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Proof of Foreign Law Not Required for Provisional Order under **ISO Act**: MBCA

In [*Lei v. Kwan*](#), 2010 MBCA 108, the Court of Appeal overturned the motion judge's [dismissal](#) of an application for a provisional order of support under *The Inter-jurisdictional Support Orders Act*, C.C.S.M., c. 160 and remitted the matter back to the lower court for the order to be made. Requiring an "applicant seeking a provisional order...to prove foreign law before a Manitoba judge is neither streamlined nor simple" according to the court, and offends the fundamental legislative purpose of the *ISO Act* which was to modernize the interjurisdictional recognition of support orders. In reaching this conclusion the court found that neither [s.12\(3\)](#) (requiring the Manitoba court to apply the law of the jurisdiction in which the claimant and the respondent last maintained a common habitual residence), nor [s.41](#) (requiring the Manitoba court to take judicial notice of the law of a reciprocating jurisdiction, [where required](#)) applied to the making of provisional orders.

As an interesting aside, the Quebec Court of Appeal has recently ruled ([Droit de la famille - 102866](#), 2010 QCCA 1978) that the province's *Civil Code* discriminates against common law couples by denying them recourse to the support rights and obligations of married couples. This was the law the motions judge took judicial notice of in refusing the application for a provisional order. For commentary on the Quebec case see the recent Slaw posting [Are Common Law Couples Victim of Discrimination?](#)

Family Gifts and Loans Complicate **FPA** Accounting: MBCA

Two heavily encumbered parcels of land given to the husband by his father were incorrectly included in the parties' *Family Property Act* accounting according to the Court of Appeal in [Falavena v. Falavena](#), 2010 MBCA 98. The wife argued that because the mortgage/taxes on the properties were paid from joint funds during the marriage the assets should be shareable, but the court disagreed, finding that an asset can be the subject of a gift even if it is encumbered, and that the nature of the asset is determined at the time of acquisition. The court

went on to note, however, that concluding that the property was a gift "is a far cry from saying that the respondent is not entitled to benefit from that asset on the basis of an unjust enrichment or a constructive trust..." (para 25), but these are issues to be decided by a judge at trial, not by a master on a reference order.

The court upheld the master's decision to exclude undocumented debts claimed by the husband's parents. Following the B.C. Court of Appeal decision in [Berry v. Page](#), 1989 CanLII 2780, the court found that the limitation date on recovery of demand loans begins to run on advancement of the funds, not from the date of demand. The 16-year-old loan from the husband's mother was therefore statute barred and properly excluded from the accounting.

Family Conciliation Notice

Family Conciliation made changes to their First Choice service effective October, 2010 and would like to remind family law lawyers that the service is now a confidential process as reflected in the Participants' Agreement signed by the parties and their lawyers. A First Choice referral form and the Participants' Agreement must be completed and forwarded to Family Conciliation before an appointment can be arranged. Attendance by lawyers is a crucial part of the process that enhances the possibility of settlement.

More on Proposed Family Law Regime Changes in B.C. and Ontario

These articles may be of interest to family law lawyers:

[B.C.'s proposed guardianship concept raises red flags](#) by Professor Susan Boyd, *Lawyers Weekly*, November 12, 2010 - a critique of the B.C. [White Paper](#) proposal to eliminate current custody and access provisions and replace them with a starting position of joint guardianship.

[Chief justice expands on proposals to redesign family law system](#), *Law Times*, November 8, 2010 - debate on Justice Winkler's proposal for mandatory mediation in Ontario family law cases.

New Code of Professional Conduct

The Benchers have approved a new [Code of Professional Conduct](#) which will come into effect on January 1, 2011. The new *Code* provides a clear, concise and updated set of rules by which lawyers will be expected to conduct themselves. All members of the profession will be required to complete some form of training on the *Code* within one year of its implementation. The Law Society will offer free training in a number of formats, including in person training, online self-study, and teleseminars. The next scheduled [teleseminar](#) will take place on January 25, 2011.

Upcoming CPD Programs: LSM

Register soon for this upcoming CPD program:

[Gain the Edge! Negotiation Strategies for Lawyers](#) - This day long seminar, presented by Martin Latz, negotiation expert and author of *Gain the Edge! Negotiating to Get What You Want*, received rave reviews when it was presented in 2009. Attendees will learn to approach negotiations with a strategic mindset, a critical skill that benefits inexperienced and seasoned negotiators alike. The program will be held February 11, 2011 at the Law Society classroom. [Register](#) by January 15th to take advantage of the early bird discount.

And, mark your calendar for the next Joint Family Law Program, to be held March 11, 2011.

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