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### 1. Right to Support Trumps Biology and Moral Wrongs: Ont. S.C.

In [Cornelio v. Cornelio](#), 2008 CanLII 68884 (ON S.C.) the court ordered the reinstatement of the respondent's child support obligations which had been suspended after DNA testing confirmed he was not the biological father of 16-year-old twins born as a result of an undisclosed extramarital affair. The judge favoured the line of authority advancing a "best interests of the child" approach over the one rooted in common law interpretations of *in loco parentis*, holding that:

The right to child support is the right of a child, and is independent of a parent's own conduct, whether it be delay in pursuing support, an attempt to contract out of support, or the failure to disclose an extramarital affair that may have led to the conception of the child (para.23).

The following articles discuss the legal and moral nuances of the decision:

- [Who's your daddy?](#), a January 19, 2009 Law Times editorial; and
- [Cornelio v. Cornelio - an extended definition of parenthood](#), posted by Stephanie Ostreicher on the Toronto Family Lawyers' blog.

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### 2. Support Obligations: Man. Q.B.

*In loco parentis* and spousal support obligations were also considered in a recent Manitoba case, [Parsons v. Watt](#), 2008 MBQB 328. In this case, the respondent's actions and behaviours toward the son of his common law partner were such that an *in loco parentis* relationship was created during the four year relationship and he was therefore obliged to contribute to the child's support after the relationship ended. The court fixed the amount of support at the guideline amount minus the amount already being paid by the child's biological father. On the issue of spousal support, the court declined to apply the spousal support guidelines as "such a low payment would not be just" in the circumstances. The respondent was ordered to pay retroactive child and spousal support forthwith, with the proviso that this amount, if not already paid, would be taken from the respondent's share in the equity of the court ordered sale of the jointly owned house.

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### 3. Manitoba Mobility Cases

Two recent Manitoba decisions highlight the complications arising from the inherent conflict between mobility and custody/access rights. In [Riddell v. Riddell](#), 2008 MBCA 145, the court

upheld the motion judge's interim order reversing care and control of the teenage children who preferred to remain in Manitoba with their father rather than return to their mother's new home in Alberta. The mother's appeal was successful in part, however, as the court ordered a new hearing on the mother's application to have the variation application heard in Alberta.

In [\*Hutchins v. Hutchins\*](#), 2008 MBQB 334 the court acknowledged the negative impact of the mother's proposed move on the father's time with his children, but concluded that forcing the mother to stay would not be in the children's best interest since the mother's health would suffer.

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#### **4. Silence Does not Create a Legal Obligation: Man. Q.B.**

The court in [\*Gould v. Penney\*](#), 2009 MBQB 4 dismissed the application for a contribution to the \$10,000 cost of AAA ringette because participation in the activity was not a necessity and the expense was not reasonable in light of the parties' limited monthly incomes. In addition, although he was made aware of the expense before the applicant signed the girls up, the respondent never committed to share the cost. The court noted that neither detrimental reliance nor estoppel applied, holding that "Mr. Penney may have sat silent about his refusal to contribute toward the AAA Ringette costs, but there is not a sufficient basis in this case to ground a payment obligation upon that silence."

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#### **5. Upcoming Pensions Program**

Don't miss the full-day professional development program, [\*Pension Issues in Family Law: What You Need to Know\*](#), presented jointly by The Law Society of Manitoba, Court of Queen's Bench Family Division Judges and the Manitoba Bar Association, Family Law Section. The program will be held in the Crystal Ballroom of the Fort Garry Hotel on Friday, February 27, 2009. Presenters include Thomas Anderson, Q.C., of *Anderson Pension Law Consulting* in Vancouver, BC, Ed Burrows, *Pension Valuers of Canada*, and Debbie Lyon, *Pension Commission of Manitoba*. Gwen Hatch and John Jones will provide the practitioners' perspective. [Contact Legal Studies](#) for further information and to register.

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