

## Not In My Backyard! Homeowner Liability for Backyard Entertainment

By Laura Tripp

With the first signs of spring and melting of snow comes relief as we no longer have to worry about the potential liability that can follow if a visitor slips and falls on our icy driveway. Spring and summer weather, however, bring a whole new set of legal liability concerns, most surrounding long anticipated backyard entertaining.

The law of negligence recognizes that we have obligations in law to conform to a particular standard of conduct towards another. If we fail to perform according to that standard, we can be subject to liability to another to whom the duty is owed for any injury they sustain. Homeowners must make sure that their property is maintained not only to protect family members, but at a standard which will protect visitors, both welcome and uninvited ones.

### **Pools & Other Backyard Entertainment**

The backyard pool is a good example of a potential hazard requiring special precautions. London requires pool owners to have at least a five foot fence around their pools with self-closing and self-latching gates. This precaution prevents small children and pets from getting too close.

City standards are the minimum that homeowners must meet, but maintaining the minimum doesn't necessarily prevent one from a negligence claim. If a pool is in an area heavily populated with children an owner may have to do more than the minimum required to avoid negligence. A higher fence or a difficult to climb fence may be required if an owner is aware of gifted young climbers or rowdy teen neighbours. Fences should be maintained and checked regularly to ensure that they are not penetrable due to loose boards or gaps. A boundary fence may also give added protection to a fence that directly surrounds the pool.

These comments also apply to backyard activities such as trampolines or climbers.

Avoiding liability might also require owners to take precautions to maintain fences to keep dogs or small children from going under or through them. A dog, a chain link fence and a curious child next door can be a lethal combination if a small arm reaching through to pet Rover looks like a tasty treat to your dog.

### **BBQs & Parties**

Nothing says summer like a backyard barbeque with friends, cold drinks, and roasted marshmallows on chimenas, but these favourite summer past times can also pose hazards.

Several London and area by-laws must be considered. Noise by-laws will help you decide what time you should call your party a night, as neighbours who haven't been invited to the party might not be happy about all-night noise. In London, you can be charged with a noise violation at any time of the day, if the noise is determined to be likely to disturb a reasonable person. Generally this means that as the sun goes down your party should get incrementally less noisy!

Only certain fire pits are permitted in backyards, so you should make sure yours is properly enclosed before you start roasting your marshmallows. Open air burning is restricted to between 4 p.m. and midnight in London. And if you were away for the long weekend, you may want to check before setting off fireworks, as they are permitted only during specified long weekend evenings.

Most important is to make sure you don't over serve coolers and beers before sending your guests home for the evening, unless they are walking or taking cabs. The Courts have not yet imposed liability on social hosts for accidents their inebriated guests cause to third parties when they drive home drunk, but the Court has not precluded that in the right situation a host's conduct might result in liability if they create or exacerbate the risk.

### **Conclusion**

Many home insurance policies respond to legal claims against you when accidents happen on your property. Keep your policy up to date with enough coverage for unfortunate accidents. Homeowners who fail to assess these risks might find themselves living in a less friendly neighbourhood and subject

to significant financial consequences and possible prosecution. By taking some time each year to make sure that your property is safe to others, you can spend the next six months worry free, enjoying the sun and fun in your backyard!

For more information on City of London by-laws visit  
<http://www.london.ca/Cityhall/CorpServices/CityClerks/ByLaws/bylaws.htm>

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