

LIABILITY FOR YOUR DOG (cont)
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I earlier canvassed various situations which could give rise to the civil liability of an owner for the harmful actions of his dog. Where a dog causes injury, there will frequently be a lawsuit in the civil courts, with the injured person claiming monetary damages for his 'pain and suffering' (including scarring or permanent deformity or disability), loss of income, and out of pocket expenses.

It is more rare, but in certain circumstances, an owner could also face criminal prosecution and the attendant risks of imprisonment and a criminal record.

Both the dog world and the legal world have shown more than a passing interest over the last year or so in events which unfolded in the San Francisco area. These events concerned the killing of a young woman by two large breed dogs and the subsequent criminal trial of the owners of those dogs, both of whom happened to be lawyers. The case had all the intrigue and drama of prime time American TV, including a gruesome death, explosive collateral issues of racism, bestiality and gay rights, courtroom theatrics, and the outcome of a conviction for murder for one defendant and a conviction of manslaughter for the other. The murder conviction was surprising. A California criminal lawyer of my acquaintance explained that the jury in the case found that the one defendant was so aware of the dogs' violent tendencies and she so ignored the obvious risks, her reckless disregard for the safety of others rose to the level of, and could be legally equated with malice and intent. Hence the basis for the charge and conviction of murder.

People have asked me whether the same legal result could happen here in Canada. Could the owner of a vicious dog be charged and convicted of murder and, if not, what lesser consequences could flow to a Canadian defendant under our criminal justice system. The questions are good, and they are ones even more thought provoking in these days of heightened awareness of dog aggression and incidences of irresponsible dog ownership.

I am not aware of any case in Canada where someone has been accidentally killed by an aggressive dog. But if such a situation were to tragically arise, I do not believe that a charge of murder would be sustainable given the definition and parameters of "murder" under the Canadian Criminal Code. There are two possible scenarios which could give rise to a murder conviction in Canada. The first obviously is that a person causes the death of another and intended to cause that death. The second is where a person intentionally causes bodily harm to another, knowing that such harm could lead to death but that person is reckless as to whether death actually occurs.

There must be the subjective element of intent. In the San Francisco case, there was no allegation that the dogs were deliberately or intentionally set onto the victim, either to kill her or to harm her. Thus, under our system, a vital element is missing for a murder charge, since there is no scope for reckless disregard being equated to intent.

If the same circumstances were to arise in Canada, the owner or owners of the dogs would likely be charged with manslaughter, which carries a maximum sentence of life imprisonment. The essence of a manslaughter charge is that there is either an overt act of assault, or there is negligent behaviour which causes bodily harm, leading to death. The negligence must be of such magnitude that it is a marked departure from the norm, the harm must be greater than trivial, and, objectively looking at it, there must be the possibility that death could result from the negligent behaviour.

In addition to a manslaughter charge, in the case of a fatal dog attack, an owner could be charged with 'criminal negligence causing death', which again carries with it a maximum sentence of life imprisonment. But, as stated, I have been unable to find any case involving death. There are, however, cases in which an attack by dog(s) has resulted in injury, and thus the charge has been 'criminal negligence causing bodily harm'. The maximum penalty is a term in prison. In my earlier article, I summarized the common-law duty that makes a person civilly liable for damage caused by an animal which he knows or should know has the propensity to do harm. The Criminal Code on the other hand requires something more than inadvertent behaviour – it is a higher standard of culpability. There must be the element of a wanton or reckless disregard for the safety of other persons, the knowledge of risk and an assumption or indifference to that risk.

One such case in Vancouver involved a dog regularly escaping from its pen, and on two occasions, biting people. The judge had this to say, in finding the defendant guilty of criminal negligence:

"When any dog is known to have a propensity for biting or harming people, there is a duty on the owner to see that the dog is not free to do so in future. The welfare of the dog, ones affection for it, the loss of a valuable dog, none of these can be weighed against the safety of the public... If (the owner) could not control his dog, and I find that he could not, then it should have been given to someone who could or alternatively the dog should have been put away. His failure to do so and his indifference to the consequences is a crime deserving of punishment."

In a similar case, a defendant also failed to keep his dogs confined, and they savagely bit a passerby, ripping her arms, her scalp and almost tearing an ear

from her head. The judge who presided over the criminal trial passed sentence following a conviction of criminal negligence causing bodily injury, by speaking to the defendant in these terms:

"To say that this has been an unfortunate incident of course is a very large understatement...It is quite clear from the (police) evidence that you were devoted, if not passionately devoted, to the dogs and now you have lost them. You must clearly realize that whatever affection you may bestow upon any dog you might have, that affection must not distort your sense of responsibility to your neighbours. And this is what happened in your case. If you had thought carefully about what you were doing, you would have realized that when put in the balance, the welfare of your neighbours outweighed very substantially the affection which you had for your dogs."

If there's a lesson to be learned from the tragic death of the woman in San Francisco, and from all other cases in which dogs have attacked and hurt people, it may be this – that more and more, owners are going to be held accountable for the actions of their pets. The warning signs are clear that dog ownership is increasingly being viewed by society as a privilege. By taking steps to protect our neighbours from our dogs, those same steps may thereby safeguard our dogs and our right to keep them.