

The Canadian Abridgment eDigests -- Family Law - Western

2010-24
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FAM.III.5.m.i

Subject Title: Family law

Classification Number: III.5.m.i

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

Parties were married in 1983 and separated in 2006 -- Parties had two children, one of which was child of marriage -- Wife was 48 years old, and was clerical worker and at times ran day care business -- At time of separation wife had ability to earn \$42,000 annually -- Husband worked in insurance industry -- Husband had received bonuses in past but was unlikely to do so in future as his clientele dwindled -- Family assets included home, RRSPs and vehicles -- Wife brought application for division of property and support -- Application granted -- Husband's debt was undertaken for family purposes and was family debt -- Debt associated with car and daughter's credit card considered in spousal support -- Other credit card debt and family debt were family debt -- Husband to release \$12,000 from trust fund for repair of roof of home and pay \$10,188 in spousal support arrears.

Boucher v. Boucher

[\(2010\), 2010 CarswellBC 24, 2010](#)

[BCSC 21](#), Harvey J. (B.C. S.C.) [British Columbia]

FAM.III.6.d.i

Subject Title: Family law

Classification Number: III.6.d.i

Family property on marriage breakdown -- Valuation of specific assets -- Registered Retirement Savings Plans -- General principles

Parties were married in 1983 and separated in 2006 -- Parties had two children, one of which was child of marriage -- Wife was 48 years old, and was clerical worker and at times ran day care business -- Husband worked in insurance industry -- Family assets included home, RRSPs and vehicles -- Wife brought application for division of property and support -- Application granted -- RRSPs equalized by ordering husband to transfer \$12,000 to wife.

Boucher v. Boucher

[\(2010\), 2010 CarswellBC 24, 2010](#)

[BCSC 21](#), Harvey J. (B.C. S.C.) [British Columbia]

FAM.III.8.f

Subject Title: Family law

Classification Number: III.8.f

Family property on marriage breakdown -- Factors affecting equal or unequal division -- Unequal financial contributions

Parties were married in 1983 and separated in 2006 -- Parties had two children, one of which was child of marriage -- Wife was 48 years old, and was clerical worker and at times ran day care business -- At time of separation wife had ability to earn \$42,000 annually -- Husband worked in insurance industry -- Family assets included home, RRSPs and vehicles -- Wife brought application for division of property and support -- Application granted -- Equal division of family assets was proper, economic disadvantage of wife to be addressed by spousal support.

Boucher v. Boucher

[\(2010\), 2010 CarswellBC 24, 2010](#)

[BCSC 21](#), Harvey J. (B.C. S.C.) [British Columbia]

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 married in 1973, adopted child in 1993 and separated in 2006 -- Parties were 21 and 22 years old when they married -- Husband was engineer and wife taught at school for ten years -- Wife supported husband while he finished engineering degree -- Wife stayed at home to care for child -- Parties acquired matrimonial home in 2004 -- Wife and child continued to live in matrimonial home after separation -- Wife was diagnosed with cancer in 2005 -- Husband brought action for divorce and sought equal division of family assets -- Assets reapportioned 60 per cent in favour of wife -- Presumption was that parties' assets should be divided equally unless such division would be unfair -- Marriage and serious health issue affected wife's ability to become and remain economically self-sufficient -- Husband was in new relationship with lawyer with significant earning potential -- Inheritance husband received after separation helped his financial situation -- Reapportionment of home in favour of wife was appropriate.

M. (S.J.) v. M. (J.L.)

[\(2010\),](#)

[2010 CarswellBC 247, 2010 BCSC 154](#), B.M. Preston J. for Allan J. (B.C. S.C.) [British Columbia]

FAM.III.9.d

Subject Title: Family law

Classification Number: III.9.d

Family property on marriage breakdown -- Order for division of property -- Order for partition and sale

Parties married in 1973, adopted child in 1993 and separated in 2006 -- Parties acquired matrimonial home in 2004 -- Wife and child continued to live in matrimonial home after separation -- Home was appraised at \$1,120,000 and was subject to mortgage of \$289,648 -- Wife argued that matrimonial home should be sold and proceeds divided when child turned 22 years old -- Husband brought action for divorce and sought division of matrimonial home and other family assets -- Action allowed -- Order was made to list property for sale in October 2011, at which time child would have graduated from high school -- Assets were normally divided upon divorce of parties -- Husband had not had use of matrimonial home since 2006 -- Husband had not received compensation for his share of property -- Husband should not have to wait until 2015 to be compensated for his interest in matrimonial home -- Wife would be responsible for deferred property taxes when property was sold.

M. (S.J.) v. M. (J.L.) [\(2010\), 2010 CarswellBC 247, 2010 BCSC 154](#), B.M. Preston J. for Allan J. (B.C. S.C.) [British Columbia]

FAM.III.10.e.i

Subject Title: Family law

Classification Number: III.10.e.i

Family property on marriage breakdown -- Matrimonial home -- Deductions from proceeds of sale -- General principles

Parties were married in 1983 and separated in 2006 -- Parties had two children, one of which was child of marriage -- Wife was 48 years old, and was clerical worker and at times ran day care business -- Husband worked in insurance industry -- Family assets included home, RRSPs and vehicles -- Wife brought application for division of property and support -- Application granted -- Husband to release \$12,000 from trust fund for repair of roof of home and pay \$10,188 in spousal support arrears -- Family home ordered sold -- Beyond roof repair parties to decide which repairs to home necessary before sale.

Boucher v. Boucher [\(2010\), 2010 CarswellBC 24, 2010 BCSC 21](#), Harvey J. (B.C. S.C.) [British Columbia]

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 1983 and separated in 2006 -- Parties had two children, one of which was child of marriage -- Wife was 48 years old, and was clerical worker and at times ran day care business -- At time of separation wife had ability to earn \$42,000 annually -- Husband worked in insurance industry -- Husband had received bonuses in past but was unlikely to do so in future as his clientele dwindled -- Family assets included home, RRSPs and vehicles -- Wife brought application for division of property and support -- Application granted -- Husband's income was \$147,655 annually, after \$7,000 deducted for gas expenses -- No reason existed why wife could not seek work or upgrade skills -- Husband ordered to pay spousal support in amount of \$2,577 per month.

Boucher v. Boucher

[\(2010\), 2010 CarswellBC 24, 2010](#)

[BCSC 21](#), Harvey J. (B.C. S.C.) [British Columbia]

FAM.IV.1.b.ii

Subject Title: Family law

Classification Number: IV.1.b.ii

Support -- Spousal support under Divorce Act and provincial statutes -- Entitlement -- Contribution to marriage

Parties married in 1973, adopted child in 1993 and separated in 2006 -- Parties were 21 and 22 years old when they married -- Husband became engineer and wife taught at school for ten years -- Wife stayed at home to care for child -- Since 2007, husband had been voluntarily paying spousal support of \$4,000 per month, unilaterally reduced to \$3,000 per month in February 2009 -- Wife earned \$11,341 per year -- Wife was unable to work more than part-time because of serious health issues -- Husband's income was \$166,000 per year -- Husband brought action for divorce and other relief, and issue arose as to spousal support -- Husband was ordered to pay spousal support of \$4,500 per month -- Marriage was traditional -- Length of marriage warranted attempt to equalize parties' standard of living -- Wife would incur extra medical and dental insurance costs after parties divorced -- Marriage affected wife's ability to become and remain economically self-sufficient -- Husband should pay upper range of spousal support advisory guidelines support.

M. (S.J.) v. M. (J.L.)

[\(2010\),](#)

[2010 CarswellBC 247, 2010 BCSC 154](#), B.M. Preston J. for Allan J. (B.C. S.C.) [British Columbia]

FAM.IV.1.g.iv

Subject Title: Family law

Classification Number: IV.1.g.iv

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

Husband and wife owned family business where husband worked full time and wife worked part time up until 2 years prior to separation -- Following separation, wife worked full time as librarian -- Wife continued to retain shares in business but did not receive dividends -- Husband paid out \$90,000 in dividends to himself

-- Husband used money to put down payment on condominium after leaving matrimonial home and to give \$40,000 to each of couple's two adult children for down payment on houses -- Wife brought application for interim support and court allowed application, ordering husband to pay \$5,045 per month -- Husband appealed award of interim support -- Appeal allowed -- Trial judge did not make any finding concerning husband's income and would have had to, to justify magnitude of award -- There was not sufficient evidence before court in this case to justify grant of interim support -- Court considered items that would normally not have been considered in award, such as extensive house repairs and future savings -- Application seemed to have been commenced as means of obtaining interim distribution of family property -- Order should have been made to compel parties to move forward with application for distribution of family property.

MacDonald v. MacDonald [\(2010\), 2010 SKCA 60, 2010 CarswellSask 250](#), Cameron J.A., Gerwing J.A., Jackson J.A. (Sask. C.A.) [Saskatchewan]

FAM.IV.1.h.i

Subject Title: Family law

Classification Number: IV.1.h.i

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

Husband and wife married in 1977, had seven children, separated in 2000 and divorced in 2002 -- Two children resided with wife, including 27-year-old mentally disabled and physically disabled son of 14 -- Pursuant to minutes of settlement of 2006 husband agreed to pay \$1,750 per month in spousal support and \$3,000 lump sum spousal support for wife's educational upgrading expenses, with wife to account for expenses -- Spousal support was reduced to \$1,300 per month in 2007 partly because of income imputed to wife as expected level of earnings -- Husband was senior police officer during marriage but retired from police force in May 2009 on medical advice, at 53 years of age -- Husband applied for variation of spousal support, application was granted and spousal support was vacated for four months and wife was ordered to reimburse husband \$1,719.13 for educational expenses -- However, evidence supported conclusion husband had ability to earn income in field other than police work and only temporary variation in maintenance was warranted -- Husband appealed decision -- Appeal allowed -- No evidence to suggest that husband would become re-employed with income equal to previous level -- Chambers judge erred in failing to find husband's circumstances had changed for purposes of spousal support when he retired -- Court ordered husband's income for purposes of backdated spousal support from 2009 be recalculated to include actual income from employment, \$40,000 received for banked sick and vacation time and pension income from date of retirement until end of year -- As of January 1, 2010 spousal support was based on annual income of \$29,748 -- Court ordered husband to inform wife if he became employed, and wife would be at liberty to apply for variation order.

Emery v. Emery [\(2010\), 2010 BCCA 229, 2010 CarswellBC 1170](#), Newbury J.A., Ryan J.A., Tysoe J.A. (B.C. C.A.); reversing [\(2009\), 2009 CarswellBC 2134, 2009 BCSC 1110](#), W.G. Grist 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

Husband and wife began cohabiting in 1989, married in 1992 and separated in 2002 -- Under original support order, husband was required to pay wife \$1,500 per month -- Husband was 71 years old and earning \$127,000 per year -- Wife was 20 years younger than husband -- Husband was in ill health and doctor recommended he retire -- Shortly after initial order was made, husband's employment was terminated and he received three week's severance pay -- Husband paid support for next two months then applied to cancel support order and any arrears that may accrue and court allowed application -- Trial judge found husband's income was \$30,000 and that husband and wife's incomes were virtually same -- Wife appealed order that cancelled both spousal support order and arrears -- Appeal allowed -- There was clear disparity between incomes of husband and wife -- Wife adduced additional evidence that corrected misapprehension of trial judge caused by husband's evidence and statements of his counsel -- Wife's evidence showed her income was only \$11,000 and husband's income on tax return was \$110,000 in 2007 and \$92,000 in 2008 -- Trial judge erred in attributing income to wife from husband's pension as this was unsupported by evidence -- Wife received one time payment of \$11,000, which she could not access until she was 65 -- Range of husband's actual income was between \$62,000 and \$68,000 -- Court ordered husband to pay \$1,000 per month, and varied order made April 30, 2007 effective October 1, 2007.

Pinder v. Pinder [\(2010\), 2010 BCCA 235, 2010 CarswellBC 1207](#), Chiasson J.A., Finch C.J.B.C., Saunders J.A. (B.C. C.A.); reversing [\(2008\), 2008 CarswellBC 19, 2008 BCSC 30](#), Bernard J. (B.C. S.C.) [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

Determination of spouse's income.

Banziger v. Banziger [\(2010\), 2010 CarswellBC 333, 2010 BCSC 179](#), Brooke J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IV.2.e.i

Subject Title: Family law

Classification Number: IV.2.e.i

Support -- Child support -- Variation of order -- General principles

Parties married in 1977, had seven children, separated in 2000 and divorced in 2002 -- Two children resided with mother, including 27-year-old mentally disabled and physically disabled son of 14 -- Father was senior police officer during marriage and earned \$110,524 in 2007 and \$146,747 in 2008 -- Father retired from police force in May 2009 on medical advice due to effects of stress associated with employment -- Father applied for variation of child support, application was granted and child support was reduced to \$750 per month for period of four months -- However, as evidence supported conclusion father was experienced, capable manager with ability to earn income in field other than police work, only temporary variation in child support was warranted -- Father appealed decision -- Appeal allowed -- No evidence to suggest that father would become re-employed with income equal to previous level -- Chambers judge erred in failing to find father's circumstances had changed for purposes of child support when he retired -- Court ordered father's income for purposes of backdated child support from 2009 be recalculated to include actual income from employment, \$40,000 received for banked sick and vacation time and pension income from date of retirement until end of year with support to be payable 30 days from court's order -- As of January 1, 2010 child support was based on annual income of \$29,748 -- Court ordered father to inform mother if he became employed, and mother would be at liberty to apply for variation order.

Emery v. Emery [\(2010\), 2010 BCCA 229, 2010 CarswellBC 1170](#), Newbury J.A., Ryan J.A., Tysoe J.A. (B.C. C.A.); reversing [\(2009\), 2009 CarswellBC 2134, 2009 BCSC 1110](#), W.G. Grist J. (B.C. S.C.) [British Columbia]

FAM.IV.2.f

Subject Title: Family law

Classification Number: IV.2.f

Support -- Child support -- Enforcement of award

D was entitled to receive funds under court-ordered Indian Residential Schools Settlement ("IRSS") and was in arrears in payment of child support -- Master issued garnishing order against administrator of Residential Schools Resolution program, but before order was served D received and spent \$22,000 of common experience payment ("CEP") without making payment toward arrears -- Department of Justice brought motion seeking to set aside Master's order -- Motion granted -- Approved CEP payments are Crown debts and legislation bars any effort to attach Crown debts by garnishing IRSS funds, but cases do not prevent court from appointing receiver of funds under IRSS -- D's children were parties to court-ordered settlement and in different position from other creditors, and nothing in IRSS agreement restricted right of D's children to gain access to those funds -- Master did not have jurisdiction to attach D's CEP payment and alternative dispute resolution ("DR") payment under IRSS, but it was open to him to find that it was just and equitable to appoint receiver of those funds -- Master's order was set aside and replaced with order appointing designated officer under The Family Maintenance Act as receiver to make sure that D's CEP and DR funds as well as his pension were applied to benefit of his children.

Daniels v. Daniels [\(2010\), 2010 MBQB 46, 2010 CarswellMan 57](#), Schulman J. (Man. Q.B.) [Manitoba]

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 1983 and separated in 2006 -- Parties had two children, one of which was child of marriage -- Mother was 48 years old, and was clerical worker and at times ran day care business -- Father worked in insurance industry -- Father had received bonuses in past but was unlikely to do so in future as his clientele dwindled -- Family assets included home, RRSPs and vehicles -- Mother brought application for division of property and support -- Application granted -- Father responsible for 78 per cent of extraordinary expenses, mother responsible for 22 per cent -- Confirmed expense was orthodontics, school was possibility as well.

Boucher v. Boucher

[\(2010\), 2010 CarswellBC 24, 2010](#)

[BCSC 21](#), Harvey J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.vii.A

Subject Title: Family law

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

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

Parties married in 1977, had seven children, separated in 2000 and divorced in 2002 -- Two children resided with mother, including 27-year-old mentally disabled and physically disabled son of 14 -- Pursuant to minutes of settlement of 2006 father agreed to pay \$988 per month in child support for child 14 years of age -- Mother earned \$24,000 per year working at two part-time jobs as teacher's assistant -- Father was senior police officer during marriage and earned \$110,524 in 2007 and \$146,747 in 2008 -- Father retired from police force in May 2009 on medical advice due to effects of stress associated with employment -- Mother submitted affidavit listing expenses including \$593.25 for trumpet, \$364 for guitar lessons and \$1,940 for new bike -- Father alleged that cost of new bike was claimable under program administered by War Amps Association -- Mother applied for reimbursement for special expenses, court granted application and ordered father to pay 76 per cent of listed expenses, exclusive of new bike, or \$2,909.89 -- Father appealed decision with respect to extraordinary expenses as he was not presented with invoices as per minutes of settlement -- This discreet aspect of appeal was dismissed -- Nature of relationship was such that father could not be relied upon to pay third party invoices by their due date.

Emery v. Emery

[\(2010\), 2010 BCCA 229, 2010 CarswellBC 1170](#), Newbury

J.A., Ryan J.A., Tysoe J.A. (B.C. C.A.); reversing [\(2009\), 2009 CarswellBC 2134, 2009 BCSC 1110](#), W.G. Grist J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.vii.A

Subject Title: Family law

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

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

Parties married in 1973, adopted child in 1993 and separated in 2006 -- Court order in 2009 granted parties joint custody and guardianship of child, with primary residence with mother -- Mother's employment income was \$11,341 per year -- Father's income was fixed at \$166,000 per year -- Father brought action for divorce, and issue arose as to child's extraordinary expenses -- Father ordered to pay 66.5 per cent and mother 33.5 per cent of expenses -- For purposes of s. 7 expenses, mother's income consisted of employment income, plus spousal support of \$4,500 per month.

M. (S.J.) v. M. (J.L.) [\(2010\), 2010 CarswellBC 247, 2010 BCSC 154](#), B.M. Preston J. for Allan J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.vii.D

Subject Title: Family law

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

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

Parties married in 1993, had children in 1995 and 1998, separated in 2005 and divorced in 2007 -- In 2007, father was ordered to pay child support of \$638 per month plus proportionate share of extraordinary expenses -- Younger child had tutoring and soccer expenses -- Older child was failing math and required tutor -- Mother's income was \$22,163 per year -- Extraordinary expenses, including tutoring for older child, would amount to \$3,022 per year -- Father was employed in concrete business but affected by economic downturn -- Father argued that tutoring was unnecessary expense -- Mother applied for increase in extraordinary expenses -- Application granted -- Father ordered to pay 60 percent of expenses based on income fixed at \$55,000 per year -- Tutoring expenses were necessary if children were to keep up academically.

Rota v. Rota [\(2010\), 2010 BCSC 165, 2010 CarswellBC 267](#), Schultes J. (B.C. S.C.) [British Columbia]

FAM.IV.3.c.i

Subject Title: Family law

Classification Number: IV.3.c.i

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

Parties were married in 1983 and separated in 2006 -- Parties had two children, one of which was child of marriage -- Mother was 48 years old, and was clerical worker and at times ran day care business -- At time of separation mother had ability to earn \$42,000 annually -- Father worked in insurance industry -- Father had received bonuses in past but was unlikely to do so in future as his clientele dwindled -- Family assets included home, RRSPs and vehicles -- Mother brought application for division of property and support -- Application granted -- Child support payable by father for one child of marriage in amount of \$1,284 -- Father's income was \$147,655 annually, after \$7,000 deducted for gas expenses -- No reason existed why mother could not seek work or upgrade skills.

Boucher v. Boucher

[\(2010\), 2010 CarswellBC 24, 2010](#)

[BCSC 21](#), Harvey J. (B.C. S.C.) [British Columbia]

FAM.IV.3.c.ii

Subject Title: Family law

Classification Number: IV.3.c.ii

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

Parties had lengthy marriage, had one child and separated -- Child was special needs child and resided with mother who was full-time parent -- Father was equal partner with brothers in cattle ranch and trucking business -- As per 2005 judgment, father had to pay \$983 per month in child support, pursuant to Federal Child Support Guidelines (Guidelines) based on income of \$135,000 per year, and \$2,750 per year for extraordinary expenses -- 2005 judgment on family assets required father to pay mother her one third of her interest in family assets in three equal installments plus interest and to hold remaining two-thirds in trust -- Father's child support later reduced to \$930 per month, based on income reduction of \$103,000 -- Appeal court determined value of mother's interest in family assets at \$926,000 and ordered equal annual payments to continue through 2012 -- Father made payments of \$156,866 in 2006, \$183,236 in 2007 and did not make 2008 payment -- Father alleged payments were made from draw from business of \$318,993 in 2006 and \$312,335 in 2007 -- Mother applied to fix father's income for purpose of child support -- Mother said father's annual income was upwards of \$300,000 and father artificially restricted income -- Father's income was fixed at \$125,000 and he was ordered to pay \$1,107 per month in child support based on Guidelines for income of \$125,000 -- Mother appealed decision to fix father's income at \$125,000 as she said his annual income was in excess of \$300,000 -- Appeal allowed -- Trial judge erred in deducting payments to mother for her interest in business from father's draws from business when determining his income -- Income for purpose of calculating support should have recognized money that was available to father from business' income -- Court fixed father's income for child support purposes at \$300,000.

Chapman v. Summer

[\(2010\), 2010 BCCA 237, 2010](#)

[CarswellBC 1209](#), Chiasson J.A., Garson J.A., Mackenzie J.A. (B.C. C.A.); reversing [\(2008\), 2008 CarswellBC 2474, 2008 BCSC 1590](#), J.K. Bracken J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.IV.3.c.iii

Subject Title: Family law

Classification Number: IV.3.c.iii

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

Parties married in 1993, had two children, separated in 2005 and divorced in 2007 -- In 2007, father was ordered to pay child support of \$638 per month, plus proportionate share of extraordinary expenses -- In 2008, child support was varied to \$1,144 per month to reflect increase in father's income -- Father worked in concrete business -- Father was laid off from recent employment -- In previous three years, father's income was \$76,474, \$78,585 and \$33,690 -- Mother applied for increase in extraordinary expenses and father applied for variation, and issue arose as to father's income -- Current economic downturn affected father's income -- Father should be able to resume good earnings in not too distant future -- There was no "degree of permanence" in father's present income that should lead it to form ongoing basis of child support -- Father was often called on short notice for extra work at rate of \$32 per hour -- Fairest way to fix father's income was to fix it at approximate mid-point between highest and lowest earnings of previous three years -- Father's annual income was fixed at \$55,000 -- Father's child support obligations were varied to \$833 per month -- Father was ordered to provide mother with monthly updates on income.

Rota v. Rota [\(2010\), 2010 BCSC 165, 2010 CarswellBC 267](#), Schultes J.
(B.C. S.C.) [British Columbia]

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 married in 1973, adopted child in 1993 and separated in 2006 -- Court order in 2009 granted parties joint custody and guardianship of child, with primary residence with mother and generous and liberal access to father -- Father earned \$241,468 in 2006, \$202,311 in 2007 and \$206,311 in 2008 -- Father was voluntarily paying child support of \$1,000 per month and \$662 towards mortgage until trial -- Father was informed that salary would be reduced to \$155,000 per year because of recession, effective January 2010 -- Father had rental income of \$4,000 per year -- Father received bonus of \$7,000 in 2009 -- Father was ordered to pay interim child support of \$1,622 per month, effective December 2009 -- Father brought action for divorce and corollary relief, and issue arose as to child support -- Father was ordered to pay Federal Child Support Guidelines support of \$1,427 per month based on annual income fixed at \$166,000 -- Father did not claim reduction of support on basis of joint custody -- Mother did not claim arrears -- Mother had access to joint funds in first year after separation -- Parties had "loose arrangements" as regarded custody -- Table amount of support that father should have paid since separation was accordingly not recalculated.

M. (S.J.) v. M. (J.L.) [\(2010\), 2010 CarswellBC 247, 2010 BCSC 154](#), B.M. Preston J. for Allan 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 had child together -- Father lived in Quebec -- Mother lived in Northwest Territories -- Pursuant to 2002 consent order, parties had joint custody with child living with each party on alternating year -- Alternating custody was successful until 2007 when child advised father she wished to remain with mother -- Child was almost 13 years old -- Mother petitioned for retroactive support, and other relief -- Petition granted -- Father ordered to pay retroactive Guidelines support of \$1,792 for period of March 2009 to August 2009 -- Mother initiated petition nine months after parties agreed to change custody arrangement -- Under these circumstances of alternating custody on yearly basis it was reasonable for mother to not act immediately -- Father's conduct was not blameworthy -- There was no evidence that child was deprived during time that no support was paid -- Father knew in 2009 that mother was seeking support -- Change in custody effectively occurred in 2008 -- Four months' retroactive support was equitable under circumstances.

Parent c. Desjardins [\(2010\), 2010 CarswellNWT 20, 2010 CSTNO 17](#), L.A. Charbonneau J. (N.W.T. S.C.) [Northwest Territories]

FAM.IV.3.h

Subject Title: Family law

Classification Number: IV.3.h

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

Parties commenced cohabitation in 2002, married in 2004, had one child and separated in August 2008 -- Father earned \$8,804.80 in 2005, \$9,564.41 in 2006, \$17,792.17 in 2007 and current annual income was determined at \$21,000 -- Mother earned \$29,398.46 in 2005 and current annual income was determined at \$21,158 -- Since separation father paid \$100 in child support and \$20 for groceries -- Mother applied for retroactive child support -- Application dismissed -- Father was properly required to pay \$190 per month in child support based on current earnings, but additional award of retroactive award would result in financial hardship -- Father faced potential significant access costs.

Walker-Mailloux v. Mailloux [\(2010\), 2010 BCSC 13, 2010 CarswellBC 16](#), Loo J. (B.C. S.C.) [British Columbia]

FAM.VIII.5.h

Subject Title: Family law

Classification Number: VIII.5.h

Divorce -- Practice and procedure -- Miscellaneous issues

In October 2007, wife had commenced action seeking divorce -- Separate family law action of wife was heard in November and December 2007 -- Wife asked for divorce order during November and December 2007 hearings -- Divorce order was granted but reasons did not reference previous divorce action -- Divorce claim ordered to have been heard December 6, 2007 and previous divorce order nunc pro tunc -- Matter was properly before court, simply by oversight that divorce file was not correctly referenced.

Nordio v. Nordio [\(2010\), 2010 BCSC 35, 2010 CarswellBC 35](#), Crawford J. (B.C. S.C.); additional reasons to [\(2008\), 2008 BCSC 383, 2008 CarswellBC 643](#), Crawford J. (B.C. S.C.) [British Columbia]

FAM.IX.4.d

Subject Title: Family law

Classification Number: IX.4.d

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

Parties commenced cohabitation in 2002, married in 2004, had one child and separated in August 2008 -- Mother was from Detroit and had extended network of family and friends in Detroit area -- Father cared for child full-time for almost one year following child's birth -- As of 2006 parties resided with father's parents, worked full-time and father's parents cared for child -- Since separation father saw child on weekends and child's primary residence was with mother -- Father had period of unemployment, then obtained job working 40 hours per week at \$10 per hour -- Father was charged with assault of mother in 2009 and trial was pending -- Mother had written job offer from Detroit business for full-time job as accountant, earning \$15 per hour, and had rent-free house available in Detroit for period of eight months -- Child was four years of age -- Mother applied for sole custody and permission to move with child to Detroit -- Application granted -- Considering all evidence, best interests of child were served by remaining with mother and moving with mother to Detroit -- Given inability of parties to communicate, as well as future distance between parties' locations, joint guardianship was not warranted -- Mother had far superior parenting plan than father and superior network of support in Detroit -- Fact that father was child's primary caregiver for period of time did not operate as presumption in favour of father.

Walker-Mailloux v. Mailloux [\(2010\), 2010 BCSC 13, 2010 CarswellBC 16](#), Loo J. (B.C. S.C.) [British Columbia]

FAM.IX.5.c

Subject Title: Family law

Classification Number: IX.5.c

Custody and access -- Variation of custody order -- Miscellaneous issues

Parties had child together -- Father lived in Quebec -- Mother lived in Northwest Territories -- Pursuant to 2002 consent order, parties had joint custody with then 6 year-old child living with each party on alternating year -- Alternating custody was successful until 2007 when child advised father she wished to remain with mother -- Child was almost 13 years old -- Mother petitioned for variation of custody, and other relief -- Petition granted -- Father agreed to child living with mother -- At child's age, it was no longer in child's best interests to alternate residence every year -- Parties would continue to jointly exercise parental authority -- Considering years child lived with father, father was granted at least three weeks' access in summer and at least ten days' access at other time of year.

Parent c. Desjardins

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

[20, 2010 CSTNO 17](#), L.A. Charbonneau J. (N.W.T. S.C.) [Northwest Territories]

FAM.IX.8.a.ii

Subject Title: Family law

Classification Number: IX.8.a.ii

Custody and access -- Access -- Factors to be considered -- Age of child

Parties married in 1973, adopted child in 1993 and separated in 2006 -- Court order in 2009 granted parties joint custody and guardianship of child, with primary residence with mother -- Father was given reasonable and generous access -- Child was spending alternate three-day weekend and every Thursday with father -- Father brought action for divorce and corollary relief, and sought designated access to child -- Action allowed in part on other grounds -- Parties granted joint custody and guardianship, with primary residence with mother and liberal and generous access to father -- Child was 16 years old -- Child was flourishing under guidance of both parties -- Access had proceeded smoothly in past -- Parties frequently had to adjust agreed access to accommodate father's business commitments -- It would be inappropriate to order scheduled access under circumstances.

M. (S.J.) v. M. (J.L.)

[\(2010\),](#)

[2010 CarswellBC 247, 2010 BCSC 154](#), B.M. Preston J. for Allan J. (B.C. S.C.) [British Columbia]

FAM.XIII.2.c.vi.D

Subject Title: Family law

Classification Number: XIII.2.c.vi.D

Adoption -- Under statute -- Practice and procedure -- Consent of parent -- Dispensing with consent

Appellant was mother of son born December 17, 2006 -- She brought appeal from order pronounced by Supreme Court judge that permitted respondents, who were child's paternal grandparents, to adopt child, and dispensed with mother's consent to adoption -- Appeal allowed -- Order was made to set aside adoption

and reinstate order of provincial court with respect to custody and access -- Chambers judge gave too much weight to concerns of stability and permanence in situation that did not justify that emphasis and too little weight to importance to child of maintaining contact with his mother and extended family -- Circumstances did not present "serious and important reasons" required to dispense with mother's consent, and adoption could not proceed without that consent.

M. (R.T.) v. S. (T.S.) (2010),
[2010 BCCA 137](#), [2010 CarswellBC 988](#), Garson J.A., Lowry J.A., Neilson J.A. (B.C. C.A.); reversing [\(2009\)](#),
[2009 CarswellBC 1131](#), [2009 BCSC 599](#), Brooke J. (B.C. S.C. [In Chambers]) [British Columbia]

FAM.XV.5.a.ii.H

Subject Title: Family law

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

Children in need of protection -- Application for permanent custody -- Factors to be considered -- Particular factors -- Miscellaneous factors

Seven-year-old girl showed up at school with racist graffiti on her person -- Interviews with girl revealed that her mother had made markings, and that girl had learned racist, genocidal views from her parents -- Girl and two-and-a-half-year-old boy were apprehended by Child and Family Services ("agency") -- Children were placed with their aunt/foster mother and her husband -- Director of agency brought application to become permanent guardian, with plan being for children to remain in placement with foster parents -- Man, who was father of boy, wanted children returned to him and applied to become guardian of girl -- Director's application granted; father's application dismissed -- Children were in need of protection at time of apprehensions, and continued to be in need of protection -- Emotional well-being of children was endangered by actions and teachings of parents, and they were likely to suffer harm if left with parents -- As shocking as defacing of child was, such defilements alone would not have been enough to justify permanent removal of children -- Mother of both children supported agency's plan, and had essentially abandoned children -- There was evidence of neglect of children while in father's care -- Boy was left virtually on his own, and his most basic needs were not met by his father; he frequently went without healthy meals and diaper changes -- Father had not completely given up drugs and alcohol, had never been effectively treated for addiction problems, and had not entirely rehabilitated his character -- Father showed no signs of becoming able to provide for family -- Living conditions afforded by parents ranged from inappropriate for young children to deplorable -- Psychologist recommended that children remain in their current placement -- Agency's plan was in best interests of children -- Children were well cared for by foster parents.

Manitoba (Director of Child & Family Services) v. P. (D.M.) (2010), [2010 MBQB 32](#), [2010 CarswellMan 56](#), Rivoalen J. (Man. Q.B.) [Manitoba]

FAM.XX.2.c

Subject Title: Family law

Classification Number: XX.2.c

Costs -- Divorce proceedings -- Offer to settle

Divorce action of husband and wife went to trial November 25-27, 2008 -- Submissions were subsequently made regarding costs -- Double costs for either party inappropriate but wife entitled to 50 percent of her costs on Scale B from husband -- Wife's offer would have continued child support for indeterminate time and spousal support of \$1,000 per month indefinitely, and trial judgment terminated child support and ordered spousal support of \$730 per month until May 1, 2017 -- Wife's offer was significantly different from trial judgment, her offer was not one that ought reasonably should have been accepted, and therefore double costs inappropriate -- Husband's offer was more favourable to wife than trial judgment but spousal support component would have resulted in wife having to come up with cash and she did not have demonstrated ability to do so, therefore offer was not one that ought reasonably should have been accepted and double costs inappropriate -- Success at trial was divided but wife was marginally more successful overall and prevailed on factual issue that consumed most of trial time -- Wife's success was not, however, substantial enough to recover full costs.

A. (S.J.) v. A. (S.) [\(2010\), 2010 BCSC 106, 2010 CarswellBC 172](#), I.C. Meiklem J. (B.C. S.C.); additional reasons to [\(2009\), 2009 CarswellBC 913, 2009 BCSC 486](#), I.C. Meiklem J. (B.C. S.C.) [British Columbia]

FAM.XX.6

Subject Title: Family law

Classification Number: XX.6

Costs -- Support

D was entitled to receive funds under court-ordered Indian Residential Schools Settlement ("IRSS") and was in arrears in payment of child support -- Master issued garnishing order against administrator of Residential Schools Resolution program, but before order was served D received and spent \$22,000 of common experience payment ("CEP") without making payment toward arrears -- Department of Justice brought motion seeking to set aside Master's order -- Motion granted -- Master's order was set aside and replaced with order appointing designated officer under The Family Maintenance Act as receiver to make sure that D's CEP and DR funds as well as his pension were applied to benefit of his children -- Crown counsel should have brought Master's attention to possibility of appointing receiver -- Designated officer under The Family Maintenance Act did nothing to seek appointment of receiver -- Court ordered province and designated officer to pay one-half of normal legal charges of amicus curiae.

Daniels v. Daniels [\(2010\), 2010 MBQB 46, 2010 CarswellMan 57](#), Schulman J. (Man. Q.B.) [Manitoba]

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