



**In this issue:**

1. [Mandatory Attendance at Parent Education](#)
2. [Marital Misconduct & Spousal Support: SCC](#)
3. [Provisional Variations: MB C.A.](#)
4. [Summary Judgment on Selected Issues: QB](#)
5. [Custody, Access & Child Support: ON C.A.](#)
6. [Lawyer's Standard of Care: ON C.A.](#)
7. [Universal Child Care Benefit](#)
8. [Review of Child Abduction Convention](#)

---

**1. Mandatory Attendance at Parent Education**

Effective September 1, 2006, Family Conciliation will require parents and guardians referred for an assessment to attend the *For the Sake of the Children* parent education program before a counsellor will be assigned. Read the [May 29, 2006 notice](#) from Family Services for complete details.

---

**2. Marital Misconduct & Spousal Support: SCC**

In [Leskun v. Leskun](#), 2006 SCC 25, the court finds that while marital misconduct cannot be considered in determining an obligation to pay spousal support, the emotional consequences of that misconduct may be a factor to consider. The court states that "The consequences are not rendered irrelevant because of their genesis in the other spouse's misconduct." The court also addresses the question of whether the proceeding under the [Divorce Act](#) should be characterized as a review ([s. 15.2](#)) or a variation ([s. 17](#)) and states that:

Insofar as possible, courts should resolve the controversies before them and make an order which is permanent subject only to change under s. 17 on proof of a change of circumstances. If the s. 15.2 court considers it essential (as here) to identify an issue for future review, the issue should be tightly delimited in the s. 15.2 order. This is because on a "review" nobody bears an onus to show changed circumstances. Failure to tightly circumscribe the issue will inevitably be seen by one or other of the parties as an invitation simply to reargue their case. That is what happened here.

---

**3. Provisional Variations: MB C.A.**

In [Wolch v. Wolch](#), 2006 MBCA 43, the court considers when it is not appropriate to use the provisional/confirmation procedures set out in ss. [18](#) and [19](#) of the [Divorce Act](#) on a variation application. The court finds that these procedures are intended to be used in most situations and should not be used only in exceptional circumstances, and then gives some examples of such exceptional circumstances. The facts of this case are distinguished from those in [Davis v. Leibel](#), 2003 MBQB 75 where exceptional circumstances were found to exist.

---

**4. Summary Judgment on Selected Issues: QB**

In *Tomkewich v. Tomkewich*, 2006 MBQB 150, the court considers a motion for summary judgment ([Rule 20](#)) on the basis of a purported agreement between the parties relating to all matters in dispute. The court grants summary judgment on the divorce, custody and property issues, but not on child support or spousal support.

---

## **5. Custody, Access & Child Support: ON C.A.**

There have been a number of recent decisions from Ontario's Court of Appeal that family law practitioners should be aware of:

- [Rogerson v. Tessaro](#), 2006 CanLII 15126 (ON C.A.) - mother loses custody because of her "persistent, ingrained and deep-rooted inability to support the children's relationship with the father."
  - [Lewi v. Lewi](#), 2006 CanLII 17741 (ON C.A.) - on calculating the level of contribution of adult children to their own post-secondary education expenses
  - [Roy v. Roy](#) 2006 CanLII 15619 (ON C.A.) - shared/parallel parenting order is inappropriate given the "enormous antipathy and mistrust that pervades their relationship."
- 

## **6. Lawyer's Standard of Care: ON C.A..**

In [Ristimaki v. Cooper](#), 2006 CanLII 12415 (ON C.A.), the court considers what standard of care is to be applied to a family law lawyer sued by his former client in negligence. The trial judge applied a standard of "egregious error" and dismissed the action, but the appellate court allowed the appeal and ordered a new trial, quoting from the earlier decision in [Folland v. Reardon](#), 2005 CanLII 1403 (ON C.A.):

Without diminishing the difficulty of many judgments that counsel must make in the course of litigation, the judgment calls made by lawyers are no more difficult than those made by other professionals. The decisions of other professionals are routinely subjected to a reasonableness standard in negligence lawsuits. I see no reason why lawyers should not be subjected to the same standard.

---

## **7. Universal Child Care Benefit**

Detailed information about the new Universal Child Care Benefit is available online at:

- <http://www.universalchildcare.ca/en/home.shtml>
  - <http://www.cra-arc.gc.ca/benefits/uccb/menu-e.html>
- 

## **8. Review of Child Abduction Convention**

A Special Commission in The Hague will review the operation of the *Convention on the Civil Aspects of International Child Abduction* this fall. Preliminary documents (including a 2006 questionnaire) are available in the "Child Abduction" section of the [Permanent Bureau's website](#). If you have any comments respecting the Abduction Convention, please contact Joan MacPhail at the Family Law Branch, Manitoba Justice (204) 945-2841.

---

[Go to the eLaw Archive](#)

*The Law Society of Manitoba provides this service solely for the benefit of and to support the competence of its members. Members should exercise their professional judgment in using or adapting any content.*