



## eLaw - Family Law Update

January 2010 - No. 39

ISSN 1916-3924

### In This Issue

Avoiding the Cliff Effect on a Shared Custody Variation: MBCA

Interim Preservation Order Appropriate: MBCA

Recent Family Division Cases

Listening to the Children

Upcoming Family Law Programs

National Family Law Program: FLSC

### Avoiding the Cliff Effect on a Shared Custody Variation: MBCA

The court considered the application of s. 9 of the *Child Support Guidelines Regulation*, Man. Reg. 58/98 and the so called "cliff effect" in [Kolitsnyk v. Loscerbo](#), 2010 MBCA 1. The cliff effect is the dramatic drop in income of a custodial parent when the access parent crosses the access threshold from 39 to 40 percent and child support obligations are varied following the s. 9 guidelines. The court rejected the father's argument that the motions judge erred in invoking the cliff effect after already determining that there should be no adjustment of the s. 9(a) set off amount by reason of the factors to be addressed under s. 9(b) and (c). It found no error in the motion judge's conclusion that "it was appropriate that both parents share the financial impact of the changed custodial arrangements and that there was room in the father's budget to permit him to do so."

### Interim Preservation Order Appropriate: MBCA

In [Stanze v. Stanze](#), 2009 MBCA 128 the court dismissed the appeal of an interim preservation order freezing a share of the net sale proceeds of farm land and protecting the equalization claim of the wife. Given the fact that the farm was sold without notice to the wife, and both co-owners of the land (the husband and his father) reside in Germany, the court found "it was open to the motions judge to be concerned about whether any equalization payment due the wife, if one is found due after a hearing could be satisfied."

### Recent Family Division Cases

Following the reasoning of Justice Thomson in [Peguis Child and Family Services v. C.S.](#), 2009 MBQB 220 (discussed in the September 2009 eLaw), the court orders production of RCMP records concerning an allegation of abuse in [Awasis Agency of Northern Manitoba v. B.D.B.](#), 2009 MBQB 316.

In [\*Karish v. Karish\*](#), 2009 MBQB 331, the court favours the mother's proposal for an interim shared parenting regime over the father's motion for primary care, noting that "the position advanced by the petitioner/husband seems to be more founded on "penalizing" the respondent/wife, rather than concerning himself with what might be in the "best interests" of the children."

[\*Small v. Squire\*](#), 2009 MBQB 317 deals with interim custody and mobility and jurisdiction issues. The parties, originally from Newfoundland, had relocated to Manitoba for the husband's employment. After 20 months in Manitoba the wife returned to Newfoundland with their child in January 2009 and remained there except for a brief reconciliation period. The husband initiated divorce proceedings in Manitoba. The court awarded interim custody to the mother and ordered a transfer of the custody/access proceedings to the Newfoundland court under s.6 of the *Divorce Act*.

## Listening to the Children

Two recent [Practice Points](#) articles deal with the right of children to participate in custody proceedings in and out of court. In [\*Hear the Child-the Legal Framework: Why Children in Canada Have the Legal Right to be Heard\*](#), the Honourable Madam Justice Donna Martinson discusses the origins and application of the child's right to be heard in custody proceedings and the right to have those views given weight in accordance with the child's age and maturity. Children's views must also be heard in alternative custody processes, as noted in the article [\*The Child Specialist in Interdisciplinary Collaborative Practice\*](#), in which the author discusses the role of, and the logistics of working with, a child specialist in an interdisciplinary collaborative practice.

## Upcoming Family Law Programs

### ['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.

The Family Law section of the Manitoba Bar Association is presenting the program [Contempt Orders in Family Law](#) on Thursday, February 25, 2010 at 12:00 noon at the Law Society of Manitoba classroom. The Honourable Madam Justice Laurie Allen and Randall Horton will address how to draft court orders to avoid contempt motions, when to bring a motion for contempt and how to defend one. They will also discuss recent Manitoba case law on the subject and remedies available if the motion is successful. Contact the [Manitoba Bar Association](#) for further information or to register.

## National Family Law Program: FLSC

Those making summer plans may want to note that the 2010 [National Family Law Program](#) will be held July 12-15 in Victoria, B.C. The [brochure](#) contains a list of topics to be covered and the registration form, and updates will be posted on the [FLSC website](#).

*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.*