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The Costs of High Conflict Custody Cases

Two recent decisions of the Q.B. Family Division Court illustrate how complex and consuming high conflict custody cases can be for both the court system and the parties:

In [*J.D.K. v. C.E.M.*](#) 2009 MBQB 245, a follow-up to an earlier decision ([2009 MBQB 175](#)) released in July, Justice Little issues a detailed (29 clause) order specifying periods of care and control, and including a provision granting ultimate decision making authority in the areas of education and health to the parent having less contact time with the child.

[*Burr v. Krahn*](#), 2009 MBQB 262 deals with the sanction of contempt proceedings in the field of family law and the appropriate penalty in egregious circumstances. To redress both the personal and societal aspects of repeated and numerous acts of contempt by the mother, who the court found had no intention of living up to the terms of a consent order on custody, the court imposed a fine of \$500 payable to the state and an order that the father's costs on the motion be paid on a solicitor and own client basis.

Child's Best Interests Paramount in Mobility Rights Cases

In [*Betz v. Joyce*](#), 2009 BCSC 1199 the B.C. Supreme Court considers the issue of mobility rights where the parties shared joint custody pursuant to a separation agreement. The court found that the agreement did not oust the court's jurisdiction to reconsider custody, nor did the plaintiff have to demonstrate a material change in circumstances. After weighing all of the factors touching on the best interests of the child the court concluded that the move to rural Manitoba proposed by the remarried mother was not in the 9-year old child's best interests at that time. To the contrary, the court found that "at this age and stage of her life, such a move away from her father would constitute a significant psychological disruption for her, effectively alienating her from her father who has been a highly involved, devoted parent throughout her childhood." The court ordered, however, that the move could take place three years later when

the child finished grade 6. In addition, the court found the child's best interests would be served by living primarily with her mother given the father's disruptive work schedule.

Input Sought on CRA Experience

The executive of the CBA [National Family Law Section](#) is interested in collecting anecdotal information about any problems family law lawyers and their clients are experiencing as a result of various provisions in the *Income Tax Act* and directions given by the Canada Revenue Agency. Comments should be sent to [Gaylene Schellenberg](#) by November 4, 2009.

Limitation Date Reminder

The Professional Liability Claims Fund staff would like to remind family law lawyers that the first step in opening every new family law file involving an accounting and equalization claim should be to determine, diarize and inform the client of limitation dates. These deadlines are easy to miss, particularly when the parties are in a common law relationship. Under [s. 19.1\(3\)](#) of *The Family Property Act*, common-law partners who registered their relationship under [s.13.1](#) of *The Vital Statistics Act*, have 60 days from the date on which a dissolution of the relationship was registered to file an application. For common-law partners who did not register their relationship applications must be filed within 3 years of the date on which the common-law partners began to live separate and apart. [Section 19\(1\)](#) sets out the limitation period for married partners, who must apply for an accounting and equalization of assets within 60 days of the granting of the decree absolute of divorce or 60 days from the day on which the divorce takes effect.

First Choice Scheduling Process

[Family Conciliation](#) has developed a new system to facilitate the booking of First Choice appointments immediately after a case conference. First Choice, an alternative to court ordered assessment, is a combination of assessment, mediation and settlement conferencing designed to help parents resolve their custody or access issues in a timely way. Appointments may be booked by telephone at 945-3201 or in person at the Family Conciliation office, 2nd floor, 379 Broadway. Shortly after booking a time slot lawyers and clients will receive more information about the program and a First Choice team will be assigned. Parents will be interviewed by telephone 1-2 weeks before the session. Lawyers are asked to inform Family Conciliation of session cancellations as soon as possible.

Joint Program on Family Law and Death

Mark your calendars now for ['Til Death Do Us Part and Beyond](#), a full day program examining the issues arising at the intersection of family law and death. The program, jointly sponsored by the Law Society, Q.B. Family Division Judges, and the MBA, will take place on Friday, March 5, 2010 at the Radisson Hotel, Winnipeg.

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