

The Canadian Abridgment eDigests -- Family Law - Ontario

2006-7

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FAM.III.6.b.i

Subject Title: Family law

Classification Number: III.6.b.i

Family property on marriage breakdown -- Valuation of specific assets -- Business -- Private corporation

Parties were seeking numerous forms of relief against other -- More than two years passed -- Parties were caught up in litigation over disclosure obligations -- Parties brought motions for various orders -- Husband was to bear cost of agreed-upon valuation up to \$50,000 -- Either party was free to apply to court to deal with additional cost if valuation was going to exceed that amount -- Husband had not made disclosure in way that would satisfy that his representations were accurate and complete -- Thousands of dollars in legal fees had been spent resulting from wife trying to make sense of what husband had been doing -- There were numerous examples of game playing by husband -- Obtaining mortgage financing for his new home and his ability to lend his girlfriend about \$133,000 to acquire property allayed any concern that he was unable to access funds to pay for valuator to value assets that he owned and had obligation to value for property division purposes -- To order that valuation be paid for out of trust funds could prejudice realization of any entitlement that wife might have -- Valuation of other assets was not to be done by valuator before valuator completed agreed-to valuations and husband was to fund cost out of resources that were not held in trust.

Rose v. Rose ([2005](#)), [2005 CarswellOnt 7240](#) (Ont. S.C.J.) [Ontario]

FAM.III.7.b.i

Subject Title: Family law

Classification Number: III.7.b.i

Family property on marriage breakdown -- Events after separation -- Sale or dissipation of assets -- General principles

Parties were seeking numerous forms of relief against other -- More than two years passed -- Parties were caught up in litigation over disclosure obligations -- Parties brought motions for various orders -- It was unclear whether order existed that required husband to obtain court authorization before he could dispose of his interest in various assets, including his interest in travel agency business in Florida -- Any order in force at this time was ordered to continue in force pending further court order -- Pending further order of court, husband was restrained from selling, assigning, gifting, transferring or encumbering interest in travel agency business -- Wife's concern about travel agency business being undersold was not frivolous or baseless concern -- It was in husband's interests that he did what he could to pave way for valuator to review necessary material in order to value business as soon as possible -- Travel agency business was going to be valued as of valuation day, and not at current date, for equalization purposes -- Wife should be made aware of any offer to purchase travel agency business or his interest in it at earliest time.

Rose v. Rose ([2005](#)), [2005 CarswellOnt 7240](#) (Ont. S.C.J.) [Ontario]

FAM.III.9.m

Subject Title: Family law

Classification Number: III.9.m

Family property on marriage breakdown -- Order for division of property -- Miscellaneous issues

Individual parties were husband and wife -- Husband started company in 1983 and gave wife 18.02 percent of shares -- Company was later organized into three separate companies -- Husband was sole officer and director of companies and held 62.68 percent of shares and one other couple, J and R, held remaining shares -- Parties separated in 1991 -- During cohabitation, wife, who had no part in operation of company, was listed as director and was on payroll for income splitting purposes -- After separation wife received no further salary or bonuses although other shareholders continued to receive such payments -- In 2004 J and A commenced application against parties and companies alleging imbalance in remuneration they had been paid -- Husband agreed to settle lawsuit for \$2m -- Wife applied for declaration that conduct of husband and companies was oppressive or unfairly prejudicial to, or had

unfairly disregarded, her minority interests -- Application granted -- Companies were small, closely held family companies and although wife did not expect income splitting to continue after separation, she reasonably expected husband would operate companies successfully and earn income which she would have benefit of sharing -- Husband routinely stripped company of all additional profit over that which qualified for small business limit -- Wife was deprived of money stripped out of company -- Also, settlement with J and A was suspicious and probably meant to reduce value of shares, which denied wife opportunity for value of shares to increase -- Wife also had reasonable expectation that husband would purchase her shares on break-down of marriage -- Accordingly, wife's reasonable expectations as minority shareholder had been thwarted and her interests as minority shareholder had been unfairly disregarded to her detriment -- Reasonable solution was for husband to purchase wife's shares for fair value without minority discount, and in determining fair value, claim of J and A was not to be included.

Proulx v. 2006550 Ontario Inc. ([2005](#)), [2005 CarswellOnt 6911](#) (Ont. S.C.J.) [Ontario]

FAM.III.11.d.i

Subject Title: Family law

Classification Number: III.11.d.i

Family property on marriage breakdown -- Practice and procedure -- Discovery -- General principles

Parties were seeking numerous forms of relief against other -- More than two years passed -- Parties were caught up in litigation over disclosure obligations -- Parties brought motions for various orders -- It could not be said whether husband had fully or substantially complied with requests for disclosure -- It was impossible to say which, if any, alleged failure to disclose would have been breach of existing court order for that disclosure -- Husband was ordered to provide copy of mortgage application he signed in relation to home to wife -- With goal of consolidating outstanding disclosure issues, it would be very helpful for case management judge to receive chart or list prepared by each party detailing any requests for provision of documents or information that he or she had unsuccessfully sought, together with notations of dates upon which specific disclosure was sought -- Any further and reasonable requests for disclosure that had not yet been made should be made within next 21 days.

Rose v. Rose ([2005](#)), [2005 CarswellOnt 7240](#) (Ont. S.C.J.) [Ontario]

FAM.III.11.d.ii

Subject Title: Family law

Classification Number: III.11.d.ii

Family property on marriage breakdown -- Practice and procedure -- Discovery -- Discovery of documents

Parties were seeking numerous forms of relief against other -- More than two years passed -- Parties were caught up in litigation over disclosure obligations -- Parties brought motions for various orders -- Wife sought order that husband provide "certified original copies" of all banking information and financial records for travel agency business in Florida for last three fiscal years and to date, including originals of cheques issued by travel agency and general ledger entries for past three fiscal years -- Husband was ordered to cause delivery of all material reasonably requested by valuator to be provided in satisfactory form or to cause original books and records to be made available to valuator and wife's counsel for review in Florida and copying upon reasonable notice of request -- If valuator or wife's counsel was required to travel to Florida to deal with disclosure issue related to travel agency, their travel and accommodation related disbursements were to be paid by husband over and above \$50,000 sum limit -- Possible non-cooperation of majority partner in travel agency would be based on discussions with husband as to whether she would or would not do so -- It was not accepted that majority partner would not cooperate if husband sincerely asked her to do so.

Rose v. Rose ([2005](#)), [2005 CarswellOnt 7240](#) (Ont. S.C.J.) [Ontario]

FAM.IV.1.h.iii.C

Subject Title: Family law

Classification Number: IV.1.h.iii.C

Support -- Spousal support under Divorce Act and provincial statutes -- Variation or termination -- Change in financial circumstances -- Change in means of spouse

Husband chose to retire as of September 1, 2004, based on number of years worked and medical challenges -- Since retirement, husband's income had been reduced from \$5,507 per month to \$2,962 per month -- Existing order for spousal support dated February 16, 1995, provided for payment of \$1,400 per month -- After indexing, current payment was \$1,654 per month -- Husband owed arrears of \$5,862.13, as Family Responsibility Office continued to deduct 50 percent of husband's income -- Husband brought interim motion to vary spousal support order -- Motion granted; support was reduced to \$1,000 per month commencing December 1, 2005 -- Although final orders should not generally be varied on interim basis, there was little reason to deny power to vary where moving party made out clear case for relief and proved need for variation was urgent -- Husband's financial statement did not disclose exorbitant lifestyle, yet he accumulated deficit of approximately \$1,300 per month -- Continued spousal support payments as per final order posed financial hardship -- Fairness to both parties was important consideration in reducing amount of support -- Enforcement of arrears was stayed pending determination of all issues.

Fredette v. Fredette ([2005](#)), [2005 CarswellOnt 6688](#) (Ont. S.C.J.) [Ontario]

FAM.IV.1.h.v

Subject Title: Family law

Classification Number: IV.1.h.v

Support -- Spousal support under Divorce Act and provincial statutes -- Variation or termination -- Duty to become self-sufficient

Parties were married in 1983, separated in 1996 and divorced in 2001 -- There were four children of marriage, two oldest of which were attending university, and twins who were still in high school but intended to go to university -- Parties had joint custody of children with twins principal residence being with wife and older daughters residing with husband -- Wife had worked in bank before marriage and during marriage had worked part-time for three years as doctor's receptionist -- After separation wife returned to university, got her degree and then, in 2003, obtained Bachelor of Education degree -- Since that time wife had worked as supply teacher earning \$6,000 per year -- Husband had been ordered to pay spousal support of \$1,225 per month and Guideline child support of \$1,078 per month -- Husband was supporting daughters at university with no assistance from wife -- Husband applied to vary spousal support on grounds of material change in circumstances -- Husband claimed that wife should be self-sufficient in view of her retraining as teacher and he claimed he could not pay spousal support and support both older daughters at university as well -- Spousal support was reduced to \$750 per month

until September 2006 and then to \$400 per month until mother was self-sufficient, but in any event support was to end no later than June 2008 -- Husband had proved material change in circumstances -- Wife could only obtain supply teaching position at present, but she had experience working in bank and as receptionist and she should have explored evening or weekend work or summer work -- Wife had not been economically disadvantaged by marriage since both parties ended up with equal amount of assets and wife was better educated and qualified now than before marriage -- In circumstances, wife should become self-sufficient within reasonable period of time -- Husband's financial resources were strained and would be more strained once twins went to university -- In varying wife's support, court found solace in fact that legislature recognized that child support should have priority over spousal support.

Baker v. Baker ([2005](#)), [2005 CarswellOnt 7067](#) (Ont. S.C.J.) [Ontario]

FAM.IV.1.h.v

Subject Title: Family law

Classification Number: IV.1.h.v

Support -- Spousal support under Divorce Act and provincial statutes -- Variation or termination -- Duty to become self-sufficient

Parties lived together from June 1993 and were married in December 1995 -- Husband had come to Canada from Jamaica in 1993 and was sponsored by wife for landed immigrant status -- Parties had one child born in 1996, and mother had one child from previous relationship -- Parties separated in November 2001 -- On eve of husband's immigration interview, wife presented husband with separation agreement -- Husband signed agreement, despite advice to contrary from immigration counsel and brother -- Husband claimed he signed agreement under duress as wife threatened to withdraw sponsorship -- Separation agreement stated that husband would pay \$400 per month child support for both children, and \$100 per week spousal support -- Husband made few if any payments on account of child or spousal support -- Husband brought motion to terminate spousal support -- Motion allowed -- Husband met onus on balance of probabilities that spousal support not required to be paid from time he filed notice of motion -- Husband suffered material change in circumstances, such that it would be unfair burden on him having regard to his other financial obligations, and his ability to pay child support -- Despite wife's dire financial circumstances, wife achieved measure of self-sufficiency, and her education and work experience abilities were far more promising than those of husband -- Spousal support terminated from April 2004 onward.

Gregory v. Brown ([2005](#)), [2005 CarswellOnt 6799](#), [2005 ONCJ 284](#) (Ont. C.J.) [Ontario]

FAM.IV.1.h.v

Subject Title: Family law

Classification Number: IV.1.h.v

**Support -- Spousal support under Divorce Act and provincial statutes -- Variation or termination
-- Duty to become self-sufficient**

Effect of pre-existing disability.

Reitsma v. Reitsma-Leadsom ([2005](#)), [2005 CarswellOnt 7491](#) (Ont. S.C.J.) [Ontario]

FAM.IV.1.h.vi

Subject Title: Family law

Classification Number: IV.1.h.vi

**Support -- Spousal support under Divorce Act and provincial statutes -- Variation or termination
-- Practice and procedure**

Quebec court determined that appellant husband's income for support purposes was \$115,000 per year -- Subsequently, in application made by husband in Ontario seeking order that his income was less than \$115,000, court found that material relied on by him from his joint venture partner, S, purportedly showing diminished payments, was not admissible since it was not in affidavit form sworn under oath -- Husband applied to vary divorce judgment so as to rescind arrears of spousal and child support -- Husband, who was self-represented, attempted to rely on notarized letter from chairman of S -- Wife objected and trial judge refused to admit document, insisting that husband had to telephone proposed witness who resided in United States -- Witness was unable to testify on such short notice and trial judge

refused to grant adjournment and drew adverse inference from fact that no witness was available for cross-examination -- Husband appealed -- Appeal allowed -- Husband, as self-represented litigant, was denied opportunity to fairly present his case on issue of his income -- It was incumbent on trial judge, in these particular circumstances, to assist husband by granting adjournment for reasonable period of time to permit husband to secure personal attendance of witness -- This was particularly so since trial judge had drawn adverse inference from failure to call witness.

O'Brien v. Griffin (2006), 2006 CarswellOnt 96 (Ont. C.A.) [Ontario]; reversing in part (2004), 2004 CarswellOnt 1543, 3 R.F.L. (6th) 143 (Ont. S.C.J.)

FAM.IV.1.i.v.A

Subject Title: Family law

Classification Number: IV.1.i.v.A

Support -- Spousal support under Divorce Act and provincial statutes -- Enforcement of award -- Limitation or reduction of arrears -- General principles

Parties lived together from June 1993 and were married in December 1995 -- Husband had come to Canada from Jamaica in 1993 and was sponsored by wife for landed immigrant status -- Parties had one child born in 1996, and mother had one child from previous relationship -- Parties separated in November 2001 -- On eve of husband's immigration interview, wife presented husband with separation agreement -- Husband signed agreement, despite advice to contrary from immigration counsel and brother -- Husband claimed he signed agreement under duress as wife threatened to withdraw sponsorship -- Separation agreement stated that husband would pay \$400 per month child support for both children, and \$100 per week spousal support -- Husband made few if any payments on account of child or spousal support -- Husband brought motion to rescind spousal support arrears -- Motion allowed in part -- Husband liable for spousal support arrears accrued between January 2002, when separation agreement signed, and April 2004, when notice of motion filed -- Husband met onus on balance of probabilities that spousal support not required to be paid from time he filed notice of motion -- All arrears accrued from April 2004 rescinded, as consequences of spousal support clause of separation agreement shifted or changed, because of evidence of wife's self-sufficiency.

Gregory v. Brown (2005), 2005 CarswellOnt 6799, 2005 ONCJ 284 (Ont. C.J.) [Ontario]

FAM.IV.3.a.ii

Subject Title: Family law

Classification Number: IV.3.a.ii

Support -- Child support under federal and provincial guidelines -- Application of guidelines -- Who is a parent

Parties lived together from June 1993 and were married in December 1995 -- Husband had come to Canada from Jamaica in 1993 and was sponsored by wife for landed immigrant status -- Parties had one child born in 1996, and mother had one child from previous relationship -- Parties separated in November 2001 -- On eve of husband's immigration interview, wife presented husband with separation agreement -- Husband signed agreement, despite advice to contrary from immigration counsel and brother -- Husband claimed he signed agreement under duress as wife threatened to withdraw sponsorship -- Separation agreement stated that husband would pay \$400 per month child support for both children, and \$100 per week spousal support -- Husband made few if any payments on account of child or spousal support -- Husband brought motion to vary child support, claiming he never stood in loco parentis to wife's child -- Motion dismissed -- Husband demonstrated settled intention to treat mother's child as child of his family as he played active role in her life, she regarded him as her father, and he acted in all material ways as father to mother's child -- Legal effect of settled intention could not be cast aside by husband to detriment of child -- No evidence was presented concerning any other child support being paid for mother's child -- Husband responsible in law for supporting both children.

Gregory v. Brown ([2005](#)), [2005 CarswellOnt 6799](#), [2005 ONCJ 284](#) (Ont. C.J.) [Ontario]

FAM.IV.3.i.ii

Subject Title: Family law

Classification Number: IV.3.i.ii

Support -- Child support under federal and provincial guidelines -- Enforcement of award --

Limitation or reduction of arrears

Parties lived together from June 1993 and were married in December 1995 -- Husband had come to Canada from Jamaica in 1993 and was sponsored by wife for landed immigrant status -- Parties had one child born in 1996, and mother had one child from previous relationship -- Parties separated in November 2001 -- On eve of husband's immigration interview, wife presented husband with separation agreement -- Husband signed agreement, despite advice to contrary from immigration counsel and brother -- Husband claimed he signed agreement under duress as wife threatened to withdraw sponsorship -- Separation agreement stated that husband would pay \$400 per month child support for both children, and \$100 per week spousal support -- Husband made few if any payments on account of child or spousal support -- Husband brought motion to rescind child support arrears -- Motion dismissed -- Evidence showed that there was need on part of children, and ability to pay on part of husband -- Husband provided incomplete and misleading financial disclosure -- Order for retroactive child support would not cause unreasonable or unfair burden to husband -- Husband required to pay child support of \$400 per month for both children in accordance with terms of separation agreement from January 2002 until March 2004, after which child support would be varied to \$529 per month for both children in accordance with Federal Child Support Guidelines.

Gregory v. Brown ([2005](#)), [2005 CarswellOnt 6799](#), [2005 ONCJ 284](#) (Ont. C.J.) [Ontario]

FAM.V.2.a.iii

Subject Title: Family law

Classification Number: V.2.a.iii

Domestic contracts and settlements -- Validity -- Essential validity and capacity -- Duress, fraud, undue influence and unconscionability

Parties lived together from June 1993 and were married in December 1995 -- Husband had come to Canada from Jamaica in 1993 and was sponsored by wife for landed immigrant status -- Parties had one child born in 1996, and mother had one child from previous relationship -- Parties separated in November 2001 -- On eve of husband's immigration interview, wife presented husband with separation agreement -- Husband signed agreement, despite advice to contrary from immigration counsel and brother -- Husband claimed he signed agreement under duress as wife threatened to withdraw sponsorship -- Separation agreement stated that husband would pay \$400 per month child support for both children, and \$100 per week spousal support -- Husband made few if any payments on account of

child or spousal support -- Husband brought motion for order that separation agreement be set aside -- Motion dismissed -- Husband had opportunity to obtain legal advice and was urged not to sign agreement -- Evidence fell short of establishing unconscionable use of power by wife over husband -- Need for independent legal advice depended on facts of each individual case -- Husband was knowledgeable and acted with free will in signing separation agreement.

Gregory v. Brown ([2005](#)), [2005 CarswellOnt 6799](#), [2005 ONCJ 284](#) (Ont. C.J.) [Ontario]

FAM.V.2.b.iii

Subject Title: Family law

Classification Number: V.2.b.iii

Domestic contracts and settlements -- Validity -- Formal validity -- Form of agreement

Husband and wife signed separation agreement which provided, in part, that cohabitation of parties for less than 90 days with mutual consent and with reconciliation as primary purpose would have no effect on agreement -- Agreement further stipulated that cohabitation for more than 90 days with reconciliation as primary purpose would invalidate agreement -- Parties separated on numerous occasions and resumed cohabitation for periods less than 90 days -- One period of resumed cohabitation lasted more than 90 days -- Wife brought motion to determine validity of separation agreement, claiming that agreement had been invalidated by reason of resumption of cohabitation for more than 90 days -- Agreement was held to be valid -- Motions judge held that, during period of resumed cohabitation that lasted more than 90 days, husband moved back with view to reconciliation but wife did not participate with reconciliation as her primary purpose -- Evidence showed that during period in question, wife was manipulative and controlling, showed interest in other men, and was unwilling to be cooperative within marriage -- Motions judge held that lack of marital sexual relations also characterized period of resumed cohabitation -- Wife appealed -- Appeal allowed -- Matter had been heard as long motion rather than trial of issue -- Matter could not properly be determined on motion, as it involved conflicting evidence on purpose of resumed cohabitation and required findings of credibility -- Conflicting evidence could be resolved only by trial of issues on viva voce evidence -- Matter returned for trial of issues.

Schnarr v. Schnarr ([2006](#)), [2006 CarswellOnt 45](#) (Ont. C.A.) [Ontario]; reversing ([2005](#)), [12 R.F.L. \(6th\) 198](#), [2005 CarswellOnt 448](#) (Ont. S.C.J.)

FAM.V.7.a

Subject Title: Family law

Classification Number: V.7.a

Domestic contracts and settlements -- Enforcement -- General principles

Issue to be determined.

Rose v. Rose ([2005](#)), [2005 CarswellOnt 7240](#) (Ont. S.C.J.) [Ontario]

FAM.IX.2.d.i

Subject Title: Family law

Classification Number: IX.2.d.i

Custody and access -- Factors to be considered in custody award -- Maintenance of stable environment -- General principles

Father and mother began living together in 1998 and had son shortly thereafter -- Parents lived in West Nipissing where son's first language was French -- Parents separated in 2003 and were granted interim joint custody -- Mother moved to Sudbury without father's consent or giving notice to court -- Mother's move was later approved -- Hearing was held to determine custody of son -- Parents were to have joint custody of son, with father having primary care and residence -- Father was to have ultimate say in major decisions regarding child -- Father was best able to provide stability with regard to school, language and daycare -- Father was better able to ascertain his presence for son's sports and other extra-curricular activities -- Father would be better able to provide proximity to extended family -- Though mother was very good parent, she had not shown strong commitment to ensuring son lived close enough to ensure ease of custody for father and son's extended family.

Laforge v. Boucher ([2005](#)), [2005 CarswellOnt 4562](#), [2005 ONCJ 254](#) (Ont. C.J.) [Ontario]; additional

reasons at [\(2005\), 2005 CarswellOnt 7085, 2005 ONCJ 297](#) (Ont. C.J.)

FAM.IX.3.c.ii

Subject Title: Family law

Classification Number: IX.3.c.ii

Custody and access -- Interim custody -- Factors considered -- Maintenance of status quo

Mother and father separated in August 2004 -- Parties had one child -- Child was in primary care of mother, pending trial -- Parties attempted mediation about parenting issues -- Mediation was unsuccessful and mother requested assessment -- Assessor recommended arbitrator with authority to make final decisions, but mother refused -- Letters from assessor recommended schedule which increased father's time with child -- Parties failed to agree and assessor submitted final report which recommended equal time with each parent, and sole custody to father -- Assessor made findings about personality disorder that he claimed could interfere with mother's parenting -- Neither party made allegations about child's care -- Father brought motion for interim custody -- Motion dismissed -- Changes to custody pending trial only made where necessary in best interests of child, and unless compelling circumstances existed to act immediately upon assessor's recommendations -- Different recommendations by assessor, two months apart, raised sufficient question be unreliable basis upon which to change parenting arrangements pending trial, especially since child was well and mother was prepared to implement schedule recommended in assessor's letters -- Trial judge in better position to fully investigate conflicting positions and determine custody and access.

David v. McCain [\(2005\), 2005 CarswellOnt 7183](#) (Ont. S.C.J.) [Ontario]

FAM.IX.3.c.vi

Subject Title: Family law

Classification Number: IX.3.c.vi

Custody and access -- Interim custody -- Factors considered -- Miscellaneous factors

Assessor's report -- Mother and father separated in August 2004 -- Parties had one child -- Child was in primary care of mother, pending trial -- Parties attempted mediation about parenting issues -- Mediation was unsuccessful and mother requested assessment -- Assessor recommended arbitrator with authority to make final decisions, but mother refused -- Letters from assessor recommended schedule which increased father's time with child -- Parties failed to agree and assessor submitted final report which recommended equal time with each parent, and sole custody to father -- Assessor made findings about personality disorder that he claimed could interfere with mother's parenting -- Neither party made allegations about child's care -- Father brought motion for interim custody -- Motion dismissed -- Changes to custody pending trial only made where necessary in best interests of child, and unless compelling circumstances existed to act immediately upon assessor's recommendations -- Different recommendations by assessor, two months apart, raised sufficient question be unreliable basis upon which to change parenting arrangements pending trial, especially since child was well and mother was prepared to implement schedule recommended in assessor's letters -- Trial judge in better position to fully investigate conflicting positions and determine custody and access.

David v. McCain ([2005](#)), [2005 CarswellOnt 7183](#) (Ont. S.C.J.) [Ontario]

FAM.XV.5.a.i

Subject Title: Family law

Classification Number: XV.5.a.i

Children in need of protection -- Application for permanent custody -- Factors to be considered -- Best interests of child

Mother had two boys who had both been apprehended at birth by society and had been in care since then -- Mother also had two older children, one of which was Crown ward with no access, while other was in custody of maternal grandmother with supervised access to mother -- Father of boys had been abusive in past, and issues of financial instability and transience persisted in parents' relationship -- Society brought motion for summary judgment for Crown wardship of both boys with no access to parents for purpose of adoption -- Motion granted -- Parents consistently demonstrated incapability of managing own affairs -- Maternal grandmother was not appropriate custodian for boys as she did not provide information as to how she intended to deal with three small children or boys' father -- Family Law Rules provide that court may make final order on summary basis if no genuine issue existed for trial -- Best interests of

children called for resolution of matter to deal with uncertainty of their future -- Mother had many years to improve herself and prepare to deal with responsibility of being parent and had not made much progress -- Genuine issue for trial required more than parents' desire for return of children -- Mother and father had done little to convince court that result would be different if trial was held -- Boys made Crown wards with no access to biological parents for purpose of adoption.

Children's Aid Society of Hamilton v. H. (S.) (2005), 2005 CarswellOnt 6902 (Ont. S.C.J.) [Ontario]

FAM.XV.5.a.ii.C

Subject Title: Family law

Classification Number: XV.5.a.ii.C

Children in need of protection -- Application for permanent custody -- Factors to be considered -- Particular factors -- Parents' ability to provide stable environment

Mother had two boys who had both been apprehended at birth by society and had been in care since then -- Mother also had two older children, one of which was Crown ward with no access, while other was in custody of maternal grandmother with supervised access to mother -- Father of boys had been abusive in past, and issues of financial instability and transience persisted in parents' relationship -- Society brought motion for summary judgment for Crown wardship of both boys with no access to parents for purpose of adoption -- Motion granted -- Parents consistently demonstrated incapability of managing own affairs -- Maternal grandmother was not appropriate custodian for boys as she did not provide information as to how she intended to deal with three small children or boys' father -- Family Law Rules provide that court may make final order on summary basis if no genuine issue existed for trial -- Best interests of children called for resolution of matter to deal with uncertainty of their future -- Mother had many years to improve herself and prepare to deal with responsibility of being parent and had not made much progress -- Genuine issue for trial required more than parents' desire for return of children -- Mother and father had done little to convince court that result would be different if trial was held -- Boys made Crown wards with no access to biological parents for purpose of adoption.

Children's Aid Society of Hamilton v. H. (S.) (2005), 2005 CarswellOnt 6902 (Ont. S.C.J.) [Ontario]

FAM.XX.5

Subject Title: Family law

Classification Number: XX.5

Costs -- Custody and access

Father was successful at trial -- Mother's submissions as to costs were two days late -- Father sought costs on solicitor and client basis which amounted to \$38,756.28 -- Father was awarded costs in amount requested -- Section 131 of Courts of Justice Act and R. 24 of Family Law Rules govern issue of costs in family matters -- Presumption in R. 24 was not to be applied willy nilly -- Rule 24 could not always be disregarded -- Matter was not complex -- There were factors that would mandate award of costs in father's favour -- Final order basically represented father's offer to settle -- Costs of interlocutory motions were not dealt with at each step and one such motion was required because of mother's removal of child's residence to another district despite court order -- There were disclosure issues regarding mother's new family's changing circumstances -- Trial time was extended by one-half day because of mother obtaining one-sided parenting capacity assessment despite there being no issue as to parenting capacity -- Mother obtained parenting assessment despite order for involvement of Office of Children's Lawyer by way of assessment that needed to be updated as direct result of mother's change of circumstances.

Laforge v. Boucher (2005), [2005 CarswellOnt 7085](#), [2005 ONCJ 297](#) (Ont. C.J.) [Ontario]; additional reasons to [\(2005\)](#), [2005 CarswellOnt 4562](#), [2005 ONCJ 254](#) (Ont. C.J.)

FAM.XX.5

Subject Title: Family law

Classification Number: XX.5

Costs -- Custody and access

Applicant mother was unsuccessful in custody proceedings -- Respondents sought costs on full indemnity basis of \$16,165.01 -- Offers of settlement by respondents did not comply with requirements

of Rule 18 of Family Law Rules -- As result, full recovery of costs under Rule 18(14) was not available -- Counsel for respondents had forwarded to Ontario Legal Aid Plan ("OLAP") letter putting respondents' position whether applicant should receive certificate of OLAP for trial -- Whether there was triable issue entitling litigant to certificate was solely between OLAP, lawyer and legally assisted client -- It was unacceptable for respondent's lawyer to attempt to interfere in applicant's relationship with OLAP -- However, improper conduct of respondents' lawyer did not affect trial process and did not amount to bad faith -- Costs were awarded to respondents on substantial but not "full recovery" or "full indemnity" basis in amount of \$12,000 -- Respondents submitted that non-party OLAP should be liable for costs on ground that there was no merit to applicant's case -- Court rejected respondents' submission -- Applicant's case had merit -- It is not for court to require that OLAP make fine determinations on merit of financially-assisted litigant's case.

Thursfield v. Gambacort ([2005](#)), [2005 CarswellOnt 6800](#), [2005 ONCJ 285](#) (Ont. C.J.) [Ontario]; additional reasons to ([2005](#)), [2005 CarswellOnt 1962](#), [2005 ONCJ 163](#) (Ont. C.J.)



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