

WHAT'S MINE IS MINE... AND WHAT'S YOUR'S IS MINE TOO¹



by Gail H. Forsythe

"I watched with interest from my apartment balcony. Every second Saturday morning, a tall, thin man would arrive at my neighbor's apartment. He would go to the door and knock; then, wait patiently outside. Moments later, my neighbor would answer the door and place a small, fluffy, white dog wearing a plaid leash and collar in his arms. The door always closed immediately. It seemed that words were not spoken between them. The man would hug the dog, carry it to his convertible, and then place it gently in the front passenger seat. He always had a smile on his face and spoke to the dog as he drove off. Sunday evening, he would faithfully re-appear with the dog, give it a hug, and return it to my neighbor. He never seemed to have the same spring in his step when he walked, alone, back to his vehicle. This ritual was repeated every second weekend for a year. I always marveled at the relationship between the dog, the man and the neighbor. I never knew the neighbor so could only speculate about this private event."

Relationships can be wonderful; their break up can be devastating. The courts are filled with people who are living proof of the damage that occurs when an amicable parting of the ways is not possible. Family law cases focus on custody, access and division of family property issues. These disputes are among society's most heart wrenching; they can, and often do, lead to violence. When it comes to the family pet or dog, the emotions and disputes involved may be among the most extreme.

How does your attachment to the family dog fit into this picture? And, what about valuable show, breeding, trial and working dogs? What will happen to them, if a break up is underway? Who will assume ownership? As with children, the family dog or valuable show or breeding stock may become pawns 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

and other pets? After all, they are "living creatures", aren't they?? The bottom line in Canada is that "in law" dogs and pets are considered "chattels" or personal property; regardless of the emotional attachments involved. Household furniture, the family home, vehicles, stocks, bonds, and dog(s) or pets, are all considered "property". In that sense, they fall into the same legal analysis as your CD's and pension when determining their fair market value and "who gets what" at the end of a relationship.

The legal principle that a dog is merely a "chattel" may well be different in each of the United States where courts have recognized that a dog has more than a fair market value to its owner. For example, in tort cases (involving negligence causing the death of a dog) US courts have awarded significant sums in recognition of a dog's unique emotional value to its owner. A dog's emotional value to its owner is also enshrined in some state legislation. It would be an interesting research project to see whether or not a dog's emotional value to its owners has

been recognized or litigated in family law cases.

Each Canadian province and US state has its own statutory law that describes: a) what constitutes a "relationship" for family law purposes; and b) how property acquired during the relationship will be divided on dissolution. For example, in British Columbia, the Family Relations Act recognizes that a relationship can be 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 in Canadian provinces is that the value of all property acquired during the relationship will be divided equally on separation. This principle normally applies regardless who is named as the "owner" of the family asset. For example, you may be the registered owner of a car (or of Fluffy); but if acquired during the relationship, the car (or Fluffy's) value must be shared equally between you and your partner when the relationship ends.

¹Copyright 2000 Dr. Gail H. Forsythe, Calgary, CANada. Originally published as Custody Battles: When a Dog Becomes a Pawn, Dogs in Canada, December 2000 at 71. This article is intended as legal education information only. If you have a concern that is similar, consult an attorney for legal advice. Dr. Forsythe is a CKC approved judge for Groups V and VI. Her Lionheart breeding program was established in 1975.

WHAT'S MINE IS MINE... AND WHAT'S YOUR'S IS MINE TOO¹

How do you accomplish this outcome? Must you sell your car (or Fluffy??!) when your relationship ends? A sale is one option and, in the case of a car, a sale may be very expedient and practical. But, for most people, selling Fluffy is simply "impossible"!!! If so, one person must agree to become Fluffy's new owner and "buy out" the other person's interest -- either by direct payment or by accounting to that person when dividing the remainder of the family property. Establishing a fair method to determine "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 be the "new" owner, or if the other person refuses to sign the transfer document after an agreement is made, then it may be necessary to turn to the court for help. The court may order the other person to deliver the dog and sign the transfer.

There are exceptions to the general principle of 50/50 division of family property. For example, property that is inherited and not used for family purposes may be excluded from any division. Another exemption exists for property that was owned prior to the marriage. In that instance, it may only be the increased value of the pre-existing property that is divided.

Or, in other cases, a court may conclude that an equal division is not fair due to the facts that are unique to that case. For example, if one party to the relationship gave up a lucrative career to care for the family, or if a disability is involved. The court may then reapportion some, or all, of one person's share of the total family "pie" in favor of the other per-

son. Fluffy's value is simply one more mathematical figure that is included in the total calculations. These exceptions can be complex; it is always important to obtain legal advice before finalizing any agreements regarding family matters.

Once Fluffy's future and "custody" is decided as part of the family property division process, the couple can then consider if "access" is reasonable or necessary. Normally, once a transfer of ownership occurs, the "new" owner has the legal right to enjoy that property without interference. Even so, if the parties respect and understand the emotional bonds that exist, they may voluntarily agree to an access arrangement regarding the family pet.

There may also be cases where the courts recognize the necessity of maintaining an emotional bond if there is a documented medical or psychological need. For example, consider the court's comments in a Canadian case where a child's emotional bond to a dog resulted in litigation over whether the family pet should accompany the child on his visits to the non-custodial parent. The judge in the case stated:

The mother seeks an order that the family dogs need not accompany the child on his access visits with his father, nor should they be in the father's possession. This order is sought based on the incident in January, 1999 when the father refused to return the dog. When the dog was ultimately recovered in February, 1999 by the mother's brother, the dog was found to have been mistreated while ostensibly in the care of the father's friend.

While I understand the mother's concerns in this regard, I also recognize that control over the dogs is a

significant friction point for the father. More importantly, however, it seems to me that it is in the child's interests that at least one dog (of his choosing) accompany him on his visits with his father. The dog might well serve to ease the transition between the two homes and afford a common bond between the two households. I think it is worth experimenting with such a scheme on the understanding that if the dogs are not returned with the child or appear to be mistreated, then this scheme will be discontinued.

Here are two tips to minimize the tension and emotional costs of disputes over your dog(s) and other family assets.

First, **before** you live together, have a lawyer prepare a pre-nuptial agreement that includes reference to all of your property, including the dog(s). The agreement can help establish "who gets what" if the relationship ends.

Second, avoid co-ownerships! Register the dog in the name of the person who will assume possession of the dog if the relationship ends. Discuss this possible outcome when you purchase the dog and are on good terms with your life partner. Remember, registration does not change the merit of a legal claim for an accounting of the dog's value, but it may serve other useful purposes. For example, some registration complaints that come before the CKC Discipline Committee could be prevented if one partner had not been at the other's mercy when litter registrations or individual transfers were due for signature. The litters in question always seem to be born at the emotional height of a break up!

by Gail H. Forsythe