



eLaw - Family Law Update

March 2010 - No. 41

ISSN 1916-3924

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Tax Credit Discussion Should be on Separation Agreement Checklist: TCC

Denying a tax credit to separated spouses who cannot agree on who should get it is not discriminatory, but it can "create a harsh and unfair result" according to Justice Miller in his oral judgment in [Krashinsky v. The Queen](#), 2010 TCC 78. The court rejected the lawyer/separated dad's claim that paragraph 118(4)(b) of the *Income Tax Act* discriminates on the basis of marital status in that married couples obtain the paragraph 118(1)(a) credit with nothing more than the application of a formula, yet separated couples must seek each other's consent to get the equivalent to married deduction. The judge described the mechanism to claim the relief as "awkward," and suggested that it might "be time to create a better mouse trap." He also concluded by saying that he hoped the case would serve two purposes:

First, to convey a message to the Family Law bar that this is an issue that should routinely be addressed at the time of the separation agreement, where joint custody is an issue. Second, to convey a message to the legislators that notwithstanding good intentions to provide taxpayer relief...the zero sum approach of denying any credit without agreement can... create a harsh and unfair result contrary to their intention...(para 16)

Kirk Makin discusses the case further in [Judge criticizes tax law that puts divorcees at disadvantage](#), a March 11, 2010 *Globe and Mail* article.

Settlement Funds Applied to Child Support Arrears: MBQB

In [Daniels v. Daniels/Fontaine et al.](#), 2010 MBQB 46 the court considers, "for the first time in Manitoba and perhaps the first time in Canada" whether monies payable under the court-ordered Indian Residential Schools Settlement (IRSS) may be accessed by the Enforcement

Branch to satisfy child support arrears. Exercising his authority as a supervising judge under the court-ordered settlement and a judge on the application for judicial review, Justice Schulman set aside the garnishing order made by the master against the IRSS fund administrator and replaced it with an order appointing a receiver, who was specifically charged with protecting the interests of Daniels' children.

Separation Agreement Overridden in Case of Extreme Vulnerability: MBQB

In [*Hardt v. Hardt*](#), 2010 MBQB 38 the court applies the tests set out in [*Miglin*](#) and [*Brandsema*](#) to override a separation agreement in which the wife released any claim to spousal support contrary to the advice of two lawyers. The court found that the wife was in an extremely vulnerable state throughout the period of the formation and execution of the separation agreement and that her vulnerability was not compensated for by professional assistance. She was intimidated, rushed and pressured by her controlling husband and there was a marked imbalance of financial acumen between the parties and no financial disclosure.

Establishing an Intention to Live Separate and Apart: MBQB

Although the legal test to determine when spouses have been living separate and apart is not contentious, establishing when one spouse formed the intention to separate can be complicated, as noted in [*J.L.L. v. G.A.L.*](#), 2010 MBQB 39. In this case the husband argued that the parties separated on May 12, the date he learned of his wife's infidelity, whereas the wife argued it should be October 20, the date when her husband did not reply to her request to resume living at the family farm and she realized the marriage was over. The court looked at the parties' behaviour during this five month period and concluded that by the time the wife returned to school on September 7, there was a marked change in their relationship (financial, sexual and otherwise) and they had formed the intent to separate.

Transferring Open Files

Family law lawyers are reminded of their obligations when transferring client files as outlined in [Practice Direction 94-02: Transfer of Open Files to New Lawyers](#). While a discharged lawyer may copy the file before transfer, the direction states that:

this should be done at the lawyer's own expense as it is solely for the lawyer's benefit, and it is improper to charge one's former client for the photocopying costs. Similarly, it is improper to impose a trust condition on the client's new lawyer purporting to require payment of such photocopying charges or to require the file be made available on request by the former lawyer.

The Law Society is planning a lunch program on Trust Conditions to be held May 19, 2010. Watch for further details or contact [Jennifer Lavallee](#) in the Education and Competence Department to register.

National Family Law Program: FLSC

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](#).

Upcoming Education Programs

Family lawyers may be interested in the following March/April programs:

The Honourable Mr. Justice Harvey Brownstone of the North Toronto Family Court will offer his insight into the impact and consequences of family court litigation in the presentation [A Judge's Verdict on Separation, Custody Battles and the Bitter Realities of Family Court](#) on March 26, 2010. The joint Manitoba Bar Association and Collaborative Practice Manitoba program will take place at the Law Society of Manitoba classroom starting at 12:00 noon. RSVP to the [Manitoba Bar Association](#) by March 24, 2010.

Collaborative Practice Manitoba and Family Mediation Manitoba are co-sponsoring the program How Fathers Parent Differently: Implications For Children and Families Before, During or After Divorce, a two-day workshop with Dr. Marsha Kline Pruett, Ph.D., M.S.L. The program will address the dynamics of father involvement, special risk factors and overnights for young children, and other custody-related matters on April 15-16, 2010 at the Canada Inn Polo Park. To register or for more information call 945 5961 or e-mail [Collaborative Practice Manitoba](#).

The Honourable Madam Justices Diamond and MacPhail will speak on [Hague Convention Applications and Judicial Communication](#) at a Family Law section lunch program on April 28, 2010 at the Law Society of Manitoba classroom. For further information or to RSVP, contact the [Manitoba Bar Association](#).

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