

The Canadian Abridgment eDigests -- Family Law - Ontario

2012-8
February 20, 2012

FAM.III.10.b.xii

Subject Title: Family law

Classification Number: III.10.b.xii

Division of family property -- Matrimonial home -- Order for possession -- Miscellaneous

Parties commenced cohabitation in 1995, had one child and separated in 2009 -- As of separation and thereafter man's work precluded residence in Thunder Bay, direct access to child was relatively infrequent, and woman had de facto custody of child -- Woman was granted interim custody of child 12 years of age -- Man earned \$256,716 per year -- Parties jointly owned home in Thunder Bay -- Report of Office of Children's Lawyer concluded importance to child of maintaining friendships and continuing to attend current school -- Woman applied for interim exclusive possession of matrimonial home -- Man brought cross-application for sale of matrimonial home -- Application dismissed -- Cross-application granted -- Order was issued for sale of property, sale to be delayed until after February 1, 2012 -- Evidence supported view that child's best interests could be jeopardized by immediate sale of matrimonial home and man's circumstances and real estate market did not require immediate sale -- Court lacked jurisdiction to order exclusive possession as cohabiting parties were not spouses for purposes of matrimonial home under Family Law Act.

McGuire v. Jean

[\(2011\), 2011 CarswellOnt 10075, 2011 ONSC 5236,](#)

F.B. Fitzpatrick J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.c.i

Subject Title: Family law

Classification Number: IV.1.c.i

Support -- Spousal support under Divorce Act and provincial statutes -- Determination of spouse's annual income -- General principles

Parties met in 1992, began cohabiting in April 1994, and separated on November 1, 2008 -- Parties had two children, B, born March 22, 1999, and C, born May 29, 2001 -- Since separation, children lived with mother -- In addition to his income, father received monthly tax-free annuity of \$1,750 from his mother's estate -- On August 30, 2010, father was ordered to pay child support of \$1,760 per month and spousal support of \$2,000 per month -- Mother brought application for increase in and retroactive variation of spousal support and child support -- Application granted in part -- There was no increase in support, but father was ordered to pay child support retroactive to November 1, 2008, spousal support retroactive to June 2010, as well as 96 per cent of children's extraordinary expenses -- Father was imputed with income of \$130,000 for purposes of support -- Determination of father's income for support purposes was based on his taxable income for 2010 -- Father did not establish that he was incapable of earning income at level he earned in 2010 by reason of disability due to anxiety and depression -- There was no substantiation of any actual reduction of father's income by date of motion, no functional capacity assessment, and no medical opinion detailing impact

that his condition had on his ability to work.

Laurain v. Clarke

[\(2011\), 2011 CarswellOnt 13729, 2011](#)

[ONSC 7195](#), Price J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.c.iii

Subject Title: Family law

Classification Number: IV.1.c.iii

Support -- Spousal support under Divorce Act and provincial statutes -- Determination of spouse's annual income -- Imputed income

Parties met in 1992, began cohabiting in April 1994, and separated on November 1, 2008 -- Parties had two children, B, born March 22, 1999, and C, born May 29, 2001 -- Since separation, children lived with mother -- In addition to his income, father received monthly tax-free annuity of \$1,750 from his mother's estate -- On August 30, 2010, father was ordered to pay child support of \$1,760 per month and spousal support of \$2,000 per month -- Mother brought application for increase in and retroactive variation of spousal support and child support -- Application granted in part -- There was no increase in support, but father was ordered to pay child support retroactive to November 1, 2008, spousal support retroactive to June 2010, as well as 96 per cent of children's extraordinary expenses -- Father was imputed with income of \$130,000 -- Annuity payments were payments of capital, not income generated by capital -- There was no evidence of economic distress on mother's part -- Annuity payments did not compensate father for loss of income or income earning capacity -- Annuity payments were inheritance, which was form of capital normally excluded from equalization between married spouses -- Annuity payments were not treated as taxable income.

Laurain v. Clarke

[\(2011\), 2011 CarswellOnt 13729, 2011](#)

[ONSC 7195](#), Price 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 1995, had one child and separated in 2009 -- As of separation and thereafter husband's work precluded residence in Thunder Bay, direct access to child was relatively infrequent, and wife had de facto custody of child -- Wife was granted interim custody of child 12 years of age -- Husband earned \$256,716 per year -- Wife applied for retroactive and ongoing interim spousal support -- Issues arose regarding husband maintaining wife as beneficiary under life insurance policy and wife withdrawing \$45,000 from parties' joint line of credit as payment of retroactive spousal support -- Application granted in part -- Husband was ordered to pay \$8,667 per month in interim ongoing spousal support and to retain wife as beneficiary under life insurance policy -- Order was further issued to require wife

to account for expenditure of funds withdrawn from joint account if questioning of wife did not occur by November 30, 2011 -- Interim spousal support award was appropriately based on father's annual income of \$256,716 and at low range of Divorce Mate calculations -- Award of retroactive spousal support was not warranted on interim basis in view of insufficient budget and accounting information and was more appropriately determined at trial following development of trial record -- Reinstatement of wife as beneficiary under husband's life insurance policy was appropriate to extent that benefit was provided during course of relationship -- Drastic action such as wife's withdrawal from joint line of credit during matrimonial litigation was not properly ignored by court.

McGuire v. Jean

[\(2011\), 2011 CarswellOnt 10075, 2011 ONSC 5236,](#)

F.B. Fitzpatrick 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 1992, married in 1993, had two children and separated in 2009 -- Order of March 2010 granted joint custody and primary residence to husband, specified access to wife including alternate weekends, and wife was ordered to pay \$710 per month in child support based on income of \$47,100 per year -- Order of 2010 required husband to pay for all expenses of matrimonial home, or \$2,472.55 per month, which wife alleged husband failed to do -- In October 2010 violent incident occurred at matrimonial home when husband threatened wife at gunpoint in front of children, husband was arrested, charged with attempted murder and was in custody awaiting trial -- Following husband's arrest wife was granted interim custody and subsequently wife was awarded interim ongoing child support -- Wife's motion for sole custody and other relief adjourned on terms to provide husband's new solicitor time to deliver responding materials -- Wife was former full-time employee dismissed in September 2010, receiving employment insurance benefits of \$1,600 per month and wife's income was determined at \$19,200 per year -- Husband received Workplace Safety and Insurance Board (WSIB) payments determined at non-taxable gross up of \$41,126 per year -- Wife's employment insurance benefits would terminate September 2011 -- Wife acknowledged using husband's WSIB payments deposited to joint account to pay monthly expenses of matrimonial home between October 2010 and February 2011 -- Wife brought motion for interim spousal support -- Motion dismissed -- Based on parties' current annual incomes, no spousal support was warranted at present -- Determination of spousal support payable from September 2011 upon termination of wife's employment insurance benefits, and any amount of retroactive spousal support, was properly left to re-commencement of hearing after adjournment -- Considerations of relevance of wife's use of husband's WSIB payments to pay household expenses to issue of retroactive spousal support and whether husband owed particular amounts for household expenses were properly left to judge at re-commencement of proceeding following adjournment.

Singh v. Singh

[\(2011\), 2011 CarswellOnt 10137, 2011 ONSC 4643,](#)

Price 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 married in 1990 and divorced in 2005 -- Parties had 4 children, born in 1992, 1994, 1996 and 1999 -- Parties reached settlement that resulted in divorce order in 2006, requiring husband to make payment to equalize net disposable income -- Two sons lived with father while two daughters lived with mother -- Father began to earn modest income while taking courses to become accountant -- Although father earned considerable income, he applied for termination of spousal support -- Application was dismissed but support was ordered to continue two years from date of decision, when mother would be fully self-supporting -- Issues arose from this decision including custody and access provisions, income calculation, and custody and access provisions -- Submissions made by both parties -- Order accordingly in favour of father -- Costs awarded to father -- Parties were unable to agree on equalization payments for disposable income in 2008 and 2009 -- Calculation of father's counsel was found to be correct and mother owed repayment to father.

Hackett v. Leung

[\(2011\), 2011 CarswellOnt 5870, 2011](#)

[ONSC 2746](#), Tranmer J. (Ont. S.C.J.); additional reasons to [\(2010\), 2010 CarswellOnt 9793, 2010 ONSC 6412, 96 R.F.L. \(6th\) 430](#), Tranmer 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 met in 1992, began cohabiting in April 1994, and separated on November 1, 2008 -- Parties had two children, B, born March 22, 1999, and C, born May 29, 2001 -- Since separation, children lived with mother -- In addition to his income, father received monthly tax-free annuity of \$1,750 from his mother's estate -- On August 30, 2010, father was ordered to pay child support of \$1,760 per month and spousal support of \$2,000 per month -- Mother brought application for increase in and retroactive variation of spousal support and child support -- Application granted in part -- There was no increase in support, but father was ordered to pay child support retroactive to November 1, 2008, spousal support retroactive to June 2010, as well as 96 per cent of children's extraordinary expenses -- Children were in need of support, having regard to their ages and expenses that mother had to incur to maintain them -- Father had ability to pay support -- While father's annuity payments were not included in his income for purpose of calculating support, his means, included annuities, were factor in finding that retroactive support order would not place unfair or unreasonable burden on him -- Mother did not act unreasonably in delaying her application for support until June 2010, and there was no evidence that father was prejudiced by delay.

Laurain v. Clarke

[\(2011\), 2011 CarswellOnt 13729, 2011](#)

[ONSC 7195](#), Price 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 married in 1997, had one child and separated in November 2008 -- Pursuant to order of July 2011 husband was ordered to pay \$12,000 per month in spousal support, \$5,186 in child support, commencing July 15, 2011 and proportionate share of private school fees and live-in nanny employed by wife -- Following separation husband alleged paying \$6,000 per month in support for period December 2008 to March 2009, parties agreed husband paid \$7,000 per month for period March 2009 to March 2010, \$8,000 per month for period April 2010 to June 2010 and \$10,000 per month for period July 2010 to July 2011, which amounts did not differentiate between child support, s. 7 expenses and spousal support -- Husband earned \$571,298 in 2008, \$568,614 in 2009 and \$681,342 in 2010 -- Wife sought retroactive spousal support from date of separation to date wife commenced proceeding in October 2010 -- Wife applied for retroactive spousal support -- Application dismissed -- Wife's material did not deal sufficiently with wife's needs, conduct of husband, reason for delay or other matters relevant to determining appropriateness of award effective as of date of separation -- No presumptive entitlement to spousal support arose, and issue was best left for trial judge to determine on totality of evidence.

Watts v. Watts

[\(2011\), 2011 CarswellOnt 10265, 2011 ONSC](#)

[5694](#), Murray J. (Ont. S.C.J.) [Ontario]

FAM.IV.1.i.ii

Subject Title: Family law

Classification Number: IV.1.i.ii

Support -- Spousal support under Divorce Act and provincial statutes -- Time-limited award -- Spouse to become self-sufficient

Parties were married on September 12, 1974, and separated on May 29, 2002 -- Parties had no dependent children -- On January 14, 2005, parties entered into separation agreement, which provided that husband would pay monthly spousal support of \$750 based on annual income of \$60,000 -- Husband continued to work full-time after separation -- Wife worked as machine operator through temporary employment agency, but earned less than she had at separation -- Wife claimed that she had health problems that affected her ability to work -- Wife brought motion for increase in spousal support -- Husband brought cross-motion for disclosure of wife's efforts to become self-supporting, and for termination date of support -- Motion granted -- Cross-motion dismissed -- Husband was ordered to pay spousal support of \$825 per month -- Separation agreement did not set out termination date -- Given silence in separation agreement and length of parties' relationship, it was not appropriate to add requirement that wife had to become self-supporting by particular date.

Salazar v. Salazar

[\(2011\), 2011 ONCJ 523, 2011](#)

[CarswellOnt 11673](#), Paddy A. Hardman J. (Ont. C.J.); additional reasons at [\(2012\), 2012 ONCJ 44](#), Paddy A. Hardman J. J. (Ont. C.J.) [Ontario]

FAM.IV.1.j.iii.C

Subject Title: Family law

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

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

Parties were married on September 12, 1974, and separated on May 29, 2002 -- Parties had no dependent children -- On January 14, 2005, parties entered into separation agreement, which provided that husband would pay monthly spousal support of \$750 based on annual income of \$60,000 -- Husband continued to work full-time after separation -- Wife worked as machine operator through temporary employment agency, but earned less than she had at separation -- Wife claimed that she had health problems that affected her ability to work -- Wife brought motion for increase in spousal support -- Husband brought cross-motion for disclosure of wife's efforts to become self-supporting, and for termination date of support -- Motion granted -- Cross-motion dismissed -- Husband was ordered to pay spousal support of \$825 per month -- Separation agreement contemplated that there might be changes in incomes of one or both parties, and set out that such variation would constitute material change of circumstances for party affected -- As year-to-date earnings of wife were not clear, variation of support was based on increase in husband's ability to pay more spousal support.

Salazar v. Salazar

[\(2011\), 2011 ONCJ 523, 2011](#)

[CarswellOnt 11673](#), Paddy A. Hardman J. (Ont. C.J.); additional reasons at [\(2012\), 2012 ONCJ 44](#), Paddy A. Hardman J. J. (Ont. C.J.) [Ontario]

FAM.IV.1.j.v

Subject Title: Family law

Classification Number: IV.1.j.v

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

Parties were married on September 12, 1974, and separated on May 29, 2002 -- Parties had no dependent children -- On January 14, 2005, parties entered into separation agreement, which provided that husband would pay monthly spousal support of \$750 based on annual income of \$60,000 -- Husband continued to work full-time after separation -- Wife worked as machine operator through temporary employment agency, but earned less than she had at separation -- Wife claimed that she had health problems that affected her ability to work -- Wife brought motion for increase in spousal support -- Husband brought cross-motion for disclosure of wife's efforts to become self-supporting, and for termination date of support -- Motion granted -- Cross-motion dismissed -- Husband was ordered to pay spousal support of \$825 per month -- Separation agreement did not set out termination date -- Given silence in separation agreement and length of parties' relationship, it was not appropriate to add requirement that wife had to become self-supporting by particular date.

Salazar v. Salazar

[\(2011\), 2011 ONCJ 523, 2011](#)

[CarswellOnt 11673](#), Paddy A. Hardman J. (Ont. C.J.); additional reasons at [\(2012\), 2012 ONCJ 44](#), Paddy A. Hardman J. J. (Ont. C.J.) [Ontario]

FAM.IV.2.e.ii.G

Subject Title: Family law

Classification Number: IV.2.e.ii.G

Support -- Child support -- Variation or termination of order -- Change in circumstances -- Miscellaneous

Parties married in 1990 and divorced in 2005 -- Parties had 4 children, born in 1992, 1994, 1996 and 1999 -- Parties reached settlement that resulted in divorce order in 2006, requiring husband to make payment to equalize net disposable income -- Two sons lived with father while two daughters lived with mother -- Father began to earn modest income while taking courses to become accountant -- Although father earned considerable income, he applied for termination of spousal support -- Application was dismissed but support was ordered to continue two years from date of decision, when mother would be fully self-supporting -- Issues arose from this decision including custody and access provisions, income calculation, and custody and access provisions -- Submissions made by both parties -- Order accordingly in favour of father -- Costs awarded to father -- Ongoing support was modified for both child and spousal support due to fact that husband had lost employment and was receiving employment insurance benefits -- Basing support on actual incomes would create undue hardship for mother as she would be required to pay support despite modest income -- Order was made stand-alone order as it varied provisions based on changes in material circumstances.

Hackett v. Leung

[\(2011\), 2011 CarswellOnt 5870, 2011](#)

[ONSC 2746](#), Tranmer J. (Ont. S.C.J.); additional reasons to [\(2010\), 2010 CarswellOnt 9793, 2010 ONSC 6412, 96 R.F.L. \(6th\) 430](#), Tranmer J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.b.i

Subject Title: Family law

Classification Number: IV.3.b.i

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

Parties commenced cohabitation in 1995, had one child and separated in 2009 -- As of separation and thereafter father's work precluded residence in Thunder Bay, direct access to child was relatively infrequent, and mother had de facto custody of child -- Mother was granted interim custody of child 12 years of age -- Father earned \$256,716 per year -- Mother applied for interim retrospective and ongoing interim child support -- Issue arose whether father was required to maintain child on father's health insurance -- Application granted in part -- Father was ordered to pay \$2,044 per month in child support and maintain child on insurance -- Amount of ongoing child support was appropriately based on father's income pursuant to Federal Child Support Guidelines -- Award of retroactive child support on interim basis was not appropriate in view of insufficient budget and accounting information -- Issue of retroactive support was more appropriately determined at trial following development of trial record.

McGuire v. Jean

[\(2011\), 2011 CarswellOnt 10075, 2011 ONSC 5236,](#)

F.B. Fitzpatrick J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.c.i

Subject Title: Family law

Classification Number: IV.3.c.i

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

Parties met in 1992, began cohabiting in April 1994, and separated on November 1, 2008 -- Parties had two children, B, born March 22, 1999, and C, born May 29, 2001 -- Since separation, children lived with mother -- In addition to his income, father received monthly tax-free annuity of \$1,750 from his mother's estate -- On August 30, 2010, father was ordered to pay child support of \$1,760 per month and spousal support of \$2,000 per month -- Mother brought application for increase in and retroactive variation of spousal support and child support -- Application granted in part -- There was no increase in support, but father was ordered to pay child support retroactive to November 1, 2008, spousal support retroactive to June 2010, as well as 96 per cent of children's extraordinary expenses -- Father was imputed with income of \$130,000 for purposes of support -- Determination of father's income for support purposes was based on his taxable income for 2010 -- Father did not establish that he was incapable of earning income at level he earned in 2010 by reason of disability due to anxiety and depression -- There was no substantiation of any actual reduction of father's income by date of motion, no functional capacity assessment, and no medical opinion detailing impact that his condition had on his ability to work.

Laurain v. Clarke

[\(2011\), 2011 CarswellOnt 13729, 2011](#)

[ONSC 7195](#), Price J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.c.iii.D

Subject Title: Family law

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

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

Parties met in 1992, began cohabiting in April 1994, and separated on November 1, 2008 -- Parties had two children, B, born March 22, 1999, and C, born May 29, 2001 -- Since separation, children lived with mother -- In addition to his income, father received monthly tax-free annuity of \$1,750 from his mother's estate -- On August 30, 2010, father was ordered to pay child support of \$1,760 per month and spousal support of \$2,000 per month -- Mother brought application for increase in and retroactive variation of spousal support and child support -- Application granted in part -- There was no increase in support, but father was ordered to pay child support retroactive to November 1, 2008, spousal support retroactive to June 2010, as well as 96 per cent of children's extraordinary expenses -- Father was imputed with income of \$130,000 -- Annuity payments were payments of capital, not income generated by capital -- There was no evidence of

economic distress on mother's part -- Annuity payments did not compensate father for loss of income or income earning capacity -- Annuity payments were inheritance, which was form of capital normally excluded from equalization between married spouses -- Annuity payments were not treated as taxable income.

Laurain v. Clarke

[\(2011\), 2011 CarswellOnt 13729, 2011](#)

[ONSC 7195](#), Price J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.e.i

Subject Title: Family law

Classification Number: IV.3.e.i

Support -- Child support under federal and provincial guidelines -- Undue hardship -- General principles

Parties married and had child in 1993 and separated in 1994 -- Child resided with mother; father remarried and had three children from second marriage -- Pursuant to final order dated May 5, 1998, father paid mother \$339 per month in child support -- Father's income was \$33,264 in 1998, \$44,000 in 1999, \$85,426 in 2007, \$97,203 in 2008, \$100,264 in 2009 and \$110,666 in 2010 -- Father was expected to earn \$105,485 in 2011 -- Mother brought motion to vary final order for child support -- Mother sought \$920 per month child support on go forward basis, based on \$105,485 father would earn in 2011 -- Mother also sought retroactive child support going back to three years prior to commencement of application -- Motion granted -- Father had not established that guideline table amount of support would cause him to suffer undue hardship -- Father had not exercised access for number of years so this had created no additional cost -- Father had no legal duty under judgment, order or separation agreement to support anyone else -- Father had no legal duty to support persons who were infirm or incapable of providing for their own support -- While father had legal duty to support his three other children, hardship to father in fulfilling this duty was result of his excessive spending habits which had caused him to incur substantial debt -- While retroactive award would cause some financial hardship to father, it was not undue, and father was to be given considerable amount of time to pay it.

Costa v. Perkins

[\(2011\), 2011 CarswellOnt 9779, 2011](#)

[ONSC 5536](#), Ricchetti J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.f

Subject Title: Family law

Classification Number: IV.3.f

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

Parties commenced cohabitation in 1992, married in 1993, had two children and separated in 2009 -- Pursuant to parties' separation agreement of October 2009, parties had joint custody with primary residence to father, and mother alleged father coerced signing of agreement -- Order of March 2010 granted joint custody and primary residence to father, specified access to mother including alternate weekends, and mother was ordered

to pay \$710 per month in child support based on income of \$47,100 per year -- Mother alleged father alienated children and order of January 2010 ordered involvement of Office of Children's Lawyer -- In October 2010 violent incident occurred at matrimonial home when father threatened mother at gunpoint in front of children, father was arrested, charged with attempted murder and was in custody awaiting trial -- Following father's arrest mother was granted interim custody and restraining order against father prohibited contact with children or mother -- Mother was former full-time employee dismissed in September 2010, receiving employment insurance benefits of \$1,600 per month and mother's income was determined at \$19,200 per year -- Father received Workplace Safety and Insurance Board (WSIB) payments determined at non-taxable gross up of \$41,126 per year -- Father alleged payment of child support was undue hardship -- Children were eight and 12 years of age -- Mother brought motion for interim child support -- Motion granted -- Father was ordered to pay \$620 per month in interim child support commencing September 2011, pursuant to Federal Child Support Guidelines -- Father's allegation of undue hardship was not supported -- Award of interim child support was warranted as father was in custody, had limited expenses, and father's obligation to pay legal fees was not higher priority than child support.

Singh v. Singh

[\(2011\), 2011 CarswellOnt 10137, 2011 ONSC 4643,](#)

Price J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.h.i

Subject Title: Family law

Classification Number: IV.3.h.i

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

Parties married in 1997, had one child and separated in November 2008 -- Pursuant to order of July 2011 father was ordered to pay \$12,000 per month in spousal support, \$5,186 in child support, commencing July 15, 2011 and proportionate share of private school fees and live-in nanny employed by mother -- Following separation father alleged paying \$6,000 per month in support for period December 2008 to March 2009, parties agreed father paid \$7,000 per month for period March 2009 to March 2010, \$8,000 per month for period April 2010 to June 2010 and \$10,000 per month for period July 2010 to July 2011, which amounts did not differentiate between child support, s. 7 expenses and spousal support -- Father earned \$571,298 in 2008, \$568,614 in 2009 and \$681,342 in 2010 -- Mother sought retroactive child support to date of separation in November 2008 -- Child was six years of age -- Mother applied for retroactive child support -- Application granted -- Father was ordered to pay \$4,372 per month in child support from November 2008 to December 2008, \$4,352 per month for 2009, \$5,186 per month for 2010, \$5,186 per month for period January to July 15, 2011, and to reimburse proportional share of s. 7 expenses, with credit for father's monthly post-separation payments up to December 31, 2011 against aggregate child support and s. 7 payments -- Amount of monthly child support was appropriately calculated pursuant to Federal Child Support Guidelines for relevant periods -- Date of retroactive child support to date of separation was supported by Supreme Court of Canada jurisprudence holding that child support payments in accordance with Guidelines were presumptively payable from date of separation -- No evidence rebutted presumption of child support and s. 7 expenses from date of separation -- Given likelihood that father's payments from date of separation satisfied father's child support obligations, no order of interest on deficit, if any, was warranted.

Watts v. Watts

[\(2011\), 2011 CarswellOnt 10265, 2011 ONSC](#)

[5694](#), Murray J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.h.vii

Subject Title: Family law

Classification Number: IV.3.h.vii

Support -- Child support under federal and provincial guidelines -- Retroactive award -- Multiple factors considered

Parties met in 1992, began cohabiting in April 1994, and separated on November 1, 2008 -- Parties had two children, B, born March 22, 1999, and C, born May 29, 2001 -- Since separation, children lived with mother -- In addition to his income, father received monthly tax-free annuity of \$1,750 from his mother's estate -- On August 30, 2010, father was ordered to pay child support of \$1,760 per month and spousal support of \$2,000 per month -- Mother brought application for increase in and retroactive variation of spousal support and child support -- Application granted in part -- There was no increase in support, but father was ordered to pay child support retroactive to November 1, 2008, spousal support retroactive to June 2010, as well as 96 per cent of children's extraordinary expenses -- Children were in need of support, having regard to their ages and expenses that mother had to incur to maintain them -- Father had ability to pay support -- While father's annuity payments were not included in his income for purpose of calculating support, his means, included annuities, were factor in finding that retroactive support order would not place unfair or unreasonable burden on him -- Mother did not act unreasonably in delaying her application for support until June 2010, and there was no evidence that father was prejudiced by delay.

Laurain v. Clarke

[\(2011\), 2011 CarswellOnt 13729, 2011](#)

[ONSC 7195](#), Price J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.h.xi

Subject Title: Family law

Classification Number: IV.3.h.xi

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

Parties were married on July 14, 2001, separated in December 2007, and divorced in 2009 -- Parties had one child, O, born February 25, 2005 -- After parties separated, mother remained in matrimonial home with O -- In 2008, father provided \$5,200 in cheques that had been identified as payments for O, as well as \$16,547.52 toward mortgage and property taxes on matrimonial home -- In May 2009, father commenced proceedings -- On December 4, 2009, judge ordered that O's principal residence remain with mother -- In May 2010, father remarried, and at end of January 2011, his daughter was born -- Parties' claims for custody of O proceeded to trial -- Parties were granted joint custody of O pursuant to parallel parenting arrangements -- Father was ordered to pay ongoing child support of \$1,115 per month, but was not ordered to pay retroactive child support -- Neither party owed any money to other in all circumstances -- Although father was of view that matrimonial home remained his property, he did not require mother to find alternate accommodations -- Payments made by father were for benefit of supporting O.

Hodgins v. Durnford

[\(2011\), 2011 CarswellOnt 9690,](#)

[2011 ONSC 4580](#), L. Templeton J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.j.iii.D

Subject Title: Family law

Classification Number: IV.3.j.iii.D

Support -- Child support under federal and provincial guidelines -- Variation or termination of award -- Change in circumstances -- Miscellaneous

Parties met in 1992, began cohabiting in April 1994, and separated on November 1, 2008 -- Parties had two children, B, born March 22, 1999, and C, born May 29, 2001 -- Since separation, children lived with mother -- In addition to his income, father received monthly tax-free annuity of \$1,750 from his mother's estate -- On August 30, 2010, father was ordered to pay child support of \$1,760 per month and spousal support of \$2,000 per month -- Mother brought application for increase in and retroactive variation of spousal support and child support -- Application granted in part -- There was no increase in support, but father was ordered to pay child support retroactive to November 1, 2008, spousal support retroactive to June 2010, as well as 96 per cent of children's extraordinary expenses -- Circumstances had not changed since order of August 30, 2010, to degree that, had facts been known at that time, different order for support would likely have been made -- Neither party was earning substantially different income than they were then -- Mother was not in substantially greater need.

Laurain v. Clarke

[\(2011\), 2011 CarswellOnt 13729, 2011](#)

[ONSC 7195](#), Price 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

Parties commenced cohabitation in 1995, had one child and separated in 2009 -- As of separation and thereafter father's work precluded residence in Thunder Bay, direct access to child was relatively infrequent, and mother had de facto custody of child -- Child's relationship with mother was faltering and father's communications with child disclosed father's involvement of child in parties' disputes -- Parties alleged difficulties in communicating -- Office of Children's Lawyer concluded child was developing appropriate friendships, enjoyed father's visits and had weakened relationship with mother -- Child was 12 years of age -- Mother applied for interim custody -- Application granted -- Best interests of child were served by award to mother of interim custody with reasonable access to father upon reasonable notice -- Parties' difficulty in communicating and father's involvement of child in parties' ongoing bitterness supported view that interim award of joint custody was not appropriate -- Mother was de facto custodian since separation, father was essentially away from Thunder Bay for foreseeable future and mother's role was best affirmed by grant of interim custody.

McGuire v. Jean

[\(2011\), 2011 CarswellOnt 10075, 2011 ONSC 5236,](#)

F.B. Fitzpatrick J. (Ont. S.C.J.) [Ontario]

FAM.IX.6.b.ii

Subject Title: Family law

Classification Number: IX.6.b.ii

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

Parties commenced relationship in 1993, married on April 11, 1998, and separated on November 1, 2005 -- Parties had two children, T, born April 7, 1999, and J, born March 26, 2003 -- T had been diagnosed with attention deficit hyperactivity disorder -- On April 7, 2006, separation agreement was prepared, which provided for shared custody, principal residence of children with mother, and equal time arrangements -- In November 2008, T began living with father -- In March 2009, action was commenced -- Parties had voluntary arrangement regarding child support -- Parties' claims respecting custody, appropriate parenting plan, and child support proceeded to trial -- Parties were awarded joint custody -- Father was granted principal residence of both children -- Both parties were loving and devoted parents and were involved in addressing T's unique situation -- However, father emphasized stability and consistency -- T needed structure in father's home -- Father was more aggressive in implementing behavioural programs -- T and J needed to be together -- There were no justifiable reasons to maintain two parenting plans in this family.

Frank v. Frank

[\(2011\), 2011 CarswellOnt 11103, 2011 ONSC 4394](#), D.

J. Gordon J. (Ont. S.C.J.); additional reasons at [\(2011\), 2011 CarswellOnt 11102, 2011 ONSC 5419](#), D.J. Gordon J. (Ont. S.C.J.) [Ontario]

FAM.IX.6.c.i

Subject Title: Family law

Classification Number: IX.6.c.i

Custody and access -- Joint custody -- Factors to be considered -- Ability of parents to co-operate and communicate

Parties married in 1990 and divorced in 2005 -- Parties had 4 children, born in 1992, 1994, 1996 and 1999 -- Parties reached settlement that resulted in divorce order in 2006, requiring husband to make payment to equalize net disposable income -- Two sons lived with father while two daughters lived with mother -- Father began to earn modest income while taking courses to become accountant -- Although father earned considerable income, he applied for termination of spousal support -- Application was dismissed but support was ordered to continue two years from date of decision, when mother would be fully self-supporting -- Issues arose from this decision including custody and access provisions, income calculation, and custody and access provisions -- Submissions made by both parties -- Order accordingly in favour of father -- Costs awarded to father -- Order was modified to allow mother to have access to sons on days where they had scheduled activities, as long as mother was willing to transport sons to and from activities as needed -- Various orders were made clarifying status of father's access to daughter.

Hackett v. Leung

[\(2011\), 2011 CarswellOnt 5870, 2011](#)

[ONSC 2746](#), Tranmer J. (Ont. S.C.J.); additional reasons to [\(2010\), 2010 CarswellOnt 9793, 2010 ONSC 6412, 96 R.F.L. \(6th\) 430](#), Tranmer J. (Ont. S.C.J.) [Ontario]

FAM.IX.6.c.i

Subject Title: Family law

Classification Number: IX.6.c.i

Custody and access -- Joint custody -- Factors to be considered -- Ability of parents to co-operate and communicate

Parties were married on July 14, 2001, separated in December 2007, and divorced in 2009 -- Parties had one child, O, born February 25, 2005 -- After parties separated, mother remained in matrimonial home with O -- In May 2009, father commenced proceedings -- On December 4, 2009, judge ordered that O's principal residence remain with mother -- In May 2010, father remarried, and at end of January 2011, his daughter was born -- Parties' claims for custody of O proceeded to trial -- Parties were granted joint custody of O pursuant to parallel parenting arrangements -- O needed opportunity to continue to develop strong and loving relationship, not only with both parties, but also his sister -- Parties met O's needs in differing but nevertheless equally valuable and significant ways -- Both parties were intelligent, responsible, caring, loving and hard working, and both were effective managers of their time and resources -- Parties could work effectively in O's best interests under joint custody regime -- Parties had already made important decisions in O's life with respect to religion, culture and education, and they had been able to communicate using email -- Parties were capable of treating each other with respect and sensitivity, were able to verbally acknowledge importance of both parents to O, and worked hard to foster all relationships that were important for O.

Hodgins v. Durnford

[\(2011\), 2011 CarswellOnt 9690,](#)

[2011 ONSC 4580](#), L. Templeton J. (Ont. S.C.J.) [Ontario]

FAM.IX.6.c.xi

Subject Title: Family law

Classification Number: IX.6.c.xi

Custody and access -- Joint custody -- Factors to be considered -- Multiple factors considered

Parties married in 1997, had one child and separated in November 2008 -- Pursuant to order of July 2011 father was ordered to pay \$12,000 per month in spousal support, \$5,186 in child support, commencing July 15, 2011 and proportionate share of private school fees and live-in nanny employed by mother -- Father sought joint custody, shared parenting and implementation of parenting plan -- Mother alleged parties had difficulty communicating -- Child was six years of age -- Father brought cross-application for joint custody -- Cross-application granted -- Order was issued on interim basis for joint custody with ultimate decision making to mother -- No evidence existed that parties had difficulty communicating as parties agreed on significant matters including child's education, extra-curricular activities and father's access -- Child was happy, well-

adjusted and joint custodial arrangement served child's best interests -- Interim grant to mother of ultimate decision making authority was based on desirability of having decisions made -- Granting father's requests for shared custody and to implement mediation and arbitration to resolve parenting issues was not warranted on interim basis.

Watts v. Watts

[\(2011\), 2011 CarswellOnt 10265, 2011 ONSC](#)

[5694](#), Murray J. (Ont. S.C.J.) [Ontario]

FAM.IX.8.a.v

Subject Title: Family law

Classification Number: IX.8.a.v

Custody and access -- Access -- Factors to be considered -- Reports by third parties

Husband and wife were married in 1993 -- In 1997, wife commenced relationship with another man who would become biological father of her daughter, who was born in 2000 -- Relationship continued while wife remained married to husband -- Daughter came to know father as family friend who she called "Uncle " -- Mother maintained that husband was actual father of child and forbade father from seeing daughter -- Paternity test was needed to prove that biological father had fathered child -- Father maintained that he was close with child throughout her upbringing -- Husband and wife made accusations against father's character and father admitted one incident of assault against acquaintance of wife -- Psychologist made recommendation that father should be involved in daughter's life and daughter should be aware of her parentage -- Father applied for access to daughter and for declaration that child should be informed of her parentage -- Application granted -- Access was right of child, not parent, under general principles of doing what was in best interest of child -- Report of psychologist was done according to standards and despite accusations of husband and wife, was not biased against them -- Daughter's views and preferences were determined as much as possible given her age and situation of her not knowing parentage -- Although husband and wife wanted father out of daughter's life out of concern for their marriage, this was defeated by interests of child in maintaining relationship -- Parenting plan as set out by psychologist allowed for gradual reintroduction of father to daughter's life and these recommendations were adopted by court -- Court did not have authority to order family counselling or parent co-ordination as set out in report -- Court also had no authority to order that husband and wife inform daughter of parentage -- Father was to retain therapist to assist with issues of reintegration and parentage issue -- Husband and wife were to have custody which was not disputed by father -- Access was granted on gradually increasing basis.

Imineo v. Price

[\(2011\), 2011 ONCJ 584, 2011 CarswellOnt](#)

[13259](#), Roselyn Zisman J. (Ont. C.J.); additional reasons at [\(2011\), 2011 CarswellOnt 14791, 2011 ONCJ 594](#), R. Zisman J. (Ont. C.J.); additional reasons at [\(2012\), 2012 CarswellOnt 1036, 2012 ONCJ 55](#), R. Zisman J. J. (Ont. C.J.) [Ontario]

FAM.IX.8.b

Subject Title: Family law

Classification Number: IX.8.b

Custody and access -- Access -- Access by parent where child born outside marriage

Husband and wife were married in 1993 -- In 1997, wife commenced relationship with another man who would become biological father of her daughter, who was born in 2000 -- Relationship continued while wife remained married to husband -- Daughter came to know father as family friend who she called "Uncle " -- Mother maintained that husband was actual father of child and forbade father from seeing daughter -- Paternity test was needed to prove that biological father had fathered child -- Father maintained that he was close with child throughout her upbringing -- Husband and wife made accusations against father's character and father admitted one incident of assault against acquaintance of wife -- Psychologist made recommendation that father should be involved in daughter's life and daughter should be aware of her parentage -- Father applied for access to daughter and for declaration that child should be informed of her parentage -- Application granted -- Access was right of child, not parent, under general principles of doing what was in best interest of child -- Report of psychologist was done according to standards and despite accusations of husband and wife, was not biased against them -- Daughter's views and preferences were determined as much as possible given her age and situation of her not knowing parentage -- Although husband and wife wanted father out of daughter's life out of concern for their marriage, this was defeated by interests of child in maintaining relationship -- Parenting plan as set out by psychologist allowed for gradual reintroduction of father to daughter's life and these recommendations were adopted by court -- Court did not have authority to order family counselling or parent co-ordination as set out in report -- Court also had no authority to order that husband and wife inform daughter of parentage -- Father was to retain therapist to assist with issues of reintegration and parentage issue -- Husband and wife were to have custody which was not disputed by father -- Access was granted on gradually increasing basis.

Imineo v. Price (2011), 2011 ONCJ 584, 2011 CarswellOnt 13259, Roselyn Zisman J. (Ont. C.J.); additional reasons at (2011), 2011 CarswellOnt 14791, 2011 ONCJ 594, R. Zisman J. (Ont. C.J.); additional reasons at (2012), 2012 CarswellOnt 1036, 2012 ONCJ 55, R. Zisman J. J. (Ont. C.J.) [Ontario]

FAM.IX.10.a

Subject Title: Family law

Classification Number: IX.10.a

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

Parties commenced cohabitation in 1992, married in 1993, had two children and separated in 2009 -- Pursuant to parties' separation agreement of October 2009, parties had joint custody with primary residence to father, and mother alleged father coerced signing of agreement -- Order of March 2010 granted joint custody and primary residence to father, specified access to mother including alternate weekends, and mother was ordered to pay \$710 per month in child support based on income of \$47,100 per year -- Mother alleged father alienated children and order of January 2010 ordered involvement of Office of Children's Lawyer -- In October 2010 violent incident occurred at matrimonial home when father threatened mother at gunpoint in front of children, father was arrested, charged with attempted murder and was in custody awaiting trial -- Following father's arrest mother was granted interim custody and restraining order against father prohibited contact with children or mother -- Subsequently letter from father's brother delivered to older child advised against accepting counselling for trauma arising from witnessing violent incident -- Mother brought motion for sole custody -- Father sought adjournment on basis that new solicitor received previous solicitor's file on day before hearing on mother's motion -- Motion adjourned on terms -- Order was issued prohibiting communications with children by father's family and all access to children at discretion of mother, approved in advance in writing by mother -- Adjournment was warranted to provide father's

new solicitor time to deliver responding materials -- Under circumstances, restriction of access by father's family to children was warranted.

Singh v. Singh

[\(2011\), 2011 CarswellOnt 10137, 2011 ONSC 4643,](#)

Price J. (Ont. S.C.J.) [Ontario]

FAM.XV.5.a.ii.B

Subject Title: Family law

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

Children in need of protection -- Application for permanent custody -- Factors to be considered -- Particular factors -- Parents' drug or alcohol addiction

Children were apprehended -- Applicant Children's Services moved for summary judgment respecting placement of children; relief sought was finding that parents continued to pose risk defined in s. 37(2)(b) of Child and Family Services Act and that children should be placed in custody of paternal grandparents pursuant to s. 57.1 of act -- Application granted -- Children were in need of protection pursuant to s. 37(2)(b)(i), (ii) applying to both parents -- Content of plan of care met notice requirements read into subsection s. 56 for purposes of an s. 57.1 order -- Evidence was clear that trial would resolve nothing under heading -- They had not identified single incident of change in circumstances that grounded risks identified in two prior orders -- If children were returned to parents' care, there would shortly thereafter be breakdown in meeting physical needs, another apprehension was likely and would disrupt or further damage any sense of relationship and family security children might have -- Continuity of care would be meaningless and certainty of risk of future harm grossly tipped merits of plans in favour of applicant.

*Family & Children's
Services of St. Thomas
& Elgin v. O. (B.)*

[\(2011\), 2011 CarswellOnt](#)

[13738, 2011 ONCJ 640](#), Michael P. O'Dea J. (Ont. C.J.) [Ontario]

FAM.XV.5.c.i

Subject Title: Family law

Classification Number: XV.5.c.i

Children in need of protection -- Application for permanent custody -- Making temporary order permanent -- General principles

Children were apprehended -- Applicant Children's Services moved for summary judgment respecting placement of children; relief sought was finding that parents continued to pose risk defined in s. 37(2)(b) of Child and Family Services Act and that children should be placed in custody of paternal grandparents pursuant to s. 57.1 of act -- Application granted -- Children were in need of protection pursuant to s. 37(2)(b)(i), (ii) applying to both parents -- Content of plan of care met notice requirements read into subsection s. 56 for purposes of an s. 57.1 order -- Evidence was clear that trial would resolve nothing under heading -- They had not identified

single incident of change in circumstances that grounded risks identified in two prior orders -- If children were returned to parents' care, there would shortly thereafter be breakdown in meeting physical needs, another apprehension was likely and would disrupt or further damage any sense of relationship and family security children might have -- Continuity of care would be meaningless and certainty of risk of future harm grossly tipped merits of plans in favour of applicant.

*Family & Children's
Services of St. Thomas
& Elgin v. O. (B.)*

[\(2011\), 2011 CarswellOnt](#)

[13738, 2011 ONCJ 640](#), Michael P. O'Dea J. (Ont. C.J.) [Ontario]

FAM.XX.1.g.vi

Subject Title: Family law

Classification Number: XX.1.g.vi

Costs -- In family law proceedings generally -- Factors considered -- Multiple factors considered

Parties married in 1990 and divorced in 2005 -- Parties had 4 children, born in 1992, 1994, 1996 and 1999 -- Parties reached settlement that resulted in divorce order in 2006, requiring husband to make payment to equalize net disposable income -- Two sons lived with father while two daughters lived with mother -- Father began to earn modest income while taking courses to become accountant -- Although father earned considerable income, he applied for termination of spousal support -- Application was dismissed but support was ordered to continue two years from date of decision, when mother would be fully self-supporting -- Issues arose from this decision including custody and access provisions, income calculation, and custody and access provisions -- Submissions made by both parties -- Order accordingly in favour of father -- Costs awarded to father -- Husband was successful party given result of both hearings -- However, substantial indemnity costs were not appropriate given potential effect on wife and children -- Costs fixed at \$20,000 reflecting success of husband and contentious behaviour of wife.

Hackett v. Leung

[\(2011\), 2011 CarswellOnt 5870, 2011](#)

[ONSC 2746](#), Tranmer J. (Ont. S.C.J.); additional reasons to [\(2010\), 2010 CarswellOnt 9793, 2010 ONSC 6412, 96 R.F.L. \(6th\) 430](#), Tranmer J. (Ont. S.C.J.) [Ontario]

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