

The Canadian Abridgment eDigests -- Family Law - Ontario

2014-33
August 18, 2014

FAM.III.9.e

Subject Title: Family law

Classification Number: III.9.e

Division of family property -- Order for division of property -- Ancillary order

Transfer of husband's timeshare to wife in partial payment of lump sum spousal support award.

Wielgus v. Adewole ([2014](#)), [2014 CarswellOnt 8618](#), [2014 ONSC 3841](#), Lemon 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

Respondent fleeing jurisdiction.

Wielgus v. Adewole ([2014](#)), [2014 CarswellOnt 8618](#), [2014 ONSC 3841](#), Lemon 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

Income imputed to payor on uncontested hearing.

Wielgus v. Adewole ([2014](#)), [2014 CarswellOnt 8618](#), [2014 ONSC 3841](#), Lemon J. (Ont. S.C.J.) [Ontario]

FAM.IV.3.e.iv

Subject Title: Family law

Classification Number: IV.3.e.iv

Support -- Child support under federal and provincial guidelines -- Undue hardship -- Obligation to support other person or child

Parties lived together, unmarried, and separated when child was seven months old -- Child was two years old at time of trial -- Since separation child has remained with mother and her older children, aged 18 and 11 -- Father did not dispute that mother had always been child's primary caregiver and that child should continue to reside primarily with her -- Mother applied for child support -- Application granted -- Mother was unemployed -- Father's income was \$36,400 -- Child support for one child based on Federal Child Support Guidelines was \$319 per month -- Court rejected father's request to lower that amount because he had to pay child support for two other children -- Father did not plead undue hardship.

Poirier v. Decker ([2014](#)), [2014 CarswellOnt 8571](#), [2014 ONSC 3780](#), Pazaratz 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 lived together, unmarried, and separated when child was seven months old -- Child was two years old at time of trial -- Since separation child had remained with mother and mother's older children, aged 18 and 11 -- Father did not dispute that mother had always been child's primary caregiver and that child should continue to reside primarily with her -- Father brought application for joint custody with access two out of every three weekends -- Mother brought application for sole custody with access to father on alternating weekends -- Applications granted in part -- Joint custody was problematic since father had been charged with sexually assaulting mother and was banned from having any communication with her -- Relationship between parties was one of conflict and there was no evidence of any ability by parties to communicate effectively for sake of child -- It was in child's best interests that mother have sole custody of child -- As mother was currently unemployed and could spend every weekday with child, it was in best interests of child that father have her for two out of three weekends.

Poirier v. Decker ([2014](#)), [2014 CarswellOnt 8571](#), [2014 ONSC 3780](#), Pazaratz J. (Ont. S.C.J.) [Ontario]

FAM.XV.5.a.i

Subject Title: Family law

Classification Number: XV.5.a.i

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

Children's Aid Society sought order that maternal grandmother have custody of child, and that father and mother have access or supervised access with certain conditions -- Child, aged four, was in junior kindergarten -- Father and the mother did not live together -- Grandmother and Society entered into voluntary service agreement on April 2, 2012 -- Child had been apprehended following protection application dated May 11, 2012, and pursuant to order dated May 14, 2012 -- Latest order of June 6, 2013, placed child with grandmother with specified access to father and access at discretion of grandmother to mother -- Order followed full care and custody hearing -- Father opposed application and sought unrestricted custody on ground that child was not child in need of protection -- Application granted -- Evidence was overwhelming that custody of child, in favour of grandmother, was in his best interests -- Grandmother had been constant in child's life and valued child's relationships with other people in his life, particularly child's mother and father -- Access by father and mother to child was to be at discretion of grandmother -- Father had demonstrated propensity to undermine grandmother and mother, which was not in child's interests -- Father's access was to be contingent on his ability to reduce that propensity.

Children's Aid Society of Ottawa v. L. (D.) (2014), 2014 ONSC 3967, 2014 CarswellOnt 8901, Timothy D. Ray J. (Ont. S.C.J.) [Ontario]

FAM.XX.6

Subject Title: Family law

Classification Number: XX.6

Costs -- Support

Mother successfully applied for increase in interim child support -- Income was imputed to father -- Parties made submissions regarding costs -- Father was ordered to pay costs of \$2,825, inclusive of fees, disbursements and HST -- There was no divided success -- Mother was successful on motion and was presumptively entitled to costs -- One aspect of father's conduct was unreasonable, namely his failure to immediately increase child support -- Lawyer's hourly rate was reasonable -- Mother failed to serve offer to settle and she should have done so -- Father was not ordered to pay for total time spent by mother's lawyer.

Rawluk-Harness v. Harness (2014), 2014 CarswellOnt 8574, 2014 ONSC 3810, Victor Mitrow J. (Ont. S.C.J.) [Ontario]

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