

“How can I save my dog?”

As the media clearly portrays, a dog attack is a serious offence. However, did you know it is a serious **crime** for which the **dog owner** could be punished by way of a fine (up to \$3,000) in addition to any other costs/liability for damages caused **and** a criminal record? Furthermore, the dog itself **must** be destroyed unless the dog owner can show exceptional circumstances in the attack.

The charges and offences are set out in section 57 and 57A of the Dog Control Act 1996. Under these provisions, the only defence for the dog/dog owner is either:

- 1) total absence of fault; or
- 2) exceptional circumstances.

Total absence of fault is complicated as the owner is basically pleading "not guilty" and then proving in a fully defended hearing (often requiring witnesses) that the owner did everything reasonable to prevent the attack, but through "total absence of fault", the dog somehow got away (e.g. the chain/fence/gate through an 'act of God' was loosened and the dog freed) and attacked a person/animal. It will also be expensive to go through the criminal process of attending the first hearing, pleading not guilty, having your lawyer complete a case management memorandum with the prosecuting Auckland Council, prepare all witnesses etc and proceed to a fully defended hearing which would (at minimum) take half a day.

"Exceptional circumstances" is in no way an easier hurdle to overcome. Although you are accepting responsibility and pleading "guilty", you are proving that certain special circumstances existed which justify an order for non-destruction of the dog. This is often coupled with an application for a discharge without conviction which parallels this approach of accepting responsibility, but arguing that the consequences of a conviction will far outweigh the gravity of the offence. The dog owner will need to sign an affidavit and attach supporting documents including supporting letters from friends, neighbours and family (for example) showing their support not to have the dog destroyed.

The cases of *Tekotia v Manukau City Council* (HC, Auckland, CRI 210-404-000234, 24 August 2010, Andrews J) and *Halliday and Cooley v New Plymouth District Court* (HC, New Plymouth, CRI-2006-443-1, 9 February 2006, Potter J) sets out the test for "exceptional circumstances of the offence" as a test considering the following factors:

- 1) The nature of the attack, including the fact that injury resulted;
- 2) The defendant's history as a dog owner;

3) Whether the dog had behaved that way in the past.

4) Steps taken by the defendant to prevent such an attack occurring; and

5) The reason why the steps taken by the defendant did not prevent the attack on the occasion in question.

The preparing of submissions and attending to the sentencing date is again no easy task and will also involve legal costs so please carefully consider all your options.

Tina Hwang of Queen City Law has recently attended to acting for a dog owner and obtained an order for non-destruction based on exceptional circumstances and further obtained a conviction and then discharge from the Judge for sentencing. Please click [here](#) for her profile and feel free to contact her on 09 970 8812 / tina@queencitylaw.co.nz.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to matters dealt with in this publication.

About the author Tina Hwang

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