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### No Requirement of Certainty of Damages: MBCA

The court rejected the appellant's argument in [\*Andison v. Katz\*](#), 2012 MBCA 107 that he did not have knowledge of all material facts of a decisive character on which to base a negligence action against the lawyer who drafted his separation agreement until the judge's ruling that the agreement was unequivocal made it certain he would suffer a loss. Section [20\(3\)](#) of *The Limitation of Actions Act* makes it clear, said the court,

...that material facts of a decisive character do not require certainty or near certainty regarding either the prospect of success or of the amount of the damages that would flow in the event that the cause of action is ultimately proved. All that is required is that the would-be plaintiff knew or ought to have known of facts that indicate a "reasonable prospect of [the action] succeeding" and that the action would result in damages "sufficient to justify the bringing of the actions."

Although the appeal court came to a different conclusion as to when the limitation period commenced, it agreed with the application judge's finding that the appellant was not within the 12 month time-frame required by the Act.

## Care and Control Order Upheld in Relocation Case: MBCA

The appeal court declined to interfere with an order imposing extensive periods of care and control for the father in [\*Delichte v. Rogers\*](#), 2012 MBCA 105, rejecting the mother's argument that the imposed regime was not in the child's best interest. The appeal court had previously allowed the mother's request to relocate with the children to California, subject to arranging periods of care and control for the father. The judge who imposed the care and control order was also the trial judge, and he was familiar with the parties and the history of the action.

## Delaying Entry of Consent Order an Abuse of Process: MBQB

The court struck a notice of application to set aside a final consent order and ordered \$2000 costs against the applicant in [\*Gilmer v. Gilmer\*](#), 2012 MBQB 332. The court found both the filing of the application and the husband's other actions in frustrating the entry of the consent order to be an abuse of process. The court commented:

...The integrity of the case management system within the Family Division is dependent and reliant on the ability of the court to pronounce consensual final orders to expedite and finalize matters of family litigation. To embark upon a course of action designed to delay or frustrate the entry of the final order is clearly inappropriate.

The entry of the notice of application itself, particularly one purporting to be founded on "fraud," is a further abuse of process. Particularly for parties represented by counsel, it is trite to say that all "due diligence" must be exercised prior to an expression of a voluntary consent to a final determination is entered. If subsequent facts are learned, such as issues involving third party corporations where independent remedies may be available, then appropriate remedies may be pursued subsequently through the issuance of a statement of claim. (paras.11-12)

## Father Sentenced to 60 Days in Jail for Egregious Contempt

There were no mitigating factors to temper the court's disposition of the findings of contempt against the respondent father in [\*L.M.A.M. v. C.P.M.\*](#), 2012 MBQB 311, a parent alienation case where "the nature of the contempt committed and the background of the contemnor both approach, if they are not among, the worst the court might see." (para. 66) The court rejected the respondent's last minute bid for a further adjournment and imposed the rarely used sanction of jail time.

## Noteworthy Appeal Decisions from Other Provinces

- The B.C. Court of Appeal decision in [\*Pratten v. British Columbia \(Attorney General\)\*](#), 2012 BCCA 480 has been criticised in articles from [\*The Court\*](#) and [\*The Globe and Mail\*](#). The court upheld the constitutionality of B.C.'s adoption legislation which allows adopted children, but not those conceived by sperm donation, to access information about their biological parents.
- [\*Carrigan v. Carrigan Estate\*](#), 2012 ONCA 736 - this case "concerns a pure question of law: who receives the pension death benefit when the member...dies and is survived by both a common law spouse with whom he resided at the time of death and a legally married spouse from whom he was separated but whom he designated a beneficiary of his pension plan?" The court was divided in its interpretation of s.48 of the Ontario *Pension Benefits Act*, but the majority, for different reasons, found in favour of the original spouse despite strong equity arguments in the common law spouse's favour. This [article](#) from The Court discusses the decision.
- The *Lawyers Weekly* article [\*Vows of arbitration: Parties opted out of the right to vary spousal support in court\*](#) discusses the Ontario Court of Appeal ruling in [\*Grosman v. Cookson\*](#), 2012 ONCA 551, which "has affirmed the integrity of family law arbitrations and narrowed access to the courts for participants" according to the author of the article.
- This [post](#) from The Court concerns [\*Spencer v. Riesberry\*](#), 2012 ONCA 418, in which the court upheld a lower court finding that a contingent interest in a family trust property did not qualify as an "interest" within the Ontario *Family Law Act* definition of "matrimonial home." The author characterizes the judgment as "a strong affirmation of basic trust principles" which "cannot be compromised to suit the policy goals of specific statutes or areas of law."

## Call for Papers: FLSC

Planners of the Federation of Law Societies' 2014 National Family Law Program have issued a [call for papers/presentations](#). Proposals must be submitted by May 30, 2013 and papers are due May 30, 2014. The program will be held in British Columbia in the summer of 2014.

## Recommended Reading

- The latest edition of [\*The Family Way\*](#) is now available on the Canadian Bar Association website. It contains articles on [drawing children's affidavits](#), [reviewing adoptions](#), [passport applications for children and other travel issues in separation agreements](#), [self-represented litigants](#), and the [impact of property settlements on spousal support awards](#).
- The Avoid a Claim article [\*Nine rules to help family law clients and their lawyers avoid social media dangers\*](#) stresses the importance of warning family law clients about how their use of social media may affect their case. It outlines nine rules both clients and lawyers should follow.
- [\*What Keeps Family Law Lawyers Up at Night?\*](#) - this article from

LAWPRO magazine addresses the issues Ontario family law lawyers find most challenging, including self-represented litigants, high conflict cases, managing client expectations, and dealing with stress.

- [\*Rare ruling sends family law litigant to jail for contempt\*](#) - a husband who was sent to jail for 30 days for breaching a mediated settlement and a court order to preserve the proceeds of a property sale may face further jail time according to the author of this *Law Times* article.
- [\*Top 10 family law developments to have on your radar\*](#) - this *LawPro Magazine* article discusses the noteworthy family law cases from the last 18 months and what you need to know about them.
- [\*Picking right path starts with screening - Importance of process as a first step in mediation recognized by courts and legislators across Canada\*](#) - this *Lawyers Weekly* article stresses the importance of pre-mediation screening to identify suitability of participants and to help select the preferred mediator for the case.
- [\*With this ring, I... take thee to court - Who gets the ring when the engagement is ended? Three possibilities to consider\*](#) - surprisingly, there is no clear law on who gets the engagement ring when a wedding is called off. The author of this *Lawyers Weekly* article says it's high time for an injection of consistency and clarity into the law.

## 2013 Annual Joint Family Law Program

[\*Yours, Mine and Ours: Adventures in Property\*](#) is the title of the 2013 Joint Family Law Program, to be held March 15, 2013 at Fort Garry Place. Among the topics to be covered are exemptions, corporations, farm property, family trusts, *Property Act* references, and bankruptcy claims. [Register](#) by February 15, 2013 to receive a reduced rate.

## Upcoming CPD: LSM

- [\*Writing to Persuade\*](#) - this advocacy writing workshop with instructor Stephen Armstrong is designed to teach litigators to write persuasive factums. Participants can register for a half or a full day program, with the afternoon session focussing on skills building using editing exercises. The program takes place February 21, 2013 at the Law Society classroom. [Register](#) on or before January 18, 2013 to take advantage of the early bird discount.
- [\*Powerful Witness Preparation\*](#) - spend a day immersing in the methods and procedure that will help you prepare witnesses to be powerful and persuasive communicators. Join presenter Dan Small at this highly acclaimed seminar to be held March 8, 2013 at the Law Society classroom. [Register](#) by February 1, 2013 to receive the early bird rate.

## Manitoba Bar Association Mid-Winter Conference

The 2013 MBA [Mid-Winter Conference](#) takes place January 24-25, 2013 at the Fort Garry Hotel. The Family Law section of the MBA will present the program **The Year in Review**, an update on the past year's most important family law cases. In addition, there will be programs on The Art of Effective Negotiation and Gender Neutral Language in the Legal Profession.

## Honouring Chief Justice Richard Scott on His Retirement

Manitoba's legal community is invited to participate in two events honouring Chief Justice Richard Scott on his retirement. An educational forum [Courting Change: The Changing Role of Courts](#) will be held February 8, 2013 and a [gala dinner](#) is planned for February 9, 2013. See [www.scottretirement.org](http://www.scottretirement.org) for more information.

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