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Who's liable if dog bites?

Home or auto insurance should cover legal damages

In the 25-plus years I have been living in the same house, no four-legged creature ever crossed the threshold - until last month.

Succumbing to a phenomenon that occasionally strikes empty-nesters, my wife and I recently acquired a cuddly, blond, 3-month old Lhaso Apso puppy.

Benjy's arrival in our household last month coincided with the horrible attack on 16-year-old Melanie Munro by two Akita-pitbull brothers in the east end of Toronto. Both dogs have a history of biting and were under a muzzle order. The Munro family has hired Toronto lawyer Richard McLean to start legal action against the dogs' owner.

In the first blush of puppy love, the liability aspects of pet ownership never occurred to me.

As docile as Benjy is, I began to wonder: do we have insurance coverage for his actions under our homeowner policy? What if he causes injury while in the car, on our boat, or at the office?

My research led me to Toronto lawyer William Blakeney, a litigator with experience in the field of dog bites. Blakeney is the author of a fascinating study, *Dog Bites and the Common Law*, a discussion of the liability of dog owners for the actions of their pets.

With the recent urban trend of keeping aggressive dogs for personal protection, Blakeney says the liability of dog owners is becoming increasingly costly for insurers, especially when responding to a serious incident where the family pet has attacked without provocation.

On the flip side, having a pet without the liability protection of a homeowner, condominium owner or tenant insurance package is a risky proposition.

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Under British and Canadian common law, says Blakeney, the owner of a normally harmless domestic animal was not responsible for a vicious or mischievous act if it was not in the animal's usual nature. Every first-year law student learns the old legal axiom, "Every dog is allowed one bite."

If, however, the dog owner knew the animal had a tendency to nasty behaviour, the owner effectively had no defence to a damage claim, even if the dog had never bitten anyone before.

Knowledge was the key element. If the owner knew of the dog's past behaviour, he or she was responsible for it in the future.

All this changed in 1980, when Ontario joined several American states and some Commonwealth countries by reversing the common law rules and imposing strict liability on dog owners.

Under the Dog Owners' Liability Act, the owner of a dog, a person who is in possession of the dog, and the parent or guardian of a minor who owns a dog, are all liable for damages resulting from a bite or attack by the dog.

The legislation effectively makes the dog owner strictly liable for damages, whether or not the owner knew of the tendency of the dog to bite, and whether or not the owner was negligent or at fault in some other way.

Even if ownership can't be proven, the Act also places equal responsibility on anyone who harbours a dog.

"Harbouring" a dog requires more than the simple act of allowing it to be in one's home or on one's property. Two court cases in the 1990s found that a dog owner's landlord, as well as the owner of a residence where the dog and his master are visiting, are not responsible for the dog's actions.

In any claim under the Dog Owners' Liability Act, a court is allowed to reduce the damages to the extent that the victim was at fault or contributed to the damages by provoking the animal.

What constitutes provocation sufficient to reduce the damages? In his article on the subject, Blakeney suggests this is difficult to pinpoint. In a 1994 case, *Slusarchuk v. DaCunha*, the plaintiff had a history of tormenting the dog in question.

On the night of the attack, the victim consumed 20 to 30 beers, and staggered toward the dog waving his arms. Despite this, the court found the dog owner responsible for all damages.

Dog bites rarely take place within the owner's residence. When dogs are in transit or in a parked car, different insurance coverage may attach to their owners. If the attack involves a dog being transported in a car, the courts have ruled the bite may be covered by the standard automobile policy.

In the 1995 case of *Longarini v. Zuliani*, the defendants left their dog Spike in a parked car with the window partially rolled down to allow air circulation. A boy approached the window and the dog managed to bite him through the small opening.

When the case got to court, a dispute arose between the homeowner's insurance and the automobile insurer over which policy would pay the victim's damages.

Madam Justice Gloria Epstein decided that the car insurer was responsible, since travelling with the dog in the car was an ordinary activity of the dog owner's family.

I assume the same reasoning would apply if Benjy decided to test out his baby teeth on a visitor to our boat next summer, or on a client visiting my office. My office insurance is relevant here since Benjy is in daily attendance as director of office morale and client development.

In the meantime, I've discovered the hard way that dog bites may not be the only damage a dog can cause. Even though Benjy is, by nature, as docile as any canine could possibly be, and spends about 18 hours a day sleeping (the exception being the hours between midnight and 6 a.m.), it turns out he has a fondness for nibbling computer cables.

Benjy and I are currently working on a program to test out his new teeth on somewhat safer materials. In the meantime, I am dog-proofing the house by blocking off rooms and setting up door gates again - something that hasn't been necessary since my sons were toddlers back in the 1970s.

The more things change, it seems, the more they stay the same.

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