



Newsletter – January 2010

NEW PARTNERS

Foster Richmond LLP is pleased to announce the admission into the partnership of Aaron M. Vanin and Heather A. McGurk on January 1, 2010.

NEW WEBSITE

We are excited to announce the unveiling of Foster Richmond LLP's new website!

Along with the biographies of the lawyers and our areas of expertise in family law, our new website also has a few new features. First, our website will now have a "blog" which will be updated regularly with matters of interest to family law, new cases and legislation from the Courts and Government and important firm events and information. Our website will also now feature an expanded glossary of family law terms and a description of the various methods of resolution for matrimonial and family law files for those who are new to the terminology and practice areas. The site will also provide a resource of a summary of important cases in the areas of child support, spousal support, matrimonial property and parenting and access.

Our website is still located at www.frlaw.ca and we encourage you to stop by for a look.

NEW ADDITIONS TO THE FIRM

Christine R. Thibert - Christine obtained an LL.B. from the Université de Moncton in 2008, and was admitted to the Alberta Bar in 2009. In law school, Christine volunteered for

Pro Bono Students Canada, competed in the national Laskin Moot competition, and was the recipient of numerous awards and scholarships. Before commencing her legal studies, Christine spent three years at the University of Alberta's Faculté Saint-Jean, and is fully bilingual (English and French).

Prior to joining Foster Richmond LLP, Christine articulated with Macleod Dixon LLP in Calgary, where she worked primarily in the areas of energy and resource law and business law. Since joining Foster Richmond LLP, Christine has practiced exclusively in the area of family law.

In her spare time, Christine enjoys reading, playing volleyball, long distance running, and golfing.

IMPORTANT CASES

Rick v Brandsema (Supreme Court of Canada) February 2009

In our June 2009 Newsletter, we provided information with respect to the case *Rick v. Brandsema*. In this case, the court in a sweeping judgment set aside a separation agreement as unconscionable where there had been material non disclosure of assets and one party had taken advantage of the emotional vulnerabilities of the other spouse. Further, even the assistance of independent legal counsel was not sufficient to prevent the "psychological and informational exploitation" that occurred.

Many other Canadian courts have since relied upon this decision to successfully challenge matrimonial agreements

negotiated under similar circumstances. To date, there have been 22 cases citing *Rick*. Specifically, in the case of *Brown v. Silvera* (2009), the Alberta Court of Queen's Bench relied on *Rick* to set aside Minutes of Settlement where there had been material financial misrepresentation and a rushed negotiation.

In *Brown*, the wife alleged that the husband did not disclose the real value of the corporate property when they negotiated and entered into Minutes. As a result, the wife brought an application for an order vacating the Minutes with respect to the corporate assets, and an order for a resulting or constructive trust over assets wrongfully withheld. The application was granted. The husband was ordered to pay \$15,095,778.76 to wife in restitution. The Court found that the husband systematically deceived and misled the wife as to the full scope of the family's corporate property. Further, the husband knowingly misstated the value of the company when the Minutes were negotiated and signed. It was found that the husband held property for his own use and benefit to which he had legal right, thereby holding it in a remedial constructive trust for the wife.

Jensen v Jensen (Alberta Court of Appeal) August 2009

This was a farm case where the trial Justice held that wife's overall contribution to the marriage was less than the husband's. As well, at trial the Husband and his parents were successful in arguing that some land which had been transferred to the couple during the marriage had in actuality been held in trust for the parents

The Court of Appeal reversed the trial justice's finding and reinstated in strong terms the presumption in the Alberta *Matrimonial Property Act* of the equal division of marital assets. The farm land claimed by the parents was ordered to be a divisible asset.

The commentary to the case has also strongly indicated that the valuation date of property is the date of trial and discouraged a growing trend of cases trying to emphasize the non-division of assets acquired during separation.

CHILD SUPPORT RECALCULATION PROGRAM

Starting January 01, 2010, Court Orders under the *Family Law Act* of Alberta can be registered with the Child Support Recalculation Program (RP). The purpose of RP is to annually recalculate the amount of support payable on existing eligible Court Orders without the necessity of a new court application. Instead, both those paying and receiving support can 'opt in' to have the RP review each party's tax returns, notices of assessment/ reassessment or income

questionnaire and determine the proper amount of section 3 and section 7 child support for the forthcoming year.

The RP will contact the payor and recipient approximately ninety days before the anniversary date of the court order and request that the parties submit their income information. Once received, the program office will calculate the new support amounts and send a decision to the parties. A party may object if they do not agree with the new amount. If there is no objection, the new amount will become the new child support amount payable 31 days following the decision. If a payor chooses to not send his or her information upon request from RP, their income will be imputed subject to a 'deemed' income increase percentage. If there is no objection after 31 days, RP will file the decision with the court, allowing Maintenance Enforcement to collect on the new support amount.

RP charges each party \$75.00 for the service of recalculating the child support amount; however, if the change in child support amount is less than 10% or \$10.00 per month, RP will not recalculate the child support amount and no fee is charged.

Eligibility for RP is as follows:

- The Order is under the *Family Law Act* (note: Orders under the *Divorce Act* are **not** yet eligible for registration)
- Both parties' incomes were known at the time of the Order -- neither party can have an imputed income.
- The Order is not 'without prejudice' or based on a 'pre-disclosure amount'
- The Order does not have a review date
- Section 7 expenses must be stated in a percentage or be proportionate to the parties' known incomes
- The recalculation can be done by use of Income Tax Returns, Notices of Assessment, and the income questionnaire—people who are sole proprietors or use extensive corporate documents to determine their annual income cannot use the program, unless both parties consent to using only the tax return information.

A difficulty with the program is that the new recalculation statement will not include arrears for previous months where the payor underpaid support prior to the court order anniversary date.

Parties who have court orders currently eligible for RP can opt into the program as of January 01, 2010, although Orders shall be entered into the system with preference given to older Orders first. RP plans to have the system online within one year so that parties can submit their income information and access their accounts electronically.

More information on the Recalculation Program can be found online at www.recalculation.gov.ab.ca or by sending questions to recalculation@gov.ab.ca.

ACHIEVEMENTS OF NOTE

This October 2009, Ron Foster was requested to co author a paper and also to teach a seminar on the 'Conduct of the Family Law Trial' program presented by the Advocates Society in Toronto, Ontario. Mr. Foster's paper and seminar was regarding the examination and cross-examination of Expert Witnesses and involved a demonstration of the examination of a business valuator. The session was attended by lawyers and Judges throughout Ontario.

Also Mr. Foster has been requested to present a paper and instruct superior court Justices for a second time at the National Judicial Institute Family Law Seminar in February 2010.

Ron Foster will also be part of a national panel at the National Family Law Conference in July 2010 in Victoria BC on the topic of the evolving standards of care of lawyers in drafting and advising on marriage contracts or pre-nuptial agreements.

Aaron Vanin is presenting at the Family Law for Legal Support Staff seminar on January 14, 2010 in Edmonton with the Calgary session being held on January 21, 2010. Mr. Vanin will be presenting on the differences between legal advice and legal information when legal assistants discuss matters with clients. This is the second course which Mr. Vanin has presented at a Legal Education Society of Alberta conference for legal assistants and support staff.

FOSTER RICHMOND LLP IN THE COMMUNITY

CLERC Artful Bench and Bar

Foster Richmond LLP was proudly involved in this year's 'Artful Bench and Bar' for the Children's Legal & Educational Resource Centre (CLERC). CLERC provides legal information, assistance, and legal counsel to children who find themselves involved in legal matters. The Artful Bench and Bar is CLERC's annual fundraiser where lawyers, Justices and Judges create, paint or donate art to a silent and live auction.

Shayi Xu donated two hand drawn ink prints entitled 'Shanghai Girls I and II' which were both purchased by one lucky bidder. Heidi Pernitsky also donated a painting on behalf of her cousin, artist Brandi Hofer. The painting, 'Untitled', sold to Madam Justice Strekaf, and is said to be hanging in the Justice's office at the courthouse.

Rebecca Bell spent the summer of 2009 being mentored at the firm and is returning as an articling student in Spring 2010. She is also a board member and volunteer researcher for CLERC.

CLERC's other fundraiser is a Casino Night held this year on November 28, 2009.

Casual Fridays for Charity

Every Friday, lawyers, legal assistants, and support staff at the firm will be permitted to wear their jeans. In exchange for donning their denim, each person must donate two dollars to Foster Richmond LLP's Casual Fridays for Charity fund.

This year, the management committee has selected The Calgary Humane Society as our charity of choice. This Halloween, the lawyers and staff at Foster Richmond LLP also held a bake sale with the profits going to the Charity fund.

Office Christmas Hampers

Staff and lawyers at Foster Richmond LLP also took part in two programs to help less fortunate Calgarians for the 2009 holiday season. We collected non-perishable food items for the Calgary Food Bank and children's toys for 'Toy Mountain' for the Salvation Army.

Also this year, instead of delivering poinsettias to our strategic alliances which has been our tradition, a donation was made on their behalf to the Calgary Homeless Society.

Earthquake Relief in Haiti

Foster Richmond LLP has also donated to the Red Cross and World Vision in response to the devastating earthquake in the Caribbean nation.

Foster Richmond LLP'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.