

## Can a Dog Owner Be Liable to a Dog Walker?

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Dog walking services have become fairly common in recent years. When dog owners are away from home, they do not want their dogs to be trapped inside all day. For extended periods away from home, dog owners will sometimes send their dogs to dog camps or boarding kennels.

What happens if a dog bites the dog walker or a person employed at the kennel? Can the dog's owner be held liable?

Generally not.

In such circumstances, the Ontario [Dog Owners' Liability Act](#), R.S.O. 1990, c. D.16 ("the Act") is usually not applicable. The Act provides that the owner of a dog is liable for damages resulting from a bite or attack by the dog on another person or domestic animal, regardless of any fault or negligence on the part of the owner or knowledge of the propensity of the dog. There is strict liability.

However, under the Act, a person such as a dog walker or an employee of a kennel can be considered an "owner", and one owner is not permitted to sue another owner. The definition of "owner" in the Act includes a person who "possesses or harbours the dog".

In [Wilk v. Arbour](#), 2017 ONCA 21, the Ontario Court of Appeal stated that a person who is in physical possession and control over a dog just before it bites or attacks another person or animal is an "owner". In other words, an "owner" of a dog is not limited to the actual owner. There can be more than one "owner".

The Court of Appeal indicated that the legislature wished to make those who are in a position to exercise a measure of control over a dog responsible for its behaviour. The person exercising control over a dog is generally in the best position to avoid damage being caused by the dog.

In the recent decision of *Medeiros v. Petopia Ltd. et al*, 2020 ONSC 1562, the defendant, Campbell, frequently travelled for work. He brought his dog, Mali, to a kennel on a weekly basis for over seven years. Mali bit the plaintiff, who was an employee at the kennel. The plaintiff sued Campbell and the kennel.

The parties agreed that the Act did not apply to the claim against Campbell. In order to succeed against Campbell, the plaintiff had to prove that Campbell was negligent.

Campbell brought a summary judgment motion, arguing that he was not liable. He relied on the Court of Appeal's decision in *Wilk v. Arbour*, wherein it was stated:

To establish liability for animals in negligence, special circumstances must exist. The owner of an animal cannot be negligent if the animal acts in an unexpected way and injures someone. For a person to be held negligent there must be foreseeability of harm and unreasonable conduct, or put another way, it must be found that "the owner of the particular animal, with its particular characteristics, in the particular circumstances [could] have reasonably foreseen the danger that could result in damage.

Therefore, in order for a dog's owner to be found negligent, there has to be reasonable foreseeability of harm, such as a history of the dog acting violently.

Campbell argued that Mali acted in an unexpected way when she bit the plaintiff. He indicated that Mali was not an aggressive dog and had no history of biting.

On the other hand, the plaintiff stated that Mali previously bit another employee of the kennel. Campbell denied having knowledge of a previous incident. There was no evidence of communications between the kennel and Campbell with respect to any concerns involving Mali.

Justice Sossin found that the evidence did not support a propensity on the part of Mali to bite. His Honour stated that Campbell did not act unreasonably. As a result, Campbell was dismissed from the action.

In summary, when a dog acts in an unexpected way and injures someone, the dog's owner is not liable if the injured person had a measure of control over the dog at the time of the incident.

Dog walkers and employees of kennels usually do not have a viable claim against a dog's owner if they are bitten by the dog, unless the owner should have reasonably foreseen the bite and resulting damage.