



NOTICE OF DECISION
of the
MISSISSAUGA APPEAL TRIBUNAL
established pursuant to section 23.5 of the *Municipal Act 2001*

IN THE MATTER OF a Notice of Appeal dated June 4, 2008 to the Mississauga Appeal Tribunal by Margaret Teixeira, 814 Catcay Crescent, Mississauga, Ontario of an Order to Muzzle a Dog having a lifetime license number 31137 issued by the Manager of Animal Services on April 15, 2008, under the City of Mississauga By-law 0098-2004, as amended (the "Muzzle Order").

AND IN THE MATTER of the Hearing of the Appeal by the Mississauga Appeal Tribunal on October 28, 2008 in accordance with the provisions of the City of Mississauga By-law 0098-2004, as amended, and the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*, as amended.

BE ADVISED THAT it is the decision of the Mississauga Appeal Tribunal to:

Uphold the Order to Muzzle a Dog having a lifetime license number 31137 pursuant to the City of Mississauga By-law 0098-2004 issued by the Manager of Animal Services on April 15, 2008 to Margaret Teixeira subject to the following amendments to the Muzzle Order:

1. Paragraph 1 the words "leashed and" are deleted; and,
2. Paragraph 8 is hereby deleted and replaced with "The provisions of the Animal Care and Control By-law 0098-2004 shall continue to apply."

The reasons for this decision are as follows:

1. On balance, it is the view of the Tribunal that the Muzzle Order satisfies the interest of public safety. However, removing the "leashing requirement" in paragraph 1 of the Muzzle Order, gives the owner the opportunity to take the dog to off-leash parks in Mississauga.
2. Pursuant to Subsection 33(1) of the By-law 0098-2004 the Manager of Animal Services may issue a Muzzle Order where the Manager has reason to believe that a dog has bitten a person or an animal. Although the Tribunal would have liked to have heard evidence from the City of Mississauga Manager of Animal Services regarding the foundation upon

**NOTICE OF DECISION
of the MISSISSAUGA APPEAL TRIBUNAL**

Appellant: Margaret Teixeira, 814 Catcay Crescent, Mississauga, Ontario
Hearing Date: October 28, 2008

which the decision was based to issue the Muzzle Order, the Tribunal feels that based on the evidence heard the City of Mississauga Manager of Animal Services discharged the onus set out under Subsection 33 (1) of the subject By-law 0098-2004. That is, the Tribunal heard evidence that a bite occurred and this was not contradicted.

3. The Tribunal heard oral and written evidence that the dog under the Muzzle Order was not wearing a muzzle, growling and off leash at other times. The Tribunal also heard evidence that the dog under the Muzzle Order is well behaved and does not pose a threat. It was noted that some of the written evidence was hearsay in nature and the Tribunal weighted this evidence accordingly in consideration of their decision.
4. On the balance of probabilities and attempting to reduce any potential for harm to public safety, the Tribunal was persuaded that the Muzzle Order was fair and reasonable.

Issued by the Mississauga Appeal Tribunal on November 10, 2008. Originally executed at the City of Mississauga on October 28, 2008 by:

Chair, Lynda Ross
Vice-Chair, Rafiq Rokerya
Member, David Brown
Member, Leonard Lyn
Member, Roderick Chung

Enclosure: Record of Proceeding



Record of Proceeding

THE CORPORATION OF THE CITY OF MISSISSAUGA

MISSISSAUGA APPEAL TRIBUNAL

TUESDAY, OCTOBER 28, 2008 – 9:30 A.M.

**COMMITTEE ROOM C, CIVIC CENTRE,
300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO**

www.mississauga.ca

This is the record of proceeding of the Hearing by the Mississauga Appeal Tribunal in the matter of an appeal of an Order to Muzzle a Dog having a lifetime license number 31137 issued by Duilio Rose, Manager of Animal Services on April 15, 2008, under the City of Mississauga By-law 0098-2004, as amended, against Margaret Teixeira, 814 Catcay Crescent, Mississauga, Ontario (the "Muzzle Order").

An appeal of the Muzzle Order was submitted by Margaret Teixeira being the owner of the dog having a City of Mississauga lifetime license number 31137.

CALL TO ORDER:

Chair Lynda Ross presided and called this Hearing to order at approximately 9:36 a.m.

DECLARATIONS OF DIRECT OR INDIRECT PECUNIARY INTEREST:

Nil

THOSE PRESENT:

Lynda Ross, Tribunal Member (Chair)
Rafiq Rokerya, Tribunal Member (Vice-Chair)
Roderick Chung, Tribunal Member
Leonard Lyn, Tribunal Member
David Brown, Tribunal Member
Kelly Yerxa, Tribunal Counsel
Margaret Teixeira, Appellant
Heather Bourgois, Agent for the Enforcement Division
Douglas Meehan, Agent for the Enforcement Division, Manager of Prosecutions
Jessica Reid, Tribunal Coordinator, Office of the City Clerk
Elaine Buckstein, Director of Enforcement Division
Marcia Taggart, Legal Counsel, Legal Services Division

INTERLOCUTORY ORDERS OF THE TRIBUNAL:

A written motion by the City's Agent by letter dated October 23, 2008 requesting the removal of documents submitted under Tabs #6 and #10 of the Appellant's filed Documents Brief. The Tribunal admitted the documents under Tab #6 and excluded the document under Tab #10 from the Appellant's Documents Brief.

A verbal motion by the City's Agent to exclude witnesses and certain Enforcement Staff from the Hearing room until such witness has delivered their testimony was granted by the Tribunal with the Appellant's consent.

A verbal motion by the Appellant to hear one of her witnesses out of the order of proceedings was granted by the Tribunal.

WITNESSES:

Rafiq Rokerya, Tribunal Member and Vice-Chair administered the Oath or Affirmation as the case may be to the individuals set out below at the time that individual was called to give evidence for the respective parties.

The following individuals testified on behalf of the City of Mississauga Enforcement Division:

10: 44 a.m. Ms. Dianne Aziz
12:00 p.m. Ms. Mary-Pat McConnell
12:19 p.m. Ms. Leilani Evans

The following individuals testified on behalf of the Appellant:

11:51 a.m. Ms. Zenaida Sousa
12:31 p.m. Ms. Karen Richardson
12:40 p.m. Mr. Carlos Teixeira
1:37 p.m. Ms. Margaret Teixeira

EVIDENCE ADMITTED BY THE TRIBUNAL:

Exhibit 1:

10:34 a.m.: A Documents Brief prepared by the City of Mississauga filed with the Tribunal Coordinator on October 16, 2008, containing the following documents:

Tab 1: Affidavit of Dianne Aziz sworn on November 22, 2006.

Tab 2: Order to Muzzle a Dog having a lifetime license number 31137 issued to Margaret Teixeira on April 15, 2008.

Tab 3: Letter from Margaret Teixeira to Jessica Reid dated June 4, 2008 requesting an appeal of the Muzzle Order.

Tab 4: City of Mississauga Dog Licence number 31137 issued on June 21, 2006.

Tab 5: Mississauga Veterinary Emergency Hospital record and invoice dated October 31, 2006.

Tab 6: Three black & white photographs of Ms. Dianne Aziz's dog bite on October 31, 2006.

Tab 7: Black & white photograph of Ms. Dianne Aziz's dog.

Tab 8: Notice pursuant to Section 35 of the *Evidence Act* of Ontario.

Exhibit 1a:

11:51 a.m.: A coloured photograph purporting to be the photograph identified as Tab #6 of Exhibit 1.

Exhibit 1b:

12:03 p.m.: A coloured photograph of the exterior of the home of Mary-Pat McConnell.

Exhibit 1c:

2:28 p.m.: Witness Statement of Kevin McConnell dated September 18, 2007.

Exhibit 2:

10:34 a.m.: A Documents Brief prepared by the Appellant, Margaret Teixeira filed with the Tribunal Coordinator on October 17, 2008, containing the following documents:

Tab 1: Letter from Debbie Mugridge, Animal Services Investigation Officer dated November 15, 2006 to Margaret Teixeira;

Tab 2: Order to Muzzle a Dog having a lifetime license number 31137 issued to Margaret Teixeira on November 22, 2006;

Tab 3: Offence Notice number 84269743 issued to Margaret Teixeira served on December 1, 2006 by Debbie Mugridge, Animal Services Investigation Officer;

Tab 4: Letter from Margaret Teixeira to Du Rose, Manager of Animal Services dated December 4, 2006;

Tab 5: Mississauga Veterinary Emergency Hospital record dated October 31, 2006 and Statement of Dianne Aziz dated November 16, 2006;

Tab 6: Witness Statement of Margaret Teixeira dated Dec 15, 2006; Witness Statement of Lisa Del Villano dated December 2, 2006; Witness Statement of Karen Richardson dated December 11, 2006; Witness Statement of Amy Kezes dated August 24, 2007; Witness Statement of John B. Stirling dated October 16, 2007; Witness Statement of S. Irene Stirling dated October 16, 2007; Witness Statement of Zenaida Sousa dated December 6, 2006; and Witness Statement of Lucie Ahmad dated November 30, 2006;

Tab 7: Almaguin Veterinary Services Medical Records for Margaret Teixeira's dog;

Tab 8: Document with information regarding the Muzzle Order; email from Margaret Teixeira to Duilio Rose dated October 15, 2007; email from Duilio Rose to Margaret Teixeira dated October 17, 2007; email from Margaret Teixeira to Councillor Pat Mullin dated October 11, 2007; email from Councillor Pat Mullin to Margaret Teixeira dated October 11, 2007; and,

Tab 9: Order to Muzzle a Dog having a lifetime license number 31137 issued on April 15, 2008 to Margaret Teixeira, 814 Catcay Crescent, Mississauga, Ontario.

Tab 10 of the Appellant's filed Documents Brief was removed at the Hearing by order of the Tribunal prior to admitting the Appellants Documents Brief as Exhibit 2. Please refer to interlocutory orders above.

ADJORNMENT: 4:16 p.m.