

The Canadian Abridgment eDigests -- Family Law - Western

2010-33
August 16, 2010

FAM.III.6.g.i

Subject Title: Family law

Classification Number: III.6.g.i

**Family property on marriage breakdown -- Valuation of specific assets -- Real property --
General principles**

Husband and wife divorced after 20 years of marriage -- Court made order dividing family assets -- Part of order found jointly owned home had market value of \$439,800 and should be apportioned 62.5 per cent in wife's favour -- Order gave wife period of time to buy out husband's interest at market value price -- If wife did not buy out husband, husband could buy wife's interest based on his expert's appraised value of \$617,000 -- Both husband and wife appealed order on division of family assets on multiple grounds -- Order varied -- Judge erred in setting different buy-out values on property, and value was to be \$439,800 regardless of who was buying other's interest -- Beyond this, trial judge had carefully considered evidence and exercised discretion in fair and judicial manner.

Birnie v. Baily [\(2010\), 2010 BCCA 269, 2010 CarswellBC 1478](#), Frankel J.A., Garson J.A., Tysoe J.A. (B.C. C.A.); varying [\(2008\), 2008 CarswellBC 31, 2008 BCSC 43](#), Josephson J. (B.C. S.C.) [British Columbia]

FAM.III.6.i

Subject Title: Family law

Classification Number: III.6.i

Family property on marriage breakdown -- Valuation of specific assets -- Date of valuation

Parties were married in July 1996, had three children and lived on their farm -- In May 2007, wife began residing in Winnipeg and returned to farm every weekend; by fall 2007, she only returned once per month -- Parties petitioned for divorce -- Date of separation was in contention -- Date of separation is relevant for granting of order of divorce and to determine valuation date for division of family assets -- Court determined separation date of September 7, 2007 -- Husband proposed date of separation of May 12, 2007, when he confronted his wife about meeting with man she had not disclosed to him -- Evidence did not support that either husband or wife formed intention to live separate and apart as of this date -- Parties continued to share bed and sexual relations continued -- Evidence convinced court that by time wife moved back to Winnipeg in early September 2007, parties had formed intention to live separate and apart -- Wife was no longer returning to farm on regular basis to see children -- Parties were no longer having sexual relations, which, in this marriage was major change in their relationship -- Both parties had consulted lawyers -- Their financial relationship had changed -- For purposes of Divorce Act and valuation date for purposes of Family Property Act, date of separation was set at September 7, 2007.

L. (J.L.) v. L. (G.A.)

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

[MBQB 39, 2010 CarswellMan 60](#), Menzies J. (Man. Q.B.) [Manitoba]

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

Husband and wife divorced after 20 years of marriage -- Court made order dividing family assets -- Part of order found jointly owned home had market value of \$439,800 and should be apportioned 62.5 per cent in wife's favour -- Order gave wife period of time to buy out husband's interest at market value price -- If wife did not buy out husband, husband could buy wife's interest based on his expert's appraised value of \$617,000 -- Both husband and wife appealed order on division of family assets on multiple grounds -- Order varied -- Judge erred in setting different buy-out values on property, and value was to be \$439,800 regardless of who was buying other's interest -- Beyond this, trial judge had carefully considered evidence and exercised discretion in fair and judicial manner.

Birnie v. Baily

[\(2010\), 2010 BCCA 269, 2010 CarswellBC](#)

[1478](#), Frankel J.A., Garson J.A., Tysoe J.A. (B.C. C.A.); varying [\(2008\), 2008 CarswellBC 31, 2008 BCSC 43](#), Josephson J. (B.C. S.C.) [British Columbia]

FAM.III.8.d

Subject Title: Family law

Classification Number: III.8.d

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

Parties commenced cohabitation in 1995, married in 2000, had two children and separated in 2006 -- Wife had limited experience at various low-paying jobs both before and during marriage, was one course short of Grade 12 and was full-time caregiver of children during marriage -- Husband had Grade 12 education, earned \$57,000 per year until laid off in April 2008, was unemployed until August 2009 and subsequently obtained full-time employment at \$33,000 per year -- Balance of proceeds of sales of parties' condominium and family home, after payment of numerous joint debts from proceeds, was \$166,350 held in trust -- Husband had Registered Retirement Savings Plan (RRSP) at \$35,078.38, including post-separation contribution of \$2,635.32 -- Wife brought action for divorce and corollary relief and sought reapportionment of sale proceeds in wife's favour -- Action allowed -- Wife was awarded \$100,000 from sale proceeds and equal division of RRSP except for husband's post-separation contributions -- Wife met burden to establish that equal division of sale proceeds was unfair, pursuant to s. 65(1)(f) of Family Relations Act -- Wife required opportunity to pursue financial independence and self-sufficiency, and distribution of proceeds of sale in wife's favour was essential to meet goals.

Martin v. Martin

[\(2010\), 2010 CarswellBC 453, 2010 BCSC 261,](#)

R.W. Metzger 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

Husband and wife divorced after 20 years of marriage -- Court made order dividing family assets -- Part of order found jointly owned home had market value of \$439,800 and should be apportioned 62.5 per cent in wife's favour -- Order gave wife period of time to buy out husband's interest at market value price -- If wife did not buy out husband, husband could buy wife's interest based on his expert's appraised value of \$617,000 -- Both husband and wife appealed order on division of family assets on multiple grounds -- Order varied -- Judge erred in setting different buy-out values on property, and value was to be \$439,800 regardless of who was buying other's interest -- Beyond this, trial judge had carefully considered evidence and exercised discretion in fair and judicial manner.

Birnie v. Baily

[\(2010\), 2010 BCCA 269, 2010 CarswellBC](#)

[1478](#), Frankel J.A., Garson J.A., Tysoe J.A. (B.C. C.A.); varying [\(2008\), 2008 CarswellBC 31, 2008 BCSC](#)

[43](#), Josephson J. (B.C. S.C.) [British Columbia]

FAM.III.9.c.i

Subject Title: Family law

Classification Number: III.9.c.i

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

Family home.

Callaghan v. McCaw

[\(2010\), 2010 CarswellSask 121,](#)

[2010 SKQB 79](#), M.J. Herauf J. (Sask. Q.B.) [Saskatchewan]

FAM.III.9.m

Subject Title: Family law

Classification Number: III.9.m

Family property on marriage breakdown -- Order for division of property -- Miscellaneous issues

Parties married in 1983 and following marriage breakdown wife commenced family action with trial in 2005 -- Trial judge found that husband's interest in large tract of property was family asset, as husband's interest was acquired with family funds of \$36,500 and subject to equal division -- Husband's interest was in shares held by numbered company and court order of 2006 provided for wife to elect within 30 days to receive either 50 per cent of husband's shares in numbered company or \$18,250 as one-half of initial investment, and if wife elected shares, wife was responsible for proportionate share of company's debts and liabilities -- Property had contamination and required expensive remediation for subsequent development -- Wife communicated election of shares within deadline, stay of matter followed husband's appeal of decision and appeal was dismissed in November 2007 with stay dissolved -- Subsequently execution of transaction was not completed and husband brought application for directions to resolve issues of wife's transfer of interest in matrimonial home to husband as well as wife's interest in property -- Pursuant to order of 2008, wife had deadline of April 30, 2008, or 30 additional days, to elect share transfer after husband's production of full financial information and upon election to transfer \$51,000 from trust account holding monies related to transfer of interest in matrimonial home -- Parties disagreed whether husband furnished sufficient financial disclosure -- Wife brought application for possession of shares representing one-half interest in property -- Issue arose whether matter was res judicata -- Application granted -- Matter was not res judicata as 2006 order required interpretation and direction to give effect to order -- Order clearly entitled wife to receive one-half interest in property and required wife to make election within deadline but did not stipulate precise steps and terms of manner of execution of transfer -- Order required wife to make election within deadline subject to wife receiving all reasonable and relevant documents and information and husband did not provide documents and information in useful format -- Husband's position that wife could ferret through massive material generated by lengthy lawsuit to obtain financial information was not acceptable.

Verma v. Verma

[\(2010\), 2010 BCSC 268, 2010 CarswellBC 472,](#)

Williams J. (B.C. S.C.) [British Columbia]

FAM.III.10.b.xii

Subject Title: Family law

Classification Number: III.10.b.xii

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

Plaintiff given 60 days to purchase defendant's interest in matrimonial home.

Sennett v. Sennett

[\(2010\), 2010 BCSC 305,](#)

[2010 CarswellBC 543,](#) D.A. Halfyard J. (B.C. S.C.) [British Columbia]

FAM.III.11.a

Subject Title: Family law

Classification Number: III.11.a

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

Most of issues in matrimonial proceeding were suitable for summary trial.

Sennett v. Sennett

[\(2010\), 2010 BCSC 305,](#)

[2010 CarswellBC 543](#), D.A. Halfyard J. (B.C. S.C.) [British Columbia]

FAM.III.11.b.i

Subject Title: Family law

Classification Number: III.11.b.i

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

Third party had no standing to bring application to vary order permitting divorcing spouses to withdraw money from family businesses.

S. (L.G.) v. S. (G.M.)

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

[BCSC 297, 2010 CarswellBC 535](#), Bruce 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 commenced cohabitation in 1995, married in 2000, had two children, and separated in 2006 -- Wife had limited experience at various low-paying jobs both before and during marriage, was one course short of Grade 12 and was full-time caregiver of children during marriage -- Husband had Grade 12 education, earned \$57,000 per year until laid off in April 2008, was unemployed until August 2009 and subsequently obtained full-time employment at \$33,000 per year -- Parties consented to shared custody of children -- Wife did not upgrade education or experience during marriage, had no specific plan for skills upgrading other than to complete Grade 12 and obtain secure employment -- Wife brought action for divorce and corollary relief and sought retroactive and ongoing spousal support -- Action allowed in part -- Husband was ordered to pay \$150 per month in spousal support for at least two years -- Wife was entitled to both compensatory and minimal non-compensatory spousal support -- Wife was disadvantaged during marriage of 11 years and

husband benefitted by wife remaining home to care for children -- Wife's income was not likely to rise above minimum wage until wife received some skills training -- Amount of spousal support appropriately considered duration of marriage and lessening of disparity between spouses' standards of living given husband's current lower salary -- Award of retroactive spousal support was unwarranted as wife delayed seeking support despite previous court hearings -- Wife had insufficient reason for delay and husband had limited ability to pay retroactive award.

Martin v. Martin

[\(2010\), 2010 CarswellBC 453, 2010 BCSC 261,](#)

R.W. Metzger 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

Plaintiff wife's new relationship not taken into account when awarding her spousal support.

Sennett v. Sennett

[\(2010\), 2010 BCSC 305,](#)

[2010 CarswellBC 543,](#) D.A. Halfyard 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 commenced cohabitation in 1980, married in 1986, had two children, separated in 2000, divorced in 2001, reconciled, and separated finally in 2005 -- Pursuant to order of May 2000 husband was ordered to pay \$500 per month in spousal support, and 2001 divorce order continued support requirements -- Parties reconciled shortly after divorce, lived together in marriage-like relation until 2005, during which time husband provided financially for family on annual income of \$32,000 -- Following reconciliation, divorce order was varied on consent in 2002 to increase spousal support to \$700 per month for period from February 2001 to January 2005, continuing thereafter at \$500 per month, and to require husband to transfer 85 per cent of husband's interest in family residence to wife -- In 2006 wife mortgaged family residence and defaulted on mortgage -- Husband explained making no support payments since order of 2001 on basis that parties lived together as family for which husband provided -- Pursuant to variation order of August 2007 husband's arrears to date were cancelled, spousal support payments were continued at \$500 per month and husband had liberty to apply for variation -- In 2005 wife acquired new partner for period of time -- Husband brought action for variation of spousal support and sought cancellation of arrears -- Action dismissed -- Husband was ordered to pay \$27,000 in arrears and \$500 per month in spousal support -- Evidence did

not support significant, unforeseen changes in wife's conditions, means or needs, and disturbing present arrangement was not in interests of justice -- Final lump sum payment of \$25,000 as proposed by husband was inappropriate in view of parties' combination of marriage and marriage-like relationship of 25 years -- Wife was entitled to spend proceeds of mortgage loan, as spousal support order of 2002 was made in recognition that wife had 85 per cent interest in family residence -- Amount of arrears accumulated for period from September 2005 to March 2010 was appropriately calculated at \$500 per month, and same amount was appropriately continued for ongoing support based on husband's annual income of \$38,000.

Uberall v. Uberall

[\(2010\), 2010 BCSC 251, 2010](#)

[CarswellBC 445](#), Saunders J. (B.C. S.C.) [British Columbia]

FAM.IV.1.c.iii.A

Subject Title: Family law

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

Support -- Spousal support under Divorce Act and provincial statutes -- Lump sum award -- Factors to be considered -- General principles

Parties divorced in 1999 after 12 years of cohabitation and 9 years of marriage -- Parties had long history of litigation with previous proceedings heard at Supreme Court of Canada (SCC) -- Parties had son, 21 years old at time of application, and daughter, 19 years old at time of application -- Son had learning difficulties and daughter was in university at time of application -- Wife withdrew from practice of law from time of son's birth in 1987, but began to practice again in 2001, and gained increased income due to fee sharing with employer in 2004 -- Both parties requested lump sum spousal support and trial judge held wife was entitled to lump sum spousal support in amount of \$350,000, payable on February 28, 2001 -- Husband appealed support issues, including lump sum amount -- Appeal allowed in part -- Husband's characterization of application as variation application misstated SCC's decision which authorized new application for spousal support -- Effect of SCC's decision was to convert earlier final order into functional equivalent of interim order and as such, trial judge was not bound by findings of fact in 1999 -- Initial 1999 order for spousal support was fundamentally flawed and could not be starting point for wife's new application -- Trial judge did not err in approach to support application and court did not accede to this ground of appeal.

Hartshorne v. Hartshorne

[\(2010\),](#)

[2010 CarswellBC 1618, 2010 BCCA 327](#), D. Smith J.A., Frankel J.A., Groberman J.A. (B.C. C.A.); reversing in part [\(2009\), 2009 BCSC 698, 2009 CarswellBC 1398, \[2009\] B.C.J. No. 1050, 70 R.F.L. \(6th\) 106](#), Leask J. (B.C. S.C.) [British Columbia]

FAM.IV.1.c.iv

Subject Title: Family law

Classification Number: IV.1.c.iv

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

Bankrupt father in default for child support was ordered to pay lump sum spousal support into trust.

Strauch v. Downey [\(2010\), 2010 SKQB 82, 2010 CarswellSask 136](#), N.S. Sandomirsky J. (Sask. Q.B.) [Saskatchewan]

FAM.IV.1.d

Subject Title: Family law

Classification Number: IV.1.d

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

Parties divorced in 1999 after 12 years of cohabitation and 9 years of marriage -- Parties had long history of litigation with previous proceedings heard at Supreme Court of Canada (SCC) -- Parties had son, 21 years old at time of application, and daughter, 19 years old at time of application -- Son had learning difficulties and daughter was in university at time of application -- Wife withdrew from practice of law from time of son's birth in 1987, but began to practice again in 2001, and gained increased income due to fee sharing with employer in 2004 -- Previous order required wife to secure debt of \$265,318 to husband at rate of 7 per cent interest and husband to transfer title of family home to wife, but husband did not do so -- Both parties requested lump sum spousal support and trial judge held wife was entitled to lump sum spousal support in amount, including retroactive amount, of \$350,000 payable on February 28, 2001 and to be applied to portion of debt owed by wife that bore interest -- Husband appealed support issues, including retroactivity of spousal support award, date payable and application of award to wife's debt -- Appeal allowed in part -- Deference was given to trial judge's finding of fact -- There was no error in principle in trial judge's quantification of lump sum award and court did not accede to this ground of appeal -- Seven per cent interest debt could not be sustained -- Husband's failure to transfer title to wife was prejudicial to her as she could not obtain mortgage in order to pay compensation order to husband and he should not benefit from higher negotiated interest rate when he failed to comply with terms of order -- Part of appeal was allowed to that limited extent.

Hartshorne v. Hartshorne [\(2010\), 2010 CarswellBC 1618, 2010 BCCA 327](#), D. Smith J.A., Frankel J.A., Groberman J.A. (B.C. C.A.); reversing in part [\(2009\), 2009 BCSC 698, 2009 CarswellBC 1398, \[2009\] B.C.J. No. 1050, 70 R.F.L. \(6th\) 106](#), Leask J. (B.C. S.C.) [British Columbia]

FAM.IV.1.f.ii

Subject Title: Family law

Classification Number: IV.1.f.ii

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

Parties were common-law spouses for six and one-half years -- Wife did not work outside home during this period -- Wife had grade 8 education and her only work experience was in service industry and was extremely dated -- Husband was charged with sexually assaulting daughter from wife's previous marriage -- Charges were dropped but wife accepted that sexual assault had likely occurred -- Wife left husband and commenced family law proceedings -- Husband was ordered to pay interim spousal support of \$1,475 per month -- Wife's fear of husband and stress of litigation caused her mental health problems -- Wife also had anxiety relating to guilt about sexual abuse of her daughter -- Wife sought to have spousal support payments continued for additional six and one-half years, which was 10 years after interim order -- Wife brought petition for spousal support -- Petition granted -- Husband was ordered to pay spousal support of \$1,750 per month for two years as lump sum -- Wife established that her inability to enter workforce was due to health issues as result of relationship with husband -- Medical evidence confirmed that wife's ability to become employed or further her education was compromised by husband's actions and ongoing litigation -- Wife's request for further six and one-half years of support was unwarranted -- Period of 24 months was sufficient to allow wife to retrain and enter workforce -- Judgment in petition at bar should relieve some of wife's anxiety and accompanying depression -- Wife was in receipt of social assistance prior to spousal relationship, so she did not suffer any economic disadvantage -- Amount of award was based on husband's imputed income of \$90,000 per year.

Callaghan v. McCaw

[\(2010\), 2010 CarswellSask 121,](#)

[2010 SKQB 79](#), M.J. Herauf 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

Payor's assumption of matrimonial debt argued against spousal support at level of advisory guidelines.

Hayes v. Hayes

[\(2010\), 2010 ABQB 158, 2010 CarswellAlta 457](#), J.B.

Veit J. (Alta. Q.B.) [Alberta]

FAM.IV.1.h.vi

Subject Title: Family law

Classification Number: IV.1.h.vi

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

Divorce order was granted and family assets were divided -- Plaintiff was found entitled to one-half interest in defendant DS's shares in two companies -- Trial judge found that several properties were held by one of brothers (defendants) of DS named on title as to one-third interest and remaining two-thirds was held in

trust for other two brothers -- Plaintiff's one-half interest in all family assets was found to be \$1,102,379 -- It was ordered that one-third of plaintiff's interest in family assets was to vest in DS upon him paying \$367,459 in three instalments -- On appeal, value of family assets was reduced to \$926,000 by making adjustments to one of DS's shareholder loan accounts, and court ordered annual instalments of \$122,486.55 plus interest -- Plaintiff had DS's shares in one company seized and directed that they be sold, which they were, to DS's brothers -- Brothers brought action against DS in attempt to collect amount owing on shareholder's loan accounts -- Brothers had DS's shares in other company seized -- DS brought application for variation of maintenance and spousal support orders that had been made -- Application dismissed, with DS being at liberty to re-apply -- It was not appropriate to deal with application at this time, given other aspects of this complex litigation -- DS had been able to earn significant income in past and could be able to do so again once all litigation was concluded -- In meantime, he had been receiving income through his interest in companies and his employment with companies and had not paid any maintenance -- Given this failure, and that plaintiff had been supporting herself and dependent adult child, no reduction was warranted until all arrears were paid and there was clear evidence of prospective future salary and income of DS and of prospects of satisfying plaintiff's judgment on account of family assets.

Chapman v. Summer

[\(2010\), 2010 BCSC 263, 2010](#)

[CarswellBC 448](#), J.K. Bracken J. (B.C. S.C.) [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

Application adjourned due to lack of evidence of payee's income.

D. (N.A.) v. D. (S.A.)

[\(2010\),](#)

[2010 CarswellBC 578, 2010 BCSC 269](#), P.J. Rogers J. (B.C. S.C.) [British Columbia]

FAM.IV.2.a.iii

Subject Title: Family law

Classification Number: IV.2.a.iii

Support -- Child support -- Duty to contribute -- Age of child

Parties divorced in 1999 after 12 years of cohabitation and 9 years of marriage -- Parties had long history of litigation with previous proceedings heard at Supreme Court of Canada -- Parties had son, 21 years old at time of application, and daughter, 19 years old at time of application -- Son had learning difficulties and daughter was in university at time of application -- Mother withdrew from practice of law from time of son's birth in 1987, but began to practice again in 2001, and gained increased income due to fee sharing with employer in 2004 -- Father unilaterally deducted from support based on mother's increased income, but did not take

into account his own increased income -- Father unilaterally terminated support for son in 2006 and daughter in 2007, though continued to pay tuition and some living expenses -- Mother brought application for support, including increased retroactive and prospective child support, and court awarded increased retroactive and ongoing child support for son as he remained child of marriage because of special needs -- Trial judge took into account fact that son had income, though he continued to be dependent -- Father appealed support awards -- Appeal allowed in part -- Current child support application was resurrection of application mother made in 2002 -- Trial judge had jurisdiction to hear application for child support even if child was over age of majority at time because application was first made by mother when son was still child of marriage -- However, there was no evidence that son's special needs were linked to inability to find employment and form basis of ongoing dependency by son -- There was no error in trial judge's order of increased retroactive support but award of ongoing prospective support amounted to palpable and overriding error.

Hartshorne v. Hartshorne (2010), [2010 CarswellBC 1618](#), [2010 BCCA 327](#), D. Smith J.A., Frankel J.A., Groberman J.A. (B.C. C.A.); reversing in part (2009), [2009 BCSC 698](#), [2009 CarswellBC 1398](#), [2009] B.C.J. No. 1050, [70 R.F.L. \(6th\) 106](#), Leask J. (B.C. S.C.) [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

Divorce order was granted and family assets were divided -- Plaintiff was found entitled to one-half interest in defendant DS's shares in two companies -- Trial judge found that several properties were held by one of brothers (defendants) of DS named on title as to one-third interest and remaining two-thirds was held in trust for other two brothers -- Plaintiff's one-half interest in all family assets was found to be \$1,102,379 -- It was ordered that one-third of plaintiff's interest in family assets was to vest in DS upon him paying \$367,459 in three instalments -- On appeal, value of family assets was reduced to \$926,000 by making adjustments to one of DS's shareholder loan accounts, and court ordered annual instalments of \$122,486.55 plus interest -- Plaintiff had DS's shares in one company seized and directed that they be sold, which they were, to DS's brothers -- Brothers brought action against DS in attempt to collect amount owing on shareholder's loan accounts -- Brothers had DS's shares in other company seized -- DS brought application for variation of maintenance and spousal support orders that had been made -- Application dismissed, with DS being at liberty to re-apply -- It was not appropriate to deal with application at this time, given other aspects of this complex litigation -- DS had been able to earn significant income in past and could be able to do so again once all litigation was concluded -- In meantime, he had been receiving income through his interest in companies and his employment with companies and had not paid any maintenance -- Given this failure, and that plaintiff had been supporting herself and dependent adult child, no reduction was warranted until all arrears were paid and there was clear evidence of prospective future salary and income of DS and of prospects of satisfying plaintiff's judgment on account of family assets.

Chapman v. Summer (2010), [2010 BCSC 263](#), [2010 CarswellBC 448](#), J.K. Bracken J. (B.C. S.C.) [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

Petitioner father was ordered, among other things in child support order, to reimburse respondent mother \$250 per month for costs of meals, despite children residing with mother less than 40 per cent of time -- Mother was allowed to offset \$250 per month from what she owed petitioner monthly -- Petitioner appealed -- Appeal allowed -- Chambers judge erred in making order allowing mother to offset costs for meals provided while parenting her children -- Reducing child support, for reason given in order, is contrary to stated objectives of s. 3 of Federal Child Support Guidelines, S.O.R./97-175.

Travis v. Travis [\(2010\), 2010 SKCA 83, 2010 CarswellSask 386](#), Gerwing J.A., Jackson J.A., Ottenbriet J.A. (Sask. C.A.) [Saskatchewan]

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

Father collecting unemployment benefits ordered to pay \$212 per month for child support.

Haigh v. Spence [\(2010\), 2010 BCSC 270, 2010 CarswellBC 474](#), E. M. Myers J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.i

Subject Title: Family law

Classification Number: IV.3.b.i

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

Payor's income over \$150,000.

Hayes v. Hayes [\(2010\), 2010 ABQB 158, 2010 CarswellAlta 457](#), J.B. Veit 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 commenced cohabitation in 1995, married in 2000, had two children, and separated in March 2006 -- Mother left matrimonial home with children in early 2007 and pursuant to interim order of March 2007, parties had joint custody, children resided primarily with mother, father had access every weekend and father was ordered to pay \$867 per month in child support based on father's income of \$57,000 -- Father lost job in April 2008, was unemployed until August 2009, and consent order of July 2009 reduced child support to \$358 per month commencing December 2008 -- Parties agreed to shared custody of children -- Father's new employment paid \$33,000 per year, mother received social assistance and mother's income was imputed at \$12,000 per year -- Children were 12 and 8 years of age -- Mother brought action for divorce and corollary relief and sought ongoing and retroactive child support -- Action allowed -- Father was ordered to pay \$2,539 in retroactive support and \$371 per month in ongoing child support -- Amount of ongoing child support was simple set-off calculated pursuant to s. 9 of Federal Child Support Guidelines -- Amount of retroactive support was appropriately calculated on basis of two months of child support at \$867 per month for January and February of 2007, based on father's income of \$57,000 for relevant period, and an additional \$161 per month for August through December 2009, based on father's income of \$33,000 for relevant period.

Martin v. Martin

[\(2010\), 2010 CarswellBC 453, 2010 BCSC 261,](#)

R.W. Metzger J. (B.C. S.C.) [British Columbia]

FAM.IV.3.b.i

Subject Title: Family law

Classification Number: IV.3.b.i

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

Defendant father's child support obligations were \$1,087 per month.

Sennett v. Sennett

[\(2010\), 2010 BCSC 305,](#)

[2010 CarswellBC 543,](#) D.A. Halfyard 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

Unemployed father's pro-rata share of child care expenses was 45.3 per cent.

Haigh v. Spence

[\(2010\), 2010 BCSC 270, 2010 CarswellBC 474](#), E.

M. Myers 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

Claims for babysitting, daycare and after school care, and for health related expenses were within s. 7 of Federal Child Support Guidelines.

D. (N.A.) v. D. (S.A.)

[\(2010\),](#)

[2010 CarswellBC 578, 2010 BCSC 269](#), P.J. Rogers 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

Payor was not required to pay s. 7 expenses when he was paying full guideline support on totality of his income over \$150,000.00.

Hayes v. Hayes

[\(2010\), 2010 ABQB 158, 2010 CarswellAlta 457](#), J.B.

Veit 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

Amount requested as proportionate share of \$1,500 annually was modest and amounted to \$75 per month.

Giroux v. Paniloo [\(2010\), 2010 NWTSC 14, 2010 CarswellNWT 15](#), D.M. Cooper J. (N.W.T. S.C.) [Northwest Territories]

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

Recreational activities did not meet criteria of special or extraordinary expenses under s. 7 of Federal Child Support Guidelines.

D. (N.A.) v. D. (S.A.) [\(2010\), 2010 CarswellBC 578, 2010 BCSC 269](#), P.J. Rogers J. (B.C. S.C.) [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

Unemployed father's pro-rata share of cost of medication was 45.3 per cent.

Haigh v. Spence [\(2010\), 2010 BCSC 270, 2010 CarswellBC 474](#), E. M. Myers 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 resided in common law relationship from December 2001 to April 2006 -- Mother brought application for order for child support for two children of relationship -- Mother asked that child support commence retroactively on July 1, 2006 -- Application granted -- Analysis of father's actual expenditures during period would be more accurate reflection of income -- Analysis and calculation would result in father's income based on 2006 to 2008 expenditures of approximately \$140,000 to \$150,000 per year -- It was safe to set father's present Alberta Child Support Guidelines income at similar amount, so accordingly he was earning \$145,000 per year for child support and retroactive child support purposes.

Hartley v. Del Pero (2010), 2010 CarswellAlta 288, 2010 ABQB 109, Donald Lee J. (Alta. Q.B.); additional reasons at (2010), 2010 CarswellAlta 534, 2010 ABQB 200, Donald Lee J. (Alta. Q.B.); reversed (2010), 2010 CarswellAlta 1030, 2010 ABCA 182, Frans Slatter J.A., Myra Bielby J.A., Patricia Rowbotham J.A. (Alta. C.A.); varied (2010), 2010 CarswellAlta 1030, 2010 ABCA 182, Frans Slatter J.A., Myra Bielby J.A., Patricia Rowbotham J.A. (Alta. C.A.) [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

To impute income, court must be satisfied that payor's decision to take leave was taken deliberately to avoid paying support to his children.

Hayes v. Hayes (2010), 2010 ABQB 158, 2010 CarswellAlta 457, J.B. Veit 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

Evidence did not show that defendant father was underemployed within meaning of s. 19(1)(a) of Federal Child Support Guidelines.

Windle v. Windle

[\(2010\), 2010 CarswellBC 27, 2010 BCSC](#)

[18](#), MacKenzie 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

Plaintiff mother, ND, and defendant father, SD, were married for five years and separated in August 2005 as result of SD's cocaine addiction, which lasted until at least mid-2007 -- Parties had three children, who resided with ND after separation -- In August 2008, ND brought application for retroactive and ongoing s. 7 expenses of Federal Child Support Guidelines -- Application allowed -- When deciding whether to make retroactive order, court must consider all relevant circumstances, including reasonable excuse for delay and conduct of payor spouse -- No one factor is determinative -- Court found it reasonable that ND delayed in applying because she knew that SD was either in grips of his addiction or he was in course of rehabilitating himself and did not need further distractions or stressors -- SD never missed payment of table amount of child support and no order for s. 7 had ever been made -- Payor cannot, on his or her own and without at least some information supplied by recipient, figure out how much to pay toward s. 7 expenses -- Appropriate start date for retroactive period was August 2008, because before that date, SD could not have known how much to contribute.

D. (N.A.) v. D. (S.A.)

[\(2010\),](#)

[2010 CarswellBC 578, 2010 BCSC 269](#), P.J. Rogers 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

Order issued in 2010 for child support in sum of \$1,040 and child care expenses of \$75 per month was made retroactive to May 1, 2007.

Giroux v. Paniloo

[\(2010\), 2010 NWTSC 14, 2010](#)

[CarswellNWT 15](#), D.M. Cooper 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 resided in common law relationship from December 2001 to April 2006 -- Mother brought application for order for child support for two children of relationship -- Mother asked that child support commence retroactively on July 1, 2006 -- Application granted -- Analysis of father's actual expenditures during period would be more accurate reflection of income -- Analysis and calculation would result in father's income based on 2006 to 2008 expenditures of approximately \$140,000 to \$150,000 per year -- It was safe to set father's present Alberta Child Support Guidelines income at similar amount, so accordingly he was earning \$145,000 per year for child support and retroactive child support purposes.

Hartley v. Del Pero

[\(2010\), 2010 CarswellAlta 288,](#)

[2010 ABQB 109](#), Donald Lee J. (Alta. Q.B.); additional reasons at [\(2010\), 2010 CarswellAlta 534, 2010 ABQB](#)

[200](#), Donald Lee J. (Alta. Q.B.); reversed [\(2010\), 2010 CarswellAlta 1030, 2010 ABCA 182](#), Frans Slatter J.A.,

Myra Bielby J.A., Patricia Rowbotham J.A. (Alta. C.A.); varied [\(2010\), 2010 CarswellAlta 1030, 2010 ABCA](#)

[182](#), Frans Slatter J.A., Myra Bielby J.A., Patricia Rowbotham J.A. (Alta. C.A.) [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 divorced in 1999 after 12 years of cohabitation and 9 years of marriage -- Parties had long history of litigation with previous proceedings heard at Supreme Court of Canada -- Parties had son, 21 years old at time of application, and daughter, 19 years old at time of application -- Son had learning difficulties and daughter was in university at time of application -- Mother withdrew from practice of law from time of son's birth in 1987, but began to practice again in 2001, and gained increased income due to fee sharing with employer in 2004 -- Father unilaterally deducted from support based on mother's increased income, but did not take into account his own increased income -- Father unilaterally terminated support for son in 2006 and daughter in 2007, though continued to pay tuition and some living expenses -- Mother brought application for support, including increased retroactive and prospective child support, and court awarded increased retroactive and ongoing child support for son as he remained child of marriage because of special needs -- Father appealed support awards -- Appeal allowed in part -- Current child support application was resurrection of application mother made in 2002 -- Trial judge had jurisdiction to hear application for child support even if child was over age of majority at time because application was first made by mother when son was still child

of marriage -- However, there was no evidence that son's special needs were linked to inability to find employment and form basis of ongoing dependency by son -- There was no error in trial judge's order of increased retroactive support but award of ongoing prospective support amounted to palpable and overriding error.

Hartshorne v. Hartshorne (2010), 2010 CarswellBC 1618, 2010 BCCA 327, D. Smith J.A., Frankel J.A., Groberman J.A. (B.C. C.A.); reversing in part (2009), 2009 BCSC 698, 2009 CarswellBC 1398, [2009] B.C.J. No. 1050, 70 R.F.L. (6th) 106, Leask J. (B.C. S.C.) [British Columbia]

FAM.IV.3.i.ii

Subject Title: Family law

Classification Number: IV.3.i.ii

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

Defendant father met onus of proving that not reducing arrears would have been grossly unfair.

Windle v. Windle (2010), 2010 CarswellBC 27, 2010 BCSC 18, MacKenzie J. (B.C. S.C.) [British Columbia]

FAM.IV.3.k.i

Subject Title: Family law

Classification Number: IV.3.k.i

Support -- Child support under federal and provincial guidelines -- Practice and procedure -- General principles

Petitioner father was ordered, among other things in child support order, to reimburse respondent mother \$250 per month for costs of meals, despite children residing with mother less than 40 per cent of time -- Mother was allowed to offset \$250 per month from what she owed petitioner monthly -- Petitioner appealed -- Appeal allowed -- Chambers judge erred in making order allowing mother to offset costs for meals provided while parenting her children -- Reducing child support, for reason given in order, is contrary to stated objectives of s. 3 of Federal Child Support Guidelines, S.O.R./97-175.

Travis v. Travis (2010), 2010 SKCA 83, 2010 CarswellSask 386, Gerwing J.A., Jackson J.A., Ottenbriet J.A. (Sask. C.A.) [Saskatchewan]

FAM.IV.3.k.iii

Subject Title: Family law

Classification Number: IV.3.k.iii

Support -- Child support under federal and provincial guidelines -- Practice and procedure -- Disclosure of financial information

Respondent father's blameworthy conduct in failing to provide financial information was commonplace but unacceptable.

Giroux v. Paniloo [\(2010\), 2010 NWTSC 14, 2010 CarswellNWT 15](#), D.M. Cooper J. (N.W.T. S.C.) [Northwest Territories]

FAM.V.3.a.i

Subject Title: Family law

Classification Number: V.3.a.i

Domestic contracts and settlements -- Effect of contract -- On division of family property -- General principles

Parties divorced in 1999 after 12 years of cohabitation and 9 years of marriage -- Parties had long history of litigation with previous proceedings heard at Supreme Court of Canada (SCC) -- Parties had son, 21 years old at time of application, and daughter, 19 years old at time of application -- Son had learning difficulties and daughter was in university at time of application -- Wife withdrew from practice of law from time of son's birth in 1987, but began to practice again in 2001, and gained increased income due to fee sharing with employer in 2004 -- Marriage agreement provided that father would be entitled to 3 per cent interest in family home for each year parties were married, up to maximum of 49 per cent -- Hearing was held to determine support and trial judge interpreted marriage agreement in light of SCC's ruling and said agreement suggested length of marriage determined wife's interest in matrimonial home and found wife was entitled to 27 per cent interest -- Husband appealed support issues, wife cross appealed trial judge's interpretation of provision of marriage agreement -- Appeal allowed in part; cross appeal dismissed -- Trial judge did not err in his interpretation of marriage agreement.

Hartshorne v. Hartshorne [\(2010\), 2010 CarswellBC 1618, 2010 BCCA 327](#), D. Smith J.A., Frankel J.A., Groberman J.A. (B.C. C.A.); reversing in part [\(2009\), 2009 BCSC 698, 2009 CarswellBC 1398, \[2009\] B.C.J. No. 1050, 70 R.F.L. \(6th\) 106](#), Leask J. (B.C. S.C.) [British Columbia]

FAM.IX.2.a

Subject Title: Family law

Classification Number: IX.2.a

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

Child was born to common-law spouses -- Mother alleged that she was intimidated by father -- Mother left father when child was four and one-half years of age and child remained with mother -- Interim order was issued giving parties joint custody of child and ordering father to pay child support -- Father stopped making child support payments -- Father filed nonsensical documents signed by thumb print and/or blood -- Father refused to participate as party in court but disrupted proceedings from audience -- Mother brought petition for final order giving her sole custody of child with specific parenting times to father -- Petition granted -- In light of father's actions in court and bizarre material that he filed, it was in child's best interest for mother to be granted sole custody -- Child was now six years of age and might be influenced by father's beliefs and harmful way he treated mother -- Also of concern was fact that father unilaterally terminated child support in defiance of court order -- Detailed schedule for parenting times was endorsed to resolve further conflict, if possible.

Callaghan v. McCaw

[\(2010\), 2010 CarswellSask 121,](#)

[2010 SKQB 79](#), M.J. Herauf J. (Sask. Q.B.) [Saskatchewan]

FAM.IX.2.a

Subject Title: Family law

Classification Number: IX.2.a

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

Custody arrangements based on best interests of particular child and unique circumstances of case.

Haigh v. Spence

[\(2010\), 2010 BCSC 270, 2010 CarswellBC 474](#), E.

M. Myers J. (B.C. S.C.) [British Columbia]

FAM.IX.2.a

Subject Title: Family law

Classification Number: IX.2.a

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

Plaintiff mother JW and defendant father PW separated in 2002 after 11 years of marriage -- Parties had three sons, ranging in age from nine to fourteen -- JW lived with sons in town of S; in 2005, PW moved to town of K, which was 11 to 12 hour drive away from town of S -- JW brought action for sole custody and guardianship, child support and imputed income; PW counterclaimed for joint custody and guardianship and for reduction of child support arrears -- Action allowed in part; counterclaim allowed in part -- JW was awarded sole custody and guardianship -- Due to parties' inability to communicate, court did not impose orders for joint custody or joint guardianship -- Status quo as to primary residence was to be preserved; status quo referred not only to geographic location, but also to relationships and social contacts -- It was in best

interests of children that JW have sole custody and sole guardianship -- It was PW's decision to move to town of K, which escalated conflict over his access to children -- Court was not prepared to make order that forced any of children to travel to town of K to see PW -- It was in best interests of all three children, given their ages, their close relationships with each other, and their own wishes, that their desires be respected -- JW's consent was not required for visits with two younger children near town of S; oldest child could decide for himself whether he wished to participate in any visits with PW -- PW was ordered to provide one month's notice of visit to town of S and two months' notice if he wished to have children visit him in town of K.

Windle v. Windle

[\(2010\), 2010 CarswellBC 27, 2010 BCSC](#)

[18](#), MacKenzie J. (B.C. S.C.) [British Columbia]

FAM.IX.2.g.i

Subject Title: Family law

Classification Number: IX.2.g.i

Custody and access -- Factors to be considered in custody award -- Conduct of parent -- General principles

Plaintiff mother H and defendant father S began cohabiting in January 2005 -- Their son was born in May 2007 and was approximately 2.5 years old when parties separated in 2009 -- H brought petition for sole custody and guardianship and for child support -- Court accepted H's evidence that she was physically abused by S and that his conduct toward her was verbally and emotionally abusive -- H and S both gave evidence of S's good relationship with child -- Court-ordered custody and access report recommended joint custody and guardianship -- Petition granted -- Court accepted H's submissions that she should have sole custody and guardianship of child, subject to advising S of major decisions about child -- While S's abusive treatment of H might not have affected his relationship with their child, it certainly affected parties' ability to communicate effectively with respect to child's care arrangements -- In making that recommendation, report did not address issue of parties' ability to communicate effectively.

Haigh v. Spence

[\(2010\), 2010 BCSC 270, 2010 CarswellBC 474](#), E.

M. Myers J. (B.C. S.C.) [British Columbia]

FAM.IX.5.a.ii

Subject Title: Family law

Classification Number: IX.5.a.ii

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

Parties had three children R, T and V -- Shortly after separation mother repeatedly thwarted father's access, including obtaining ex parte restraining order in April 2005 and involvement of Ministry resulting in apprehension of children -- Mother repeatedly defied prior court orders relating to father's access -- Pursuant to trial of matter in 2009, mother had interim custody and guardianship, with extensive access to father, including seven weeks in summer and alternating week-ends and mother was strongly urged to obtain

counselling -- Subsequently, mother continued to frustrate father's access and mother alleged that children were unwilling to visit father and that father was abusive and violent -- R was 17 years of age, T was 15 years of age and V was 12 years of age -- Father sought primary residence of children -- Father brought application for variation of custody and miscellaneous relief -- Application granted in part; custody varied -- Parties were awarded joint custody and guardianship of R and T who were entitled to choose place of primary residence, with access to non-resident parent on alternating weekends -- Father was awarded sole custody and guardianship of V with V's primary residence with father, effective immediately, access to mother every second weekend, with access structured to result in children spending weekends together -- Application for miscellaneous relief was properly adjourned pending father giving proper notice -- Best interests of all three children were served by having relationship with both parents and abundant evidence compelled conclusion that if children remained with mother, mother would completely sabotage children's relationship with father -- Mother was incapable of recognizing harm caused to children by mother's behaviour and mother's refusal to obtain counselling or comply with court orders related to access further supported necessity of varying custody -- Mother's allegations regarding father's behaviour were not supported.

G. (D.L.) v. G. (R.A.)

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

[BCSC 244, 2010 CarswellBC 437](#), Beames J. (B.C. S.C.) [British Columbia]

FAM.IX.5.a.ii

Subject Title: Family law

Classification Number: IX.5.a.ii

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

Mother and father were given joint custody with primary residence of child with father, though mother did have parenting time in excess of 40 per cent -- Mother was to pay support based on income of \$43,755 -- Mother did not appeal support award -- Hours of access were to be changed when child entered kindergarten in September 2009, and judge ordered conference calls to take place in May 2009 to sort out new schedule -- Conference calls took place and new custody arrangement was agreed upon -- Both mother and father made application to be designated as parent with primary residence of child and sought variation of support, and trial judge said father was to remain parent with primary residence -- Trial judge did not grant variation of support, as there was no material change in circumstance as child was with mother more than 40 per cent of time under both arrangements -- Mother appealed judgment -- Appeal dismissed -- This appeal was, in reality, attempt to appeal original order, as only trivial differences were used to justify application -- Position that any change, no matter how trivial, would trigger review was impossible interpretation -- With only trivial differences demonstrated, judge would have been revisiting precise issue previously addressed in discretionary way by colleague.

Rubidge v. Rubidge

[\(2010\), 2010 SKCA 80, 2010](#)

[CarswellSask 355](#), Gerwing J.A., Jackson J.A., Ottenbreit J.A. (Sask. C.A.); affirming [\(2008\), 323 Sask. R. 268, 2008 CarswellSask 557, 2008 SKQB 305](#), D.B. Konkin J. (Sask. Q.B.) [Saskatchewan]

FAM.IX.7

Subject Title: Family law

Classification Number: IX.7

Custody and access -- Joint guardianship

Father was denied joint guardianship as his abuse of mother affected parties' ability to communicate effectively with respect to child's care arrangements.

Haigh v. Spence

[\(2010\), 2010 BCSC 270, 2010 CarswellBC 474](#), E.

M. Myers J. (B.C. S.C.) [British Columbia]

FAM.IX.8.a.iv

Subject Title: Family law

Classification Number: IX.8.a.iv

Custody and access -- Access -- Factors to be considered -- Conduct of parent

Plaintiff mother H and defendant father S began cohabiting in January 2005 -- Their son was born in May 2007 and was approximately 2.5 years old when parties separated in 2009 -- H brought petition for sole custody and guardianship and for child support -- Court accepted H's evidence that she was physically abused by S and that his conduct toward her was verbally and emotionally abusive -- H and S both gave evidence of S's good relationship with child -- Petition granted -- Court accepted H's submissions that she should have sole custody and guardianship of child, subject to advising S of major decisions about child -- H agreed to S's request for overnight access every second week but said that overnight portion only should be when S's parents were present, because of her concern with respect to S's anger issues -- Court acceded to that provision remaining in effect until S had completed anger management course ordered in his recognizance -- Once S provided proof of completion to H, unsupervised overnight access could begin.

Haigh v. Spence

[\(2010\), 2010 BCSC 270, 2010 CarswellBC 474](#), E.

M. Myers J. (B.C. S.C.) [British Columbia]

FAM.IX.8.c.i

Subject Title: Family law

Classification Number: IX.8.c.i

Custody and access -- Access -- Variation of order -- General principles

Mother and father were given joint custody with primary residence of child with father, though mother did have parenting time in excess of 40 per cent -- Mother was to pay support based on income of \$43,755 -- Mother did not appeal support award -- Hours of access were to be changed when child entered kindergarten in September 2009, and judge ordered conference calls to take place in May 2009 to sort out new schedule -- Conference calls took place and new custody arrangement was agreed upon -- Both mother and father made application to be designated as parent with primary residence of child and sought variation of support,

and trial judge said father was to remain parent with primary residence -- Trial judge did not grant variation of support, as there was no material change in circumstance as child was with mother more than 40 per cent of time under both arrangements -- Mother appealed judgment -- Appeal dismissed -- This appeal was, in reality, attempt to appeal original order, as only trivial differences were used to justify application -- Position that any change, no matter how trivial, would trigger review was impossible interpretation -- With only trivial differences demonstrated, judge would have been revisiting precise issue previously addressed in discretionary way by colleague.

Rubidge v. Rubidge

[\(2010\)](#), [2010 SKCA 80](#), [2010](#)

[CarswellSask 355](#), Gerwing J.A., Jackson J.A., Ottenbreit J.A. (Sask. C.A.); affirming [\(2008\)](#), [323 Sask. R. 268](#), [2008 CarswellSask 557](#), [2008 SKQB 305](#), D.B. Konkin J. (Sask. Q.B.) [Saskatchewan]

FAM.IX.8.e

Subject Title: Family law

Classification Number: IX.8.e

Custody and access -- Access -- Miscellaneous issues

Relative cultural weight of holidays considered.

Hayes v. Hayes

[\(2010\)](#), [2010 ABQB 158](#), [2010 CarswellAlta 457](#), J.B.

Veit J. (Alta. Q.B.) [Alberta]

FAM.IX.12.b

Subject Title: Family law

Classification Number: IX.12.b

Custody and access -- Appeals -- Powers and duties of court

Restoration of appeal -- Father and mother attended chambers to determine variation of custody, access and communications issues with respect to parties' children -- Chambers judge ordered that father shall have access, that he was entitled to call and e-mail children, and that he should receive children's report cards -- Father brought motion that mother be held in contempt of court for interfering with his access to and communication with children and asked for specific relief -- Father made further notice of motion seeking additional relief regarding funds seized from his bank accounts and named additional parties -- Ministers of Justice and Attorney Generals of Alberta and Canada, Director of Maintenance Enforcement, and mother's parents were additional parties added -- Motions were heard by Court of Appeal and court directed that Special Family Law Chambers heard motion -- Father was partially successful in Chambers, but appealed whole of order -- Father attempted to file evidence on appeal, but by time he did, appeal was struck -- Father made application to restore appeal -- Application allowed in part -- Appeal was restored against mother with respect to one issue only and against Director of Maintenance and Enforcement with respect to one issue only -- Father intended to proceed with appeal and took steps to do so -- Delay was not so great as to prejudice respondents -- However, much of appeal did not have merit -- Appeal was restored solely on

issues regarding contempt against Director of Maintenance Enforcement and mother, as there was not enough evidence on record to determine whether appeal on those issues had merit.

Dahlseide v. Dahlseide

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

[220, 2010 CarswellAlta 1218](#), Patricia Rowbotham J.A. (Alta. C.A.) [Alberta]

FAM.IX.14

Subject Title: Family law

Classification Number: IX.14

Custody and access -- Miscellaneous issues

Discretionary exceptions to return internationally abducted child -- Petitioner father, M, was Honduran and respondent mother, P was Canadian -- Their child was born in Honduras in 2005 and was left there in her grandparents' care while her parents attempted to settle in Canada -- By spring of 2008, M's ability to remain in Canada was still uncertain, thus he no longer wanted to bring his child to Canada -- P claimed that M signed child's Canadian passport application; M denied doing so -- Without notice to M, P went to Honduras and removed child to Canada -- P commenced divorce proceedings in Canada and sought custody and support -- M brought application to have child returned to Honduras -- Application granted -- Both Canada and Honduras were signatories to Hague Convention on the Civil Aspects of International Child Abduction, 1980 -- Article 3 of Convention states that removal is wrongful when it is in breach of "rights of custody" held either jointly or alone under law of state where child is habitually resident at time of removal -- Pursuant to Article 13(b) of Convention, court is not bound to return child where there is grave risk that return of child would expose her to physical or psychological harm or otherwise place child in intolerable situation -- P did not meet burden of proof placed on her by Convention and in particular did not show on balance of probabilities that there was grave risk of harm to child if she was returned to Honduras.

Medina v. Pallett

[\(2010\), 2010 BCSC 259, 2010](#)

[CarswellBC 449](#), F.W. Cole J. (B.C. S.C.) [British Columbia]

FAM.XV.13

Subject Title: Family law

Classification Number: XV.13

Children in need of protection -- Effect of Charter of Rights and Freedoms

Article 20 of Hague Convention on the Civil Aspects of International Child Abduction, 1980 allows court to refuse to order return of child if it would not be permitted by fundamental principles of Canada relating to protection of human rights and fundamental freedoms.

Medina v. Pallett

[\(2010\), 2010 BCSC 259, 2010](#)

[CarswellBC 449](#), F.W. Cole J. (B.C. S.C.) [British Columbia]

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