

Top Ten (Actually Twelve!) Recent Matrimonial Property Cases to Know About

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Matrimonial Property Division

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TOP TEN (ACTUALLY TWELVE!) RECENT MATRIMONIAL PROPERTY CASES TO KNOW ABOUT

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Part I: Important Cases

1. *Alpugan v Baykan*, 2014 ABCA 152
2. *Chikonyora v Chikonyora*, 2013 ABCA 320
3. *Groot v Kotake*, 2014 ABQB 53
4. *Holm v Holm*, 2013 ABCA 345
5. *Kretschmer v Terrigno*, 2012 ABCA 345
6. *Kuehn v Kuehn* 2012 ABCA 67
7. *Lemonine v Griffith*, 2014 ABCA 46
8. *McCullough-Greiff v Canada Revenue Agency (Taxation)*, 2014 ABCA 202
9. *Meads v Meads*, 2012 ABQB 571
10. *McMorran v McMorran* 2013 ABQB 610, rev'd *McMorran v Alberta Pension Services Corporation*, 2014 ABCA 387
11. *Nipshank v Trimble*, 2014 ABQB 120
12. *Toliver v Koepke*, 2013 ABCA 304

Part II: Other Noteworthy Matrimonial Property Cases

1. *Lakhoo v Lakhoo*, 2014 ABCA 98, leave to appeal to SCC denied.
2. *Milavsky v 353396 Alberta Inc.*, 2013 ABCA 253
3. *Olympia Trust Company v Totten*, 2012 ABQB 488
4. *Repas v Repas*, 2012 ABQB 572
5. *S.(T.N.) v W. (J.Q.)*, 2012 ABCA 321

Part III: Dog and Cat Files

1. *CEC v SWC*, 2013 BCSC 1879
2. *NAG v JMG*, 2013 SKQB 304
3. *Telep v Telep*, 2012 BCSC 2092
4. *LeClerc v LeClerc*, 2012 NSSC 321
5. *Boulet v Rushton*, 2014 NSCC 75
6. *Boyda v Shaw*, 2014 ABCA 1

PART I: IMPORTANT CASES

Alpugan v Baykan, 2014 ABCA 152

This is a case involving admissibility of evidence and valuation of foreign property. It may be of use given the number of self-represented litigants appearing before the courts in family law matters. It reinforces the rules of evidence.

The Court of Appeal found it is an error for the trial court to accept a self-represented litigant's unsworn statements and documents as admissible evidence (at para 20). The Court of Appeal held the trial judge erred in failing to consider the parties' foreign property, and instead held that it must be considered in the division of their matrimonial property. The Court of Appeal fixed the value of the foreign property in Canadian dollars and awarded half that value to the Appellant.

The trial issues in this case were spousal support, child support and division of matrimonial property. At trial the Respondent was self-represented and declined to take the stand to testify. He made oral statements and provided the court with a spreadsheet of his financial information, entered as an Exhibit for identification only. The Applicant's counsel voiced objections to reception of any of his information. The trial judge erred in relying on his statements, representations, and unproved documents in making his decisions.

The Appellant wife also appealed the trial judge's findings regarding division of the matrimonial property. She argued the judge erred in dealing with the pension entitlements of the respondent and failed to take the respondent's foreign properties into account when distributing the matrimonial property.

The appeal was allowed in part. The Court of Appeal held the judge made no error in treating the pension entitlements as income rather than property. The judge recognized the pensions could be treated as property but made his order reflecting the Appellant's wishes at trial. The judge, did however, overlook the foreign properties in his decision and this was an error. The Court of Appeal held the appellant was entitled to compensation for the division of the foreign assets and, given there was no direct evidence of the value of the property at the trial, the Court of Appeal fixed the value at \$150,000 (CAN) and awarded the Appellant \$75,000 for her share. This decision was a consequence of the Respondent's failure to testify or otherwise refute the wife's evidence, the only evidence before the court regarding the properties (at paras 37, 41).

WHY IS THIS CASE IMPORTANT?

- *It is a reminder to all of us that even though the Court cannot divide or otherwise distribute assets in other jurisdictions, it CAN take their value into account under the Matrimonial Property Act, and divide assets here in Alberta using their value in a “set-off” mode (assuming they were acquired during the marriage). Do not assume it is impossible to get real property appraisals or other appraisals in places like Turkey or India. Remember to make use of a Notice to Admit (See Rule 6.37 in the Rules of Court), or seek directions from the Court in a Case Conference.*

Here, the Court of Appeal was kind enough to accept the wife’s suggestions as to value; you may not be so lucky.

- *When dealing with self-represented litigants, remember that the rules of evidence still all apply, and judges must hold them to the same evidentiary standards as the rest of us. If not, the Court of Appeal will rectify things. However, the trial judge is the key player to enforce the rules – there is nothing worse than the Court of Appeal directing a new trial! (Sounds like a win, but feels like a loss!)*