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Habitual Residence Required for *Hague Convention* Relief: MBQB

In [*D.L.P. v. S-J. A.*](#), 2010 MBQB 225, a case involving a grandparent's application for guardianship of her deceased son's child, the court dismisses an intervening application by the central authority to transfer jurisdiction to the nation of Belize, where the child's mother claimed residence. The court found that the mother failed to establish habitual residence in Belize immediately before the child's "wrongful detention" in Manitoba. Her credibility was called into question by the fact that she had recently claimed residence in Ontario for the purpose of renewing her Canadian driver's licence and the fact that she was supporting her family in part with benefits only available to her as a resident of Canada.

Without Notice Protection Orders Rare in Ongoing Cases: MBQB

In [*B.W.D.F. v. V.R.R.*](#), 2010 MBQB 223, the court expresses great concern about the process undertaken by the mother when she sought a without notice protection order on behalf of herself and her son in the midst of ongoing domestic litigation. Of particular concern to the court was the fact that there was virtually no evidence of the imminent harm, danger or disruption required to substantiate the need for the order. Although the court did not go so far as to accept the father's characterization of the matter as a parental alienation case, costs were ordered against the mother.

New Take on Exempt Property: MBQB

In the most recent decision in [*Tilbury v. Tilbury*](#), 2010 MBQB 214, the court allows the respondent husband to set off the value of a farm crop that was still in the field when the parties began living together in September 1990 against the value of the harvest from the same field at the October 2005 separation date. Noting the "evidentiary vacuum" concerning what deductions should be applied to the gross asset value of the 1990 crop, the court reduced the 1990 gross inventory receipts to an amount equal to the 2005 gross inventory receipts. On the issue of what, if any, tracing requirements apply, the court prefers the broad analysis set out in *Chamberlin v. Chamberlin* [1999] S.J. No. 550 to the *Kowaluk v Kowaluk* [1996] M.J. No. 247 (C.A.) requirement that the party claiming an exemption must be able to trace the pre-owned asset to separation.

"Strike While the Iron is Hot" an Apt Adage: ONSC

[*Steine v. Steine*](#), 2010 ONSC 4289, a recent Ontario case, highlights the importance of taking detailed minutes of settlement and finalising orders quickly post-settlement. In this case, the delay in drafting and executing the formal order (during which time voluntary support payments were stopped) culminated in competing motions to enforce the minutes and to set aside the agreement. The court upheld the minutes of settlement, but ordered the husband to pay spousal support arrears for the delay period. The court also noted that, since conduct is a factor in determining costs, should the husband seek costs he would be required to make further submissions as to why he did not continue with voluntary support payments and why he did not agree to the partial release of the proceeds of the matrimonial home being held in trust.

Why Hire a Private Detective?

Although it is American based, the article [*Using Social Network Evidence in Family Court*](#) contains some good advice on making the most of evidence obtained from social networking sites like Facebook in court or during negotiations. The authors note that a recent survey cites Facebook as the "unrivaled leader for online divorce evidence." On the flip side, as the authors suggest, family law lawyers should request access to clients' accounts in order to anticipate problems and should caution clients to guard their online privacy.

And, the recent *Law Times* article [*Cyber-service 'a new frontier'*](#) discusses an Ontario paternity case in which the judge allowed the applicant to serve the putative father by sending him the documents attached to a Facebook message. Expanding the ways of effecting service may prove particularly useful in family law cases where containing costs is essential and potential payors may be avoiding service. The article suggests this may be the first time Facebook has been used to effect substituted service, but there have been similar rulings in Alberta in February 2009 and in Manitoba last January (the February 2010 Litigation eLaw contains a description of the Manitoba case and links to a copy of the order and notice in the MPI action).

Get Out the Chequebook: Child Support Obligations for Post Secondary Degrees

The *Lawyers Weekly* article [*Child support for post-secondary degrees*](#) contains summaries of several recent Ontario cases on entitlement to child support for post-secondary education. The author's conclusion on what to tell clients who want to know their obligations past the first degree: "Get out the chequebook."

Change is Good: BC Proposes Radical Reform of *Family Relations Act*

The B.C. [*White Paper on Family Relations Act Reform*](#), a proposal for overhauling the province's family law system, is receiving mostly positive feedback for its progressive reforms according to the author of the *Lawyers Weekly* article [*B.C. poised for a massive family law overhaul*](#). The article summarizes the highlights of the white paper, which include an emphasis on non-court dispute resolution; new enforcement tools such as conduct orders; enforcement of

parenting time, and routine consultation with children concerning their post-separation care. The paper contains an extensive overview of the law in B.C. and elsewhere and includes an Appendix listing and linking to both Canadian and International statutory references.

Schreyer v. Schreyer Update

In November the Supreme Court of Canada will hear the appeal from the "unfortunate and unfair" result in [Schreyer v. Schreyer](#), 2009 MBCA 84, the Manitoba Court of Appeal decision allowing indebted spouses to avoid their equalization payment obligations by filing bankruptcy. Those who are following the case may want to read the SCC [summary](#), the [factums](#), or the article "[Letter of the Law](#)" [Poised to Undermine Equity in Divorce: A Look Ahead to Schreyer v. Schreyer](#), by Alysia Lau, posted October 14, 2010 on The Court.

Stats on Canadian Families

The Vanier Institute of the Family has released the 4th edition of [Families Count - Profiling Canada's Families](#), its encyclopaedia of Canadian family trends and statistics based on the 2006 census. Some trends for family law lawyers to consider:

- there were 69,600 divorces in Canada in 2004, down 1.7 per cent from the previous year and a 28 per cent decline from 1987, following the passage of the 1985 *Divorce Act*;
- common-law families are the fastest-growing family type in Canada, rising from 5.6 per cent of all families in 1981 to 15.5 per cent in 2006, and the ranks of common-law couples with children are growing fastest;
- of the 45,300 same-sex couples in Canada in 2006, 16.5 per cent were married, and same-sex couples make up 0.6 per cent of all couple families in the country.

MBA Program on Changes to Family Law Legislation

The Family Law section of the Manitoba Bar Association is presenting the program [Recent Changes to Legislation](#) on November 2, 2010, from 12:00 noon - 1:30 p.m. at the Law Society of Manitoba classroom. Presenters Clair Berland and Cheryl McGibbon, both of the Family Law Branch, and Debbie Lyon, Office of the Superintendent - Pension Commission, will review recent changes to *The Family Maintenance Act* (including a list of criteria in considering the best interests of children); *The Domestic Violence and Stalking Act* (Bill 19); and *The Pension Benefits Act* (Bill 10); as well as new pension benefits regulations regarding provincial regulated workplace pension plans and changes to the enforcement of family support payments (Bill 30). Contact the MBA for further details or to register.

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