

## Neighbour Law

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Script 400 gives information only, not legal advice. If you have a legal problem or need legal advice, you should speak to a lawyer. For the name of a lawyer to consult, call Lawyer Referral at 604.687.3221 in the lower mainland or 1.800.663.1919 elsewhere in British Columbia.

Many of us have had occasional problems with neighbours involving noise, untidy premises, dogs, fences, trees and hedges, secondhand smoke, water damage, or trespass. This script describes the laws that deal with these types of problems. In most cases, you can try talking to the person causing the problem. They may not be aware of the effect they're having on their neighbours and talking to them may solve the problem. But if that doesn't work, you have other options, which this script describes.

### Noise

We've all had our peace and quiet disturbed by squealing tires, loud stereos, barking dogs, or noisy equipment. What can you do to stop it? First, try talking to the person causing the noise. They may not realize how irritating it is.

If that doesn't work, call your city hall and ask if there is a noise bylaw. If there is one, talk to the person who enforces it. For example, in Vancouver, you would call the Environmental Health Officers. Each municipality's noise bylaw is different, but most are quite broad. In Vancouver and many other municipalities, the bylaw covers noise from animals and birds, heavy-duty equipment, lawnmowers, loud parties, stereos and many other things. Usually, the municipality's enforcement officer will try to solve the problem informally. If they can't, they may prosecute the person in court for violating the bylaw.

If the noise is on a weekend or at night, and city hall is closed, you can call the police. And if a person is screaming, shouting, swearing or singing to the point they are creating a nuisance, they may be causing a common disturbance – an offence under the *Criminal Code*. In all these cases, call the police and report it. The *Criminal Code* is available at <http://laws-lois.justice.gc.ca>.

You can also sue the person causing the noise. You could sue for damages for nuisance or negligence, or ask the court to order the person to stop the noise.

### Untidy premises

Most municipalities have bylaws to control things like garbage, junk, overgrown gardens, or abandoned vehicles. For example, in Vancouver, every property owner must keep their property in neat and tidy condition, in keeping with a reasonable standard of maintenance common in the neighbourhood. So, if talking to the neighbour doesn't help, your next step is the local government. Explain your situation to the person who enforces bylaws. They may investigate and if your complaint is valid, order the owner to clean up the property. If the owner doesn't, the municipality can clean it up and then bill the owner for the cost of the cleanup.

### Dogs

If you own a dog, you should be familiar with your legal responsibilities. These are described in four places: local bylaws, provincial laws, the *Criminal Code*, and the common law, as explained below.

#### 1. Local bylaws

Local bylaws cover licensing and may prohibit dogs from being in certain places. You can find a copy of local bylaws at your public library, courthouse library, or local government offices. Many local bylaws are also available on the municipality's website.

Many local governments have passed bylaws to prohibit dogs running loose. In Vancouver, for example, dogs cannot be on the street or in a public place unless they're on a leash not more than 8 feet long (2.5 meters) – except in off-leash parks. As well, female dogs must be kept confined and housed when they're in heat.

The Vancouver animal control bylaw also requires “aggressive” dogs – dogs with a known tendency to attack or bite, or dogs that have bitten another domestic animal or person without provocation – to be muzzled or kept indoors or in a pen.

The city may seize and impound (for up to 3 weeks) a dog that has bitten someone. A dog found running loose, or unlicensed, will be taken to the Pound and, if it isn't claimed within three days, it may be put up for sale or destroyed. The owner could also be charged fees for impounding the dog, keeping it at the Pound, and any veterinarian services it needs. The owner may get a ticket for violating the bylaw.

Health bylaws in Vancouver and elsewhere prohibit dogs in restaurants and other places where food is kept or handled. The bylaws don't apply to private homes or prohibit "seeing-eye" or other types of service dogs.

Vancouver has a "pooper-scooper" bylaw, and your municipality may have one too. It requires you to pick up your dog's excrement if it's on property that is not yours. If you don't, you can be fined up to \$2000. This law does not apply to "seeing-eye" dogs or service dogs working with people with disabilities.

Vancouver's animal control bylaw also regulates the noise of barking or howling dogs. For example, if your neighbours complain that your dog's barking unreasonably disturbs the peace and quiet of the neighbourhood, you could be fined up to \$2,000. Other local governments also regulate dog barking in their noise-control bylaws.

## 2. Provincial laws

The BC *Livestock Act* protects farm animals from attacks by dogs. For example, anyone can kill a dog on the spot if it's seen running at large and attacking or viciously chasing cattle, goats, horses, sheep, swine, or game.

Under section 49 of the BC *Community Charter*, local governments may seize and impound some dangerous dogs. The local government may apply to provincial court for an order to destroy the dog. The local government does not need a specific local bylaw to exercise these powers.

Both these BC laws are available at [www.bclaws.ca](http://www.bclaws.ca).

## 3. The Criminal Code

It's against the *Criminal Code* to willfully cause unnecessary pain or suffering or injury to any animal or to willfully neglect or fail to provide suitable and adequate food, water, shelter and care for it. If you don't take reasonable care of your dog, you could face a fine or jail term and a criminal record. And if you don't take reasonable care to avoid harming others, and your dog attacks and injures someone, you could be charged with criminal negligence. The Criminal Code is available at <http://laws-lois.justice.gc.ca>.

## 4. If your dog injures someone – common law

If your dog injures someone, that person may sue you under the common law in civil court. If they succeed, you'll have to pay them for the injuries your dog caused them. You should check with your insurance agent to find out if your house insurance would cover you in this case. Better yet, if you have a dog that is likely to bite or attack a person, always keep it under control or get rid of it.

## Fences

Fences make good neighbours: that's the common saying. But they can also cause problems. Local bylaws often control how high a fence can be, both natural fences, such as hedges, and fences that you build. If your neighbour builds a fence higher than the bylaw allows, you can talk to them about it. You can also call the city, which can order the person to obey the law. Unless you do these things, the city does not normally check every fence.

A fence on the property boundary belongs to both property owners. People often share the cost of a fence, but they don't have to. Both are responsible to keep it in good shape and they have to get permission from the other one to take it down. The section below called "Trespass" has more on fences.

## Trees and hedges

If your neighbour's tree branches hang over your property, you can cut them, but only up to the property line. You cannot go onto your neighbor's property or destroy the tree. The reverse case is also true.

If your tree damages your neighbour's property, for example, a branch falls on their roof during a storm, are you responsible? No, not unless you caused the damage intentionally or through negligence. Negligence means you did not take reasonable care or you were warned or knew the tree was damaged or diseased and may fall. But if your tree roots go under their property and damage their pipes, lawn, or foundation, you may be responsible under the common law principle of "nuisance". It depends on the facts of the case, but normally, courts will not allow use of a property that

causes substantial discomfort to others or damages their property.

### **Secondhand smoke**

If your neighbour's smoke comes into your house, as in all these cases, you can talk to them. If that doesn't work, what to do depends on the situation. Does the smoke come from a tenant? If so, does the lease prohibit smoking? If not, you still have the right to "quiet enjoyment" of your property. And the smoke may violate that right or be a nuisance under the common law. You would need legal advice on this.

### **Water damage**

Normally, a neighbor is not responsible for damage caused by the natural conditions of land. In other words, if rain runs from a neighbour's yard onto your property and makes it soggy, the neighbour is not responsible. But if a neighbour changes their property and that causes more rainwater to come run onto your property, they may be responsible. They have a duty to be reasonable. If they are careless, for example, leaving a sprinkler running too long, which in turn floods your property, they may have to pay you for the damage. Again, you would need legal advice on this.

### **Trespass**

If a neighbour comes onto your property without your permission, they are trespassing. If they don't leave when you ask them to, you should call the police. If a neighbour builds a fence or other structure, such as a shed, that encroaches on (comes onto) your property, this is also a trespass. Often the encroachment is unintentional and you can solve the problem by getting a proper survey. If talking with your neighbour and getting a survey don't solve the problem, you can sue them for trespassing. Usually, a court will order the neighbour to remove and relocate the fence or structure so it's off your property.

### **What if no bylaw, provincial law, or the *Criminal Code* deals with your problem?**

You may have a problem that these laws do not cover. For example, your neighbour's property may be producing a terrible smell. In this case, you could try alternative dispute resolution. It may be the best and most cost-effective way to resolve neighbour disputes, because the relationship between you and your neighbour continues and you don't want to harm or destroy it. For information on alternative dispute resolution, see the website of the Dispute Resolution Office of the Ministry of Attorney General at [www.ag.gov.bc.ca/dro](http://www.ag.gov.bc.ca/dro).

Or you may decide to sue your neighbour. In that case, you should talk to a lawyer immediately because the laws may set a time limit for starting a lawsuit.

[updated September 2010]

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