

THOUGHTLESS AND CARELESS NEIGHBOURS

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Property owners have much to be concerned about when it comes to maintenance or management of their own property: inadequate or improper maintenance can result in systemic problems in any building, whether residential, office or commercial. One need look no further than the “leaky condo” debacle to find many examples where lack of maintenance in multi-family dwellings has resulted in water ingress and extraordinarily expensive repair bills, which are often just the beginning of the problem. Equally unpleasant and painful financial experiences can ensue if the condominium owners seek to recover these costs from those alleged to be responsible for the systemic problems that led to the water penetration in the first place.

It is apparent that property owners should be concerned about effectively addressing any deficiencies in the building they own or occupy. But, in addition, they should pay the same amount of attention to the possibility of damaging, or interfering with the use of, their neighbours’ property. It’s important to realize that mismanagement of one’s own property can result in liability to one’s neighbours if the mismanagement results in damage to or loss of use and enjoyment of their property.

Perhaps the most obvious area for concern is when a property owner’s negligence results in physical damage to neighbouring property. There are more than enough recent examples of this type of risk and liability. Land slippages and slides in the Gulf Islands, the Central Okanagan and Greater Vancouver have resulted in very serious losses to neighbouring properties when drainage on adjoining properties has been improperly, or not at all, managed. The faulty installation of swimming pools or site drainage on up-slope properties has resulted in slope failure causing damage to properties below and even, in one case, a fatality. In another instance, the placement of unstable fill on a slope to reclaim air space and enable the construction of single family dwellings led to a large-scale slope failure and damage to the down-slope properties. In these cases, “negligence” on the part of the land owners resulted in significant liability. Each was found to have been in breach of the duty they owed their neighbour to exercise reasonable care in managing and maintaining their property.

It is not necessary to actually damage a neighbour's property to be found guilty of creating a "nuisance" on that property resulting in the loss of its use and enjoyment. Liability for the consequences of a "nuisance" can arise independently of any negligence on the part of a property owner—the only test is to determine if an owner has used their property, or caused it to be used, in a non-natural way that interferes with the use of their neighbours' property. It is not only owners or operators of solid or liquid waste management facilities who receive these claims. On the contrary, many of these kinds of disputes occur between residential neighbours, one of whose activities has affected the use and enjoyment of the other's property rights. Normal activities like barbecuing or burning refuse by a property owner may cause odours that create a "nuisance" for neighbours and expose an owner to a claim for damages. Claims for loss of rental income, diminution in value of property and even claims for physical illness have resulted from such alleged "nuisances."