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Family Law Battle a "Legal and Procedural Morass": MBQB

[Chevalier v Chevalier](#), 2012 MBQB 37 and [Chevalier v. Chevalier](#), 2012 MBQB 56 show how complicated family cases involving farmland can be, particularly where one side is both unwilling to participate and unrepresented. To conduct the accounting (on a reference order which had been outstanding for seven years) the master was required to review "over 10,000 pages of somewhat relevant material" concerning the history of the parties' relationship and business. His lengthy decision untangles the many interconnected concepts that underlie a family farm valuation, from butterfly reorganizations and milk quotas to depreciation of farm machinery, equipment, and livestock. The fact that the parties cohabited for several years prior to their 12-year marriage further complicated matters.

In the second decision, having seized himself of all motions in the eight year old case "with a view to regularizing proceedings and bringing some economy of judicial effort to the file," the judge awarded interim spousal support to the wife "despite the substantial delay" in having the motion heard.

"Getting to *Boston*": MBQB

The court declined to terminate or reduce spousal support in [Kopp v. Kopp](#), 2012 MBQB 2, finding that the husband's early and unilateral retirement was voluntary and could not trigger a corresponding obligation on his 54-year-old ex-wife (who had limited income and work history) to begin eliminating her limited capital resources. The general proposition set out in [Boston v. Boston](#), 2001 SCC 43 is "intended to limit double recovery - but it is not absolute, having its root in fairness," said the court.

(T)here is no reason *per se* that spousal support cannot continue past the retirement date of a pension holding spouse. Need, ability to pay, and double recovery all need to be considered in the fact specific context of each case in order to arrive at a sum "the court thinks reasonable for the support of the other spouse" (see s. 15.2(1) of the Divorce Act).

In a [subsequent decision](#) concerning costs, the court found that the wife was entitled to party and party costs prior to the date of her unaccepted settlement offer and double costs from that date and through the contested costs hearing.

Ongoing Sexual Relationship Not a Bar to Divorce: NBCA

The New Brunswick Court of Appeal decision in [K.L.S. v. D.R.S.](#), 2012 NBCA 16 addresses an issue on which there are conflicting opinions from trial courts across the country: whether an estranged couple who no longer share a residence may at law be living separate and apart even though they continue to engage in consensual sexual activity with one another. The court found that the parties' ongoing sexual relationship (for 10 of the 11 months preceding the hearing of the divorce) was only one of the several factors relevant to the determination of whether they were living separate and apart, and should not, alone, constitute an interruption of separation. The appeal was allowed and the petition for divorce granted.

In Force Legislation

Section 26 (insofar as it enacts ss. 61.3 and 61.4 of *The Family Maintenance Act*) of [The Strengthened Enforcement of Family Support Payments and Miscellaneous Amendments Act \(Various Acts Amended\)](#) will come into force April 1, 2012, as will ss.22-27 of [Maintenance Enforcement Regulation 142/2011](#).

Domestic Violence Strategy

The government is currently conducting [province wide consultations](#) on how to improve prevention services for those affected by domestic violence according to this [news release](#). The [Public Consultation Paper](#) describing the government's multi-year strategy was published February 2012. Those who want to participate in the consultation but cannot attend in person may complete an [online survey](#) or make a [submission in writing](#) to Manitoba Status of Women.

Recommended Reading

These articles all concern current family law topics:

- [L.M.P. changes landscape for support agreements](#) - this *Law Times* article discusses how the decision in [L.M.P. v. L.S.](#), 2011 SCC 64 has complicated the negotiation and drafting of separation agreements;
- [Family law being shunned?](#) - Winnipeg lawyers are quoted in this *Lawyers Weekly* article on how systemic changes have impacted family law practice;
- [More clarity needed for relocation cases](#) - nuanced advisory guidelines are needed to facilitate the judicial resolution of the growing number of relocation cases according to the authors of this *Lawyers Weekly* article. The results of their research project, which analyzed 738 Canadian relocation cases from the last 10 years, will be published in the *Canadian Family Law Quarterly*;
- [Listening to children's voices](#) - a *Canadian Lawyer* article on initiatives to bring children's views to the family court and to establish guidelines for conducting judicial interviews;
- [Vikileaks case shows need for privacy in family court files](#) - the author of this *Law Times* article proposes changes to protect the privacy of family law litigants in light of the Vikileaks case;
- [Family practitioners targeted by protests](#) -- dissatisfaction with the family court system is the subject of this *Law Times* article.

National Family Law Program: FLSC

The Federation of Law Society's 2012 [National Family Law Program](#) will be held July 16-19 in Halifax, Nova Scotia. A preliminary [list of topics](#) to be covered and a [registration form](#) are available on the FLSC website. Early bird registration discounts are in effect until April 30, 2012.

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