

Family Pets and Separation

With the onset of restrictions due to the COVID-19 pandemic, the rate of dog adoptions has increased significantly.¹ Many of these “pandemic puppy parents” are couples seeking a companion and a form of entertainment during these unprecedented times (plus, there is no better time to potty-train a puppy than while working from home!)

But what happens to your beloved fur-child if you and your spouse separate?

Despite pets being a part of the family, and more young couples choosing pets over children², you cannot ask the Court to grant “contact time” or “parenting time” between you and your dog. These are terms that are exclusive to human children.

In the eyes of the law, pets are property, and the Court will not consider the “best interests” of your pet. What the Court will consider is who has ownership of the pet. You and your spouse can agree to share a pet, but the court is unlikely to order you to share a pet with your spouse.³

When ownership of a pet is disputed by two people, the court may consider the following factors:

- a. Whether the animal was owned or possessed by one of the people prior to the beginning of their relationship;
- b. Any express or implied agreement as to ownership, made either at the time the animal was acquired or after;
- c. The nature of the relationship between the people contesting ownership at the time the animal was first acquired;
- d. Who purchased or raised the animal;
- e. Who exercised care and control of the animal;
- f. Who bore the burden of the care and comfort of the animal;
- g. Who paid for the expenses of the animal's upkeep;
- h. Whether a gift of the animal was made at any time by the original owner to the other person;
- i. What happened to the animal after the relationship between the contestants changed; and
- j. Any other indication of ownership, or evidence of any agreements, relevant to the issue of who has or should have ownership of the animal⁴.

Once an ownership declaration is granted, you can ask the Court for compensation for the money you spent purchasing the pet and feeding and caring for the pet, that the value of the pet be divided equally, or replacement costs⁵.

¹ See for example: <https://www.ctvnews.ca/health/coronavirus/rescue-groups-across-canada-see-surge-in-demand-for-pandemic-pets-1.4871946>; <https://calgaryherald.com/news/local-news/animal-adoption-demand-up-since-march-as-calgarians-look-to-stay-busy-at-home>

² See for example: <https://www.forbes.com/sites/erinlowry/2016/08/31/why-are-so-many-millennials-opting-for-pets-not-parenthood/?sh=b5de97f39633>

³ *Kemp v. Osmond*, 2017 NSSM 25 at para 7; *Kitchen v. MacDonald*, 2012 BCPC 9 at para 2.

⁴ *Kemp v. Osmond*, 2017 NSSM 25 at para 9

⁵ *Boyda v. Shaw*, 2014 ABCA 1 at para 3

However, just because a pet can be divided as property, it does not mean the Court will be pleased to hear a “pet application”. In a 2010 case from Saskatchewan⁶, it was agreed that the parties’ pet was “family property” and therefore divisible between the spouses, but the Court commented that:

“It is an unacceptable waste of these parties’ financial resources, the time and abilities of their two very experienced and capable legal counsel and most importantly the public resource of this Court that a dispute of this kind should occupy all in a one-day trial involving three witnesses, including an expert called by one of the parties. It is demeaning for the court and legal counsel to have these parties call upon these legal and court resources because they are unable to settle, what most would agree, is an issue unworthy of this expenditure of time, money, and public resources.

Except in the most compelling of circumstances (perhaps to avoid a breach of the peace or potential harm that parties may do to one another), the court should not be engaged with interim applications or the trial of an issue such as this.”

If you and your spouse want to be proactive and do not want your fur-child to be treated as property upon separation, it is recommended that you enter to an agreement (i.e., cohabitation agreement, prenuptial agreement, marriage contract or postnuptial agreement) that sets out how you and your spouse will look after a pet following separation.

⁶ *Ireland v. Ireland*, 2010 SKQB 454 at paras 9-10