



In this issue:

1. [Mentally Ill Parents and the Child Protection System](#)
2. [Increased Maturity Alone not a Material Change: SKCA](#)
3. [Support in High Income Cases](#)
4. [Farm Valuations](#)
5. [Legislative Reform Input Sought](#)
6. [Best Interests Test Deconstructed: MBA CLE](#)

1. Mentally Ill Parents and the Child Protection System

In [Director of Child and Family Services \(Man.\) v. J.A.](#), 2009 MBCA 48, the Manitoba Court of Appeal upheld the lower court decision to grant CFS a permanent order of custody of two children of a mentally ill woman. The trial, which lasted some seven weeks, and the appeal decision, highlight the difficult issues of self representation in the courts and how the child protection and legal systems deal with mentally disabled clients.

The latter issue is the subject of a recent [Practice Points](#) publication, [Client Care and Relations: Dealing with Challenging Clients-An Advocate's Perspective](#) by Amanda J. Rose. The article discusses the barriers faced by mentally ill parents who are involved in the child protection system and covers some practical aspects of communicating with and assisting these clients. Although written for a B.C. audience, the article contains general information that can be used to evaluate potential resources and to facilitate communication.

2. Increased Maturity Alone not a Material Change: SKCA

In [Gray v. Wiegers](#), 2008 SKCA 7 the Saskatchewan Court of Appeal overturned a lower court order varying a custody agreement where the only material change was the child's increased maturity. The court found that:

mere passage of time and increased maturity of the child does not, in and of itself, constitute a material change of circumstance as is required by s.17(5) of the *Divorce Act* and the case law that has interpreted that section. Were it otherwise, there would be an automatic right to seek variation of custody orders on a regular basis every few years. This is clearly contrary to the established law. While the reviewing judge may, of course, take into account that a child's needs may change as he or she matures, it is necessary to go further to determine whether and to what extent those changes have, in the case before the reviewing judge, made the original order inadequate.

The following article discusses the decision:

- [Wiegers v. Gray 2008 Sask. C.A. - The Effect of the Passage of Time](#)

3. Support in High Income Cases

[Dyck v. Dyck](#), 2009 MBQB 112, a recent decision of the Manitoba Court of Queen's Bench concerning interim support awards, is a good example of how the court exercises its discretion in cases where the payor parent/spouse has exceptionally high levels of income and the ability to pay at or beyond guideline levels of support. The court had this to say respecting child support obligations:

The husband's behaviour in withholding proper child support these many months should not be rewarded by the court. To now refuse to order proper child support for the months since separation where it was not voluntarily provided, on the basis suggested by the husband (that it would amount to "capital distribution") or on any other basis, would make the court complicit in the deprivation caused by the husband and in his unacceptable economic behaviour. The intervening hardship experienced by the children while in the wife's care and caused by the husband's refusal to meet his obligations on anything resembling a reasonable basis is as palpable as it is inexplicable.

4. Farm Valuations

Two recent decisions of Master Harrison illustrate the complexities of *Family Property Act* valuations, particularly where farm property is involved. In [Johnston v. Johnston](#), 2009 MBQB 109, the court uses the "best evidence" test to determine the separation date value of bred cows and examines the relative merits of different types of evidence to value farm machinery, tools, hay, straw, and miscellaneous farm equipment. Generally the court favours independent evidence such as an auctioneer's opinion or actual sale price. In [Tilbury v. Tilbury](#), 2009 MBQB 89, the court rejects the argument that a cash infusion by the purchaser on a trade-in of pre-acquired farm machinery should be granted the same exemption as the pre-acquired asset. Following *Voth v. Voth*, 2003 MBQB 44 the court examines the history of each machine and excludes a proportion of the separation date value of the machinery from the accounting equivalent to the proportion of the trade-in value of the pre-acquired asset to the purchase price of the after-acquired replacement asset.

5. Legislative Reform Input Sought

The legislation sub-committee of the Family Law section of the Manitoba Bar Association invites your input on potential changes to legislation governing family law matters. Contact Lawrence Pinsky, committee chair, at lpinsky@tmlawyers.com or by telephone at 988-4641 with your suggestions.

6. Best Interests Test Deconstructed: MBA CLE

The [Family Law section](#) of the Manitoba Bar Association is presenting the program *Constructing and Deconstructing Best Interests Determinations - The Best Interests of the Child* on Friday, May 29, 2009, 12:00 noon at the Law Society classroom, 219 Kennedy Street. Presenters Justice Michael Thomson, Dr. Rayleen De Luca, and Verna Sullivan will discuss the best interests of the child, the presumptions inherent in such determinations, the basis for such presumptions and how that all plays out at court. This will be the last opportunity to introduce a non-member buddy to a section meeting, so consider bringing a friend. RSVP to the Manitoba Bar Association RSVP Line @ 927-1211 or by email (mtannahill@cba-mb.ca).

[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.