

An Overview of Current Developments in Alberta Family Law for Busy General Practitioners

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INTRODUCTION

This is not an academic paper but a practice-oriented overview of some current topics in family law in Alberta that I believe busy general practitioners should be aware of to better advise their family law clients. This is certainly not an exhaustive compilation or survey of developing trends in this area of law but is my own take of certain developments which may have particular impact on our day to day practice of family law.

This brief digest draws together commentaries by a number of able Alberta family lawyers who have given much fuller treatment of these subjects in previous LESA papers and in particular, at the most recent 2013 Banff Refresher on Family Law. If you were not able to attend or are simply behind in your reading on recent developments in family law, I hope this paper will help to bring you back up to speed.

A: ALBERTA RULES OF COURT, PART 12 – FAMILY LAW RULES: SOME PRACTICE POINTERS

Foundational Rules

Since the coming into force of the new Rules on November 1, 2010, we have become conversant with them in general civil litigation practice. As a general statement, it is important to remember that the purpose and intention of the Rules stated in the Part 1 Foundational Rules 1.1 to 1.8 infuse and inform the proper application of the entire Rules of Court, including the Part 12 – Family Law Rules. Rule 1.2 stating the purpose and intention of the Rules of Court bears repeating:

- 1.2 (1) The purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way.
- (2) In particular, these rules are intended to be used.
 - (a) to identify the real issues in dispute,
 - (b) to facilitate the quickest means of resolving a claim at the least expense,
 - (c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as practicable,
 - (d) to oblige the parties to communicate honestly, openly and in a timely way, and
 - (e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.

- (3) To achieve the purpose and intention of these rules the parties must, jointly and individually during an action,
- (a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense,
 - (b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the Court.
 - (c) refrain from filing applications or taking proceedings that do not further the purpose and intention of these rules, and
 - (d) when using publicly funded Court resources, use them effectively.
- (4) The intention of these rules is that the Court, when exercising a discretion to grant a remedy or impose a sanction, will grant or impose a remedy or sanction proportional to the reason for granting or imposing it.

Making clear reference to the foundational rules wherever possible, gives depth and context to the application for the benefit of the Court and in the best interest of our clients. The decision of Justice Graesser in *C.(L.) v. Alberta (Metis Settlements Child and Family Services, Region 10)* illustrates the proper use of the rules as a “lens through which all Rules must be interpreted.”:

“75 Rule 1.2 is clearly intended to guide, the interpretation of the New Rules and might be described as the New Rules’ guiding principles. Any application for relief under a Rule may bring Rule 1.2 into play, which will influence any interpretation issues. Rule 1.2 may be described as the lens through which all Rules must be interpreted.”

The decision of Justice Graesser in that case dealt with the issue of whether a party can make a stand alone application under Rule 1.2(3). The case dealt with a Court action by a party against the Crown in Right of Alberta by a designated child protection agency but the guidance in the case applies to all civil actions. The Court ruled that the wording in Rule 1.2(3)(a) in particular allows a party to bring a stand-alone application to promote resolution by a Court process as timely and as cost-effectively as possible:

“In my view, a stand-alone application under Rule 1.2(3) is intended to facilitate creating an appropriate task list and moving the timeline towards resolution. It is not intended to be a punitive measure and is aimed at getting litigation moving when it is bogged down.” (paragraph 109)