



The following is not intended to be construed as legal advice, nor does it form the basis of a lawyer-client relationship. The information provided in this guide pertains only to the jurisdiction of Ontario, Canada.

Currency Date: May 28, 2013

Animal Care Malpractice and Negligence

If your animal has been the victim of malpractice or negligence, you should first decide what sort of redress you are seeking. More specifically, your options ultimately depend on whether you want to: (a) ensure the negligent party is disciplined appropriately; (b) receive some form of monetary compensation; or (c) both.

Making a Complaint to the College of Veterinarians of Ontario

If you are dealing with a veterinarian you may wish to contact the College of Veterinarians of Ontario (www.cvo.org) and report the conduct of the veterinarian. The College of Veterinarians of Ontario has the power to discipline veterinarians if they are found to have acted improperly. Even if the veterinarian(s) in question are disciplined the CVO does not provide any sort of compensation to the complainant, however.

The following is a link to the CVO's statement on how to file a complaints process:

http://www.cvo.org/imis15/CVO/For_The_Public/About_the_CVO/File_a_Complaint/CVO/Complaints.aspx?hkey=f49dd9f4-a32d-4dd6-b887-8d0503863c14

Commencing Legal Action

If you are considering commencing a legal action against your animal's veterinarian / groomer / boarder you should first contact him/her directly and inform him/her that you believe s/he was negligent. If the issue is not resolved to your satisfaction, then you may consider informing the party that you intend to take further action, possibly including legal action. This may be enough to prompt settlement discussions. You can also hire a lawyer to write what is termed a 'demand letter' which states that you demand certain things (i.e. compensation), and if those things are not given to you, you may commence a claim. A demand letter is generally not prohibitively expensive as the lawyer (or paralegal) will spend only a couple of hours or less drafting it.

If the demand letter is unsuccessful you may decide to initiate legal action. In Ontario there are three different court "levels": the Superior Court of Justice (for amounts over \$100,000), simplified procedure in the Superior Court of Justice (for amounts between \$25,000 and \$100,000) and Small Claims Court (for amounts below \$25,000). The cost and complexity involved decreases with the amount at issue with each successive "level".

The Small Claims Court procedure is comparatively simple and inexpensive and many claimants represent themselves. You can also hire a lawyer or paralegal to represent you. Paralegals are less expensive than lawyers and they are often used in Small Claims Court proceedings. The Ministry of the Attorney General has put together a website about the Small Claims Court, including any forms you will have to file, how to find a lawyer/paralegal, etc. A link to the website is found below:

[\(http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/\)](http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/)

You should always be cognisant of time limits that pertain to legal actions, which in Ontario, are governed by the *Limitations Act, 2002* (S.O. 2002, Chapter 24, Schedule B). The *Limitations Act, 2002* sets out the maximum amount of time that claimants can wait before filing a claim. In general, civil action claims have a limit of two (2) years. This means that you have two (2) years from the day you knew or ought to have known that you had a potential cause of action to commence a claim. However, prior to starting a claim, you should review the *Limitations Act, 2002* to ensure no relevant amendments have been made. Note

also that some statutes, such as the *Veterinarians Act* (which is further described below) reduce the limitation period to one year in the case of specific causes of action (s. 41(3)).

The public can access current Ontario laws at no charge at the e-laws website (www.e-laws.gov.on.ca). To search for a statute, you must click on the "Search or Browse Current Consolidated Law" button, which will take you to an alphabetical listing of statutes. Once you find the statute you are looking for, you may find that there is a plus (+) sign next to its name. The plus (+) sign indicates that there are Regulations associated with the statute under review. Regulations are very important, and they should always be reviewed, as they often add to or expand on something that is contained in the statute itself.

In Ontario, veterinarians are governed by the *Veterinarians Act* (R.S.O. 1990, c. V.3). The Regulations that are enacted pursuant to the *Veterinarians Act* set out the standards that are expected of veterinarians and delineate when conduct is considered malpractice. You can find the *Veterinarians Act* and its Regulations on the e-laws website. We suggest that you review the *Veterinarians Act* and its Regulations to determine if you have a plausible claim of malpractice. Groomers, dog walkers etc. are not governed by specific legislation. Therefore, in these cases, common law standards of negligence would apply (as further described in the paragraph below).

Fridman, in *The Law of Torts in Canada*, vol. 1 (Toronto: Carswell, 1989, p. 233) sets out the legal requirements of a negligence claim:

"...it is necessary for the plaintiff to show:

(i) that he was owed a duty of care by the defendant; (ii) that the defendant should have observed a particular standard of care in order to perform or fulfil that duty; (iii) that he broke his duty of care by failing to fulfil or observe the relevant standard of care; (iv) that such breach of duty caused damage or loss to the plaintiff; (v) that such damage was not too remote a consequence of the breach so as to render the defendant not liable for its occurrence."

For claims involving veterinarians, you would point to the standard of care set out in the *Veterinarians Act*. In determining the standard of care, the courts will look at how other veterinarians, groomers and dog walkers in a similar town, of a similar education level, with a similar level of experience etc. would have acted in a factually analogous situation.

Therefore, what you need to keep in mind is that even if you feel that what was done to your animal was wrong, if that's what other veterinarians / groomers / boarders would do in similar circumstances, a negligence claim will likely fail. You may wish to do some research regarding standards of care, so that you are better informed as to the typical standards of care practised by veterinarians/groomers/boarders.

***If you have found this guide helpful please consider making a donation at:
www.animaljustice.ca/donate
Animal Justice Canada is a charitable organization that operates with the
help of people like you.***