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### Unjust Enrichment in Joint Family Ventures: SCC

The Supreme Court of Canada outlines a framework for deciding property disputes by unmarried partners in [\*Kerr v. Baranow\*](#), 2011 SCC 10, a decision addressing conflicting findings from B.C. and Ontario on how unjust enrichment claims should be calculated. The court overruled the Ontario Court of Appeal decision in *Kerr*, which restricted the monetary remedy for a successful unjust enrichment to assessment on a *quantum meruit* basis. The court rejected the "dichotomy of remedial choice" (constructive trust or *quantum meruit*), and went on to provide a broad outline of when unjust enrichment may arise from a joint family venture (paras. 87-99). These articles discuss the import of the decision, particularly in jurisdictions where judge-made law is the only option for resolving property disputes between unmarried persons in domestic relationships.

- [\*SCC sets out framework for unjust enrichment claims in family law\*](#), *The Lawyers Weekly*, March 4, 2011;
- [\*Common law couples deserve fair shares when separating, top court rules\*](#), *The Globe and Mail*, February 18, 2011.

### Spousal Support Guidelines Useful But Not Binding: MBCA

Failure to refer to the *Spousal Support Advisory Guidelines* when varying a spousal support award is not an error in law justifying appellate intervention, according to the Court of Appeal in [\*Scott v. Scott\*](#), 2011 MBCA 21, even where both counsel rely on the guidelines in their submissions. While acknowledging that in some jurisdictions the courts place heavy reliance on the guidelines, the Manitoba court prefers the "useful tool" approach followed in [\*Fisher v. Fisher\*](#), 2008 ONCA 11, where the guidelines are described as "neither legislated nor binding,...only advisory." The court does not go so far as to say that the guidelines do not apply to variations, however, as was stated in the *Fisher* case.

## Non-Consensual Use of Personal Diaries a Violation of Privacy: MBQB

The husband committed the tort of violation of privacy (s.2 of [The Privacy Act](#)) by refusing to return and using his former wife's "intensely personal and private diaries" in [Lane v. Lane](#), 2011 MBQB 26. The husband argued he had a defence under s. 5(c) of the Act in that portions of the diaries were relevant to the parties' child custody action as they contained evidence of the wife's plan to alienate their child from him. This argument (confined to certain sections of the diary attached as an exhibit to the husband's affidavit) was adjourned to the hearing of the custody and control motion, as was the issue of costs. Damages for the privacy violation were adjourned to trial.

## New Child Support Recalculation Rules In Effect

[Regulation 15/2011](#), the Child Support Guidelines Regulation, amendment, came into force March 1, 2011, allowing for the recalculation of child support orders that are part of the program regardless of whether the paying parent provides updated financial information. Income increases are deemed where the paying parent fails to provide income information on a timely basis. In addition, special or extraordinary expenses will be deemed to be zero in the absence of financial disclosure as to their amount. Recalculations will occur on the first anniversary date of the child support order and every two years thereafter.

## Extended Case Conference Materials

For those who missed the recent presentation by Justice Little on extended case conferences in the Family Division (part of the JADR program held January 13, 2011 at the Law Society), his comments are summarized in these [materials](#), which describe the terms and expectations of the new pilot project.

## Recommended Reading

These articles may interest family law lawyers:

- [Email Evidence - Worth the Search?](#) - a Slaw article examining the use of email evidence in family law cases. The author refers to a recent Ontario case, [Bruni v. Bruni](#), 2010 ONSC 6568, in which the judge claims that the proliferation of email and text messaging has made credibility assessments much easier. As the judge puts it: "Parties are not shy about splattering their spleens throughout cyberspace." The case is an entertaining read for the judge's colourful language and controversial personal opinions.
- [Debate fires up over presumption of joint custody](#) - People have strong opinions on the presumption of joint custody topic, judging by the number of responses to this *Law Times* article.
- [Divorce insurance - Family lawyers remain unsure of its merits](#) - It's not here yet, but divorce insurance may be the next thing to hit family lawyers in Canada, according to this *Lawyers Weekly* article from February 18, 2011.

## Annual Joint Family Law Program: Putting Children First

Professor Rollie Thompson and psychologist Dr. Joan Kelly will examine the latest research on children's adjustment after separation and divorce, parenting plans, child alienation and mobility issues in the upcoming Annual Joint Family Law program [Getting to 20/20 Refining Our Focus: Putting Children First](#). The program is jointly sponsored by the Law Society of Manitoba, the Court of Queen's Bench Family Division judges and the Manitoba Bar Association, Family Law section. It takes place on March 11, 2011, from 9:00 a.m. - 4:30 p.m. at the Fort Garry Hotel.

## Call for Papers: 2012 National Family Law Program

Organizers of the Federation of Law Societies' 2012 National Family Law Program, to be held July 16-19, 2012 in Halifax, N.S., are [accepting proposals](#) for conference papers/presentations. Submissions must be received no later than May 30, 2011.

