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1. Equality Rights Trump Freedom of Religion: S.C.C.

In [Bruker v. Marcovitz](#), 2007 SCC 54, the court allowed the appeal from the lower court order which held that the obligation of the husband to agree to give his wife a *get* created a moral, but not a legal obligation and was not therefore justiciable. The majority found that:

The fact that Paragraph 12 of the Consent had religious elements does not thereby immunize it from judicial scrutiny. We are not dealing with judicial review of doctrinal religious principles, such as whether a particular *get* is valid. Nor are we required to speculate on what the rabbinical court would do. The promise by Mr. Marcovitz to remove the religious barriers to remarriage by providing a *get* was negotiated between two consenting adults, each represented by counsel, as part of a voluntary exchange of commitments intended to have legally enforceable consequences. This puts the obligation appropriately under a judicial microscope.

The court went on to determine that "...Any infringement of Mr. Marcovitz's freedom of religion is inconsequential compared to the disproportionate disadvantaging effect on Ms. Bruker's ability to live her life fully as a Jewish woman in Canada." For commentary on the decision, read [Man's Religious Freedom Bows to Ex-Wife's Equality Rights](#), by Cristin Schmitz, published in the January 11, 2008 issue of [The Lawyers Weekly](#).

2. Case Management Required: C.A.

The Court of Appeal, in dismissing the appeals and cross-appeals of the parties from the orders for interim support and costs, in [Gale v. Gale](#), 2007 MBCA 162 (CanLII) concluded with the comment that:

The courts are not the private preserve of litigants and counsel. Counsel, not the litigants, must control the client's case. Here, it would appear to be otherwise as this is the only explanation for some of the conduct that has occurred in the course of this litigation.

This case cries out for firm case management in bringing about an expeditious resolution in the interests of all concerned, including by way of trial, if necessary.

3. Child Support and Shared Parenting: Q.B.

In [Martin v. Martin](#), 2007 MBQB 296 (CanLII), the court considered the question of child support

in a shared parenting arrangement. After coming to his decision, the Honourable Mr. Justice Little commented (at paras. 74 - 76) that:

I know that parties and counsel are often absolutely desperate to find some way to resolve the Section 9 child support issue short of further litigation and the costs and risk associated with the process. I may be wrong, but I suspect cases across the country are being resolved on a "split the difference" approach to child support where the set-off or mid-point amounts are often used as the measure - not because on an evidentiary analysis it would be found to be "appropriate", but because the cost of any adjudicated solution will result in only further losses to both sides without any real gains. The mid-point in this case would have been \$375.50, rather than the \$400 I have awarded.

Based on Contino and a proper interpretation of Section 9, we are clearly to eschew formulaic approaches and multipliers. The outcome of future variation proceedings then will depend on the particular financial circumstances of the parties and the evidence to be mustered then.

The question for these parties must surely be: "At what cost another exercise of judicial discretion?" For what it is worth I note that the amount of the present award at \$400 is slightly less than twice the set-off amount and slightly more than the mid-point between set-off and full table.

4. Family Practice Makeover

On Friday, February 8, 2008, the Law Society of Manitoba, in partnership with the Manitoba Bar Association's Family Law Section is presenting *Family Practice Makeover*, a half-day CLE program focussed on the very practical question of how you can have a financially rewarding family law practice in the 21st century while maintaining a work-life balance that allows for time to "stop and smell the roses." The program is chaired by the Honourable Madam Justice Laurie Allen and features presentations by Lonny Balbi, Q.C. and Jennifer Cooper, Q.C. To register or obtain further information, visit the Law Society's [website](#).

5. Grandparent Access Issues

Family Mediation Manitoba is presenting a free information session entitled *Law and Reality: Grandparent Access Issues* on Wednesday, February 6, 2008 from 12:00 - 1:30 p.m. in the Family Conciliation Boardroom, 2nd Floor - 379 Broadway. Lunch is available for \$10 but must be requested by February 1. For information and registration forms, contact Cynthia Spratt Goodmundson at Family Conciliation by [email](#) or by phone to 945-5961.

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