



**HULL & HULL LLP**  
Barristers and Solicitors

### **Estate Planning for Pets**

For many Canadians, pets are a part of the family. Because of this, the distinction between pets as property and humans who can be named as beneficiaries of property may be poorly understood. It may further complicate the planning process when owners give pets human names and may refer to them as their "children".

Some pet owners may be surprised to learn that beloved members of their families are property rather than entities with their own rights. Accordingly, subject to certain public policy restrictions, pets can be administered as other property pursuant to the terms of a Last Will and Testament. Estate planners often hear of intentions to leave an entire estate to a surviving dog or cat. However, money or other gifts cannot be left directly to pets, as property is not capable of owning other property. Furthermore, a pet cannot be the beneficiary of a trust.

### **Common Estate Planning Options**

There are, however, a number of planning options available to estate planning clients to assist in ensuring a pet's wellbeing after the testator's death.

- **Cash Legacies to Pet Guardians:** Testators have the option of leaving a cash legacy to the beneficiary (or "guardian") of a pet, with the intention that the gift is used to assist in funding the pet's care. The Will can specify that the cash gift is conditional upon the beneficiary's acceptance of the pet. However, the testator cannot control how the funds are actually used and, if the pet outlives its beneficiary, the remaining funds will not automatically be passed on to the new owner of the pet and, as a result, may not be available for the pet's care.
- **Trusts for Pet Guardians:** A trust can be used to provide the testator with a greater degree of control over the use of funds for the pet's benefit and provide for a number of contingencies. The trustee of the "pet trust" is able to enforce its conditions for the benefit of the pet and is usually someone other than the pet guardian. Typically, the Will names someone other than the pet guardian as beneficiary of the balance of the trust assets at the time of the pet's death, as the pet guardian may otherwise be incentivized to minimize the depletion of funds for the pet's care.
- **Pet Stewardship Programs:** Some Humane Society branches and other organizations offer pet stewardship programs, whereby the testator enters into an agreement to leave the pet and an enrollment fee (and whatever additional gift the testator may wish to donate) to the organization.

Below are a few **potential checklist questions** for estate planning clients regarding pets:

- Do you have any pets?
- Have you considered what will happen to your pet if it survives you?
- Does the proposed guardian of the pet have the time, health/lifestyle, financial stability, etc. to properly care for the pet?
- Have you discussed your wishes with the proposed pet guardian?
- How will the proposed pet guardian fund pet-related expenses?
  - Do you wish to consider leaving him or her a cash legacy to lessen the financial burden relating to caring for the pet?
  - Do you wish instead to set up a trust that provides a greater degree of control as to how the pet guardian is able to spend money intended to be used for the pet?
- What would you like to happen if the proposed pet guardian chooses not to accept the pet?