



eLaw - Family Law Update

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Watch for the next issue in your Inbox in September 2011.

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Assets Acquired During Common-Law Qualifying Period Shareable: MBCA

Assets acquired by non-registered common-law partners during the prerequisite three years of cohabitation are included in an accounting of a crystallized relationship according to the Manitoba Court of Appeal in [Stuart v. Toth](#), 2011 MBCA 42. The court found that the appellant's interpretation of s. 4 of *The Family Property Act* (that all assets acquired during the qualifying period were exempted except those acquired in specific contemplation of the common-law relationship) did not accord with the legislative objective of giving common-law partners the same, or identical, property rights to those of married spouses and did not respect either the wording of the statute or the legislated meaning of defined terms.

Irregular Schedule Not a Limiting Factor in Determining Care and Control: MBQB

A father should not automatically be disqualified from having care and control of his children simply because his shift work operates at times when he will be absent from his home and the children will be left without his physical presence according to the court in [Van Den Driessche v. Van Den Driessche](#), 2011 MBQB 134. The court refused to restrict the father's interim care and control to times when he was not working, finding that it would not be in the best interests of the children to protect them from an irregular work schedule. A balance must be struck, according to the court, since "many parents are unable to set their own work schedules or organize their work lives so as to accord ideally with the schedules of their children."

Clear Evidence Needed to Sever Joint Tenancy: MBQB

A transfer of land signed by a since deceased respondent in an ongoing divorce action and purporting to transfer an undivided one-half interest in the family home to his three children did not meet the requirements of *The Homesteads Act* and was declared invalid by the court in [*Gorski v. Gorski*](#), 2011 MBQB 125. The court also enjoined the executrix of the respondent's estate from registering any documentation relating to a notice to sever the joint tenancy, finding that since there was no clear evidence of severance at death the petitioner became the sole owner of the property by right of survivorship.

Other Family Division Cases

[*Sandercock v. Croll*](#), 2011 MBQB 138 - the court considers a dying father's motion seeking more time with his emancipated son;

[*Harris v. Harris*](#), 2011 MBQB 132 - the court notes that a mere list of children's names, activities and a round number of net costs in a financial statement does not meet the onus on the party seeking s.7 expenses to prove the expenses are extraordinary;

[*Alleyn-Dornn v. Dornn*](#), 2011 MBQB 117 - the court refuses to stay an order for sale of the parties' unaffordable house, finding that the applicant had not met the heavy onus to prove irreparable harm and that staying on in the house would only lead to impoverishment all around;

[*Bueckert v. Bueckert*](#), 2011 MBQB 115 - the court adjourns a motion to vary to impute income pending better evidence as to the husband's financial affairs, particularly the reasonableness of the "operating expenses" of his company.

Bills Receive Royal Assent

[*Bill 25*](#), *The Inter-jurisdictional Support Orders Amendment Act*, received royal assent June 16, 2011 and will come into force upon proclamation. As noted in the [*explanatory note*](#), the bill amends *The Inter-jurisdictional Support Orders Act* to enhance the process by which family support orders are obtained, varied and recognized for enforcement in cases between Manitobans and parties in Canada and elsewhere. It clarifies provisions about notice to non-resident debtors to facilitate enforcement from assets or income in Manitoba and sets out the factors to be considered when registration of a foreign order is challenged.

[*Bill 217*](#), *The Residential Tenancies Amendment Act (Expanded Grounds for Early Termination)*, received royal assent on June 16, 2011 and will come into force on proclamation. Among other things the amendments would allow renters who are victims of domestic violence to be released early from their tenancy obligations if they believe their safety or the safety of their children is at risk if they were to continue living in the rental unit.

Recommended Reading

These articles deal with current issues in family law:

[*What is appropriate lump-sum support?*](#) - a *Law Times* article from June 20, 2011, discusses a recent [*Ontario decision*](#) concerning the calculation of lump-sum spousal support payments.

[*In whose interest?*](#), from the June 2011 edition of *The National*, outlines the differing views on Bill C-422, a private members' bill proposing an equal parenting presumption upon divorce. The bill was dissolved when the election was called, but will likely be re-introduced this session.

[*Donor offspring rights and estate law*](#) - a June 24, 2011 *Lawyers Weekly* article, discusses the B.C. Supreme Court decision in [*Pratten v. British Columbia \(Attorney General\)*](#), 2011 BCSC 656, which gave children of sperm donors the same rights to biological parent information as adopted children. The case is also analysed in a recent post on The Court, [*Pratten v. British Columbia*](#)

[\(Attorney General\): B.C. Supreme Court Declares Sperm Donor Anonymity Unconstitutional.](#)

[Solicitor Negligent in Collaborative Family Law Settlement](#) - is a Slaw post discussing the Alberta Court of Appeal decision in [Webb v. Birkett](#), 2011 ABCA 13 (also discussed in our April 2011 eLaw). The case deals with standard of care in collaborative family law matters.

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