

The Canadian Abridgment eDigests -- Family Law - Ontario

2011-3
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FAM.III.8.i

Subject Title: Family law

Classification Number: III.8.i

Division of family property -- Factors affecting equal or unequal division -- Miscellaneous

Husband and wife were married in February 2001 and separated in June 2008 after entering into separation agreement -- Separation agreement was drawn by disbarred lawyer who at time was acting as paralegal -- Separation agreement contained internal inconsistencies and there were two slightly different versions of agreement -- Respondent husband sought to set aside separation agreement on basis of inadequate disclosure, inadequate consideration, unconscionability and its failure to provide for equalization of family property -- Separation agreement contained no provision for independent legal advice and no general release of claims or discussion of equalization -- Separation agreement was not unconscionable or unenforceable -- Separation agreement was more statement of intention than well-crafted legal document, but it did contain well thought out plan for separation of parties' joint business and ending of their marriage -- At time of trial separation, agreement had been partly performed -- Separation agreement was entered into voluntarily; there was no duress on part of wife -- Impetus for quick completion of separation agreement came from husband's desire to begin new life in Florida, combined with wife's desire to end relationship -- It was clear that husband understood terms of separation agreement and believed it to be in keeping with his plan to leave and as to what he was entitled to and/or wanted at the time he signed it -- Parties chose not to pursue legal advice to save money -- There was no non-disclosure; parties were well aware of their assets and liabilities; they formed part of agreement -- There were no psychological issues that prevented one party from comprehending separation agreement -- Neither party was in greater position of power than other -- There were no medical issues -- There was no evidence that one party did not understand nature or consequences of separation agreement; in fact, there was evidence to contrary, given that parties amended it and partially performed it -- Although separation agreement did not specifically release equalization rights, in effect parties equalized their property by separation agreement.

Nisbett v. Nisbett

[\(2010\), 2010 ONSC 4381,](#)

[2010 CarswellOnt 5827](#), Tucker J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.e.x

Subject Title: Family law

Classification Number: IV.1.e.x

Support -- Spousal support under Divorce Act and provincial statutes -- Interim support -- Miscellaneous

Parties commenced cohabitation in 1987, married in 1997, had three children and separated December 31, 2007 -- Wife was homemaker throughout marriage and husband was sole officer, director and shareholder of

two companies, deriving majority of income from retained earnings and distributions from companies upon which husband paid no personal income tax -- Pursuant to consent order of February 2009 husband produced preliminary income and valuation reports disclosing husband's withdrawals from companies of \$234,000 in 2006, \$626,000 in 2007, and \$637,000 in 2008, and disclosing pre-tax corporate income of \$222,000 in 2006, \$630,000 in 2007 and \$557,000 in 2008 -- Valuator imputed husband's annual income at \$200,000 per year -- Husband and companies had not filed income tax returns for 2008 -- Following separation husband paid total amount of \$146,995 on account of basic child support and spousal support -- Wife brought motion for interim spousal support -- Motion granted -- Husband was ordered to pay \$11,000 per month in interim spousal support retroactive to April 2009 -- Wife clearly had need of interim spousal support -- Imputing husband's income at \$557,000 was appropriate based on retained earnings of companies as father's businesses were not capital-intensive and no corporate indebtedness existed -- Valuator's opinion as to husband's imputed income was not justified by facts or analysis in valuator's report -- Husband's costs in sorting out business and personal transactions and impending tax consequences resulted from husband's practices and were not result of separation -- Wife was homemaker for past 20 years without tax or business knowledge and was in no way responsible for husband's financial issues -- Husband's allegation that husband's income was depressed as result of matrimonial litigation was matter for trial judge to consider for possible material change in circumstances.

Ramlochan v. Ramlochan

[\(2010\), 2010 ONSC](#)

[4323, 2010 CarswellOnt 5726](#), D.L. Corbett J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.f.iii.B

Subject Title: Family law

Classification Number: IV.1.f.iii.B

Support -- Spousal support under Divorce Act and provincial statutes -- Lump sum award -- Factors to be considered -- Respondent unlikely to make periodic payments

Parties married in 1996, had three children, and separated in 2005 -- Wife was primarily responsible for raising children and maintaining home -- Husband was primary wage earner -- Wife worked as graphic designer prior to marriage and obtained sporadic freelance work after separation -- Husband was in new relationship with partner who paid for all husband's expenses -- Husband failed to pay spousal support since separation -- Wife applied for spousal support, and other relief -- Application granted -- Husband ordered to pay lump sum support of \$50,000 -- As result of parties' role in marriage, wife had been away from career for 14 years -- Wife's annual income was fixed at \$22,200 -- Youngest child was two years old when parties separated -- Husband, with imputed annual income of \$75,000, had ability to pay spousal support -- Husband, resistant to idea of spousal support, was unlikely to pay periodic support -- Lump sum would create clean break between parties and was most appropriate form of support under circumstances.

Bardouniotis v. Trypis

[\(2010\), 2010 ONSC](#)

[4466, 2010 CarswellOnt 5956](#), Mesbur J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.f.iii.D

Subject Title: Family law

Classification Number: IV.1.f.iii.D

Support -- Spousal support under Divorce Act and provincial statutes -- Lump sum award -- Factors to be considered -- Recognition of contribution to marriage

Common-law wife brought application for monetary compensation for financial contributions she made and services she provided to husband, his home and business during 11-year cohabitation -- Application granted -- Wife was awarded monetary compensation in net amount of \$305,000, including prejudgment interest, for her contributions in money and in labour to assets of husband -- She was also awarded lump sum spousal support of \$36,000, including prejudgment interest -- Wife's requested support of about \$1,000 a month, for 54 months to 121 months, totalling \$54,000 to \$121,000, was reasonable -- Dependency of 54 months rather than 121 was more reasonable duration for parties -- Many of those months were in taxation years for which it was likely not possible to refile to claim deduction for husband, and in any event he had not declared enough income to get any benefit -- Lump sum amount would be more suitable.

Aksman v. Shenderoy

[\(2010\), 2010 ONSC 3559,](#)

[2010 CarswellOnt 6016](#), Perkins J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.g

Subject Title: Family law

Classification Number: IV.1.g

Support -- Spousal support under Divorce Act and provincial statutes -- Retroactivity of order

Parties commenced cohabitation in 1995, had two children and separated in 2000 -- Parties had traditional marriage with wife assuming primary responsibility for home and children and husband working in plywood plant -- Wife had custody of children pursuant to interim order of October 2001, husband was required to pay monthly child support, and order was varied on consent in February 2002 granting husband interim access, fixing spousal arrears and fixing interim child support at \$506 per month -- Husband left employment in Ontario in March 2003, moved to Manitoba with new partner and had limited or no involvement with children, seeing them last in December 2006 -- Wife earned \$1,777.60 in 2000, \$14,074.91 in 2001, \$10,912 in 2002, \$9,546.65 in 2003, \$15,498 in 2004, \$22,646 in 2005 and 2006, \$25,152.36 in 2007 and wife testified to income of approximately \$27,000 in 2008 and \$28,000 in 2009 -- Husband's tax returns disclosed income of \$42,839 in 2000, \$26,765 in 2001, \$38,777 in 2002, \$16,791 in 2003, \$21,267 in 2004 and \$15,883 in 2005, and husband failed to provide updated financial information -- Wife applied for spousal support -- Application granted -- Husband was ordered to pay \$506 per month in spousal support up to and including December 31, 2004 and terminating thereafter -- Amount of spousal support was appropriately based on husband's reported income through 2004 -- Parties' relative financial circumstances after 2004 supported conclusion to terminate spousal support after 2004.

Koski v. Kristjanson

[\(2010\), 2010 ONSC 2005,](#)

[2010 CarswellOnt 5675](#), T.A. Platana J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.b.vii.A

Subject Title: Family law

Classification Number: IV.3.b.vii.A

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Extraordinary expenses -- General principles

Parties married in 1996, had three children and separated in 2005 when youngest child was two years old -- Children were in mother's interim custody since separation -- Father did not contribute financially to children's multitude of activities -- Mother applied for extraordinary expenses and other relief -- Father ordered to pay 77 percent of extraordinary expenses based on imputed income of \$75,000 per year and mother's imputed income of \$22,200 per year -- Amount of \$4,000 annually would be reasonable and realistic to cover children's activities based on parties' incomes -- Some of children's activities could be met out of table support.

Bardouniotis v. Trypis

[\(2010\), 2010 ONSC](#)

[4466, 2010 CarswellOnt 5956](#), Mesbur J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.c.iii.B

Subject Title: Family law

Classification Number: IV.3.c.iii.B

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

Parties married in 1996, had three children, and separated in 2005 when youngest child was two years old -- Mother earned \$30,000 to \$35,000 per year as graphic designer prior to having children -- Mother was primarily responsible for raising children and maintaining home -- Children were in mother's interim custody since separation -- Father was primary wage-earner during marriage -- Mother was sole owner of condominium with net rental income of \$7,000 per year -- Mother obtained sporadic freelance work after separation -- Mother's business income in 2008 was \$20,550 less business expenses -- Mother applied for extraordinary expenses, and other relief, and issue arose as to mother's income -- Mother could be expected to earn \$15,000 to \$20,000 in gross revenue from business -- Mother was able to write off business expenses and pay little tax on remaining income -- Mother's annual income was fixed at \$22,200 per year.

Bardouniotis v. Trypis

[\(2010\), 2010 ONSC](#)

[4466, 2010 CarswellOnt 5956](#), Mesbur J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.c.iii.B

Subject Title: Family law

Classification Number: IV.3.c.iii.B

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

Parties commenced cohabitation in 1995, had two children and separated in 2000 -- Parties had traditional marriage with mother assuming primary responsibility for home and children and father working in plywood plant -- Interim order of October 2001 awarded mother custody of children and required father to pay \$506 per month in interim child support based on father's reported income of \$35,000 per year -- Order was varied on consent in February 2002 granting father interim access, fixing spousal arrears and fixing interim child support at \$506 per month -- Father left employment in Ontario in March 2003, moved to Manitoba with new partner and had limited or no involvement with children, seeing them last in December 2006 -- Mother earned \$1,777.60 in 2000, \$14,074.91 in 2001, \$10,912 in 2002, \$9,546.65 in 2003, \$15,498 in 2004, \$22,646 in 2005 and 2006, \$25,152.36 in 2007 and mother testified to income of approximately \$27,000 in 2008 and \$28,000 in 2009 -- Father's tax returns disclosed income of \$42,839 in 2000, \$26,765 in 2001, \$38,777 in 2002, \$16,791 in 2003, \$21,267 in 2004 and \$15,883 in 2005, and father failed to provide updated financial information -- Father's arrears pursuant to existing interim, interim orders as of December 2004 were \$20,848.77 -- Children were 14 and 11 years of age -- Mother applied for child support -- Application granted -- Father was ordered to pay \$259 per month in ongoing child support and support arrears of \$29,445.20 -- Calculation of amount of ongoing support was appropriately based on imputing father's 2010 income at \$18,720 pursuant to Manitoba Child Support Guidelines, and fixing income with reference to Manitoba Minimum Wage Schedule -- Arrears were appropriately calculated for 2006 through 2009 based on Manitoba Child Support Guidelines with reference to Manitoba Minimum Wage Schedule for relevant years -- Father was capable of earning income and imputing annual income based on Manitoba minimum wage was reasonable in light of evidence of father's current residence and father's failure to cooperate in financial disclosure.

Koski v. Kristjanson

[\(2010\), 2010 ONSC 2005,](#)

[2010 CarswellOnt 5675](#), T.A. Platana J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.c.iii.H

Subject Title: Family law

Classification Number: IV.3.c.iii.H

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

Parties married in 1996, had three children and separated in 2005 when youngest child was two years old -- Children were in mother's interim custody since separation -- Father was involved in family printing business -- Father was primary wage earner during marriage -- Father was in new relationship with partner who paid all expenses -- Father historically earned \$58,000 per year, plus cash of \$30,000 to \$60,000 from Go-Kart business that he ceased after separation -- Father alleged annual income of \$25,000 based on 2009 tax return -- Mother applied for child support and extraordinary expenses, and issue arose as to father's income -- Father was healthy, fit and personable, and limited success in market was due more to lack of effort than downturn in economy -- Father's benefits from business amounted to \$12,000 to \$15,000 per year -- Father was able to earn at least \$58,000 as he had done in past -- Father was imputed annual income of \$75,000.

Bardouniotis v. Trypis

[\(2010\), 2010 ONSC](#)

[4466, 2010 CarswellOnt 5956](#), Mesbur J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.c.iii.L

Subject Title: Family law

Classification Number: IV.3.c.iii.L

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

Parties commenced cohabitation in 1987, married in 1997, had three children and separated December 31, 2007 -- Mother was homemaker throughout marriage and father was sole officer, director and shareholder of two companies, deriving majority of income from retained earnings and distributions from companies upon which father paid no personal income tax -- Pursuant to consent order of February 2009 father produced preliminary income and valuation reports disclosing father's withdrawals from companies of \$234,000 in 2006, \$626,000 in 2007, and \$637,000 in 2008, and disclosing pre-tax corporate income of \$222,000 in 2006, \$630,000 in 2007 and \$557,000 in 2008 -- Valuator imputed father's annual income at \$200,000 per year -- Father and companies had not filed income tax returns for 2008 -- Two children ages 19 and 14 remained children of marriage -- Mother brought motion for interim child support -- Motion granted -- Father was ordered to pay \$6,713.20 per month in interim child support, 50 per cent of s. 7 expenses and \$154,403.60 retroactive child support, retroactive to January 1, 2008 -- Amount of ongoing and retroactive child support was appropriately based on father's imputed income of \$557,000 and pursuant to Federal Child Support Guidelines related to income over \$150,000 -- Imputing father's income at \$557,000 was appropriate based on retained earnings of companies as father's businesses were not capital-intensive and no corporate indebtedness existed -- Valuator's opinion as to father's imputed income was not justified by facts or analysis in valuator's report -- Conservative approach to imputing income to father based on 2008 retained earnings, rather than amount father withdrew in 2008, was appropriate on interim proceeding -- Equal sharing of s. 7 expenses was warranted in view of father's child and spousal support obligations.

Ramlochan v. Ramlochan

[\(2010\), 2010 ONSC](#)

[4323, 2010 CarswellOnt 5726](#), D.L. Corbett J. (Ont. S.C.J.) [Ontario]

FAM.IX.1.a

Subject Title: Family law

Classification Number: IX.1.a

Custody and access -- Jurisdiction of courts -- General principles

Father lived in Ontario and was Canadian citizen -- Mother lived in Utah, was citizen of Mexico, and had legal resident status in US -- Mother and father married in Mexico in 1995 and had two children -- In 2004, Utah court granted parties divorce and awarded parties joint legal custody of children with primary physical custody to father -- Since 2004, children resided with father in Ontario and had visits and telephone and e-mail contact with mother -- In March 2010, mother brought action in Utah for reversal of custody provisions in Utah decree -- Father brought action for custody in Ontario -- Paternal grandfather brought motion to change maternal grandmother's visitation with children -- Issue arose as to whether Ontario court should defer to Utah court where original decree was issued or whether it should exercise its jurisdiction with respect to children's custody and access pursuant to s. 22 of Children's Law Reform Act based on fact that children were now and had been habitually resident in Ontario since 2004 -- Ontario court would exercise its

jurisdiction with respect to custody and access of children -- On encouragement of father, without opposition from mother, and in accordance with Canadian Judicial Council's approval of concept of judicial networking and collaboration in cases involving multiple jurisdictions, Ontario court had contacted Utah court and informed it of Ontario proceeding and relevant portions of Children's Law Reform Act, and reserved judgment pending decision of Utah court -- Ontario court had been informed by Utah court that, after hearing matter on issue of jurisdiction, Utah court had refused to exercise jurisdiction -- Children were habitually resident in Ontario and had been residents of Ontario since 2004.

Campbell v. Campbell

[\(2010\), 2010 ONSC 4363,](#)

[2010 CarswellOnt 5908](#), Kruzick J. (Ont. S.C.J.) [Ontario]

FAM.IX.2.a.ix

Subject Title: Family law

Classification Number: IX.2.a.ix

Custody and access -- Factors to be considered in custody award -- Best interests of child generally -- Miscellaneous

Parties commenced cohabitation in 1995, had two children and separated in 2000 -- Parties had traditional marriage with mother assuming primary responsibility for home and children and father working in plywood plant -- Interim order of October 2001 awarded mother custody of children and required father to pay \$506 per month in interim interim child support based on father's reported income of \$35,000 per year -- Order was varied on consent in February 2002 granting father interim interim access, fixing spousal arrears and fixing interim interim child support at \$506 per month -- Father left employment in Ontario in March 2003, moved to Manitoba with new partner and had limited or no involvement with children, seeing them last in December 2006 -- Mother applied for custody -- Application granted -- Under circumstances award of custody to mother was appropriate.

Koski v. Kristjanson

[\(2010\), 2010 ONSC 2005,](#)

[2010 CarswellOnt 5675](#), T.A. Platana J. (Ont. S.C.J.) [Ontario]

FAM.XV.9

Subject Title: Family law

Classification Number: XV.9

Children in need of protection -- Unmanageable children

14-year-old child had been in temporary care of children's aid society for several years while there was ongoing child protection proceeding involving her and number of her siblings -- Proceeding was terminated by order for Crown wardship with parental access -- Child did not do well in foster home placement -- Child's behaviour was problematic -- Child was depressed, irritable, had difficulty following direction and was prone to angry outbursts -- In 2008, child was transferred to treatment centre because her behaviour had escalated -- In 2008, treatment centre discharged child from its programs and facilities, and child was

placed in group home -- Child's problematic behaviour had not abated -- Child was involved in several incidents against staff members, one of which resulted in charges under Youth Criminal Justice Act for assault and assault with weapon -- Children's aid society applied for order committing child to secure treatment program -- Application granted -- Order for secure treatment was appropriate in circumstances -- Prerequisite set out in s. 117 of Child and Family Services Act had been met -- Child had been diagnosed with post-traumatic stress disorder, oppositional defiant disorder and mood disorder -- Child had caused serious bodily harm to staff member and had attempted to cause serious bodily harm to herself -- In past year, child had had many other incidents involving threats or actual attempts to seriously harm herself and other persons -- Child had signed consent to application -- Secure treatment centre would be effective to prevent child from causing or attempting to cause serious bodily harm to herself or others, and in treating her mental disorders -- There were no less restrictive methods of providing treatment.

*Children's Aid Society
of Algoma v. M. (K.A.L.)*

[\(2010\)](#),

[2010 CarswellOnt 5886](#), [2010 ONCJ 324](#), John Kukurin J. (Ont. C.J.) [Ontario]

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