

The Canadian Abridgment eDigests -- Family Law - Ontario

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FAM.III.5.d.ii.G

Subject Title: Family law

Classification Number: III.5.d.ii.G

Family property on marriage breakdown -- Assets which may be excluded from property to be divided -- Business and employment assets -- Shares in private corporations -- Ontario

Husband and wife were involved in matrimonial dispute -- Wife sought 50 per cent interest in company which husband and his brother were equal shareholders -- Wife commenced application against defendant company and brother for order that defendants pay her share of value of her one-half interest in company -- Company and brother brought motion for summary judgment for dismissal of wife's claim -- Application dismissed -- Defendants failed to establish that there was no genuine issue for trial -- It could not be concluded that wife's claims could not succeed -- It was possibility that court may order that husband transfer shares to wife or have corporation issue shares to wife, or order constructive trust remedy as against corporation.

Prehn v. Prehn ([2008](#)), [2008 CarswellOnt 2296](#), Van Melle J. (Ont. S.C.J.); additional reasons at ([2008](#)), [2008 CarswellOnt 2297](#), Van Melle J. (Ont. S.C.J.) [Ontario]

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 were married, had two children and separated -- Children were 17 and 14 years of age -- Wife and children remained in matrimonial home after separation -- Husband brought application for order for partition and sale of matrimonial home -- Application granted -- Wife was awarded opportunity to make accepted offer to purchase home by specified date, and if house was not purchase by wife, house was to be listed for sale -- Sale would not be prejudicial to children -- Wife would not be unfairly disadvantaged if house was ordered sold at this stage rather than having issue determined at trial.

Rodgers v. Rodgers ([2008](#)), [2008 CarswellOnt 2502](#), Wein J. (Ont. S.C.J.); additional reasons at ([2008](#)), [2008 CarswellOnt 3015](#), Wein J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.g.i

Subject Title: Family law

Classification Number: IV.1.g.i

Support -- Spousal support under Divorce Act and provincial statutes -- Interim support -- General principles

Parties married in 1993, had two children, and separated in 2007 -- Husband was ordered to pay interim spousal support of \$500 per month -- Husband's annual income was \$85,000 -- Wife claimed that she was unable to work -- Wife brought application for variation of interim spousal support order retroactive to date of separation -- Application granted -- Husband was ordered to pay increased amount of temporary spousal support in amount of \$2,400 per month retroactive to September 7, 2007 -- Wife's current means were very limited and her current needs were significant -- Issue of support from separation was best dealt with by trial judge who would hear all of evidence.

Dor v. Traynor ([2008](#)), [2008 CarswellOnt 1739](#), F. Graham J. (Ont. S.C.J.) [Ontario]

FAM.V.4

Subject Title: Family law

Classification Number: V.4

Domestic contracts and settlements -- Interpretation

Parties agreed that separation agreement dated June 18, 2007 was valid "domestic contract" within meaning of Family Law Act -- Wife brought application to enforce separation agreement between parties -- Application granted -- Text of separation agreement established that "equalization payment" from husband to wife was \$200,000 -- This reading arose from "clear preponderance of meaning stemming from words and structure" of separation agreement -- Parties agreed that there shall be no deduction from this amount for any contingencies, including foreseeable risk that there would be less than \$200,000 equity in matrimonial home -- Separation agreement could have been clearer, but it was not "ambiguous" within meaning of caselaw -- Thus court should not consider extrinsic evidence in construing agreement.

Rateja v. Rateja ([2008](#)), [2008 CarswellOnt 4794](#), D.L. Corbett J. (Ont. S.C.J.) [Ontario]

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

Parties were married in 2004 and separated in 2008 -- Mother was stay-at-home mother and father was police officer -- Mother brought motion for several forms of relief, including interim custody -- Motion granted -- On interim basis, best interests of daughter can be protected by providing her with as much time with both parents as possible -- Status quo before separation for daughter involved spending significant amounts of time in care of each parents -- Her bedroom and toys were where her father continued to live -- Mother was primary caregiver in early years of daughter's life.

Baker v. Baker ([2008](#)), [2008 CarswellOnt 5082](#), Turnbull J. (Ont. S.C.J.); additional reasons at ([2008](#)), [2008 CarswellOnt 4963](#), Turnbull J. (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

Parties married in 2006, had one child and separated in 2007 -- Parties purchased matrimonial home in Vaughan, were employed in Vaughan and child was born in Vaughan -- Shortly after child's birth father lost employment and cared for child while mother worked -- Following separation mother left matrimonial home and went with child to live with mother's parents in Mississauga -- Despite numerous requests from father's lawyer, mother refused regular access to father -- Mother brought successful emergency application without notice in March 2008 for sole custody and restraining order against father -- In affidavit supporting application mother made allegations of father's violence and alcohol abuse and anticipated difficulty of serving father as he was moving to California -- Temporary order was varied in April 2008 with continuation of temporary custody order on without prejudice basis, removal of restraining order and grant to father of unsupervised full alternate weekend access -- Father brought motion for temporary joint custody, increased access and transfer of proceedings to Newmarket Superior Court -- Motion granted -- Father was awarded temporary joint custody of child with weekly alternating residence of child -- Father had ample experience caring for young son on daily basis -- Absence of complaint from mother in context of April access order was powerful vindicator in father's favour -- Order for joint custody in decision making was needed to preserve father's presence in child's life -- Order was warranted in view of mother's non-cooperative conduct and unilateral withdrawal of son from relationship with father.

Morano v. Coletta ([2008](#)), [2008 CarswellOnt 2735](#), [2008 ONCJ 228](#), [52 R.F.L. \(6th\) 200](#), P.W. Dunn J. (Ont. C.J.); additional reasons at ([2008](#)), [2008 ONCJ 389](#), [2008 CarswellOnt 5127](#), P.W. Dunn J. (Ont. C.J.) [Ontario]

FAM.IX.6.b

Subject Title: Family law

Classification Number: IX.6.b

Custody and access -- Joint custody -- Primary residence of child

Parties married in 1996, had two children, and separated in 2003 -- Parties agreed to joint custody of children -- Mother brought application for primary care and control of children -- Application dismissed -- Parties were awarded shared parenting with children spending equal time with both parties -- Both parties were involved in children's day-to-day care -- After separation, father requested more time with children on many occasions, which most of time was refused by mother.

Bromley v. Bromley [\(2008\), 2008 CarswellOnt 1736](#), Festeryga J. (Ont. S.C.J.) [Ontario]

FAM.IX.10.a

Subject Title: Family law

Classification Number: IX.10.a

Custody and access -- Practice and procedure -- General principles

Requirement to obtain leave prior to bringing further motions.

Hollamby v. Campbell [\(2008\), 2008 CarswellOnt 3072](#), Backhouse J. (Ont. S.C.J.) [Ontario]

FAM.IX.10.b

Subject Title: Family law

Classification Number: IX.10.b

Custody and access -- Practice and procedure -- Independent representation of children

Final order of custody was issued -- "No access" order was made because of alienation of child from mother -- Court was statutorily compelled to review matter at reasonable time to determine if timing was appropriate for re-integration of contact between child and father -- Matter was ordered back before court -- At trial of action, child was not represented by Office of Children's Lawyer -- Father brought motion to appoint lawyer to represent interests of child -- Motion dismissed -- Psychiatrist who had been therapeutically treating child and mother since order had submitted report -- It was not in best interests of child to have lawyer appointed to represent his interests at this time -- Child was still in transitional stage in restoring his relationship with his mother and to have Office of Children's Lawyer or another court appointed lawyer become involved in matter at this stage would simply draw child back into situation where he was having to choose between parents -- Because of professional opinions before court and affidavits of parties, "no access" and "no contact" provisions of order should not be varied -- Only relevant consideration for court on issue such as this was best interests of child -- Despite "maximum contact" principle, contact must be restricted or in some cases prohibited if it conflicted with child's best interests -- Wish to have lawyer appointed was thinly guised effort by father to skirt essential elements of judgment -- Father knew that child would state to lawyer that he wanted to reside with father -- Using that information, father would then argue that best interests of child would be thus served -- Psychiatrist could speak for child and advise court in child's best interests.

L. (J.K.) v. S. (N.C.) (2008), 2008 CarswellOnt 5490, Turnbull J. (Ont. S.C.J.) [Ontario]

FAM.IX.11

Subject Title: Family law

Classification Number: IX.11

Custody and access -- Evidence

Final order of custody was issued -- "No access" order was made because of alienation of child from mother -- Court was statutorily compelled to review matter at reasonable time to determine if timing was appropriate for re-integration of contact between child and father -- Matter was ordered back before court -- Father brought motion to have hospital records introduced into evidence -- Motion dismissed -- These were records relating to recent weekend submission of child to that hospital and presumably notes and records relating to his treatment and participation in program -- Admission and child's behaviour and condition had not influenced psychiatrist who had co-ordinated admission to recommend any change in court order or therapeutic intervention which child and mother were available to receive.

L. (J.K.) v. S. (N.C.) [\(2008\), 2008 CarswellOnt 5490](#), Turnbull J. (Ont. S.C.J.) [Ontario]

FAM.IX.14

Subject Title: Family law

Classification Number: IX.14

Custody and access -- Miscellaneous issues

Counselling.

Hollamby v. Campbell [\(2008\), 2008 CarswellOnt 3072](#), Backhouse J. (Ont. S.C.J.) [Ontario]

FAM.XV.2.b

Subject Title: Family law

Classification Number: XV.2.b

Children in need of protection -- Administrative process -- Placement of child

Child was brought into care at birth for one month -- Parents began working on voluntary basis with Children's Aid Society -- In July 2006, mother relapsed with alcohol and cocaine -- Child stayed with father subject to terms of new care agreement -- In August 2006, child was apprehended -- Child was placed in mother's care, on consent of all parties, in March 2007 -- In April 2007, parties consented to finding of protection and child was placed in mother's care for six months subject to supervision of Society -- Status review hearing was scheduled for September -- Mother tested positive for alcohol consumption in violation of terms of outstanding supervision order -- Society amended its status review application and recommended that child be placed with father with access to mother -- Society brought motion to place child in interim care and custody of father, pending outcome of status review application

-- Child was placed in father's care in November 2007 on without prejudice basis, on consent of all parties -- Matter was put over to be argued on its merits -- Test for placement under s. 64(8) of Child and Family Services Act is interim best interests -- Society and father had demonstrated that best interests of child would demand that he be left with his father -- Mother had long-standing addiction issues -- Mother relapsed before original status review application could be heard -- Relapse, even if it was confined to one occasion, might also change prognosis for mother's long-term prospects -- That was issue that must be subject of evidence and would be central issue at trial of matter -- Child had settled in with father and there appeared to be no issues -- It was in child's best interests to remain in father's care on temporary basis.

Children's Aid Society of Toronto v. N. (K.) (2008), 2008 CarswellOnt 4679, 2008 ONCJ 340, B.C. Weagant J. (Ont. C.J.) [Ontario]

FAM.XV.7.a

Subject Title: Family law

Classification Number: XV.7.a

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

Child was brought into care at birth for one month -- In July 2006, mother relapsed and child stayed with father subject to terms of new care agreement -- In August 2006, child was apprehended -- In April 2007, parties consented to finding of protection -- Child was placed in mother's care for six months subject to supervision of Children's Aid Society -- Status review hearing was scheduled -- Mother tested positive for alcohol consumption -- Society amended its status review application and recommended that child be placed with father with access to mother -- Society brought motion to place child in interim care and custody of father, pending outcome of status review application -- Child was placed in father's care in November 2007 on without prejudice basis, on consent of all parties -- Legal issue was raised by mother -- Nature of "without prejudice" order would vary from case to case, depending on reason it was agreed to by parties or imposed by court -- Obviously, mother's counsel agreed to "without prejudice" order in matter last November with specific intention to preserve mother's legal position as of that date -- When motion was to be heard, mother would enjoy form of presumption of custody unless Society could persuade court that best interests of child demanded change -- Notwithstanding prior "without prejudice" order, once intervening "without prejudice" order was made placing child elsewhere, presumption had dwindling shelf life -- Passage of time in care of another person, even if it was on "without prejudice" basis, could effectively create new status for child -- As with any apprehension, parties may not be ready

to argue on first appearance and "without prejudice" order may be agreed to for sake of expediency -- It was child's best interests at moment of re-apprehension that were central to decision making and not assessment of risk should child be returned to parent in whose care child had been previously placed -- Mother was not in good position last autumn to jump "best interests hurdle" -- Three months that child had been in father's care had begun to erode "presumption" that mother might have enjoyed last fall.

Children's Aid Society of Toronto v. N. (K.) [\(2008\), 2008 CarswellOnt 4679, 2008 ONCJ 340](#), B.C. Weagant J. (Ont. C.J.) [Ontario]

FAM.XX.4.a

Subject Title: Family law

Classification Number: XX.4.a

Costs -- Family property applications -- General principles

Parties were married, had two children and separated -- Children were 17 and 14 years of age -- Wife and children remained in matrimonial home after separation -- Husband's application for order for partition and sale of matrimonial home was granted on condition that wife be granted opportunity to offer to purchase house -- Parties made submissions on costs -- Each party was ordered to pay his and her own costs -- Success was divided -- Timing of sale of matrimonial home and agreement that mother be permitted period of time to see if she could buy out house was not in accord with offer to settle.

Rodgers v. Rodgers [\(2008\), 2008 CarswellOnt 3015](#), Wein J. (Ont. S.C.J.); additional reasons to [\(2008\), 2008 CarswellOnt 2502](#), Wein J. (Ont. S.C.J.) [Ontario]

FAM.XX.5

Subject Title: Family law

Classification Number: XX.5

Costs -- Custody and access

Parties married in 2006, had one child and separated in 2007 -- Father cared for child while mother worked outside home -- On separation, mother refused regular access to father -- Father's motion for temporary joint custody and increased access was granted -- Father was awarded costs of \$13,255.01 -- There was no reason why father should not be able to receive full amount of costs requested -- Father was entitled to costs -- Father was successful on all key issues -- Mother acted unreasonably by refusing to communicate with father's lawyer and in not co-operating with father's request for access -- Mother made false and misleading statements in her materials.

Morano v. Coletta ([2008](#)), [2008 ONCJ 389](#), [2008 CarswellOnt 5127](#), P.W. Dunn J. (Ont. C.J.); additional reasons to ([2008](#)), [2008 CarswellOnt 2735](#), [2008 ONCJ 228](#), [52 R.F.L. \(6th\) 200](#), P.W. Dunn J. (Ont. C.J.) [Ontario]



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