

FOSTER RICHMOND LLP

FAMILY LAW LAWYERS

Newsletter - December 2008

THE NEW LOOK OF OUR FIRM

2008 has brought many exciting changes. We have a new name: Foster Richmond LLP.

Our Senior Partner, Ronald Foster Q.C., recently presented a paper at the National Family Law Conference *Expert Evidence at a Family Law Trial*, co-written by Ms. Stacie Glazman of Toronto, Ontario. The paper was chosen to be published in the upcoming edition of the Canadian Family Law Quarterly, a national publication. A copy of this paper will be available on our website at www.frlaw.ca.

Ron will be a panelist at the National Judicial Institute seminar for Judges in February 2009 on the topic of expert evidence in the courtroom.

Ron was also lead counsel in a large family law trial in 2006-7. The Court of Queen's Bench just released the costs award and granted his client double court costs in a sum of \$819,000.00.

Diana Richmond has assumed the role of Managing Partner and keeps us all on our toes! Diana also celebrated a major life milestone in October by getting married! She and her husband Sean were married in the lovely town of St. Andrews-by-the-Sea in New Brunswick. Both of them are Easterners at heart, but we don't hold that against them!

Matia Matkovic became a Non-Equity Partner at Foster Richmond LLP on July 15th, 2008. Matia continues to provide strong leadership and acts as a liaison between the associates and Partners. Congratulations Matia!

Peter Wells continues to be a solid presence in the firm. His vast experience in family legal matters and other areas of law provide the lawyers with an invaluable resource base.

Carolyn Allan continues to build a thriving practice based largely on referrals, with an emphasis on parenting disputes. She also acts as a mentor to junior lawyers in the firm.

Colleen Christie is getting used to the life in the "big" city since moving here in the summer of 2006 from Winnipeg. She is developing a practice niche for herself in the area of adoptions.

There have also been many new faces in the firm in 2008.

Cindy Marshall joined us in April. Cindy is a bobsledder and a member of the National bobsled team. She is currently on leave as she continues on her quest to be a member of the Women's Olympic Bobsleigh Team for the 2010 Winter Olympics.

Aaron Vanin also joined us in April, relocating from Edmonton. Aaron has experience in many areas of law which makes him an excellent resource. He is a man of many talents: his cooking abilities are worth noting!

Vanessa Cork joined the firm in the summer, and was called to the Alberta bar in October. Vanessa is expecting her second child in early January 2009.

Meghan Hanson joined us in late September, also a transplant from the Maritimes. Megan is from the small city of Kentville, Nova Scotia, and is finding life in Calgary very fast paced and exciting.

Lyndsey Dangerfield is the firm's most recent addition, joining us in November. Lyndsey is from Calgary, having recently graduated from our law school. She is looking forward to developing an expertise in all areas of Family Law.

Heidi Pernitsky is finishing her third year of law school at the University of Calgary and is in the office one day a week. Heidi will be joining us as an articling student after her graduation in the spring of 2009.

Of course, we would not be who we are without our excellent support staff: Michelle J., Michele B., Jennifer B., Amanda, Sharron, Roya, Michelle H. Lori, Katrina, Lesley, Elisa, Jennifer O., Belen, Loris and Susan.

As you can see, we have grown. With all of our new additions comes a vast array of experiences and expertise. Foster Richmond LLP continues to be one of the leading Family Law firms in Calgary and our lawyers and staff are always available to assist with our clients' most immediate needs.

LEGAL ISSUES

The Year in Review

There have been many significant decisions in the area of family law which have come from the high courts across the country this year. Here are some highlights:

LeVan v. LeVan, 2008 ONCA 388.

LeVan is a decision out of the Ontario Court of Appeal, heard in January 2008, which addresses the validity of a marriage contract. In this situation, the parties had been married for 7 years. The Husband and his family owned the majority of shares in a company which was the largest manufacturer of exhaust manifolds in the world. At the time of their marriage, the Husband had accumulated an interest in the family companies and in the family trust that, when combined, put his net worth at approximately \$30 million. The Husband and Wife had entered into a prenuptial agreement before their marriage that excluded the husband's business interests from a division of matrimonial property and severely restricted the Wife's claim for spousal support. The Husband did not fully disclose his interests in the family business at the time of the endorsement of the Agreement.

At trial, the Wife took the position that the Agreement should be set aside on the grounds that the Husband had failed to disclose significant assets and had made misrepresentations as to his worth at the time of the negotiations of the Agreement. She was successful. The Husband appealed but his appeal was denied.

This case emphasizes the crucial need for full and complete disclosure of assets and income in all domestic contracts. It should be a warning to those contemplating entering into Domestic Agreement without the provision of disclosure.

Schick v. Schick, 2008 ABCA 196

Schick was a decision from Alberta's Court of Appeal, given on April 22nd, 2008, dealing with a retroactive claim for child support.

The Father had been paying support for the child based on his income for 2002. His income had increased each year since the original Order but he did not increase his child support, which the Court reiterated was a requirement under the *Federal Child Support Guidelines*. The Mother brought an application to have his support varied back to the date of the original Order.

The Court reviewed the criteria from *S. (D.B.) v. G. (S.R.)*, a Supreme Court of Canada decision from 2006, which laid out factors that a Court must consider in determining whether a request for retroactive child support is warranted. The Court in *Schick* found that the Father had repeatedly misled the Mother as to his

actual income, and that his income was materially higher than it was previously. The Father was therefore guilty of blameworthy conduct by not sharing his financial gains with his child.

The Father appealed but the appeal was dismissed.

We advise all of our clients who have a child support obligation to vary their child support payment voluntarily if they have an increase in income. It is the law – and to not do so could leave them open to a hefty retroactive support claim in the future.

Shields v. Shields, 2008 ABCA 213

In June, Alberta's Court of Appeal considered the issue of variation or termination of spousal support in **Shields**.

The Husband and Wife had been separated for 8 years after a 15 year marriage. Under the Divorce Agreement, the Husband was to pay the wife a lump sum spousal support amount of \$17,700.00, with the Wife retaining the right to apply for ongoing spousal support after 2001. An application was made by the Wife accordingly in 2002, but not finalized until 2006, wherein the Court directed that the Husband pay to the Wife \$1,000.00 per month indefinitely and a retroactive spousal support award was ordered of \$1,500.00 per month covering the period from 2003 to 2005. The Husband appealed and the appeal was allowed in part.

The Court of Appeal determined that the trial Judge had not sufficiently considered the facts as to the division of the couple's property, their modest standard of living while together, the fact that there were no longer childcare issues, and the fact that the wife had achieved the goal of self-sufficiency as she had attained full-time employment.

The Court determined that a spousal support award of \$1,000.00 per month for an 8 year period post separation complied with the objectives of the *Divorce Act* by recognizing the economic disadvantage of the Wife arising from the marriage and its breakdown, but also encouraged her to complete a transition towards self-sufficiency. The terms of the trial judge's Order were altered accordingly such that the Wife would receive \$1,000.00 per month from 2001 – 2006 in addition to three years of spousal support by way of lump sum, with a full termination after that.

This case is of assistance to our clients who may face a spousal support claim. It recognizes that spousal support is not to be an indefinite source income to one spouse. A termination date is likely.

Foster Richmond's newsletter offers general comments on legal developments of concern to individuals. The articles in this newsletter are not intended to provide legal opinions and readers should, therefore, seek professional legal advice on the particular issues which concern them. We would be pleased to elaborate on any article and discuss how it might apply to specific matters or cases.