

Custody battles



ILLUSTRATION: WICK GRAME

When a dog becomes a pawn between warring spouses, how do courts resolve the dispute?

by Gail H. Forsythe, LL.M.

I watched with interest from my apartment balcony. Every second Saturday morning, a tall, thin man arrived at my neighbour's apartment. He went to the door and knocked, then waited patiently outside. Moments later, my neighbour answered the door and placed a small, fluffy white dog in his arms. The door always closed immediately. It seemed that words were not spoken. The man hugged the dog, carried it to his convertible and placed it gently on the front seat. He always had a smile on his face and spoke to the dog as he drove away. Sunday evening, he faithfully re-appeared with the dog, gave it a hug and returned it to my neighbour. He never seemed to have the same spring in his step when he returned to his vehicle.

Relationships can be wonderful; their breakup can be devastating. The courts are filled with living proof of the damage that occurs when an amicable parting of the ways is not possible. Family law disputes can, and often do, lead to violence. When it comes to the family pet, the emotions involved may be extreme.

How does your attachment to the fam-

ily dog fit into this picture? What about valuable show, breeding or working dogs – what will happen to them if a breakup occurs? Who will assume ownership? A family dog or valuable breeding animal may become a pawn in a fierce power struggle. Emotional and physical abuse in a relationship may escalate to include threats or harm to the family pet.

How do the courts resolve disputes over a couple's beloved dog? After all, our pets are living creatures, aren't they? In the eyes of the law, they are considered personal property, regardless of their financial value (or lack thereof) or the emotional attachments involved. Household furniture, the family home, vehicles, stocks, CDs and pets are all property. In that sense, animals fall into the same legal category as other family assets when determining who gets what at the end of a relationship.

Each province has statutory law that describes, for family law purposes, what constitutes a relationship and how property acquired during the relationship will be divided. For example, in British Columbia, the *Family Relations Act* recognizes a common-law relationship of

two years duration or a relationship that arises by marriage. The common law is rapidly changing and same-sex couples are now included within this definition.

The general legal principle is that the value of all property acquired or used during the relationship will be divided equally on separation. This principle normally applies regardless of who is named as the owner on an ownership document. You may be the registered owner of a car (or Rover), but the value of the car (or Rover) must generally be shared equally between you and your partner when your relationship ends.

How do you accomplish this outcome? Must you sell your dog when you split up? A sale is one option. In the case of a car, a sale may be practical. For most couples, selling Rover is impossible. One person must become Rover's new 'owner' and buy out the other person's interest in the dog. A buyout can occur by direct payment or by accounting to the other person for Rover's value when the remainder of the family property is divided.

This approach was used in the 1996 *Schad v. Schad* decision of the B.C. Supreme Court. In *Schad*, the court set

a value of \$250 for a family dog that was purchased jointly during the marriage. At the time of trial, one spouse had possession of the dog and the other spouse was credited with \$125 for the dog's value as part of the total family-property division. In some cases, establishing a fair value can be a dispute in itself. An expert's opinion may be required if the parties cannot agree.

If a couple cannot agree on who will keep the dog, or if one person refuses to sign the transfer document after an agreement is made, then it may be necessary to turn to the court for help.

There are important exceptions to the general principle of 50/50 division of family property. These exceptions can be complex; you should always obtain legal advice before finalizing any agreements regarding Rover or other family matters.

Normally, once a transfer occurs, the 'new' owner has a legal right to enjoy the property without interference. However, parties may voluntarily agree to an access arrangement that involves the family pet. The courts recognize that it may be nec-

essary to maintain an emotional bond with a dog. In the March 2000 B.C. Supreme Court *Langlois v. Langlois* decision, the court ordered the parties to ensure that the family dog accompanied their child when the child moved from one parent's home to the other. The dog's continued presence was viewed as a comfort to the child.

In other B.C. cases, the courts made reference to dog-show expenses when assessing the merit of spousal-maintenance claims. For example, one court noted that a spouse had sufficient resources to make a trip to England to attend a dog show. In another case, the court concluded that a lifestyle involving dogs and horses was known to the parties before they married. The court concluded it was reasonable for that lifestyle and those expenses to continue after the marriage.

Here are two tips to minimize the costs of disputes over your dog and other family assets. First, *before* you live together, have a lawyer prepare a pre-nuptial agreement that sets out how you will

divide your property if you should separate. It should apply to all your existing and future property, including dogs. Although not always determinative, properly drafted and signed pre-nuptial agreements are increasingly effective.

Secondly, avoid co-ownerships! Register the dog in one person's name only. This step may not eliminate your 50/50 obligation, but it can prevent additional problems. Many CKC registration complaints could be prevented if one partner were not held to ransom by the other when CKC documents needed to be signed. The litters in question always seem to be born at the emotional height of a breakup!

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