection;

34.3 Any other relevant matters.

35. It is submitted that in mandatorily assessing the cases for and against (which is what s33D engages Council to do), Council is require to assess the evidence, and determine which evidence is the best.
Submissions

36. It is submitted that-

36.1 Firstly, Council’s case for Bree being classified as a menacing dog is not anchored in “reasonable grounds”. The grounds are not reasonable;

36.2 Secondly, Krissie’s case for Bree not being classified as a menacing dog is anchored in “reasonable grounds”, and thus, ought to be preferred.

Council’s classification is not based on reasonable grounds

37. Councils case relies on the following-

37.1 Firstly, the 20 September 2017 Notice (appendix A). It is a notice of classification made without Council ever having met or examined the dog. It is not reasonable for such an assessment, and determination to have been made based on the information in an application. It also appears to run counter to the legislative requirement for the dog to belong wholly or predominantly to the menacing breed. For Bree to have American Staffordshire Terrier noted as her secondary breed, must call that evidential requirement into question. The exercise therefore requires a deeper level of diligence, than of someone simply sitting at a desk and issuing a notice, in view of the fact that the form notes American Staffordshire as a secondary breed;

37.2 Second, the assessments of the animal shelter people. But (it is submitted respectfully), such assessments are simply unreliable. This submission is enlarged-

(a) First, the methodology appears to be open to criticism- the Identification Checklist is hardly definitive in itself. It is generically phrased (medium-to what?), and does not explain how in the final analysis achieving a score of say 49 out of 66 indicates an American Pit Bull Terrier type;
(b) Second, shelter staff do not appear to be tertiary qualified in dog assessment;

(c) Third, the assessment is visual, which leaves it open to subjective assessment, whereas the assessment ought to be objective in order to reasonable (within reason- free of subjective influence);

(d) Fourth, the shelter staff differed in their own results, which shows inconsistency (eg scores, measurement);

(e) Fifth, authoritative literature tells us that such tests are essentially unreliable. (see The Veterinary Journal 206 (2015) 197-202, Inconsistent identification of pit bull type dogs by shelter staff (KR Olson and ors). If such assessments are unreliable, they can hardly be reasonable, or based on reasonable grounds.

Krissie’s case for non-classification is based on reasonable grounds

38. It is submitted that in contrast to Councils case, Krissies case for non-classification is based on reasonable grounds.

39. Krissie puts forward two kinds of evidence in support-

39.1 Testimonies of experts;

39.2 A genetics test.

Testimonies of experts

40. Two vets, a behavioural expert and the person who ran the rescue organisation all say that Bree is predominantly an American Bulldog, or that Bree is not required to be muzzled and restrained.

41. Their expertise and experience must be compelling. They must be preferred over people who do not hold equivalent qualifications. It is reasonable to prefer an expert over a lay person for evidence in the nature of opinion evidence.
Genetics test

42. The genetics test provided by BITSA shows that Brees secondary breed is Neopolitan mastiff. A distant breed is American Staffordshire bull terrier.

43. Neither result points to being Bree’s breed or wholly or predominantly, as the Act requires. Bree is a true mixed breed dog, according to the genetics test. The test could not state the breed that she wholly belongs to, and it concedes that it is questionable as to the secondary breed. In any event, the test does not show that Bree is either wholly or predominantly an American Staffordshire bull terrier.

44. Council states on its website that DNA testing is not reliable. No reasons are given. The science of genetics would likely balk at such a remark.

45. Council instead states that visual testing is used by other shelters, and thus, it is inferred, makes it inherently reliable. But this goes against the scientific analysis found in the literature referred to above.

46. Taken together, the evidence provided by Krissie is compelling. It is more compelling than that of the Council. It is evidence that is the best available in this case. On the other hand the Councils evidence in this case is not the best evidence available.

Conclusion

47. The issue raised by this case is resolvable on the law. Whilst there is likely to be a wish to resolve this based on what ought to be the case, on public opinion, at the end of the day, the framework and test has been set by Parliament as law. Council must apply the law.

48. And the law is simply the application of reason and logic.

49. Krissies case for non-classification demonstrates reason (expert testimony; scientific genetic test) and the resulting logic: Bree is not and cannot belong wholly or predominantly to the schedule 4 breeds or single type of dog.
50. Council’s case lacks reason (ie its test/assessment is unreliable and/or without proper
diligence) and thus is prevented from giving rise to a correct logical conclusion. Council
should not be allowed to deprive someone of rights (to own a dog without restriction)
based on grounds that lack reasonableness. It would be profoundly wrong to deprive
someone of rights upon grounds that are not reasonable.

51. It is submitted that for the reasons submitted above, the classification of Bree as a
menacing breed of dog is rescinded.

Dated: 12 April 2018

______________________________

J P Kahukiwa for the Objector, KK Pennell (and Bree)
Inconsistent identification of pit bull-type dogs by shelter staff


Abstract

Shelter staff and veterinarians routinely make subjective dog breed identification based on appearance, but their accuracy regarding pit bull-type breeds is unknown. The purpose of this study was to measure agreement among shelter staff in assigning pit bull-type breed designations to shelter dogs and to compare breed assignments with DNA breed signatures. In this prospective cross-sectional study, four staff members at each of four different shelters recorded their suspected breed(s) for 30 dogs; there was a total of 16 breed assessors and 120 dogs. The terms American pit bull terrier, American Staffordshire terrier, Staffordshire bull terrier, pit bull, and their mixes were included in the study definition of "pit bull-type breeds." Using visual identification only, the median inter-observer agreements and kappa values in pairwise comparisons of each of the staff breed assignments for pit bull-type breed vs. not pit bull-type breed ranged from 76% to 83% and from 0.44 to 0.52 (moderate agreement), respectively. Whole blood was submitted to a commercial DNA testing laboratory for breed identification. Whereas DNA breed signatures identified only 25 dogs (21%) as pit bull-type, shelter staff collectively identified 62 (52%) dogs as pit bull-type. Agreement between visual and DNA-based breed assignments varied among individuals, with sensitivity for pit bull-type identification ranging from 33% to 75% and specificity ranging from 52% to 100%. The median kappa value for inter-observer agreement with DNA results at each shelter ranged from 0.1 to 0.46 (poor to moderate). Lack of consistency among shelter staff indicated that visual identification of pit bull-type dogs was unreliable.

Introduction

As pet dog ownership in the United States passes 70 million, mixed breed dogs have nearly overtaken purebreds in the proportion of owned dogs (American Veterinary Medical Association, 2012). Even when purebred dogs are acquired, it is most commonly for companionship and not for the working roles for which they were historically developed. Despite the decreased focus on purpose-bred dogs, breed assignment continues to influence how dogs are viewed and managed (Simpson et al., 2012). This is true even when the actual breed of dog, if any, is unknown.

Guessed breed designations are often included in veterinary records, dog licenses, animal shelter records, pet adoption websites, lost-and-found notices, housing applications, and insurance policies (Voith et al., 2013). Visual breed assessments have been shown to be erroneous more frequently than not (Voith et al., 2009, 2013). The past few decades have seen an increase in ownership restrictions applied to certain breeds of dogs and dogs that resemble them. The restrictions are based on the assumptions that certain breeds are inherently dangerous, that those breeds can be reliably identified, and that restricting these breeds would improve public safety.

When dogs bite people and other animals, the suspected breed of dog reported by witnesses is often listed in official bite reports filed by hospitals or animal control facilities. Media coverage of dog

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bite-related injuries has been shown to be more extensive and to report the suspected breed more frequently when witnesses report a pit bull or guard-line breed as involved.4 The sources and reliability of this breed reporting have been questioned (Collier, 2006; Patronek and Slavinski, 2009; Voith et al., 2005, 2013; Patronek et al., 2010, 2013).

A study of all dog bite-related fatalities that occurred during the 10-year period 2000–2009 reported that 90% of the dogs involved were described in at least one media account with a single breed descriptor, potentially implying that the dog was purebred (Patronek et al., 2013). However, approximately 46% of the dogs in the US are mixed breed dogs (American Veterinary Medical Association, 2012), and it seemed unlikely to the authors able to make a valid determination that the dog involved was a member of a distinct, recognized breed (Patronek et al., 2013). Nevertheless, unverified reports of the dogs involved in serious and fatal incidents have been used to develop opinions regarding perceived danger levels of different breeds (Voith et al., 2005, 2013; Patronek et al., 2013).

These opinions have led to restrictions or outright bans on certain breeds by municipalities, insurance companies, homeowner associations, and animal shelters. It has been estimated that as of 2009, restrictions regarding ownership of dozens of breeds were in place in more than 300 jurisdictions in the US (Berkey, 2009). Most restrictions name ‘pit bull’ as a regulated ‘breed,’ but many also include Rottweilers, Doberman Pinschers, German shepherd dogs, and Chow Chows, among more than 30 others.

‘Pit bull’ is not a recognized breed, but a term applied to a heterogeneous group whose membership may include purebred dogs of various breeds, along with dogs presumed to be mixes of those breeds. Use of this descriptor varies according to the recognized breeds included and the opinions of the observers (Patronek et al., 2013). Nevertheless, dog owners, animal shelters, insurance companies, veterinarians, and the public frequently use the term ‘pit bull’ casually and in official documents, as though it describes a single, recognized breed. The lack of a universally accepted definition of ‘pit bull’ and reliance upon the opinion of observers complicate identification of dogs targeted for regulatory control by ‘breed bans’ (Hoffman et al., 2014). Most, but not all, breed-specific ordinances in the US include with the term ‘pit bull’ the American pit bull terrier, American Staffordshire terrier, and Staffordshire bull terrier, along with dogs that, based upon their appearance, are deemed to resemble these breeds.

Since actual pedigree information is not usually available, determining the likely breed of dogs that may fall under breed-based restrictions requires a subjective assessment of the dog’s appearance. Recently, DNA analysis has been used to investigate the breed heritage of individual dogs targeted in breed restriction cases. However, the largest testing service does not offer a DNA test for identification of American pit bull terriers. Additionally, it does not provide a test for ‘pit bulls’, since the term variously refers to a loose collection of breeds and their mixes or to dogs with similar morphology rather than a group of dogs with a controlled gene pool.

Shelter staff members and veterinarians routinely make subjective breed assessments as part of daily shelter operations. They also may be tasked with providing expert opinions regarding the likely breed of individual dogs involved in breed regulation cases. Depending upon the regulatory environment and/or the beliefs of shelter managers, the stakes may be high for dogs identified as pit bulls and for their owners5 (Voith et al., 2009).

The primary objective of this study was to determine the level of agreement among shelter workers in designating pit bull-type breeds for shelter dogs. A secondary objective was to compare shelter workers’ breed assignments with DNA breed signatures.

Materials and methods

Study sites

Four Florida animal shelters were recruited. These shelters admitted 2526–10134 dogs in the calendar year prior to the study. At each shelter, managers assigned three staff members and one shelter veterinarian whose regular duties included assignment of breed designations to newly admitted dogs to participate in the study of dog breed assessments. Each assessor completed a questionnaire regarding their shelter experience and previous training in dog breed identification. In addition to the veterinary assessment duties, assessors included animal control officers, kennel staff, veterinary assistants/technicians, and customer service staff. The assessors might or might not have had previous knowledge of the dogs selected for the study.

Dogs

At each study site, 30 healthy dogs 2 months of age and older were selected by the research team to phenotypically represent a variety of age, body size, body types, coat length, and coat color. In the case of related dogs (dams and litters), only one dog from each family was selected. Only dogs that staff considered safe to handle were eligible for inclusion. The breed previously assigned to each dog at the time of shelter admission was recorded for comparison. The cage card for each dog was reviewed so that the breed previously assigned at intake was not visible to the dog breed assessors. The study protocol was approved by the Institutional Animal Care and Use Committee at the University of Florida on 7 March 2011.

Subjective breed assessment

At each shelter, the four dog breed assessors were given a list of the selected dogs and asked to assign a primary breed for each dog based on its physical appearance. Assessors could assign a secondary breed if they felt that it was indicated and could select ‘mixed breed’ if they felt there were no defining characteristics that allowed a specific breed identification. Assessors were allowed to list any breed and were not provided with a predetermined list of breeds to choose from. They were escorted as a group by a research team member to the front of each dog’s kennel and did not move to the next dog until all assessors had recorded their breed designations. The assessors were not allowed to confer with anyone or to view any intake paperwork, cage cards, computer records, or references while the study was in progress.

For the purposes of this study, the term American pit bull terrier, American Staffordshire terrier, Staffordshire bull terrier, pit bull, and their mixes were included in the study definition of ‘pit bull-type breeds’ because these terms are frequently included in laws regulating dog ownership based on breed or phenotype. For each dog, the breed assigned by the shelter prior to the study and the breed assigned by each shelter staff member during the study were coded by the investigators as ‘pit bull-type’ if any of these breed terms were included as the primary or secondary breed identification. The breed identification was coded as ‘not pit bull type’ if none of these breed terms were included.

Dog physical assessments

Following the shelter staff breed assessment, each dog was photographed, weighed, measured from the floor to the top of the shoulder, and assessed by the research veterinarian for body condition using the categories (underweight, ideal weight, overweight). Physical characteristics including coat length, coat type, coat color, ear type, tail type, age (juveniles 5 months, adults 6 months and older), sex, and reproductive status were recorded.

DNA assessment of dog breeds

Three milliliters of whole blood was collected from each dog into EDTA tubes for DNA analysis. Samples were shipped to a commercial DNA analysis laboratory (Wisdom Panel Professional Canine Genetic Analysis, Mars Veterinary)6 at room temperature by overnight courier on the day of collection. DNA was extracted and typed

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Attachment C

18

Item 18
at 321 different single nucleotide polymorphisms (SNPs) across the genome using selective hybridization and PCR amplification, followed by a discriminant single base-pair primer extension reaction. The SNP genotypes were detected by mass spectrometry. The laboratory then used a Bayesian generative model to infer the family tree of a dog from comparison of detected genotypes with 226 breed signatures developed previously from more than 9700 pure breed dogs. Inference was performed on 11 different family tree models, and the best-fit model was selected using the deviance information criterion (Martin et al., 2010).

Results from the DNA analysis laboratory included major breed composition percentages in increments of 12.5%. If breed compositions were identified in amounts >12.5%, these breeds were listed as ‘minor breeds.’ American pit bull terrier and pit bull were not included in the 226 breed signatures. Dogs were coded as ‘pit bull type’ if the breed American Staffordshire terrier or Staffordshire bull terrier was identified to comprise at least 12.5% of the breed signature.

Statistical analysis

Agreement among shelter staff for identification of pit bull-type dogs and between shelter staff and DNA breed signatures was assessed with the kappa statistic according to the following criteria: <.60, poor agreement; 0.61–0.80, fair agreement; 0.81–0.90, moderate agreement; 0.91–1.00, almost perfect agreement (Landis and Koch, 1977). Findings were considered to be significant when \( P < 0.05 \). The 95% confidence intervals (CI) for sensitivity and specificity estimates were calculated using the exact method. All analyses were performed with statistical software (Stata, StataCorp).

Results

Staff members and dogs selected for the study

A total of 16 shelter staff members, including four shelter veterinarians, participated in the study. All staff members had at least 3 years of shelter experience, but only one reported any formal training in dog breed identification (Table 1). The 120 dogs selected for the study comprised 20–25% of the dogs present in each of the four shelters on the day of the study visit and represented a range of ages, sexes, and phenotypes (Table 2). Juveniles included two puppies estimated to be 2 months of age, 12 estimated to be 3–4 months of age, and 12 estimated to be 5–6 months of age, based on dentition.

Inter-observer agreement for visual breed identification

Using visual identification only, the median inter-observer agreements and kappa values in pairwise comparisons of each of the five staff breed assignments (one admission breed and four assessors breeds) for pit bull-type dog vs. not pit bull-type dog ranged from 76 to 83% and from 0.44 to 0.52, respectively (Table 3).

Table 2
Demographic features of 120 dogs selected for visual and DNA breed assignments in four Florida animal shelters.

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juveniles (&lt;6 months)</td>
<td>26</td>
<td>22</td>
</tr>
<tr>
<td>Adults (&gt;6 months)</td>
<td>94</td>
<td>78</td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Females</td>
<td>52</td>
<td>43</td>
</tr>
<tr>
<td>Males</td>
<td>68</td>
<td>57</td>
</tr>
<tr>
<td>Body weight (kg)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt;11</td>
<td>26</td>
<td>22</td>
</tr>
<tr>
<td>11–20</td>
<td>47</td>
<td>39</td>
</tr>
<tr>
<td>21–30</td>
<td>35</td>
<td>29</td>
</tr>
<tr>
<td>31–40</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>&gt;40</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Height (cm)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>≤20</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>21–30</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td>31–40</td>
<td>17</td>
<td>14</td>
</tr>
<tr>
<td>41–60</td>
<td>46</td>
<td>40</td>
</tr>
<tr>
<td>51–60</td>
<td>34</td>
<td>28</td>
</tr>
<tr>
<td>&gt;60</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Body condition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underweight</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Ideal weight</td>
<td>97</td>
<td>81</td>
</tr>
<tr>
<td>Overweight</td>
<td>15</td>
<td>12</td>
</tr>
</tbody>
</table>

DNA breed signatures

Using DNA identification, of the 120 dogs chosen for participation in this study, 25 (21%) were identified with pit bull-type heritage (comprising at least 12.5% American Staffordshire terrier or Staffordshire bull terrier) by DNA breed signatures. The breed signatures in these dogs belonged to American Staffordshire terrier in 19 dogs, Staffordshire bull terrier in four dogs, and both breeds in two dogs. According to the breed signatures, none of these 25 dogs were purebred or contained more than 50% contribution of either breed.

Agreement between visual and DNA-based breed assignments

The median inter-observer agreements and kappa values in pairwise comparisons of each of the five staff breed assignments (one intake breed assignment and four breeder assessor assignments) with the DNA breed signature for pit bull-type or not pit bull-type ranged from 67 to 78% and from 0.1 to 0.48, respectively (Table 3). Selected examples of breed identification by staff assessment and DNA analysis are provided (Table 4).

Of the 25 dogs identified as pit bull-type dogs by breed signature, 12 were identified by shelter staff as pit bull-type dogs at the time of admission to the shelter (prior to the study visit), including five labeled American Staffordshire terrier mix, four pit bull mix, two pit bull, and one American Staffordshire terrier. During the study, 20/25 dogs were identified by at least one of the four staff assessors as pit bull-type dogs, and five were not identified as pit bull-type dogs by any of the assessors. Overall, the mean sensitivity of visual identification of pit bull-type dogs was 50% (95% CI, 44–66%). The breeds assigned to these dogs by the four staff assessors included pit bull (67%), American pit bull terrier (8%), American Staffordshire terrier (25%), and their mixes. Of the 95 dogs (7%) that lacked breed signatures for pit bull heritage breeds, six (6%) were identified by shelter staff as pit bull-type dogs at the time of shelter admission, and 36 (38%) were identified as pit bull-type dogs by at least one shelter staff assessor at the time of the study visit. Overall, the mean specificity of visual identification of non-pit bull-type dogs was 83% (95% CI, 78–85%).

Table 1
Occupation and training of shelter staff members responsible for assigning breeds of dogs in four Florida animal shelters.

<table>
<thead>
<tr>
<th>Occupation/Training</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterinarian</td>
<td>4</td>
<td>25</td>
</tr>
<tr>
<td>Veterinary technician</td>
<td>4</td>
<td>25</td>
</tr>
<tr>
<td>Animal control officer</td>
<td>2</td>
<td>13</td>
</tr>
<tr>
<td>Customer service</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>Animal care</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>Years of shelter experience</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt;3</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>3–5</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>6–10</td>
<td>4</td>
<td>25</td>
</tr>
<tr>
<td>11–15</td>
<td>2</td>
<td>13</td>
</tr>
<tr>
<td>&gt;15</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Breed identification training</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Formal training</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Mentioned on the job</td>
<td>14</td>
<td>88</td>
</tr>
<tr>
<td>Studied breed book</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Other dog experience</td>
<td>12</td>
<td>75</td>
</tr>
<tr>
<td>No training</td>
<td>4</td>
<td>25</td>
</tr>
</tbody>
</table>

* Total responses >100 because respondents could select more than one item.
Table 3

<table>
<thead>
<tr>
<th>Shelter 1</th>
<th>Median % agreement between staff members</th>
<th>Median k (range)</th>
<th>Median % agreement between staff members and DNA breed signature</th>
<th>Median k (range)</th>
</tr>
</thead>
<tbody>
<tr>
<td>80 (78-93)</td>
<td>0.44 (0.13-0.79)</td>
<td>77 (73-80)</td>
<td>0.38 (0.26-0.44)</td>
<td>67 (53-77)</td>
</tr>
<tr>
<td>Shelter 2</td>
<td>76 (59-90)</td>
<td>0.44 (0.19-0.61)</td>
<td>0.40 (0.07-0.22)</td>
<td>79 (67-87)</td>
</tr>
<tr>
<td>Shelter 3</td>
<td>83 (77-90)</td>
<td>0.52 (0.25-0.65)</td>
<td>0.24 (0.07-0.32)</td>
<td>78 (77-87)</td>
</tr>
<tr>
<td>Shelter 4</td>
<td>77 (79-93)</td>
<td>0.46 (0.23-0.82)</td>
<td>0.48 (0.38-0.60)</td>
<td></td>
</tr>
</tbody>
</table>

Table 4

<table>
<thead>
<tr>
<th>Dog</th>
<th>Photo</th>
<th>Breed</th>
<th>Intake breed</th>
<th>Staff 1</th>
<th>Staff 2</th>
<th>Staff 3</th>
<th>Veteranian</th>
<th>Prominent DNA breeds (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dog 7</td>
<td><img src="image" alt="Labrador retriever mix" /></td>
<td>Labrador retriever mix</td>
<td>American Staffordshire</td>
<td>American Staffordshire</td>
<td>American Staffordshire</td>
<td>Pit bull</td>
<td>Labrador retriever</td>
<td>Irish water spaniel (25)</td>
</tr>
<tr>
<td>Dog 8</td>
<td><img src="image" alt="Boxer mix" /></td>
<td>Boxer mix</td>
<td>Boxer</td>
<td>American Staffordshire</td>
<td>Boxer</td>
<td>American Staffordshire</td>
<td>Russian Bear (25)</td>
<td></td>
</tr>
<tr>
<td>Dog 9</td>
<td><img src="image" alt="American Staffordshire mix" /></td>
<td>American Staffordshire mix</td>
<td>American Staffordshire</td>
<td>American Staffordshire</td>
<td>Pit bull</td>
<td>American Staffordshire</td>
<td>American Bulldog (50)</td>
<td></td>
</tr>
<tr>
<td>Dog 11</td>
<td><img src="image" alt="Australian cattle dog mix" /></td>
<td>Australian cattle dog mix</td>
<td>Australian cattle dog</td>
<td>Australian cattle dog</td>
<td>Australian cattle dog</td>
<td>American Staffordshire</td>
<td>American Staffordshire (25)</td>
<td></td>
</tr>
<tr>
<td>Dog 59</td>
<td><img src="image" alt="Pit bull" /></td>
<td>Pit bull mix</td>
<td>Pit bull</td>
<td>American pit bull terrier mix</td>
<td>Pit bull mix</td>
<td>American Staffordshire</td>
<td>American Staffordshire (50)</td>
<td></td>
</tr>
<tr>
<td>Dog 62</td>
<td><img src="image" alt="Terrier mix" /></td>
<td>Terrier mix</td>
<td>Jack Russell terrier</td>
<td>Basset Hound</td>
<td>Shih-Pei</td>
<td>Chihuahua mix</td>
<td>Chow Chow (25)</td>
<td></td>
</tr>
</tbody>
</table>

Accuracy in breed assignment as determined by sensitivity and specificity based on DNA breed signatures varied among individual staff assessors, with sensitivity for pit bull-type breed identification ranging from 33 to 75% and specificity ranging from 52 to 100% (Table 5). Veterinarians were not more likely than other shelter staff members to assign breeds that were consistent with the DNA breed signature.

Discussion

A key finding of this study was that agreement among different shelter staff members evaluating the breeds of the same shelter dogs at the same time was only moderate. Lack of consistency among shelter staff in breed assignment confirmed that visual identification of pit bull-type dogs was unreliable.

There is no standardized breed signature for the mixed breed dog known as the ‘pit bull,’ and the surrogate DNA breed signatures used in this study were for the American Staffordshire terrier and the Staffordshire bull terrier. One in five dogs genetically identified with pit bull heritage breeds were missed by all shelter staff at the time of the study. One in three dogs lacking DNA evidence for pit bull heritage breeds were labeled pit bull-type dogs by at least one shelter staff member.

These findings are consistent with previous reports of poor inter-observer agreement among individuals attempting to identify the predominant breeds of dogs. In a large Internet survey, a national sample of 5922 self-identified ‘dog-experts,’ including breeders, exhibitors, trainers, groomers, behaviorists, rescuers, shelter staff, veterinarians, and veterinary technicians, was recruited to complete an anonymous Internet survey in which they selected the most likely breed for dogs depicted in photographs. One hundred dogs were included in the Internet survey, and each respondent was randomly shown photographs (front facial and lateral whole body) of 20 of these dogs. Based on the photographs and information about the height, weight, sex, and age of each dog, respondents selected from a drop-down menu of 181 breed options, including “no predominant breed.”

An average of 53 different breeds was selected for each dog, ranging from a low of 11 breeds selected for a purebred Beagle to a high of 84 different breeds for a single mixed-breed dog. In another study, 523 survey takers involved in dog-related professions and activities watched 1 minute color videos of 20 different dogs, and based on the images and information about age, weight, and sex, recorded one or two predominant breeds or “mix” (Voith et al., 2013). Agreement among survey participants was poor, with at least half of respondents disagreeing on the breed for only 7/20 dogs.

Our findings are also consistent with previous reports comparing visual breed identification with results of DNA breed profiles. In a study of 20 dogs adopted from 17 different agencies, the agency’s breed designation matched DNA breed profiles in only four dogs (Voith et al., 2009). In the subsequent study using videos of the same dogs, visual breed identifications matched DNA results less than half of the time in 14/20 dogs in the study (Voith et al., 2013).
Table 5
Sensitivity for identification of 25 pit bull-type dogs and specificity for identification of 95 non-pit bull-type dogs as determined by DNA breed signature at the time of shelter admission and by four shelter staff members.

<table>
<thead>
<tr>
<th>Number identified by staff as pit bull-type</th>
<th>Sensitivity, % (95% CI)</th>
<th>Specificity, % (95% CI)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shelter 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admission breed</td>
<td>5</td>
<td>0.63 (0.25–0.91)</td>
</tr>
<tr>
<td>Assessor 1</td>
<td>8</td>
<td>0.60 (0.16–0.84)</td>
</tr>
<tr>
<td>Assessor 2</td>
<td>6</td>
<td>0.75 (0.77–0.87)</td>
</tr>
<tr>
<td>Assessor 3</td>
<td>6</td>
<td>0.80 (0.16–0.84)</td>
</tr>
<tr>
<td>Veterinarian</td>
<td>6</td>
<td>0.60 (0.16–0.84)</td>
</tr>
<tr>
<td>Shelter 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admission breed</td>
<td>3</td>
<td>1.00 (0.73–0.99)</td>
</tr>
<tr>
<td>Assessor 1</td>
<td>6</td>
<td>1.00 (0.73–0.99)</td>
</tr>
<tr>
<td>Assessor 2</td>
<td>15</td>
<td>0.75 (0.20–0.83)</td>
</tr>
<tr>
<td>Assessor 3</td>
<td>8</td>
<td>0.75 (0.77–0.87)</td>
</tr>
<tr>
<td>Veterinarian</td>
<td>8</td>
<td>0.75 (0.77–0.87)</td>
</tr>
<tr>
<td>Shelter 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admission breed</td>
<td>5</td>
<td>2.00 (0.73–0.99)</td>
</tr>
<tr>
<td>Assessor 1</td>
<td>4</td>
<td>0.75 (0.20–0.83)</td>
</tr>
<tr>
<td>Assessor 2</td>
<td>7</td>
<td>0.60 (0.16–0.84)</td>
</tr>
<tr>
<td>Assessor 3</td>
<td>6</td>
<td>0.80 (0.16–0.84)</td>
</tr>
<tr>
<td>Veterinarian</td>
<td>8</td>
<td>0.80 (0.16–0.84)</td>
</tr>
<tr>
<td>Shelter 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admission breed</td>
<td>6</td>
<td>0.60 (0.16–0.84)</td>
</tr>
<tr>
<td>Assessor 1</td>
<td>4</td>
<td>0.80 (0.16–0.84)</td>
</tr>
<tr>
<td>Assessor 2</td>
<td>7</td>
<td>0.60 (0.16–0.84)</td>
</tr>
<tr>
<td>Assessor 3</td>
<td>8</td>
<td>0.60 (0.16–0.84)</td>
</tr>
<tr>
<td>Veterinarian</td>
<td>11</td>
<td>0.60 (0.16–0.84)</td>
</tr>
</tbody>
</table>

Cl. 95% confidence interval by exact method.
* One-sided 95% confidence interval.

Dogs were selected for the Internet survey if they were reported to have at least one breed that comprised at least 25% of their DNA profile. Visual identifications were considered correct if at least one named breed matched at least one breed in the DNA profile. On average, visual breed identifications matched DNA breed signatures for only 27% of dogs; 6% of dogs were never correctly identified. Although these previous studies included dogs with pit bull-type DNA breed signatures in 15% (Voith et al., 2009, 2013) and 23% of the dogs tested, respectively, the topic of identification of pit bull-type dogs was not specifically discussed.

Participants in both of the studies overestimated their ability to correctly identify breeds visually. In the Internet survey, 68% of respondents predicted they would correctly identify breeds at least 60% of the time, but only 4% actually did. In the study using videos, after the survey was completed, respondents attended an educational session in which the heredity of phenotypic attributes was discussed and images of breed crosses that looked nothing like their parents were displayed (Voith et al., 2013). Despite being presented with evidence of the poor correlation of physical appearance with breed composition in mixed breed dogs, some respondents clung to their opinions that the DNA results must be wrong; authors of the study called for the completion of similar studies to confirm the findings in additional dogs (Voith et al., 2013).

The commercial DNA testing laboratory used in this study reported an average accuracy of 84% in first-generation crossbred dogs of known parentage. The breed distribution tested represented 45% of American Kennel Club registrations. The accuracy of the test in dogs with more than two breeds and in dogs lacking any purebred heritage is unknown.

Most shelter management software programs have pre-populated drop-down menus of dog breeds that staff members select from when dogs are admitted to the shelter. The two commercial shelter software programs used in the study shelters listed 200–250 dog breed terms, including pit bull terrier, pit bull mix, American pit bull terrier, American Staffordshire terrier, and Staffordshire bull terrier. Breed is a required field for the creation of new dog records, and staff do not have the option of leaving it blank if they are uncertain of the breed assignment.

As demonstrated in the current study, guessing breeds based on visual appearance is fraught with error. In a previous study, the offspring of a cross between a purebred Boxer and a purebred Cocker Spaniel did not physiologically resemble either parent (Scott and Fuller, 1965). When those offspring were backcrossed to either of the parental breeds, even more variability in physical phenotype occurred. This occurs because dog breeds contain a variety of genetic variants for specific traits and these are not reliably expressed in a 1:1 ratio when mixed with other breeds. Breed designations have been used in attempts to predict future behavior or personality, such as activity level, trainability, friendliness, or propensity for aggression, but recent studies have demonstrated that the behavior of individual dogs varies widely both within a breed and between breeds (Swarzberg, 2006; Martinez et al., 2011; Casey et al., 2013, 2014). In addition, modern purebred dogs often lack the behaviors that were historically selected for when dogs were bred and used for specific functional tasks (Swarzberg, 2006). There have been no reports correlating the behavior of crossbred dogs with that expected of the parental breeds. A pair of large studies examining patterns of aggression in dogs found no association between aggression and specific breeds (Casey et al., 2013, 2014). These reports found that aggression tended to occur in a single context, such as a strange person entering the house or encountering an unfamiliar dog on a walk, rather than being generalized over a wide variety of circumstances. There was a low association between inter-dog aggression and human-directed aggression. Together, these findings suggest that dogs are more likely to show aggression in response to ситуational perceived ‘threats’ rather than to have a general trait of aggression.

The lack of a correlation between the appearance and behavior of individual dogs with that of their crossed parent highlights the fact that inherited genes determine what could happen, and not necessarily what will happen. Pedigree analysis can explain the degree of relatedness but does not necessarily predict which morphological or behavioral traits are expressed in mixed-breed dogs. This is an important concept to consider when educating the public either in the areas of law or adoption. Mixing breeds is not like mixing paint.

The regulation of certain dog breeds is controversial, with little evidence that breed bans have resulted in increased serious or fatal dog bite-related injuries (Rakassen et al., 1996; Rosado et al., 2007; Overall, 2010; Patrono et al., 2010). Regulation of particular breeds has been challenged in court, as has the breed identification of individual dogs (Patronek and Slavinski, 2009). In 2011, the US Department of Justice ruled that the Federal Americans with Disabilities Act supersedes any local breed restrictions and allows disabled persons to keep service dogs of restricted breeds (VanKavage, 2011).

In many jurisdictions, animal shelter staff members and veterinarians are considered to be experts in breed identification and are asked to visually assess dogs to determine whether they should be categorized as pit bulls or other regulated ‘breeds’ based on their physical features alone (Simpson et al., 2012). As more cases of...
breed identification involve DNA analysis and are challenged in court. Veterinarians could be called to testify or even be held liable should their breed identification opinions be found to be in error (Berkley, 2009; Simpson et al., 2012). The results of this study confirm that shelter staff members, including veterinarians, frequently disagree with each other on whether dogs fall into the pit bull-type category, and their assessments of whether or not a dog was a pit bull-type only moderately agree with DNA breed profiles.

Limitations of our study include unknown sensitivity and specificity of the DNA breed testing and lack of a DNA test for American pit bull terrier. There is also no DNA test for ‘pit bull,’ since this term refers to a phenotype, not a pedigree. The test for the Bayesian analysis used by providers of the DNA testing relied on breed signatures of purebred dogs selected for the database and not a representative randomized sample of all dogs, which might be a source of inaccuracy. In addition, relatively little information exists regarding the accuracy of the DNA test for identifying the breed composition of mixed breed dogs. Nonetheless, the key finding in this study was that the poor agreement among staff members in pit-bull type dog identification indicates that many errors in visual breed identification were made, even if it was not possible to determine with certainty which of those identifications were wrong.

Conclusions

The marked lack of agreement observed among shelter staff members in categorizing the breeds of shelter dogs illustrates that reliable inclusion or exclusion of dogs as ‘pit bulls’ is not possible, even by experts. This has special significance to the topic of restrictive breed regulations, since such regulations are based on the faulty assumptions that (1) certain breeds or phenotypes are inherently dangerous, and (2) that those breeds and their mixes can be identified by observation. Since injuries from dogs have not decreased following bans on particular breeds, public safety is better served by focusing on recognition and mitigation of risk factors for dog bites, such as supervising children, recognizing canine body language, avoiding approaching an unfamiliar dog in its territory, neutering dogs, and providing adequate socialization and companionship for dogs and identification and management of individual dangerous dogs and reckless dog owners.

Conflict of interest statement

None of the authors of this paper has a financial or personal relationship with other people or organizations that could inappropriately influence or bias the content of the paper.

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References


