



## A dog is not just another consumer product, appeal court finds

BY [KENNETH A. DEKKER](#), AFFLECK GREENE ORR LLP.

Last month, Ontario's Divisional Court released a decision<sup>1</sup> small in monetary terms but great in importance to dog owners and dog lovers everywhere.

Divisional Court Justice Chapnik upheld a \$2,500.00 Small Claims Court judgment in favour of Mr. and Mrs. Ferguson after their dog, Harley, escaped from the defendant's boarding kennel and was lost forever. In doing so, Chapnik J. agreed with the judge below that, as bailees accepting the Ferguson's dog for compensation, the defendants had not met their onus of proving that any failings on their part did not cause or contribute to Harley's escape. More significantly, Chapnik J. upheld an award of \$1,417.12 in damages over and above the dog's replacement cost to compensate the plaintiffs for their pain and suffering in losing their beloved companion.

This additional \$1,417.12 in damages is significant, given that traditionally dogs and other pets have been viewed as chattels – pieces of personal property for which the plaintiff is limited to

recovering either the dog's purchase price or its replacement cost. Citing a recent B.C. decision that compared a dog to a stereo and limited a dog owner to recovery of his dog's replacement cost, Chapnik J. stated, "The court viewed the dog as just another consumer product. In my view, that characterization as a general proposition, is incorrect in law." Chapnik J. found that the Deputy Judge below had correctly awarded damages to compensate the Fergusons for the emotional distress they had suffered in suddenly losing their faithful companion of 7 ½ years.

There appears to be a trend in Ontario toward recognising that family dogs are more than just pieces of property. Chapnik J. also cited the 1999 Ontario Superior Court decision in *Somerville v. Malloy*<sup>2</sup>, in which a dog owner was awarded damages for, among other things, the emotional trauma he suffered in witnessing his Chihuahua being attacked and killed by a pit bull.



### For more information contact:

Kenneth Dekker, Affleck Greene Orr LLP  
Tel: 416-360-6902  
Email: [kdekker@agolaw.com](mailto:kdekker@agolaw.com)

<sup>1</sup> *Ferguson v. Birchmount Boarding Kennels Ltd.*, 2006 CANLII 2049 (Div.Ct., January 27, 2006)

<sup>2</sup> *Somerville v. Malloy*, [1999] O.J. No. 4208 (SCJ)