

## Civil Litigation

# Adjudicator calls for specialized court to tackle pet ownership and custody issues

By **Donalee Moulton**

(August 24, 2017, 2:44 PM EDT) -- Nova Scotia small claims court adjudicator Eric Slone is frustrated with being legally compelled to treat Fido like a Ford Focus or other four-wheeled vehicle.



Rebeka Breder, Breder Law

"In this less perfect world," he said in a recent decision, "there is the small claims court operating on principles of property law, treating pets as 'chattels' not very different — legally speaking — from the family car."

Many lawyers believe Slone is barking up the right legal tree and resistance to equating the family pet to the kitchen fridge is heating up across Canada and around the world. "Animals are currently treated as property, but increasingly they are seen as a creature with rights," said Alan Preyra, a partner with Bergmanis Preyra LLP in Toronto.

In *Kemp v. Osmond* 2017 NSSM 25, Slone calls for a new court to tackle pet ownership and custody issues. "In a more perfect world there would be special laws recognizing pets as living, feeling creatures with rights to be looked after by those who best meet their needs or interests, and there would be specialized accessible courts to determine the 'best interest of the dog,' as there are for children in the family courts," he said.

A specialized court would be ideal, but it may be unrealistic, said Preyra. "Our courts are [already] burdened."

British Columbia, however, is moving to include the best interests of the animal as a factor in judicial determinations, said Rebeka Breder, an animal lawyer in Vancouver. Courts in the province are starting to use a two-part test to resolve furry legal issues. The first part of the test asks who is legally entitled to the animal — who purchased the cat? Who adopted the dog? And for which there is usually paperwork or receipts. The second component focuses on putting the needs of the animal first.

"Courts do have the jurisdiction to consider what is in the best interests of the animal. There is precedent for that," Breder noted.

She added that including the best interests of the animal as a foundation element is also in the best interests of pet owners and the courts. "There is no need to change the [existing] system."



Suzana Gartner, Gartner & Associates, Animal Law

Suzana Gartner, founder of Gartner & Associates, Animal Law, in Toronto, believes the legislation should go further. "The treatment of pets must be written in the language of rights, with them being recognized as objects of moral concern with the fundamental right to life, protection from suffering and the right to live out their natural life spans and according to their nature," she said. "In short, animals should be legally recognized as sentient."

The issue of treating animals as sentient beings is beginning to take hold in Canada. Quebec has passed Bill 54, *An Act to improve the legal situation of animals*, explicitly categorizing animals as sentient beings and not property.

For many, the legal leap from inanimate object to rightful equal seems huge, but Preyra pointed out that it wasn't until the late 1920s that women in Canada were legally considered to be persons and not chattel. "Now such thinking would be egregious."

Since the early 19th century, corporations have enjoyed the right to legal standing in Canada. "It is harder to defend the notion that a corporation is a direct object of moral concern, yet corporations have legal rights and our beloved companion animals do not," noted Gartner. Selling society and its lawmakers on the need to imbue all animals, not just Fido and Fluffy, with rights may be difficult.

"The issue meets a bottleneck when it comes to animals that are our food source," said Catherine Gulliver, editor of the Animal Law in Canada website. "Many U.S. courts see it as a 'slippery slope' when it comes to determining whether all animals are sentient."

As long as our four-legged friends have the same status as a coffee table, Gulliver proposes another option to resolving disputes: Put in place a process similar to Ontario's *Line Fences Act*, which lays out a method of arbitrating disputes between neighbouring property owners. "A municipality would appoint referees to determine pet custody issues following the questions as set out in *Kemp v. Osmond*," she said, noting this approach would be less costly and more time efficient.