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Family Law Newsletters

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— **Franks & Zalev - This Week in Family Law**

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You Don't Get to Count It Twice

***Lamoureux v. Hedquist* (2025), 22 R.F.L. (9th) 1 (B.C. C.A.) — Harris, Riley and Edlmann JJ.A.**

Modern property division legislation was meant, in large part, to avoid a laborious and detailed accounting of "who contributed what" during marriage. Legislatures did not intend a post-mortem examination of the minutiae of the sharing of responsibilities to determine if the application of the local statutory property-sharing regime would be appropriate: *Brett v. Brett* (1999), 46 R.F.L. (4th) 433 (Ont. C.A.); *McNaught v. Friedman*, 2011 CarswellBC 1607 (S.C.); *Barnett v. Lindsay* (2016), 81 R.F.L. (7th) 329 (Ont. S.C.J.); *Jensen v. Jensen* (2009), 70 R.F.L. (6th) 63 (Alta. C.A.); *Beese v. Beese* (2008), 60 R.F.L. (6th) 31 (B.C. C.A.); *Caines v. Collins* (2013), 43 R.F.L. (7th) 92 (N.L. T.D.). Marriage is not an exercise in book-keeping.

Under the British Columbia *Family Law Act*, SBC 2011, c. 25 (the "*FLA*") the value of "excluded" property ("date of marriage deductions" for other provinces) is not shared. Basically everything else, including the increase in value of that excluded property, gets shared equally. The *FLA* eschews the contribution-counting that plagued the old *Family Relations Act*. As Ontario constrains judicial "tinkering" with presumed equal division with the threshold of "unconscionability", the B.C. *FLA* does so using the "significantly unfair" threshold — a lesser threshold than "unconscionability" to be sure — but a significant threshold nonetheless (and certainly higher than the standard of mere "unfairness" in the former B.C. *Family Relations Act*). "Fairness" is in the eye of the beholder; "significant unfairness" is likely to garner greater consensus; and "unconscionability" still more.

In *Lamoureux v. Hedquist*, the trial judge was considering a five-year relationship. In doing so, the court saw a husband whose businesses had "momentum" before the relationship began, saw a wife who had merely "hitched her wagon" to those enterprises, and ordered a 75/25 split (in favour of the husband) of the increase in value.

At the risk of spoiling the surprise, on appeal, the B.C. Court of Appeal said "uh, no" — because that reasoning and result was precisely what the *FLA* was designed to avoid.

The husband ran construction and rental businesses through three companies. When he and the wife were married in 2015, the companies were worth about \$1.285 million. By the agreed-upon valuation date in May 2022, the companies had grown in value to about \$3.575 million — an increase of just under \$2 million after tax adjustments.

The relationship lasted about five years. Both had children from prior relationships. The trial judge labelled the relationship "tumultuous," marked by serial separations and reconciliations. Hedquist was the entrepreneur; Lamoureux focused on domestic life. The parties had discussed making Lamoureux a business partner, but nothing came of it — unsurprising, given the instability.

They agreed on equal division of most family property. The fight was about the \$2 million increase in value of the companies.

Hedquist sought reapportionment in his favour. The trial judge found that Lamoureux had made only minor contributions to the companies and that her focus was primarily on running the family's domestic life. Ultimately, the trial judge awarded him 75% and her 25%.

The trial judge stated the legal principles correctly. He acknowledged the high threshold for departing from presumed equal division. He cited the right cases. And then he did exactly what those cases say not to do.

His analysis rested on three pillars: (1) Hedquist's pre-relationship efforts had given the companies "momentum" that continued during the relationship; (2) Hedquist's post-separation efforts had increased value beyond market trends; and (3) Lamoureux's contributions to the business were "minimal" compared to Hedquist's.

The third factor is where the trouble started. The trial judge weighed Lamoureux's "minimal contributions" against Hedquist's efforts. And that sort of "contribution-counting" was precisely that which the *FLA* made exceptional, not routine.

The colourful language did not help. Lamoureux had "hitched her wagon" to already successful enterprises. While this may have been accurate as a factual notion, it is not a legal basis for unequal division. Under the statutory scheme, Lamoureux's entitlement to half the increase did not depend on her contributions to it.

The Court of Appeal allowed the appeal, set aside the 75/25 split, and ordered equal division.

Justice Harris, writing for the panel, started with the legal framework. Under the *FLA*, equal division is the presumption. To depart from it, a court must find "significant unfairness", that being something objectively unjust or unreasonable in some important or substantial sense. The factors justifying unequal division must be rooted in s. 95(2) of the *FLA*, and the legislature deliberately did not include "relative contribution" as a factor. However, we do point out that s. 95(2) lists factors the court may consider when considering whether there should be unequal division — and s. 95(2)(i) lists "any other factor . . . that may lead to significant unfairness." Could unequal contributions not lead to significant unfairness? We'll leave that with you.

As the court explained in *Jaszczewska v. Kostanski* (2016), 84 R.F.L. (7th) 316 (B.C. C.A.), allowing relative contribution to become a regular consideration would create the uncertainty and complexity the new regime was specifically designed to avoid. (It would also penalize spouses that focussed on domestic engineering and child-raising.)

Relying on *Khan v. Gilbert* (2019), 22 R.F.L. (8th) 23 (B.C. C.A.) and *Slavenova v. Ranguelov*, 2015 CarswellBC 116 (S.C.), the Court of Appeal emphasized that "significant unfairness" requires much more than differing financial contributions. Exactly equal contribution is more likely exceptional than commonplace. Cases justifying unequal division have typically involved "marked, prolonged, and intentional or unexplained disparities in contribution to family burdens" — not the ordinary situation where one spouse builds a business while the other manages the business of the home.

Justice Harris identified the core problem: the result below was driven almost entirely by a focus on unequal contribution in a way that actually defeats the purpose of the legislative scheme.

On "pre-relationship momentum," the Court of Appeal held that the trial judge erred by treating Hedquist's efforts before the relationship as a reason to reduce Lamoureux's share. The parties had agreed on the fair market value of the companies at the start of the relationship. That valuation, the court noted, must be taken to capture the financial momentum generated by Hedquist's energy, drive, and reputation. He was already compensated for his pre-relationship work — through the excluded date-of-marriage property values. It is trite that the fair market value of the business at the date of separation would account for the state of the business at that time, including "momentum." To recognize the "momentum" as a basis for unequal division would be to count that "momentum" twice. And we do not count things twice (except for the notion of double-counting in child support . . . but that is just going to make us upset).

The court also rejected the personal goodwill argument — that value attributable to Hedquist's reputation and skills should be treated differently. That clever argument, the Court of Appeal noted, was really just an indirect attack on the agreed valuation.

And anyway, Hedquist kept the companies. If there was continuing value in his personal goodwill, he kept that too. (And it was not valued separately at separation, we note.)

On post-separation contribution, the trial judge had relied on 2022 revenue figures to show that Hedquist's post-separation efforts increased the value of the business. But the agreed valuation date was May 2022, and the valuation only used financial information through the end of 2021. The 2022 revenues were not part of the valuation — and any value they contributed was excluded property that Hedquist kept anyway.

The Court of Appeal was clear: upholding this result for the stated reasons below would open the door to litigation routinely focused on relative contribution to family property. That's exactly what the *FLA* was designed to prevent. It would replicate the contribution-based analysis under the repealed *Family Relations Act*, where entitlement was grounded in use of property or contribution to property. The *FLA* replaced that model with one in which property is presumptively divisible equally and reapportionment is narrowly circumscribed.

It is commonplace for one spouse to be building a business before the relationship, and to continue building it during the relationship, while the other spouse (for varying reasons) contributes to it not at all, marginally, or at best indirectly. That is not exceptional. That is called "marriage."

The *FLA*'s response to this common reality is clear: the business-owning spouse keeps the value they brought in, and the increase during the relationship is shared. The non-business spouse's entitlement does not depend on whether they helped grow the business. That is the deal. If the legislature wanted to treat these situations differently, it could have said so.

And if "hitching one's wagon" to a successful entrepreneur is enough to defeat presumed equal division, what is left of the presumption of equal division? Every entrepreneur who built something before meeting their spouse would make the same argument. The exception would swallow the rule. (And entrepreneurs would be very lonely.)

The appeal also addressed support. Those arguments did not fare nearly as well.

The trial judge ordered spousal support from separation until July 2023, imputing income of \$91,852 to Lamoureux and \$200,000 to Hedquist. Because interim support had been paid at higher levels, the final order required Lamoureux to repay about \$90,000, including interim support that had been paid for her child from a previous relationship.

Lamoureux argued the trial judge failed to conduct a retroactivity analysis under *D.B.S. v. S.R.G.* (2006), 31 R.F.L. (6th) 1 (S.C.C.) and *Colucci v. Colucci* (2021), 56 R.F.L. (8th) 1 (S.C.C.). The Court of Appeal disagreed, drawing on the distinction between *varying* a final order and *replacing* an interim order with a final one. Trial judges routinely revisit and adjust interim support — that is the expectation of the parties and the basis on which interim orders are made; it is expected that interim orders will be adjusted at trial with the benefit of a full record: *Durocher v. Klementovich*, 2013 CarswellAlta 848 (C.A.); *MacMinn v. MacMinn* (1995), 17 R.F.L. (4th) 88 (Alta. C.A.); *Hartley v. Del Pero* (2010), 83 R.F.L. (6th) 305 (Alta. C.A.); *Olson v. Olson* (2014), 37 R.F.L. (7th) 414 (Alta. C.A.); *Dillon v. Dillon* (2016), 87 R.F.L. (7th) 51 (Man. C.A.); and *Durocher v. Klementovich*, 2013 CarswellAlta 848 (C.A.). (This is why interim orders are generally hard to appeal.) The *D.B.S.* factors, addressing expectations of finality and notice, do not operate the same way when everyone *knows* the interim order will be revisited.

The court also upheld the income imputation. The trial judge found Lamoureux was multi-talented with marketable interior design skills, functioned at a high level, and was intentionally unemployed. Her financial disclosure suggested artificially low income. Those were findings of fact entitled to deference. Lesson: when a trial judge finds you are intentionally unemployed, you have an uphill climb on appeal.

For practitioners, *Lamoureux* is a reminder that "significant unfairness" means what it says. It is not a vehicle for rewarding the spouse who worked harder, earned more, or built the business single-handedly. Unequal contribution to family property is not, by itself, unusual. The legislative scheme accounts for that through the excluded property framework.

The court's treatment of agreed valuations matters too. If the parties have agreed on the fair market value of excluded property, that agreement settles what each spouse brought in. Arguments about pre-relationship momentum, business goodwill, or future earning potential? Nope.

On support, the case confirms that replacing an interim order with a final order is not the same as varying a final order. The expectation of adjustment is baked into the interim framework. That does not mean hardship is irrelevant, but a party seeking to avoid repayment needs more than the fact that the final numbers came out differently.

And for business owners in BC who think their pre-relationship sweat equity entitles them to more than their excluded property share? Think again. You got credit for that already. You don't get to count it twice.

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***Ladoski-Kolbuck v. Kolbuck* (2025), 24 R.F.L. (9th) 17 (Man. C.A.) — Spivak, Mainella and Turner JJ.A.**

An unrepresented payor walked into a trial expecting to argue one thing — child support based on his updated income. He walked out ordered to obtain a \$150,000 life insurance policy — a claim that had already been struck and on a record containing almost no evidence to support it — to secure child support for a seventeen-year-old child.

After the decision was released, but before the order was taken out, what was supposed to have been a hearing to settle the form of the order then became, in substance, a reopening of the trial, and the trial judge ultimately reduced the income-imputation finding from \$100,000 to \$70,000.

Neither error should have required an appeal; both arose because procedural boundaries that had already been established were treated as negotiable rather than binding.

The point is not that the process unfairly favoured one side. The loosened boundaries helped the wife on life insurance and then helped the husband on income. And that is precisely why the boundaries mattered.

The parties were married for about nine years, separated in 2008, and had one child together. A 2014 final order imputed annual income of \$40,000 to the husband and, notably, did not provide for life insurance security, because the wife never requested it.

In 2017, the wife moved to vary the final order, seeking 14 changes, including, for the first time, life insurance as security for support.

Then the case did what too many family cases do: it sat . . . and sat . . . and sat.

After a Case Conference process spanning more than six years and seven appearances, the issues for trial appeared to have been significantly narrowed. At one of the last Case Conferences before the trial, the court struck all of the wife's claims except her request to adjust child support based on the husband's updated income, retroactively and prospectively. At the final Case Conference before trial, the court reiterated that life insurance and other remaining requests fell outside what remained, and that the trial would focus on the impact on child support and s. 7 expenses.

Despite these prior determinations, when the matter was called to trial, the trial judge began by asking the self-represented wife what relief she was seeking, and at that point she renewed her request that the self-represented husband obtain life insurance, along with an order binding child support to the husband's estate.

In oral reasons delivered at the conclusion of the trial, the trial judge ordered the husband to obtain a \$150,000 life insurance policy naming the parties' then-17-year-old daughter as beneficiary. However, the oral reasons made no reference to the Case Conference process or to any amendment reviving that relief. The trial judge also imputed income to the husband of \$100,000 for 2017-2021, and \$200,000 for 2022-2023 and prospectively.

Before the order was signed, however, the husband retained counsel. As they say, timing is everything.

What followed began as hearings to settle the form of the order but became something else. Counsel challenged the court's jurisdiction to order life insurance and, for the first time, argued that there was no basis to impute income of \$100,000 for 2017-2021.

In further oral reasons delivered in June 2024, the trial judge maintained the life insurance order, explaining that the court had jurisdiction under s. 74(12) of *The Family Law Act*, C.C.S.M. c. F20 (the "*FLA*") and finding that the husband had sufficient notice because the wife had raised the issue at the outset of trial. The trial judge also reduced the husband's imputed income for 2017-2021 from \$100,000 to \$70,000, stating that she was then placing greater weight on his income tax returns. As the Court of Appeal later observed, the reason the trial judge changed the original income finding was "not really explained."

The husband appealed. He challenged the life insurance order, arguing that the trial judge lacked jurisdiction to require him to obtain a new policy, that there was no evidentiary basis for the order, and that the relief had been removed from the live pleadings.

The wife cross-appealed. She argued that the trial judge had improperly revisited her initial income-imputation finding after trial and erred in reducing it from \$100,000 to \$70,000.

While the Court of Appeal could have disposed of the appeal on the procedural and evidentiary defects alone, Spivak J.A., writing for a unanimous panel, first answered an important jurisdictional question that had not previously been decided in Manitoba: can a court in Manitoba require a spouse to obtain a *new* life insurance policy, rather than merely designate a beneficiary under an existing policy under s. 74(7) of the *FLA*?

The jurisdictional answer was yes, but with a condition that mattered. Following the Ontario Court of Appeal in *Katz v. Katz* (2014), 50 R.F.L. (7th) 1 (Ont. C.A.) ("*Katz*") (imitation is the highest form of flattery), the Manitoba Court of Appeal held that s. 74(12) of the *FLA* — and s. 15.1(4) of the *Divorce Act* — are broad enough to permit an order requiring new life insurance. But in Manitoba, that power exists only where the support obligation binds the payor's estate and is also ordered to continue after death. Under the *FLA*, that requires an order under s. 74(8).

The logic is straightforward: death ordinarily ends a support obligation unless something — legislation or the order itself specifies otherwise: *Katz*; *McLeod v. McLeod* (2013), 38 R.F.L. (7th) 295 (B.C. C.A.); *McCulloch v. McCulloch* (2025), 13 R.F.L. (9th) 31 (Alta. K.B.). A security order needs something to secure. If the obligation disappears on death, a life insurance requirement has no foundation. We have seen a version of that trap sprung before. In *Blacklock v. Tkacz* (2021), 62 R.F.L. (8th) 4 (Ont. C.A.) (discussed in the November 15, 2021 (2021-44) edition of *TWFL*), a retroactive child support claim against the payor's estate failed for the same underlying reason: the original order did not bind the estate, so there was no continuing support obligation to secure.

This is more than just judicial housekeeping. Adopting *Katz* puts Manitoba in line with other provinces, but the real import in *Ladoski-Kolbuck* was not the *existence* of the power. It was why this particular order could not stand.

The Court of Appeal did not stop at this technical defect. It went on to deal with two "more fundamental problems."

No Evidence, No Insurance Order

Katz warns courts to proceed carefully before ordering someone to contract with a third-party insurer. Here, the Manitoba Court of Appeal did more than simply repeat that caution — it endorsed what is effectively a checklist for future cases: insurability, affordability, cost, quantum, duration, type of policy, whether an order binding the estate will suffice, and whether some better form of security is available. Here there was "little, if any" evidence: the husband's age (58), a mortgage with a death benefit to the lender, and a 17-year-old beneficiary for whom any properly tailored policy would be short-term.

There was no evidence the husband qualified or could obtain life insurance. There was no evidence as to the cost of insurance. There was no evidence as to why \$150,000 was the right number. Ordering the policy on that record was an error.

The Pleadings Still Matter

Although the request for life insurance had appeared in the 2017 pleadings, it had been removed as a live issue in the Case Conference process. The trial judge did not appear to have considered that the life insurance claim had been expressly struck before trial. The later rationale — that the court had clarified with the husband at the outset that the issue would be dealt with thus giving him a chance to respond — never addressed or grappled with why the court was entertaining relief that had been previously specifically removed by the case conference judge, without any amendment to the pleadings.

The Court of Appeal was blunt about the consequence: given the two Case Conferences, the husband reasonably expected life insurance was off the table, and should not have been expected to marshal evidence as to insurability "on the spot." Stepping outside the pleadings undermined the case flow regime and compromised the fairness of the process. While *Ahluwalia v. Ahluwalia* (2026), 29 R.F.L. (9th) 1 (S.C.C.) at para. 17 reminds us that courts should not punish self-represented parties for failing to attach the appropriate "legal label" to the facts, that flexibility has limits: it does not eliminate the opposing party's right to know the case they have to meet. Here, the husband was not surprised by a mislabelled claim — he was blindsided by a claim that had been explicitly removed from the proceeding. It is fundamental to the litigation process that lawsuits be decided within the boundaries of the pleadings: *Rodaro v. RBC*, 2002 CarswellOnt 1047 (C.A.); *Al-Ebadi v. Zahran*, 2010 CarswellOnt 2409 (C.A.); *H. (T.M.A.) v. G. (J.J.)* (2010), 85 R.F.L. (6th) 263 (N.B. C.A.). While the claim for relief need not attach the appropriate label, there does have to be a label. Natural justice, anyone?

There was one practical fix available: the husband told the appeal panel he was content to have the support order bind his estate while the daughter remained a child of the marriage. The court exercised its own power under s. 74(8) to add a provision to that effect.

Then the same procedural problem showed up in reverse. The order-settling process that had let a removed issue return to life also let the decided income issue be reargued. It was essentially a second kick at the can.

The wife's cross-appeal succeeded here. The Court of Appeal restored the \$100,000 imputation figure (but without ruling on whether that figure was, in fact, right).

While "kick the can" is a fun game enjoyed by children everywhere; "second kick at the can" is a game regularly eschewed by courts of all levels. While a judge is not *functus officio* until the order is signed or entered and can *technically* change their mind before then: *Ridout v. Ridout*, 2003 CarswellMan 173 (C.A. [In Chambers]) — that does not mean a litigant gets a second kick. In *Ladoski-Kolbuck*, the Court of Appeal held that, absent a fresh-evidence motion, a trial judge's discretion to reopen an unentered order should be governed by the same principles that apply to reopening an appeal: *Willman v. Ducks Unlimited (Canada)*, 2005 CarswellMan 23 (C.A.). Reconsideration should be granted only in *exceptional* circumstances, "where the interests of justice manifestly compel such a course of action[.]" That is a very high bar — generally requiring a patent error, an issue counsel had no opportunity to address, or a significant oversight or misapprehension of the evidence or law creating a serious risk of a miscarriage of justice.

Applied here, the reduction from \$100,000 to \$70,000 could not survive. There was no motion to reopen, and the judge did not appreciate that is what the husband's "Settling the Terms" Brief actually was. His Brief was largely a re-argument of the trial evidence — precisely what reopening terms is *not* for. There was no patent error in the initial reasons, no denial of an opportunity to be heard, no misapprehension rising to a miscarriage of justice. Allowing the husband to argue his case twice "distorted the trial process", and the wife had only days to respond. So the \$100,000 imputation was restored — with the Court of Appeal careful to note it was not reviewing the merits of the \$100,000 finding, only whether the judge was entitled to change it.

Procedural boundaries are not optional. They are an important limit that ensures an end to disputes.

Three practical points follow the results here:

First, if relief has been struck at a Case Conference, it is not revived just because one side raises it at trial. Object on the record. If the judge is inclined to hear it anyway, ask for an adjournment and explain what evidence you would need to answer the issue properly.

Second, if you are seeking life insurance security, make the estate-binding piece explicit before turning to insurance. The point is different across statutes: Ontario's *Family Law Act*, R.S.O. 1990, c. F.3 provides that "[a]n order for support binds the estate of the person having the support obligation unless the order provides otherwise." But that is not the case under either the *Divorce Act* or Manitoba's *FLA*. So know your statute.

Then marshal the evidence *before* the hearing: insurability, cost, affordability, quantum tied to the total support over the order's duration, type of policy, and whether the amount should decline over time. A bare request for a round number like \$150,000, with nothing behind it, is an invitation to appeal.

Finally, if you want a judge to revisit a pronounced-but-unentered decision, call it what it is — a motion to reopen the trial — and be ready to meet the applicable high legal threshold. Dressing up re-argument as "settling the terms of the order" is not a workaround. Reopening exists to prevent injustice, not to give a disappointed party another chance to argue the same record.

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