



## eLaw - Family Law Update

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Watch for the next issue in your inbox in September 2012.*

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### **Summary *FPA* Order Triggers Immediate Pension Division: MBQB**

In most cases pension division should be deferred until completion of the *FPA* accounting, said the court in [Sinclair v. McAuley](#), 2012 MBQB 85, but in the unique circumstances of this case, where the petitioner suffered from a terminal illness, the court granted summary judgment for an order that the family assets of the parties "are required to be divided" as that phrase is used in s.31(2)(a) of *The Pension Benefits Act*, triggering the immediate sharing of the petitioner's pension.

The Court of Appeal dealt with a different aspect of the case in [Sinclair v. McAuley](#), 2012 MBCA 63, granting the applicant father's request to preserve the proceeds of certain life insurance policies pending appeal of the motion judge's refusal to designate him as a beneficiary under the policies. The father had previously consented to a change of beneficiaries under the policy, and the lower court rejected his argument that abandoning his rights to a one-half share was an unconscionable variation of a spousal agreement. The Court of Appeal had previously [dismissed](#) an earlier preservation application because, due to complications on the pension issue, the lower court had yet to execute and enter an order on the matter.

## Racking Up the Costs

The solicitor-clients costs just keep mounting in the *Dickson* case. In the most recent decision, [\*Dickson v. Dickson\*](#), 2012 MBQB 152, the husband was ordered to pay an additional \$35,000 (reduced from the claim of \$67,020.48) for the costs of an interim child and spousal support motion in which it was later proven he had provided false, misleading, and incomplete financial disclosure. The court stressed the fundamental importance of full financial disclosure in such matters and found that the husband's conduct at the interim hearing was "reprehensible, scandalous and outrageous."

## Other Family Division Cases

The court dismissed the husband's application for a stay of final order (or, alternatively, a suspension of maintenance enforcement) pending appeal in [\*Graham v. Graham\*](#), 2012 MBQB 163, citing clear evidence that the wife and three children would suffer far more harm if the stay was granted than the husband would if it was denied. The husband, who owed in excess of \$68,000 in arrears, had waited nine months to file his appeal and was "less than forthright" in his affidavit.

The principle that a self-represented party should not be denied the right to a hearing by a strict or technical application of the Queen's Bench Rules cannot override fairness to the party represented by counsel according to the court in [\*Schultz v. Schultz\*](#), 2012 MBQB 140. The master struck the answers of a self represented father whose ongoing refusal to properly address the questions on interrogatories had bogged down the litigation for more than two years.

Self-representation is neither a defence nor an excuse for abuse of the court process by bad faith bargaining according to the court in [\*Ross v. Ross\*](#), 2012 MBQB 127, which ordered costs of \$1,950 against a husband who pretended to negotiate something he had no intention of agreeing to during a case conference.

## Notice re Family Division Court

By [Notice](#) of the Court of Queen's Bench dated June 2, 2012, Madam Justice Rivoalen is now handling the administrative duties required for performing the role of Acting Associate Chief Justice of the Family Division, and all administrative questions related to the division should be directed to her.

## Recommended Reading

Family law lawyers may be interested in these articles:

- [\*Navigating without a lawyer\*](#) - this *Lawyers Weekly* article discusses the results of an Ontario study examining why family litigants choose to be represented by a lawyer or not;
- [\*When Facebook and Twitter are not your friends\*](#) - this article, from the June 2012 edition of the *National* magazine, discusses the growing use of damaging online evidence in family law cases and the courts' response; and
- [\*DOJ Report Indicates SSAGs Are Working\*](#) - this Slaw post discusses an internal Department of Justice report on how Canadian courts have treated the Spousal Support Advisory Guidelines.

And, CLE BC has posted three new papers on its Practice Points website:

- [\*Remarks on Correspondence, Collegiality and Courtesy\*](#) - this practical paper contains many tips on improving the written correspondence of family law lawyers. It addresses a broad range of topics from professionalism to audience to content and style, and it deals with email correspondence in a separate section;
- [\*Ethical Issues for Legal Support Staff in Family Law\*](#) - this paper discusses how informed support staff can help prevent and limit the development of ethical issues in family law cases. Among other things it addresses how to deal with unrepresented litigants, confidentiality, and undertakings;
- [\*Musings on High Conflict Custody Cases\*](#) - the author of this paper identifies the personality types involved in high conflict custody cases and discusses how best to handle such matters.

## National Family Law Program: FLSC

There's still time to register for the Federation of Law Society's 2012 [National Family Law Program](#) which takes place July 16-19 in Halifax, Nova Scotia. The [program schedule](#), [speaker](#) and [topic](#) lists, and [registration form](#) are available on the FLSC website.

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