

The Canadian Abridgment eDigests -- Family Law - Western

2008-3

January 21, 2008

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

Parties were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Husband was found to have over billed government for services and was not accredited to perform certain services he had performed -- Mother maintained that husband abused children at various times, and obtained restraining order -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance with guidelines, extraordinary expenses settled, spousal support awarded -- Value of medical clinic for distribution purposes was \$1,661,422 -- Husband's university courses during marriage were shareable debt -- Debt to Health Canada was shareable debt, as it arose during marriage -- Wife responsible for payment of her debts totalling \$154,700 -- Husband required to make to equalization payment of \$251,786.18.

A. (S.M.) v. H. (S.F.) ([2007](#)), [2007 ABQB 95](#), [2007 CarswellAlta 849](#), B.E. Romaine J. (Alta. Q.B.) [Alberta]

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

Parties started living together in 2000 at which time husband had wife sign cohabitation agreement -- Cohabitation agreement provided that parties would remain sole owner of their respective property and neither would make claim to property of other -- Parties married in April 2001 and continued to maintain separate bank accounts and share expenses -- Wife became pregnant in 2004 and parties separated few months later -- In context of family law proceeding, issue arose as to which of parties' assets were family assets given cohabitation agreement -- Cohabitation agreement clearly contemplated end to separate property regime if parties married -- To extent clause in agreement was ambiguous, ambiguity should be resolved against husband as party attempting to take benefit of clause -- In absence of separate property regime, determination of family assets falls under provisions of Family Relations Act -- Business assets were family assets -- Subsequent to parties' marriage, husband's bonding company required wife to be added to bond, which made her jointly and severally liable -- If wife had refused to be added, company might not have been able to obtain bonding, which would have made it impossible to carry on business -- By agreeing to sign bond, wife made meaningful direct contribution to company's economic well-being -- In addition, shares of other company were registered in wife's name for tax reasons and wife was director of other company -- Boat purchased by husband prior to separation was not family asset -- Husband did not take possession of boat until after parties separated and it was never used for family purpose.

Hawboldt v. Hawboldt (2007), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel J. (B.C. S.C.)
[British Columbia]

FAM.III.5.h.i

Subject Title: Family law

Classification Number: III.5.h.i

Family property on marriage breakdown -- Assets which may be excluded from property to be divided -- Recreational property -- General principles

Recreational trailer.

Fellinger v. Fellinger (2007), [2007 CarswellSask 462](#), [2007 SKQB 317](#), C.R. Wimmer J. (Sask. Q.B.)
[Saskatchewan]

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 started living together in 2000 and married in 2001 -- Wife became pregnant in 2004 and parties separated few months later -- Husband owned all outstanding shares of S Ltd., all voting shares of H Ltd. and 1,000 non-voting shares of H -- Husband's parents owned remaining non-voting shares of H -- H owned all shares of Y Ltd. -- Shares of S were registered in wife's name for tax reasons -- In context of family law proceeding, issue arose as to value of husband's corporate assets -- Y valued on net asset basis -- Purchaser would not pay premium in excess of net asset value for Y -- Y's success reflected husband's management and potential buyer would know that Y's continued success was not assured -- Conclusion was consistent with husband buying Y in 1999 on net asset basis -- Parents' interest in H, like wife's interest in S, was paper transaction -- Parents had interest without value -- Entitlement of parents to any dividends or proceeds from distribution of H's assets was dependent upon husband -- H's success was result of husband's activities -- Entire value of H was attributable to husband -- Husband relied on professional advisors to structure his business affairs.

Hawboldt v. Hawboldt ([2007](#)), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel J. (B.C. S.C.) [British Columbia]

FAM.III.7.b.iv

Subject Title: Family law

Classification Number: III.7.b.iv

Family property on marriage breakdown -- Events after separation -- Sale or dissipation of assets -- Compensation

Parties separated after 11 1/2 years of marriage -- Following separation, husband continued to live in matrimonial home until it was sold some eight years later -- Of net sale proceeds of \$168,689.51, each party received \$15,000 and remaining \$138,689.51 was held in trust -- Wife filed action for divorce and division of matrimonial property -- Wife applied for, inter alia, distribution of remaining proceeds of sale of matrimonial home and reimbursement for half of matrimonial RRSPs which were cashed and spent by husband after separation -- Application for reimbursement granted in part -- In 2002, husband cashed in marital RRSP and used \$6,417 of \$9,276 received to purchase entertainment centre -- In 2003, husband cashed in another RRSP, face value of which was \$2,000 -- RRSP partially used to purchase entertainment centre was matrimonial asset and therefore wife was entitled to equal share of money received by husband -- Second RRSP cashed in 2003 could not be traced to any specific asset and was therefore considered as income -- Wife was entitled to be paid \$4,683.48, her half share, from husband's share of funds held in trust from sale of matrimonial home.

Purdie v. Coleman ([2007](#)), [2007 CarswellAlta 1006](#), [2007 ABQB 452](#), P. Chrumka J. (Alta. Q.B.)
[Alberta]

FAM.III.8.a.i

Subject Title: Family law

Classification Number: III.8.a.i

Family property on marriage breakdown -- Factors affecting equal or unequal division -- Effect of conduct of spouses during marriage -- General principles

Parties were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Family assets included matrimonial home, condominiums in Red Deer and Calgary, contents of home and condos, pension, savings bonds, automobiles, RRSPs, medical equipment and other assets -- Husband's attempts to create medical clinic in Red Deer Alberta failed -- Husband was found to have over billed government for services and was not accredited to perform certain services he had performed -- Mother maintained that husband abused children at various times, and obtained restraining order -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance with guidelines, extraordinary expenses settled, spousal support awarded, family property

divided -- Conduct by mother was questionable but did not affect equal distribution of assets -- Mother did not consciously alienate children of marriage -- Husband's university courses during marriage were shareable debt -- Debt to Health Canada was shareable debt, as it arose during marriage -- Wife responsible for payment of her debts totalling \$154,700 -- Husband required to make to equalization payment of \$251,786.18.

A. (S.M.) v. H. (S.F.) ([2007](#)), [2007 ABQB 95](#), [2007 CarswellAlta 849](#), B.E. Romaine J. (Alta. Q.B.) [Alberta]

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 separated in 2000 after 11 1/2 years of marriage -- Wife took out \$30,000 loan in 1998 to consolidate family debt payments -- Amount owing on date of separation was \$23,997.07 -- Following separation, wife paid \$26,372.41 to retire loan -- Wife filed action for divorce and division of matrimonial property -- Wife applied for, inter alia, distribution of remaining proceeds of sale of matrimonial home and lump sum repayment of husband's share of matrimonial debt paid solely by her -- Application for payment of husband's share of debt granted -- Wife was entitled to recover half of amount paid as husband's half share of debt -- Accordingly, she was entitled to recover \$13,186.41 from husband's share of proceeds of sale of matrimonial home presently held in trust.

Purdie v. Coleman ([2007](#)), [2007 CarswellAlta 1006](#), [2007 ABQB 452](#), P. Chrumka J. (Alta. Q.B.) [Alberta]

FAM.III.8.g

Subject Title: Family law

Classification Number: III.8.g

Family property on marriage breakdown -- Factors affecting equal or unequal division -- Multiple factors considered

Parties were married in 1962, had three children, and separated in 1989 -- Wife moved out of family home, and began living with one child in 1993 -- Husband stayed in family home after separation -- Parties remained financially separate after separation -- Wife did not commence proceeding against husband for divorce and corollary relief until 2001 -- Divorce was granted in 2002 -- Wife brought petition for division of family property -- Petition granted -- Family property could not be valued as at date of separation as husband argued, but could only be valued as at date of application or trial -- House was valued as at date of trial at \$129,000 -- Petition date was fairest date for adjudication for bank accounts and RRSPs -- Husband's pension was not commutable, therefore pension was to be divided equally at source with one half to husband and one half to wife -- Husband had received lump sum disability payments, and invested payments in RRSPs and other investments -- Husband was entitled to exemption of \$31,347.72 as portion of disability payments that was traceable into other assets -- Wife's claim for occupation rent was dismissed, and husband's claim for unequal division of home was dismissed, and value of home was to be divided equally between parties -- Husband wished to retain ownership of home, and owed wife \$64,500 for her share of home, as well as \$36,013.27 for equalization of other family assets.

Ioanidis v. Ioanidis ([2007](#)), [2007 SKQB 233](#), [2007 CarswellSask 345](#), C.L. Dawson J. (Sask. Q.B.) [Saskatchewan]

FAM.III.9.c.ii

Subject Title: Family law

Classification Number: III.9.c.ii

Family property on marriage breakdown -- Order for division of property -- Order for payment -- Global equalization order

Parties went to trial on issues of spousal support and matrimonial property division -- Wife commenced appeal challenging several findings -- Wife's appeal was struck as consequence of her failure to comply

with order providing her to file and serve factum to counsel on September 28, 2007 -- Wife served factum to counsel on October 1, 2007 -- Wife brought application to restore appeal -- Application dismissed -- Appeal did not have arguable merit such as to make it unjust to deny hearing before panel of court -- Trial judge's findings of fact were within province of trial judge -- Wife failed to show palpable and overriding error or extricable error of law -- Trial judge was entitled to find that there was spousal support overpayment of \$54,000 to wife arising from spousal support orders previously made on interlocutory basis in period before trial -- Decisions of trial judge with respect to matrimonial property division were unchallengeable on her fact findings.

Dhala v. Dhala ([2007](#)), [2007 CarswellAlta 1631](#), [2007 ABCA 389](#), J. Watson J.A. (Alta. C.A.) [Alberta]

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

Parties married in 1967, separated in 1986 and divorced in 1987 when wife was 44 years old and husband was 45 -- Longshoreman husband started working for employer in 1973 -- Husband's employment pension plan was deemed family asset -- Husband's pension was divided pursuant to particulars with provision for "power to make further orders to be reserved" -- Order dividing pension entitled wife to 22.5 per cent of husband's total pension -- Family company operated by wife was family asset but was vested entirely in wife -- Equal division of all other family assets was ordered -- Husband retired in 2005 and received retiring allowance of \$56,250 -- Wife sought declaration that husband's retiring allowance acquired after divorce be declared family asset -- Retirement allowance of \$56,250 was deemed family asset and wife was entitled to 22.5 per cent -- Original court order allowed parties to apply in event that asset was "overlooked" -- Retiring allowance was earned by husband as result of his employment during course of marriage to wife -- Retiring allowance was to be shared in same proportion as husband's regular pension notwithstanding that husband received allowance 20 years after divorce.

Kranenburg v. Kranenburg ([2007](#)), [2007 BCSC 921](#), [2007 CarswellBC 1466](#), Warren J. (B.C. S.C.) [British Columbia]

FAM.III.10.b.v.E

Subject Title: Family law

Classification Number: III.10.b.v.E

Family property on marriage breakdown -- Matrimonial home -- Order for possession -- Interim possession -- Miscellaneous issues

Parties were married in 1992 and separated in 2006 -- There were three children of marriage -- Petitioner wife commenced action for divorce, custody, child and spousal support, and division of family property -- Wife applied for, inter alia, order granting her exclusive possession of matrimonial home -- Application granted -- Children had been continuously residing with wife in family home since parties separated -- No reason had been shown why this should not continue, at least on interim basis -- Order issued pursuant to s. 5(2) of Family Property Act, directing that wife be given exclusive possession of family home until further order -- Respondent husband was ordered to pay for all reasonably necessary repairs to home and all costs incurred in respect of its maintenance as they fell due, and was restrained from attending at or near home except with wife's permission, or as necessary to attend to matters of repair or maintenance, or to pick up or drop off children.

Fellinger v. Fellinger (2007), 2007 CarswellSask 462, 2007 SKQB 317, C.R. Wimmer J. (Sask. Q.B.) [Saskatchewan]

FAM.III.10.b.vi

Subject Title: Family law

Classification Number: III.10.b.vi

Family property on marriage breakdown -- Matrimonial home -- Order for possession -- Upkeep of home

Parties separated after 11 1/2 years of marriage -- Following separation, husband continued to live in matrimonial home until it was sold some eight years later -- Of net sale proceeds of \$168,689.51, each party received \$15,000 and remaining \$138,689.51 was held in trust -- Wife filed action for divorce and division of matrimonial property -- Wife applied for, inter alia, distribution of remaining proceeds of sale of matrimonial home and repayment of husband's half share of matrimonial debt paid solely by her after separation -- No order made -- Husband submitted that from date of separation until home was sold, he alone was responsible for costs of maintenance and repairs, including taxes, utilities, insurance and mortgage payments, and that he should be credited with those expenses when family debts were adjusted -- If such approach were taken, then allegations that husband had tenants in home must also be addressed -- Wife's claim for occupational rent and accounting for any rental funds received by husband would have to be addressed by way of trial -- Issue could not be assessed or determined on this application.

Purdie v. Coleman ([2007](#)), [2007 CarswellAlta 1006](#), [2007 ABQB 452](#), P. Chrumka J. (Alta. Q.B.)
[Alberta]

FAM.IV.1.b.i

Subject Title: Family law

Classification Number: IV.1.b.i

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

Parties were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Family assets included matrimonial home, condominiums in Red Deer and Calgary, contents of home and condos, pension, savings bonds, automobiles, RRSPs, medical equipment and other assets -- Husband's attempts to create medical clinic in Red Deer Alberta failed -- Husband was found to have over billed government for services and was not accredited to perform certain services he had performed -- Mother maintained that husband abused children at various times, and obtained restraining order -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance with guidelines, extraordinary expenses settled, spousal support awarded, family property divided -- Wife's income set at \$78,435 for purposes of Guidelines -- Wife not deliberately underemployed -- Wife suffered from disability preventing working more than two and one-half days per week -- Although evidence of disability was weak it was not controverted -- Wife had professional

degree but had also taken time from work to raise children -- Family relocation did not disadvantage wife financially -- Wife's budgetary submissions were inflated -- Wife was unable to work full-time -- Expectation of pre-separation lifestyle and need were factors in awarding spousal support -- Wife entitled to spousal support in amount of \$3,500 per month, applied retroactively and carrying forward until change in circumstances.

A. (S.M.) v. H. (S.F.) (2007), 2007 ABQB 95, 2007 CarswellAlta 849, B.E. Romaine J. (Alta. Q.B.) [Alberta]

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 L and S began relationship in Alberta and began cohabiting in British Columbia in 1999 -- Both parties owned homes in Alberta, and agreed to pool their resources and purchase new home in BC and share expenses -- S and L took title to new home jointly, despite fact that L did not contribute to down payment as her house had not yet sold -- L's house eventually sold, and she decided not to contribute \$56,000 in proceeds from sale toward mortgage on new home, and did not contribute to monthly payments -- Parties kept their finances separate from each other, and both contributed to upkeep of home -- S worked throughout relationship, but L worked sporadically and received employment insurance at times -- Relationship ended after approximately 6 years -- L brought counter-claim for spousal support -- Counter-claim dismissed -- L was not entitled to compensatory support, since she did not forego any opportunities in course of relationship with S, had opportunity to continue working, and her asset position increased during relationship -- L was not entitled to support on contractual basis as parties kept their finances separate, and it was L who breached agreement to contribute funds to mortgage -- Spousal support on non-compensatory basis was not appropriate, as parties left Alberta based on joint decision, L's employment opportunities were similar in BC, and she chose to invest funds from sale of her home in GIC rather than in home with S, which would have afforded her significant gain.

Schultz v. Landry (2007), 2007 BCSC 994, 2007 CarswellBC 2212, Russell 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 married in 1976 and separated after traditional 26 year marriage -- Parties came to settlement embodied in judgment whereby husband would pay spousal of \$1,450 per month for three years at which time issue of spousal support would be reviewed by court -- Wife suffered from three disabilities which compromised her ability to work full-time -- Wife brought petition for additional spousal support -- Petition granted -- Husband was ordered to pay \$1,875 per month until further order -- Husband's income was fixed at \$80,100 per year -- Wife's earning power was fixed between \$15,000 and \$20,000 per year -- Significant income disparity between parties continued to exist -- Wife's health precluded her from being financially independent relative to standard of living parties had enjoyed and relative to her training and skills -- Wife continued to suffer from economic hardship engendered by her role in long-term marriage and by marriage breakdown.

Deringer v. Hill ([2007](#)), [2007 SKQB 206](#), [2007 CarswellSask 334](#), N.S. Sandomirsky J. (Sask. Q.B.)
[Saskatchewan]

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 started living together in 2000, married in 2001, became pregnant in 2004 and separated few months later -- In July 2004, wife signed separation agreement after receiving independent legal advice -- Pursuant to agreement, wife waived her right to spousal support after husband agreed to support her financially if she required assistance while on maternity leave -- In context of family law proceeding, wife sought spousal support -- No spousal support ordered -- Wife had long-established career that continued throughout marriage -- Wife did not suffer economic disadvantage because of marriage or breakdown of marriage -- Side agreement protected wife from financial consequences arising while she was on maternity leave -- Spousal support waiver was part of overall settlement of all issues between parties and could not be looked at in vacuum -- Wife's circumstances were as contemplated at time of agreement -- Agreement was fairly negotiated and substantially compliant with objectives of Divorce Act.

Hawboldt v. Hawboldt ([2007](#)), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel J. (B.C. S.C.) [British Columbia]

FAM.IV.1.b.vii

Subject Title: Family law

Classification Number: IV.1.b.vii

Support -- Spousal support under Divorce Act and provincial statutes -- Entitlement -- Delay in applying

Parties were married in 1962, had three children, and separated in 1989 -- Wife moved out of family home, and began living with one child in 1993 -- Husband stayed in family home after separation -- Parties remained financially separate after separation -- Both parties had been employed during marriage, but both suffered disability after separation which affected their ability to work -- Between 1995 and 1999, husband paid \$300 per month to wife, which wife assumed was spousal support and husband intended as division of property -- Wife did not commence proceeding against husband for divorce and corollary relief until 2001 -- Wife brought petition for spousal support; husband brought counter-petition for spousal support -- Petitions dismissed -- Husband did not suffer economic disadvantage as result of marriage or its breakdown, therefore his claim for spousal support was dismissed -- No retroactive support was payable due to delay, and fact that such order would amount to redistribution of capital for husband -- Delay during period of 1995 to 1999 could be explained as wife was receiving \$300 per month from husband; however, no evidence explained delay thereafter -- While husband had managed to earn approximately \$1,000 per month in income over past year, he was 71 years old and unlikely to continue to earn such income, therefore his ability to pay was limited.

Ioanidis v. Ioanidis ([2007](#)), [2007 SKQB 233](#), [2007 CarswellSask 345](#), C.L. Dawson J. (Sask. Q.B.)
[Saskatchewan]

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 were married in 1992 and separated in 2006 -- There were three children of marriage -- Petitioner wife commenced action for divorce, custody, child and spousal support, and division of family property -- Wife applied for, inter alia, order for interim spousal support -- Application granted -- Purpose of interim spousal support is to make reasonable provision for maintenance of wife or partner pending final adjudication -- After birth of first child, wife had worked only part-time and after birth of third child, she became mostly stay-at-home mother -- Her earnings in recent years had been minimal -- While she might become self-supporting in time, it would not occur instantaneously -- There was difficulty in assessing need and ability to pay because of unresolved questions concerning respondent husband's means -- There was evidence of investments upon which he could possibly draw, but more thorough investigation was required -- Wife was not making ends meet -- Marriage breakdown left her in debt, as expenses which were covered by husband before separation had gone unpaid and she had to borrow from her mother -- Wife claimed she needed total monthly income of \$4,000 to meet needs of children and maintain family home -- She was about to start work at average salary of \$1,110 per month and hoped to improve upon that in short time -- Based on available evidence, interim spousal support order of \$1,000 per month would be appropriate and manageable, commencing October 1, 2007.

Fellinger v. Fellinger ([2007](#)), [2007 CarswellSask 462](#), [2007 SKQB 317](#), C.R. Wimmer 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 married in 1967 and divorced in 1987 when wife was 44 and husband was 45 years old -- In 1987, husband was ordered to pay spousal support of \$900 per month -- Wife received family tile business as part of apportionment of assets, which wife subsequently sold to son -- In 1997, spousal support order was varied to \$1,500 per month based on husband and current wife's combined income of \$9,325 per month -- In October 2006, support order was reduced to \$750 per month due to husband's reduced income and declining health -- Husband's annual income was \$46,000 and current wife had no income -- Wife had medical conditions which prevented her from working full-time -- Wife's annual income from all sources was approximately \$47,500, including rental income from real estate which wife owned -- Husband applied to cancel or reduce spousal support and other relief -- Application granted -- Husband was ordered to pay support until September 2007 to allow wife to send notice of rental increase to tenants -- Wife and husband were on same footing financially -- Previous orders had recognized and made allowances for economic advantages and disadvantages of marriage -- Payment of spousal support since 1988 and division of assets relieved economic hardship between parties arising from breakdown of marriage -- Both husband and wife had health issues which affected their ability to work -- Wife chose to sell tile business and such sale or disposition could not be used to support need for continued spousal support.

Kranenburg v. Kranenburg ([2007](#)), [2007 BCSC 921](#), [2007 CarswellBC 1466](#), Warren J. (B.C. S.C.)
[British Columbia]

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 married in 1975 and had three children before separating in 1990 -- Mother obtained pre-Guidelines order for \$600 monthly support per child and spousal support of \$1,000 per month in 1990 -- Prior to separation, father obtained B.Sc., B.A., and LL.B. -- Father deposed that back problems caused his absenteeism, decline in income, and eventual dismissal from partnership with law firm in 2003 -- Father stopped support payments in 2002 and mother brought application claiming arrears of \$51,850 -- Parties' eldest child had begun work after high school and parties' second child had taken post-secondary training and was working part-time, but parties' third child was in post-secondary program and had student loans -- Father deposed that he had made extensive efforts to obtain employment as lawyer since dismissal in March 2003 -- Father was living on \$500 per month social assistance from June 2003 until 2006 but stood to inherit substantial funds from 93-year-old mother -- Mother's annual income from two part-time jobs was \$35,000 in 2005 and \$40,000 in 2006, but had declined since 2006 -- Chambers judge dismissed father's application for variation of spousal and child support, applying same standard of gross unfairness to application for retroactive reduction as to father's application for cancellation of arrears -- Chambers judge found father intentionally unemployed, imputed him with income of \$70,000, and, noting that table amount was \$561 per month, ordered father to pay \$500 per month child support -- Father appealed -- Appeal dismissed -- Chambers judge neither erred in principle, misapprehended evidence, nor was clearly wrong in declining to vary retroactively child support payable under 1991 order, with exception of order for one child from June 2005 -- As success on application for retroactive variation would presumably result in reduction of arrears, it was doubtful that court could reduce support retroactively without holding father to same standard of gross unfairness applicable to reduction of arrears -- As for prospective order, while there was no doubt father's circumstances were vastly different from those that existed at time of original order, chambers judge's finding that father was intentionally unemployed could not be said to be erroneous, as income attributed to him was substantially less than what father was earning some years earlier.

Luney v. Luney (2007), 2007 CarswellBC 2795, 2007 BCCA 567, Levine J.A., Newbury J.A., Thackray J.A. (B.C. C.A.) [British Columbia]

FAM.IV.1.h.vii

Subject Title: Family law

Classification Number: IV.1.h.vii

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

Parties married in 1975 and had three children before separating in 1990 -- Mother obtained pre-Guidelines order for \$600 monthly support per child and spousal support of \$1,000 per month in 1990 -- Prior to separation, father had B.Sc., B.A., LL.B. -- Father deposed that back problems caused his absenteeism, decline in income, and eventual dismissal from partnership with law firm in 2003 -- Father stopped support payments in 2002 and mother brought application claiming arrears of \$51,850 -- Chambers judge found father intentionally unemployed, imputed him with \$70,000 income, and dismissed his application for retroactive variation of support and reduction or cancellation of arrears, concluding that father had not satisfied court it would be grossly unfair not to reduce arrears -- Chambers judge observed that if father could afford to do LL.M., he could afford to bring variation application in timely fashion, and concluded there was no medical evidence to support his claim to mental health problems -- Father obtained leave to appeal order and brought application to introduce fresh evidence not before chambers judge -- Fresh evidence was father's affidavit with attached medico-legal reports, affidavit of father's mother to effect that she and not son had paid for son's L.L.M., report from vocational consultant as to father's employability, and financial statements with attached income tax returns -- Issue arose as to whether fresh evidence was admissible on appeal -- Slightly more elastic approach was to be taken to admissibility of fresh evidence in family law context -- Medico-legal reports, affidavit of father's mother and financial statements were to be admitted in interests of justice -- If affidavit of father's mother clarifying that she had paid for son's LL.M. were not admitted, court's decision might be regarded as resting on misapprehension of evidence -- Vocational consultant's report was essentially based on hearsay and was neither helpful nor necessary -- Other items, including father's affidavit, were inadmissible as adding no new information and being largely new argument.

Luney v. Luney ([2007](#)), [2007 CarswellBC 2795](#), [2007 BCCA 567](#), Levine J.A., Newbury J.A., Thackray J.A. (B.C. C.A.) [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 1975 and had three children before separating in 1990 -- Mother obtained pre-Guidelines order for \$600 monthly support per child and spousal support of \$1,000 per month in 1990 -- Prior to separation, father obtained B.Sc., B.A., and LL.B. -- Father deposed that back problems caused

his absenteeism, decline in income, and eventual dismissal from partnership with law firm in 2003 -- Father stopped support payments in 2002 and mother brought application claiming arrears of \$51,850 -- Father brought unsuccessful application to cancel arrears -- Chambers judge concluded father had not shown it would be grossly unfair not to reduce arrears and that while it would be appropriate to reduce arrears to reflect fact that one child ceased to be child of marriage as of June 2005, remaining \$51,450 in arrears should not be cancelled, and was of view father could have brought application for variation earlier -- Father appealed -- Appeal dismissed -- Cancellation of arrears was rare and more was required of applicant than simply showing change in circumstances -- Had father been working or been engaged in real job search rather than on social assistance, some arrears reduction might have been appropriate -- While evidence showed that surgery prevented father from working full-time for few months around May 2005, he was able to do LL.M. and could have done some kind of work or made application to reduce maintenance -- In circumstances, it was inappropriate to reduce arrears even for six months, since it seemed likely that even without surgery, father would simply have continued doing nothing to meet family obligations -- Father's earlier deposition as to inability to borrow funds to start up practice was contradicted by fresh evidence which indicated that was exactly what he had done in borrowing funds from his mother -- Active securities market in recent times would have provided sufficient work for father to earn at least half his earlier earnings -- Considering all evidence, including fresh evidence, chambers judge was not shown to have misapprehended evidence or to have otherwise erred in failing to find it would be grossly unfair not to reduce arrears -- Chambers judge's conclusion that father's evidence fell short of demonstrating gross unfairness was bolstered by mother's circumstances, including her own serious health problems, bankruptcy, and challenges in raising three children with no help from father.

Luney v. Luney ([2007](#)), [2007 CarswellBC 2795](#), [2007 BCCA 567](#), Levine J.A., Newbury J.A., Thackray J.A. (B.C. C.A.) [British Columbia]

FAM.IV.1.n

Subject Title: Family law

Classification Number: IV.1.n

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

Application of spousal support advisory guidelines -- Parties married in 1976 and separated after traditional marriage of 26 years -- Parties reached settlement embodied in court order whereby husband would pay \$1,450 per month spousal support -- Support was subject to review in three years -- Wife's

disabilities precluded her from attaining self-sufficiency -- Wife petitioned for further entitlement to spousal support -- Husband's income was fixed at \$80,100 per year -- Wife was deemed capable of earning \$15,000 to \$20,000 per year -- If spousal support application guidelines were applied on gross annual income difference of \$60,000, range of support would be between \$1,875 to \$2,500 per month -- Husband was ordered to pay \$1,875 per month.

Deringer v. Hill ([2007](#)), [2007 SKQB 206](#), [2007 CarswellSask 334](#), N.S. Sandomirsky J. (Sask. Q.B.) [Saskatchewan]

FAM.IV.1.n

Subject Title: Family law

Classification Number: IV.1.n

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

Quantum -- Parties went to trial on issues of spousal support and matrimonial property division -- Wife commenced appeal challenging several findings -- Wife's appeal was struck as consequence of her failure to comply with order providing her to file and serve factum to counsel on September 28, 2007 -- Wife served factum to counsel on October 1, 2007 -- Wife brought application to restore appeal -- Application dismissed -- Appeal did not have arguable merit such as to make it unjust to deny hearing before panel of court -- Trial judge's findings of fact were within province of trial judge -- Wife failed to show palpable and overriding error or extricable error of law -- Trial judge was entitled to find that there was spousal support overpayment of \$54,000 to wife arising from spousal support orders previously made on interlocutory basis in period before trial -- Decisions of trial judge with respect to matrimonial property division were unchallengeable on her fact findings.

Dhala v. Dhala ([2007](#)), [2007 CarswellAlta 1631](#), [2007 ABCA 389](#), J. Watson J.A. (Alta. C.A.) [Alberta]

FAM.IV.2.a.iv

Subject Title: Family law

Classification Number: IV.2.a.iv

Support -- Child support -- Duty to contribute -- Child at school

Child was born after parties' one-year cohabitation from 1984 to 1985 -- Pursuant to consent order, father paid child support of \$150 per month until 2003 when child turned 18 -- Father now lived in BC and mother and child lived in Alberta -- Three years after father paid last support payment, mother brought application under Interjurisdictional Support Orders Act for variation of support -- Mother sought Guidelines child support, contribution by father towards \$507.66 in special expenses, and order that father maintain child on medical and dental insurance -- Mother also sought contribution towards anticipated \$15,229 annual extraordinary expenses from child's enrolment in dance program -- Court determined it had jurisdiction to treat mother's application as fresh application given that original order had expired and could not be varied -- Issue arose as to whether child was still child of marriage -- Child remained child of marriage -- Prevailing decision set out eight factors which were to be considered in determining whether child continued to be child of marriage -- It was established that child was 21, full-time student, had applied for student loans, and earned some money from part-time employment -- There was no evidence as to whether child's career plans were reasonable or appropriate or as to child's past academic performance -- There was no evidence of any relationship between child and father or of any plans concerning child's future, as child was born after separation -- Evidence of all factors was not necessary to establish that child met definition of child of marriage.

G. (C.M.) v. S. (M.) (2007), 2007 CarswellBC 2673, 2007 BCPC 644, M.J. Brecknell J. (B.C. Prov. Ct.) [British Columbia]

FAM.IV.2.a.v

Subject Title: Family law

Classification Number: IV.2.a.v

Support -- Child support -- Duty to contribute -- Child withdrawing from parental control

July 2001 order required father to pay \$340 per month child support for daughter, E and \$426 per month for daughter, K, and son, D -- Children had little communication with father -- Father terminated E's support in April 2003 when E turned 20 -- Father terminated K's support in June 2004 when K turned 18

-- E got married in August 2005 and completed B.Ed. in 2006 -- E had \$17,500 student loan, \$2,000 bursary, and \$17,000 personal loan from undisclosed lender -- K, who was 20, was in third year of university in other city and planned to take Masters and PhD after completing B.Sc. -- K paid for first three years of university with summer earnings, \$24,000 student loan, \$10,000 from mother, and \$27,000 from accident settlement -- K worked full-time and lived with mother during summer -- Father brought application to terminate child support for two older children who were now adults -- Judge granted leave to parties to reset application and submit further affidavit evidence concerning older children's educational endeavours and financial circumstances -- In interim, mother brought cross-application for payment of \$16,614 in arrears with respect to child support for K and E, and for payment of extraordinary expenses for K and D -- Issue arose as to whether K or E remained children of marriage at time father terminated support payments -- E was child of marriage from April 2003 until marriage in August 2005 -- K was child of marriage and would continue to be so while completing undergraduate degree -- E and K's student loans and part-time income did not impact finding of whether they were children of marriage -- Father encouraged E and K to pursue post-secondary education and made promises of support, and E and K's choices of post-secondary education were more than reasonable, and father did not argue otherwise -- E and K's age and academic performance did not impact finding of whether they were children of marriage.

Matwichuk v. Stephenson ([2007](#)), [2007 BCSC 1589](#), [2007 CarswellBC 2596](#), Garson J. (B.C. S.C.)
[British Columbia]

FAM.IV.2.e.ii

Subject Title: Family law

Classification Number: IV.2.e.ii

Support -- Child support -- Variation of order -- Change in financial circumstances

Parties married in 1975 and had three children before separating in 1990 -- Mother obtained pre-Guidelines order for \$600 monthly support per child and spousal support of \$1,000 per month in 1990 -- Prior to separation, father obtained B.Sc., B.A., and LL.B. -- Father deposed that back problems caused his absenteeism, decline in income, and eventual dismissal from partnership with law firm in 2003 -- Father stopped support payments in 2002 and mother brought application claiming arrears of \$51,850 -- Parties' eldest child had begun work after high school and parties' second child had taken post-secondary training and was working part-time, but parties' third child was in post-secondary program and had student loans -- Father deposed that he had made extensive efforts to obtain employment as lawyer since

dismissal in March 2003 -- Father was living on \$500 per month social assistance from June 2003 until 2006 but stood to inherit substantial funds from 93-year-old mother -- Mother's annual income from two part-time jobs was \$35,000 in 2005 and \$40,000 in 2006, but had declined since 2006 -- Chambers judge dismissed father's application for variation of spousal and child support, applying same standard of gross unfairness to application for retroactive reduction as to father's application for cancellation of arrears -- Chambers judge found father intentionally unemployed, imputed him with income of \$70,000, and, noting that table amount was \$561 per month, ordered father to pay \$500 per month child support -- Father appealed -- Appeal dismissed -- Chambers judge neither erred in principle, misapprehended evidence, nor was clearly wrong in declining to vary retroactively child support payable under 1991 order, with exception of order for one child from June 2005 -- As success on application for retroactive variation would presumably result in reduction of arrears, it was doubtful that court could reduce support retroactively without holding father to same standard of gross unfairness applicable to reduction of arrears -- As for prospective order, while there was no doubt father's circumstances were vastly different from those that existed at time of original order, chambers judge's finding that father was intentionally unemployed could not be said to be erroneous, as income attributed to him was substantially less than what father was earning some years earlier.

Luney v. Luney ([2007](#)), [2007 CarswellBC 2795](#), [2007 BCCA 567](#), Levine J.A., Newbury J.A., Thackray J.A. (B.C. C.A.) [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

Parties married in 1975 and had three children before separating in 1990 -- Mother obtained pre-Guidelines order for \$600 monthly support per child and spousal support of \$1,000 per month in 1990 -- Prior to separation, father obtained B.Sc., B.A., and LL.B. -- Father deposed that back problems caused his absenteeism, decline in income, and eventual dismissal from partnership with law firm in 2003 -- Father stopped support payments in 2002 and mother brought application claiming arrears of \$51,850 -- Father brought unsuccessful application to cancel arrears -- Chambers judge concluded father had not shown it would be grossly unfair not to reduce arrears and that while it would be appropriate to reduce arrears to reflect fact that one child ceased to be child of marriage as of June 2005, remaining \$51,450 in arrears should not be cancelled, and was of view father could have brought application for variation

earlier -- Father appealed -- Appeal dismissed -- Cancellation of arrears was rare and more was required of applicant than simply showing change in circumstances -- Had father been working or been engaged in real job search rather than on social assistance, some arrears reduction might have been appropriate -- While evidence showed that surgery prevented father from working full-time for few months around May 2005, he was able to do LL.M. and could have done some kind of work or made application to reduce maintenance -- In circumstances, it was inappropriate to reduce arrears even for six months, since it seemed likely that even without surgery, father would simply have continued doing nothing to meet family obligations -- Father's earlier deposition as to inability to borrow funds to start up practice was contradicted by fresh evidence which indicated that was exactly what he had done in borrowing funds from his mother -- Active securities market in recent times would have provided sufficient work for father to earn at least half his earlier earnings -- Considering all evidence, including fresh evidence, chambers judge was not shown to have misapprehended evidence or to have otherwise erred in failing to find it would be grossly unfair not to reduce arrears -- Chambers judge's conclusion that father's evidence fell short of demonstrating gross unfairness was bolstered by mother's circumstances, including her own serious health problems, bankruptcy, and challenges in raising three children with no help from father.

Luney v. Luney ([2007](#)), [2007 CarswellBC 2795](#), [2007 BCCA 567](#), Levine J.A., Newbury J.A., Thackray J.A. (B.C. C.A.) [British Columbia]

FAM.IV.2.e.iv.A

Subject Title: Family law

Classification Number: IV.2.e.iv.A

Support -- Child support -- Variation of order -- Practice and procedure -- General principles

Parties married in 1975 and had three children before separating in 1990 -- Mother obtained pre-Guidelines order for \$600 monthly support per child and spousal support of \$1,000 per month in 1990 -- Prior to separation, father obtained B.Sc., B.A., and LL.B. -- Father deposed that back problems caused his absenteeism, decline in income, and eventual dismissal from partnership with law firm in 2003 -- Father stopped support payments in 2002 and mother brought application claiming arrears of \$51,850 -- Parties' eldest child had begun work after high school and parties' second child had taken post-secondary training and was working part-time, but parties' third child was in post-secondary program and had student loans -- Father deposed that he had made extensive efforts to obtain employment as lawyer since dismissal in March 2003 -- Father was living on \$500 per month social assistance from June 2003 until

2006 but stood to inherit substantial funds from 93-year-old mother -- Mother's annual income from two part-time jobs was \$35,000 in 2005 and \$40,000 in 2006, but had declined since 2006 -- Chambers judge dismissed father's application for variation of spousal and child support, applying same standard of gross unfairness to application for retroactive reduction as to father's application for cancellation of arrears -- Chambers judge found father intentionally unemployed, imputed him with income of \$70,000, and, noting that table amount was \$561 per month, ordered father to pay \$500 per month child support -- Father appealed -- Appeal dismissed -- Chambers judge neither erred in principle, misapprehended evidence, nor was clearly wrong in declining to vary retroactively child support payable under 1991 order, with exception of order for one child from June 2005 -- As success on application for retroactive variation would presumably result in reduction of arrears, it was doubtful that court could reduce support retroactively without holding father to same standard of gross unfairness applicable to reduction of arrears -- As for prospective order, while there was no doubt father's circumstances were vastly different from those that existed at time of original order, chambers judge's finding that father was intentionally unemployed could not be said to be erroneous, as income attributed to him was substantially less than what father was earning some years earlier.

Luney v. Luney ([2007](#)), [2007 CarswellBC 2795](#), [2007 BCCA 567](#), Levine J.A., Newbury J.A., Thackray J.A. (B.C. C.A.) [British Columbia]

FAM.IV.3.a.i

Subject Title: Family law

Classification Number: IV.3.a.i

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

There is no obligation under Child Support Guidelines for 15 year old person to contribute to his or her own expenses.

Purdie v. Coleman ([2007](#)), [2007 CarswellAlta 1006](#), [2007 ABQB 452](#), P. Chrumka J. (Alta. Q.B.) [Alberta]

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 were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Family assets included matrimonial home, condominiums in Red Deer and Calgary, contents of home and condos, pension, savings bonds, automobiles, RRSPs, medical equipment and other assets -- Husband's attempts to create medical clinic in Red Deer Alberta failed -- Husband was found to have over billed government for services and was not accredited to perform certain services he had performed -- Mother maintained that husband abused children at various times, and obtained restraining order -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance with guidelines, extraordinary expenses settled, spousal support awarded -- Husband required to pay \$5,726 in child support if eldest child attending university outside of Calgary, and \$7,371.50 if child attending university in Calgary -- Husband's income set at \$425,000 for Guideline purposes -- Husband worked in excess of 120 hours a week and was not underemployed -- Husband unlikely to earn same amounts as prior to reassessment by Health Canada -- Previous five years showed two anomalous years in terms of earnings, one exceeding and one not meeting average income -- Wife's income set at \$78,435 for purposes of Guidelines -- Wife not deliberately underemployed -- Wife suffered from disability preventing working more than two and one-half days per week -- Although evidence of disability was weak it was not controverted.

A. (*S.M.*) v. H. (*S.F.*) ([2007](#)), [2007 ABQB 95](#), [2007 CarswellAlta 849](#), B.E. Romaine J. (Alta. Q.B.) [Alberta]

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 had two children in 1986 and 1990, and divorced -- Father paid support for both children -- Maintenance Enforcement ceased to collect support for T.D. after T.D. turned 18 in 2004 -- Adult child, T.D., had various conditions and did not matriculate -- Child was occasionally enrolled in various courses and worked at different jobs -- Mother applied for ongoing child support and to have older child declared "child of marriage", and other relief -- Application granted in part -- To be declared child of marriage, child had to be in full time attendance at academic institution -- Evidence showed that child did not attend school full time between 2004 and 2006 and when he was taking courses, there were many interruptions -- Child proposed to take two-year course, but did not demonstrate if it would give him reasonable chance to support himself -- Mother's claim to have child reclassified as child of marriage was not made out -- Father was ordered to pay ongoing child support at the Federal Child Support Guidelines rate until younger child ceased to be child of marriage.

T. (C.J.) v. T. (D.R.) (2007), 2007 ABQB 216, 2007 CarswellAlta 867, W.E. Wilson J. (Alta. Q.B.) [Alberta]

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 were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Husband was found to have over billed government for services and was not accredited to perform certain services he had performed -- Mother maintained that husband abused children at various times, and obtained restraining order -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance with guidelines, extraordinary expenses settled, spousal support awarded -- Husband required to pay \$5,726 in child support if eldest child attending university outside of Calgary, and \$7,371.50 if child attending university in Calgary -- Husband's income set at \$425,000 for Guideline purposes -- Husband worked in excess of 120 hours a

week and was not underemployed -- Husband unlikely to earn same amounts as prior to reassessment by Health Canada -- Wife's income set at \$78,435 for purposes of Guidelines -- Wife not deliberately underemployed -- Wife suffered from disability preventing working more than two and one-half days per week -- Although evidence of disability was weak it was not controverted.

A. (S.M.) v. H. (S.F.) (2007), 2007 ABQB 95, 2007 CarswellAlta 849, B.E. Romaine J. (Alta. Q.B.)
[Alberta]

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 had one child who lived with mother -- Mother earned \$46,196 per year -- Father had Grade IX education and history of odd jobs -- Mother applied for child support and other relief and asked Court to impute income to father -- Father occasionally worked as musician and as labourer -- Father agreed that despite lack of education he could be working full-time at minimum wage -- Specific intention to avoid paying support or be intentionally under-employed was not required -- Father was required to do what he could to provide financial assistance to child -- Although father was working at same level as he had in past when living with mother, father was found to be intentionally under-employed -- Father ordered to pay \$128.00 per month, based on imputed income of \$16,640 which would correspond to full-time minimum wage employment.

Sands v. Frohlick (2007), 2007 CarswellSask 341, 2007 SKQB 218, R.K. Ottenbreit J. (Sask. Q.B.)
[Saskatchewan]

FAM.IV.3.b.v

Subject Title: Family law

Classification Number: IV.3.b.v

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Children's means

Child was born after parties' one-year cohabitation from 1984 to 1985 -- Pursuant to consent order, father paid child support of \$150 per month until 2003 when child turned 18 -- Father now lived in BC and mother and child lived in Alberta -- Three years after father paid last support payment, mother brought application under Interjurisdictional Support Orders Act for variation of support -- Mother also sought contribution towards anticipated \$15,229 annual extraordinary expenses from child's enrolment in dance program -- Mother's annual income was \$69,512.76 and father's income was determined to be \$60,000, being average of last three years of employment -- Child was working part-time and able to contribute somewhat to own expenses, had obtained student loan, and would be looking into scholarships and bursaries -- Court determined it had jurisdiction to treat mother's application as fresh application for child support given that original order had expired and could not be varied -- Issue arose as to appropriate contribution by child towards post-secondary education expenses -- Child's monthly expenses were determined to be \$1,815 -- It was reasonable for child to attend to 60 per cent of those expenses from her earnings, loans, bursaries or scholarships -- Father's monthly contribution towards child's remaining post-secondary expenses was \$335 and mother's was \$390.

G. (C.M.) v. S. (M.) ([2007](#)), [2007 CarswellBC 2673](#), [2007 BCPC 644](#), M.J. Brecknell J. (B.C. Prov. Ct.) [British Columbia]

FAM.IV.3.b.v

Subject Title: Family law

Classification Number: IV.3.b.v

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Children's means

July 2001 order required father to pay \$340 per month child support for daughter, E and \$426 per month for daughter, K -- Children had little communication with father -- Father terminated E's support in April 2003 when E turned 20 -- Father terminated K's support in June 2004 when K turned 18 -- E got married

in August 2005 and completed B.Ed. in 2006 -- E had \$17,500 student loan, \$2,000 bursary, and \$17,000 personal loan from undisclosed lender -- K, who was 20, was in third year of university in other city and planned to take Masters and PhD after completing B.Sc. -- K had \$30,000 personal injury award from accident -- K paid for first three years of university with summer earnings, \$24,000 student loan, \$10,000 from mother, and \$27,000 from accident settlement -- K worked full-time and lived with mother during summer -- Father brought application to terminate child support for two older children who were now adults -- Judge granted leave to parties to reset application and submit further affidavit evidence concerning older children's educational endeavours and financial circumstances -- In interim, mother brought cross-application for payment of \$16,614 in arrears in respect to child support for K and E, and for payment of extraordinary expenses for K and D -- Father brought application to terminate child support for E and K -- Application with respect to E dismissed; application with respect to K granted in part -- In interim, mother brought cross-application for payment of \$16,614 in arrears in respect to child support for K and E, and for payment of extraordinary expenses for K and D -- Amount of child support claimed by E was modest in comparison to needs and debts she had incurred and awarding E full amount of arrears claimed still left E largely responsible for own education -- Father was to pay arrears of \$9,860 directly to E -- Reasonable and appropriate monthly contribution from father towards K's educational expenses was \$340, so order was to be varied accordingly -- K was to advise father of day she received Bachelor's degree, at which time father's child support obligation towards K was to terminate -- E and K, as adult children attending university, were not required to exhaust all their savings or incur debts in preference to parental obligation to them -- Father encouraged E and K to pursue post-secondary education and made promises of support, and E and K's choices of post-secondary education were more than reasonable, and father did not argue otherwise -- E and K's age and academic performance did not impact finding of whether they were children of marriage.

Matwichuk v. Stephenson (2007), 2007 BCSC 1589, 2007 CarswellBC 2596, Garson J. (B.C. S.C.)
[British Columbia]

FAM.IV.3.b.vi

Subject Title: Family law

Classification Number: IV.3.b.vi

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Child care expenses

Parties lived together and had one child in 2005 -- Child lived with mother -- Mother earned \$46,196 per

year -- Father had sporadic employment history of odd jobs -- Mother applied for extraordinary expenses, and other relief -- Application granted in part, on these grounds -- Father was ordered to pay \$84 per month of child care costs -- Father was imputed minimum wage income of \$16,540 per year -- Only child care expenses of \$525 per month were properly proven -- Other issues with respect to extraordinary expenses would be dealt with at trial.

Sands v. Frohlick (2007), 2007 CarswellSask 341, 2007 SKQB 218, R.K. Ottenbreit J. (Sask. Q.B.) [Saskatchewan]

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 were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Family assets included matrimonial home, condominiums in Red Deer and Calgary, contents of home and condos, pension, savings bonds, automobiles, RRSPs, medical equipment and other assets -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance with guidelines, extraordinary expenses settled, spousal support awarded, family property divided -- Contact sessions between youngest child and father ordered, to be treated as extraordinary expense under s. 7 of Guidelines -- Husband agreed to share extraordinary expenses regarding wrestling, volleyball, camps, piano lessons, educational tutors, private school expenses, medical dental and orthodontic fees and driver's education -- Expenses for winter club were reasonable as children had taken part in activity in past -- Expenses for skiing, school uniforms and supplies, diet programs and counselling from Red Deer counsellor not appropriate extraordinary expenses -- Excluded activities were either not properly extraordinary expenses, or excessive given family history -- Children less interested in counselling than in past, and no reasonable rationale for paying for specific counsellor to travel from Red Deer.

A. (S.M.) v. H. (S.F.) (2007), 2007 ABQB 95, 2007 CarswellAlta 849, B.E. Romaine J. (Alta. Q.B.) [Alberta]

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 had three children and divorced -- Parties' separation agreement in 1999 addressed child support and stated that husband would pay one-half extraordinary expenses -- Addendum to separation agreement in 2002 stated that father would pay \$500 per year per child for extracurricular activities as his "contribution to activities" -- Mother applied for additional child support, including \$4,750 of arrears of expenses under s. 7 of Federal Child Support Guidelines for 2004 to 2007, and other relief -- Application dismissed on these grounds -- Father was not obliged to pay \$4,750 portion of mother's claim -- There was no evidence as to necessity or reasonableness of any expense to enable order to be made -- Mother did not acknowledge her own obligation to share extraordinary expenses -- Mother's refusal to disclose own income prevented calculation of proportion of sharing of expense -- Mother did not accept that father's obligation was to contribute as they had agreed.

Molstad v. Molstad ([2007](#)), [2007 SKQB 193](#), [2007 CarswellSask 342](#), Kraus J. (Sask. Q.B.)
[Saskatchewan]

FAM.IV.3.b.vii.B

Subject Title: Family law

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

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Extraordinary expenses -- Necessity and reasonableness

Parties separated in February 2000 after 11 1/2 years of marriage -- Father deposed that he had primary care of child from September 2000 until end of 2002, something disputed by mother -- From January 2003 until June 2006, child resided with mother but there was bi-weekly shared custody agreement -- Since June 2006, child resided exclusively with mother -- Mother filed action for divorce and applied for, inter alia, order for payment of expenses under s. 7 of Federal Child Support Guidelines for period from June 2006 -- Section 7 expenses awarded -- It was submitted that s. 7 expenses should include school fees and hockey equipment and hockey registration costs -- Section 7 expenses were in child's best interests and were reasonable in relation to means of parents -- These were special and extraordinary expenses within ss. 7(1)(d) and (f) of Alberta Child Support Guidelines and were to be provided by each parent in proportion to their respective incomes -- Having regard to parties' 2006 income, percentage share was 75 percent for father and 25 percent for mother -- Any contribution by child to cost of his hockey equipment would reduce proportionate amounts payable by parties in accordance with s. 7(2) -- In each school year, changes in income might require readjustments of percentages.

Purdie v. Coleman ([2007](#)), [2007 CarswellAlta 1006](#), [2007 ABQB 452](#), P. Chrumka J. (Alta. Q.B.) [Alberta]

FAM.IV.3.b.vii.B

Subject Title: Family law

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

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Extraordinary expenses -- Necessity and reasonableness

Parties had two children R and L, and divorced -- Mother's annual income was \$57,368.11; father's income was fixed at \$50,584.42 -- L was involved in music lessons and soccer -- Mother also sought contribution to education exchange costing \$1,987 -- Mother applied for variation of child support and contribution to extraordinary expenses -- Music fit within definition of extraordinary expenses -- Soccer was in child's best interest and also deemed reasonable extraordinary expense -- Father was ordered to pay 47 per cent of those extraordinary expenses -- Education Touring Association Exchange was not necessity or reasonable under circumstances -- There were limits on affordability and reasonableness of expenditure in light of all other extraordinary expenses that father was called upon to contribute.

Segall v. Fellingner ([2007](#)), [2007 SKQB 207](#), [2007 CarswellSask 336](#), N.S. Sandomirsky J. (Sask. Q.B.)

[Saskatchewan]

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 were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Family assets included matrimonial home, condominiums in Red Deer and Calgary, contents of home and condos, pension, savings bonds, automobiles, RRSPs, medical equipment and other assets -- Husband's attempts to create medical clinic in Red Deer Alberta failed -- Husband was found to have over billed government for services and was not accredited to perform certain services he had performed -- Mother maintained that husband abused children at various times, and obtained restraining order -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance with guidelines, extraordinary expenses settled, spousal support awarded -- Husband required to pay \$5,726 in child support if eldest child attending university outside of Calgary, and \$7,371.50 if child attending university in Calgary -- Husband's income set at \$425,000 for Guideline purposes -- Wife's income set at \$78,435 for purposes of Guidelines -- Wife not deliberately underemployed -- Expenses for skiing, school uniforms and supplies, diet programs and counselling from Red Deer counsellor not appropriate extraordinary expenses -- If eldest child to attend university outside of Calgary, costs to be borne out of educational fund, with personal expenses of \$750 per month while receiving university education to be borne in same proportion as extraordinary expenses -- If child to attend university within Calgary, base child support paid and remaining expenses from educational fund.

A. (*S.M.*) v. H. (*S.F.*) ([2007](#)), [2007 ABQB 95](#), [2007 CarswellAlta 849](#), B.E. Romaine J. (Alta. Q.B.)
[Alberta]

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 had two children, R born in 1989 and L born in 1993 -- R had graduated from high school and had enrolled in university -- R lived with mother and father had not seen her since 2004 -- Mother's annual income was \$57,368.11 -- Father's income was fixed at \$50,584.43 -- Child lived at home and had university tuition and book expenses of \$5,525 -- Mother applied for contribution to university expenses and other relief -- Application granted on these grounds -- Child earned \$1,000 in summer; remaining university expenses of \$4,525 were split between mother and father on 53 to 47 per cent basis -- Child lived at home and basic child support was appropriate -- Child and father's failed relationship was but one factor to consider -- Child was enrolled full-time in school and deemed child of marriage -- Education was necessary to enable child to attain best interests -- Parents' obligations to provide financial assistance was reasonable expectation given social and economic status of parents and child.

Segall v. Fellingner (2007), 2007 SKQB 207, 2007 CarswellSask 336, N.S. Sandomirsky J. (Sask. Q.B.) [Saskatchewan]

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

Divorced parties had two daughters -- Wife brought application for several forms of relief, including special and extraordinary expenses -- Application granted -- Husband failed to provide income information when under legal obligation to do so -- Husband intentionally avoided financial disclosure for seven months, forcing wife to incur cost of hiring lawyer and then he sent incomplete and intentionally misleading financial disclosure -- Husband's 2006 income was imputed to be \$57,683,

which was comprised of pension income of \$21,262, employment income of \$36,232, and net rental income of \$189 -- Husband's 2007 income was imputed to be \$61,058, comprised of pension income of \$21,262, employment income of \$36,232, and rental income of \$3,564 -- Father was ordered to pay 60 per cent of child care costs, school fees and extracurricular activities -- Daughters have attended private school for several years, and it would not be in best interest to now switch to public school.

F. (D.M.) v. F. (B.A.) (2007), 2007 CarswellBC 1651, 2007 BCSC 1067, Reg. B.M. Young (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

Child was born after parties' one-year cohabitation from 1984 to 1985 -- Pursuant to consent order, father paid child support of \$150 per month until 2003 when child turned 18 -- Father now lived in BC and mother and child lived in Alberta -- Three years after father paid last support payment, mother brought application under Interjurisdictional Support Orders Act for variation of support -- Mother also sought contribution towards anticipated \$15,229 annual extraordinary expenses from child's enrolment in dance program -- Mother's annual income was \$69,512.76 and father's income was determined to be \$60,000, being average of last three years of employment -- Child was working part-time and able to contribute somewhat to own expenses, had obtained student loan, and would be looking into scholarships and bursaries -- Court determined it had jurisdiction to treat mother's application as fresh application for child support given that original order had expired and could not be varied -- Issue arose as to appropriate contribution by each parent and child towards child's post-secondary education expenses -- Appropriate contribution of each parent was to be determined by first estimating child's total expenses and contribution child could make towards expenses by virtue of own earnings, student loans, bursaries or scholarships -- Child's monthly expenses were determined to be \$1,815 -- It was reasonable for child to attend to 60 per cent of those expenses from her earnings, loans, bursaries or scholarships -- Father's monthly contribution towards child's remaining post-secondary expenses was \$335 and mother's was \$390.

G. (C.M.) v. S. (M.) (2007), 2007 CarswellBC 2673, 2007 BCPC 644, M.J. Brecknell J. (B.C. Prov. Ct.)

[British Columbia]

FAM.IV.3.b.x

Subject Title: Family law

Classification Number: IV.3.b.x

Support -- Child support under federal and provincial guidelines -- Determination of award amount -- Health-related expenses

Parties had two children, T.D. born in 1986 and K.G. born in 1990, and divorced -- Mother collected child support for T.D. until he attained age of majority -- T.D. suffered from number of disabling conditions -- Divorce and matrimonial orders addressed medical expenses to be covered by some extent by father's medical insurance coverage -- Mother applied for medical expenses, and other relief -- Application granted in part on other grounds -- Medical matters were dealt with in earlier court orders -- Mother made no attempt to advance medical claims in timely way -- It was wrong to advance medical claims against father's own funds at late date when bills could have been paid by insurance coverage.

T. (C.J.) v. T. (D.R.) (2007), [2007 ABQB 216](#), [2007 CarswellAlta 867](#), W.E. Wilson J. (Alta. Q.B.)
[Alberta]

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

Child was born after parties' one-year cohabitation from 1984 to 1985 -- Pursuant to consent order,

father paid child support of \$150 per month until 2003 when child turned 18 -- Father now lived in BC and mother and child lived in Alberta -- Mother brought application under Interjurisdictional Support Orders Act for variation of support seeking Guideline child support, \$507.66 in special expenses, and order that father maintain child on medical and dental insurance -- Mother also sought contribution from father in proportion to his income towards \$15,229 annual extraordinary expenses anticipated from child's enrolment in university contemporary dance program -- Mother's application was to be treated as fresh application given that original order had expired and could therefore not be varied -- Mother's annual income was \$69,512.76 -- Father's answer to application stated income as \$53,067.69, but father's financial information and statements indicated income had risen from \$53,655.67 in 2002 to \$63,906.55 for various time periods in 2005 and 2006 -- Issue arose as to father's income for purposes of determining child support and contribution towards child's educational expenses -- While father's income varied from year to year, income was far above \$53,000 father claimed in financial statement -- Father's income was to be averaged over last three years -- Resulting average of \$60,000 was father's income for determining support and contribution to extraordinary and post-secondary expenses -- Father's monthly contribution towards child's post-secondary expenses was \$335, while mother's was \$390 and child's was remaining 60 per cent.

G. (C.M.) v. S. (M.) (2007), 2007 CarswellBC 2673, 2007 BCPC 644, M.J. Brecknell J. (B.C. Prov. Ct.) [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 married in 1977, had two children and separated in 1993 -- Parties reached minutes of settlement addressing child support -- Father paid \$175 per month child support based on alleged income of \$1,600 per month -- In 1995, father's income was found to be two to four times alleged income and divorce ordered was stayed until amount of \$550 per month was paid -- Father paid \$175 per month until 2002 -- Youngest child ceased being dependant in 2003 -- Mother applied for retroactive child support and issue arose as to father's income -- In 1995, father's actual income was \$44,444 per year -- Father's income was \$51,636 in 1998; \$69,880 in 1999 and \$80,068 in 2000 -- Father moved to Bermuda in 2001 and claimed income was \$3,000 per month -- Father did not produce tax records because they were not

required in that country, nor did he provide other sustaining documents -- Father was attributed income of \$80,068 for each of years 2001, 2002 and 2003, in same amount as last year for which he produced proof of income.

B. (D.M.) v. B. (J.R.) ([2007](#)), [2007 CarswellAlta 882](#), [2007 ABQB 440](#), A.B. Sulatycky J. (Alta. Q.B.)
[Alberta]

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

Divorced parties had two daughters -- Wife brought application for several forms of relief, including variation of child support agreement based on material change in circumstances -- Application granted -- Husband failed to provide income information when under legal obligation to do so -- Husband intentionally avoided financial disclosure for seven months, forcing wife to incur cost of hiring lawyer, and then he sent incomplete and intentionally misleading financial disclosure -- Husband's financial statement and accompanying cover letter was carefully worded to lead reader to believe that he only had pension income -- Husband's affidavit made no mention of fact that he had been working and earning employment income since January 2006 -- Husband's 2006 income was imputed to be \$57,683, which was comprised of pension income of \$21,262, employment income of \$36,232, and net rental income of \$189 -- Husband's 2007 income was imputed to be \$61,058, comprised of pension income of \$21,262, employment income of \$36,232, and rental income of \$3,564.

F. (D.M.) v. F. (B.A.) ([2007](#)), [2007 CarswellBC 1651](#), [2007 BCSC 1067](#), Reg. B.M. Young (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 started living together in 2000 and married in 2001 -- Mother became pregnant in 2004 and parties separated few months later -- Father's income on his tax return was \$75,800 in 2004 and \$127,442 in 2005 -- Father was principal shareholder in number of corporations -- In context of family law proceeding, issue arose as to father's income for child support purposes -- Income of \$4000,000 attributed to father -- It was necessary to impute considerable income to father -- Father clearly had ability to access cash within corporations -- Since separation, father had used almost \$1 million in corporate funds for personal purposes -- Father's tax returns did not fairly reflect amount of money available to him for payment of child support -- Corporate income method was likely fairest method of determining husband's sources of income -- Corporation's bonding requirements made it difficult to determine amount of income with precision.

Hawboldt v. Hawboldt ([2007](#)), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel 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 were divorced in 1993 -- Mother was awarded custody of three children of marriage -- Father was ordered to pay \$300 per month as child support -- In 1998, Prince Edward Island court varied support amount to \$490 per month, calculated on estimated annual income of \$25,000 for father -- Mother applied for retroactive variation of child support based on increase in father's income -- Provisional variation order granted, subject to confirmation in Prince Edward Island -- Father failed to provide information as to his actual income -- Support payments had been irregular and there were

accumulated arrears of \$7,691.52 -- Evidence provided by mother as to father's employment income was accepted -- Her belief that he did private work was too speculative based on evidence presented -- In absence of any other evidence, and because of father's failure to provide income information, annual income of \$60,000 was imputed to father.

Large v. Lewis ([2007](#)), [2007 CarswellNWT 72](#), [2007 NWTSC 55](#), J.Z. Vertes J. (N.W.T. S.C.)
[Northwest Territories]

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 1975 and had three children before separating in 1990 -- Mother obtained pre-Guidelines order for \$600 monthly support per child and spousal support of \$1,000 per month in 1990 -- Prior to separation, father obtained B.Sc., B.A., and LL.B. -- Father's 1994 income was \$210,500 -- In March 1997, father declared bankruptcy -- Father deposed that back problems caused his absenteeism, decline in income, and eventual dismissal from partnership with law firm in 2003 -- Father stopped support payments in 2002 and mother brought application claiming arrears of \$51,850 -- Parties' eldest child had begun work after high school and parties' second child had taken post-secondary training and was working part-time, but parties' third child was in post-secondary program and had student loans -- Father deposed that he had made extensive efforts to obtain employment as lawyer since dismissal in March 2003 -- In 2003 and 2004, father's mother paid his costs to get LL.M. -- Father was living on \$500 per month social assistance from June 2003 until 2006 but had borrowed money from his mother to start practice -- Father's application for variation of support and cancellation of arrears and other relief was dismissed by motions judge, who found father intentionally unemployed and imputed him with income of \$70,000 -- Father appealed -- Appeal dismissed -- Motions judge's imputation of \$70,000 was not erroneous, given father's level of education, age, health and skills -- Attribution of \$70,000 income was substantially less than what father was earning some years earlier and there was little reason to think that level of income was beyond father's present abilities.

Luney v. Luney ([2007](#)), [2007 CarswellBC 2795](#), [2007 BCCA 567](#), Levine J.A., Newbury J.A., Thackray J.A. (B.C. C.A.) [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 three children -- Parties entered in separation agreement in 1999 whereby father agreed to pay \$900 child support based on his annual income of \$52,250 -- In 2002, parties entered into addendum of separation agreement fixing child support at \$942 monthly, based on father's income of \$51,476 -- Father had family business, with home office -- Mother applied for child support from 2002 to 2007 and for contribution towards extracurricular expenses and sought to have income imputed to father -- Additional income was not imputed to father -- Payment of home office expenses of \$2,326.72 by father's corporation was reasonable in circumstances and legitimate -- Corporation's payment of \$16,500 to husband's spouse for clerical services was also reasonable and comparable to what spouse had been earning previously -- Spouse's salary and expenses were not added back to husband's income.

Molstad v. Molstad ([2007](#)), [2007 SKQB 193](#), [2007 CarswellSask 342](#), Kraus J. (Sask. Q.B.)
[Saskatchewan]

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 separated in February 2000 after 11 1/2 years of marriage -- Father deposed that he had primary care of child of marriage from September 2000 until end of 2002 -- From January 2003 until June 2006, child resided with mother but there was bi-weekly shared custody agreement -- Since June 2006, child resided exclusively with mother -- Mother filed action for divorce -- Father applied for retroactive child support based on mother's imputed income for period from September 2000 until end of 2002 -- Application for order imputing increased income to mother dismissed -- Father submitted that mother benefited from subsidized rent during period when he had custody of child, and that her declared income should be increased by \$450 monthly rent subsidy and grossed up by 25 percent -- Father further submitted that as mother was now employed by person with whom she had lengthy relationship since separation, her income should be imputed rather than based on her declared earnings -- Mother disclosed her yearly income in affidavit -- There was no evidence that she was under employed or intentionally unemployed, or that she should have been paying higher rent in 2000 or in later years -- Proper factual base on which to make suggested calculation did not exist.

Purdie v. Coleman (2007), 2007 CarswellAlta 1006, 2007 ABQB 452, P. Chrumka J. (Alta. Q.B.)
[Alberta]

FAM.IV.3.c.v

Subject Title: Family law

Classification Number: IV.3.c.v

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

Parties started living together in 2000 and married in 2001 -- Mother became pregnant in 2004 and parties separated few months later -- Father's income on his tax return was \$75,800 in 2004 and \$127,442 in 2005 -- Father was principle shareholder in number of corporations -- In context of family law proceeding, issue arose as to father's income for child support purposes -- Income of \$400,000 attributed to father -- It was necessary to impute considerable income to father -- Father clearly had ability to access cash within corporations -- Since separation, father had used almost \$1 million in corporate funds for personal purposes -- Father's tax returns did not fairly reflect amount of money available to him for payment of child support -- Corporate income method was likely fairest method of determining husband's sources of income -- Corporation's bonding requirements made it difficult to determine amount of income with precision.

Hawboldt v. Hawboldt ([2007](#)), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel J. (B.C. S.C.)
[British Columbia]

FAM.IV.3.c.v

Subject Title: Family law

Classification Number: IV.3.c.v

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

Parties had two children, born 1989 and 1993 -- In 2005, father was ordered to pay \$518 per month table child support, based on annual income of \$37,785 -- Father was sole owner of holding company that paid his salary -- Mother applied to vary child support order and issue arose as to father's income -- Corporate pre-tax income of holding company was stated at \$26,690 but company did not conduct business and expenses were incurred for father -- Father claimed management and administration fee of \$6,000 in his reported personal income -- Remainder of holding company's expenses, excepting payments already reported, was \$5,121, which had to be added back to corporate pre-tax income -- Corporate pre-tax income of \$31,811 plus father's income from all sources brought father's annual income, for child support purposes, to 44,584.43 -- Father occupied apartment adjoining family business at imputed benefit of \$6,000 per year -- Father's total annual, gross imputed income for 2007 was \$50,584.43.

Segall v. Fellingner ([2007](#)), [2007 SKQB 207](#), [2007 CarswellSask 336](#), N.S. Sandomirsky J. (Sask. Q.B.)
[Saskatchewan]

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 started living together in 2000 and married in 2001 -- Mother became pregnant in 2004 and parties separated few months later -- Father's income on his tax return was \$75,800 in 2004 and \$127,442 in 2005 -- Father was principle shareholder in number of corporations -- In context of family law proceeding, issue arose as to amount father was required to pay in child support -- Father ordered to pay \$2,679 per month in child support based on imputed income of \$400,000 -- There was no clear or compelling reason to depart from Federal Child Support Guidelines' amount -- Father earned \$400,000 per year and mother earned \$60,000 per year -- Father lived in large home and mother lived in two-bedroom apartment -- Mother's financial statement showed expenses of \$84,000 and her budget appeared reasonable -- Father failed to discharge onus on him to show why he should pay less than table amount.

Hawboldt v. Hawboldt ([2007](#)), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel J. (B.C. S.C.) [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

Parties were married in 1992 and separated in 2006 -- There were three children of marriage -- Petitioner mother commenced action for divorce, custody, child and spousal support, and division of family property -- Mother applied for, inter alia, order for interim child support -- Application granted -- Mother contended that she had received no child support since date of separation -- There was no documented evidence to support respondent father's claim that he had been depositing \$900 each month into bank account to which mother had access -- Inference was drawn from father's assertions that he was willing to contribute \$900 per month towards child care expenses -- Father's income for purpose of applying Federal Child Support Guidelines was difficult to determine from material on file -- In circumstances, it was reasonable to order payment of interim child support in amount of \$900 per month based on imputed income of \$50,000 per year commencing on October 1, 2007, retroactive to January 1, 2007 -- Retroactive amount of \$8,100 was to be paid immediately in one lump sum.

Fellinger v. Fellinger ([2007](#)), [2007 CarswellSask 462](#), [2007 SKQB 317](#), C.R. Wimmer 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 married in 1977, had two children, born in 1983 and 1984, and separated in 1993 -- Pursuant to minutes of settlement, father agreed to pay \$175 per month based on alleged income of \$1,600 per month -- Father's actual income was two to four times that amount -- In 1995, deeming child support provisions inadequate, judge stayed petition for divorce until mother received at least \$550 per month -- Mother sought to finalise matter in 1996 but father was unemployed and there was insufficient financial information -- Electrician father's actual income ranged from \$40,820.00 in 1996 to \$80,068 in 2000 -- Father moved to Bermuda in 2001 and financial information was not available -- Father continued to pay \$175 per month until termination of child support entitlement in 2002 -- Older child attended vocational school in 2003 and was partially supported by mother -- Mother applied for retroactive child support for period after coming into force of Federal Child Support Guidelines -- Application granted -- Father was ordered to pay \$43,072.01, which represented amounts for two children between 1997 to 2002 and thereafter, support for one child until 2003 -- Minutes of settlement was reached as result of father misrepresenting his earnings -- Throughout period from separation until termination of child support entitlement, mother struggled financially and had to rely on assistance of family -- Father's income for years 2001, 2002 and 2003 fixed at \$80,068, which was same amount as last year for which he produced proof of income -- Father continued to misrepresent earnings to mother -- Father's conduct was blameworthy -- Mother was entitled to retroactive child support.

B. (D.M.) v. B. (J.R.) ([2007](#)), [2007 CarswellAlta 882](#), [2007 ABQB 440](#), A.B. Sulatycky J. (Alta. Q.B.)
[Alberta]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Divorced parties had two daughters -- Wife brought application for several forms of relief, including retroactive child support -- Application granted -- Husband failed to provide income information when under legal obligation to do so -- Husband intentionally avoided financial disclosure for seven months, forcing wife to incur cost of hiring lawyer, and then he sent incomplete and intentionally misleading financial disclosure -- Husband's 2006 income was imputed to be \$57,683, which was comprised of pension income of \$21,262, employment income of \$36,232, and net rental income of \$189 -- Husband's 2007 income was imputed to be \$61,058, comprised of pension income of \$21,262, employment income of \$36,232, and rental income of \$3,564 -- Increased support order was ordered to be backdated to date husband's income increased in January 2006 and not just date financial information was requested -- Husband's rental income was higher in 2007 and Guideline income in 2007 was \$61,058, accordingly child support after January 2007 should be \$922 per month -- Total arrears payable by father was \$5,757.

F. (D.M.) v. F. (B.A.) ([2007](#)), [2007 CarswellBC 1651](#), [2007 BCSC 1067](#), Reg. B.M. Young (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 were married in 1992 and separated in 2006 -- There were three children of marriage -- Petitioner mother commenced action for divorce, custody, child and spousal support, and division of family property -- Mother applied for, inter alia, order for interim child support -- Application granted -- Mother contended that she had received no child support since date of separation -- There was no documented evidence to support respondent father's claim that he had been depositing \$900 each month into bank account to which mother had access -- Inference was drawn from father's assertions that he

was willing to contribute \$900 per month towards child care expenses -- Father's income for purpose of applying Federal Child Support Guidelines was difficult to determine from material on file -- In circumstances, it was reasonable to order payment of interim child support in amount of \$900 per month based on imputed income of \$50,000 per year commencing on October 1, 2007, retroactive to January 1, 2007 -- Retroactive amount of \$8,100 was to be paid immediately in one lump sum.

Fellinger v. Fellinger (2007), 2007 CarswellSask 462, 2007 SKQB 317, C.R. Wimmer 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

First order for child support was made in 1999, and father was ordered to pay global sum of \$910 per month for three children based on his income of \$64,000 per year -- On interim hearings, court varied orders by terminating support for children when they turned 18 years old, and ordering payment for extraordinary expenses -- Father brought application for variation of child support on final basis and return of overpayment of child support; mother brought application for retroactive child support -- Father's application granted in part; mother's application dismissed -- Oldest child turned 18 years old in 2002, and insufficient evidence existed that she attended school in 2003 and 2004, therefore support was terminated at end of school year in 2002 -- Middle child turned 18 years old in 2005 and attended school on at least part time basis for 2005-2006 school year, therefore she was eligible for support until end of school year in 2006 -- Father had been ordered to pay one-half of middle child's tuition expenses, however, child did not attend post-secondary school, therefore that term of interim order was vacated -- While in initial years, father's payment of child support was less than Federal Child Support Guidelines amount under SOR/97-175, he paid in accordance with court order and made every payment -- Delay by mother in seeking retroactive support was not reasonable -- Father's conduct had not been improper in that he met terms of separation agreement and interim orders, and retroactive award would cause hardship -- Children would not receive benefit of retroactive increase as two children were no longer eligible for support -- While there was ample support for courts to award retroactive support, no statutory terms or case law provided for refund for overpayment, and court likely did not have jurisdiction to make such an order.

Gould v. Budd ([2007](#)), [2007 ABPC 187](#), [2007 CarswellAlta 950](#), R.S. Fowler Prov. J. (Alta. Prov. Ct.)
[Alberta]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Parties started living together in 2000 and married in 2001 -- Mother became pregnant in 2004 and parties separated few months later -- Father's income on his tax return was \$75,800 in 2004 and \$127,442 in 2005 -- Father was principal shareholder in two corporations -- Since child's birth, father had paid child support based on income of \$80,000 -- In context of family law proceeding, issue arose as to amount father was required to pay in child support and whether retroactive support was warranted -- Father ordered to pay \$2,679 per month in child support based on imputed income of \$400,000 -- Father ordered to pay \$73,655 in retroactive child support from February 2005 -- Amount father had been paying was determined in absence of any meaningful financial disclosure -- Father woefully understated his actual earnings -- Retroactive support was appropriate -- Father was entitled to credit for amount of child support paid.

Hawboldt v. Hawboldt ([2007](#)), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel 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 separated in February 2000 after 11 1/2 years of marriage -- Following separation, there was joint shared parenting arrangement for child of marriage -- Father deposed that he had primary care of child from September 2000 until end of 2002, something disputed by mother -- From January 2003 until June 2006, child resided with mother but there was bi-weekly shared custody agreement -- Since June 2006, child resided exclusively with mother -- Mother filed action for divorce and applied for, inter alia, order for retroactive child support -- Application for retroactive child support granted in part -- Whether or not child resided with father from September 2000 until end of 2002 could not be determined on this application -- Claim by each party for retroactive child support for this period was dismissed -- Father did not dispute that he should have been paying mother child support from January 2003 to June 2006, when shared parenting residential care arrangement was in place -- Retroactive child support for this period was ordered to be paid in amount of \$17,942 -- Arrears of child support for period from June 2006 should be calculated on father's actual income of \$57,741 -- Monthly child support payable pursuant to Federal Child Support Guidelines was \$497.

Purdie v. Coleman ([2007](#)), [2007 CarswellAlta 1006](#), [2007 ABQB 452](#), P. Chrumka J. (Alta. Q.B.)
[Alberta]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Parties had two children and divorced -- In 2005, father was ordered to pay \$518 child support based on income of \$37,785, pursuant to variation order -- Father's income from all sources was higher -- Mother applied for retroactive child support, and other relief -- Application granted on other grounds -- Father's income increase was not substantial such that children were prejudiced or mother disadvantaged by lack of review -- Father's income in 2004 was \$47,703 although found to be \$37,785 for purposes of previous order -- Father's income was fixed at \$50,584.43 -- Past and present circumstances of children did not raise necessity or justification for retroactive child support award.

Segall v. Fellingner ([2007](#)), [2007 SKQB 207](#), [2007 CarswellSask 336](#), N.S. Sandomirsky 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 had two children, T.D. born in 1986 and K.G. born in 1990, and divorced -- Father paid support for both children -- Maintenance Enforcement ceased to collect support for T.D. after T.D. turned 18 in 2004 -- Mother applied for retroactive child support and other relief -- Application granted in part on other grounds -- Mother was entitled to seek change based on changes brought about by Federal Child Support Guidelines but did not do so -- Mother made no enquiry about father's finances since divorce -- Father, who had remarried, did not hide his financial circumstances -- Father had made all his payments over years and when unemployed made up payments when he had money -- There was little information about mother and children's financial circumstances -- Father would suffer hardship over large retroactive order -- Mother did not make case for retroactive award.

T. (C.J.) v. T. (D.R.) (2007), 2007 ABQB 216, 2007 CarswellAlta 867, W.E. Wilson J. (Alta. Q.B.)
[Alberta]

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 had three children -- Parties entered in separation agreement in 1999 whereby father agreed to pay \$900 child support based on his annual income of \$52,250 -- In 2002, parties entered into addendum

of separation agreement whereby father would pay \$942 monthly based on father's income of \$51,476 -- Father also agreed that he would pay \$500 per year per child as his contribution to such activities -- Mother did not disclose her income for purposes of calculating extraordinary expenses -- Father owned corporation which paid his home office expenses -- Father paid total of \$73,195.00 in child support either directly to mother or through Maintenance Enforcement Office -- Mother claimed father had arrears -- Maintenance Enforcement Office calculated that father did not owe any support -- Mother did not disclose her income for purposes of calculating extraordinary expenses -- Father was not obliged to pay \$4,750 of wife's claim for extraordinary expenses, which reduced claim to \$5,975.06 -- Additional income was not imputed to father -- Counsel for parties should be able to settle any arrears and ongoing child support based on determinations.

Molstad v. Molstad ([2007](#)), [2007 SKQB 193](#), [2007 CarswellSask 342](#), Kraus 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 were divorced in 1993 -- Mother was awarded custody of three children of marriage -- Father was ordered to pay \$300 per month as child support -- In 1998, Prince Edward Island court varied support amount to \$490 per month, calculated on estimated annual income of \$25,000 for father -- Mother applied for retroactive variation of child support based on increase in father's income -- Provisional variation order granted, subject to confirmation in Prince Edward Island -- Support payments had been irregular and there were accumulated arrears of \$7,691.52 -- Annual income of \$60,000 was imputed to father -- Eldest child of marriage ceased to be dependant child in June 2004, when she graduated from post-secondary school -- Change in circumstances since making of last support order arose from change in father's income and fact that there were now only two children subject to order -- Fact that father had consistently refused or neglected to provide relevant financial information was justification for retroactive order -- Parents have obligation to support their children in manner commensurate with their income -- Order varied so as to provide for child support payments, based on annual income of \$60,000, for three children from August 1, 2003 to June 1, 2004, and for two children from July 1, 2004, until further order or children cease to be children of marriage -- Since variation

would result in increase to the arrears, father ordered to pay minimum additional sum of \$100 to be credited toward arrears.

Large v. Lewis ([2007](#)), [2007 CarswellNWT 72](#), [2007 NWTSC 55](#), J.Z. Vertes J. (N.W.T. S.C.)
[Northwest Territories]

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 had two children born 1989 and 1993 who lived with mother -- In 2005, father was ordered to pay \$518 per month child support based on annual income of \$36,785 -- Father's income was derived from business in which he was shareholder -- Mother applied for variation in child support and other relief -- Application granted on these grounds -- Father was ordered to pay child support of \$707.18 per month -- As of May 1, 2006, Child Support Guidelines allowed for right to review without establishing material change -- Father's income was fixed at \$50,584.43 and appropriate table amount of support was ordered.

Segall v. Fellingner ([2007](#)), [2007 SKQB 207](#), [2007 CarswellSask 336](#), N.S. Sandomirsky J. (Sask. Q.B.)
[Saskatchewan]

FAM.V.2.a.iii

Subject Title: Family law

Classification Number: V.2.a.iii

Domestic contracts and settlements -- Validity -- Essential validity and capacity -- Duress, fraud, undue influence and unconscionability

Parties started living together in 2000, married in 2001, became pregnant in 2004 and separated few months later -- In July 2004, wife signed separation agreement after receiving independent legal advice -- In context of family law proceeding, husband sought to enforce terms of agreement -- Wife sought to set aside agreement as unconscionable -- Agreement not set aside -- Agreement was not unfair or unconscionable -- Both parties were represented by counsel -- Wife met with counsel and reviewed proposed agreement in detail -- Major matter not raised in agreement was spousal support which parties discussed separately -- Wife's distress on day of signing was not determinative of flaw in negotiation process -- While wife was under considerable stress, she was experienced negotiator -- Wife fully understood terms of agreement and knew that it was final and binding upon her -- Adverse inference drawn from fact that counsel wife had dealt with throughout negotiation process was not called as witness -- Agreement did not operate unfairly given factors set out in s. 65 of Family Relations Act -- Marriage was short and parties were economically independent and self-sufficient -- Parties' circumstances were as contemplated at time of signing -- Wife was significantly better off at end of marriage than at beginning of it -- There was no imbalance between parties.

Hawboldt v. Hawboldt ([2007](#)), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel J. (B.C. S.C.) [British Columbia]

FAM.V.3.b.i.B

Subject Title: Family law

Classification Number: V.3.b.i.B

Domestic contracts and settlements -- Effect of contract -- On spousal support -- Under Divorce Act -- Variation of support

Parties married in 1976 and separated after traditional 26 year marriage -- Parties came to spousal support settlement that was embodied in judgment -- Husband agreed to pay \$1,450 per month for three years at which time issue would be reviewed regarding quantum, entitlement and further review pursuant to s. 15.2 of Divorce Act -- Husband ceased paying after three years -- Wife petitioned for further entitlement of support and issue arose as to interpretation to give settlement -- Sentence was ambiguous but interpretation was that support was payable for three years only -- Wife should have initiated review before, not immediately after, expiry of three year period -- Wife's disabilities, however,

precluded her from attaining self-sufficiency relative to standard of living that parties enjoyed before marriage -- Wife continued to suffer from economic hardship engendered by her role in traditional marriage and by marriage breakdown -- Husband was ordered to pay \$1,875 per month until further court order.

Deringer v. Hill ([2007](#)), [2007 SKQB 206](#), [2007 CarswellSask 334](#), N.S. Sandomirsky J. (Sask. Q.B.) [Saskatchewan]

FAM.V.5

Subject Title: Family law

Classification Number: V.5

Domestic contracts and settlements -- Termination

Repudiation of separation agreement -- Parties started living together in 2000 and married in 2001 -- Wife became pregnant in 2004 and parties separated few months later -- In July 2004, wife signed separation agreement which required husband to pay wife \$90,000 in August 2005 in consideration of wife transferring her interest in matrimonial home to husband -- In July 2005, wife told husband agreement was unfair and she wanted more money -- When parties could not settle their differences, husband commenced proceedings to enforce terms of agreement -- Husband had not paid \$90,000 to wife -- In context of proceedings, issue arose as to whether husband repudiated agreement by failing to pay wife \$90,000 -- Husband did not repudiate agreement -- Husband ordered to pay \$90,000 within 45 days -- Wife ordered to transfer her interest in home to husband -- Wife received all benefits under agreement except for \$90,000 -- Reason wife did not receive \$90,000 was her declared intention to set agreement aside -- Wife was refusing to perform agreement, not husband -- Agreement was not unfair or unconscionable and continued to govern parties' relationship.

Hawboldt v. Hawboldt ([2007](#)), [2007 BCSC 1613](#), [2007 CarswellBC 2646](#), R.B.T. Goepel J. (B.C. S.C.) [British Columbia]

FAM.VI.3.e.i

Subject Title: Family law

Classification Number: VI.3.e.i

Annulment -- Essential validity -- Prior subsisting marriage -- General principles

Wife married first husband in England in 1994 -- Couple moved to Canada and had more public ceremony in 1995, obtaining Canadian marriage licence and marriage certificate -- Couple purportedly obtained divorce in 2002 -- Divorce order only referred to 1995 marriage in Canada and not 1994 marriage in England -- Wife married second husband in 2002 -- Parties ceased cohabitation in 2005 -- Wife resumed cohabitation with first husband thereafter -- Wife applied for declaration that her second marriage was invalid because she was married to first husband at time -- Application dismissed -- 2002 divorce validly dissolved marriage between wife and first husband, notwithstanding that it referred to wrong date of marriage -- Order was neither void nor voidable -- Order for divorce dissolves relationship of marriage, not ceremony -- Fact that date of ceremony indicated on face of divorce order was wrong did not call into question validity of order -- Date of ceremony shown on order was in nature of recital rather than operative part of order -- Accordingly, subsequent marriage between parties was not rendered invalid by wife's first marriage.

Tschudi v. Tschudi ([2007](#)), [2007 CarswellBC 2707](#), [2007 BCSC 1639](#), H.M. Groberman J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IX.2.b

Subject Title: Family law

Classification Number: IX.2.b

Custody and access -- Factors to be considered in custody award -- Wishes of child

Parties were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Husband's attempts to create medical clinic in Red Deer Alberta failed -- Mother maintained that husband abused children at various times, and obtained restraining order -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance

with guidelines, extraordinary expenses settled, spousal support awarded, family property divided -- No need for custody order as related to eldest child -- Children expressed dislike of father -- Difficult for father to have day to day input into children's affairs, due to conflict between parents -- Father to be kept informed of major decisions -- Where parties unable to agree on funding of activities, arbitration process to be used -- Joint custody and sole custody not appropriate terminology for limited order regarding arbitration -- Family dynamics did not permit forced contact between father and daughters, although contact encouraged -- Contact sessions between youngest child and father ordered -- Father was not attempting to contact children merely for revenge and control.

A. (*S.M.*) v. H. (*S.F.*) ([2007](#)), [2007 ABQB 95](#), [2007 CarswellAlta 849](#), B.E. Romaine J. (Alta. Q.B.) [Alberta]

FAM.IX.2.d.i

Subject Title: Family law

Classification Number: IX.2.d.i

Custody and access -- Factors to be considered in custody award -- Maintenance of stable environment -- General principles

Parties resided together together from 1997 to 2003 in Edmonton -- Parties had seven-year-old son -- Son had been enrolled in school near family residence since daycare -- Father brought application for parenting order for day to day care of son, and to prohibit mother from moving son's residence to Nova Scotia -- Application granted -- It was in son's best interests to be in day to day care of father and to remain in community he grew up in -- Mother granted reasonable and generous parenting time with son -- Mother's net pay was \$2,400 per month and she had financial shortfall each month because she spent between \$2,600 to \$2,700 per month -- If mother's present situation continued into future without change, she anticipated that she will be bankrupt -- Mother did not have concrete prospect of employment in Nova Scotia -- Mother will not be able to meet son's basic needs in near future, if not immediately -- Father and fiancée were actively involved in parenting son -- Father's home was familiar to son and he already had bedroom there -- Father was not only able to meet son's basic needs, but also help him to develop and grow physically, psychologically and emotionally.

Ostafichuk v. Croiter ([2007](#)), [2007 CarswellAlta 1546](#), [2007 ABPC 314](#), G.B.N. Ho Prov. J. (Alta. Prov. Ct.) [Alberta]

FAM.IX.3.c.iii

Subject Title: Family law

Classification Number: IX.3.c.iii

Custody and access -- Interim custody -- Factors considered -- Best interests of child

Parties lived together and had one child, born in 2005 -- Child lived with mother since parties separated -- Mother had steady, full-time employment, and earned \$46,196 per year -- Father, aged 38, had sporadic employment history and was facing criminal charges -- Father also had anger management issues -- Mother was sole provider and care-giver for child -- Mother applied for interim sole custody and other relief -- Application granted on these grounds -- Mother was awarded sole interim custody -- Father likely had issues with substance abuse and had unsettled lifestyle -- Father had not established independent residence or procured steady employment -- Mother was best person to be custodial parent at this time -- Joint custody situation, even on interim basis, was not best situation for child.

Sands v. Frohlick ([2007](#)), [2007 CarswellSask 341](#), [2007 SKQB 218](#), R.K. Ottenbreit J. (Sask. Q.B.) [Saskatchewan]

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 resided together together from 1997 to 2003 in Edmonton -- Parties had seven-year-old son -- Son had been enrolled in school near family residence since daycare -- Father brought application for parenting order for day to day care of son, and to prohibit mother from moving son's residence to Nova Scotia -- Application granted -- It was in son's best interests to be in day to day care of father and to

remain in community he grew up in -- Mother granted reasonable and generous parenting time with son -- Mother's net pay was \$2,400 per month and she had financial shortfall each month because she spent between \$2,600 to \$2,700 per month -- If mother's present situation continued into future without change, she anticipated that she will be bankrupt -- Mother did not have concrete prospect of employment in Nova Scotia -- Mother will not be able to meet son's basic needs in near future, if not immediately -- Father and fiancée were actively involved in parenting son -- Father's home was familiar to son and he already had bedroom there -- Father was not only able to meet son's basic needs, but also help him to develop and grow physically, psychologically and emotionally.

Ostafichuk v. Croiter (2007), 2007 CarswellAlta 1546, 2007 ABPC 314, G.B.N. Ho Prov. J. (Alta. Prov. Ct.) [Alberta]

FAM.IX.6.b

Subject Title: Family law

Classification Number: IX.6.b

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

Parties separated in February 2000 after 11 1/2 years of marriage -- Following separation, there was joint shared parenting arrangement for child of marriage -- Father deposed that he had primary care of child from September 2000 until end of 2002, something disputed by mother -- From January 2003 until June 2006, child resided with mother but there was bi-weekly shared custody agreement -- Since June 2006, child resided exclusively with mother -- Mother filed action for divorce and applied for, inter alia, order respecting past primary care of child -- No order made to reflect de facto change from shared parenting to primary care by mother -- Each party claimed retroactive child support for period from September 2000 until end of 2002 -- Whether or not child resided with father during this period could not be determined on this application, as affidavits conflicted on material matters -- Trial would be required to weigh evidence and decide facts -- No award of retroactive child support for this period could be ordered to either party.

Purdie v. Coleman (2007), 2007 CarswellAlta 1006, 2007 ABQB 452, P. Chrumka J. (Alta. Q.B.) [Alberta]

FAM.IX.8.d.iii

Subject Title: Family law

Classification Number: IX.8.d.iii

Custody and access -- Access -- Termination of order -- Reinstatement of access

Parties had one child, born 2005, who remained with mother -- Father had supervised access pursuant to January 2007 court order -- Father's visits were suspended when father breached condition of access by taking child outside -- Mother applied for cessation of father's access, and other relief -- Application granted on other grounds -- Supervised access as set forth in previous order was ordered resumed -- It was important that child had consistent, comfortable contact with father as soon as possible -- Child often sought reassurance of female during access -- Father could have his mother in room during last hour of supervised access to ease transition to more suitable location for access.

Sands v. Frohlick (2007), 2007 CarswellSask 341, 2007 SKQB 218, R.K. Ottenbreit J. (Sask. Q.B.)
[Saskatchewan]

FAM.XV.14

Subject Title: Family law

Classification Number: XV.14

Children in need of protection -- Miscellaneous issues

Young child had fairly regular contact with applicants, grandmother and step grandfather, though mother of child often changed or cancelled visits -- Mother suffered from eating disorder and child would not eat solid food -- Child was hospitalized for several weeks -- Applicants visited hospital almost every day -- Child was subsequently apprehended and placed in foster home -- Child continued to visit applicants during that time -- Child was returned to mother under supervision order -- Mother believed applicants had contributed to apprehension of child and terminated their contact with child -- Applicants brought application for leave to proceed with application for contact order in respect of child -- Application

granted -- Although mother had resumed contact with child after their application it was not clear that she intended to maintain contact with applicants -- Child had regular contact with applicants since her birth and was happy to see them -- Child had established positive relationship with applicants and through them had opportunity to be in contact with extended family -- Due to family conflict, order may be necessary to facilitate contact between applicants and child.

D. (B.) v. W. (S.) ([2007](#)), [2007 ABPC 95](#), [2007 CarswellAlta 457](#), L.K. McLellan Prov. J. (Alta. Prov. Ct.) [Alberta]

FAM.XIX.6

Subject Title: Family law

Classification Number: XIX.6

Miscellaneous causes of action -- Restraining orders

Parties were married in 1985 and separated in 2004, and had three children -- Both parties were medical doctors -- Both parties owned corporation which operated husband's clinic business -- Husband was found to have over billed government for services and was not accredited to perform certain services he had performed -- Mother maintained that husband abused children at various times, and obtained restraining order -- Husband brought action for divorce, for determination of support and division of property -- Divorce granted, child support set in accordance with guidelines, extraordinary expenses settled, spousal support awarded, restraining order lifted with respect to children -- Husband entitled to contact children, although must respect their wishes regarding contact with them -- Husband did not object to order continuing regarding wife -- Attempts to contact children not construed as breach of restraining order -- Husband was not threat and wife exaggerated minor instances.

A. (S.M.) v. H. (S.F.) ([2007](#)), [2007 ABQB 95](#), [2007 CarswellAlta 849](#), B.E. Romaine J. (Alta. Q.B.) [Alberta]

FAM.XX.6

Subject Title: Family law

Classification Number: XX.6

Costs -- Support

Chambers judge granted application of husband to vary his spousal and child support obligations -- Wife's appeal was allowed and appeal court set aside chambers judge's order, dismissed husband's application regarding child support and remitted issue to spousal support for rehearing -- Wife was granted her costs on appeal and submissions were requested regarding costs before chamber's judge -- Chambers judge had ordered that each party bear own costs -- Wife was entitled to her costs on issues of both child and spousal support at appeal level and in court below -- Usual rule is that if appeal is allowed and judgment granted in appellant's favour on substantive issues, appellant is entitled to costs in appeal court and in court below -- There was no reason why this rule should not be followed in this case with respect to issue of child support -- On issue of spousal support, usual rule is that when new hearing is ordered on basis of some error or misdirection by chambers judge, costs of first hearing will follow event of second hearing -- However, appellate court may depart from this rule when party has misconducted him or herself at first hearing -- This is particularly so in matrimonial litigation where there is obligation on parties to make full and accurate disclosure of their financial circumstances -- In this case husband was less than candid in disclosing his financial circumstances which made task of chambers judge more difficult and may have contributed to his making error -- Accordingly, husband's conduct was deserving of disapprobation and wife was entitled to her costs on issue of spousal support.

Murphy v. Murphy (2007), 2007 BCCA 591, 2007 CarswellBC 2845, Frankel J.A., Prowse J.A., Ryan J. A. (B.C. C.A.); additional reasons to (2007), 43 R.F.L. (6th) 48, [2008] 1 W.W.R. 68, 2007 CarswellBC 2487, 2007 BCCA 500, Frankel J.A., Prowse J.A., Ryan J.A. (B.C. C.A.); reversing (2007), 2007 CarswellBC 774, 2007 BCSC 510, E. Rice J. (B.C. S.C. [In Chambers]) [British Columbia]



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