



eLaw - Family Law Update

December 2009 - No. 38

ISSN 1916-3924

In This Issue

Retroactive Lump Sum Child Support Rarely Awarded on Interim Basis: MBCA

Family Division Cases

Family Law Lawyers the Latest Fraud Victims

Provincial Court Notice

More on Parental Alienation Syndrome

New Approach to Common-Law Property Division?

Upcoming Family Law CPD

Retroactive Lump Sum Child Support Rarely Awarded on Interim Basis: MBCA

In [*Dram v. Foster*](#), 2009 MBCA 125 the court sets aside an interim, lump sum, retroactive, child support award and directs that the matter proceed to final hearing. The court notes that while it is not receptive to hearing appeals from interim orders, it has also made it clear that an order for lump sum child support on an interim basis should be made only where extraordinary or exceptional circumstances justify it. In this case,

the admonition against lump sum interim child support orders must trump the admonition against appeals from interim orders, especially considering that the order was made retroactively. (para. 6)

Family Division Cases

The Court of Queen's Bench (Family Division) decided these cases in November:

[*Heintz v. Heintz*](#), 2009 MBQB 304 - The court dismisses the father's application to prevent the mother from changing the names of their children to her maiden name. The court found that the father had not met his onus to show on a balance of probabilities that the proposed change was not in the best interests of the children (s.6(1) of *The Change of Name Act*). Lack of improper motivation on the mother's part and the fact that the father had ceded sole custody of the children and had a tenuous relationship with them (likely with good reason) were factors in the decision.

[*Bochurka v. Bochurka*](#), 2009 MBQB 295 - the narrow issue in this case was whether the son had paid for or was gifted shares in the family business. Despite records showing a \$100 payment for the shares, the court accepted the credible evidence of both the son and his

mother (who was the bookkeeper for the business) that the shares were a gift from the father. They were therefore not shareable under s.7(1) of *The Family Property Act*.

[Martin v. Orris](#), 2009 MBQB 290 - at issue on this interim motion were time sharing in a shared custody arrangement, who should have exclusive occupancy of the family home, the father's income from his corporation, child support, and whether spousal support should be paid and in what amount. The court notes the imprecise nature of interim awards, particularly with regard to the cost of setting up a second household.

Family Law Lawyers the Latest Fraud Victims

The blogosphere is full of reports of a new fraud scam being perpetrated against family law lawyers. This one involves a client seeking help collecting outstanding support arrears. Several lawyers have made the mistake of forwarding the outstanding funds to the "client" without waiting for the agreed-to Fed Ex cheque to clear the bank. Two recent Slaw posting by Dan Pinnington, [Keep Your Guard Up: Bogus Cheque Fraudsters Continue To Target Lawyers](#) and [Bad-cheque scams on family law matters targeting Ontario lawyers](#), describe the scam in more detail and link to various fraud prevention resources available online.

Provincial Court Notice

By [notice](#) of the Provincial Court, starting for the December 11, 2009 hearings, filings for matters in the Steinbach Child Protection Court should be made at Room 101A of the Law Courts complex, 408 York Avenue, Winnipeg, to the attention of Lynn Casselman, Child Protection Coordinator.

More on Parental Alienation Syndrome

A recent *Law Times* article, [Judge reverses parental alienation ruling](#), discusses another controversial custody decision involving parental alienation syndrome (discussed in last month's eLaw). In [S.G.B. v. S.J.L.](#), 2009 CanLII 24230 (ON S.C.) the judge sets aside an 18-month-old arbitrator's award reversing custody and ordering that the two children have no contact with their father until three months after they have completed the Family Workshop for Alienated Children in Texas. The decision and the article highlight the difficulties in resolving these high conflict custody cases.

New Approach to Common-Law Property Division?

The article [Division of Property in Common-law Relationships](#) by Ankur Bhatt, examines the issues in [Kerr v. Baranow](#), 2009 BCCA 111, currently on appeal to the Supreme Court of Canada. The court will consider whether the B.C. Court of Appeal erred in finding that the lower court should not have applied a general fairness test when considering resulting trust or unjust enrichment for a division of property. The author elaborates on and supports the "global analysis" approach taken by the Court of Appeal, but recognizes that the Supreme Court may decide the appeal on narrower grounds.

Upcoming Family Law CPD

Early bird registration ends January 15, 2010 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. Topics to be covered include spousal and child support obligations, resulting trust and the presumption of

advancement, and grandparent guardianship and access. [Register](#) soon to take advantage of the discount.

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.