

B.C. court orders shared custody of separated couple's dog under new Family Law Act amendments (Bayat v. Mavedati)

Family Law | Litigation | Litigation & Dispute Resolution | Pet Ownership

10 June 2024

The British Columbia *Family Law Act* was amended in January of 2024 to include specific provisions to determine the ownership of a couple's "companion animal" (i.e. pet) following a separation or divorce.

Section 97(4.1) was added to outline the factors that a court must consider when making an order regarding the ownership or right to possession of the animal. These factors include the following:

- (a) the circumstances in which the companion animal was acquired;
- (b) the extent to which each spouse cared for the companion animal;
- (c) any history of family violence;
- (d) the risk of family violence;
- (e) a spouse's cruelty, or threat of cruelty, toward an animal;
- (f) the relationship that a child has with the companion animal;
- (g) the willingness and ability of each spouse to care for the basic needs of the companion animal;
- (h) any other circumstances the court considers relevant.

By applying these factors, the court must consider the best interests of the animal. For example, if a particular partner has a history of cruelty towards the animal or a history of violence, the court may lean towards ordering that the other partner have ownership.

The new amendments were recently applied by the British Columbia Supreme Court in *Bayat v. Mavedati*, 2024 BCSC 619, where the claimant sought ownership and exclusive care of the family's golden retriever.

The dog, Stella, was purchased shortly after the parties moved in together. There was a dispute over who purchased Stella. The receipt for Stella only showed the respondent's name, but the claimant showed an e-transfer where she paid half of Stella's price to the respondent, so as to split the cost.

The claimant then argued that she was entitled to full ownership as the respondent had shown cruelty and lack of concern and care towards Stella in the past. The court, however, did not accept this evidence. The court found that both parties showed deep concern for Stella and that both invested considerable legal fees and court appearances to argue for her ownership.

B.C. court orders shared custody of separated couple's dog under new Family Law Act amendments (Bayat v. Mavedati)

In considering the new amendments, the court noted that the changes to the *Family Law Act* recognized the sentence of companion animals, and that the changes put the ownership of a companion animal in the context of something that goes beyond the ownership of a chattel.

Given the equal willingness and ability of each partner to care for the animal, and the lack of evidence regarding any cruelty or violence, the court ordered that the parties share custody of Stella 50/50 on a week-on, week-off basis. This would mean that one party would have custody of Stella for the week, and the other partner would have her for the next. The court held that this arrangement would be in place until further agreement between the parties or a court order.

Under the amended [section 92 of the Family Law Act](#), spouses are now able to make an agreement between each other for the joint ownership and shared possession of a companion animal. Notably, the court itself cannot order joint ownership and shared possession. This may only be done by agreement between the parties.

The court declined to make an order regarding decision-making, other than to state that the parties should share decision-making responsibilities. The respondent argued that future decision-making regarding Stella's care would be complicated, but the court encouraged the parties to deal with the matter between each other and only return to court if they could not.

In Ontario, there are no similar laws in place. Currently, pets are still considered property, such as furniture.

Recently, in *Carvalho v. Verma*, 2024 ONSC 1183, the Ontario Superior Court of Justice ordered the return of an American Bull Terrier named Rocco Jr. to his deceased owner's sister and estate trustee. The deceased left his entire estate to his two sisters and a former spouse. The deceased owner's romantic partner, who was not named in the will, had the dog in her possession and refused to return him, arguing that she was attached to him and relied on him for emotional support. The Court held that Ontario law recognizes dogs as personal property, such as chattels, and that the question of pet ownership was narrowly focused on who paid for the animal. There are some common law factors that a court may consider in determining ownership, but these are not codified in law. The court found that the dog was owned by the deceased at the time of his death and had formed part of his estate. Accordingly, the dog was to be returned to the deceased's sister and estate trustee.

The deceased's partner has since appealed the ruling and applied for a stay of the order to return the dog. It remains to be seen if the Court of Appeal for Ontario will change the Superior Court's decision.

Given the rise in pet custody cases following the pandemic, it also remains to be seen if Ontario and other provinces will follow British Columbia and implement similar legislation for the determination of a pet's ownership and possession. A PDF version is available to download [here](#).

For more information please contact: [Isabel Yoo](#) at 416.865.6655 or iyoo@grllp.com

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



Isabel Yoo

Associate

416.865.6655
iyoo@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com