

Bouncing Bowser

— one leap too many for the law!

You may put your dog's life on the line when you allow him to cross legal boundaries.

by Gail H. Forsythe

Dogs love and honour us with their patience, dedication and tolerance. They seem to have endless amounts of time and energy to provide non-judgmental companionship.

Our emotional bond with dogs makes it easy to overlook that they cannot judge right from wrong or demonstrate good manners 100 per cent of the time. Instead, they look to us, their human leaders, for direction. Unfortunately, despite our good intentions, we may inadvertently put our dogs' lives on the line when we permit them to cross legal boundaries.

For example:

You and Bowser go for a run in the park to let off some steam. You neglect to read the signs stating that dogs must be leashed, and allow Bowser off leash. You also fail to note that you are jogging along a bicycle path. A cyclist rounds the corner at breakneck speed and collides with you. Bowser leaps to your rescue and bites the cyclist!

As the dust settles, it becomes clear that the skin on the cyclist's hand is punctured and your new jogging clothes are torn. The cyclist demands that you pay for medical treatment. You demand payment for the torn pants. As your voices grow louder, Bowser becomes more agitated and threatens the cyclist with a menacing growl.

The cyclist begins to yell that your dog is dangerous. You decide to leave. The cyclist follows you to your car and writes down your licence plate number as you drive away.

A few months later, you're served with a civil claim alleging that the cyclist can no longer work due to the injuries caused by Bowser. What bad luck for you that the cyclist is a computer whiz! The cyclist claims to be partially disabled due to your "carelessness" and demands that you pay medical costs; past and future income loss (which is sky high); damages for pain; and interest and court costs. Suddenly, an innocent run with Bowser turns into a financial disaster.

What are your chances of success in defending this claim? The following cases help answer this question.

SEASHORE SURPRISE

'Sally' was walking along a public beach when a Rottweiler owned by 'Bruce' ran up. Taken by surprise, Sally fell onto the sand, hit her head and was knocked unconscious. The Supreme Court held that Sally did not establish in her claim that the Rottie had a propensity to be dangerous. The Court of Appeal demonstrated its insight into canine nature when it noted that it would be unfair to assume the dog was dangerous, simply because it was a Rottweiler. The danger posed by the Rottweiler to Sally was small – a reasonable person could not have anticipated her injury. Even though Bruce broke a leash bylaw by allowing his dog to run at large in a public area, Bruce was not liable.





OVERLY ENTHUSIASTIC GREETINGS

'Jan' was invited to Larry's home. Larry's guest, 'Hal,' owned a Labrador Retriever. The dog gave Jan an unusually enthusiastic greeting – he leapt off the porch, ran toward her and knocked her onto her back as she stepped out of her car onto the driveway. Jan fractured her finger and required three operations. She lost time off work, needed a housekeeper and was permanently deformed. The Supreme Court ordered that, because the dog had a propensity to chase deer, and Larry had not urged his guest to do more than tie up the dog, Larry and the guest were jointly liable to Jan for \$30,000 for pain, \$3,000 for past and future wage loss, \$4,250 for household tasks, and over \$2,000 for special damages and costs. The Court of Appeal dismissed the case on the basis there was no evidence that the dog was a danger or that it was known to misbehave by jumping on people.



STAY AWAY FROM THE BABY!

'Oliver' lived next door to 'Holly.' Oliver purchased a puppy and invited Holly to come into his yard to see it. When Holly bent over the puppy to pet it, Oliver's adult dog, which had a good history with Oliver's children and guests, punctured

Holly's face. Oliver was only a few feet away from the dog and Holly when the injury occurred. He had restrained the dog by his collar but, thinking he had the dog under control, let go of the dog. The court accepted Holly's testimony that the dog's behaviour was threatening and that Holly relied on Oliver's assurances that "it was okay." The Alberta Provincial Court awarded Holly \$3,500 in damages plus \$300 in costs.

These cases illustrate that several issues arise when the courts assess a dog owner's liability. These include:

1) **Who owned the dog?** In the friendly-greeting case, dog identity became an issue. There was doubt that Hal's dog had caused the injuries, as another dog was observed in the area. Once identified as the dog's owner, Hal became liable for the consequences of negligently managing his property. Property? Your dog falls into the same legal category as your car, laptop or weapons – all are personal property.

2) **Is the dog dangerous?** Courts presume that a dog, because of its domestic nature, is not dangerous. This presumption is a useful defence. If the evidence shows that the dog has a history of dangerous behaviour, then the court must not apply this presumption. If the dog is a biter, the owner has a higher duty to protect the public.

3) **Was the dog's owner negligent?** We expect others to act responsibly – to consider the consequences of their actions and to take reasonable steps to prevent harm. If you know that your dog is not reliable, don't leave it alone (e.g., tied up outside a store) if someone – particularly a child or a senior – could come in contact with the dog. Err on the side of caution. Confine your dog, rather than leaving it unsupervised. By remaining in control of your dog's behaviour, you can prevent the unexpected.

In our cyclist case, it is likely that the case will be resolved by negotiation. This process can take years and require extensive financial, emotional and personal commitment. If the jogger had just clipped a leash onto Bowser's collar, this entire legal quagmire, aggravated by Bowser's leap into the fray, could have been avoided.

For those of you who are more sedentary than our jogger, here is a different scenario:

GIT OUTTA MY YARD!

'Bill' allows a meter reader onto his residential property located in Ontario. Bill ties up his dog, to keep it away from the meter reader. However, rather than remain in the yard to supervise the dog, Bill goes inside to watch TV. Feeling threatened, the dog bites the meter reader when he comes within reach. A few days later, the police are at Bill's door with a demand that he appear in court to plead to charges under the *Ontario Dog Owner's Liability Act*. If convicted, Bill could face a \$5,000 fine plus the dog's destruction!

Without a proper legal defence, Bill stands a good chance of being convicted under the *Ontario Dog Owner's Liability Act*.



Testimony from family, friends and an 'expert,' such as a veterinarian, may persuade the court that a bite was an isolated occurrence. If the court accepts that evidence, the dog's life could be spared if Bill agrees to confine the dog by building a secure run or kennel.

Most provinces create an extra legal duty that applies in this circumstance. For example, under Alberta's *Occupier's Liability Act*, an occupier of a residence or business has an extra duty to protect people invited onto the premises. This statutory duty includes protecting people from dangers such as broken steps, swimming pools and dangerous animals. This potential liability is a factor that prompts insurers to ask if you have a dog when issuing a homeowner liability policy.

For those of you who love the great outdoors, especially in the West, here is a different scenario.

BEARS, BANFF AND 'BUFFALO'

You and your buddies are enjoying a day in Banff National Park. Because you're in the wilderness, hoping to get close to a bear (no one said you

were particularly bright) you allow your dog, Buffalo, off leash in a national park hiking area. Things get a bit rowdy and, before you know it, you attract the park warden's attention and he charges you with allowing Buffalo off leash.

You can expect a conviction for this offence. The average fine is \$100. After illegal camping and speeding, dog-leash offences are the third-most-likely misdemeanour committed in this world-famous playground.

If we look at these cases, they have a common thread. The dog was not restrained – it was allowed to act on its own instincts.

If your dog could talk, he might say, "I'm trying to protect you and our property or greet your friends by displaying boundless joy. Without training and guidance, these behaviours are a liability for me, you and your loved ones. I'll make you a deal... You protect me from the folly of my antics. Train me, keep me on lead and restrain me when appropriate. In exchange, I'll listen to, play with and adore you – without complaint or criticism."

Sounds like a good bargain for you and good security for your dog, your wallet and your family's peace of mind.

