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Family Law Section

2012 FAMILY LAW DECISIONS - ONTARIO COURT OF APPEAL

By Ryan Kniznik

The Ontario Court of Appeal released many informative decisions within the context of family law in 2012. Some of the topics include: Torts, Security for Costs, Jurisdiction, Routes of Appeal and Joint Tenancy vs. Tenancy in Common. Attached please find prepared two tables that list the family law decisions emanating from the Court of Appeal. The first table provides brief headings pertaining to the subject matter of each decision, while the second table provides an outline of important points that were extracted from instructive decisions. We hope you find these tables helpful.

* Indicates an Instructive Decision

Table 1: Brief Identification of Subject Matter

Date	Decision	Citation	Subject Matter
April 25, 2012	<i>B.V. v. P.V.</i>	2012 ONCA 262	Custody, access and spousal support
November 27, 2012	<i>Carrigan v. Carrigan Estate</i>	2012 ONCA 823	Support under the SLRA
October 31, 2012	<i>Carrigan v. Carrigan Estate*</i>	2012 ONCA 736	Pension Death Benefit – Deferred Pension – Competing Claims between Common Law Spouse and Legally Married but Separated Spouse; Pension Benefits Act
December 28, 2012	<i>Children and Family Services for York Region v. M.H.</i>	2012 ONCA 912	Jurisdiction for Appeal
January 11, 2012	<i>Children's Aid Society of Haldimand and Norfolk v. L.A.P.</i>	2012 ONCA 15	Crown wardship
September 7, 2012	<i>Children's Aid Society of Ottawa v. S.N.-D.*</i>	2012 ONCA 590	Extension of Time to File Leave to Appeal Application; Children Crown wards and placed for Adoption

November 19, 2012	<i>Children's Aid Society of Toronto v. G.S.</i>	2012 ONCA 783	Crown ward
February 27, 2012	<i>Children's Aid Society of Toronto v. N.A.</i>	2012 ONCA 128	Crown wardship
December 19, 2012	<i>Children's Aid Society of Toronto v. V. L.</i>	2012 ONCA 890	Crown wardship – adoption, no access to parents; Fresh Evidence; Test for Bias
July 19, 2012	<i>Cinar v. Cinar</i>	2012 ONCA 507	Spousal Support
May 18, 2012	<i>Cook v. Cook</i>	2012 ONCA 333	Striking pleadings
July 26, 2012	<i>Crosbie v. Crosbie</i>	2012 ONCA 516	Child Support – Arrears, Retroactive Increase, On going Support, Section 7 Expenses
July 6, 2012	<i>Davydov v. Kondrasheva</i>	2012 ONCA 488	Contempt and Non-Dissipation Order
August 10, 2012	<i>de Somer v. Martin</i>	2012 ONCA 535	Child Support – Jurisdiction Issue - Competing Orders between Ontario and France
December 21, 2012	<i>de Somer v. Martin</i>	2012 ONCA 908	Costs
December 4, 2012	<i>Dembeck v. Wright*</i>	2012 ONCA 852	Severance Payments; Fresh Evidence; <u>Meaning of Property under the FLA</u>
December 14, 2012	<i>Denis v. Denis</i>	2012 ONCA 886	Retroactive Child Support
May 31, 2012	<i>Dovigi v. Razi*</i>	2012 ONCA 361	Jurisdiction for Custody and Access Application; Parens Patriae; Competing Affidavits
July 4, 2012	<i>Duhot v. Duhot</i>	2012 ONCA 474	Determination of whether Order was Temporary or Final
September 27, 2012	<i>Edgar v. Edgar</i>	2012 ONCA 646	Imputation of Income; Spousal Support – Periodic Payments – Tax Implications
December 20, 2012	<i>Fair v. Fair</i>	2012 ONCA 900	Adjournment of Trial; Imputation of Income; Section 7 Expenses
May 14, 2012	<i>Ferris v. Ferris</i>	2012 ONCA 320	Support Variation Application
October 19, 2012	<i>French v. Riley-French</i>	2012 ONCA 702	Custody and Access – Adjournment of

			Trial; Calling Psychiatrist at Trial; Restraining Order; Supervised Access
April 17, 2012	<i>Gacanin v. Macedo</i>	2012 ONCA 246	Necessary and proper parties for matrimonial litigation
October 29, 2012	<i>Grenier v. Grenier</i>	2012 ONCA 732	Strike Pleadings; Uncontested Trial
October 24, 2012	<i>Grosman v. Cookson</i>	2012 ONCA 710	Costs
August 24, 2012	<i>Grosman v. Cookson*</i>	2012 ONCA 551	Variation of Spousal Support – Separation Agreement – Arbitration Provision – s. 35 of the FLA
February 22, 2012	<i>Hansen Estate v. Hansen*</i>	2012 ONCA 112	Thorough review of jurisprudence on Joint tenancy vs. Tenancy in common; “Course of dealing”; Severing a Joint tenancy
April 5, 2012	<i>Hawkins v. Huige</i>	2012 ONCA 219	Varying child support
June 29, 2012	<i>Husid v. Daviau</i>	2012 ONCA 469	Motion for Unsupervised and Overnight Access from August 19, 2012 to August 22, 2012
October 2, 2012	<i>Husid v. Daviau</i>	2012 ONCA 655	Custody – Jurisdiction Issues – Ontario or Peru - Costs
January 18, 2012	<i>Jones v. Tsigé*</i>	2012 ONCA 32	Invasion of privacy; New Tort: “Intrusion upon Seclusion”
January 23, 2012	<i>Makarchuk v. Makarchuk</i>	2012 ONCA 42	Separation Agreement; Gift in a will
October 3, 2012	<i>Marchildon v. Beitz*</i>	2012 ONCA 668	Family Law Appeal – Court of Appeal or Divisional Court
June 11, 2012	<i>Martynko v. Martynko</i>	2012 ONCA 395	Time Limitations for Net Family Property and Support
June 21, 2012	<i>Mohamed v. Salad</i>	2012 ONCA 439	Spousal Support and Entitlement to an Interest in the Home Registered in one Spouse’s Name
May 14, 2012	<i>N.R. v. Children's Aid Society of Toronto</i>	2012 ONCA 315	Qualified Privilege

October 26, 2012	<i>Ogunlesi v. Ogunlesi</i>	2012 ONCA 723	Jurisdiction
October 25, 2012	<i>Patton-Casse v. Casse</i>	2012 ONCA 709	Arbitration Award – Child and Spousal Support
December 20, 2012	<i>Perino v. Perino</i>	2012 ONCA 899	Spousal Support – Imputation of Income – Parental Alienation
November 23, 2012	<i>Perron v. Perron</i>	2012 ONCA 811	Custody and Access; Children’s Language of Instruction; Change in Childrens’ School
November 26, 2012	<i>Roscoe v. Roscoe</i>	2012 ONCA 817	Child Support – Lump Sum Award
October 17, 2012	<i>Ruffolo v. David</i>	2012 ONCA 698	Equalization – Buy Out Order - s.5(6) of the FLA; Retroactive Spousal Support
April 24, 2012	<i>Ruffudeen-Coutts v. Coutts</i>	2012 ONCA 263	Costs, no costs ordered.
February 1, 2012	<i>Ruffudeen-Coutts v. Coutts*</i>	2012 ONCA 65	Custody and Access; Test for Leave to Appeal a Consent Order; Test for Leave to Appeal a Consent Order that involves children
February 15, 2012	<i>Salem v. Kourany</i>	2012 ONCA 102	Communication between father and daughter
April 17, 2012	<i>Schwartz v. Schwartz</i>	2012 ONCA 239	Resulting and Constructive trust of matrimonial home.
October 12, 2012	<i>Selznick v. Selznick</i>	2012 ONCA 686	Child Support – Income Determination, Section 7 Expenses
June 19, 2012	<i>Spencer v. Riesberry*</i>	2012 ONCA 418	Trust Agreements and Exclusions from Property under the FLA; Net Family Property and Analysis of Matrimonial Home Definition
November 28, 2012	<i>Symmons v. Symmons</i>	2012 ONCA 831	Costs
November 6, 2012	<i>Symmons v. Symmons*</i>	2012 ONCA 747	Equalization Payment (Unequal Division); Pensions; Unjust Enrichment; Costs

October 15, 2012	<i>Syrette v. Syrette</i>	2012 ONCA 693	Property – Indian Reserve
February 6, 2012	<i>Szpakowsky v. Kramar</i> *[not a family law case]	2012 ONCA 77	Security for costs
December 7, 2012	<i>Titova v. Titov*</i>	2012 ONCA 864	Child Support – Retroactive Support, Arrears, Section 7 Expenses; Custody; Life Insurance; <u>Unrequested Substantive Orders</u>
December 11, 2012	<i>Townshend v. Townshend*</i>	2012 ONCA 868	NFP - Calculation of Equalization Payment – Date of Marriage Property Deductions – Joint Bank Accounts; Leave to Appeal Costs Award
June 28, 2012	<i>Trebilcock v. Trebilcock</i>	2012 ONCA 452	Lump sum child support
November 15, 2012	<i>Trembley v. Daley</i>	2012 ONCA 780	Child Support – Motion to Change; Costs
June 29, 2012	<i>Ward v. Ward*</i>	2012 ONCA 462	Unequal Division of NFP s.5(6) of FLA
April 30, 2012	<i>Wodzynski v. Wodzynski</i>	2012 ONCA 272	Separation Agreement
October 1, 2012	<i>Yar v. Yar</i>	2012 ONCA 658	New Trial Required

Table 2: Expanded Points on Subject Matter

Date	Decision	Citation	Subject Matter
April 25, 2012	<i>B.V. v. P.V.</i>	2012 ONCA 262	<p>Custody, access and spousal support</p> <p>Trial judge awarded mother sole custody of two children with minimal access to father, and ordered father to pay child and spousal support.</p> <p>The Court of Appeal increased the father’s access to 35% of the time. Father’s appeal for spousal support dismissed.</p>
November 27, 2012	<i>Carrigan v. Carrigan Estate</i>	2012 ONCA 823	<p>Support under the SLRA</p> <p>Determination to be made by</p>

October 31, 2012	<i>Carrigan v. Carrigan Estate*</i>	2012 ONCA 736	<p>the Superior Court.</p> <p>Pension Death Benefit – Deferred Pension – Competing Claims between Common Law Spouse and Legally Married but Separated Spouse; Pension Benefits Act</p> <p>Member of the pension plan died and was survived by his common law spouse with whom he was residing, and a legally married spouse from whom he was separated but was designated as his beneficiary of the plan.</p> <p>Court of Appeal held the legally married spouse and her two daughters are entitled to pre-retirement death benefit as designated beneficiaries.</p> <p>The Court stated:</p> <p><i>“As I read it, the PBA does not presume that property division following marriage breakdown is completed until divorce. A member with a legally married spouse, but living apart from that spouse, may arrange his or her own affairs by designating a beneficiary to receive the pension under s.48(6).”</i></p> <p><i>“...it is not possible to read s.48(3) as applying to a common law spouse, as, if the member of the pension plan is living separate and apart from an individual with whom he is not married, that individual is not a ‘spouse’ under s.1 of the PBA.”</i></p> <p><i>“...s. 48 must be interpreted to mean that if, at the time of death, the pension benefit holder had a legally married</i></p>
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			<i>spouse from whom he or she was living separate and apart, a designation that had been made under s. 48(6) would apply regardless of the fact that he was living with a person who fell within one of the two definitions of spouse.</i>
December 28, 2012	<i>Children and Family Services for York Region v. M.H.</i>	2012 ONCA 912	<p>Jurisdiction for Appeal</p> <p>Moving party appealed two orders from the Superior Court of Justice.</p> <p>The orders were made under Part III of the <i>CFSA</i>, and therefore the appeal lies to the Divisional Court.</p> <p>Both of the orders the moving party wished to appeal were interlocutory in nature. The Court of Appeal stated:</p> <p><i>“This court has no jurisdiction to hear an appeal from an interlocutory order of a Superior Court judge.”</i></p>
January 11, 2012	<i>Children’s Aid Society of Haldimand and Norfolk v. L.A.P.</i>	2012 ONCA 15	Crown wardship
September 7, 2012	<i>Children’s Aid Society of Ottawa v. S.N.-D.*</i>	2012 ONCA 590	<p>Motion Seeking Extension of Time to File Leave to Appeal Application; Children Crown wards and placed for Adoption</p> <p>The Court of Appeal dismissed the Motion, however made some important statements:</p> <p><i>“The CAS submission based on s.69(5) [adoption provision] of the CFSA consists of a single sentence. It is a bald assertion that this court lacks jurisdiction to grant an extension of time. There is no analysis, legislative history or anything else to support the contention that s.69(5) of the CFSA applies to proceedings</i></p>

			<p><i>in this court. Whether s.69(5) applies to proceedings in this court is an extremely significant point of law, one that I decline to decide in the absence of full and proper argument.”</i></p> <p><i>“I recognize that the children’s best interests must be the paramount consideration and that the legislation creates very strict, tight timelines with that goal in mind. At the same time, the legislation does not oust all notions of fairness.”</i></p>
November 19, 2012	<i>Children's Aid Society of Toronto v. G.S.</i>	2012 ONCA 783	<p>Crown ward</p> <p>Court of Appeal ordered a new trial.</p> <p>Trial judge made child a Crown ward. The decision was appealed to the Superior Court, which upheld the trial judge’s decision.</p> <p>Court of Appeal held that Superior Court erred in failing to hold that the trial judge erred in law by failing to consider the bond between the child and his father, the risk that the bond would be diminished or terminated as a result of the Crown wardship order and the harm to the child that could follow.</p> <p>The Court of Appeal stated:</p> <p><i>“While the risk that the child may suffer harm through being allowed to remain in the appellant’s care was also relevant, it was an error for the trial judge to consider that risk alone.”</i></p> <p><i>“...the trial judge never identified the precise degree of</i></p>

			<p><i>risk posed to M.S. [the child] by R.O. [the mother] if M.S. were allowed to remain in the appellant's [father] care."</i></p> <p>Crown wardship order was silent on access. This was an error.</p>
February 27, 2012	<i>Children's Aid Society of Toronto v. N.A.</i>	2012 ONCA 128	Trial judge Ordered two children to be Crown wards , without access to parents, and placed for adoption. Court of Appeal upheld trial judge's decision.
December 19, 2012	<i>Children's Aid Society of Toronto v. V. L.</i>	2012 ONCA 890	<p>Crown wardship – adoption, no access to parents; Fresh Evidence; Test for Bias</p> <p>A motion for summary judgment was scheduled, and the parents abducted the child and were on the run until the police found them.</p> <p>The child was placed under Crown wardship, without access, for adoption to her aunt and uncle.</p> <p>The decision to place the child under Crown wardship was appealed to the Superior Court of Justice. The decision was upheld.</p> <p>The Court of Appeal dismissed the appeal.</p>
July 19, 2012	<i>Cinar v. Cinar</i>	2012 ONCA 507	Spousal Support
May 18, 2012	<i>Cook v. Cook</i>	2012 ONCA 333	Striking pleadings
July 26, 2012	<i>Crosbie v. Crosbie</i>	2012 ONCA 516	<p>Child Support – Arrears, Retroactive Increase, On going Support, Section 7 Expenses</p> <p>The Court of Appeal amended the interest on the support arrears.</p>
July 6, 2012	<i>Davydov v. Kondrasheva</i>	2012 ONCA 488	<p>Contempt and Non-Dissipation Order</p> <p>The motion judge found Mr. Davydov in contempt of a non-</p>

			dissipation order. The Court of Appeal set aside the motion judge's contempt finding, however left the possibility of a finding of contempt open.
August 10, 2012	<i>de Somer v. Martin</i>	2012 ONCA 535	Child Support – Jurisdiction Issue - Competing Orders between Ontario and France Ontario chosen as the proper jurisdiction.
December 21, 2012	<i>de Somer v. Martin</i>	2012 ONCA 908	Costs Costs award treated as a “support order” and enforced via the <i>Family Responsibility and Support Arrears Enforcement Act</i>
December 4, 2012	<i>Dembeck v. Wright*</i>	2012 ONCA 852	Severance Payments; Fresh Evidence; <u>Meaning of Property under the FLA</u> The main question is this: under what circumstances, if any, does a spouse “own” on the date of marriage an entitlement to a severance payment that he or she later receives? The husband’s employment was terminated and he received a termination package of \$190,000 before tax. \$35,241.26 of the \$190,000 was considered an <i>ESA</i> payment. The parties separated three days after the husband’s employment was terminated. The Court below permitted the husband to deduct the portion of his <i>ESA</i> as a date of marriage asset. The Court of Appeal analyzed under what circumstances, if any, a spouse’s potential entitlement to <i>Employment Standards Act</i> severance that has accumulated before marriage should be categorized

		<p>as property he or she owned on the date of marriage.</p> <p>Court of Appeal provides a detailed analysis on the meaning of property.</p> <p>With respect to severance packages, the Court of Appeal stated:</p> <p><i>“...Ontario courts have consistently held that entitlement to severance pay is only property once it has crystallized.”</i></p> <p><i>“...the FLA, in defining property does not distinguish between date of marriage and date of separation. It follows that, for a severance package to be considered property as of either of the two dates that form the basis of any equalization calculation, there must be a right or entitlement to it at that date.”</i></p> <p>The Court of Appeal held that the trial judge erred in concluding that the respondent’s accumulated <i>ESA</i> severance as of the date of marriage, was property owned by him at that point in time.</p> <p>The Court of Appeal undertakes an interesting analysis on the inability to retroactively reclassify property. The Court held:</p> <p><i>“There is nothing in this wording [s.4(1) of the FLA] that gives the court jurisdiction to reclassify an interest as circumstances change.”</i></p> <p>Ultimately the Court of Appeal allowed the appeal in part and</p>
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			varied the judgment so that the equalization payment to be made by the husband to the wife reflected the \$35,241.26 (ESA payment) increase in his NFP.
December 14, 2012	<i>Denis v. Denis</i>	2012 ONCA 886	Retroactive Child Support
May 31, 2012	<i>Dovigi v. Razi*</i>	2012 ONCA 361	<p>Jurisdiction for Custody and Access Application; Parens Patriae; Competing Affidavits</p> <p>Woman went to California for a “visit” while pregnant. Child born in California and had never been in Ontario. Motion judge held that Ontario was the proper jurisdiction for the application by invoking <i>parens patriae</i>. The Court of Appeal set aside the motion judge’s order.</p>
July 4, 2012	<i>Duhot v. Duhot</i>	2012 ONCA 474	Determination of whether Order was Temporary or Final
September 27, 2012	<i>Edgar v. Edgar</i>	2012 ONCA 646	<p>Imputation of Income; Spousal Support – Periodic Payments – Tax Implications</p> <p>The parties separated in October 2007. Subsequent to separation, the husband took a leave of absence. He did not apply for any jobs since the date of separation. Husband provided letter from doctor stating he could not work due to anxiety and depression. The trial judge imputed an income of \$30,000 per year to the husband from August 2009 forward. The trial judge did not impute income for 2008.</p> <p>The Court of Appeal imputed an income of \$30,000 to the husband from February 1, 2008 to August 1, 2009. The husband had available to him LTD, sick pay, CPP benefits, ODSP, EI. He did not use any of the available sources of income, however he did draw</p>

			an income from his RRSP.
December 20, 2012	<i>Fair v. Fair</i>	2012 ONCA 900	Adjournment of Trial; Imputation of Income; Section 7 Expenses Appeal dismissed.
May 14, 2012	<i>Ferris v. Ferris</i>	2012 ONCA 320	Support Variation Application
October 19, 2012	<i>French v. Riley-French</i>	2012 ONCA 702	Custody and Access – Adjournment of Trial; Calling Psychiatrist at Trial; Restraining Order; Supervised Access Appeal Dismissed.
April 17, 2012	<i>Gacanin v. Macedo</i>	2012 ONCA 246	Necessary and proper parties for matrimonial litigation
October 29, 2012	<i>Grenier v. Grenier</i>	2012 ONCA 732	Strike Pleadings; Uncontested Trial Appeal dismissed. Appellant failed to comply with disclosure since 2006. The Court Stated: <i>“The cases relied upon by the appellant concern custody and access and hence the best interests of the child and do not apply in this case.”</i>
October 24, 2012	<i>Grosman v. Cookson</i>	2012 ONCA 710	Costs
August 24, 2012	<i>Grosman v. Cookson*</i>	2012 ONCA 551	Variation of Spousal Support – Separation Agreement – Arbitration Provision – s. 35 of the FLA <i>“...s.35 of the FLA does not supersede the parties’ agreement in a domestic contract to arbitrate rather than litigate disputes about varying spousal support”</i>
February 22, 2012	<i>Hansen Estate v. Hansen*</i>	2012 ONCA 112	Thorough review of jurisprudence on Joint tenancy vs. Tenancy in common; “Course of dealing”; Severing a Joint

			<p>tenancy</p> <p>Married couple held title to matrimonial home as joint tenants. While parties were in the process of separating, the husband died. Prior to husband's death, he directed a new will to be drafted that left his estate to his children and not his wife. Court of Appeal held that joint tenancy was severed.</p>
April 5, 2012	<i>Hawkins v. Huige</i>	2012 ONCA 219	Appeal from an order varying child support on the basis of inadequate notice. Appeal dismissed.
June 29, 2012	<i>Husid v. Daviau</i>	2012 ONCA 469	<p>Motion for Unsupervised and Overnight Access from August 19, 2012 to August 22, 2012</p> <p>Motion dismissed. Court of Appeal held that it did not have jurisdiction on the motion. Also there was a risk that father will remove child from Ontario.</p>
October 2, 2012	<i>Husid v. Daviau</i>	2012 ONCA 655	<p>Custody – Jurisdiction Issues – Ontario or Peru - Costs</p> <p>Mother wrongfully removed child from Peru and father sought an order for daughter's return. Trial judge denied father's request. Claim for custody proceeded in Ontario.</p> <p>Father appealed trial judges decision, appeal dismissed.</p> <p>Costs - A trial judge has jurisdiction to award costs in a matter that involves the Convention.</p>
January 18, 2012	<i>Jones v. Tsige*</i>	2012 ONCA 32	Invasion of privacy; New Tort: "Intrusion upon Seclusion"
January 23, 2012	<i>Makarchuk v. Makarchuk</i>	2012 ONCA 42	Separation Agreement; Gift in a will
October 3, 2012	<i>Marchildon v. Beitz*</i>	2012 ONCA 668	Family Law Appeal – Court of Appeal or Divisional

			<p>Court</p> <p>Appeal is from an Order of the Family Court of the Superior Court of Justice made pursuant to s.38 of the <i>CLRA</i>. The appeal lies to the Divisional Court.</p>
June 11, 2012	<i>Martynko v. Martynko</i>	2012 ONCA 395	<p>Time Limitations for Net Family Property and Support</p> <p>The parties separated in 2002 and the wife brought her claims in 2008. Her claim fell outside of the six year limitation period under s.7(3) of the <i>Act</i> and the application judge would not extend the period pursuant to s.2(8) of the <i>Act</i>. The Court of Appeal upheld the application judge's decision.</p>
June 21, 2012	<i>Mohamed v. Salad</i>	2012 ONCA 439	<p>Spousal Support and Entitlement to an Interest in the Home Registered in one Spouse's Name</p> <p>The home was not a matrimonial home. Appellant not entitled to support. Appeal dismissed.</p>
May 14, 2012	<i>N.R. v. Children's Aid Society of Toronto</i>	2012 ONCA 315	<p>Qualified Privilege</p>
October 26, 2012	<i>Ogunlesi v. Ogunlesi</i>	2012 ONCA 723	<p>Jurisdiction</p> <p>Motion judge found that the parties were ordinarily resident in Ontario for at least one year prior to commencing proceedings pursuant to s.3(1) of the <i>DA</i>.</p> <p>Court of Appeal upheld motion judge's decision.</p>
October 25, 2012	<i>Patton-Casse v. Casse</i>	2012 ONCA 709	<p>Arbitration Award – Child and Spousal Support</p> <p>Appeal judge set aside retroactive award of child support because <i>D.B.S.</i> was not properly applied. Court of</p>

			Appeal upheld this decision. Discussion regarding tax implications of lump sum support payments.
December 20, 2012	<i>Perino v. Perino</i>	2012 ONCA 899	Spousal Support – Imputation of Income – Parental Alienation
November 23, 2012	<i>Perron v. Perron</i>	2012 ONCA 811	Custody and Access; Children’s Language of Instruction; Change in Childrens’ School
November 26, 2012	<i>Roscoe v. Roscoe</i>	2012 ONCA 817	Child Support – Lump Sum Award
October 17, 2012	<i>Ruffolo v. David</i>	2012 ONCA 698	Equalization – Buy Out Order - s.5(6) of the FLA; Retroactive Spousal Support Important point: <i>“Retroactive spousal support can be ordered prior to the date first claimed in legal proceedings where there is good reason for the delay: see Philip v. Philip, 2006 CarswellOnt 1591, para. 50.”</i> The Court of Appeal set off the equalization payment against the retroactive spousal support.
April 24, 2012	<i>Ruffudeen-Coutts v. Coutts</i>	2012 ONCA 263	Costs, no costs ordered. <i>“While Rule 24 has circumscribed the court’s discretion to award costs, there remains discretion to make no-costs awards.”</i>
February 1, 2012	<i>Ruffudeen-Coutts v. Coutts*</i>	2012 ONCA 65	Custody and Access; Test for Leave to Appeal a Consent Order; Test for Leave to Appeal a Consent Order that involves children Parties entered into consent Order for joint custody of their child and shared primary residence. Wife appealed on the basis that the judge’s

			treatment of her placed her under duress so that her consent was vitiated. Court of Appeal did not grant leave to Appeal the consent order.
February 15, 2012	<i>Salem v. Kourany</i>	2012 ONCA 102	<p>Communication between father and daughter</p> <p>Court Order held that daughter is to initiate any contact, and that father cannot initiate contact. Court of Appeal dismissed appeal. Court of Appeal made important statement: “<i>The judge was entitled to give the child’s [15 year old] expressed wishes considerable weight.</i>”</p>
April 17, 2012	<i>Schwartz v. Schwartz</i>	2012 ONCA 239	<p>Resulting and Constructive trust of matrimonial home.</p>
October 12, 2012	<i>Selznick v. Selznick</i>	2012 ONCA 686	<p>Child Support – Income Determination, Section 7 Expenses</p> <p>Income – Motion judge averaged appellant’s income for 3 years and attributed an additional \$60,000 for the purpose of calculating the s.7 expenses. Court of Appeal upheld this decision.</p> <p>Nanny Expense – Motion judge denied Nanny expense as a s.7 expense. Appellant appealed motion judge’s denial. Court of Appeal gave no effect to this ground of appeal.</p>
June 19, 2012	<i>Spencer v. Riesberry*</i>	2012 ONCA 418	<p>Trust Agreements and Exclusions from Property under the FLA; Net Family Property and Analysis of Matrimonial Home Definition</p> <p>The Court of Appeal stated: “<i>The respondent’s interest as</i></p>

			<p><i>a beneficiary of the SFRT is not an interest in the property within the meaning of s. 18(1) of the FLA.”</i></p> <p><i>“A trust is a form of property holding. It is not a legal entity or person. A trust does not hold title to property nor can it. It is the trustee who holds legal title to the trust property”.</i></p> <p><i>“There are two conditions in s. 18(1) that must be satisfied for a property to be a matrimonial home: (1) a person must have an interest in the property; and (2) at the time of separation, the property must be ordinarily occupied by the person and his or her spouse as their family residence. The trial judge recognized that the second condition had been met because the parties had used the property as their family residence. However, as has already been explained, he held that the first condition had not been met because the respondent’s interest is in the SFRT, not the property.</i></p>
November 28, 2012	<i>Symmons v. Symmons</i>	2012 ONCA 831	Costs
November 6, 2012	<i>Symmons v. Symmons*</i>	2012 ONCA 747	<p>Equalization Payment (Unequal Division); Pensions; Unjust Enrichment; Costs</p> <p>Court of Appeal dismissed the appeal.</p> <p>Interesting discussion on unjust enrichment with respect to pension. The wife argued that she should share in the increase in the husband’s pension prior to marriage, in other words during cohabitation.</p>

			<p>The wife argued that pursuant to <i>Kerr v. Baranow</i>, the parties experienced a joint family venture during cohabitation and prior to marriage.</p> <p>Important points:</p> <p><i>“While Mrs. Symmons’ claim to unjust enrichment is based on the cohabitation period, this court has held that a judge may consider the relative status of the parties at the end of a marriage in ascertaining the merits of an unjust enrichment claim relating to the pre-marital period: <i>Roseneck v. Gowling</i> (2002), 62 O.R. (3d) 789, at paras. 28-30.”</i></p> <p><i>“Even if the relationship exhibited some characteristics of a joint family venture, there is insufficient evidence that Mr. Symmons retained a disproportionate share of the assets accrued as the result of their joint efforts – namely, the pension”.</i></p> <p><i>“A final piece of evidence that suggests Mrs. Symmons has not been unjustly deprived in relation to the pension is the spousal support Mr. Symmons will pay out of his already equalized pension interest until May of 2021.”</i></p> <p>The trial judge rejected this argument and excluded the husband’s pension accrual during cohabitation and prior to marriage. The Court of Appeal declined to give effect to the Appellant’s unjust enrichment claim.</p>
October 15, 2012	<i>Syrette v. Syrette</i>	2012 ONCA 693	Property – Indian Reserve

			<p><i>"...neither this court nor the application judge in this case have authority to make any order concerning possession, ownership or disposition of property on a reserve that, like the property at issue here, is governed by the provisions of the Indian Act."</i></p>
February 6, 2012	<i>Szpakowsky v. Kramar</i> *[not a family law case]	2012 ONCA 77	<p>Security for costs</p> <p>Court of Appeal stated: <i>"Impecunious litigants are not entitled to proceed in such circumstances with impunity – causing their opponents to incur significant costs themselves – and without having to face the normal consequences of costs if they are unsuccessful."</i></p>
December 7, 2012	<i>Titova v. Titov*</i>	2012 ONCA 864	<p>Child Support – Retroactive Support, Arrears, Section 7 Expenses; Custody; Life Insurance; <u>Unrequested Substantive Orders</u></p> <p>With respect to s.7 expenses, the trial judge did not consider the majority of the relevant factors set out in s.7.</p> <p>Court of Appeal undergoes a discussion on the requirement of a judge to provide reasons for their decision.</p> <p>The trial judge did not provide adequate reasons for the s.7 expense award. The Court of Appeal held that the order for ongoing s.7 expenses could not stand.</p> <p>Good discussion on retroactive child support. Court of Appeal notes:</p> <p><i>"...the court should not normally order retroactive child support in the absence of a current child support</i></p>

			<p><i>entitlement. As explained at para. 89 of D.B.S.:</i></p> <p><i>...one who is over the age of majority and is not dependent, is not the type of person for whom Parliament envisioned child support orders being made...Child support is for the children of the marriage, not adults who used to have that status.”</i></p> <p>The Court of Appeal held that the retroactive support and retroactive s.7 expenses cannot stand.</p> <p>With respect to the portions of the trial judge’s order that neither party requested, the Court of Appeal held that this was an error of the trial judge.</p> <p>Section 7 expenses – Court of Appeal disallowed claims for school books and school registration, because they are covered by the basic support amount.</p>
December 11, 2012	<i>Townshend v. Townshend*</i>	2012 ONCA 868	<p>NFP - Calculation of Equalization Payment – Date of Marriage Property Deductions – Joint Bank Accounts; Leave to Appeal Costs Award</p> <p>Court of Appeal makes the following important statements regarding deduction of date of marriage property:</p> <p><i>“...unlike the case with excluded property, the fact that property owned by a spouse on the date of marriage may have been distributed or invested jointly following the date of marriage is irrelevant. The claiming spouse is entitled to a deduction for the net value of property other than a matrimonial home owned on</i></p>

			<p><i>the date of marriage.”</i></p> <p>With respect to the evidence the husband provided regarding his date of marriage deduction, the Court of Appeal stated:</p> <p><i>“...denying the husband’s claim entirely because he failed to obtain a valuation date appraisal would be unreasonable...disallowing the deduction entirely because the husband failed to obtain a valuation date appraisal would mean increasing the cost of family law disputes unnecessarily.”</i></p> <p>The Court of Appeal undergoes a comprehensive analysis with respect to joint bank accounts and exclusions. The husband deposited a \$25,000 <i>inter-vivos</i> gift, which he received from his mother during the marriage, into a joint account with his wife. The trial judge held the husband lost his entire exclusion due to the money being in a joint account. The Court of Appeal held that the husband was entitled to exclude half the amount of the gift.</p> <p>The Court of Appeal held that the husband did not have to pay the costs awarded by the trial judge.</p>
June 28, 2012	<i>Trebilcock v. Trebilcock</i>	2012 ONCA 452	<p>Lump sum child support</p> <p>Vesting Order set aside.</p>
November 15, 2012	<i>Trembley v. Daley</i>	2012 ONCA 780	<p>Child Support – Motion to Change; Costs</p> <p>Good review of s.37(2.1) of the FLA (Powers of the Court – Child Support)</p>

			<p>Trial judge ordered father to pay child support and costs, among other things.</p> <p>Subsequent to order, father suffered a serious injury, losing several fingers. Father brought a motion to change. Motions judge found injury to be a material change in circumstances.</p> <p>Motions judge recalculated child support and s.7 expenses for support arrears and ongoing support. Ultimately, the motions judge altered the trial judge's decision.</p> <p>The Court of Appeal dismissed the appeal.</p> <p>Important statement:</p> <p><i>“In interpreting a statute, a court may depart from an ordinary and grammatical reading of the text where such an interpretation results in absurdity, or if another meaning that the text can reasonably bear is more consonant with the purpose of the legislation.”</i></p>
June 29, 2012	<i>Ward v. Ward*</i>	2012 ONCA 462	<p>Unequal Division of NFP s.5(6) of FLA</p> <p>Trial judge found the wife was entitled to unequal division of NFP. The Court of Appeal upheld the trial judge's decision.</p>
April 30, 2012	<i>Wodzynski v. Wodzynski</i>	2012 ONCA 272	Separation Agreement
October 1, 2012	<i>Yar v. Yar</i>	2012 ONCA 658	New Trial Required

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