

The Canadian Abridgment eDigests -- Family Law - Ontario

2008-28
July 14, 2008

FAM.III.9.d

Subject Title: Family law

Classification Number: III.9.d

Family property on marriage breakdown -- Order for division of property -- Order for partition and sale

Parties married in 1987, had child and separated in 2004 when wife moved out -- Husband remained in matrimonial home whose title was in both parties' names -- Parties signed agreement dealing with transfer of matrimonial home to husband -- Agreement stipulated that wife would retain half equity with husband making financial arrangements and wife signing off on mortgage -- Husband did not attempt to obtain financing or buy home from wife -- Matrimonial home was parties' only real asset -- Husband applied to enforce agreement between parties and other relief -- Application dismissed on these grounds -- Husband did not meet onus to prove that agreement was enforceable -- Moreover, husband repudiated contract with respect to his obligations to arrange financing at time of mortgage renewal -- Husband's request to have agreement enforced was denied -- Parties consented to transfer of home to husband -- To equalize family assets, husband was ordered to pay one half of current appraised value of home to wife.

Lalonde v. Lalonde ([2008](#)), 2008 CarswellOnt 308, P.C. Hennessy J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.b.v

Subject Title: Family law

Classification Number: IV.1.b.v

Support -- Spousal support under Divorce Act and provincial statutes -- Entitlement -- Economic

disadvantage of marriage

Parties married in 1987, had child, and separated in 2004 when wife moved out -- Wife was primary care-giver to child and worked evening shift to maximize time with her -- After separation, child was on three-day alternating schedule with each party -- Wife was full-time student supported in part with student loans -- Wife had also been on public assistance or employed in low paying, part-time work -- Husband earned \$50,612 per year -- Husband had paid no spousal support since separation -- Wife applied for spousal support and other relief -- Application granted -- Husband ordered to pay \$500 per month, effective January 2008 -- Husband was consistently employed throughout seventeen-year marriage and was historically primary wage-earner -- Wife suffered economic disadvantage from marriage and its breakdown -- Considering age of child, wife's full-time parenting and restricted employment and her economic hardship, wife was entitled to support -- Wife should have goal of attaining self-sufficiency over next five years.

Lalonde v. Lalonde ([2008](#), 2008 CarswellOnt 308, P.C. Hennessy J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

Support -- Child support under federal and provincial guidelines -- Determination of spouse's annual income -- Imputed income

Parties married in 1992, had child, separated in 1993 and divorced in 1999 -- Mother had child from prior relationship towards whom father stood in loco parentis -- Parties agreed in 2000 that father would pay \$1,200 for three months while father was taking over sole shareholder company -- Parties also agreed that father would provide financial information to determine support thereafter -- Father arbitrarily sent child support of \$260 per month which he raised to \$600 per month in 2004 -- Father worked without pay on his father's farm and received board, gift and reductions in rent -- After remarrying, father and new wife lived on parents' farm at very low rent -- Father's new wife earned about \$19,200 per year and contributed to expenses -- Father made little financial disclosure -- Father brought action for various relief and mother sought determination of father's income -- Father was paid management fee through his one-person cattle brokerage company which also paid several of his expenses -- Father had under-reported income -- Many of father's expenses were undocumented -- Amount father showed on tax returns was not reflective of all money available to father for child support

-- Father was imputed income of \$80,000 per year and accordingly ordered to pay child support of \$1,259 per month.

Wood v. Wood ([2008](#), [2008 CarswellOnt 23](#), H.S. Arrell J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

Support -- Child support under federal and provincial guidelines -- Retroactive award

Parties married in 1992, had child, separated in 1993 and divorced in 1999 -- Mother had child from prior relationship towards whom father stood in loco parentis -- Parties agreed in 2000 that father would pay \$1,200 for three months and that father would provide financial information thereafter to determine support -- Father was single shareholder in company and was paid management fee -- Company also paid many expenses -- Father's new wife earned about \$19,200 per year -- Father arbitrarily sent child support of \$260 per month which he raised to \$600 per month in 2004 -- Mother earned between \$14,000 and \$20,000 up to 2005 -- Mother earned \$66,000 in years 2005 and 2006 and subsequently lost employment -- Father worked for his parents' farm without pay for room and board and reductions on rent -- Father brought action for various relief, and issue arose as to determination of retroactive child support -- Father was ordered to pay \$40,000 in retroactive child support payable in 48 monthly instalments -- Father underpaid child support, even based on his own tax returns -- Father had under-reported his income which was imputed at \$80,000 per year -- Mother bore majority of financial burden raising children for seven years and struggled financially for most of those years -- Mother, however, did not apply for financial disclosure and enforcement of child support between 2001 and 2004 -- Retroactive order took into account any hardship to father and past hardship to children.

Wood v. Wood ([2008](#), [2008 CarswellOnt 23](#), H.S. Arrell J. (Ont. S.C.J.) [Ontario]

FAM.V.2.b.i

Subject Title: Family law

Classification Number: V.2.b.i

Domestic contracts and settlements -- Validity -- Formal validity -- General principles

Parties married in 1987, had child, and separated in 2004 when wife moved out -- Husband remained in matrimonial home -- Parties signed agreement dealing with transfer of matrimonial home whereby husband would keep home -- Title to home remained in both names -- Agreement stipulated that wife would retain half equity and that husband would make financial arrangements -- Husband did not attempt to obtain financing or buy home from wife -- Husband applied to enforce agreement between parties and issue arose as to its validity -- Onus was on husband to prove that agreement was enforceable -- Family Law Act stipulates that domestic agreement, including separation agreement, must be in writing, must be signed by both parties and must be witnessed -- Although agreement with respect to home was in writing and signed by parties, there were no witnesses -- Moreover, husband repudiated contract with respect to his obligations to arrange financing at time of mortgage renewal -- Husband's request to have agreement enforced was denied.

Lalonde v. Lalonde ([2008](#), 2008 CarswellOnt 308, P.C. Hennessy J. (Ont. S.C.J.) [Ontario]

FAM.V.3.a.i

Subject Title: Family law

Classification Number: V.3.a.i

Domestic contracts and settlements -- Effect of contract -- On division of family property -- General principles

Parties began cohabiting in 1992, married in 1995, and separated in 2004 -- Each party had previous marriage -- Parties entered into written domestic contract in January 1993, with husband retaining lawyer to act on his behalf and parties signing contract in lawyer's office before lawyer's secretary -- With respect to ownership and division of property, contract provided that neither party acquired interest in specified property referred to as "One Party Property" and that all property acquired during cohabitation would be equally divided on dissolution of relationship -- With respect to support, contract provided that each party was responsible for maintaining self during and after cohabitation -- Contract

included acknowledgement that each party received independent legal advice and made full disclosure of significant assets, debts, and liabilities -- Parties made no formal disclosure and personal and real property listed on separate schedules attached to contract did not show value of asset -- During relationship, parties had traditional relationship and wife gave up nursing job at husband's request -- At time of separation, wife had modest business which, together with pension, provided monthly income of \$1,320 -- One month following separation, husband sold car dealership and scrap yard, retired and lived solely on investment income and in matrimonial home -- Husband brought application for enforcement of domestic contract -- At hearing on matter, husband testified that total value of assets were approximately \$1.3m -- Parties disagreed whether husband advised wife to obtain independent legal advice, and wife did not have independent legal advice -- Wife testified that she had no knowledge of value of husband's listed assets or completeness of list, but believed that once married, property would be evenly divided -- Application dismissed -- Domestic contract did not provide for alternative "One Party Property" regime, excluding property pursuant to s. 4(2)(6) of Family Law Act from equalization of net family property and did not provide mutual release from equalization of net family property pursuant to s. 5 of Act -- Husband failed to provide full and frank disclosure either as to assets at time of entering into contract -- Evidence did not support that wife was ever advised to seek independent legal advice or that wife fully understood nature of agreement she was signing -- Wording of contract was clear that relevant property was to be divided equally on dissolution of relationship.

Lambert v. Lambert (2008), 2008 CarswellOnt 2663, T.A. Platana J. (Ont. S.C.J.) [Ontario]

FAM.V.3.b.ii

Subject Title: Family law

Classification Number: V.3.b.ii

Domestic contracts and settlements -- Effect of contract -- On spousal support -- Under provincial legislation

Parties began cohabiting in 1992, married in 1995, and separated in 2004 -- Each party had previous marriage -- Parties entered into written domestic contract in January 1993, with husband retaining lawyer to act on his behalf and parties signing contract in lawyer's office before lawyer's secretary -- With respect to ownership and division of property, contract provided that neither party acquired interest in specified property referred to as "One Party Property" and that all property acquired during cohabitation would be equally divided on dissolution of relationship -- With respect to support, contract provided that each party was responsible for maintaining self during and after cohabitation -- Contract

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Lambert v. Lambert (2008), 2008 CarswellOnt 2663, T.A. Platana J. (Ont. S.C.J.) [Ontario]

FAM.IX.2.g.i

Subject Title: Family law

Classification Number: IX.2.g.i

Custody and access -- Factors to be considered in custody award -- Conduct of parent -- General principles

Parties married in 1992, had child, separated in 1993 and divorced in 1999 -- Mother had child in 1989 from prior relationship towards whom father stood in loco parentis -- Mother was awarded interim custody of children in 1996 -- Parties agreed in 2000 that father would pay \$1,200 for three months while father was taking over sole shareholder company -- Father also agreed to provide financial information to determine support thereafter -- Father arbitrarily sent child support of \$260 per month which he raised to \$600 per month in 2004 -- Mother was unemployed -- Father was sole shareholder of company that paid him management fee and several expenses -- Father worked on his parents' farm in

exchange for rent reduction and board -- Father brought action for custody and access -- Action dismissed -- Mother was awarded sole custody of children -- Father was awarded reasonable access pursuant to wishes of children -- Father underpaid child support for many years -- Father failed to make timely financial disclosure -- Mother struggled financially while she raised children alone -- Two weeks prior to trial, father made contribution to child's RESP knowing that mother was unemployed and struggling to meet basic expenses for her and children -- Joint custody was not appropriate in circumstances.

Wood v. Wood ([2008](#), 2008 CarswellOnt 23), H.S. Arrell J. (Ont. S.C.J.) [Ontario]

FAM.IX.2.i

Subject Title: Family law

Classification Number: IX.2.i

Custody and access -- Factors to be considered in custody award -- Miscellaneous factors

Parties married in 1987, had child, and separated in 2004 when mother moved out of matrimonial home -- For two and one half years after separation, child moved between parties' respective residences every three days -- In 2006, mother moved with child to town 40 minutes away without notice to father -- Mother did not drive and father exercised access, which became more limited -- Mother was in new relationship -- Father was in new relationship with woman who had three sons -- Parties were granted interim joint custody by prior court order -- Office of Children's Lawyer, without providing reasons, recommended joint custody, with primary residence with mother and increased access to father -- Father applied for sole custody with access to mother, and other relief -- Mother applied for joint custody, with primary residence with mother and generous access to father, and other relief -- Father's application dismissed on these grounds -- Mother's application granted -- Order was made for joint custody, with primary residence to mother -- Father was granted access on alternating weekends, one night per week and equal split of Christmas and summer vacation -- Mother had cared for child full-time for first two-and-one-half years -- After separation, mother cared for child in pre-school and after school period on days that child was with father -- Mother worked evening shifts so that she could be with child during day -- Father worked day shifts and had 45-minute commute -- Father's new partner, who cared for child during summer, was seeking employment -- Father, though loving parent, exaggerated his involvement in child's life and criticism of mother's parenting was without any foundation -- Mother was providing stable home for child who was thriving socially and at school -- Because of present distance between parties and fact that mother did not drive, shared parenting was not possible.

Lalonde v. Lalonde ([2008](#)), [2008 CarswellOnt 308](#), P.C. Hennessy J. (Ont. S.C.J.) [Ontario]

FAM.XV.7.g.i

Subject Title: Family law

Classification Number: XV.7.g.i

Children in need of protection -- Practice and procedure in custody hearings -- Appeal of order -- General principles

Muslim parties had child in 2005 and separated -- Mother and child went to different shelters after separation -- Father denied striking or threatening mother -- Mother was diagnosed with depression and bipolar disorder -- Child was apprehended in February 2006 and placed in mother's care under condition of mother having roommate and remaining compliant with medications -- Father sought custody of child -- Trial judge noted that mother's mental illness was stable and found that father was not trying to protect child's best interests -- Trial judge also found that child was in need of protection and made final order placing child in care of mother, subject to supervision of Children's Aid Society -- Father was provided supervised access at day care or alternative location, up to maximum twice per week for two hours -- Father did not support medical opinions recommending that mother take medication for period of time -- Soon after order, child accidentally ingested some of mother's roommate anti-depressant medication -- Father appealed order -- Appeal dismissed -- Society remained satisfied with child's care with mother -- Child was progressing well and mother was ensuring child's needs -- Mother was actively participating in psychiatric treatment and had been compliant with her medication -- Trial judge noted that mother had endured emotional and probably physical abuse from father -- Trial judge had benefit of evidence of parties and other witnesses and had preferred mother's evidence -- Nothing led to conclusion that trial judge had erred.

Children's Aid Society of Toronto v. Y. (E.) ([2008](#)), [2008 CarswellOnt 331](#), Czutrin J. (Ont. S.C.J.) [Ontario]

FAM.XX.1.a

Subject Title: Family law

Classification Number: XX.1.a

Costs -- In family law proceedings generally -- General principles

Parties married in 1996, had two children and separated in 1999 -- Parties were involved in numerous motions and court appearances with respect to custody, access and support leading to several court orders, including orders for father to comply with outstanding undertakings -- Since 2001, only two proceedings addressed matter of costs -- Court order in December 2005 indicated that costs would be dealt with -- Father submitted bill of costs in June 2007 and brought motion for costs -- Motion dismissed -- Father's argument on costs was received eighteen months after order -- Father was not always successful in proceedings which, in some cases, happened six years prior -- Father did not provide explanation for delay -- Pursuant to Family Law Rules, time was major factor in dealing with issue of costs -- Father was not awarded costs on account of delay.

Cerson v. Pocsai ([2008](#), 2008 CarswellOnt 300), B.H. Matheson J. (Ont. S.C.J.) [Ontario]

FAM.XX.8

Subject Title: Family law

Classification Number: XX.8

Costs -- Children in need of protection

Children's Aid Society ("CAS") brought motion for summary judgment -- Mother's counsel was 90 minutes late -- Mother's counsel booked another tribunal hearing in another location before current hearing, knowing full well that he was required to be before court at 2:00 p.m. -- Counsel did not communicate his intention to be late to mother -- Motion granted -- Counsel was ordered to pay costs to CAS, in amount of \$200.00 -- Court must be able to control its process -- It was not in public interest, the interest of administration of justice or interest of individual litigants to promote this kind of conduct, or be cavalier about it -- In making this order, court considered that counsel was genuinely remorseful and sincerely apologetic -- it was also the first time in which he had engaged in this conduct before court.

Children's Aid Society of Toronto v. W. (J.) ([2008](#)), [2008 ONCJ 256](#), [2008 CarswellOnt 3153](#), R.J. Spence J. (Ont. C.J.) [Ontario]



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