

# The law and You you

These questions and answers, based on Ontario law, are intended to inform and not to advise. No one should try to apply or interpret the law without the aid and advice of a trained expert who knows the facts, since the facts of each case may change the application of the law.

**Q:** A door-to-door salesman has been trying to drum up business in our neighborhood for a paving company which repairs driveways. We need our retarred but how can I be sure the company is reliable?

**A:** Your cautious approach is wise. Any salesman who phones you, comes to your home or place of business, or sells to you in a public place must be registered. You should insist on seeing his licence. If you doubt whether (i) he is registered or (ii) there have been complaints against his product or service, call Consumer Protection Bureau, Box 99, Ottawa, Ontario.

**Q:** This morning I signed a contract for the painting of the exterior of my house with a firm which solicits business through door-to-door representatives. I now feel I acted in haste. . . what can I do?

**A:** For any agreement made with a door-to-door salesman where the purchase price is greater than \$50.00, the law permits you to change your mind and cancel the contract as long as you didn't pay cash or write a cheque for the full amount. To end the contract, you must send a letter by REGISTERED MAIL or deliver it personally to the company the seller represents within 48 hours from receiving the contract.

**Q:** We have just moved into an old house which is in need of extensive renovations. A good friend's brother who is well qualified has agreed to do the work. Is it necessary to have a formal legal arrangement?

**A:** It is best for all parties that the arrangement be governed by a contract. The contract should be written and include the costs, nature and extent of the work to be done, and a description of the materials to be used. Also be sure that all promises and guarantees made to you by the renovator are written into the contract. If there is a guarantee be sure it is spelled out and the length of time for such guarantee clearly stated.

**Q:** My husband wishes to take out a substantial loan to build an addition to the house. The loan company required that I sign. . . is this just a formality?

**A:** No. You are responsible for any loan you co-sign or guarantee. Should your husband default in his payments or even if you decide to separate at some future date, you are responsible. Before signing you should know what steps the person lending your husband the money (creditor) can take to get the money back if he proves to the court that he is entitled. If you are employed, the creditor can get an order from the court requiring your employer to deduct money from your paycheque. (This is called garnishment of wages). Under certain conditions, any property you own such as car, furniture, home, could be taken.

**Q:** Neighbors living below us in our apartment building are constantly barbecuing. The smoke and fumes which

reach our balcony make it uncomfortable and maybe even dangerous. We don't feel we should be deprived of the use of our balcony. What can we do?

**A:** The general rule in law is that a man can use his property as he wishes, but not in a way that interferes with other peoples' rights to enjoy their property. However, apartment tenants are subject to additional restrictions. It is surprising that you don't mention any clause prohibiting barbecuing in the building. . . if there is such a clause, your problem is solved. . . if there isn't and the tenant refuses to co-operate, confront your landlord. The last option would be to bring an action for nuisance. If successful, you could recover damages or get an injunction to prevent your neighbor's excessive use of his barbecue.

**Q:** Unfortunately, the fruit trees and vegetable garden in our backyard lure neighborhood teenagers who compete for the biggest "take". Plants have been trampled and branches broken. My husband is furious and plans on setting sort of trap. I told him it was illegal. Am I right?

**A:** Yes, you are. An owner or occupier of land has a

certain duty of care to every one who comes on it. This duty depends on whether the person is there by permission or invitation by owner or is trespassing. Your husband might be liable in negligence if he sets hidden traps for a trespasser. There must be clear warning posted for defences such as electric fences, traps, etc. S.231 of the Criminal Code makes it a serious offence to set a trap or device likely to cause death or bodily harm.

**Q:** My neighbors have a large weeping willow tree planted very near to the line dividing our properties. The problem is that the branches hang over into our garden completely blocking necessary sunlight. We are concerned as well that the roots might damage our sewage pipes.

**A:** You can cut only those branches necessary to remove the hindrance to the use of your garden. Concerning the spreading roots, you would first have to prove damage to the foundation or pipes before your neighbor could be asked to cut his tree down.

**Q:** My wife and I are finally able to put a down-payment

on a new home. Is it really necessary to have a lawyer take care of the transaction? Our financial situation is very tight so if we could safely avoid the expense. . .

**A:** You are not bound by law to hire a lawyer. However, there are dangers you should be aware of. For example, you have to be sure that whoever is selling the house is the actual owner. This requires that title be checked to insure that there are no mortgages, judgments, or liens registered against the property. You could check this out at the registry office yourself if you are familiar with the terms, implications etc. The fee is generally 1 1/2 per cent of the purchase price plus expenses incurred in obtaining necessary permits and survey, which you would have to pay for anyway. Since this is your first home and your question suggests uncertainty, a lawyer is recommended.

**Q:** My sons love animals and have been taught not to antagonize or mistreat pets but I am frightened of a dog who is constantly barking, chasing, and growling at passersby. Is there anything I can do before someone is hurt?

**A:** Yes. Check your municipal by-laws, at the Clerk's office. Most require that dogs be allowed to roam only

within the owner's fenced premises or that the dog be chained. If the owner has posted Beware of Dog signs, a heavy duty lies on parents of children to insure that children don't wander up to the fences, etc. Dog owners beware! The law is that the owner is responsible for an injury caused by an animal he knows to be vicious. Domestic animals such as dogs and cats are presumed to be gentle until shown otherwise. It is not necessary, however, to show that the dog has bitten someone in the past to make an owner liable. It is only necessary to show the owner should have foreseen this possibility if the dog were to break loose.

**Q:** Before I left for work this morning it was already 25 degrees so I left my windows open in my apartment. The weather forecast was for sunny skies all day. However, a storm blew up suddenly, my floor was damaged and water leaked to the unit below. The superintendent said I was responsible for all the damage. Is he correct?

**A:** You are responsible to any tenant affected by your actions. Think of the consequences if there had been a serious flood or fire. For the future, it is strongly recommended that you be covered by tenant insurance. The cost is relatively low and the benefits obviously many.

**Q:** I have just received a promotion. The only drawback is that I must move to head office in another city. Can I get out of my lease by subletting?

**A:** If you are one of the few tenants to have a lease without restrictions on subletting, you have an absolute right to sublet to whomever you please. In most cases, however, you can sublet only with the landlord's approval. The Landlord and Tenant Act provides that this approval "shall not be arbitrarily or unreasonably withheld". Remember that it is primarily your responsibility to find a subtenant and (unless the landlord releases you from your lease and signs a new lease with the subtenant) you are still bound by the original lease. This means that if the subtenant fails to pay his rent, you may still be responsible to the landlord for that amount. The landlord may charge you a reasonable fee which is customarily \$50.00.

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