

# Contract Details Wag the Dog



# About the Author

Dr. Gail H. Forsythe, Lawyer & Mediator, Calgary, Canada  
(B.Ed., LL.B., LL.M., S.J.D. Duke University Law School)

Dr. Forsythe has bred Best in Show and #1 ranked Chow Chows, Pekingese and Japanese Chin since 1975. Her “Lionheart” dogs won Best of Breed and awards at World Dog Shows and National Specialties in the USA and Canada. Lionheart dogs have over 140 championship titles in 10 countries. She is a recipient of AKC’s Outstanding Sportsmanship award. Dr. Forsythe is a Canadian Kennel Club all breed judge, who has officiated at FCI international shows in many countries.

Dr. Forsythe completed her Doctorate in mediation law at Duke University, one of America’s top law schools. She was called to the Alberta Bar in 1987; and the BC Bar in 1993. She has appeared before various levels of court and administrative tribunals; and mediated hundreds of cases. She was the first lawyer in North America to serve as Ombudsperson for a Law Society. Her litigation practice with Aarbo Fuldauer LLP includes animal law, dog contracts, CKC hearings, family law, general litigation, workplace harassment investigations and mediation.





# Caution: Not Legal Advice

- This presentation is for legal educational purposes only.
- It is not intended as legal advice, nor should it be relied upon in place of obtaining legal advice.
- If you have a problem, do not delay - consult a lawyer.
- Contact the nearest branch of the Canadian Bar Association for a referrals to a lawyer with expertise in contract law.



# Seminar Overview

## Part 1 - The Foundation

- “Property” vs “Sentient Being”
- The Legal Consequences of Either classification

## Part 2 - The Building Blocks

- Advertisement vs Contract vs Bailment
- Essential Contractual Elements

## Part 3 - The Details

- Putting it All Together for CKC Breeders & Judges
- Contracts, Stud Service & Remedies



# Part 2 - The Building Blocks

## Advertisement vs Contract vs Bailment

### Essential Contractual Elements

1. Offer
2. Acceptance
3. Consideration
4. Competence
5. Legal Purpose
6. Clear terms - intent



# Advertisement or a Contract?

Advertisement: “Bramblefinch birds - 25 shillings each”.

*Protection of Birds Act, 1954* - illegal to sell Bramblefinch birds

Question:

Was the publication an:

1. offer to sell (a crime)
2. advertisement (not a crime)



# It's all the details - wording is important:

*Partridge v. Crittenden [1968] 1 WLR 1204* - was a contract formed?

Invitation to Treat - *Invitatio Ad Offerendum*

*Carlill v Carbolic Smoke Ball Co [1892] EWCA Div 1* - English Court of Appeal

*“Use our flu remedy, and if it does not work, receive 100 Stirling”*

*100 GRB in 1892 = 12,789.25 GRB in 2020*

*12,789 GRB = \$21,786 CND or \$16,600 USD or 14,160 EU @ Nov 4, 2020 buy rate*

Held: a binding unilateral offer that could be accepted by anyone who did as stated.

Established the essential elements for a contract:

offer, acceptance, consideration and intent to create legal relations.



# Six Contractual Elements:

1. Offer
2. Acceptance (Mutual Consent)
3. Consideration or Mutual Promises
4. Competence - not under duress, not a minor, not impaired
5. Legal Purpose
6. Clear Intent / Terms



## Question 6

You place 2 dogs with “S”, who operates a rescue service. No contract. No surrender form signed. 2 months later, you want your dogs back, but “S” gave them to “X”. “S” repeatedly reassures you, your dogs will be returned. “X” refuses to give up the dogs. Who wins?

1. “S”
2. You



# *LeMoine v. Smith 2014 NSSM 11* *(Small Claims Court)*

- American Pit Bull Terrier
- Boston Terrier/Pug cross placed with “S”
- “S” operated a pit bull and adoption rescue service
- No surrender form
- No contract signed
- No clear evidence as to the intent of the parties



## *LeMoine:*

- mutual intent was to permanently place the dogs
- Unreasonable to assume “S” would board dogs for free, for 2 months, as a gratuitous bailment
- No award for damages for the value of the dogs
- If an award had been given: \$600 for the dog with a pedigree; and \$100 for the mixed breed dog.
- Case dismissed without court costs



# *INTENT*

*National Service Dog Training Centre v. Hall*  
*2014 Ontario Superior Court of Justice, Small Claims*  
*court*

Bailment Claim (return of goods where ownership is not a factor)

vs.

Detinue (tort action to claim return of property + damages)

Handing personal property to another for safekeeping, is a bailment



# *Competence*

- 17 year old signed contract for purchase of a dog

*Wheeler & Wheeler v. Murphy, 2019 BCCRT 337  
(Small Claims)*



# Question 7

You sell a dog on the condition the dog lives with you, and Buyer pays you a board fee. After a few months, Buyer stops paying board and tells you to keep the dog. After 1 year, you give the dog back to Buyer, who lets the dog escape. You pay the impound fee, pick up the dog, keep the dog 6 months and give the dog to C, in return for a puppy back. You inform C not to tell the Buyer about the puppy back.

Who gets the dog?

1. Buyer
2. You - the Seller
3. C



# *Gillespie v. Cuthbert, 2017 YKSM 2*

## Contract:

if owner does not want the dog, the adoption fee will not be refunded

- One year later, dog is biting and owner “surrenders” the dog to C
- C agrees to keep dog until adopted
- C agrees owner can visit the dog, until a new home is found
- C locates a home for the dog, owner objects and wants dog back
- Owner goes to C’s home to recover the dog, with the police
- C removed the dog from the jurisdiction
- Dog escaped from a rest stop



# Question 8

Who is entitled to compensation for the dog's loss?

1. The person who “adopted” the dog?
2. The person to whom the dog was surrendered?



## Awarded:

- adoption fee \$250
- \$900 court costs
- lawyer's fees for time at trial
- \$2,500 lawyer's fees to prepare for trial
- punitive damages for removal of the dog denied



# Question 9

- 8 week old puppy sold to Buyer on a “foster contract”
- Contract: after 6 months, breeder will transfer ownership, if quality of care conditions are met by the Buyer.
- Breeder refuses transfer of ownership due to quality of care

Who gets ownership of the dog?

1. Breeder
2. Buyer



# *Brown v. Larochelle, 2017 BCPC 115*

## *- Clear Terms*

### Contract:

- Provide adequate food, water, vet care
- Enroll in puppy classes
- Keep dog under control
- Wear ID tag at all times
- Use force free training methods
- Allow breeder to visit
- If breeder thought dog was in unsatisfactory condition, immediately release dog to breeder
- Notify breeder if buyer cannot care for dog
- Spay dog by 6 months or immediately return to breeder



## Contract did not include:

- Time limits or deadlines (other than 6 months spay condition)
- What “adequate” food, water meant
- Guidelines or standards to be followed
- Who would determine if Buyer fulfilled her obligations
- Outcome: Contract not specific: Buyer awarded ownership



# Question 10

Buyer pays \$1,200 for a puppy. Contract requires:

- If Buyer returns the dog and Breeder resells, sale money goes to Buyer;
- If 3<sup>rd</sup> party finds neglect, Breeder can repossess without a refund.
- A professional opinion will be obtained, before breeder rehomes the puppy.
- Breeder may charge for training time, if the dog needs rehoming.
- Three months after purchase, Buyer posts on Facebook “puppy is a problem”. Buyer returns dog and wants a full refund. Breeder charges Buyer \$2,400 for rehoming training. Puppy is sold for \$600.

Who wins?    1. Breeder    2. Buyer



## *Sue v. Hughes, 2015 BCPC 456 (Return of Puppy and Refund)*

- No professional opinion to rehome the dog was obtained by the Breeder, as required by the contract
- Breeder was not entitled to recover \$2,400 for her time to retrain the dog for rehoming
- Claim for training fees was dismissed
- \$600 awarded to Buyer as per contract
- Buyer awarded \$120 in court costs



## *Montier v. Hall 2002 ABQB 0070 (Refund and Health Warranty)*

- Sale of 2 month old Belgian Sheepdog for \$100. Recurrent bladder infections treated, lameness, fractured bones, euthanized at 4 months.
- Necropsy: osteoporosis leading to multiple fractures
- Possible causes: congenital disease and nutritional problems
- Buyer sued breeder for vet bills



### 3 Critical Terms in *Montier* contract:

1. Sold as show quality: guaranteed free from hereditary defects, Breeder shall replace from next litter
2. Sold as pet quality: guarantee against serious hereditary illness or disease, until 25 months old. If euthanized, replace from next litter
3. No refund of any money



# On Appeal of Queen's Bench decision held:

- Contract is ambiguous - It does not specifically exclude reimbursement of vet expenses or consequential damages.
- The ambiguity must be interpreted against the seller
- *Contra Proferentum* rule
- Term refusing to pay vet bills is an “unfair trade practice”
- Harsh, oppressive or excessively one sided contract.
- Not a fair contract



## *Montier* Court noted:

- Consequential damages are actionable, unless they are specifically excluded. This is especially warranted, when dog is euthanized.
- Most retail purchases do not involve such a fundamental failure, or damages, of this proportion.
- Award of vet bills upheld, despite the contractual language “no refund of any money”



# *Vallance v. Naaykens 2001 BCSC 656*

## *(Prohibition on Resale)*

“Adoptions” contract - Breeder sold puppy for \$400

Contract term:

*I will return my puppy if for any reason I can no longer keep or care for my dog*

Buyer sold dog to a 3<sup>rd</sup> party, without Breeder consent.

Breeder demanded dog returned or disclosure of new owner names.



# *Savoie v. Dowell, 2009 NSSM 5*

## Oral contract

- Much evidence given about who best looked after the dog
- Claimant alleges:
  - a continuing right to have contact with the dog
  - right to revoke the contract, if the home is not working out
- Defendant alleges:
  - right to return the dog, if the dog is not working out



# Question 11

Which party is the “better home” and entitled to the dog?

1. The Seller
2. The Buyer



## *Tchozewski et al v. LaMontagne 2014 SKQB 71- Health Guarantees*

- Buyer purchased 2 “Chorkies” @ \$650 each.
- Day 1 listless, Day 2 parvo
- Vet bills \$7,500
- Breeder’s website guarantees Maltese health
- Breeder stated “all my dogs are healthy” at the time of sale
- Buyer’s expert : pre-existing parvo, breeder = puppy mill
- Breeder’s expert: over crowded, grooming issues but adequate care



# Question 12

Did the oral statement about the health of the puppies, become a term of the contract of sale?

1. Yes
2. No



## *Unfair Practices Act, Part II, s.5, s.6, s.8*

- Unfair for a supplier to do or say anything that will reasonably deceive or mislead the consumer or make a false claim
- Court may award damages in the amount of the loss suffered including punitive or exemplary damages



Part III of the *ACT* includes a statutory warranty:

s. 48 9 (d) creates an exception to the statutory warranty, if the consumer examines the product before the contract is made

- Held: dogs were consumer products
- Breeder is deemed by the Statute to have given a warranty that the dogs were of acceptable quality

*Act* requires the Seller to remedy the breach:

- Claim for exemplary damages under s.65 of the *Act* denied -
- No evidence breeder knew they were infected



# *Pezzente v. McClain [1005] BCPC 352*

## Question:

- Samoyed puppy born without a tail. Price reduced to \$350. At the age of 2 years, extensive health issues developed, some relating to the tail
- \$10,000 in vet bills

Must the breeder pay the vet bills?

1. Yes
2. No



## *Sale of Good Act, s. 56*

- If there is a breach of warranty, damages arising from the breach can be recovered
- The measure of damages is the estimated loss directly and naturally resulting from the breach of warranty



## *Pezzente*

“You don’t spend \$1,000 to repair a \$350 stereo”

- Buyer’s duty to mitigate including euthanizing
- \$350 awarded in damages pursuant to *Sale of Goods Act*; or
- Replace the dog, after giving the dog back to the Breeder



## *Gandy v. Robinson (1990 NBJ No 565, Provincial Court)*

Dysplastic dog \$1400 for hip replacement

Court noted 2 contracts - purchaser and seller/Plaintiff and the dog

Contract between man and dog is over 10,000 years old.

“If the dog performs certain tasks for us, we in return will provide it with food and water, and with shelter, companionship and care.”



## *Yonder v. Fraser 2017 NSSM 76*

(Breach of Non-Breeding Agreement)

\$300 non refundable deposit, \$1,100 balance due at 4 weeks.

Contract sent to buyer at 6 weeks:

- Registration “limited CKC” Express term non- breeding agreement.
- Spay neuter before 18 months. Liquidated damages if bred \$6,000

Buyer agreed by email to contract terms

CKC issued unrestricted breeding certificate to the Buyer

CKC requested the breeder submit the CKC non-breeding contract but Breeder did not do so

**CKC issued unlimited registration to buyer**



# Question 13

Unrestricted CKC Certificate, Buyer bred the dog 3 years later.  
Buyer argues that on the sale date, the Breeder did not require the Buyer sign the contract.

Is the Breeder entitled to \$6,000 in damages?

1. Yes
2. No



# Thank you!

Breeders, exhibitors and owners who submitted questions to focus this seminar's content. Your input was much appreciated!

Sponsors:

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My assistant, Ms. Rachel Son, for her diligent work and support

My dogs, for always being full of joy, regardless of the contract!