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The Supreme Court issued companion decisions dealing with variation of spousal support orders on December 21, 2011. In both cases the court reinstated spousal support, finding that the payor husbands had failed to demonstrate a material change in circumstances that would justify a variation.

In *L.M.P. v. L.S.*, 2011 SCC 64, the primary decision, the court was unanimous in overturning the lower court's conclusion that the wife's failure to become self-sufficient over time gave rise to a material change in circumstances. The court split 5-2, however, on whether the *Miglin* analysis applies to variation applications and on what weight should be given to the parties' agreement. The majority found that the analysis under a s.15.2 initial application for support (the *Miglin* situation) is completely distinct from that on a variation application under s.17, where little weight should be given to the parties' agreement unless it specifically addresses the issue of variation. The minority, on the other hand, found that the agreement plays a central role in variation applications and that the principles established in *Miglin* are highly relevant to the analysis.

In *R.P. v. R.C.*, 2011 SCC 65 the court found that evidentiary gaps concerning the husband's financial circumstances made it impossible to measure whether there had been a change in circumstances to justify a variation.

These articles discuss the decisions:

- [Top court maps out approach to support changes](#), *Lawyers Weekly*, January 13, 2012;
- [Supreme Court of Canada Releases Decisions on Spousal Support](#), BC Family Law Resources blog;
- [Supreme Court takes firm stand on spousal support payments](#), *Globe & Mail*.

**Order Appointing Designated Officer a Receiver Upheld: MBQA**

The Court of Appeal upheld the [order](#) of the Manitoba judge supervising the Indian residential school class action settlement agreement appointing the designated officer of the Maintenance Enforcement Program as a receiver of part of Daniels's settlement monies in *Daniels v. Daniels*, 2011 MBQA 94. "In these complex and difficult circumstances, the judge exercised his discretion judicially and for the purpose of securing a just and expeditious resolution of the issues related to the enforcement of Daniels's arrears of child support," said the court. Although the appointment in and of itself did not offend federal Crown immunity, the court did find that certain sections of the receiving order were coercive against the Federal Crown and had to be excised.

**Expungements Beget Expungements: MBQB**

The court urges counsel to take time to craft relevant, non-repetitive, focused and probative affidavits in *A. E. v. D.E.*, 2011 MBQB 325, an expungement ruling in a custody case in which the unrestrained cross-allegations in the parties' affidavits led the court to forward the affidavits to a child caring agency. "Thought given to the drafting of affidavits or the real need to expunge is not time misspent," said the court:

Some evidence that might at first blush justify expungement will cut both ways. It may actually be more useful to an adversary in argument if it remains in evidence. What is decidedly unhelpful is bulk that adds no evidentiary weight.

This is not about people getting to tell their story in the way they want to tell it. It is about counsel telling their client's story in the manner it needs to be told to get the relief they seek and in compliance with time-honoured evidentiary and procedural requirements that exist to better ensure there is fairness and reliability of outcomes. (paras.18 and 19)

The court also criticised the practice of case splitting, which "inevitably leads to an evidentiary proliferation occasioning additional cost and delay" and will attract a consideration of costs.

**Failing to Contemplate Parenting by Same-Sex Couples Discriminatory: ABQB**

The court used its *parens patriae* jurisdiction to declare a non-biological father from a separated same sex relationship to be both a father and guardian of the parties' child in *D.W.H. v. D.J.R.*, 2011 ABQB 791. The court found that, in failing to contemplate parenting situations involving same-sex couples, the *Domestic Relations Act* (no longer in force) contravened s.15 of the *Charter*. See also the court's [earlier decision](#) on the same case which had been decided under incorrect legislation, the *Family Law Act*. The ABLawg post [Non-biological father from separated same-sex couple declared a legal parent](#) discusses the struggle of the court to find a remedy in the case given the legal gap created by the repeal of s.13 of the FLA, which stated that a person becomes a male parent if he has a spousal relationship with the birth mother.

**Recap on Family Law Legislative Amendments**

As noted in the two previous Family eLaw updates, several significant family law amendments came into force over the last few months. To recap:

- [Guidelines Amending the Federal Child Support Guidelines](#) came into force December 31, 2011. PDF versions of the updated federal child support tables are now available on [Justice Canada's website](#). Schedule I of Manitoba's Child Support Guidelines Regulation, Man. Reg. 58/98, adopts Schedule I of the Federal Child Support Guidelines as amended from time to time for the purposes of Manitoba's Guidelines. Therefore, the updated Child Support Tables are applicable to cases under Manitoba's Child Support Guidelines Regulation as well as to cases under the Federal Child Support Guidelines.
- [The Inter-jurisdictional Support Orders Amendment Act, S.M. 2011, c. 15](#) and the [Inter-jurisdictional Support Orders Regulation, amendment Man.Reg. 211/2011](#) both came into force December 20, 2011. These amendments enhance the process by which family support orders are obtained, varied and recognized for enforcement in cases between Manitobans and parties in other jurisdictions in Canada and elsewhere as noted in this April 2011 [news release](#) and the [explanatory note](#) to Bill 25. Further information can be obtained from the Family Law Branch, Manitoba Justice at 204-945-0268 or [Tracy.Morrow@gov.mb.ca](mailto:Tracy.Morrow@gov.mb.ca).
- Sections 1 and 8 to 25, s.26 except insofar as it enacts ss. 61.3 and 61.4 of *The Family Maintenance Act*, and ss. 27, 29 and 30 of [The Strengthened Enforcement of Family Support Payments and Miscellaneous Amendments Act \(Various Acts Amended\)](#) came into force December 3, 2011. Please note that s. 26 (insofar as it enacts ss. 61.3 and 61.4 of *The Family Maintenance Act*) will come into force April 1, 2012. [Maintenance Enforcement Regulation 142/2011](#) also came into force December 3, 2011, except for ss.22-27, which will come into force April 1, 2012.

**Articles on Family Law Issues**

[Withdrawal of Affidavits](#) - this Davis LLP blog post considers the case law on when affidavits (particularly inflammatory ones) may be withdrawn and outlines the factors the court will consider on such applications.

[The Law and a Child's Right to be Heard & Have Their Views Considered](#) - this Practice Points article notes up a previous paper on the two most influential decisions on a child's right to be heard.

Two recent Slaw posts, [Same-Sex Divorce and Conflict of Laws](#) and [Marriage and Divorce in the Conflict of Laws](#), discuss the legal issues behind the same-sex marriage controversy that hit the news last week.

**Winter CPD: LSM**

[Changes to Support Enforcement - What You Need to Know](#) - The Brandon program on the changes to [The Strengthened Enforcement of Family Support Payments and Miscellaneous Amendments Act](#) and regulation has been rescheduled to January 31, 2012, from 12:00 noon to 2:00 p.m. The director of the Maintenance Enforcement Program and two lawyers from the Family Law Branch will review the changes to the legislation and to the MEP, including how to read the MEP printouts and how the new legislation and computer system have changed the program. See the [LSM website](#) for further information and to download the [registration form](#).

The 2012 Annual Joint Family Law Program [What's Time Got To Do With It? Examinations of Shared Custody and Child Support](#) will take place March 16, 2012 at Fort Garry Place. The program is a joint presentation of the Law Society of Manitoba, the Court of Queen's Bench Family Division Judges and the Manitoba Bar Association, Family Law section. Presenters include Justice Laurie Allen, Professor Tonya Brito, University of Wisconsin Law School, Rhoda Dobler and Professor Mavis Maclean, University of Oxford. [Register](#) before February 3, 2012 to take advantage of the early bird discount.

**National Family Law Program: FLSC**

Mark your calendars now for the Federation of Law Society's 2012 National Family Law Program, to be held July 16-19 in Halifax, Nova Scotia. Preliminary information about the program can be found on the [FLSC website](#) and in this [brochure](#).

**Collaborative Practice Manitoba Training Sessions**

Collaborative Practice Manitoba is offering the following training sessions which may interest family lawyers:

- The Interdisciplinary Team Workshop - provides the protocols for working in an interdisciplinary model. This one day workshop will be held January 26, 2012;
- Conflict Resolution Training - this four day program will be offered February 3, 4, 9 and 10, 2012.

Email [info@collaborativepracticemanitoba.ca](mailto:info@collaborativepracticemanitoba.ca) for further information.

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