The Canadian Abridgment eDigests -- Family Law - Western

2006-50
December 11, 2006

FAM.III.4.a.i.A

Subject Title: Family law

Classification Number: III.4.a.i.A

Family property on marriage breakdown -- Determination of ownership of property -- Application of trust principles -- Resulting and constructive trusts -- General principles

Parties cohabited for nearly five years before they split up -- Common-law husband owned small farm which was where they resided -- Common-law wife assumed role of homemaker but also worked outside home -- Common-law wife paid him $500 per month for accommodation and paid all food bills, while he paid utilities -- She also paid for some renovations to home and bought furniture and appliances -- She also planted garden and painted several rooms in house -- Common-law wife brought action against husband -- Action allowed -- Common-law husband was enriched by plaintiff's contributions to home which enhanced his ability to pay off mortgage and other debts -- Common-law wife suffered corresponding deprivation -- Common-law wife had legitimate expectation that her efforts would not go unrewarded and that she would share in assets if relationship ended -- Common-law wife was awarded $49,600 to compensate for unjust enrichment which was equivalent to 20 per cent of property's value.

R. (L.M.R.) v. C. (B.P.) (2006), 2006 BCSC 1202, 2006 CarswellBC 2003, B.M. Joyce J. (B.C. S.C.) [British Columbia]

FAM.III.4.d

Subject Title: Family law

Classification Number: III.4.d

Family property on marriage breakdown -- Determination of ownership of property -- Rights against trustee in bankruptcy

Husband and wife separated and husband made assignment in bankruptcy before wife began divorce proceedings which had not concluded -- Husband's trustee in bankruptcy was registered on title to matrimonial home for husband's one-half interest which was declared to be $53,450 -- Trustee in bankruptcy brought application for order for partition and sale of former matrimonial home under Partition of Property Act ("PPA") and wife who resided in home opposed application -- Possibility existed that husband could retain his pensions and wife could be forced to leave matrimonial home since husband's property vested with his trustee in bankruptcy and wife could not assert right to husband's pensions in matrimonial proceedings because no triggering event occurred under Family Relations Act -- Court-initiated delay which would allow husband and wife to continue negotiating their separation agreement could not assist wife since she was required to negotiate with trustee in whom husband's property vested -- Order for partition and sale of matrimonial home was not granted since insufficient information existed by which relative hardship of parties could be weighed -- Registrar was directed to conduct enquiry under s. 4(2) of PPA into nature of property, persons interested in it, and status and circumstances of husband's bankruptcy and his estate, and to report findings to court -- Value of matrimonial home, its approximate mortgage, wife's ability to raise $10,000 to purchase trustee's one-half interest in home, and amount of unsecured claims proven in husband's bankruptcy were known -- Wife's financial circumstances and income, availability and cost of alternative housing for her, why she could not borrow more than $10,000, financial impact sale of home would have on her, and further claims by husband's other creditors were not known -- Draft accounts of husband's estate seemed unreliable for amounts received by estate with respect to husband's interest in home.

Norquay (Trustee of) v. Norquay (2006), 2006 CarswellBC 2076, 2006 BCSC 1242, 24 C.B.R. (5th) 268, Master Baker (B.C. Master) [British Columbia]

FAM.III.5.a.i

Subject Title: Family law

Classification Number: III.5.a.i

Family property on marriage breakdown -- Assets which may be excluded from property to be divided -- General principles -- Family and non-family assets

Spouses divorced after 34-year marriage -- Husband was owner of cabinet-making business and wife

was traditional homemaker -- Wife brought action for division of family assets and trial judge determined that equal division was fair -- After parties' separation but few months prior to triggering event, husband purchased condominium -- In determining which assets were family assets, trial judge found that husband's interest in condominium was family asset since it had been acquired with funds borrowed from operating company for cabinet-making business -- Terms of loan were set out in promissory note under which husband promised to pay operating company $300,000 without interest by 25 annual instalments -- Husband did not pay instalments but instead annual instalments were declared to be income and documented as income earned by husband from company -- Trial judge determined that such "income" did not reflect payment to husband of money that was due to him for any services performed by him, but were merely book entries addressing accounting and taxation issues -- Husband appealed -- Appeal allowed in part -- Trial judge's reasoning on this point was clearly erroneous -- Funds used to buy condominium were not family assets -- Making of loan was not disposition of property, nor did it reduce value of shares in operating company since there was corresponding debt owing to company by husband -- Effect was same as if company had paid out salary or other fee to husband and he had paid down loan using cash received -- Arrangement that did take place was common arrangement to which tax authorities did not usually object -- Amount of $12,000 paid out for each instalment was not excessive -- Accordingly, condominium was to be deleted from list of family assets.

Balic v. Balic (2006), 2006 CarswellBC 1676, 2006 BCCA 335, Finch C.J.B.C., Newbury J.A., Ryan J. A. (B.C. C.A.) [British Columbia]; reversing in part (2003), 2003 CarswellBC 2398, 2003 BCSC 1474, Shabbits J. (B.C. S.C.)

FAM.III.5.i

Subject Title: Family law

Classification Number: III.5.i

Family property on marriage breakdown -- Assets which may be excluded from property to be divided -- Farm property

Parties were married in 1979, had two children, and separated in 2004 -- Wife worked outside home during early years of marriage, but parties farmed from 1983 to 2004 -- Husband worked outside home during entire marriage in addition to farming -- Parties owned four parcels of land, three of which were in their joint names and which were matrimonial property -- Fourth parcel of land was in husband's name alone, and was gift from his father in 1983 -- Husband claimed exemption for value of gift -- Wife brought action for division of property -- Action allowed -- Experts disagreed as to whether property

was best used as farmland or recreational property -- Highest and best use of property was as farmland -- Appraisers valued land by comparison approach -- Closest estimate of current fair market value of land was $584 per acre -- At time of transfer, husband swore that market value was $14,000, although he indicated he did this for capital gains reasons -- Parties purchased two sections of land in 1987 adjacent to gifted property for $36,000 per section -- Land prices were extremely unstable in early 1980s in Alberta due to imposition of National Energy Program, therefore sales that occurred in 1983 were given greater weight -- Most reliable fair market value of gifted land in 1983 was $38,000, and husband was entitled to exemption in that amount.

Lovich v. Lovich (2006), 2006 CarswellAlta 1312, 2006 ABQB 736, F.F. Slatter J. (Alta. Q.B.) [Alberta]; additional reasons at (2006), 2006 CarswellAlta 1419, 2006 ABQB 797, F.F. Slatter J. (Alta. Q.B.)

FAM.III.5.m.ii

Subject Title: Family law

Classification Number: III.5.m.ii

Family property on marriage breakdown -- Assets which may be excluded from property to be divided -- Debts and liabilities -- Valuing liabilities

Parties were married in 1991 and separated in 2003 -- Husband had limited partnerships in film tax shelters, some of which were challenged by Canada Customs and Revenue Agency -- Trial judge, in dividing family assets equally, determined that parties were to share equally any liability related to reassessment or winding-up of all tax shelters -- Wife appealed, claiming this was effectively reapportioning assets where no claim for reapportionment had been made by husband -- Wife claimed trial judge had erred in apportioning to her equal share of speculative debt -- Appeal allowed; order set aside -- Issue of debt was sufficiently before trial judge -- However, order was made in error -- By dividing debt that might arise in future, trial judge was making freestanding order for sharing -- Family Relations Act does not permit such order to be made -- Statutory scheme provides that property entitlement between parties is entirely resolved at trial, without further accounting between them -- Order dividing future financial obligation did not fall within those provisions -- However, there should not be order against assets allocated to wife on account of future contingent debt since amount of any positive value or liability was unknown and speculative -- As husband's income greatly exceeded wife's, he was better placed to handle future reassessments -- Any significant reassessment would reflect on wife's income and in reduced child support, so that she would, on reduced scale, share some of

consequences of reassessment.

S. (M.) v. S. (W.) (2006), [2006] 11 W.W.R. 119, 2006 BCCA 391, 56 B.C.L.R. (4th) 245, [2006] B.C.J. No. 2020, 2006 CarswellBC 2214, Levine J.A., Saunders J.A., Thackray J.A. (B.C. C.A.) [British Columbia]; reversed in part (2005), 2005 CarswellBC 1535, 2005 BCSC 939, [2005] B.C.J. No. 1447, Romilly J. (B.C. S.C.)

FAM.III.5.n

Subject Title: Family law

Classification Number: III.5.n

Family property on marriage breakdown -- Assets which may be excluded from property to be divided -- Miscellaneous assets

Parties were married in 1991 and separated in 2003 -- After separation, wife took animation course and was about to join industry -- Husband's annual income was $207,433 and wife's was $43,248 including spousal support -- Husband received tax refunds after separation for two years prior thereto -- Wife applied for division of family property and in ordering equal division trial judge declined to order that tax refunds for 2002 and 2003 tax years were family assets to be divided -- Wife appealed -- Appeal dismissed -- Refund for 2002 was received while parties were still residing in matrimonial home and was treated in family's customary way of pooling it with other assets -- Same was done with 2003 refund -- Pool of assets were drawn on to support family -- Both refunds pre-dated triggering event -- In circumstances, there was no practical difference between treating these refunds as income or as family assets since they were, in any event, divided when assets existing at triggering event were divided.

S. (M.) v. S. (W.) (2006), [2006] 11 W.W.R. 119, 2006 BCCA 391, 56 B.C.L.R. (4th) 245, [2006] B.C.J. No. 2020, 2006 CarswellBC 2214, Levine J.A., Saunders J.A., Thackray J.A. (B.C. C.A.) [British Columbia]; reversed in part (2005), 2005 CarswellBC 1535, 2005 BCSC 939, [2005] B.C.J. No. 1447, Romilly J. (B.C. S.C.)

FAM.III.6.b.i

Subject Title: Family law

Classification Number: III.6.b.i

Family property on marriage breakdown -- Valuation of specific assets -- Business -- Private corporation

Parties separated after 20 years of marriage -- Parties had five children and wife stayed home to raise them -- Husband operated bakery, two delicatessens, and owned land that he acquired prior to marriage -- Property and interest in business was valued at $993,677 -- Wife was content with 50-50 distribution as provided for in Family Relations Act -- Husband brought application for reapportionment of family assets -- Trial judge found that this was not appropriate case for reapportionment -- When valuing business's shares for purpose of division of assets, trial judge deducted $450,000 representing his estimate of costs of proposed renovations and improvements which husband claimed he was planning to make on his business premises -- Wife appealed claiming that trial judge demonstrated fundamental misapprehension of expert evidence and way in which business assets were valued -- Appeal dismissed -- Problem with case was that all experts had proceeded on basis that highest and best use of underlying corporate assets was to bulldoze business's operations and sell real estate for redevelopment -- However, at trial it became clear and was accepted by all that if parties' generous income stream was to continue, husband would have to remain in business, using business assets, for another 10 to 15 years -- Unfortunately, no valuation of business as going concern had been made -- Trial judge did best he could in circumstances by attempting to introduce fact of proposed expenditures into expert valuations before him -- Trial judge realized that net asset approach ignored question of renovation costs because it was not possible to forecast earnings sufficiently to estimate going concern value -- Value of shares in closely held corporation cannot be precise exercise and trial judge had to use what limited evidence he had before him to make valuation -- Overall, it could not be shown that trial judge was clearly wrong in his factual conclusions or inferences or that he erred in law.

Redpath v. Redpath (2006), 2006 CarswellBC 1709, 2006 BCCA 338, [2006] B.C.J. No. 1550, Hall J. A., Mackenzie J.A., Newbury J.A. (B.C. C.A.) [British Columbia]; reversing in part (2005), 2005 BCSC 562, 2005 CarswellBC 950, Williamson J. (B.C. S.C.)

FAM.III.6.b.iii

Subject Title: Family law

Classification Number: III.6.b.iii

Family property on marriage breakdown -- Valuation of specific assets -- Business -- Miscellaneous issues

Parties separated after 20 years of marriage -- Parties had five children and wife stayed home to raise them -- Husband operated bakery, two delicatessens, and owned land that he acquired prior to marriage -- Property and interest in business was valued at $993,677 -- Wife was content with 50-50 distribution as provided for in Family Relations Act -- Husband brought application for reapportionment of family assets -- Trial judge found that this was not appropriate case for reapportionment -- When valuing business's shares for purpose of division of assets, trial judge included in business's assets $38,000 of proceeds of loan owing by husband to business, in total amount of $57,431 -- The $38,000 was intended by trial judge to represent his estimate of portion of loan proceeds that husband used for his own purposes -- Wife appealed, claiming that by husband's own evidence, entire loan proceeds were expended for non-family purposes -- Appeal allowed -- No portion of loan should have been deducted from value of business's shares -- Shareholder's loan simply represented account receivable of business and debt owing by father -- It was corporate asset which was required to be included in valuation of shares, regardless of purpose for which husband may or may not have used funds -- However, since trial judge found that $19,000 of debt was expended by husband for family purposes, it should be credited to him in calculation of family assets.

Redpath v. Redpath (2006), 2006 CarswellBC 1709, 2006 BCCA 338, [2006] B.C.J. No. 1550, Hall J. A., Mackenzie J.A., Newbury J.A. (B.C. C.A.) [British Columbia]; reversing in part (2005), 2005 BCSC 562, 2005 CarswellBC 950, Williamson J. (B.C. S.C.)

FAM.III.6.k

Subject Title: Family law

Classification Number: III.6.k

Family property on marriage breakdown -- Valuation of specific assets -- Farming assets

Parties were married in 1979, had two children, and separated in 2004 -- Parties operated mixed grain and cattle farm from 1983, and accumulated many different pieces of farm equipment -- Some farm equipment was acquired with husband's brothers and father, making ownership difficult to determine --

Husband claimed exemption based on gift of equipment from husband's father -- Parties agreed on value of equipment at date of trial, but could not agree on value of exempt equipment -- Wife brought action for division of property -- Action allowed -- Farm equipment was depreciable property, was traded in and upgraded over time, and was "used up" -- Exempt property had to be traced into property that existed at time of trial -- Exemption was only allowed for farm equipment, and not cattle or horses claimed by husband -- Tracing calculations applied to all farm equipment resulted in total exemption for husband in amount of $23,035.

Lovich v. Lovich (2006), 2006 CarswellAlta 1312, 2006 ABQB 736, F.F. Slatter J. (Alta. Q.B.) [Alberta]; additional reasons at (2006), 2006 CarswellAlta 1419, 2006 ABQB 797, F.F. Slatter J. (Alta. Q.B.)

FAM.III.8.c.ii

Subject Title: Family law

Classification Number: III.8.c.ii

Family property on marriage breakdown -- Factors affecting equal or unequal division -- Debts -- Family debts

Parties were married in 1991 and separated in 2003 -- Trial judge, in dividing family assets equally, ordered that portion granted to wife was to be adjusted to reflect existing tax debt that was being appealed -- Wife appealed, claiming that judge erred in making no provision for her sharing in success husband might have on appeal -- Appeal dismissed -- This debt was far past speculative stage since amount was known and determination had been made that sum was owed, even if it was under appeal -- Given husband's substantial exposure to further reassessment, trial judge was not obliged to order reimbursement to wife if appeal succeeded -- It would not be unfair for husband to take both risk and reward in connection with future tax rulings.

S. (M.) v. S. (W.) (2006), [2006] 11 W.W.R. 119, 2006 BCCA 391, 56 B.C.L.R. (4th) 245, [2006] B.C.J. No. 2020, 2006 CarswellBC 2214, Levine J.A., Saunders J.A., Thackray J.A. (B.C. C.A.) [British Columbia]; reversed in part (2005), 2005 CarswellBC 1535, 2005 BCSC 939, [2005] B.C.J. No. 1447, Romilly J. (B.C. S.C.)

FAM.III.8.d

Subject Title: Family law

Classification Number: III.8.d

Family property on marriage breakdown -- Factors affecting equal or unequal division -- Needs of parties

Parties married in 1989 and separated in 2003 -- Parties had one child, a son, and wife's daughter from previous marriage lived with parties -- On separation, wife and children continued to live in matrimonial home -- Husband worked as stockbroker but also earned money investing in stock market, providing services to companies as chartered financial analyst, and playing poker and betting online -- Wife had high school education and had worked at minimum wage jobs and been on social assistance before marriage -- During marriage wife stayed at home to look after house and children -- After separation husband did not provide regular monthly support for family but did pay mortgage. lines of credit and utilities, and wife has use of credit card for necessities -- In 2004 interim order was made granting sole custody of son to wife and ordering husband to pay $2,000 per month interim support -- Order also imputed income of $100,000 per year to husband and ordered him to pay interim child support -- In divorce proceedings, wife sought reapportionment of family property in her favour -- Family property was reapportioned in wife's favour on asset by asset basis and not on global basis -- Matrimonial home had net equity of $282,000 and was to be reapportioned 100 percent in favour of wife -- Investment accounts were required by husband in order to generate income and all but two of them were to vest solely in him -- Similarly shares were to vest in husband, whether they were registered in his or wife's name, since he had always managed them and was in best position to continue to do so -- Bank accounts and interest in RRSP account and time share were to be divided equally -- Division of assets in this way recognized husband's greater earning capacity and wife's responsibility to care for son and attempt to become economically independent.

Kuznecov v. Kuznecov (2006), 2006 CarswellBC 1262, 2006 BCSC 748, Wilson J. (B.C. S.C.) [British Columbia]

FAM.III.8.d

Subject Title: Family law

Classification Number: III.8.d

Family property on marriage breakdown -- Factors affecting equal or unequal division -- Needs of parties

Parties married in Poland in 1976, had daughter and came to Canada in 1984 -- Husband began employment as mechanic with large equipment sales and repair company -- Parties had second child in 1989 -- When parties separated in 2004 mother and second child remained in family home -- Second child went to live with husband on January 15 -- Wife lived in family home until it was sold in September 2005, during which time she paid mortgage payments -- Parties received $195,122.98 after paying mortgage, taxes, legal fees and other usual adjustments -- From that amount, payments of $16,739.42, $10,870.52, $13,870.10, $4,607.46 and $3,605.99 were made on debts including credit cards, line of credit, loan, and overdraft leaving balance of $145,429.49 -- Parties applied for final determination of all matters arising from breakdown of marriage -- Applications granted -- Payments of $10,194.09, $3,041.75, $13,870.10, $4,607.46, and $3,605.99 should have been made from sale proceeds -- Net sale proceeds constituting family asset were $159,803.59 -- Under Family Relations Act, each spouse was entitled to undivided one-half interest in each family asset as tenant in common, subject to reapportionment if equal division would be unfair, having regard to factors in s. 65 -- Section 65(1)(e) of Family Relations Act permits court to compensate for disadvantaged spouse for her or his loss of self-sufficiency -- Wife had suffered economic disadvantage as result of marriage and its breakdown in that her capacity to earn income had been adversely affected -- During greater part of marriage wife adopted role which was primarily that of homemaker and only secondarily that of additional income earner while husband was able to pursue and advance in his occupation -- Equal division would not be fair -- Equal division would not fairly recognize loss and compensate wife for her loss -- Fair and equitable division would be 60/40 split of net proceeds of sale in favour of wife.

M. (M.R.) v. M. (I.M.) (2006), [2006] B.C.J. No. 1034, 2006 CarswellBC 1117, 2006 BCSC 568, Joyce J. (B.C. S.C.) [British Columbia]

FAM.III.9.b.i.A

Subject Title: Family law

Classification Number: III.9.b.i.A

Family property on marriage breakdown -- Order for division of property -- Factors to be considered in determining nature of order -- Preservation of operating business -- General principles

Spouses divorced after 34-year marriage -- Husband was owner of cabinet-making business and wife was traditional homemaker -- Wife brought action for division of family assets and trial judge determined that equal division was fair -- Cabinet-making business was dormant at time of trial -- Family trust owned common shares of business and husband owned substantially all preference shares -- Trial judge determined that husband's shares in business were family assets and ordered that receiver be appointed to sell business and assets in order to permit equal division of family assets in terms of value -- Husband appealed -- Appeal allowed in part -- Trial judge made order even though assets of business were not family assets and neither holding company nor operating company was party to proceedings -- Also, receivership order had not been sought by either party in pleadings and husband wished to have opportunity to acquire shares and compensate wife in cash for her interest therein -- If jurisdiction existed to order liquidation of company in order to facilitate distribution of assets to divorcing spouses, such order should be made only in exceptional cases, where all necessary procedural safeguards, including joinder of company, are in place and where court has complete information as to consequences of order sought -- None of safeguards was in place in this case and liquidation order was contrary to general scheme of Family Relations Act and basic company law -- In particular, it ignored fact that at law company's assets are not those of its shareholders -- Also, there were less draconian measures available to trial judge such as order vesting shares in one spouse on payment of compensation by other spouse -- In circumstances, husband should be given opportunity to purchase that number of shares from wife necessary to effect equal apportionment of value of family assets contemplated by trial judge.

Balic v. Balic (2006), 2006 CarswellBC 1676, 2006 BCCA 335, Finch C.J.B.C., Newbury J.A., Ryan J. A. (B.C. C.A.) [British Columbia]; reversing in part (2003), 2003 CarswellBC 2398, 2003 BCSC 1474, Shabbits J. (B.C. S.C.)

FAM.III.9.c.i

Subject Title: Family law

Classification Number: III.9.c.i

Family property on marriage breakdown -- Order for division of property -- Order for payment -- General principles

Parties married in Poland in 1976, had daughter and came to Canada in 1984 -- Husband began employment as mechanic with large equipment sales and repair company -- Parties had second child in 1989 -- When parties separated in 2004 mother and second child remained in family home -- Second child went to live with husband on January 15 -- Wife lived in family home until it was sold in September 2005, during which time she paid mortgage payments -- Parties received $195,122.98 after paying mortgage, taxes, legal fees and other usual adjustments -- Parties applied for final determination of all matters arising from breakdown of marriage -- Applications granted -- Payments of $10,194.09, $3,041.75, $13,870.10, $4,607.46, and $3,605.99 should have been made from sale proceeds -- Net sale proceeds constituting family asset were $159,803.59 -- Net result of compensation claims with respect to Worker's Compensation payments, house repairs, satellite television service, house insurance, payment of parking ticket and store credit account was that wife was to pay husband $3,701.80 -- Wife was entitled to $87,928.24 of funds held in trust -- In order to effect division of family assets, other than husband's pension, wife's RRSP, automobiles and household contents and in order to satisfy compensation claims, husband was to receive $73,536.17 of funds in trust and wife was to receive $86,267.43.

M. (M.R.) v. M. (I.M.) (2006), [2006] B.C.J. No. 1034, 2006 CarswellBC 1117, 2006 BCSC 568, Joyce J. (B.C. S.C.) [British Columbia]

FAM.III.9.c.iii.A

Subject Title: Family law

Classification Number: III.9.c.iii.A

Family property on marriage breakdown -- Order for division of property -- Order for payment -- Order regarding pensions -- General principles

Spouse's share of administrative costs of dividing pension plan.

G. (S.) v. W. (G.) (2006), 2006 CarswellBC 1594, 2006 BCSC 991, D.J. Martinson J. (B.C. S.C.) [British Columbia]

FAM.III.9.c.iv

Subject Title: Family law

Classification Number: III.9.c.iv

Family property on marriage breakdown -- Order for division of property -- Order for payment -- Order of compensation

Parties separated after 20 years of marriage -- Parties had five children and wife stayed home to raise them -- Husband operated bakery, two delicatessens, and owned land that he acquired prior to marriage -- Property and interest in business was valued at $993,677 -- Wife was content with 50-50 distribution as provided for in Family Relations Act -- Husband brought application for reapportionment of family assets -- Trial judge found that this was not appropriate case for reapportionment and divided assets equally -- However, since wife was to receive cash payment as compensation for her share of family assets but it was essential that husband be able to continue in business to support family, trial judge deducted $75,000 from wife's share to reflect that husband had to borrow and pay interest on funds to pay compensation order and needed to renovate business premises -- Wife appealed claiming that it had not been shown that husband's expenditures would affect revenues or profits -- Appeal was dismissed -- Most of business improvements were required, either by terms of lease or by city for public safety purposes -- Even experts were unable to predict any increase in profits -- Husband, who was directing mind of business, was entitled to borrow funds through business for business purposes, which in this case could not be said to be improper or illegitimate -- Nor, in determining amount of compensation award, could it be said that trial judge misapprehended nature of real estate as compared with nature of share in private company -- Although it was not clear how trial judge had arrived at figure of $75,000, this amount as percentage of total assets was not out of line with cited cases -- Ultimately, compensation was matter of trial judge's discretion and court should not interfere.

Redpath v. Redpath (2006), 2006 CarswellBC 1709, 2006 BCCA 338, [2006] B.C.J. No. 1550, Hall J. A., Mackenzie J.A., Newbury J.A. (B.C. C.A.) [British Columbia]; reversing in part (2005), 2005 BCSC 562, 2005 CarswellBC 950, Williamson J. (B.C. S.C.)

FAM.III.10.d.i

Subject Title: Family law

Classification Number: III.10.d.i

Family property on marriage breakdown -- Matrimonial home -- Determination of share of ownership -- General principles

Husband and wife separated and husband made assignment in bankruptcy before wife began divorce proceedings which had not concluded -- Husband's trustee in bankruptcy was registered on title to matrimonial home for husband's one-half interest which was declared to be $53,450 -- Trustee in bankruptcy brought application for order for partition and sale of former matrimonial home under Partition of Property Act ("PPA") and wife who resided in home opposed application -- Possibility existed that husband could retain his pensions and wife could be forced to leave matrimonial home since husband's property vested with his trustee in bankruptcy and wife could not assert right to husband's pensions in matrimonial proceedings because no triggering event occurred under Family Relations Act -- Court-initiated delay which would allow husband and wife to continue negotiating their separation agreement could not assist wife since she was required to negotiate with trustee in whom husband's property vested -- Order for partition and sale of matrimonial home was not granted since insufficient information existed by which relative hardship of parties could be weighed -- Registrar was directed to conduct enquiry under s. 4(2) of PPA into nature of property, persons interested in it, and status and circumstances of husband's bankruptcy and his estate, and to report findings to court -- Value of matrimonial home, its approximate mortgage, wife's ability to raise $10,000 to purchase trustee's one-half interest in home, and amount of unsecured claims proven in husband's bankruptcy were known -- Wife's financial circumstances and income, availability and cost of alternative housing for her, why she could not borrow more than $10,000, financial impact sale of home would have on her, and further claims by husband's other creditors were not known -- Draft accounts of husband's estate seemed unreliable for amounts received by estate with respect to husband's interest in home.

Norquay (Trustee of) v. Norquay (2006), 2006 CarswellBC 2076, 2006 BCSC 1242, 24 C.B.R. (5th) 268, Master Baker (B.C. Master) [British Columbia]

FAM.III.11.a

Subject Title: Family law

Classification Number: III.11.a

Family property on marriage breakdown -- Practice and procedure -- General principles

Trial judge erred in finding no evidence of fate of loan proceeds.

Balic v. Balic (2006), 2006 CarswellBC 1676, 2006 BCCA 335, Finch C.J.B.C., Newbury J.A., Ryan J. A. (B.C. C.A.) [British Columbia]; reversing in part (2003), 2003 CarswellBC 2398, 2003 BCSC 1474, Shabbits J. (B.C. S.C.)

FAM.III.11.d.ii

Subject Title: Family law

Classification Number: III.11.d.ii

Family property on marriage breakdown -- Practice and procedure -- Discovery -- Discovery of documents

Neither party making timely disclosure of assets.

Kuznecov v. Kuznecov (2006), 2006 CarswellBC 1262, 2006 BCSC 748, Wilson J. (B.C. S.C.) [British Columbia]

FAM.IV.1.b.iii

Subject Title: Family law

Classification Number: IV.1.b.iii

Support -- Spousal support under Divorce Act and provincial statutes -- Entitlement -- Means of spouses

Parties met while working for same surveying firm and lived together for three and a half years from January 2002 to June 2005 -- Cohabitation began when defendant moved into property G, which plaintiff had purchased before they met -- Defendant paid plaintiff $200 per month which plaintiff

claimed was rent but defendant claimed was contribution to expenses -- Parties became engaged in 2002 -- Relationship was strained and defendant alleged that plaintiff hit her on two occasions -- In 2003 defendant bought own house and moved into it and shortly after plaintiff moved in with her and property G was rented out -- In 2004 both parties sold their respective properties -- Parties renovated property G and net proceeds from sale were $70,000 while net proceeds from defendant's sale were $49,000 -- Parties bought property C in joint names and opened joint bank account to contribute funds to pay mortgage and other expenses on property C -- Also in 2004 plaintiff started own business and persuaded established surveying firm to set up office in town in partnership with plaintiff -- In early 2005 defendant started own business -- When parties separated in 2005 plaintiff moved out of property C and brought proceedings claiming interest in defendant's property -- Defendant counterclaimed that plaintiff had been unjustly enriched by her contributions in money and work to property G and partnership business and claimed equal interest in property C -- Defendant also sought spousal support -- On issue of spousal support, counterclaim was dismissed -- Parties were spouses within meaning of Family Relations Act since they had lived together as man and wife, had shared vacations, had bought home in joint names and plaintiff referred to defendant as spouse -- Accordingly, defendant had standing to claim spousal support -- Parties each remained independent throughout relationship in that each pursued own career and remained fiscally independent of other except for period from January to June 2005 when defendant was setting up her business -- However, defendant did not sacrifice career for relationship and did not show need for support since she was doing better financially in 2005 then in 2003 and 2004 -- Evidence did not support agreement by plaintiff to support defendant while she set up her business -- In circumstances, no spousal support was payable.

Whale v. Gregoire (2006), 2006 CarswellBC 1374, 2006 BCSC 735, Johnston J. (B.C. S.C.) [British Columbia]

FAM.IV.1.b.iv

Subject Title: Family law

Classification Number: IV.1.b.iv

Support -- Spousal support under Divorce Act and provincial statutes -- Entitlement -- Causal connection between need and marriage

Parties were married in 1979, had two children, and separated in 2004 -- Wife worked outside home during early years of marriage, but parties farmed from 1983 to 2004 -- Husband worked outside home during entire marriage in addition to farming -- Wife worked as farm wife until date of separation, but

had not worked since separation -- Wife suffered from depressive illness with anxiety features -- Wife brought action for spousal support -- Action allowed -- Wife was entitled to support and husband acknowledged such entitlement -- Wife produced uncontradicted evidence that she suffered from depressive illness with anxiety features, and was unable to work -- As only evidence before court was that of wife's doctors, only possible conclusion was that wife was unable to work -- No income was attributed to wife -- Wife's psychiatrist anticipated gradual improvement to point where wife could possibly work, therefore husband entitled to medical updates every two years -- Indefinite spousal support appropriate, in amount of $1,360 per month, subject to any change of circumstances including wife's medical circumstances and husband's retirement.

Lovich v. Lovich (2006), 2006 CarswellAlta 1312, 2006 ABQB 736, F.F. Slatter J. (Alta. Q.B.) [Alberta]; additional reasons at (2006), 2006 CarswellAlta 1419, 2006 ABQB 797, F.F. Slatter J. (Alta. Q.B.)

FAM.IV.1.b.v

Subject Title: Family law

Classification Number: IV.1.b.v

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

Parties married in Poland in 1976, had daughter and came to Canada in 1984 -- Husband began working for large equipment sales and repair company as mechanic in 1988 -- Parties had second child in 1989 -- Wife found employment at care facility in 2000 on casual basis -- Wife accepted permanent position with employer and earned annual income of $39,819 -- Husband operated karate school and had small business repairing computer equipment -- Parties applied for final determination of all matters arising from breakdown of marriage -- Applications granted -- Marriage was long one in which wife adopted primary role of home-making and child raising and secondary role of supplementing household income -- Wife suffered economic disadvantage as result of marriage and its breakdown -- There was significant disparity in parties' incomes that would likely continue into future -- There were no financial consequences arising from care any child of marriage that would negatively impact wife since husband had primary care of remaining child of marriage -- Wife was entitled to spousal support -- It was appropriate to award spousal support that would enable parties to have similar standards of living -- Parties would have approximately equal standard of living ratios if spousal support amount was $700 per month.

M. (M.R.) v. M. (I.M.) (2006), [2006] B.C.J. No. 1034, 2006 CarswellBC 1117, 2006 BCSC 568, Joyce J. (B.C. S.C.) [British Columbia]

FAM.IV.1.b.v

Subject Title: Family law

Classification Number: IV.1.b.v

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

Parties were married in 1998, had one child in 1999 and separated in 2002 -- Wife was not employed during marriage or at time of separation, but had completed hairstyling course and was employed at time of hearing -- Husband was employed as criminal lawyer -- Child lived with each parent on alternating week arrangement pursuant to consent order in 2004 -- Husband did not appear at hearing concerning child and spousal support, and income of $100,000 was imputed to him -- Husband was ordered to pay child support in accordance with Federal Child Support Guidelines, and spousal support in amount of $2,000 per month -- Husband did not make payments, and enforcement program collected $16,352 through attachment orders to Legal Services Society -- Most payments received were from society for services provided to legal aid clients -- Husband then arranged his affairs to avoid paying support, by ceasing to render accounts to society, despite having completed services to legal aid clients -- Husband brought motion to set aside or vary spousal support order -- Motion granted in part -- Wife's expenses were modest, and she had debt from completing educational program -- Wife continued to experience some disadvantage arising from role she played in marriage -- Wife still remained in need of financial support from husband -- Spousal support reduced to $1,000 per month, reviewable two years from date of order.

Markovitz v. Markovitz (2006), 2006 BCSC 1007, 2006 CarswellBC 1638, Ralph J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IV.1.b.v

Subject Title: Family law

Classification Number: IV.1.b.v

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

Parties separated after 23-year marriage, and wife resided in marriage-like relationship with new partner -- Husband, who was 48 years of age, earned annual income of $67,074.02 and 46-year-old wife earned annual income of $21,400 -- Prior to marriage, wife was employed as retail clerk and during marriage husband provided primary source of support for family -- Family assets were comprised mainly of matrimonial home and husband's employment pension which accrued throughout marriage -- Net proceeds from sale of matrimonial home were evenly divided, and husband's pension was to be divided by agreement -- Parties executed separation agreement in September 2003 described as interim arrangement for support -- Agreement stated in part that either party could apply for judicial determination of further term of support if parties could not agree -- Agreement did not deal with arrangements regarding spousal support in event that wife formed new relationship -- Husband paid $900 monthly in spousal support until June 2004 -- Husband applied for relief including dismissal of wife's claim for spousal support -- Application dismissed -- Husband was able to pursue full-time career with benefits because wife assumed child-care duties, and parties had disparate incomes -- Wife would receive substantial support under Spousal Support Advisory Guidelines -- In circumstances, there was basis for entitlement based on both compensatory principles and need -- Wife's needs could change along with her circumstances, such as outcome of her new relationship -- Wife's need would have to be assessed with other relevant factors at time of wife's application.

R. (R.S.) v. R. (S.M.) (2006), 2006 CarswellBC 2295, 2006 BCSC 1404, D.J. Martinson J. (B.C. S.C.) [British Columbia]

FAM.IV.1.b.v

Subject Title: Family law

Classification Number: IV.1.b.v

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

disadvantage of marriage

Husband and wife were married for 20 years and had five children -- Wife remained at home to look after children while husband operated businesses -- Husband and wife had married when wife was 18 years old -- Husband and wife had had expensive lifestyle while married -- Husband and wife owned home worth over $2 million, drove expensive cars, took expensive vacations, and sent children to private school -- Wife brought application for spousal support -- Trial judge made spousal support order for $3,500 per month to be reviewed in three years -- Trial judge found that after lengthy marriage, wife should have been in position to have lifestyle similar to marriage, but she also had statutory obligation to become economically self-sufficient -- Also, wife was healthy and parental responsibilities would only require 50 per cent of her time given order for equal time with each parent -- Wife appealed contending that trial judge did not refer to Advisory Guidelines in reasons for spousal support and that Advisory Guidelines range for income of $260,000 was between $4,542 and $5,510 -- Accordingly, wife claimed that trial judge erred in awarding spousal support that was too low -- Appeal allowed -- Guidelines were useful tool for trial judge but there was no requirement that, as matter of law, they be used in determining spousal support -- Trial judge did consider appropriate factors and did not misapprehend evidence -- However, figure of $3,500 per month was simply too low in light of Advisory Guidelines range -- Husband would in future continue to enjoy affluent lifestyle and could afford for wife to do so as well -- Therefore, spousal support of $5,000 per month reviewable in five years was appropriate, which recognized wife's need for retraining and young age of her youngest children.

Redpath v. Redpath (2006), 2006 CarswellBC 1709, 2006 BCCA 338, [2006] B.C.J. No. 1550, Hall J. A., Mackenzie J.A., Newbury J.A. (B.C. C.A.) [British Columbia]; reversing in part (2005), 2005 BCSC 562, 2005 CarswellBC 950, Williamson J. (B.C. S.C.)

FAM.IV.1.d

Subject Title: Family law

Classification Number: IV.1.d

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

Parties married in 1989 and separated in 2003 -- Parties had one child, a son, and wife's daughter from previous marriage lived with parties -- On separation, wife and children continued to live in matrimonial home -- Husband worked as stockbroker but also earned money investing in stock market, providing services to companies as chartered financial analyst, and playing poker and betting online -- Wife had

high school education and had worked at minimum wage jobs and been on social assistance before marriage -- During marriage wife stayed at home to look after house and children -- After separation husband did not provide regular monthly support for family but did pay mortgage. lines of credit and utilities, and wife has use of credit card for necessities -- In 2004 interim order was made granting sole custody of son to wife and ordering husband to pay $2,000 per month interim support -- Husband was also ordered to pay interim child support -- In divorce proceedings, wife sought retroactive spousal support -- No order for retroactive spousal support should be made -- There was need for support on part of both wife and son and corresponding ability to pay on part of husband -- Also, there had been blameworthy conduct on part of husband including incomplete and misleading financial disclosure -- Furthermore, wife had to encroach on her capital to meet expenses for herself and son -- However, if retroactive award was made it would result in unreasonable burden on husband as it would restrict his ability to meet his ongoing support obligations -- Also, there was some blameworthy conduct on wife's part as well in not disclosing assets in her possession -- In all circumstances, it was not appropriate case for award of retroactive spousal support.

Kuznecov v. Kuznecov (2006), 2006 CarswellBC 1262, 2006 BCSC 748, Wilson J. (B.C. S.C.) [British Columbia]

FAM.IV.1.f.i

Subject Title: Family law

Classification Number: IV.1.f.i

Support -- Spousal support under Divorce Act and provincial statutes -- Time-limited award -- General principles

Parties married in 1989 and separated in 2003 -- Parties had one child, a son, and wife's daughter from previous marriage lived with parties -- On separation, wife and children continued to live in matrimonial home -- Husband worked as stockbroker but also earned money investing in stock market, providing services to companies as chartered financial analyst, and playing poker and betting online -- Wife had high school education and had worked at minimum wage jobs and been on social assistance before marriage -- During marriage wife stayed at home to look after house and children -- After separation husband did not provide regular monthly support for family but did pay mortgage. lines of credit and utilities, and wife has use of credit card for necessities -- In 2004 interim order was made granting sole custody of son to wife and ordering husband to pay $2,000 per month interim support -- Father was also ordered to pay interim child support -- In divorce proceedings, wife sought spousal support and issues

arose as to quantum and duration of such support -- Husband was to pay wife monthly spousal support of $6,000 for five years, at which time order would be subject to review on either parties' application -- Support amounts were based on imputed yearly income of $150,000 to husband and $8,000 to wife -- There was no realistic prospect that wife would substantially increase her income, especially while son was still at home -- Before separation parties had comfortable if not extravagant standard of living with large home and frequent travel holidays -- Even on combined family income of $158,000 previous standard of living could not be maintained -- Accordingly, spousal support was not set at amount to enable wife to enjoy pre-separation lifestyle, but rather to equalize standard of living of parties in future -- Five-year support period was appropriate since marriage had been of moderate length and parties were both still in early 40's with lengthy working life ahead of them -- Also, expectation of both parties at time of marriage was that husband would be income earner for family, and there were concerns as to whether wife could ever become self-sufficient.

Kuznecov v. Kuznecov (2006), 2006 CarswellBC 1262, 2006 BCSC 748, Wilson J. (B.C. S.C.) [British Columbia]

FAM.IV.1.f.ii

Subject Title: Family law

Classification Number: IV.1.f.ii

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

Husband and wife were married for 20 years and had five children -- Wife remained at home to look after children while husband operated businesses -- Husband and wife had married when wife was 18 years old -- Husband and wife had had expensive lifestyle while married -- Husband and wife owned home worth over $2 million, drove expensive cars, took expensive vacations and sent children to private school -- Wife brought application for spousal support -- Trial judge made spousal support order for $3,500 per month to be reviewed in three years -- Trial judge found that after lengthy marriage, wife should have been in position to have lifestyle similar to marriage, but she also had statutory obligation to become economically self-sufficient -- Also, wife was healthy and parental responsibilities would only require 50 per cent of her time given order for equal time with each parent -- Wife appealed contending that trial judge did not refer to Advisory Guidelines in reasons for spousal support and that Advisory Guidelines range for income of $260,000 was between $4,542 and $5,510 -- Accordingly, wife claimed that trial judge erred in awarding spousal support that was too low -- Appeal allowed -- Guidelines were

useful tool for trial judge but there was no requirement that, as matter of law, they be used in determining spousal support -- Trial judge did consider appropriate factors and did not misapprehend evidence -- However, figure of $3,500 per month was simply too low in light of Advisory Guidelines range -- Husband would in future continue to enjoy affluent lifestyle and could afford for wife to do so as well -- Therefore, spousal support of $5,000 per month reviewable in five years was appropriate, which recognized wife's need for retraining and young age of her youngest children.

Redpath v. Redpath (2006), 2006 CarswellBC 1709, 2006 BCCA 338, [2006] B.C.J. No. 1550, Hall J. A., Mackenzie J.A., Newbury J.A. (B.C. C.A.) [British Columbia]; reversing in part (2005), 2005 BCSC 562, 2005 CarswellBC 950, Williamson J. (B.C. S.C.)

FAM.IV.1.f.ii

Subject Title: Family law

Classification Number: IV.1.f.ii

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

Parties were married in 1991 and separated in 2003 -- Husband was 44 years old and wife 38 -- Parties had two children aged 12 and 9 -- After separation, wife took animation course, for which husband paid, and was about to join industry -- Husband's annual income was $207,433 and wife's was $13,248 exclusive of support -- Trial judge awarded wife spousal support of $2,500 per month for 42 months on basis that wife was positioned to become self-sufficient in near future -- Wife appealed -- Appeal allowed -- Husband was to pay monthly spousal support of $4,200, and termination of order was to be reviewed by December 2008 -- Wife's income potential was only expectation -- Parties had cohabited for 12 years and wife had no recent experience working in paid labour force -- Parties had enjoyed affluent standard of living and their two children, who resided with wife, were still young and required parental presence in home -- Trial judge did not fairly apportion consequences of breakdown of marriage or consider disparity in means and circumstances of parties -- Range of spousal support under Advisory Guidelines was $3,920 to $4,883 suggesting amount awarded was low -- In short term, amount of spousal support ordered was considerably less than adequate to meet objectives of Divorce Act -- Time limit was too severe.

S. (M.) v. S. (W.) (2006), [2006] 11 W.W.R. 119, 2006 BCCA 391, 56 B.C.L.R. (4th) 245, [2006] B.C.J. No. 2020, 2006 CarswellBC 2214, Levine J.A., Saunders J.A., Thackray J.A. (B.C. C.A.) [British

Columbia]; reversed in part (2005), 2005 CarswellBC 1535, 2005 BCSC 939, [2005] B.C.J. No. 1447, Romilly J. (B.C. S.C.)

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 October 1985, had four children of marriage, and lived separate and apart since December 2003 -- Interim support order was granted in 2005, and at time of interim support order, husband's annual income was $72,000 -- At time of interim order, spousal support was varied from $2,000 to $1,500 monthly -- At time of interim order, wife's support was based on full-time attendance at college -- After interim order was granted, wife learned that she would need to commute to attend full-time nursing program and decided to wait for one year to resume nursing -- In meantime, wife obtained part-time employment while taking nursing classes offered closer to her home -- Wife's income was $16,000 annually -- Husband sought relief including varying of interim support order by suspending enforcement of spousal support until trial or settlement and varying spousal support retroactive to September 2005 -- Wife sought relief including final judgment for divorce -- Interim spousal support order was based on wife's full-time student status without independent income -- At present, wife shared household expenses with partner and reported annual income in amount of $16,000 -- Wife would become full-time student in near future -- Amount of $750 per month payable by husband to wife in respect of spousal support was made commencing June 1, 2006.

Carlton v. Carlton (2006), 2006 CarswellSask 308, 2006 SKQB 259, Krueger J. (Sask. Q.B.) [Saskatchewan]

FAM.IV.1.h.iii.A

Subject Title: Family law

Classification Number: IV.1.h.iii.A

Support -- Spousal support under Divorce Act and provincial statutes -- Variation or termination -- Change in financial circumstances -- General principles

Bankruptcy -- Parties were married for 23 years and had three children -- By consent order, husband was ordered to pay $26,000 to wife, take over payment of line of credit and pay $250 monthly in spousal support -- Husband had health problems, preventing him from realizing full working potential as electrician -- Husband earned $48,000 annually -- After marriage, wife attempted cooking classes but health problems intervened -- Husband declared bankruptcy, and liability for debt to wife and for line of credit was extinguished -- Wife received payment of $22,054 -- Wife brought application for increased spousal support -- Application granted -- Support increased to $300, to be paid for three years -- Increased support tied to payment of debt -- Bankruptcy was material change in circumstances -- Husband was in poor economic circumstances, but wife was responsible for debt that she had no means to repay -- Wife was at disadvantage from marriage breakdown.

Weckermann v. Weckermann (2006), 2006 CarswellBC 2555, 2006 BCSC 1537, L. Bernard J. (B.C. S. C.) [British Columbia]

FAM.IV.1.h.iii.B

Subject Title: Family law

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

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

Parties married in October 1985, had four children of marriage, and lived separate and apart since December 2003 -- Interim support order was granted in 2005, and at time of interim support order, husband's annual income was $72,000 -- At time of interim order, spousal support was varied from $2,000 to $1,500 monthly -- At time of interim order, wife's support was based on full-time attendance at college -- After interim order was granted, wife learned that she would need to commute to attend full-time nursing program and decided to wait for one year to resume nursing -- In meantime, wife obtained part-time employment while taking nursing classes offered closer to her home -- Wife's income was

$16,000 annually -- Husband sought relief including varying of interim support order by suspending enforcement of spousal support until trial or settlement and varying spousal support retroactive to September 2005 -- Wife sought relief including final judgment for divorce -- Interim spousal support order was based on wife's full-time student status without independent income -- At present, wife shared household expenses with partner and reported annual income in amount of $16,000 -- Wife would become full-time student in near future -- Amount of $750 per month payable by husband to wife in respect of spousal support was made commencing June 1, 2006.

Carlton v. Carlton (2006), 2006 CarswellSask 308, 2006 SKQB 259, Krueger J. (Sask. Q.B.) [Saskatchewan]

FAM.IV.1.h.iii.C

Subject Title: Family law

Classification Number: IV.1.h.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 in 1998, had one child in 1999 and separated in 2002 -- Wife was not employed during marriage or at time of separation, but had completed hairstyling course and was employed at time of hearing -- Husband was employed as criminal lawyer -- Child lived with each parent on alternating week arrangement pursuant to consent order in 2004 -- Husband did not appear at hearing concerning child and spousal support, and income of $100,000 was imputed to him -- Husband was ordered to pay child support in accordance with Federal Child Support Guidelines, and spousal support in amount of $2,000 per month -- Husband did not make payments, and enforcement program collected $16,352 through attachment orders to Legal Services Society -- Most payments received were from society for services provided to legal aid clients -- Husband then arranged his affairs to avoid paying support, by ceasing to render accounts to society, despite having completed services to legal aid clients -- Husband brought motion to reduce or cancel arrears of spousal support -- Motion dismissed -- At time of spousal support order, wife had recently begun training program, had no income and was drawing upon student loans -- Wife was at economic disadvantage to husband and suffered economic hardship in absence of receiving spousal support -- Only payments received by wife resulted from attachment procedures -- Cancellation or reduction of arrears of spousal support was inappropriate.

Markovitz v. Markovitz (2006), 2006 BCSC 1007, 2006 CarswellBC 1638, Ralph J. (B.C. S.C. [In

Chambers]) [British Columbia]

FAM.IV.1.h.iv

Subject Title: Family law

Classification Number: IV.1.h.iv

Support -- Spousal support under Divorce Act and provincial statutes -- Variation or termination -- Cohabitation or remarriage

Parties separated after 23-year marriage, and wife resided in marriage-like relationship with new partner -- Husband, who was 48 years of age, earned annual income of $67,074.02 and 46-year-old wife earned annual income of $21,400 -- Prior to marriage, wife was employed as retail clerk and during marriage husband provided primary source of support for family -- Family assets were comprised mainly of matrimonial home and husband's employment pension which accrued throughout marriage -- Net proceeds from sale of matrimonial home were evenly divided, and husband's pension was to be divided by agreement -- Parties executed separation agreement in September 2003 described as interim arrangement for support -- Agreement stated in part that either party could apply for judicial determination of further term of support if parties could not agree -- Agreement did not deal with arrangements regarding spousal support in event that wife formed new relationship -- Husband paid $900 monthly in spousal support until June 2004 -- Husband applied for relief including dismissal of wife's claim for spousal support -- Application dismissed -- Husband was able to pursue full-time career with benefits because wife assumed child-care duties, and parties had disparate incomes -- Wife would receive substantial support under Spousal Support Advisory Guidelines -- In circumstances, there was basis for entitlement based on both compensatory principles and need -- Wife's needs could change along with her circumstances, such as outcome of her new relationship -- Wife's need would have to be assessed with other relevant factors at time of wife's application.

R. (R.S.) v. R. (S.M.) (2006), 2006 CarswellBC 2295, 2006 BCSC 1404, D.J. Martinson J. (B.C. S.C.) [British Columbia]

FAM.IV.1.i.v.A

Subject Title: Family law

Classification Number: IV.1.i.v.A

Support -- Spousal support under Divorce Act and provincial statutes -- Enforcement of award -- Limitation or reduction of arrears -- General principles

Parties married in October 1985, had four children of marriage, and lived separate and apart since December 2003 -- Wife successfully applied for addition of C Ltd. as third party -- Interim support order was granted in 2005, and at time of interim support order, husband's annual income was $72,000 -- On interim order, spousal support was varied from $2,000 to $1,500 monthly -- At time of interim order, wife's support was based on full-time attendance at college -- After interim order was granted, wife learned that she would need to commute to attend full-time nursing program and decided to wait for one year to resume nursing -- In meantime, wife obtained part-time employment while taking nursing classes offered closer to her home -- Wife's income was $16,000 annually -- Husband sought relief including varying of interim support order by suspending enforcement of spousal support until trial or settlement and varying spousal support retroactive to September 2005 -- Wife sought relief including final judgment for divorce -- Two cheques in aggregate amount of $6,825 were available and did not need to be held in abeyance pending resolution of family property issues -- Husband was ordered to deliver cheques endorsed by him to wife -- Husband was to be credited with one-half amount of each cheque on payment of spousal arrears -- Enforcement of balance of arrears of spousal support was suspended until further order or agreement.

Carlton v. Carlton (2006), 2006 CarswellSask 308, 2006 SKQB 259, Krueger J. (Sask. Q.B.) [Saskatchewan]

FAM.IV.1.i.v.A

Subject Title: Family law

Classification Number: IV.1.i.v.A

Support -- Spousal support under Divorce Act and provincial statutes -- Enforcement of award -- Limitation or reduction of arrears -- General principles

Arrears of support.

Kuznecov v. Kuznecov (2006), 2006 CarswellBC 1262, 2006 BCSC 748, Wilson J. (B.C. S.C.) [British Columbia]

FAM.IV.2.a.ii

Subject Title: Family law

Classification Number: IV.2.a.ii

Support -- Child support -- Duty to contribute -- Who is a parent

Parties lived together in common law relationship from 1990 to 2000 and had two children -- Mother also had biological son L who resided with parties -- Father was sole source of financial support throughout relationship -- Consent order in July 2002 provided that parties had joint and shared custody of children and father would pay mother $700 per month in child support -- Father's income at time was $78,000 -- Father's 2004 income was $91,500 -- Mother's income consisted of $9,600 per year in Child Tax Credits and $700 per year in GST rebates -- Mother brought application for sole custody and increase in child support and issue arose as to whether father stood in loco parentis to L -- Father stood in loco parentis to L -- Parental relationship existed between L and father when parties lived together and father's obligations continued post-separation -- L had not yet reached age of majority or withdrawn from charge of parents -- As result, father was required to pay child support for L according to Child Support Guidelines -- To determine child support for L, Guideline amount for three children was divided by three.

Beggair v. Nixon (2006), 2006 CarswellNWT 27, 2006 NWTSC 22, Richard C.J.S.C. (N.W.T. S.C.) [Northwest Territories]; additional reasons at (2006), 2006 CarswellNWT 36, J.E. Richard J. (N.W.T. S. C.)

FAM.IV.2.a.ii

Subject Title: Family law

Classification Number: IV.2.a.ii

Support -- Child support -- Duty to contribute -- Who is a parent

Parties married in 1999, had one child, T, and separated in 2004 -- Mother's two children of previous marriage, S, born in 1991 and Z, born in 1992, lived with parties -- Mother's previous husband was required to pay $500 per month in child support for Z and S, and paid amount somewhat less than that fairly consistently -- Father attended or took S and Z to their sports activities, and looked after them when mother was at work -- Mother discussed issues regarding S and Z with father -- Following parties' separation, father continued to look after T, and did not continue to see S and Z regularly -- Mother brought application for child support, and issue arose as to whether father met definition of parent in Family Relations Act with respect to S and Z -- Application granted -- Father was ordered to pay child support for all three children in amount of $300 per month -- Father constituted stepfather to S and Z given their ages when he married mother, amount of time he spent with them daily, and length of marriage -- Father's withdrawal from their lives did not negate his status as person who stood in as parent for large part of their lives -- Although father did not contribute directly to support of children, father made indirect contributions by assisting mother to buy house where family lived for two years during marriage, paying half mortgage, and contributing to household expenses -- Children clearly benefited by residing in home.

H. (S.) v. P. (A.) (2006), 2006 CarswellBC 1575, 2006 BCPC 293, C.C. Baird Ellan Prov. J. (B.C. Prov. Ct.) [British Columbia]

FAM.IV.2.e.iii

Subject Title: Family law

Classification Number: IV.2.e.iii

Support -- Child support -- Variation of order -- Limitation or reduction of arrears

Applicant father and respondent mother married in 1987, had daughter in 1988, and separated in 1989 -- Daughter resided with mother since separation -- Father was required to pay child support of $300 per month in 1990 Order and again in divorce and corollary relief judgment in 1995 -- Father, despite having been served, failed to attend both proceedings -- Father brought child support variation

application under Divorce Act in 2005 and obtained provisional order in Ontario -- Provisional order reduced father's ongoing child support obligation to $157 per month and eliminated arrears of $22,397.03, subject to confirmation in Manitoba -- Confirmation hearing held; provisional order confirmed with variations -- Given mother's consent, father's obligation was varied retroactively to January 1, 2002 based on Provincial child support Guidelines -- Retroactive variation resulted in credit of $7,468 against arrears -- Father's ongoing child support obligation was varied to rate of $181 per month according to Guidelines based on income of $21,100 per year -- Father's request to vary support prior to January 1, 2002 was denied -- Arrears to be paid at rate of $100 per month, payable to mother first and then assignee -- Absent exceptional circumstances rooted in fairness balance between parties, retroactive relief should not be granted -- Father raised no special or exceptional circumstances -- There was no unfairness in enforcing original order -- Father was aware of obligations and had dismal record of payment throughout -- Father benefited from tax deductible nature of previous order -- Father had substantial unexplained delay in bringing variation forward.

Bailey v. Hildebrand (2006), 2006 MBQB 129, 2006 CarswellMan 190, Yard J. (Man. Q.B.) [Manitoba]

FAM.IV.3.a.iii

Subject Title: Family law

Classification Number: IV.3.a.iii

Support -- Child support under federal and provincial guidelines -- Application of guidelines -- Shared or split custody

Parties lived together in common law relationship from 1990 to 2000 and had two children -- Mother also had biological son L who resided with parties -- Father was sole source of financial support throughout relationship -- Consent order in July 2002 provided that parties had joint and shared custody of children and father would pay mother $700 per month in child support -- Father's income at time was $78,000 -- Father's 2004 income was $91,500 -- Mother's income consisted of $9,600 per year in Child Tax Credits and $700 per year in GST rebates -- Mother brought application for sole custody and increase in child support -- Application granted in part -- Mother awarded sole custody of L only -- Joint and shared custody of two youngest children was ordered to continue -- Father ordered to pay child support of $798 per month for two youngest children -- In circumstances, simple set-off amount was appropriate under s. 11 of Child Support Guidelines -- Employment income of $25,000 was imputed to mother as evidence indicated she was capable of obtaining at least unskilled employment -- Mother's total income for Guideline set-off was $35,300 -- There was no evidence of what increased costs of

shared custody arrangement were -- Standard of living in two households was, in general terms, comparable.

Beggair v. Nixon (2006), 2006 CarswellNWT 27, 2006 NWTSC 22, Richard C.J.S.C. (N.W.T. S.C.) [Northwest Territories]; additional reasons at (2006), 2006 CarswellNWT 36, J.E. Richard J. (N.W.T. S. C.)

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 married in 1999, had one child, T, and separated in 2004 -- Mother's two children of previous marriage, S, born in 1991 and Z, born in 1992, lived with parties -- Mother's previous husband was required to pay $500 per month in child support for Z and S, and paid amount somewhat less than that fairly consistently -- Father attended or took S and Z to their sports activities, and looked after them when mother was at work -- Mother discussed issues regarding S and Z with father -- Following parties' separation, father continued to look after T, and did not continue to see S and Z regularly -- Mother brought application for child support for all three children -- Application granted -- Father was ordered to pay child support for all three children in amount of $300 per month -- Father's annual income was determined to be $35,000, and mother's annual income was determined to be $38,700 -- Amount under Federal Child Support Guidelines for two children, less offset, was $543 -- It was appropriate to impose lesser amount of $350 for S and Z given father's role as step-parent, expected contribution of natural father, and fact that mother paid for medical and dental insurance and received contribution to financial expenses from new partner -- Father constituted stepfather to S and Z given their ages when he married mother, amount of time he spent with them daily, and length of marriage -- Father's withdrawal from their lives did not negate his status as person who stood in as parent for large part of their lives -- Parties were ordered to share custody of T, and to enjoy equal access.

H. (S.) v. P. (A.) (2006), 2006 CarswellBC 1575, 2006 BCPC 293, C.C. Baird Ellan Prov. J. (B.C. Prov. Ct.) [British Columbia]

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 began living together in 2000 when appellant father was 32 and respondent mother was 17 -- Father was divorced and had three children from that marriage who were living with their mother -- In 2002 father was injured in work-related accident which rendered him quadriplegic -- Five months later parties' child was born and in 2004 parties separated -- Mother moved to Regina with child to live with her brother -- Mother applied for child support and chambers judge determined that father's income for child support purposes was $39,893 and ordered father to pay Guidelines child support of $328 per month -- Father's income was from Canada Pension Plan ("CPP") disability benefits of $9,294 per year, workers compensation benefits of $21,727 per year and investment income of $479 per year for total of $31,501 -- However, since workers compensation benefits were non-taxable, chambers judge grossed up father's income to taxable amount by attributing further income to him of $8,392 -- Also, as result of separation, child benefit of $192 per month payable under CPP to child of disabled person became payable to mother for benefit of child -- Chambers judge refused to adjust amount of $328 to take into consideration CPP child benefits since she held that such benefits were not product of special provisions made for benefit of child, within meaning of s. 3 of Family Maintenance Act -- Father appealed -- Appeal dismissed -- Where income of parent, determined in accordance with s. 16 of Guidelines, is unreflective of parent's real ability to contribute to support of child, s. 19 enables court to impute income -- This includes situation where parent is exempt from paying income tax -- Accordingly, court can gross up parent's income to extent that income consists of non-taxable workers compensation benefits -- CPP disability payments made to child are not special provision that benefits child, as contemplated by Act -- Disability benefit is universal benefit payable to child when parent becomes disabled -- Parent gives up nothing that would warrant corresponding recognition that Guidelines amount should be varied -- If child does not receive CPP child benefit, there is no corresponding gain for non-custodial parent and it is benefit unrelated to any agreement of parties -- Accordingly, such benefits ought not to be taken into account when determining amount of support payable by disabled parent.

Peterson v. Horan (2006), 270 D.L.R. (4th) 450, 29 R.F.L. (6th) 241, [2006] 11 W.W.R. 396, (sub nom. C.P. v. L.H.) 279 Sask. R. 94, 372 W.A.C. 94, [2006] S.C.J. No. 333, 2006 CarswellSask 404, 2006 SKCA 61, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.) [Saskatchewan]; affirming (2004), [2004] S.J. No. 636, 2004 CarswellSask 675, 2004 SKQB 414, (sub nom. C.P. v. L.H.) 255 Sask. L.R.

302, Pritchard J. (Sask. Q.B.); affirmed (2005), 2005 CarswellSask 420, 2005 SKCA 82, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.); and additional reasons to (2005), 2005 CarswellSask 420, 2005 SKCA 82, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.)

FAM.IV.3.b.iii

Subject Title: Family law

Classification Number: IV.3.b.iii

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Whether use of child support tables appropriate

Parties married in 1999, had one child, T, and separated in 2004 -- Mother's two children of previous marriage, S, born in 1991 and Z, born in 1992, lived with parties -- Mother's previous husband was required to pay $500 per month in child support for Z and S, and paid amount somewhat less than that fairly consistently -- Father attended or took S and Z to their sports activities, and looked after them when mother was at work -- Mother discussed issues regarding S and Z with father -- Following parties' separation, father continued to look after T, and did not continue to see S and Z regularly -- Mother brought application for child support for all three children -- Application granted -- Father was ordered to pay child support for all three children in amount of $300 per month -- Father's annual income was determined to be $35,000, and mother's annual income was determined to be $38,700 -- Amount under Federal Child Support Guidelines for two children, less offset, was $543 -- It was appropriate to impose lesser amount of $350 for S and Z given father's role as step-parent, expected contribution of natural father, and fact that mother paid for medical and dental insurance and received contribution to financial expenses from new partner -- Father constituted stepfather to S and Z given their ages when he married mother, amount of time he spent with them daily, and length of marriage -- Father's withdrawal from their lives did not negate his status as person who stood in as parent for large part of their lives -- Parties were ordered to share custody of T, and to enjoy equal access.

H. (S.) v. P. (A.) (2006), 2006 CarswellBC 1575, 2006 BCPC 293, C.C. Baird Ellan Prov. J. (B.C. Prov. Ct.) [British Columbia]

FAM.IV.3.b.iv.B

Subject Title: Family law

Classification Number: IV.3.b.iv.B

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Spouses' means -- Spouse deliberately underemployed

Parties married in Poland in 1976, had daughter and came to Canada in 1984 -- Father began working for large equipment sales and repair company as mechanic in 1988 -- Parties had second child in 1989 -- Mother found employment at care facility in 2000 on casual basis -- When parties separated in 2004 mother and second child remained in family home -- Father consented to order that he pay interim child support in amount of $439 per month commencing January 1, 2005 -- Second child went to live with father on January 15 and father ceased paying child support -- Mother accepted permanent position with employer and earned annual income of $39,819 -- Parties applied for final determination of all matters arising from breakdown of marriage -- Applications granted -- Mother acted reasonably in accepting permanent position with added security and benefits it provided and could not be said to be underemployed -- Amount of basic child support payable based on Guidelines income of $39,819 was $342 per month -- As of May 1, 2006, amount would increase to $368 per month.

M. (M.R.) v. M. (I.M.) (2006), [2006] B.C.J. No. 1034, 2006 CarswellBC 1117, 2006 BCSC 568, Joyce J. (B.C. S.C.) [British Columbia]

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 1999, had one child, T, and separated in 2004 -- Mother's two children of previous marriage, S, born in 1991 and Z, born in 1992, lived with parties -- Mother's previous husband was required to pay $500 per month in child support for Z and S, and paid amount somewhat less than that

fairly consistently -- Father attended or took S and Z to their sports activities, and looked after them when mother was at work -- Mother discussed issues regarding S and Z with father -- Following parties' separation, father continued to look after T, and did not continue to see S and Z regularly -- Mother brought application for child support including extraordinary expenses for all three children -- Application granted -- Father was ordered to pay child support for all three children in amount of $300 per month -- Father was ordered to make equal contribution to all extraordinary expenses for T, and contribute at proportionate rate of one third for extraordinary expenses for S and Z in view of his role as step-parent -- Father's annual income was determined to be $35,000, and mother's annual income was determined to be $38,700 -- Amount under Federal Child Support Guidelines for two children, less offset, was $543 -- Father constituted stepfather to S and Z given their ages when he married mother, amount of time he spent with them daily, and length of marriage -- Parties were ordered to share custody of T, and to enjoy equal access.

H. (S.) v. P. (A.) (2006), 2006 CarswellBC 1575, 2006 BCPC 293, C.C. Baird Ellan Prov. J. (B.C. Prov. Ct.) [British Columbia]

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

Dance costs remained extraordinary expense after daughter reached age of majority.

Stewart v. Stewart (2006), 2006 ABQB 668, 2006 CarswellAlta 1222, B.R. Burrows J. (Alta. Q.B.) [Alberta]

FAM.IV.3.b.vii.D

Subject Title: Family law

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

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Extraordinary expenses -- Whether expense extraordinary

Parties married in 1985, had three children and separated in 1998 -- Parties entered into separation agreement in 1999 -- Under agreement, father agreed to pay child support of $945 per month based on income of $52,000, half of hockey registration fees for two children and half of one dance class registration for other child -- Father had substantial increase in income after separation agreement and was earning $74,018 -- Mother's income including child support she would be receiving was $50,704 -- Mother brought application for extraordinary expenses and issue arose as to whether daughter's dance fees were extraordinary expenses -- Application granted -- Father to pay mother $182.85 per month toward dance fees, which represented 69% of fees -- Dance fees were ordered to be shared by parties in proportion to their incomes -- Dance classes and dance activities were extraordinary expenses -- Mother could not reasonably cover expense on her income alone -- Daughter had been in dance for eight or nine years, enjoyed it and wanted to continue -- It was in daughter's best interests to continue with dance classes and competitions -- Parties had means to financially support dance activities.

G. (J.) v. L. (F.) (2006), 2006 BCPC 420, 2006 CarswellBC 2204, J.O'C. Wingham Prov. J. (B.C. Prov. Ct.) [British Columbia]

FAM.IV.3.b.vii.D

Subject Title: Family law

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

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Extraordinary expenses -- Whether expense extraordinary

Parties married in 1989 and separated in 2003 -- Parties had one child, a son, and mother's daughter from previous marriage lived with parties -- On separation, mother and children continued to live in matrimonial home -- Husband worked as stockbroker but also earned money investing in stock market, providing services to companies as chartered financial analyst, and playing poker and betting online -- Mother had high school education and had worked at minimum wage jobs and been on social assistance

before marriage -- During marriage mother stayed at home to look after house and children -- After separation father did not provide regular monthly support for family but did pay mortgage. lines of credit and utilities, and mother has use of credit card for necessities -- In 2004 interim order was made granting sole custody of son to mother and ordering father to pay $2,000 per month interim support -- Father was also ordered to pay interim child support -- In divorce proceedings, mother sought child support for son and contribution to extraordinary expenses -- Father to pay monthly child support of $1,079 and $42 per month toward extraordinary expenses -- Support amounts were based on imputed yearly income of $150,000 to father and $8,000 to mother -- Mother's claims for expenses of math tutor and amount for guitar, lacrosse, basketball, football and gym pass could not be considered extraordinary expenses -- However, cost of attending tournaments was extraordinary expense -- Spousal support was to be added to mother's income and subtracted from father's when determining proportion of extraordinary expenses each spouse bore.

Kuznecov v. Kuznecov (2006), 2006 CarswellBC 1262, 2006 BCSC 748, Wilson J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.viii

Subject Title: Family law

Classification Number: IV.3.b.viii

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Expenses for post-secondary education

Parties commenced common-law relationship in 1983, were married in 1992 and separated in 2000 -- Parties had two children -- Both parties were employed as lawyers, though father practised law on part-time basis and also worked outside his law practice in executive director position -- Parties entered into separation agreement in 2001 which required father to pay child support in amount other than that prescribed by Federal Child Support Guidelines due to undue hardship on father -- Agreement stated that child support was to be reviewed in 2002 as cause of undue hardship was to be eliminated by that date -- Both parties were First Nations people and Status Indians -- Mother brought application for contribution to extraordinary expenses -- Application granted -- Father worked primarily on reserve and therefore did not pay federal or provincial income tax, therefore grossing-up of income was appropriate -- Proportionate share of extraordinary expenses was to be 64 percent paid by father and 36 percent paid by mother -- As Status Indian, oldest child qualified for funding through her band which included numerous expenses paid for her or reimbursed to her, including tuition, books, Christmas travel, some supplies,

and living allowance of $675 per month during university term -- Child's expenses on top of those covered by band were $825 per month -- Child was required to contribute $1,800 per year, or $225 per month to her own education, leaving $600 per month to be paid by parents -- Father ordered to pay $350 per month and mother ordered to pay $250 per month toward child's education expenses.

M. (S.A.) v. S. (G.J.) (2006), 2006 CarswellBC 1913, 2006 BCPC 354, M.J. Brecknell Prov. J. (B.C. Prov. Ct.) [British Columbia]

FAM.IV.3.b.viii

Subject Title: Family law

Classification Number: IV.3.b.viii

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Expenses for post-secondary education

Parties divorced in 1992 after 10 years of marriage -- Parties had two children, both of which were over age of majority at time of application -- Father was ordered to pay $350 per child per month in support in 1995, based on income of $30,000 -- Father voluntarily increased amount of support in 1997 and 1999 for both children, and continued paying child support until children turned 19 years of age -- Father earned $203,500 in 2002 and $300,499 in 2003 -- Father sold business, which resulted in income of $25,011 in 2004, all of which came from RRSPs -- Mother was unemployed and only source of income was child support -- Child's costs for tuition, fees and books at college were $4,000 per year -- Mother brought application for contribution to extraordinary expenses for youngest child's post-secondary education under s. 7(1)(e) of Federal Child Support Guidelines -- Application granted -- Mother's income and child's income considered in determination of father's share of education expenses -- As mother was not employed and no evidentiary basis existed upon which to impute income to her, she was not required to make any contribution to child's education expenses -- Child worked one day per week, and realistic contribution was 10 percent of education expense -- Father was liable for 100 percent of child's education expenses after child's 10 percent contribution deducted.

Morgan v. Morgan (2006), 2006 CarswellBC 1940, 2006 BCSC 1197, S. Kelleher J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.viii

Subject Title: Family law

Classification Number: IV.3.b.viii

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Expenses for post-secondary education

Parties married in 1979, had two children born in 1985 and 1988, and separated in 1995 -- In 1996 parties entered into separation agreement under which they had joint custody and guardianship of children who were to reside primarily with mother, and father was to pay child support of $400 per month for each child -- Father paid accordingly to agreement until June 2004 when oldest child turned 19, at which point father unilaterally terminated that child's support payments until December 2005 when he resumed payments -- Mother sought contribution by father to oldest child's educational expenses -- Father and new partner were fostering and hoping to adopt two children with disabilities and received $1,600 per month from government for children's care -- In financial statement father claimed that he would have to go into debt if he had to contribute to university expenses -- Father was to pay $3,900 per year as his proportionate share of oldest child's extraordinary expenses for 2006-2007 university year -- Father's financial statement was somewhat misleading since he claimed he was merely scraping by, but had been able to accumulate non-RRSP savings of $5,500 -- Middle-class parents such as these parties are obliged to make some sacrifice to put their children through school and university -- It is wholly unreasonable for separated parent to assert that they should be allowed to pander to personal lifestyle preferences at cost of their child's university education -- Oldest child could earn $8,000 per year and cost of university was $20,000 per year -- One-half of father's child support was for oldest child, leaving unfunded balance of university costs of $6,100 -- Father's income represented 64 percent of parties' combined incomes and therefore his contribution to extraordinary expenses was $3,900.

R. (J.C.) v. R. (J.J.) (2006), 2006 CarswellBC 2347, 2006 BCSC 1422, P.J. Rogers J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.ix

Subject Title: Family law

Classification Number: IV.3.b.ix

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Extraordinary expenses for child's particular educational needs

Parties married in Poland in 1976, had daughter and came to Canada in 1984 -- Father began working for large equipment sales and repair company as mechanic in 1988 -- Parties had second child in 1989 -- When parties separated in 2004 mother and second child remained in family home -- Father consented to order that he pay interim child support in amount of $439 per month commencing January 1, 2005 -- Second child went to live with father on January 15 and father ceased paying child support -- Mother accepted permanent position with employer and earned annual income of $39,819 -- Second child had attended Catholic school since Grade 3 -- Private Catholic school fees were $210 per month for 10 months -- Parties applied for final determination of all matters arising from breakdown of marriage -- Applications granted -- It was not in second child's best interest to be taken out of school that he had attended for some time -- Mother should pay her proportionate share of tuition costs, which amounted to $819 per year or $68 per month -- Registration and activity fee was not extraordinary expense within meaning of s. 7 of Federal Child Support Guidelines.

M. (M.R.) v. M. (I.M.) (2006), [2006] B.C.J. No. 1034, 2006 CarswellBC 1117, 2006 BCSC 568, Joyce J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.xii

Subject Title: Family law

Classification Number: IV.3.b.xii

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Availability of subsidies, benefits, tax deductions or credits

Parties began living together in 2000 when appellant father was 32 and respondent mother was 17 -- Father was divorced and had three children from that marriage who were living with their mother -- In 2002 father was injured in work-related accident which rendered him quadriplegic -- Five months later parties' child was born and in 2004 parties separated -- Mother moved to Regina with child to live with her brother -- Mother applied for child support and chambers judge determined that father's income for child support purposes was $39,893 and ordered father to pay Guidelines child support of $328 per month -- As result of separation, child benefit of $192 per month payable under CPP to child of disabled

person became payable to mother for benefit of child -- Chambers judge refused to adjust amount of $328 to take into consideration CPP child benefits since she held that such benefits were not product of special provisions made for benefit of child, within meaning of s. 3 of Family Maintenance Act -- Father appealed -- Appeal dismissed -- CPP disability payments made to child are not special provision that benefits child, as contemplated by Act -- Father had no choice about making CPP contributions -- Disability benefit is universal benefit payable to child when parent becomes disabled -- Parent gives up nothing that would warrant corresponding recognition that Guidelines amount should be varied -- If child does not receive CPP child benefit, there is no corresponding gain for non-custodial parent and it is benefit unrelated to any agreement of parties -- Also, children in receipt of CPP child disability benefit will likely receive child support based on lower income of parent than child of person non disabled -- Accordingly, such benefits ought not to be taken into account when determining amount of support payable by disabled parent.

Peterson v. Horan (2006), 270 D.L.R. (4th) 450, 29 R.F.L. (6th) 241, [2006] 11 W.W.R. 396, (sub nom. C.P. v. L.H.) 279 Sask. R. 94, 372 W.A.C. 94, [2006] S.C.J. No. 333, 2006 CarswellSask 404, 2006 SKCA 61, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.) [Saskatchewan]; affirming (2004), [2004] S.J. No. 636, 2004 CarswellSask 675, 2004 SKQB 414, (sub nom. C.P. v. L.H.) 255 Sask. L.R. 302, Pritchard J. (Sask. Q.B.); affirmed (2005), 2005 CarswellSask 420, 2005 SKCA 82, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.); and additional reasons to (2005), 2005 CarswellSask 420, 2005 SKCA 82, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.)

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 married in Poland in 1976, had daughter and came to Canada in 1984 -- Father began working for large equipment sales and repair company as mechanic in 1988 -- Parties had second child in 1989 -- When parties separated in 2004 mother and second child remained in family home -- Father consented to order that he pay interim child support in amount of $439 per month commencing January 1, 2005 -- Second child went to live with father on January 15 and father ceased paying child support -- Father operated karate school and had small business repairing computer equipment -- Parties applied for final determination of all matters arising from breakdown of marriage -- Applications granted -- It was

appropriate to assess father's income based on his employment income without regard to his business losses from karate school -- Father's income under Federal Child Support Guidelines should not be reduced because he chose to operate business at loss as recreational pursuit -- Father's income was $63,000 per year.

M. (M.R.) v. M. (I.M.) (2006), [2006] B.C.J. No. 1034, 2006 CarswellBC 1117, 2006 BCSC 568, Joyce J. (B.C. S.C.) [British Columbia]

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

Grossing-up -- Parties commenced common-law relationship in 1983, were married in 1992 and separated in 2000 -- Parties had two children -- Both parties were employed as lawyers, though father practised law on part-time basis and also worked outside his law practice in executive director position -- Parties entered into separation agreement in 2001 which required father to pay child support in amount other than that prescribed by Federal Child Support Guidelines due to undue hardship on father -- Agreement stated that child support was to be reviewed in 2002 as cause of undue hardship was to be eliminated by that date -- Both parties were First Nations people and Status Indians -- Mother brought application for child support in accordance with Guidelines retroactive to May 2004 and extraordinary expenses -- Application granted -- Father did not provide adequate evidence to court of nature of his claimed business expenses for his law practice -- Averaging of father's practice income was not appropriate as his future income was likely to be much less than it had been in previous years -- As Status Indian working largely on reserve, father was exempt from paying federal or provincial income tax -- Gross-up of father's income was reasonable pursuant to s. 19(1)(b) to carry out Guidelines' objective of consistency in treatment of payers -- Father's grossed-up income for 2003 was $180,000, for 2004 was $182,000, and for 2005 was $136,000 -- Father was ordered pay child support in accordance with Guidelines based on grossed-up income from May 2004, less deductions for amounts already paid.

M. (S.A.) v. S. (G.J.) (2006), 2006 CarswellBC 1913, 2006 BCPC 354, M.J. Brecknell Prov. J. (B.C. Prov. Ct.) [British Columbia]

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 had five children and separated after 20 years of marriage -- Order was made that three youngest children would split their time equally between each parent's residence -- Eldest son resided with father full-time and eldest daughter resided with mother full-time -- Father agreed to pay full child support to mother regardless of equal time sharing arrangement -- Mother claimed father's income for child support purposes was $354,500 based on salaries, benefits, rental income, and capital cost allowance accruing to father over one-year period from business he owned -- Trial judge determined that father's Guidelines income was $260,000 per year and ordered him to pay monthly child support of $4,000 -- Trial judge found that mother's reasoning was not persuasive as it failed to take into account money that had to be put back into companies to keep them going concern -- From amount payable by father amount was deducted that was payable by mother for eldest son residing with father -- Mother appealed -- Appeal dismissed -- There could be compelling reasons to attribute income from father's business to father if he was accumulating assets for his sole benefit inside company to exclusion of recipient spouse and children -- However, in this case it could not be argued that recipient spouse and children were being excluded from ongoing benefit of business's income stream -- To have trial judge's conclusions set aside, mother had to show that he was clearly wrong in determining that father's Guidelines income of $260,000 was realistic -- Even though appeal court might have reached different conclusion, it could not be said that trial judge was wrong in law or clearly wrong in fact since this was issue on which reasonable judges could differ.

Redpath v. Redpath (2006), 2006 CarswellBC 1709, 2006 BCCA 338, [2006] B.C.J. No. 1550, Hall J. A., Mackenzie J.A., Newbury J.A. (B.C. C.A.) [British Columbia]; reversing in part (2005), 2005 BCSC 562, 2005 CarswellBC 950, Williamson J. (B.C. S.C.)

FAM.IV.3.c.ii

Subject Title: Family law

Classification Number: IV.3.c.ii

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

Parties separated in 2002 after eight-year marriage, during which time they had two children -- Children lived primarily with mother -- Pursuant to agreement between parties, father had been paying child support in amount of $7,000 per month based on Federal Child Support Guidelines income of $684,000 -- Father's employment terminated, and he was given large severance pay -- Including severance payments, father's 2004 annual income was approximately $1.8 million, and 2005 annual income was $837,513 -- At time of trial, in August 2006, father had earned $277,849 -- Mother brought application for retroactive child support, and issue arose as to amount of father's annual income -- Application granted -- Father's obligation to pay child support for period from January 1, 2005 to May 1, 2006 was retroactively increased from $7,000 to $7,518 per month -- Father was ordered to pay monthly child support in amount of $9,276 on ongoing basis -- Father's income was determined to be $735,968 -- Averaged income for 2004, 2005, and 2006 was close to what he was earning before his dismissal, and was therefore imputed as current income -- Forward averaging approach based on s. 17(1) of Guidelines was applied, effectively spreading severance income over subsequent years -- Given that father's severance pay was non-recurring amount, to have determined father's income using average from three previous years would be fixing income based on situation that no longer existed -- It was unrealistic to consider only current year, as children would have been deprived of benefit of father's severance package.

B. (C.A.) v. S. (M.S.C.) (2006), 2006 BCSC 1393, 2006 CarswellBC 2339, N. Smith J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

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

annual income -- Imputed income

Parties lived together in common law relationship from 1990 to 2000 and had two children -- Mother also had biological son L who resided with parties -- Consent order in July 2002 provided that parties had joint and shared custody of children and father would pay mother $700 per month in child support -- Father's income at time was $78,000 -- Father's 2004 income was $91,500 -- Mother's income consisted of $9,600 per year in Child Tax Credits and $700 per year in GST rebates -- Mother brought application for sole custody and increase in child support and issue arose as to whether income should be imputed to mother -- Employment income of $25,000 was imputed to mother -- Evidence indicated mother was capable of obtaining at least unskilled employment -- Mother's total income for Guideline set-off including Child Tax Credits and GST rebates was thus $35,300 -- There was no valid reason why mother should not seek and obtain employment given youngest child was attending school full-time and two youngest children were parented by father at least 50 per cent of time -- Mother had grade 10 equivalency, cared for children during relationship and did not seek employment outside home -- Mother had little work experience other than providing babysitter services for other parents and working few days as chambermaid -- In personal circumstances of mother, imputed income was set well below average for employed adult females in area.

Beggair v. Nixon (2006), 2006 CarswellNWT 27, 2006 NWTSC 22, Richard C.J.S.C. (N.W.T. S.C.) [Northwest Territories]; additional reasons at (2006), 2006 CarswellNWT 36, J.E. Richard J. (N.W.T. S. C.)

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

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

Mother and father had three children -- Father collected $1,623.03 per month in disability benefits from insurer prior to separation -- Father wanted to prevent mother from benefiting from ongoing disability payments so he stopped providing information about his medical condition to insurer, which consequently terminated his benefits in 1996 -- Mother and father divorced in 1999 -- Judgment provided that any further disability payments were to be considered as income for child support recalculation purposes -- Father brought action against insurer in 2001 for ongoing entitlement to

disability benefits -- Father obtained $117,500 settlement from insurer in 2006 -- Mother brought motion for variation of child support -- Motion granted -- Income in amount of $69,795.19 was imputed to father for 2006 with result that father's 2006 child support obligation was increased by $15,552 -- Father's situation was highly analogous to intentional unemployment and diversion of income to affect level of child support -- Father's conduct was considered to be diversion of income stream into lump sum settlement despite his claims for damages and costs as father presented no evidence with respect to breakdown of settlement amount -- Imputing entire $117,500 to father would have been unfair in light of legal fees and disbursements that were incurred to recover funds -- Tax consequences and effect on extraordinary expenses were ignored in light of overall financial circumstances of parties and children -- Imputed amount would meet objectives of Child Support Guidelines.

Fritschij v. Bazan (2006), 2006 MBQB 183, 2006 CarswellMan 285, Yard J. (Man. Q.B.) [Manitoba]

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

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

Parties married in 1989 and separated in 2003 -- Parties had one child, a son, and wife's daughter from previous marriage lived with parties -- On separation, wife and children continued to live in matrimonial home -- Husband worked as stockbroker but also earned money investing in stock market, providing services to companies as chartered financial analyst, and playing poker and betting online -- Wife had high school education and had worked at minimum wage jobs and been on social assistance before marriage -- During marriage wife stayed at home to look after house and children -- After separation husband did not provide regular monthly support for family but did pay mortgage. lines of credit and utilities, and wife has use of credit card for necessities -- In 2004 interim order was made granting sole custody of son to wife and ordering husband to pay $2,000 per month interim support -- Order also imputed income of $100,000 per year to husband and ordered him to pay interim child support -- In divorce proceedings, wife claimed spousal and child support and asked that income of $300,000 per year be imputed to husband for support purposes -- Income of $150.000 was imputed to husband for purpose of future support; income of $120,000 per year was imputed to husband for earlier period; income of $8,000 per year was imputed to wife -- Throughout marriage, since separation and for foreseeable future, husband would be major source of support for family -- Person was expected to earn income

commensurate with their ability to do so and husband had business degree and was successful chartered business analyst and skilled gambler -- However, during period after separation wife had revoked authority she had granted to husband to trade stocks held in account in her name -- During that period husband's ability to earn income had been restricted by lack of access to capital and therefore reduced amount of imputed income was appropriate for that period -- As son grew older, wife should be available to take on more employment but her skills were limited -- Therefore, her income for foreseeable future would be little more than part-time, minimum wage employment.

Kuznecov v. Kuznecov (2006), 2006 CarswellBC 1262, 2006 BCSC 748, Wilson J. (B.C. S.C.) [British Columbia]

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

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

Parties divorced in 1992 after 10 years of marriage -- Parties had two children, both of which were over age of majority at time of application -- Father was ordered to pay $350 per child per month in support in 1995, based on income of $30,000 -- Father voluntarily increased amount of support in 1997 and 1999 for both children, and continued paying child support until children turned 19 years of age -- Father earned $203,500 in 2002 and $300,499 in 2003 -- Father sold business, which resulted in income of $25,011 in 2004, all of which came from RRSPs -- Mother was unemployed and only source of income was child support -- Mother brought application for variation of ongoing child support for youngest child based on imputed income to father -- Application granted -- No evidentiary basis existed upon which to question father's business judgment in selling his tool business -- Decision to sell business was not unreasonable -- Based on father's age, education, experience, skills and health, he was able to earn income and job opportunities were available to him -- Father was in process of negotiating three month employment contract, which would pay $5,000 per month -- Father was intentionally unemployed as he had capacity to work, but was not working -- Reasonable imputation of income was $5,000 per month or $60,000 per year as that was salary he expected to earn under employment contract he was negotiating -- Imputed income could not be based on average of his income from 2002 to 2004 as father was not likely to earn income similar to that earned in 2002 and 2003.

Morgan v. Morgan (2006), 2006 CarswellBC 1940, 2006 BCSC 1197, S. Kelleher J. (B.C. S.C.) [British Columbia]

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

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

Parties had two children -- Mother relocated from family home in small community to Saskatoon and wished to relocate children with her -- On interim basis, for year preceding trial, children had remained in family home with parties alternating primary care of them on 50-50 basis -- Mother and father both sought to have primary residence of children determined in their favour -- Trial judge concluded that it was in best interest of children to remain in community in which they had always lived -- Mother was ordered to pay child support in amount of $586 per month for two children based on imputed annual income of $43,700 -- Mother appealed -- Appeal dismissed -- Findings of mother's annual income was supported by evidence -- Child support order was not premature -- Children were of school age and it was reasonable to presume that they would be in father's care more than 60 percent of time.

Norrish v. Norrish (2006), 2006 CarswellSask 608, 2006 SKCA 104, Lane J.A., Sherstobitoff J.A., Smith J.A. (Sask. C.A.) [Saskatchewan]; affirming (2005), 20 R.F.L. (6th) 366, 2005 CarswellSask 606, 2005 SKQB 396, Wright J. (Sask. Q.B.)

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

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

Parties began living together in 2000 when appellant father was 32 and respondent mother was 17 -- Father was divorced and had three children from that marriage who were living with their mother -- In 2002 father was injured in work-related accident which rendered him quadriplegic -- Five months later parties' child was born and in 2004 parties separated -- Mother moved to Regina with child to live with her brother -- Mother applied for child support and chambers judge determined that father's income for child support purposes was $39,893 and ordered father to pay Guidelines child support of $328 per month -- Father's income was from Canada Pension Plan ("CPP") disability benefits of $9,294 per year, workers compensation benefits of $21,727 per year and investment income of $479 per year for total of $31,501 -- However, since workers compensation benefits were non-taxable, chambers judge grossed up father's income to taxable amount by attributing further income to him of $8,392 -- Father appealed -- Appeal dismissed -- Where income of parent, determined in accordance with s. 16 of Guidelines, is unreflective of parent's real ability to contribute to support of child, s. 19 enables court to impute income -- This includes situation where parent is exempt from paying income tax -- Accordingly, court can gross up parent's income to extent that income consists of non-taxable workers compensation benefits.

Peterson v. Horan (2006), 270 D.L.R. (4th) 450, 29 R.F.L. (6th) 241, [2006] 11 W.W.R. 396, (sub nom. C.P. v. L.H.) 279 Sask. R. 94, 372 W.A.C. 94, [2006] S.C.J. No. 333, 2006 CarswellSask 404, 2006 SKCA 61, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.) [Saskatchewan]; affirming (2004), [2004] S.J. No. 636, 2004 CarswellSask 675, 2004 SKQB 414, (sub nom. C.P. v. L.H.) 255 Sask. L.R. 302, Pritchard J. (Sask. Q.B.); affirmed (2005), 2005 CarswellSask 420, 2005 SKCA 82, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.); and additional reasons to (2005), 2005 CarswellSask 420, 2005 SKCA 82, Cameron J.A., Gerwing J.A., Vancise J.A. (Sask. C.A.)

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

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

Parties were married in 1991 and separated in 1997 -- There were three children of marriage -- Father's income was $96,783 in 2000, $96,222 in 2001, and $82,568 in 2002 but only $45,377 in 2005 while on

stress leave -- Mother was under-employed but was qualified legal assistant -- Mother brought action for child support -- Action allowed -- Income of $91,900 was imputed to father and $30,000 to mother -- Father was ordered to pay table support of $1,722 per month and 75 per cent of day care expenses beginning in 2007 -- Father was also ordered to pay $1,200 of $1,700 outstanding day care account.

Roberts v. Salvador (2006), 2006 CarswellAlta 752, 2006 ABQB 400, M.J. Trussler J. (Alta. Q.B.) [Alberta]

FAM.IV.3.d

Subject Title: Family law

Classification Number: IV.3.d

Support -- Child support under federal and provincial guidelines -- Income over $150,000

Parties separated in 2002 after eight-year marriage, during which time they had two children -- Children lived primarily with mother -- Pursuant to agreement between parties, father had been paying child support in amount of $7,000 per month based on Federal Child Support Guidelines income of $684,000 -- Father's employment terminated, and he was given large severance pay -- Including severance payments, father's 2004 annual income was approximately $1.8 million, and 2005 annual income was $837,513 -- At time of trial, in August 2006, father had earned $277,849 -- Mother brought application for retoractive and ongoing child support -- Application granted -- Father's obligation to pay child support for period from January 1, 2005 to May 1, 2006 was retroactively increased from $7,000 to $7,518 per month based on determined Guidleline income of $735,968 -- Father was ordered to pay ongoing child support in amount of $9,276 per month based on same income as of May 1, 2006 -- Father's income was determined to be $735,968.

B. (C.A.) v. S. (M.S.C.) (2006), 2006 BCSC 1393, 2006 CarswellBC 2339, N. Smith J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IV.3.f

Subject Title: Family law

Classification Number: IV.3.f

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

Variation of interim child support order.

Carlton v. Carlton (2006), 2006 CarswellSask 308, 2006 SKQB 259, Krueger J. (Sask. Q.B.) [Saskatchewan]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Parties separated in 2002 after eight-year marriage, during which time they had two children -- Children lived primarily with mother -- Pursuant to agreement between parties, father had been paying child support in amount of $7,000 per month based on Federal Child Support Guidelines income of $684,000 -- Father's employment terminated, and he was given large severance pay -- Including severance payments, father's 2004 annual income was approximately $1.8 million, and 2005 annual income was $837,513 -- At time of trial, in August 2006, father had earned $277,849 -- Mother brought application for retroactive child support -- Application granted -- Father's obligation to pay child support for period from January 1, 2005 to May 1, 2006 was retroactively increased from $7,000 to $7,518 per month based on determined Guidleline income of $735,968 -- Father was ordered to pay ongoing child support in amount of $9,276 per month based on same income as of May 1, 2006.

B. (C.A.) v. S. (M.S.C.) (2006), 2006 BCSC 1393, 2006 CarswellBC 2339, N. Smith J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Parties married in 1985, had three children and separated in 1998 -- Parties entered into separation agreement in 1999, in which father agreed to pay child support of $945 per month based on income of $52,000 -- Father had substantial increase in income after separation agreement and was earning $74,018 -- Father increased child support payments as income rose, but not to level required by guidelines until 2005 -- Mother brought application for father to pay retroactive child support -- Application granted -- Father ordered to pay $2,540 in retroactive child support for period from July 1, 2003 to December 21, 2004 -- Retroactive award was warranted and appropriate to date of effective notice -- Mother's delay in applying to court was reasonable -- Father knew as early as July 2003 that mother was seeking increase in child support payments, yet failed to provide requested financial information -- Father at time stated he wanted matter dealt with in court -- Father's conduct from July 2003 until date he began to pay according to guidelines was "blameworthy conduct" -- Father was aware of obligation and did not fulfil it.

G. (J.) v. L. (F.) (2006), 2006 BCPC 420, 2006 CarswellBC 2204, J.O'C. Wingham Prov. J. (B.C. Prov. Ct.) [British Columbia]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Parties married in Poland in 1976, had daughter and came to Canada in 1984 -- Parties had second child in 1989 -- When parties separated in 2004 mother and second child remained in family home -- Father consented to order that he pay interim child support in amount of $439 per month commencing January

1, 2005 -- Second child went to live with father on January 15 and father ceased paying child support -- Mother lived in family home until it was sold in September 2005 -- Parties applied for final determination of all matters arising from breakdown of marriage -- Applications granted -- Retroactive basic child support was not granted -- There was period of about eight months when second child was in custody of mother and father did not pay child support -- There was period of about 12 months when second child was in custody of father and mother did not pay child support -- Amount that would have been payable by each of them based on their respective incomes was about same.

M. (M.R.) v. M. (I.M.) (2006), [2006] B.C.J. No. 1034, 2006 CarswellBC 1117, 2006 BCSC 568, Joyce J. (B.C. S.C.) [British Columbia]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Parties divorced in 1992 after 10 years of marriage -- Parties had two children, both of which were over age of majority at time of application -- Father was ordered to pay $350 per child per month in support in 1995, based on income of $30,000 -- Father voluntarily increased amount of support in 1997 and 1999 for both children, and continued paying child support until children turned 19 years of age -- Father earned $203,500 in 2002 and $300,499 in 2003 -- Father sold business, which resulted in income of $25,011 in 2004, all of which came from RRSPs -- Mother was unemployed and only source of income was child support -- Father stopped paying child support when youngest child turned 19 years old, and then paid $300 per month when child started attending college -- Mother brought application for order retroactively increasing 1995 child support order for youngest child -- Application dismissed -- Mother's delay in seeking increased support was not reasonable, and no evidence existed that she inquired about father's income before October 2004 -- Father's failure to disclose his increased income was blameworthy conduct, but his conduct fell toward lower end of scale as he paid more support than he was required to pay for much of time he paid support, and he had paid for all of youngest child's health, clothing, and extracurricular expenses -- No evidence existed that youngest child needed retroactive support, or that her standard of living suffered because she did not have increased support -- Father had assets which could satisfy retroactive award, but father's ability to pay and his failure to disclose his income were only factors in favour of such award, while other factors considered militated against retroactive award.

Morgan v. Morgan (2006), 2006 CarswellBC 1940, 2006 BCSC 1197, S. Kelleher J. (B.C. S.C.) [British Columbia]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Parties married in 1979, had two children born in 1985 and 1988, and separated in 1995 -- In 1996 parties entered into separation agreement under which they had joint custody and guardianship of children who were to reside primarily with mother, and father was to pay child support of $400 per month for each child -- Father paid accordingly to agreement until June 2004 when oldest child turned 19, at which point father unilaterally terminated that child's support payments until December 2005 when he resumed payments -- Mother sought contribution by father to oldest child's educational expenses and contended that award should be made retroactive to start of child's attendance at university -- In financial statement father claimed that he would have to go into debt if he had to contribute to university expenses, but trial judge found that he had managed to save $5,500 -- Trial judge determined that father was to pay $3,900 per year as his proportionate share of oldest child's extraordinary expenses for 2006-2007 university year -- Trial judge made point that it was wholly unreasonable for separated parents to assert that they should be allowed to pander to personal lifestyle preferences at cost of their child's university education -- On issue of retroactivity of award, father's payment towards oldest child's educational expenses was to be made retroactive from start of child's time at university, for total retroactive award of $15,600 -- Father knew child was going to university but cut off all support, not just refusing to contribute to university expenses -- That child was in need with respect to university expenses was not in doubt -- However, given that father also owed arrears under separation agreement of $7,200, it was appropriate to stay mother's recovery of arrears of university expenses until oldest child was no longer child of marriage.

R. (J.C.) v. R. (J.J.) (2006), 2006 CarswellBC 2347, 2006 BCSC 1422, P.J. Rogers J. (B.C. S.C.) [British Columbia]

FAM.IV.3.i.i

Subject Title: Family law

Classification Number: IV.3.i.i

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

Parties married in 1979, had two children born in 1985 and 1988, and separated in 1995 -- In 1996 parties entered into separation agreement under which they had joint custody and guardianship of children who were to reside primarily with mother, and father was to pay child support of $400 per month for each child -- Father paid accordingly to agreement until June 2004 when oldest child turned 19, at which point father unilaterally terminated that child's support payments until December 2005 when he resumed payments -- Mother sought order from court that father pay fine for failing to provide financial disclosure in proper fashion -- Fine was not appropriate but wife's costs for discovery of documents was to be increased from Scale 3 to Scale 4 -- Father revealed finances in piecemeal way and he was very late in his delivery of his expense, asset and liability information -- Father's conduct worked to delay mother's prosecution of action and father had no reasonable explanation for delay -- However, father's conduct did not prejudice outcome of proceedings and therefore costs increase rather than fine was more appropriate way to address issue.

R. (J.C.) v. R. (J.J.) (2006), 2006 CarswellBC 2347, 2006 BCSC 1422, P.J. Rogers J. (B.C. S.C.) [British Columbia]

FAM.IV.3.i.ii

Subject Title: Family law

Classification Number: IV.3.i.ii

Support -- Child support under federal and provincial guidelines -- Enforcement of award -- Limitation or reduction of arrears

Parties married, had three children, and subsequently separated -- Upon separation, parties shared joint

custody of children, and children lived primarily with mother -- Father was ordered to pay $665 per month on annual income of $35,000 -- Father's employment was terminated as result of restructuring -- Father's subsequent employment yielded annual income of $15,924 -- Father brought application to reduce arrears -- Application dismissed -- Father failed to prove that it would have been grossly unfair not to cancel or reduce arrears -- Although losing his job constituted change, father failed to prove that loss of job meant that he was no longer able to earn equivalent income to meet his child support obligation -- There was no evidence to support assertion that problems with his shoulder would have prevented father from earning that which he was earning at trial -- Father's claim that he wished to retrain was not reasonable -- Father failed to satisfy that he had no ability to otherwise earn income he had in past without retraining -- Father's continuing resentment toward mother contributed to his reluctance to find suitable full-time employment.

G. (S.) v. W. (G.) (2006), 2006 CarswellBC 1594, 2006 BCSC 991, D.J. Martinson J. (B.C. S.C.) [British Columbia]

FAM.IV.3.i.ii

Subject Title: Family law

Classification Number: IV.3.i.ii

Support -- Child support under federal and provincial guidelines -- Enforcement of award -- Limitation or reduction of arrears

Parties were married in 1998, had one child in 1999 and separated in 2002 -- Mother was not employed during marriage or at time of separation, but had completed hairstyling course and was employed at time of hearing -- Father was employed as criminal lawyer -- Child lived with each parent on alternating week arrangement pursuant to consent order in 2004 -- Father did not appear at hearing concerning child and spousal support, and income of $100,000 was imputed to him -- Father was ordered to pay child support in accordance with Federal Child Support Guidelines, and spousal support in amount of $2,000 per month -- Father did not make payments, and enforcement program collected $16,352 through attachment orders to Legal Services Society -- Most payments received were from society for services provided to legal aid clients -- Father then arranged his affairs to avoid paying support, by ceasing to render accounts to society, despite having completed services to legal aid clients -- Father brought motion for reduction or cancellation of arrears of child support -- Motion dismissed -- Father did not show that it would be grossly unfair not to reduce or cancel arrears -- Only payments made by father were through attachment measures, and father took steps to impede such attachment -- Father's own

evidence was that he was "back on track" in terms of employment activity, and had earned substantial income in past.

Markovitz v. Markovitz (2006), 2006 BCSC 1007, 2006 CarswellBC 1638, Ralph J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IV.3.j.i

Subject Title: Family law

Classification Number: IV.3.j.i

Support -- Child support under federal and provincial guidelines -- Variation or termination of award -- General principles

Applicant father and respondent mother married in 1987, had daughter in 1988, and separated in 1989 -- Daughter resided with mother since separation -- Father was required to pay child support of $300 per month in 1990 Order and again in divorce and corollary relief judgment in 1995 -- Father, despite having been served, failed to attend both proceedings -- Father brought child support variation application under Divorce Act in 2005 and obtained provisional order in Ontario -- Provisional order reduced father's ongoing child support obligation to $157 per month and eliminated arrears of $22,397.03, subject to confirmation in Manitoba -- Confirmation hearing held; provisional order confirmed with variations -- Father's ongoing child support obligation was varied to rate of $181 per month according to Provincial child support Guidelines based on income of $21,100 per year -- Given mother's consent, father's obligation was varied retroactively to January 1, 2002 based on Guidelines -- Retroactive variation resulted in credit of $7,468 against arrears -- Father's request to vary support prior to January 1, 2002 was denied -- Mother raised child with little support from father -- Arrears to be paid at rate of $100 per month, payable to mother first and then assignee -- Repayment was to be reassessed on application by either party if child no longer "child of marriage" -- Absent exceptional circumstances rooted in fairness balance between parties, retroactive relief should not be granted.

Bailey v. Hildebrand (2006), 2006 MBQB 129, 2006 CarswellMan 190, Yard J. (Man. Q.B.) [Manitoba]

FAM.IV.3.j.ii

Subject Title: Family law

Classification Number: IV.3.j.ii

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

Child under age of majority at out-of-province university -- Parties entered into settlement agreement on separation, terms of which were incorporated into divorce order entered in December 2003 -- Terms provided in part that parties were to share joint custody and guardianship of children, that children would continue to reside with each parent, and that father would pay mother $6,000 monthly for child support as long as they were children of marriage under Divorce Act -- Father had high income although exact amount was disputed -- In September 2005, eldest son, who was under age of majority, attended education at out-of-province university -- Father paid for son's expenses incurred to establish himself at university, including tuition, and unilaterally reduced amount of child support from $6,000 to $3,000, and residual amount accounted solely for younger son -- Father applied unsuccessfully for order suspending child support for eldest son while he attended university and varying divorce order to set monthly child support for younger son at $3,000 or less -- Father appealed -- Appeal dismissed -- Chambers judge did not err in finding that when order was made, it was within parties' reasonable contemplation that children would attend university and order did not require that children live at home while attending university -- Payment of eldest son's university expenses would not impose hardship on father and it could not be said that son's university attendance constituted substantial change in circumstances -- It was reasonable that mother incurred some household expenses to allow son to live with her from time to time -- Relevant case law showed that material change was to be demonstrated before court would vary child support order made after April 1997 -- Father failed to establish that parties' circumstances changed from date of divorce order sufficient to warrant variation of support order.

Bockhold v. Bockhold (2006), 2006 BCCA 472, 2006 CarswellBC 2567, Kirkpatrick J.A., Levine J.A., Low J.A. (B.C. C.A.) [British Columbia]

FAM.IV.3.j.ii

Subject Title: Family law

Classification Number: IV.3.j.ii

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

Parties married in October 1985, had four children of marriage, and lived separate and apart since December 2003 -- Interim support order was granted in 2005 -- Father sought relief including varying interim child support -- Mother sought relief including child support in amount of $901 monthly and s. 7 expenses for 2006 pursuant to agreement reached at pre-trial settlement conference -- Variation application in respect of child support was dismissed -- There was no change in circumstances justifying variation of interim child support order -- Annual income of father had changed only slightly since interim order was made, and order was based on same two dependent children.

Carlton v. Carlton (2006), 2006 CarswellSask 308, 2006 SKQB 259, Krueger J. (Sask. Q.B.) [Saskatchewan]

FAM.IV.3.j.ii

Subject Title: Family law

Classification Number: IV.3.j.ii

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

Parties married, had three children, and subsequently separated -- Upon separation, parties shared joint custody of children, and children lived primarily with mother -- Father was ordered to pay $665 per month on annual income of $35,000 -- Father's employment was terminated as result of restructuring -- Father's subsequent employment yielded annual income of $15,924 -- Father brought application to vary child support order -- Application dismissed -- Father failed to satisfy that change was material in that there had been significant and long lasting change in father's ability to earn what he was earning at time of trial -- Although losing his job constituted change, father failed to prove that loss of job meant that he was no longer able to earn equivalent income to meet his child support obligation -- There was no evidence to support assertion that problems with his shoulder would have prevented father from earning that which he was earning at trial -- Father's claim that he wished to retrain was not reasonable -- Father failed to satisfy that he had no ability to otherwise earn income he had in past without retraining -- Father's continuing resentment toward mother contributed to his reluctance to find suitable full-time employment.

G. (S.) v. W. (G.) (2006), 2006 CarswellBC 1594, 2006 BCSC 991, D.J. Martinson J. (B.C. S.C.) [British Columbia]

FAM.IV.3.j.ii

Subject Title: Family law

Classification Number: IV.3.j.ii

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

Parties were married in 1998, had one child in 1999 and separated in 2002 -- Mother was not employed during marriage or at time of separation, but had completed hairstyling course and was employed at time of hearing -- Father was employed as criminal lawyer -- Child lived with each parent on alternating week arrangement pursuant to consent order in 2004 -- Father did not appear at hearing concerning child and spousal support, and income of $100,000 was imputed to him -- Father was ordered to pay child support in accordance with Federal Child Support Guidelines, and spousal support in amount of $2,000 per month -- Father did not make payments, and enforcement program collected $16,352 through attachment orders to Legal Services Society -- Most payments received were from society for services provided to legal aid clients -- Father then arranged his affairs to avoid paying support, by ceasing to render accounts to society, despite having completed services to legal aid clients -- Father brought motion to set aside or vary child support order -- Motion granted in part -- Material change of circumstances existed as father's evidence showed that he was not earning $100,000 per year -- Averaging of income between 2002 and 2004 was not appropriate, as father admitted he was unable to function to best of his abilities at that time due to breakdown of marriage -- Income of $75,000 imputed to father for child support purposes.

Markovitz v. Markovitz (2006), 2006 BCSC 1007, 2006 CarswellBC 1638, Ralph J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IV.3.j.ii

Subject Title: Family law

Classification Number: IV.3.j.ii

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

Parties divorced in 1992 after 10 years of marriage -- Parties had two children, both of which were over age of majority at time of application -- Father was ordered to pay $350 per child per month in support in 1995, based on income of $30,000 -- Father voluntarily increased amount of support in 1997 and 1999 for both children, and continued paying child support until children turned 19 years of age -- Father earned $203,500 in 2002 and $300,499 in 2003 -- Father sold business, which resulted in income of $25,011 in 2004, all of which came from RRSPs -- Mother was unemployed and only source of income was child support -- Mother brought application for variation of ongoing child support for youngest child -- Application granted -- Evidence was sufficient to establish that child remained child of marriage because she was living at home, attending college full-time, and was dependent on mother -- Father did not dispute that child needed support while attending college -- Father was ordered to pay child support in accordance with Federal Child Support Guidelines based on imputed income of $60,000, and 100 percent of extraordinary expenses as mother earned no income.

Morgan v. Morgan (2006), 2006 CarswellBC 1940, 2006 BCSC 1197, S. Kelleher J. (B.C. S.C.) [British Columbia]

FAM.IV.3.j.ii

Subject Title: Family law

Classification Number: IV.3.j.ii

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

Mother's obligation to pay support for older son, now living with father, was waived.

Tindill v. Tindill (2006), 2006 CarswellAlta 1202, 2006 ABQB 671, S. Sanderman J. (Alta. Q.B.)

[Alberta]

FAM.V.3.a.ii

Subject Title: Family law

Classification Number: V.3.a.ii

Domestic contracts and settlements -- Effect of contract -- On division of family property -- Matrimonial home

Parties were married in 1991 and separated in 1997 -- Prenuptial agreement provided that ownership of property acquired during marriage shall be owned by parties in proportion to their contributions thereto -- Agreement further provided that each party may gift any of its property to other -- Parties initially lived in house owned by husband -- Husband purchased new homes in joint tenancy although wife made no contribution -- Wife brought action for division of matrimonial property -- Action dismissed except for share of matrimonial home -- Wife was entitled to one-half of increase in equity during marriage -- Gifting provision prevailed over other provisions of agreement -- Husband made gift of one-half of interest in matrimonial home when purchased.

Roberts v. Salvador (2006), 2006 CarswellAlta 752, 2006 ABQB 400, M.J. Trussler J. (Alta. Q.B.) [Alberta]

FAM.V.3.b.ii

Subject Title: Family law

Classification Number: V.3.b.ii

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

Parties were married in 1991 and separated in 1997 -- Wife contracted out of spousal support in prenuptial agreement -- Wife brought action for spousal support -- Action dismissed -- Agreement met requirements of s. 37 and s. 38 of Matrimonial Property Act -- Wife had independent legal advice and was not pressured into signing agreement -- Act did not require judicial review of fairness of agreement -- Wife was capable of earning income similar to what she made prior to marriage and result was in substantial compliance with Divorce Act.

Roberts v. Salvador (2006), 2006 CarswellAlta 752, 2006 ABQB 400, M.J. Trussler J. (Alta. Q.B.) [Alberta]

FAM.VIII.1.b

Subject Title: Family law

Classification Number: VIII.1.b

Divorce -- Jurisdiction of courts -- Determining ordinary residence

Husband was Jamaican, parties married in Jamaica, and only child of marriage was born there in 1989 -- In 1992 parties separated in Jamaica -- Wife and child were living in United States and husband had had no contact with child since 2004 -- Husband had came to Canada in 1993 and since then had lived illegally in Canada and United States -- Husband had been in Alberta since 2004 and since 2005 had been living with common law wife, with whom he had three children -- Husband applied for divorce from wife and acknowledged that immediate purpose of divorce was so that he could marry common law spouse and she could sponsor his application for permanent residence in Canada -- Application dismissed -- For these proceedings only, it was accepted that for some purposes including matrimonial causes, even illegal residence in Alberta could qualify a resident such as husband as being ordinarily resident in Alberta within meaning of s. 3(1) of Divorce Act -- However, government policy is that individuals such as husband, who are in Canada illegally and have common law partners, cannot be sponsored by their common law partners if individuals are already married to someone else -- Husband could have obtained legal status in Canada by lawful means -- Since Canadian government did not condone husband's status in Canada, it was not for court to expand government's policy -- Furthermore, since husband was knowingly in Alberta illegally and since his illegal status prevented him from earning money to support his four children, advancement of public policy objectives required court to decline to deal with his application for divorce -- Failure to obtain Canadian divorce did not affect wife, who had not filed anything with court, or husband's child living with wife, for whom husband had not been paying any support and with whom husband had not sought out any contact -- Failure to obtain Canadian

divorce did not affect husband's three children in Canada since there was no evidence that their presence in Canada was in any way dependent on husband.

Blair v. Chung (2006), 63 Alta. L.R. (4th) 84, 2006 CarswellAlta 906, 2006 ABQB 534, J.B. Veit J. (Alta. Q.B.) [Alberta]

FAM.IX.2.a

Subject Title: Family law

Classification Number: IX.2.a

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

Parties married in 1999, had one child, T, and separated in 2004 -- Mother's two children of previous marriage, S and Z, lived with parties -- Following parties' separation, father continued to look after T approximately 30 percent of time -- Mother brought application for sole custody of T with continuation of current access schedule -- Application dismissed -- Parties were ordered to share custody of T, and to enjoy equal access -- There was no reason why custody of T should not be joint with equal access periods -- Fact that T grew up with two siblings that father chose to exclude from his family unit did not operate against premise that time with each parent should be maximized -- Father's proposed access schedule consisting of him having T from Tuesday after school to Friday morning one week and from Thursday afternoon to Monday morning second week was reasonable.

H. (S.) v. P. (A.) (2006), 2006 CarswellBC 1575, 2006 BCPC 293, C.C. Baird Ellan Prov. J. (B.C. Prov. Ct.) [British Columbia]

FAM.IX.2.h

Subject Title: Family law

Classification Number: IX.2.h

Custody and access -- Factors to be considered in custody award -- Reports by third parties

Father had court ordered access to child of marriage -- Father's access to child was supervised -- During supervised access visit child was verbally abusive to father then struck him hard with book -- After being struck father pushed child away in reflex action -- Mother attempted to have criminal charges laid against father in respect of incident, but was not successful -- Mother unilaterally terminated father's access to child -- Father brought motion to reinstate access to child and expand access -- Motion dismissed -- Bilateral assessment was required with respect to custody of child -- Assessment could include psychiatric testing of parents and child -- Assessment was to include recommendations concerning emotional health and counselling of child -- Different expert was to assess custody then access -- Father was to propose bilateral custody assessment within 21 days of order -- Mother was to respond within 14 days of receipt of proposal -- If parties could not agree on terms of order they could return to court.

B. (R.P.) v. P. (K.D.) (2006), 2006 CarswellAlta 1237, 2006 ABQB 706, J.B. Veit J. (Alta. Q.B.) [Alberta]

FAM.IX.4.a

Subject Title: Family law

Classification Number: IX.4.a

Custody and access -- Terms of custody order -- General principles

Clarification of joint custody order.

Beggair v. Nixon (2006), 2006 CarswellNWT 36, J.E. Richard J. (N.W.T. S.C.) [Northwest Territories]; additional reasons to (2006), 2006 CarswellNWT 27, 2006 NWTSC 22, Richard C.J.S.C. (N.W.T. S.C.)

FAM.IX.4.c

Subject Title: Family law

Classification Number: IX.4.c

Custody and access -- Terms of custody order -- Removal of child from jurisdiction

Parties were married with two children -- Parties separated and mother was awarded primary custody with father having regular access -- Parties both lived in same town -- Father and new partner moved five miles outside of town -- Mother's application to move children out of province was dismissed -- Appeals court overturned decision -- Father appealed decision to Supreme Court of Canada -- Father brought application for stay of judgment pending appeal -- Application dismissed -- Appeals court reasonably rested its decision on primary care giving role of mother -- Balance of convenience favoured allowing move -- Mother had put off move for two years and reasonably did not want to move children in middle of school year -- Father's move had altered nature of application somewhat -- Even if mother were to remain in town, father's access to children had been altered.

Swenson v. Swenson (2006), 29 R.F.L. (6th) 237, 2006 CarswellSask 540, 2006 SKCA 93, Jackson J.A. (Sask. C.A. [In Chambers]) [Saskatchewan]

FAM.IX.4.d

Subject Title: Family law

Classification Number: IX.4.d

Custody and access -- Terms of custody order -- Mobility

Parties were married in 1983, had two children, and separated in 2000 -- Father was citizen of Norway -- Upon separation, mother remained in matrimonial home in Kelowna with two children -- Father maintained permanent residence in Norway, but rented home in Kelowna and exercised access on frequent basis -- Youngest child had some sort of attention deficit disorder, and his school work had improved in year prior to application -- Mother notified father that she wished to move from Kelowna to Bowen Island with children, to take up residence with her fiancé -- Father brought application for order preventing mother from changing residence of children -- Application granted -- Mother's plan to relocate children constituted change in circumstances sufficient to trigger fresh inquiry into children's best interests -- While father believed that he would not be able to find accommodation on Bowen

Island, he provided no evidence that he had researched availability and, therefore, did not show that frequency or quality of access with him would likely be impaired by move -- Mother had investment in commercial property on Bowen Island, but did not show that move would improve her economic circumstances such that children would benefit -- Mother did not show that, as single parent, she lacked some emotional or financial resource that her fiancé would improve or assist with, therefore mother's parenting ability would not necessarily be improved by move -- As children and mother's fiancé had never lived together, it was not reasonable to conclude that children would benefit from having fiancé in their household -- Youngest child could experience some difficulty in changing schools due to his previous problems with school -- As benefits of move were only prospect and not certain, children's best interests would not be served by uprooting them from their home where things were going well for them.

O. (A.E.) v. O. (K.) (2006), 2006 CarswellBC 1656, 2006 BCSC 990, P.J. Rogers J. (B.C. S.C.) [British Columbia]

FAM.IX.5.a.ii

Subject Title: Family law

Classification Number: IX.5.a.ii

Custody and access -- Variation of custody order -- Factors to be considered -- Miscellaneous factors

Parties lived together in common law relationship from 1990 to 2000 and had two children -- Mother also had son L from previous relationship who resided with parties -- Consent order in July 2002 provided parties had joint and shared custody of children with children spending 50 per cent of time with each parent on flexible basis -- Mother brought application for variation of order seeking sole custody -- Application granted in part -- Mother awarded sole custody of L only -- Joint and shared custody of two youngest children was ordered to continue on 50 per cent basis but with structured regime -- There was material change in circumstances since consent order with respect to L -- L had ceased spending time with father and lived with mother full-time -- There was no material change to justify granting mother sole custody of two youngest children or vary basic 50 per cent split between parties -- Unstructured shared custody arrangement was, however, not in best interests of children as parties did not communicate well with each other.

Beggair v. Nixon (2006), 2006 CarswellNWT 27, 2006 NWTSC 22, Richard C.J.S.C. (N.W.T. S.C.) [Northwest Territories]; additional reasons at (2006), 2006 CarswellNWT 36, J.E. Richard J. (N.W.T. S.

C.)

FAM.IX.6.a

Subject Title: Family law

Classification Number: IX.6.a

Custody and access -- Joint custody -- General principles

Interim order.

Wynnyk v. Freitag (2006), 2006 CarswellSask 534, 2006 SKQB 371, T.C. Zarzeczny J. (Sask. Q.B.) [Saskatchewan]

FAM.IX.8.d.ii

Subject Title: Family law

Classification Number: IX.8.d.ii

Custody and access -- Access -- Termination of order -- Abuse of child

Father had court ordered access to child of marriage -- Father's access to child was supervised -- During supervised access visit child was verbally abusive to father then struck him hard with book -- After being struck father pushed child away in reflex action -- Mother attempted to have criminal charges laid against father in respect of incident, but was not successful -- Mother unilaterally terminated father's access to child -- Father brought motion to reinstate access to child and expand access -- Motion dismissed -- Under current access regime child was learning that abuse was tolerated which was not in her best interests -- Access ought to be supervised with supervisor having power to discipline child when required -- This was one of rare situations in which parental access must be subjected to state intervention -- Father should be able to access state financial support to normalize relations with child --

Father was given 21 days to propose form of intervention to mother -- Proposal was to identify expert to supervise access and specify terms under which expert was engaged -- Mother was to provide response within 14 days of receipt of proposal -- If parties could not agree on terms of order they could return to court.

B. (R.P.) v. P. (K.D.) (2006), 2006 CarswellAlta 1237, 2006 ABQB 706, J.B. Veit J. (Alta. Q.B.) [Alberta]

FAM.XII.4.b.ii

Subject Title: Family law

Classification Number: XII.4.b.ii

Guardianship -- Appointment by court -- Factors -- Best interests of child

Parties married in 1989 and separated in 2003 -- Parties had one child, a son, and mother's daughter from previous marriage lived with parties -- On separation, mother and children continued to live in matrimonial home -- Parties agreed that daughter was not longer child of marriage -- Husband worked as stockbroker but also earned money investing in stock market, providing services to companies as chartered financial analyst, and playing poker and betting online -- Mother had high school education and had worked at minimum wage jobs and been on social assistance before marriage -- During marriage mother stayed at home to look after house and children -- After separation father did not provide regular monthly support for family but did pay mortgage. lines of credit and utilities, and mother has use of credit card for necessities -- In 2004 interim order was made granting sole custody and guardianship of son to mother and ordering father to pay $2,000 per month interim support -- In divorce proceedings, issue arose as to guardianship of son who was now 16 years old -- Parties were to have joint guardianship of son -- Mother and son had close and loving relationship but relationship between father and son was strained despite efforts by father -- In circumstances, it was best that mother continued to have sole custody and, given son's age, access was to be arranged between father and son -- Respecting guardianship, there had not been level of cooperation between parties which was likely to make joint guardianship successful, but this was just one consideration -- Also relevant was father's arrogant and controlling personality -- However, father was in position to provide assistance to son in his post-secondary education and employment and with respect to financial matters -- Therefore, order for joint guardianship was appropriate but on basis that, if no agreement could be reached on any major decision, mother was to make decision -- Father was to have right to apply under Family Relations Act for review of mother's decision but had to try mediation before such application.

Kuznecov v. Kuznecov (2006), 2006 CarswellBC 1262, 2006 BCSC 748, Wilson J. (B.C. S.C.) [British Columbia]

FAM.XV.1.b.i

Subject Title: Family law

Classification Number: XV.1.b.i

Children in need of protection -- General principles -- Factors determining whether in need of protection -- General principles

Mother and father were living separate and apart, and child was in custody of father -- Agency received two complaints from mother, and one complaint from another source, that child had been abused by son of father -- Upon investigation, half-brother admitted that he had sexual contact with child -- At time, half-brother was living in psychiatric institution -- Agency presented father with information, and he indicated that he had no concerns for child's current safety as half-brother no longer resided in home, and was not returning home in foreseeable future -- Child was apprehended, and petition and notice of hearing was issued -- Father's motion seeking to quash apprehension as being without justification was granted -- Agency appealed -- Appeal dismissed -- Trial judge applied correct test, and he applied test correctly based on evidence -- Judge did not exercise his discretion incorrectly by reaching conclusion that agency lacked reasonable and probable ground to apprehend by finding that child was not in need of protection at time of apprehension -- Nor did judge exercise his discretion incorrectly in arriving at conclusion by consideration of fact that apprehended child would not have any further contact with her abuser.

Child & Family Services of Western Manitoba v. B. (K.) (2006), 29 R.F.L. (6th) 41, 2006 CarswellMan 247, 2006 MBCA 82, C.R. Huband J.A., M.A. Monnin J.A., R.J. Scott C.J.M. (Man. C.A.) [Manitoba]; affirming (2006), 2006 CarswellMan 122, 2006 MBQB 94, Menzies J. (Man. Q.B.)

FAM.XV.4.a.ii

Subject Title: Family law

Classification Number: XV.4.a.ii

Children in need of protection -- Application for temporary custody -- Grounds for temporary order -- Child abuse

Mother and father were living separate and apart, and child was in custody of father -- Agency received two complaints from mother, and one complaint from another source, that child had been abused by son of father -- Upon investigation, half-brother admitted that he had sexual contact with child -- At time, half-brother was living in psychiatric institution -- Agency presented father with information, and he indicated that he had no concerns for child's current safety as half-brother no longer resided in home, and was not returning home in foreseeable future -- Child was apprehended, and petition and notice of hearing was issued -- Father's motion seeking to quash apprehension as being without justification was granted -- Agency appealed -- Appeal dismissed -- Trial judge applied correct test, and he applied test correctly based on evidence -- Judge did not exercise his discretion incorrectly by reaching conclusion that agency lacked reasonable and probable ground to apprehend by finding that child was not in need of protection at time of apprehension -- Nor did judge exercise his discretion incorrectly in arriving at conclusion by consideration of fact that apprehended child would not have any further contact with her abuser.

Child & Family Services of Western Manitoba v. B. (K.) (2006), 29 R.F.L. (6th) 41, 2006 CarswellMan 247, 2006 MBCA 82, C.R. Huband J.A., M.A. Monnin J.A., R.J. Scott C.J.M. (Man. C.A.) [Manitoba]; affirming (2006), 2006 CarswellMan 122, 2006 MBQB 94, Menzies J. (Man. Q.B.)

FAM.XV.6.b.iii

Subject Title: Family law

Classification Number: XV.6.b.iii

Children in need of protection -- Application for return of child -- Under permanent order -- Where child voluntarily committed

Sixteen-year-old mother voluntarily placed child in care when he was one year old -- Following year mother consented to having child placed in continuing custody -- Two years later mother was in stable

relationship, was working and attending school -- When child was four years old mother brought application for permission to proceed with application to cancel continuing custody order -- Application dismissed -- Mother appealed -- Appeal allowed -- On application judge incorrectly weighed evidence and determined that there had been no significant change in mother's circumstances -- Role of judge on initial application was limited to determination of whether mother had reasonable chance of arguing that there had been significant change in circumstances that caused original order to be made -- Judge was not entitled to weigh evidence and make final determination as to whether mother's circumstances had changed on application for leave to proceed with application to cancel continuing custody order -- Trial judge erred in law and applied incorrect test on application.

J. (C.) v. British Columbia (Director of Child, Family & Community Services) (2006), 2006 BCSC 1253, 2006 CarswellBC 2049, D.I Brenner C.J.S.C. (B.C. S.C.) [British Columbia]

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

Failure to make full disclosure -- Director of family and children's services was notified of pregnancy of 17-year-old mother -- Concern regarding ability of mother and 16-year-old father to parent was expressed by several parties including mother's doctor -- Parents met with intake social worker in mid-June 2006 -- Parents' stated plan to live with mother's father temporarily after child's birth was problematic given history of sexual abuse of mother's father -- Child was born on July 16, 2006 -- Warrant for apprehension of child under s. 121(4) of Children's Act was issued without notice to parents on July 18, 2006, and child was apprehended on July 24, 2006 -- In affidavit submitted in support of warrant, social worker failed to report that parents had attended second meeting with intake social worker -- Parents applied to set aside warrant and application was heard three days after apprehension -- Application dismissed -- Director made reasonable attempts to engage parents and encourage them to make plan for health and safety of child -- Process took place for six weeks before child's birth and did not lead to defined plans regarding living arrangements once child arrived -- Parents clearly understood that safety plan had to be in place before they left hospital, but there was no evidence such plan existed -- Director's failure to disclose that parents attended second meeting was disappointing, but lack of disclosure did not affect basic reasonable and probable grounds that child was in need of protection -- Parents were immature and did not grasp seriousness of situation -- Failure to fully disclose ultimately

made no difference to original decision to issue warrant to apprehend child.

C. (J.) v. Yukon Territory (Director of Child & Family Services) (2006), 2006 CarswellYukon 96, 2006 YKSC 55, R.S. Veale J. (Y.T. S.C.) [Yukon Territory]