

Veterinary negligence

If matters go wrong, try to resolve your concerns directly with the veterinarian.

by Gail H. Forsythe, LL.M.

Consider the following case study. "Our bitch was due to whelp any day. We had great confidence in the veterinary profession. Years of positive experience with competent, caring professionals meant that we could expect a safe delivery of a valuable litter. Being new to the area, we sought out a veterinarian who was highly recommended. The veterinarian urged us to bring our bitch in for a Caesarean section as soon as she started labour. Everyone wanted to avoid an 'emergency' situation.

"We dashed into the clinic at the first signs of labour. The veterinarian said that we were mistaken. 'She is not in labour. Take her home.' She had two contractions on the examination table; even so, the veterinarian insisted that we leave.

"Half an hour later we returned. A protruding amniotic sac was now compelling evidence of an imminent delivery. The veterinarian said that she was 'too far along' to perform the surgery; the first puppy was lodged in the birth canal. No amount of pulling by the veterinarian could dislodge it. After what seemed an endless struggle, the veterinarian recommended the C-section. We agreed. The veterinarian was short staffed, so we were asked to assist. Having attended many C-sections, we agreed. Contrary to our prior observations, this veterinarian was flipping through the pages of a textbook during the procedure. This was highly unusual!

"The puppies were removed from the uterus, limp, cold and lifeless. Three of the four were dead. Our bitch was also ice cold, motionless and barely breathing. As we left the clinic, the veterinarian said: 'I hope she doesn't die on the way home. I've done everything possible for her.' It took three days for her to walk normally."



The birth of a healthy litter is a priority for both vets and breeders.

The legal ramifications

What, if anything, went wrong in this scenario? Could the owners have done more to ensure the safety of this litter? Or, should they have been able to rely on the veterinarian's professional expertise? What is their legal recourse?

Let's look at *Melnychuk v Ronaghan et al.*, a 1999 Alberta Court of Appeal case. Mr. Melnychuk asked Dr. Ronaghan to perform a Caesarian section on a heifer to deliver her unborn and dead calf. The veterinarian reluctantly agreed to perform this surgery in the field under very difficult conditions. During the surgery, the veterinarian gripped the scalpel in his teeth so that he could use both hands to perform a difficult lift of the uterus.

Mr. Melnychuk assisted. Unfortunately, something went wrong and the scalpel accidentally slipped from the veterinarian's grip between his teeth. It cut Mr. Melnychuk's arm and serious injuries were suffered as a result.

Mr. Melnychuk sued the veterinarian for negligence.

Some of the key legal principles in professional negligence cases are:

- 1) Did the professional owe the client a "duty of care"? The courts will look to the typical standard of care used in that profession. In some situations, a court may conclude that although an industry-wide practice is followed, the "standard of care" is woefully inadequate.
- 2) Was the injury or harm reasonably foreseeable? If so, the professional had an obligation to prevent it. If not, then it may be a mere accident.
- 3) If the injury was reasonably foreseeable, did the professional "cause" the events that led to the damage suffered? If a court is satisfied that no intervening event occurred, it may conclude that the professional's action (or inaction) resulted in the loss.
- 4) What is the damage? Is there convincing and objective evidence to quantify economic loss? In the case of the litter of dead puppies, if the breeder can provide convincing evidence as to their sale price, a court may award damages (less a percentage reduction for "contingencies" – i.e., routine fatalities) for the economic loss. Future stud fees, and the value of generations of unborn litters, may be considered more remote.

In the *Melnychuk* case, the Alberta Court of Queen's Bench concluded that the veterinarian failed in his duty to warn Mr. Melnychuk of the risks associated with the sharp scalpel. The Court of Appeal disagreed. It concluded that Dr. Ronaghan did not have a duty to warn Mr. Melnychuk. The veterinarian was held not liable. *continued on page 81*



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How does one prevent and resolve this type of claim?

- 1)** Before consenting to any procedure, ensure that you have a clear understanding of the risks involved. You also have an obligation to provide accurate and complete information to your veterinarian as well as pay a reasonable fee for services rendered.
- 2)** If matters go wrong, try to resolve your concerns directly with the veterinarian to agree on a mutually satisfactory solution.
- 3)** If you have a serious concern about competence, consider a complaint to the governing licensing body in your province. Veterinary medical associations have an obligation to receive complaints and investigate their merit. A professional association has the legislative authority to discipline a member. In some cases, a licence to practise may be revoked or suspended.

The courts are the appropriate place to seek financial or other compensation for claims of professional negligence. It is very important to obtain legal advice before starting a court action because insurers may vigorously defend. If the amount in question is small, consider small claims court.

- 4)** Before taking an adversarial approach, remember that veterinarians and clients have a mutual desire to ensure that quality medical care is delivered to the dogs we love. As for the litter of puppies, the events depicted are a combination of actual experience in two separate cases. A third, and very capable, veterinarian now has the confidence and ongoing business of the owners