



eLaw - Family Law Update

March 2013 - No. 62

ISSN 1916-3924

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Legislation Excluding De Facto Spouses Upheld: SCC

Any change to Quebec's spousal support and property division regime will have to be legislated following the Supreme Court's split decision in [Quebec \(Attorney General\) v. A](#), 2013 SCC 5. The court upheld the constitutionality of the *Civil Code* provisions which exclude de facto spouses from the support and property protections given to spouses in formal unions. For commentary on the decision and a review of how other provinces treat common law relationships see:

- [Quebec \(Attorney General\) v A-Much ado about saying "I do"](#), The Court;
- [SCC muddies constitutional waters with common-law union ruling](#), *Lawyers Weekly*;
- [SCC: The Rights and Obligations of Common-Law Spouses in Quebec](#), *Slaw*.

Delayed Support Claim to Proceed: MBCA

In [Shachtay v. Shachtay](#), 2013 MBCA 17, the Court of Appeal upheld the dismissal of a motion for summary judgment of a husband's claim for spousal support more than 15 years after both parties renounced any right to claim spousal support in a separation agreement. The court found no fault with the judge's conclusions that the renunciation clause in the agreement was ambiguous and that there was sufficient evidence of a "material change" to necessitate an analysis under *Miglin* or *Bracklow*.

Court "Sends a Message" About Delay Tactics: MBQB

In [Price v. Laflamme](#), 2013 MBQB 25 the court ordered costs of \$83,444.34 against a mother who, having gained the procedural advantage of restricted access through an *ex parte* process, then did everything she could to discourage an early resolution of the case. The court rejected the mother's argument that, notwithstanding the father's success in ending the supervised access, costs should be shared since she had relied on an expert's recommendations in seeking the restricted access. On this point the court found:

While this court may be receptive to the proposition that a party relying on the recommendations of an independent expert's report might not always be liable for costs if unsuccessful at trial, the manner in which the petitioner/mother instructed the conduct of these proceedings circumvents the persuasiveness of that proposition in this case. (para. 23)

Partition and Sale Ordered to End Deadlock: MBQB

The court severed the issue of partition and sale from other issues dividing the parties in [Lotz v. Lotz](#), 2013 MBQB 24, finding that "there comes a point in time where joint owners of property should be relieved of some of the disabilities associated with joint ownership." In this high conflict case the parties had been deadlocked for two years on the issue of who should have the marital home, and had yet to start a family property accounting. The wife, who was responsible for much of the delay, was unable to make out a case of inconvenience or demonstrate that the husband's failure to make a few payments on time meant he did not come to court with clean hands. The court granted the husband's application for partition and sale.

Egregious Conduct Undeserving of Court's Commiseration: MBQB

The court had no sympathy for a mother who evaded child support for 8 years and then argued that the court should find fault with the father's decision not to chase her in [Elias v. Vermette](#), 2013 MBQB 10. The court rejected her novel attempt to analogize the husband's motion to vary child support to a situation involving a claim to retroactive child support, and ordered her to pay support from 2004.

Major Changes to BC's Family Law Regime

B.C.'s new [Family Law Act](#) comes into force March 18, 2013, replacing the thirty-year-old [Family Relations Act](#). The new regime is summarized on the Ministry of Justice [website](#), in this Legal Services Society [guide](#), and in several posts on JP Boyd's [blog](#) and [resource page](#). The new act will likely affect future *Wills Variation Act* claims as well, as described in this [Rule of Law post](#).

Report on CBA Family Law Section Survey on Tax Issues

The results of the CBA's National Family Law section survey on tax issues for family law practitioners are summarized in this [letter to the Canada Revenue Agency](#) and the attached report. The ultimate objective of the project is for the CBA and the CRA to collaborate in developing an online toolkit for lawyers to help them navigate the tax hurdles they encounter in representing family law clients.

Recommended Reading

- [Millionaire challenging record spousal support ruling](#) - this *Lawyers Weekly* article concerns the surprising ruling in [McCain v. McCain](#), 2012 ONSC 7344, in which the court set aside a provision of a marriage agreement waiving spousal support and awarded the wife a record \$175,000 per month interim support. Needless to say, the husband is appealing.
- [Judge lectures bar on proportionality duties in family law](#) - this post from the Legal Feeds blog discusses the judge's comments on out-of-control costs in [Principato v. Principato](#), 2013 ONSC 420.
- [The price of separation: Divorce related legal complaints and their causes](#) - this UK Legal Ombudsman report on why divorce leads to higher levels of dissatisfaction and more complaints than other areas of legal service concludes that lawyers need to work harder to reduce complaints about costs. The authors say giving proper estimates, updating clients regularly on costs, and putting client interests first are all vital to avoiding complaints. The report also includes a link to a previously published [guide on good costs service](#), which specifies the key components of good customer service at all stages of a file.
- [Inside the mind of an expert](#) -- this *Lawyers Weekly* article by Nicholas Bala explores the use of jointly-retained single experts in family matters.
- [Common law partners shouldn't have to testify against each other: judge](#) - this *Law Times* article discusses a criminal law [decision on common-law spousal competence](#), in which the judge found that the common-law partner of an accused was "neither a competent nor compellable witness for the prosecution."
- [Separation agreement scams](#) - this AvoidAClaim post describes the latest in a series of family law-related fraud scams circulating in Ontario

and the United States.

Advanced Mediation Workshop: FMM

[Family Mediation Manitoba Inc.](#) is presenting a two day intensive workshop on [Mediation and the Modern Family: Advanced Mediation Approaches](#). Presenter Allan Barsky, mediator and professor of social work at Florida Atlantic University, will discuss how evolving family structures, norms, and values have affected family mediation. The program takes place June 13, and 14, 2013.

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