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Setting of Costs a Discretionary Matter: MBCA

In [*Falvena v. Falvena*](#), 2011 MBCA 39, the Court of Appeal reconsiders the award of costs it made when it [overturned](#) a [master's decision](#) to include two heavily encumbered properties (given to the husband by his father but paid for from joint funds during the marriage) in the parties' *FPA* accounting. The court was not convinced that its original apportionment should be altered. Although the husband was partially successful on the appeal, the court found that his success "might well be transient" given the wife's compelling claim for compensation on an equitable basis. The court did extend the reduction in costs it ordered to the disbursements set by the Master and to the costs awarded by the judge.

Judges Are Not Accountants: MBQB

The court terminated the husband's obligation to pay spousal support in [*Chubey v. Chubey*](#), 2011 MBQB 100, finding that the wife had failed, through her own choices, to become self sufficient in the ten years since separation. She had moved to a town where job opportunities were limited, remarried to someone with health and financial limitations, and failed to pursue the education or training necessary for independence. The court observed:

For expenses and debts to be factored into a recipient's means, needs and circumstances, they must have been incurred reasonably. The court should distinguish between the relief of economic hardship arising from the breakdown of the marriage, and hardship arising as a consequence of not living reasonably or making wrong choices. If the recipient's financial situation has worsened since equalization, the recipient must show "identifiable reasons", apart from living a lifestyle beyond what he or she could afford, to be entitled to support from the other spouse to meet that

need. (para. 67)

The court also found that there was insufficient evidence to render a proper accounting of the parties' child support obligations since neither party had complied with the final order to provide financial disclosure and receipts, and the children had changed residences. The court commented:

..."judges are not accountants nor should they be expected to be accountants". It is a futile exercise when the evidence is not provided. The court should not have to speculate or guess in regard to what was paid and how much. (para. 27)

Third Party Affidavits Should Be Filed Before Reply Affidavits: MBQB

In [Genaske v. Genaske](#), 2011 MBQB 75 the court expunged a third party affidavit filed as a response to allegations made in the reply affidavit, finding that Queen's Bench Rule 70 does not permit the filing of any affidavits after the moving party has filed his or her reply, without leave of the court. The clear intention of the family rules, according to the master, "is to contain the proliferation of affidavits in family matters and establish an orderly process with the goal of putting a stop to endless affidavits and resultant expense and delay." This entails the filing and serving of non-party affidavits at the same time as the parties' own affidavits, so that both parties have an opportunity to respond to the other's non-party affidavits. To interpret subrule 70.20(9) otherwise "would encourage case splitting, evidence bolstering and proliferating affidavits." (para. 15)

Revised AFCO Recalculation Clauses

The coming into force of ss. 4, 5 and 6 of [The Strengthened Enforcement of Family Support Payments and Miscellaneous Amendments Act](#) and amendments to the Child Support Guidelines Regulation (contained in [M.R. 15/2011](#)), has necessitated revisions to the AFCO Standard Clauses relating to the recalculation of child support. Work is underway to post the revisions to the Manitoba Courts website. In the interim, counsel may contact the Child Support Recalculation Service to obtain the revised wording for the recalculation clauses that has been approved by the Court of Queen's Bench (Family Division). Their email address is CSRS@gov.mb.ca or they may be reached by telephone at 945-2293 or toll free at 1-800-282-8069 (Ext. 2293).

Japan to Join Hague Convention

After significant pressure from other signatories Japan has reportedly agreed to join the *Hague Convention on International Child Abduction*. Japanese law (which favours single parent custody and leaves access arrangements to the parties) will have to be changed before Japan can comply with the treaty, however, and that may be contentious.

Leave to Appeal Granted in Quebec Common Law Rights Case

The Supreme Court has granted leave to appeal the [Quebec Court of Appeal decision](#) challenging the constitutionality of the *Civil Code of Quebec*. The appeal court found that the *Code* discriminates against common law couples by denying them recourse to the support rights and obligations of married or civil union spouses. The province sought leave to appeal.

New Method of Allocating Child Tax Benefit in Shared Custody Situations

As noted on the [BC Family Law Resource Blog](#), the Canada Revenue Agency will change its method for allocating the [Canada Child Tax Benefit](#) between separated parents who share custody equally or near-equally effective July 1, 2011. The new rule will end the current six month rotation of benefits and credits and substitute a

system where each parent would receive one-half of the benefits that parent would receive if they were the only one entitled to the benefit.

Facilitating Contact in Family Law Cases

Technology is increasingly being used in family law matters to facilitate virtual interaction between parties where distance or mobility issues restrict actual contact. The Slaw article [A Tale of Two \(ODR\) Projects](#) describes [Distance Family Mediation Services](#), offered by Mediate B.C., which conducts virtual mediations between separating and divorcing couples who are unable to meet in person. Details of the project are discussed in their blog, [BC Distance Family Mediation Blog](#).

Skype technology is increasingly a consideration in mobility cases, as noted in these articles discussing both Canadian and American case law: [Skype, Webcams and "Virtual Visitation" in Ontario Separation and Divorce](#) and [Judge Orders Skype Visits as Condition of Mom's Move](#). There don't appear to be any Manitoba cases where judges have commented on virtual visitation via Skype, but there are at least 20 Ontario decisions where the technology is mentioned.

Recommended Reading

These publications may be of interest to family law lawyers:

- Although it references primarily B.C. legislation and case law, the Practice Points paper [Family Law and the Blended Family: A Brief Introduction](#) is a useful overview of the law on child support, spousal support, and step-parent obligations in blended families. It also talks about how to prevent future legal disputes between repartnering spouses.
- The *Lawyers Weekly* article [Why judges need to talk to kids](#) discusses two presentations from the Annual Institute of Family Law conference, the first on interviewing children in custody cases and the second on effective oral and written advocacy in family court.

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