



## eLaw - Family Law Update

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### Selective Disclosure Results in Credibility Deficit: MBQB

The court reinstated spousal support it had previously terminated in [Hill v. Hill](#), 2012 MBQB 76, finding the husband's plea of poverty on the initial variation appeared "contrived and disingenuous" in light of subsequent evidence as to his actual earnings and job prospects. His selective disclosure left him with a credibility deficit and suggested that he mislead the court for the purpose of avoiding his ongoing obligation to pay spousal support. (para.29) The court increased the quantum of support and ordered payments to be made from the date of the earlier revision. The court's comments on procedural irregularities in the case (at paras. 37 and 38) are also instructive. While sympathetic to the concern that prohibitive costs sometimes curtail productive exercises, the court encouraged lawyers to bring on matters with the best available evidence and to be circumspect in the sequencing of their procedural steps.

### Pensions and Pre-Nups: MBQB

The court rejected the petitioner's argument in [Dundas v. Schafer](#), 2012 MBQB 87 that the provisions of [The Pension Benefits Act](#), when considered together with other relevant legislative provisions, bar pension benefit credit-splitting releases in prenuptial agreements where the parties have no family property rights at the time of execution of the agreement. (para.14) According to the court, the provisions of [The Family Property Act](#) (establishing entitlement) and [The Pension Benefits Act](#) (creating the mechanism for division) "can be read as a cohesive scheme by recognizing that where individuals have no current entitlement and are therefore not entitled to a portion of a party's provincially-regulated pension, they may enter into a spousal agreement pursuant to which they will have no interest in the other's pension benefit credits provided they receive independent legal advice." (para. 42) The court goes on to discuss s. 31 (2) of [The Pension Benefits Act](#) (which specifies the documents triggering a pension division), and finds that a prenuptial agreement is not a written agreement to divide family assets as contemplated in clause 31(2)(b). The court concluded that the petitioner validly released her interest in the respondent's pension and ordered her to repay \$20,000 plus interest to the respondent (it was a term of their agreement that she would repay the money if she challenged the validity of the agreement).

### Undue Hardship a Tough Threshold to Meet: MBQB

In [Skorulski v Zupan](#), 2012 MBQB 98, [Collins v. D'Arcangelo](#), 2012 MBQB 96, and [Dorge v. Dorge](#), 2012 MBQB 97 three fathers seeking to eliminate or pay less than table child support failed to meet the stringent test for undue hardship. All involved determinations under [The Inter-Jurisdictional Support Orders Act](#), C. C.S.M. c. I60, which created evidentiary challenges for the court. In [Zupan](#), the applicant, an Ontario resident who argued he was unable to maintain employment for medical reasons, utterly failed to make out a case for undue hardship. He did succeed in having both his arrears and his ongoing support obligations reduced, however. In [Dorge](#), the father made out a slim case for undue hardship at the initial stage (he alone was shouldering the family debt and his expenses to exercise access would be considerable), but was ordered to pay table support because he failed to prove that his standard of living would be lower than the petitioner's if he paid the presumptive amount. In [Collins](#), the self-represented father argued undue hardship but led no evidence. The court ordered him to pay table support but declined to make it retroactive because of concerns about delay and financial hardship.

### Latest Version of Auto Order Clauses Online

Version 4 of the Mandatory Standard Clauses for Family Division Orders is now available for viewing or downloading on the [Manitoba Courts website](#) as announced in this May 2012 [Notice](#) from the court. This version incorporates changes necessitated by recent legislative amendments.

The Auto Order Advisory Committee, chaired by Justice MacPhail, is now going to review the auto orders to consider if there are any clauses that should be added or changed. The committee is seeking input from members of the family bar. If you have experienced frustration with any of the clauses as they are presently worded, or if you have found that there are areas where you wish there were standardized clauses, please email your comments to any of the following committee members: Colette Chelack ([colette.chelack@gov.mb.ca](mailto:colette.chelack@gov.mb.ca)), Len Fishman ([lfishman@mymts.net](mailto:lfishman@mymts.net)) or Jennifer Cooper ([jcooper@dfslaw.ca](mailto:jcooper@dfslaw.ca)).

### Safety First

Most family law lawyers have represented clients embroiled in relationships involving domestic violence. Safety, (the client's, your staff's, and your own) is paramount in these cases. As noted in this [post](#) on The Stream, the Legal Services Society of B.C. has recently published two fact sheets dealing with safety planning information: [Is Your Client Safe?](#) - which describes relationship violence, the indicators of abuse, the risk factors, and what to do if your client has been victimized, and also includes safety planning information; and [Safety Planning for You and Your Staff](#) - which offers suggestions for reviewing your office security procedures and creating a safety protocol. These fact sheets are part of a more comprehensive series on [Abuse and Family Violence](#) dealing with such topics as [Encouraging Disclosure](#) and [Surviving Relationship Violence and Abuse](#). Many of these publications have been translated into several languages.

### Recommended Reading

Family law lawyers may be interested in the following publications:

- The April 2012 edition of [The Family Way](#), the CBA National Family Law section newsletter, contains several interesting articles on family law issues, including [Manitoba's Child Support Recalculation Service](#), by Michael Williams and [Developmental décalage and the voice of the child](#) and a [Q & A](#) with its author, Dr. Garber. Also included are two articles on justice resources and an article describing Calgary's Dispute Resolution Officer Project, a mandatory mediation session staffed by volunteer lawyers.
- The *Lawyers Weekly* article [Collaborative law nears maturity](#) discusses the growth of collaborative practice and its increasing popularity, particularly in the family law realm.
- The *Law Times* article [Family law case to feature testimony via Skype](#) discusses the growing use of electronic technology in Ontario courts and the first family law order allowing testimony by Skype ([P. v. C.](#), 2012 ONCJ 88). Ontario's Family Court rules don't specifically address cross-exam by video conferencing, but do allow judges to decide on technology use in the courtroom. The case will resume in June in Toronto's electronic courtroom, where the applicant and her witness (now living in Denmark) will be cross-examined by Skype. The judge's analysis on the issue is set out at paras. 21 to 37).

### National Family Law Program: FLSC

Early bird registration for the Federation of Law Society's 2012 [National Family Law Program](#) has been extended to May 15, 2012. The program takes place July 16-19 in Halifax, Nova Scotia. [Speaker](#) and [topic](#) lists, and a [registration form](#) are available on the FLSC website.

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