

CANADA / JUDGMENT

Kennedy v. Dubois

2026 BCSC 723

COURT

Supreme Court of British Columbia

DECIDED

13 February 2026

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2026 BCSC 723 Kennedy v. Dubois

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kennedy v. Dubois,

2026 BCSC 723

Date: 20260213

Docket: E250653

Registry: Vancouver

Between:

Geraldine Kennedy

And:

Joseph Patrick Mario Dubois also known as Mario Dubois

Corrected Judgment: The text of the judgment was corrected at paragraphs 6 and 7 on April 30, 2026.

Before: The Honourable Justice Jones

Oral Reasons for Judgment

Counsel for Claimant:

C. Molloy

Counsel for Respondent:

G. Smith

Place and Date of Hearing:

Vancouver, B.C.

January 8, 2026

Place and Date of Judgment:

Vancouver, B.C.

February 13, 2026

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Introduction

[1] These are my reasons for judgment on the respondent's Notice of Application dated July 25, 2025.

- [2] The respondent, Mr. Dubois, seeks a number of orders, only two of which were sought at the hearing on January 8, 2026: (1) Mr. Dubois' claim for the payment of interim spousal support from the claimant, Ms. Kennedy; and (2) Mr. Dubois' claim for sole possession of a dog named Fergus, alternatively shared possession of the dog.
- [3] Before I address these two substantive issues, there are three preliminary issues that require comment: first, jurisdiction; second, the form of the affidavits filed on this application; and third, the claimant's supplemental application record including three affidavits.
- [4] The transcript of these reasons has been edited to correct for errors, for clarity, and for citations, but the substance has not changed.

First Preliminary Issue: Jurisdiction

- [5] Although Fergus the dog has been in Calgary, Alberta with Ms. Kennedy since the parties separated on December 22, 2024, neither of the parties raised the issue of jurisdiction in their respective materials filed in this application, or at the hearing today.
- [6] Ms. Molloy, counsel for Ms. Kennedy, advised the Court that Ms. Kennedy filed her claim in British Columbia because the division of property issue involves real property in Victoria.
- [7] Ms. Molloy also advised the Court that Ms. Kennedy is willing to comply with any order with respect to Fergus, located in Calgary.

Second Preliminary Issue: Form of Affidavits

- [8] The second preliminary issue is the form of the affidavits filed for this application.
- [9] All of the parties' affidavits and financial statements, other than one affidavit affirmed by a legal assistant, suffer from the defect of an improper form of jurat. In each case, the affiant states that they "swear or affirm" to the evidence therein, followed by the individual who took the affidavit describing the affidavit as having been "sworn (or affirmed)" before them.
- [10] An affiant can swear that the evidence in the affidavit is true, or can affirm that the evidence is true, but an affidavit stating the evidence is sworn or affirmed is defective.
- [11] Former Chief Justice Hinkson was critical of this practice in *British Columbia v. Adamson*, 2016 BCSC 584, as follows:
- [19] I am troubled by the form of many of the affidavits tendered by the defendants. For example, the individual who took the affidavit of Hugh Adamson, one of the named defendants in this action, inappropriately described his March 7, 2016 affidavit to be "sworn (or affirmed)". A number of other affidavits filed by the defendants were also in this form. This improper form of jurat caused me pause in considering the evidence contained in such affidavits, but I have decided that the fault for the form of the jurat lies with counsel for the defendants, rather than with the deponents. As no objection to the form of jurat was taken by counsel for the plaintiffs, I will consider the evidence in these forms of affidavits, rather than force

counsel for the defendants to go through the exercise of having the affidavits properly commissioned. I would not do so if this were not an interim application.

- [12] This point was considered in detail more recently by Justice Crerar in *P.K.S. v. A.N.R.*, 2024 BCSC 2110, at paras. 75-90, with a similar criticism of the improper form of jurat.
- [13] Here, in my seeking to make necessary findings of facts in order to decide the issues between the parties, I refer to sub-rule 10-4(14) of the Supreme Court Family Rules, which provides that an affidavit may be used in evidence despite an irregularity in its form.
- [14] Similarly, s. 67 of the Evidence Act, R.S.B.C. 1996, c. 124, provides that a defect in the jurat of an affidavit, or an irregularity in the form of an affidavit, does not prevent its reception in evidence if the court, judge, or other officer before or to whom it is tendered thinks its receipt is proper.
- [15] I also refer to rule 1-3 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] regarding the object of the rules being to include helping parties to resolve the issues fairly and to secure the just, speedy and inexpensive determination of every family law case on its merits.
- [16] Here, there was no objection taken to the form of the affidavits. Similar to the Adamson case, where former Chief Justice Hinkson considered the evidence because of an interim application, I accept the affidavits and financial statements may be received in evidence despite the issues relating to the irregularities in the jurats.
- [17] I have considered the evidence carefully, and, for the purpose of this interim application, I have been able to make findings on the admissible evidence that has been filed by the parties.

Third Preliminary Issue: Claimant's Supplemental Application Record

- [18] The third preliminary issue is the claimant's supplemental application record.
- [19] At the commencement of the hearing, Mr. Dubois' counsel stated that on the ground of relevance, he preferred that I not refer to the three additional affidavits filed by the claimant on December 10, 2025 in the claimant's supplemental application record.
- [20] I understand that December 10, 2025, was one of the dates previously scheduled for this application after the first scheduled hearing on August 14, 2025.
- [21] Ms. Kennedy's counsel submitted that the additional affidavits were intended simply to update the evidence to the present day, given that the application was originally scheduled for hearing on August 14, 2025, but had been adjourned a number of times before the application was heard on January 8, 2026.

- [22] No authorities on the admissibility of additional affidavits were provided to me at the hearing. Given the limited time estimated for the hearing of the application, 45 minutes, which appeared at the time to be an optimistic estimate, I proceeded to hear the application on the substantive issues, leaving aside the issue of the additional affidavits.
- [23] To be fair to both parties, in these reasons I address in more detail the issue of the admissibility of the claimant's additional three affidavits in her supplemental application record.
- [24] Division 2, Part 10 of the Rules provides for applications to the Court.
- [25] Rules 10-5 and 10-6 concern the procedure for bringing and responding to applications, including the time for the service of the applicant's affidavits (sub-rule 10-6(6)); the respondent's affidavits (sub-rule 10-6(8)); and any applicant's responding affidavits (sub-rule 10-6(12)).
- [26] Sub-rule 10-6(13) provides that unless all parties of record consent or the court otherwise orders, a party must not serve any affidavits additional to those served by the parties under subrules (6), (8) and (12). As a result, the decision to permit late-filed affidavit material is discretionary on the Court.
- [27] I also refer again to Rule 1-3 - Object of the Rules, as follows:

Object

- (1) The object of these Supreme Court Family Rules is to
- (a) help parties resolve the legal issues in a family law case fairly and in a way that will
 - (i) take into account the impact that the conduct of the family law case may have on a child, and
 - (ii) minimize conflict and promote cooperation between the parties, and
 - (b) secure the just, speedy and inexpensive determination of every family law case on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a family law case on its merits includes, so far as is practicable, conducting the family law case in ways that are proportionate to
- (a) the interests of any child affected,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the family law case.

[Emphasis added.]

- [28] In *Quigg v. Quigg*, 2019 BCSC 628, on the admissibility of affidavits filed outside of the time limits in the Rules, Justice Choi refers to the Rules I have summarized above, and at para. 20 refers to the case of *Ivarson v. Lloyd's M.J. Oppenheim Attorney In Fact In Canada for Lloyd's Underwriters et al*, 2002 BCSC 1627 at para. 25, "where Mr. Justice Barrow held that the court should exercise its discretion to admit late-filed affidavits sparingly, and only in clearly meritorious cases, where to exclude the evidence would result in a 'substantial injustice.'"
- [29] The Court in *Quigg* also referred to the test regarding deadlines for giving notice of witnesses in a trial from *Fu v. Zhu*, 2017 BCSC 754, as follows:
1. Is there prejudice to the other party due to the lack of notice?
 2. Will precluding the admission prevent a determination of the case on the merits?
 3. Do the interests of justice weigh in favour of allowing the admission?
- [30] A fourth step in the *Fu* case, which was not considered in the *Quigg* case because of a previous court order, is whether there was a reasonable explanation for the delay.
- [31] Here, the claimant's supplemental application record includes three affidavits, one from each of three affiants: Ms. Kennedy, her daughter Alyssa Wolfe, and a legal assistant at the claimant's counsel's law firm. All three affidavits were made on December 10, 2025, approximately four months after the first date scheduled for the hearing of this application, August 14, 2025, which was adjourned.
- [32] Ms. Kennedy's affidavit in her supplemental record attaches two letters from her psychologist, Dr. Elisabeth Hallam, regarding the positive impact of the dog Fergus on the claimant's mental health. The first letter had been referenced in an earlier affidavit filed by the claimant. The second letter is an update to the first letter, somewhat repetitive of the contents of the first letter.
- [33] The affidavit also refers to an appraisal of the family residence, which is not relevant to the issues before me.
- [34] A third issue in Ms. Kennedy's affidavit is what she alleges are threats made by Mr. Dubois, including Mr. Dubois' threatened release of sensitive information about third parties relating to Ms. Kennedy's previous employment.
- [35] The fourth issue is Ms. Kennedy's evidence about Mr. Dubois' purchase of what she believes to be a new vehicle.
- [36] The second affidavit in the claimant's supplemental record was made by the claimant's daughter, Alyssa Wolfe, which relates primarily to the third issue in the claimant's affidavit, above, regarding allegations of threats by Mr. Dubois.

- [37] The third affidavit in the claimant's supplemental record was made by a legal assistant at the claimant's counsel's law firm regarding Mr. Dubois' personal belongings left at Ms. Wolfe's house, which is not relevant to the issues before the Court on this application.
- [38] Here, the three affidavits were filed on December 10, 2025, leaving sufficient time until the date of the hearing on January 8, 2026, for a response by the respondent, if he chose to do so.
- [39] Referring to the test in *Fu*, as applied in *Quigg* for late filed affidavits, given the date of the service of the affidavits, leaving time for the respondent to respond if he wished, there is little or no prejudice to the respondent on account of the lack of notice; however, I am conscious of the need for parties to comply with the Rules, and the desirability of avoiding never-ending serial affidavits.
- [40] On the second step in the test, precluding the admission of this evidence will not prevent a determination of the case on the merits; however, there is some evidence in the affidavits which I consider to be of some potential significance to the issues before the Court on this application.
- [41] For example, the first letter from Ms. Kennedy's psychologist was referred to in her previous affidavit, but for unexplained reasons was not attached to that affidavit. The second letter from the psychologist is somewhat repetitive of the first letter; however, the issue of Ms. Kennedy's mental health is significant to the claimant's reasons for wishing to retain possession of Fergus. The issue of the alleged threats from Mr. Dubois may have some relevance to the issue of the possession of Fergus, but I am cautious about placing weight on that evidence given there is no response from the respondent to those allegations. The issue of the respondent's alleged purchase of a new vehicle may be relevant to the issue of spousal support.
- [42] For the third step of the test, do the interests of justice weigh in favour of allowing the admission of the affidavit evidence? In my view, the evidence to which I have referred appears to be relevant to the issues of the respondent's claim for spousal support, and possession of Fergus.
- [43] Also, the almost five-month delay in the hearing of the application from the first scheduled hearing of the application to the date of this hearing supports the admission of updated evidence. The three affidavits were filed on December 10, 2025, and served on or about that date, giving the respondent ample notice of the evidence before this hearing.
- [44] As a result, I consider the interests of justice weigh in favour of allowing the admission of the evidence in the affidavits of the claimant and her daughter filed December 10, 2025.

- [45] For the fourth step of the test regarding whether there is reasonable explanation for the delay, Ms. Kennedy's counsel submits that for the most part, the evidence in the three affidavits is intended to update the evidentiary record because of the scheduling of the application, which was originally scheduled to be heard on August 14, 2025, and then adjourned a number of times before being heard on January 8, 2025.
- [46] For the evidence I have referred to that is relevant in Ms. Kennedy's affidavit and her daughter's affidavit, the explanation of an update is reasonable, other than the unexplained omission of the psychologist's first letter in the earlier affidavits.
- [47] Finally, referring to Justice Barrow's comment in the Ivarson case regarding the Court exercising its discretion to admit late-filed affidavits sparingly and only in clearly meritorious cases, in my view, the limited evidence I consider to be potentially relevant to the issues in the application make the admission of that evidence clearly meritorious, and to exclude the evidence would result in a substantial injustice.
- [48] Having addressed the three preliminary issues, I now turn to the substantive issues on Mr. Dubois' application: interim spousal support, and possession of Fergus the dog.

Background

- [49] The parties began living together on July 1, 2017. They were married on February 14, 2022. There are no children of the marriage. Ms. Kennedy has an adult daughter, Ms. Wolfe, from a previous relationship.
- [50] Approximately a week before Christmas in 2024, the parties drove to Calgary to spend Christmas with Ms. Wolfe. They took their two dogs, Fergus and Bianca.
- [51] Fergus is a male Shih Tzu born August 28, 2018. He was acquired from a breeder on November 4, 2018.
- [52] On the evening of December 22, 2024, at the claimant's daughter's residence in Calgary, the parties engaged in a loud verbal dispute described by the respondent as a "heated argument."
- [53] The next day, December 23, 2024, Ms. Wolfe asked Mr. Dubois to leave her home. Mr. Dubois left the residence and returned to Victoria.
- [54] The two dogs, Fergus and Bianca, remained with Ms. Kennedy in Calgary.
- [55] Both parties plead the date of separation as December 22, 2024.
- [56] Mr. Dubois is 61 years old. He lives in Victoria in the former marital home (the "Victoria Property") which he purchased before the relationship, in or about 2001.
- [57] Ms. Kennedy is 59 years old. She presently lives in Calgary with her daughter and the two dogs, Fergus and Bianca.

[58] Mr. Dubois filed this application on July 25, 2025, seven months after separation. The matter was set down for hearing on August 14, 2025, then adjourned a number of times until the date of this hearing, almost 13 months after separation.

Issues

[59] The issues are:

1. Is Mr. Dubois entitled to interim spousal support from Ms. Kennedy?
2. Should Mr. Dubois be granted interim sole possession of Fergus the dog? Or, alternatively, should the parties share possession of Fergus?

Issue #1 - Spousal Support

Respondent's Position

[60] Mr. Dubois claims interim spousal support from Ms. Kennedy on the grounds that he is unable to work on account of severe PTSD and anxiety related to violent and traumatic incidents in his past employment. His second affidavit refers to his income as \$30,000 composed of disability support payments from the Workers' Compensation Board ("WCB"). A subsequently filed affidavit refers to additional rental income.

[61] Mr. Dubois alleges that Ms. Kennedy's annual income is more than \$93,000.

[62] Mr. Dubois alleges he was reliant on Ms. Kennedy for financial support, and he is unable to sustain an equivalent standard of living to her without her financial support.

Claimant's Position

[63] Ms. Kennedy denies that Mr. Dubois is entitled to spousal support.

[64] Ms. Kennedy refers to her 2024 tax return where the line 15000 total income is \$81,380.01, the majority of which is comprised of a military pension and a medical pension from the Canadian Armed Forces. Ms. Kennedy also received disability payments arising from an assault, and medical discharge from the Canadian Navy. She continues to suffer from PTSD, agoraphobia and anxiety from the assault.

[65] Ms. Kennedy alleges that Mr. Dubois did not report on his financial statement \$1,800 monthly income that she alleges he receives from a tenant in a rental suite in the Victoria Property.

[66] Ms. Kennedy also refers to the disparity in the net assets of the parties. She refers to Mr. Dubois' assets totalling \$1,047,971, a significant portion of which is the ownership of the Victoria Property, and her assets valued at approximately \$540,000.

[67] Ms. Kennedy alleges that Mr. Dubois is living a more extravagant lifestyle than she herself can afford. Her affidavit refers to Mr. Dubois travelling to the Dominican Republic on February 5 to 25, 2025, his full back tattoo she believes to have cost \$8,000, and what she believes to be his recent acquisition of a new red Mercedes vehicle pictured in photographs on Facebook, with Mr. Dubois' caption "Happy Birthday to me."

Legal framework

[68] In *Robles v. Kuhn*, 2009 BCSC 1163, the court set out legal principles relating to spousal support, and specifically interim orders, as follows:

[10] The relevant provisions of the Divorce Act, R.S.C. 1985, c. 3 (2nd Sup.) read as follows:

Spousal support order

15.2(1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Interim order

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[]

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[11] ...

[12] On interim support applications, the application of these provisions must be qualified by certain established considerations:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, 1998 CanLII 6440 (BC CA), [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
4. The courts should not unduly emphasise any one of the statutory considerations above others;
5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);

8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: L.G.B.

[Emphasis added.]

[69] The Court in Robles also referred to the provisions of the Family Relations Act, R.S.B.C. 1996 c. 128, subsequently replaced by the Family Law Act, S.B.C. 2011, c. 25 [FLA], in which the provisions for spousal support are as follows:

160 If, after considering the objectives set out in section 161 [objectives of spousal support], a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with section 162 [determining spousal support].

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[70] In R.J.L. v. T.G.S., 2023 BCSC 3, Norell J. summarized basis upon which a spouse may be entitled to spousal support as follows:

[170] In determining whether there is entitlement to support, the Court must consider the objectives of spousal support in s.161 of the FLA [quoted above].

...

[171] If entitlement is established, in determining the amount and duration of support, the Court must consider the factors in s. 162 [quoted above]:

- [172] There are three bases upon which a spousal support award may be made: compensatory (economic advantage and/or disadvantage); non-compensatory (needs-based); and contractual: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paras. 15, 49, 1999 CanLII 715. There is no contractual basis alleged here. In determining if there is entitlement to support, the Court begins with the objectives of spousal support. No objective is paramount and all must be considered: *Bracklow* at paras. 35-37; *Moge v. Moge*, [1992] 3 S.C.R. 813 at 850-852, 1992 CanLII 25.
- [173] Compensatory support is intended to provide for an equitable sharing of the economic consequences of the relationship or its breakdown. Both economic advantage and disadvantage are considered. The longer the relationship, the greater the presumptive claim to an equal standard of living upon its breakdown: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-52, leave to appeal to SCC ref'd, 33002 (28 May 2009); *Bracklow* at paras. 34, 39; *Moge* at 861-863, 870.
- [174] Non-compensatory support is intended to provide needs-based support where compensatory principles do not apply. Its goal is to narrow the gap between the needs and means of spouses upon marital breakdown. Need is a relative concept, and goes beyond the basic necessities of life. It is informed by the circumstances of the parties, including the length of the relationship and the standards of living enjoyed during and after the relationship: *Chutter* at paras. 54-59; *Bracklow* at paras. 36, 41.

[Emphasis added.]

Analysis

- [71] Ms. Kennedy's notice of family claim filed on March 6, 2025, claims an equal division of family property and family debt.
- [72] Mr. Dubois' response to family claim filed April 2, 2025, makes no reference to a claim for spousal support, nor does his amended response to family claim filed May 29, 2025, both of which disagree with the claimant's position on division of family property and family debt.
- [73] Mr. Dubois' counterclaim filed June 12, 2025, following a judicial case conference ("JCC") on May 6, 2025, claims spousal support from Ms. Kennedy and an unequal division of family property, principally the Victoria Property based on Mr. Dubois' allegation he purchased the Victoria Property in 2001, well before the relationship started.
- [74] For Mr. Dubois' claim for interim spousal support to succeed, he must first establish a prima facie case for entitlement on compensatory, non-compensatory, or contractual basis: see above, *Robles* at para. 12, citing L.G.B.
- [75] Here, there is no allegation of contract.

- [76] Mr. Dubois' application response regarding spousal support asserts what appears to be a non-compensatory needs-based claim with Mr. Dubois submitting that his only source of income is from disability; he is unable to sustain an equivalent standard of living without the support of Ms. Kennedy; he earns less than Ms. Kennedy; and he is unable to work.
- [77] Given the circumstances of the parties' relationship commencing when their ages were in their 50s, and the parties having established independent financial circumstances before and during the relationship, discussed in more detail below, I do not consider that Mr. Dubois' evidence raises a prima facie entitlement to spousal support on a compensatory basis.
- [78] As stated in R.J.L., above, non-compensatory support is intended to provide needs-based support where compensatory principles do not apply. Its goal is to narrow the gap between the needs and means of spouses upon marital breakdown. Need is a relative concept, and goes beyond the basic necessities of life. It is informed by the circumstances of the parties, including the length of the relationship and the standards of living enjoyed during and after the relationship.
- [79] Mr. Dubois' financial statement states his income to be \$32,804.53. His second affidavit made on July 25, 2025, refers to him being unable to work from PTSD and anxiety from a violent incident while he worked as a corrections officer at a jail near Victoria in 2002.
- [80] He later worked as an animal control officer, and he states that a threatening incident by a pet owner triggered his PTSD, following which he has been receiving long-term disability benefits from WCB since 2010.
- [81] He states he is no longer employable and lives off approximately \$31,000 per year in disability income. He states he is under severe financial stress as the claimant had contributed \$1,200 per month to their housing, and \$800 worth of groceries and expenses.
- [82] Mr. Dubois' second affidavit was followed by Ms. Kennedy's second affidavit made on August 13, 2025, in which she refers to Mr. Dubois not reporting monthly rental income of \$1,800 she believes he receives from a tenant in a suite in the Victoria Property. Mr. Dubois does not refer to that income in his second affidavit, his financial statement made on July 25, 2025, nor on his 2024 tax return.
- [83] Mr. Dubois' subsequent third affidavit states that he "forgot to include" the \$1,800 he receives from the tenant, from which he estimates he nets less than \$1,000 per month after paying the mortgage, taxes, services, and utilities.
- [84] Adding net rental income estimated to be \$10,000 by Mr. Dubois' counsel, Mr. Dubois' income is approximately \$43,000; however, the net figure for the rental income is not documented in any way. Also, WCB disability benefits may be grossed up because of their non-taxability: see *Stuart v. Madigan*, 2018 BCSC 1205 at para. 3.

- [85] The potential WCB gross-up results in a potentially higher annual income for Mr. Dubois for an assessment of spousal support, if any. The resulting annual income figure for Mr. Dubois appears likely to exceed \$50,000.
- [86] Ms. Kennedy also refers to Mr. Dubois having worked full-time as a process server until approximately two years ago to which Mr. Dubois responds that he has not been a process server since before COVID, but he cannot do it anymore after he was threatened by a person with an axe.
- [87] As noted above, Ms. Kennedy also refers to the disparity in the net assets of the parties. She refers to Mr. Dubois' assets totalling \$1,047,971 and her assets valued at approximately \$540,000, citing *Leskun v. Leskun*, 2006 SCC 25, regarding the appropriateness of the court taking capital assets into account when considering a spousal support order.
- [88] *Leskun* at para. 33 also refers to adverse conclusions being drawn against a party who is less than forthright in their evidence, useful in the present circumstances of Mr. Dubois not being completely forthright about his income.
- [89] Ms. Kennedy alleges that the respondent is living a more extravagant lifestyle than she herself can afford. As noted above, her affidavits refer to Mr. Dubois travelling to the Dominican Republic from February 5 to 25, 2025, a full-back tattoo she believes cost \$8,000, and what she believes to be his recent acquisition of a new red Mercedes vehicle pictured in photographs with him on Facebook quoting the caption "Happy Birthday to me."
- [90] I note that in Mr. Dubois' third affidavit made September 25, 2025, three weeks after his birthday, he responds to Ms. Kennedy's affidavit made August 13, 2025, in which she refers to him having bought both vehicles in cash. He states that he has only one vehicle, he purchased it "seven or eight years ago", and he has "traded it in today for something much less valuable to keep me going financially." His financial statement made July 25, 2025 lists a 2018 Chevrolet Silverado with a value of \$17,500, a motorcycle and a half interest in a motorhome. There is no evidence of the value of the Mercedes-Benz vehicle.
- [91] Mr. Dubois also responds that the vacation was inexpensive and the tattoo cost around \$4,000.
- [92] The claimant cites *K.R. v J.R.*, 2022 BCSC 1856 for the principle that a mere disparity in the parties' incomes is not sufficient to create entitlement: *K.R.* at para. 353 citing *Lee v. Lee*, 2014 BCCA 383, at para. 60; and "[i]nstead, there must at least be some evidence of how the applicant's lifestyle has been diminished and, even then, other factors may have to be considered": *Madruga v. Madruga*, 2015 BCSC 1605.
- [93] *Madruga* is also instructive regarding the impact of separation on lifestyle, with parallels to the case at bar as follows:

- [42] In the absence of a presumption based on income disparity alone, the evidence does not show that Mr. Madruga has suffered any diminution in his lifestyle from what he enjoyed during the marriage. He continues to live in the same house he lived in during the marriage and will acquire sole, mortgage-free title to that property. He now lives there with a new partner, although there is no evidence of her income.
- [94] Ms. Kennedy alleges that Mr. Dubois has re-partnered with a girlfriend who moved in with him in the Victoria Property on July 1, 2025, suggesting she is likely contributing to the housing expenses.
- [95] Mr. Dubois' response in his affidavit made September 24, 2025, is that he denies having a girlfriend paying him rent. He states that he met "Svetlana" in person for the first time on June 7, and there is no way she is paying rent three weeks after they met.
- [96] Ms. Kennedy's evidence is that her lifestyle has decreased on account of her cost of living increasing from her having to rent a basement suite at a higher cost than what she was paying to Mr. Dubois, and she rents a storage unit for her additional items.
- [97] Ms. Kennedy also submits that by the time the parties started living together, she was 51 years old and retired by reason of medical disability from the military. Mr. Dubois was 54 and had been in receipt of long-term WCB benefits for a period of 17 years. She submits that neither party was financially dependent on the other.
- [98] Although entitlement to spousal support must be demonstrated before assessing an amount of spousal support, if any, the disparity of the spouse's incomes depends on the finding that Ms. Kennedy's military pension and medical pension is to be considered as income. The claimant cites *Lozinski v. Lozinski*, 2017 BCCA 280 regarding whether or not Veterans Affairs disability pensions ("VA Pensions") are to be taken into account in determining spousal support.
- [99] In that case, the Court of Appeal refers to diverging Canadian case law on whether VA Pensions may be considered income for child support purposes.
- [100] As a result, there is some question regarding the amount of Ms. Kennedy's income that may be considered on the question of Mr. Dubois' claim for spousal support; however, that is not an issue that can be determined on the affidavit evidence filed for this application.
- [101] Here, the relationship was not lengthy, approximately seven and a half years, and the parties were in their 50s when the relationship began. For Ms. Kennedy, the majority of her financial resources consist of her receipt of a military pension and a medical pension.
- [102] Mr. Dubois receives WCB disability benefits and rental income, although, as I have noted, the specific totals of these sources of income is not clear.

- [103] The Robles considerations which are relevant to this analysis regarding applications for interim spousal support are as follows: Mr. Dubois' needs and Ms. Kennedy's ability to pay, and the disparity in the parties' incomes does not appear to be sufficient to create entitlement for Mr. Dubois.
- [104] Ms. Kennedy's level of income as demonstrated in her financial statement, and her evidence of financial limitations support a conclusion that her ability to pay spousal support is limited.
- [105] From Mr. Dubois' perspective, although his evidence is he cannot afford an equivalent standard of living to Ms. Kennedy without her support, his disclosure of his income in his first affidavit, his financial statement, and his tax return, is less than forthright in his failure to disclose the monthly rental income he receives from a tenant. This weakens his assertion of need, and makes it difficult to determine his actual income for the purpose of assessing his claim to entitlement to spousal support on the basis of need.
- [106] Regarding Mr. Dubois' standard of living since separation, as compared to the standard of living during the relationship, his affidavit evidence does not provide sufficient detail to support a finding that the standard of living has decreased to a degree supportive of his claim for spousal support on an interim basis.
- [107] The evidence does not establish that either party was financially dependent on the other party during the relationship. Mr. Dubois continues to live in the Victoria Property as he did before and during the relationship, and he does not deny he has travelled and purchased an expensive tattoo since separation.
- [108] The parties' affidavits disagree on a number of issues, including the threshold issues of Mr. Dubois' income and lifestyle. Where, as here, there are contested issues of fact, an in-depth analysis of the parties' circumstances is not possible on the basis of affidavits. In my view, it is better left for determination at trial.
- [109] As a result, based on the parties' evidence and submissions as discussed above, Mr. Dubois has not made out a prima facie case for entitlement to interim spousal support from Ms. Kennedy.

Issue #2 - Possession of Fergus the dog

Respondent's Position

- [110] Mr. Dubois seeks an order for sole possession of the family dog, Fergus, alternatively shared possession between the parties on a month-on, month-off basis.
- [111] Mr. Dubois submits that Fergus was purchased as a birthday present for him following the death of his previous dog, Lola.

- [112] Mr. Dubois states that his name and signature are on the puppy sales agreement as the buyer, and that Ms. Kennedy paid half the cost of purchasing Fergus for \$1,800.
- [113] He states that he walked Fergus, played with him, and fed him.
- [114] Fergus lived at the Victoria Property with the parties and Ms. Kennedy's dog, Bianca, until the parties separated in Calgary on December 22, 2024. Mr. Dubois returned to Victoria, leaving Fergus with Ms. Kennedy.
- [115] Mr. Dubois submits that since the parties separated he has asked Ms. Kennedy numerous times for Fergus, but she refuses. He submits that he has not seen Fergus since the parties separated, and it negatively affects his mental health.
- [116] His affidavit includes a letter from his treating psychologist, Dr. Riva Coupland, dated May 26, 2025. Dr. Coupland has been treating the respondent for PTSD since August 2023.
- [117] Dr. Coupland's letter refers to Mr. Dubois reporting to him that he feels very emotionally attached to Fergus, and Fergus' presence has a calming effect on his labile mood, helping him to regulate his emotions and cope with his PTSD symptoms.
- [118] Dr. Coupland states that Mr. Dubois' separation from Fergus for five months has had a notable negative impact on his mental health and caused him great distress, with Dr. Coupland expressing concern that Mr. Dubois' mental state may deteriorate further if he continues to be separated from his sole emotional support animal.
- [119] When Mr. Dubois left Fergus with Ms. Kennedy in Calgary, his evidence is that he was unable to take Fergus with him given the request by Ms. Kennedy's daughter for him to leave the home in short order, and he was limited in his ability to secure transportation to Victoria.

Claimant's Position

- [120] Ms. Kennedy disagrees with Mr. Dubois' characterization of Fergus as being a birthday gift for him. She states that they purchased Fergus together, and Mr. Dubois signed the agreement with the breeder because she was holding Fergus. She states that she was, and still is with Fergus all day. She will sometimes take Fergus to her therapy sessions. She describes Fergus as being very attached to her, and to the other dog, Bianca, with which Fergus has been his entire life.
- [121] She reports that Fergus displayed no signs of distress after Mr. Dubois left her daughter's home in Calgary.
- [122] Ms. Kennedy's evidence is that before separation, Mr. Dubois would often leave her and the dogs at home. She states that she has always had two dogs so they would never be alone if she is not around, Fergus has never been alone, and she believes that being alone would cause Fergus major distress.

- [123] She states that she walks Fergus and Bianca twice daily in Calgary because the yard is not fenced in, and walking the dogs is a big part of her recovery from agoraphobia, with her therapist encouraging her to get out of the house on these dog walks.
- [124] She states she regularly fed and played with Fergus when the parties were together. She paid all the grooming and vet bills, and she does his long "hair" in a pony tail. She describes herself as Fergus' primary care-taker from the start.
- [125] Ms. Kennedy's affidavit attaches a letter from her treating psychologist, Dr. Elisabeth Hallam, dated January 11th, 2025. The letter states that Fergus "provides Ms. Kennedy with emotional support that significantly alleviates her symptoms of PTSD and agoraphobia and helps manage daily activities and maintain emotional stability."
- [126] Dr. Hallam concludes that "Fergus provides comfort and contributes to Ms. Kennedy's emotional stability, and, in the absence of this bond, most likely will lead to further deterioration in Ms. Kennedy's mental health."

Legal framework

- [127] The provisions of the FLA regarding companion animals, specifically s. 97(4.1) to (4.3) and related provisions, came into force on January 15, 2024.
- [128] Section 1 of the FLA defines "companion animal" as "an animal that is kept primarily for the purposes of companionship."
- [129] Section 3.1 excludes from that definition, guide dogs, animals kept as part of a business, and animals that are kept for agricultural purposes, none of which are relevant here.
- [130] Section 97 provides in part as follows:
- (1) For the purposes of giving effect to a division of property or family debt under this Part or Part 6 [Pension Division], the Supreme Court may
 - (a) determine any matter respecting the ownership, right of possession, or division of the property or family debt, and
 - (b) despite sections 94 (2) [orders respecting property division] and 215 (2) [changing, suspending or terminating orders generally], and subject to subsections (3) to (4.3) of this section, as applicable, make any order that is necessary, reasonable or ancillary to give effect to the division.
 - (2) Without limiting subsection (1), the Supreme Court may make an order to do one or more of the following:
 - (a) Declare who has ownership of, or right of possession to, property, including a companion animal.

...

...

(4.1) In determining whether to make an order under subsection (1) [division of property] respecting a companion animal, the Supreme Court must consider the following factors:

- (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.

(4.2) An order respecting a companion animal must not

- (a) declare that the spouses jointly own the companion animal, or
- (b) require the spouses to share possession of the companion animal.

(4.3) Sections 95 [unequal division by order] and 96 do not apply to the making of an order respecting a companion animal.

[Emphasis added.]

Analysis

[131] Mr. Dubois seeks sole possession of Fergus, alternatively shared possession between Ms. Kennedy and Mr. Dubois on a month-on/month-off basis.

[132] Following the parties' separation on December 22, 2024, the claimant's notice of family claim filed on March 6, 2025 claims an equal division of family property and family debt.

[133] The respondent's response to the family claim filed April 2, 2025 makes no reference to Fergus, nor to spousal support.

[134] The first mention of Fergus in the court record appears to be one of the Orders made at the JCC on May 6, 2025, ordering Ms. Kennedy to provide Mr. Dubois with all evidence currently in her possession that Fergus is a support animal.

[135] The respondent's amended response to family claim was filed on May 29, 2025, with no mention of Fergus.

- [136] The respondent's counterclaim filed June 12, 2025 claims spousal support, and unequal division of family property, the Victoria Property based on the increase in value of the Victoria property during the 7.5 year relationship. The counterclaim does not mention Fergus.
- [137] The respondent's application filed July 25, 2025, seven months after separation, seeks a number of orders, including spousal support and sole possession of Fergus, alternatively shared possession.
- [138] Although originally Mr. Dubois' application was set to be heard on August 14, 2025, it was adjourned a number of times before the hearing on January 8, 2026, over twelve months after separation.

Shared possession

- [139] One issue on the law is that Ms. Kennedy submits that the Court does not have the jurisdiction to order shared possession of a companion animal, referring to s. 97 (4.2) of the FLA, quoted above, which provides that an order respecting a companion animal must not declare that the spouses jointly own the companion animal, or require the spouses to share possession of the companion animal.
- [140] The claimant cites *Glassen v. Glassen*, 2025 BCSC 640, at para. 174, in which Justice Giltrow, after a trial, decided that section 97(4.2) of the FLA prevents the court from making an order for shared possession of the family dog, Toba, as one of the parties had requested.
- [141] The respondent submits the Court may make an interim order for shared possession, citing *Bayat v. Mavedati*, 2024 BCSC 619, in which Associate Judge Nielsen ordered interim shared possession of a dog on a week-on, week-off basis.
- [142] I distinguish *Bayat* on the ground that Nielsen A.J. refers only to section 7 [sic], subsection 4.1, and not subsection (4.2) which includes the statutory restriction on shared possession of a companion animal.
- [143] Associate Judge Nielsen's reference to section 7 appears to be the section of the Family Law Amendment Act, 2023 SBC 12, adding subsections 4.1 to 4.3 to s. 97 of the FLA, quoted above, regarding companion animals, which came into force on January 15, 2024.
- [144] I do not agree with the respondent's submission that s. 97(4.2) only applies when a final order is rendered. Section 97(1)(a) allows the Court to make an order with respect to possession of family property, and s. 216 of the FLA allows the Court to make an interim order if an application is made for an order under the Act, but that power is subject to the Act, in accordance with any requirements or conditions of the Act that would apply if the order were not an interim order, as follows:

216 (1) Subject to this Act, if an application is made for an order under this Act, a court may make an interim order for the relief applied for.

- (2) In making an interim order respecting a family law dispute, the court, to the extent practicable, must make the interim order in accordance with any requirements or conditions of this Act that would apply if the order were not an interim order.
- [145] These provisions allow an interim order for the possession of family property, but subject to the Act, which includes the s. 97(4.2) restriction that an order respecting a companion animal must not declare that spouses jointly own the companion animal, and must not require that spouses share possession of the companion animal.
- [146] Another case cited by the parties, *Atwal v. Randhawa*, 2023 BCPC 238, is not binding on this Court, but is of interest in its analysis in the context of the claimant seeking an interim order that the parties share possession of a dog pending resolution of the proceedings or court order.
- [147] *Atwal* was decided before the FLA amendments regarding companion animals; however, the Court took judicial notice of the proposed FLA amendments, without reference to any shared possession provisions, noting that the proposed considerations "share many similarities with the best interests of the dog assessment that has developed over time in civil law."
- [148] The Court in *Atwal* decided it was appropriate to consider the best interests of the dog, referring to both parties being capable of caring for the dog, both loved the dog, both had bonded strongly with the dog, the dog would be impacted to be separated from the party presently in possession of the dog, the dog was relatively young and adaptable, and the dog was well-travelled.
- [149] The Court concluded that it was in the best interests of the dog to have the companionship of both parties during the interim period. In the result, the Court ordered that the parties share possession of the dog, alternating monthly, with the dog moving between the two parties' residences in Seattle, Washington, and Vancouver, British Columbia.
- [150] The *Atwal* case is also distinguishable because it was decided before the companion animal amendments to the FLA, and, although the Court referred to the proposed amendments, the court stated only that the proposed considerations shared many similarities with a "best interests of the dog" assessment. The Court decided the case by applying the test whether there was an issue to be tried, whether the parties seek possession of the dog demonstrated a strong *prima facie* case, and where the balance of convenience lay.
- [151] As a result, in my view, I do not consider that the FLA allows the Court to make an interim order for shared possession; however, if I am wrong, if shared possession is an option for an interim order relating to a companion animal, in Fergus' circumstances I do not consider shared possession to be desirable because Ms. Kennedy lives in Calgary, and Mr. Dubois lives in Victoria. Shipping Fergus back and forth between Calgary and Victoria, even on a monthly basis, does not appear to be in the interests of Fergus, both from the stress of frequent travel, and the stress and disruption of cycling back and forth between Ms.

Kennedy and Mr. Dubois, particularly because, according to the claimant, Fergus has not just bonded with Ms. Kennedy, but also with Ms Kennedy's other dog, Bianca.

[152] See also *Singh v. Smith*, 2025 ABKB 715, which includes an interesting summary of cases informing the development of the law in Canada applicable to disputed pet ownership after separation.

Family Law Act - companion animals

[153] Although I do not consider *Bayat* to be authoritative on the issue of shared possession, in that case, Nielsen A.J. summarized well a key aspect of the companion animal amendments to the FLA, as follows:

[14] The recent amendments to the Family Law Act essentially put the ownership of a companion animal, such as Stella, in the context of something that goes beyond ownership of a chattel. The sentience of the animal is recognized to the extent that the criteria reflect.

[154] In *Gass v. Hill*, 2025 BCSC 1602 [Gass #1], aff'd 2025 BCSC 2076 [Gass #2], Associate Judge Hughes in *Gass #1* commented on the purpose of the FLA amendments, as follows:

[10] Companion animals, as defined in s. 1, are no longer treated as ordinary chattels to be divided in a family law dispute. Although the legislation still treats companion animals as property, it now requires the court to consider a non-exhaustive list of factors when determining ownership and possession of a companion animal.

[155] In *Gass #1*, the claimant sought an interim order pursuant to the FLA, s. 97(2)(a) [orders regarding ownership of, or right of possession to, property, including a companion animal] and s. 216 [interim orders] of the FLA regarding a family dog, King.

[156] The claimant had owned King before the relationship started. When the claimant moved out of the family home, her evidence was that she did not have a place to stay that would accommodate King, so she left him in the care of the respondent on a temporary basis. The parties both claimed to have been the person primarily responsible for the care and training of the parties' dogs, including King, during the relationship.

[157] Regarding the factors to be considered under s. 97(4.1), the Court found that the circumstances in which a companion animal was acquired weighed in favour of the claimant as she owned King before the relationship commenced. The Court considered the other relevant enumerated factors to be neutral as Court found that both parties had cared for King during the relationship, and both parties were willing and able to care for King's basic needs.

- [158] In considering any other circumstances the Court considered relevant, the Court considered a relevant factor to be that the claimant's application was filed some 16 months after separation, and was not heard until two months later. As a result, the claimant had no contact with the animal for the past 18 months, and she had sufficient trust in the respondent's ability to care for King that she left him in the respondent's care when she moved out.
- [159] The Court also considered that the physical distance between the parties, Cranbrook and Vancouver, had made visits practically impossible, and King had no contact with the claimant since the parties' separation.
- [160] The Court considered that King had been living with the respondent and the parties' three other dogs for 18 months, there was no evidence that King was anything other than well cared for, with acreage to roam in the company of other dogs with whom he was well bonded, compared to the claimant's townhouse in the Lower Mainland with an infant child and another dog he had never met. He would be removed from the home he had known for the past four years into a completely new environment.
- [161] Finally, the Court considered that either party could end up being successful at trial, and if the claimant's application for an interim order for possession was granted, and the respondent was eventually successful at trial, King would be uprooted and relocated again. Given the passage of 18 months without any contact with the claimant, it was not in King's interests to remove him from the care of the respondent on an interim basis.
- [162] As a result, the claimant's application for interim care and possession of the dog was dismissed, and the claimant's appeal was also dismissed: see Gass #2.
- [163] Here, regarding the factors to be considered under s. 97(4.1) of the FLA:
- (a) The circumstances in which the companion animal was acquired
- [164] This factor weighs partially in favour of Mr. Dubois because the puppy sales agreement provides that the contract is between the seller, and the respondent as buyer, and Mr. Dubois signed the contract; however, it weighs less favourably to Mr. Dubois as in the Gass case because there the claimant had ownership of the dog before the relationship started.
- [165] Here, both parties paid for half of the \$1,800 cost of Fergus, Fergus was acquired during the relationship, and there is conflict in the affidavit evidence as Ms. Kennedy's evidence is that Fergus was not purchased for Mr. Dubois.
- (b) The extent to which each spouse cared for the companion animal

[166] This factor is relatively neutral. Both parties claimed to have cared for Fergus, each party emphasizing their own contribution and downplaying the other's contributions; however, I note that the claimant's evidence was more detailed and extensive about specific aspects of her care of Fergus, compared to Mr. Dubois' evidence.

(c) Any history of family violence

[167] There is no evidence of physical violence in the relationship, however, Ms. Kennedy's allegations of Mr. Dubois' verbal and emotional abuse, and his berating and mental abuse of her the night of their separation, and her and her daughter's allegation of the respondent's later harassment and threats, if accepted, likely fall within the definition of "family violence" in section 1 of the FLA, the definition including:

(d) psychological or emotional abuse of a family member, including

- (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property.

[168] Here, Mr. Dubois denies harassing Ms. Kennedy or her daughter, Ms. Wolfe.

[169] There is no evidence of any threats or violence against Fergus; however, some of Ms. Wolfe's affidavit evidence regarding Mr. Dubois' threats to publicly release confidential information regarding a third party relating to Ms. Kennedy's previous employment appears to be supported by text messages from Mr. Dubois attached to Ms. Wolfe's affidavit.

[170] There is no allegation that the alleged threats affect Fergus in any way.

[171] The Court does not have the benefit of viva voce testimony regarding these allegations, and there has been no cross-examination of the parties on the affidavits. Mr. Dubois denies the allegations, and I have no independent evidence to corroborate the allegations, other than text messages in Ms. Wolfe's affidavit which are isolated and limited in their context.

[172] As a result, I make no findings relating to this factor for the purposes of this application for an interim order.

(d) The risk of family violence

[173] I do not consider this to be a factor.

(e) A spouse's cruelty or threat of cruelty toward an animal

[174] This is not a factor.

(f) The relationship that a child has with a companion animal

[175] This is not a factor.

(g) The willingness and the ability of a spouse to care for the basic needs of a companion animal

- [176] This appears to be a neutral factor, with both parties appearing to be willing and able to care for Fergus' basic needs.
- (h) Any other circumstances the court considers relevant
- [177] Both parties claim that Fergus is important to the maintenance of their mental health in the context of both parties suffering from mental health issues relating to traumatic events in their previous employment. Given the similarity of the content of the parties' letters from their respective treating psychologists, I recognize that Mr. Dubois is presently without a dog, and Ms. Kennedy presently has both Fergus and Bianca; however, given the parties' similar evidence of the importance of Fergus to their mental health, I consider this factor to be neutral.
- [178] I also recognize that each of the parties has expressed a strong emotional attachment to Fergus, which distinguishes companion animals, to some extent, from inanimate personal chattels.
- [179] Like the Gass #1 case, I consider it relevant that Mr. Dubois' application was filed seven months after the parties' separation, and the application did not come on for hearing until more than five months later, meaning that Mr. Dubois has had no contact with Fergus for over twelve months.
- [180] Fergus has been living with Ms. Kennedy and her dog, Bianca, and Ms. Kennedy's evidence is that the two dogs are bonded, Fergus having lived with Bianca for all of his seven years' life with the parties.
- [181] In Gass #2, the claimant's appeal of the Associate Judge's decision was dismissed by Justice Brongers.
- [182] Justice Brongers decided that the Associate Judge was not clearly wrong in concluding that it was not in the dog's best interests to move him from the respondent's care on an interim basis, referring to the dog King's interests, as follows:
- [33] Furthermore, the Associate Judge was not clearly wrong to take into account the best interests of the dog as a relevant circumstance to be considered. To the contrary, given the legislative amendments to the FLA which provide that companion animals are not to be treated as ordinary chattels, an animal's best interests as a sentient being may certainly be relevant to a s. 97(4.1) analysis.
- [183] Regarding considerations of an animal's best interests, I agree with Brongers J., and also the following comments of Associate Judge Krentz in *Palm v. Macdonald*, 2025 BCSC 2510, specifically referring to Atwal regarding how the "best interests of the animal" may be considered in the context of the FLA provisions regarding companion animals, as follows:
- [14] Both parties submit that when applying the factors set out in ss. 4.1, the court should order that they have interim possession of Charlie. Unlike Part 4 of the FLA that deals with parenting arrangements for children, with the focus being solely on the best interests of the

children, the factors in s. 97(4.1) do not specifically refer to the best interests of the companion animal. Likely, that is intentional as companion animals under the FLA are still treated as family property, although they are treated differently than other property, likely reflecting their status as valued members of a family.

[15] Although the law with respect to companion animals needs further time to evolve, particularly at the trial stage, there is some indication that in making orders under the FLA the best interest of the animal is an important consideration. The (4.1) factors require the court to consider allegations of cruelty towards an animal, family violence, the history of the care of the animal and the ability of each spouse to provide for the basic needs of the companion animal. In my view, those are factors that relate to the best interests of the animal.

[16] Although not binding on this Court, in *Atwal v. Randhawa*, 2023 BCPC 238 (CanLII) at para. 75, after reviewing other decisions in the Provincial Court, Judge Gaffar stated, "I find that it is appropriate to consider the best interests of the dog in making my decision".

[Emphasis added.]

[184] As a result, in my view, the consideration of the best interests of the animal is a factor to be considered, as Krentz A.J. notes--an important consideration--where the possession of a companion animal is an issue between parties to a family law matter. The other factors in section 97(4.1) are of course also important, but some are not directly related to the interests of the animal; for example, the circumstances in which the companion animal was acquired, and the relationship a child may have with a companion animal.

[185] Here, I consider the *Gass* case to be of assistance because of the similarities between that case and the case at bar: the factor of the acquisition of the companion animal favouring the non-possessing party making the claim (although of less weight here as compared to the *Gass* case), a number of neutral factors, the bonding of the companion animal to other animals in the possessing party's care, and importantly the length of time between separation and the hearing of the application during which time the claimant in *Gass* had not seen the companion animal, and here Mr. Dubois has not seen Fergus, and Fergus has been in Ms. Kennedy's care, also apparently bonding with Bianca the dog.

[186] Like *Gass*, if I were to grant Mr. Dubois' request for interim possession of Fergus and he is removed from Ms. Kennedy's care in Calgary to Mr. Dubois in Victoria, and Ms. Kennedy were to eventually succeed at trial, Fergus would be uprooted and relocated again.

[187] I understand that the length of time Mr. Dubois has been separated from Fergus has been difficult for Mr. Dubois; however, considering all of the above, the circumstances of Fergus in light of the law and the evidence favour him remaining in place in Calgary with Ms. Kennedy on an interim basis, with the ultimate issue of possession of Fergus to be developed at trial when the conflicting evidence can be explored in more detail with the viva voce evidence of the parties, and cross-examination.

Conclusion

[188] The respondent's application for interim spousal support from the claimant is dismissed.

[189] The respondent's application for interim sole possession of the family dog Fergus, or alternatively shared possession until a final court order or agreement of the parties, is dismissed.

[SUBMISSIONS ON COSTS.]

[190] The claimant has been substantially successful on the respondent's application. For that reason, I award costs of this application to the claimant, not in a set amount, and not payable forthwith.

"Jones J."

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