

Judicial Bias at the Court of Appeal I

This study analyzes family law decisions at the Court of Appeal from the mid 1990's to the mid 2000's. Records from 7 judges are compared for 171 different family law cases. Since cases are usually heard by panels of 3 judges it comprises 513 decisions on the records of individual judges spanning more than a decade. The cases for Justices Abella and Charron are complete because Quicklaw was used, however only Canlii was available for the others so some may be missing. Complete listings for each judge is given in Appendixes A1 to A7. Error arising from using the different databases is discussed in Appendix A8. All cases were appraised individually.

Part one simply relates whether an appellant was successful or not on the primary grounds of their appeal. A minor success is counted as a win. If there is a divided ruling on separate issues the case is rated as win some / lose some. Only family cases directly between spouses are included. In the second part of the study outcomes to specific family issues are depicted. Some cases may raise more than one issue and may receive multiple entries. Cases that did not include these issues received were omitted. Cross appeals are included in part 2 but omitted in part 1. The third part summarizes individual family issues and the fourth part analyzes cases heard by the Chief Justice of Ontario

Part 1

For Justice Abella the total cases can be summarized as follows:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	28	2	23	3
Female	12	9	2	1

It can be concluded a man had a 82.1 % chance of losing on all issues, but a woman had a 83.3 % chance of winning on at least some issues when appearing before a panel with Justice Abella on it

For Justice Feldman, the total cases can be summarized as follows:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	10	2	5	3
Female	17	11	3	3

It can be concluded a man had a 50 % chance of losing on all issues, but a woman had a 82.3 % chance of winning on at least some issues when appearing before a panel with Justice Feldman on it

For Justice Charron the total cases can be summarized as follows:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	27	3	22	2
Female	10	7	2	1

It can be concluded a man had a 81.5 % chance of losing on all issues, but a woman had a 80.0 % chance of winning on at least some issues when appearing before a panel with Justice Charron on it

For Justice Simmons the total cases can be summarized as follows:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	20	1	10	9
Female	10	5	4	1

It can be concluded a man had a 50 % chance of losing on all issues, but a woman had a 60 % chance of winning on at least some issues when appearing before a panel with Justice Simmons on it

For Justice Lang the total cases can be summarized as follows:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	8	1	7	0
Female	5	3	1	1

It can be concluded a man had a 87.5 % chance of losing on all issues, but a woman had a 70 % chance of winning on at least some issues when appearing before a panel with Justice Lang on it

For Justice Weiler the total cases can be summarized as follows:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	22	2	13	7
Female	13	7	2	4

It can be concluded a man had a 59.1 % chance of losing on all issues, but a woman had a 84.6 % chance of winning on at least some issues when appearing before a panel with Justice Weiler on it.

Adding all the data produces the following result:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	115	11	70	24
Female	67	42	24	11

Summarized in percentage terms

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	100	9.6	60.9	20.8
Female	100	62.7	21.6	16.4

It can be concluded a man had a 60.9 % chance of losing on all issues, but a woman had a 79.1 % chance of winning on at least some issues when appearing before a panel composed of one or more of these judges.

Part 2

A more detailed examination of these cases for decisions on specific family parameters is as follows

For Justice Abella, a summary of family decisions produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	2	6	1	10	12
Number of Male Wins	0	0	0	0	2

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	5	1	0	4	6
Number of Female Wins	3	1	0	3	5

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	0	0	0	16.7
% Chance of Female Win	60.0	100	NA	75	83.3

It can be concluded that on a family issue a man has a 6.4 % chance of winning and a woman has an 75.0 % chance of winning when appearing before a panel with Justice Abella on it

For Justice Feldman, a summary of family decisions produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	3	3	1	4	4
Number of Male Wins	0	1	0	1	0

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	1	0	1	6	3
Number of Female Wins	1	0	0	5	2

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	33	0	25	0
% Chance of Female Win	100	NA	0	83	66

It can be concluded that on a family issue a man has a 13.3 % chance of winning, and a woman has a 72.7 % chance of winning when appearing before a panel with Justice Feldman on it

For Justice Charron, a summary of family decisions produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	3	3	0	11	11
Number of Male Wins	0	0	0	1	1

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	2	0	2	3	2
Number of Female Wins	1	0	2	2	1

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	0	NA	9.1	9.1
% Chance of Female Win	50	NA	100	66.7	50

It can be concluded that on a family issue a man has a 7.4 % chance of winning, and a woman has a 70.0 % chance of winning when appearing before a panel with Justice Charron on it

For Justice Simmonds, a summary of family decisions produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	4	4	0	7	7
Number of Male Wins	0	2	0	1	2

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	0	1	2	4	3
Number of Female Wins	0	1	1	3	3

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	50	NA	14.3	28.6
% Chance of Female Win	NA	100	50	75.0	100

It can be concluded that on a family issue a man has a 23.8 % chance of winning, and a woman has an 80% chance of winning when appearing before a panel with Justice Simmons on it

For Justice Lang, a summary of family decisions produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	2	2	0	2	5
Number of Male Wins	0	0	0	0	0

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	0	0	0	3	3
Number of Female Wins	0	0	0	1	2

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	0	NA	0	0
% Chance of Female Win	NA	NA	NA	33.3	66.7

It can be concluded that on a family issue a man has a 0 % chance of winning, and a woman has a 50 % chance of winning when appearing before a panel with Justice Lang on it

For Justice Weiler, a summary of family decisions produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	4	2	1	9	7
Number of Male Wins	0	0	0	3	4

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	3	0	3	6	5
Number of Female Wins	2	0	2	5	4

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	0	0	33.3	57.1
% Chance of Female Win	66.7	NA	66.7	83.3	66.7

It can be concluded that on a family issue a man has a 26.1 % chance of winning, and a woman has a 72.2 % chance of winning when appearing before a panel with Justice Weiler on it

Adding decisions in all categories produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	18	20	3	43	46
Number of Male Wins	0	3	0	6	9

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	11	2	8	26	23
Number of Female Wins	7	2	5	19	18

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	15.0	0	13.9	19.6
% Chance of Female Win	63.6	100	62.5	73.1	78.2

It can be concluded that on average on a family issue a man has a 13.8 % ($18/130 \times 100$) chance of winning and a woman has a 72.9 % ($51/70 \times 100$) chance of winning when appearing before these judges at the Court of Appeal.

Discrimination indexes

The spread between average male and female wins can be used to identify sexual discrimination, and to compare between judges. Discrimination against men is calculated by subtracting the percentage of male wins from female wins. $D = 100$ means 100 % chance of discrimination against males. $D = -100$ would signify 100 % chance of discrimination against females. $D = 0$ would show male and female wins to be equal and therefore no discrimination. Categories have been assigned as : 0 to 15 is slightly discriminatory, 15 to 30 is moderately discriminatory, 30 to 60 is highly discriminatory, 60 to 85 is heavily discriminatory, and 85 to 100 is fully discriminatory.

Discrimination Indexes by Judge

It can be concluded that: a man has a 68.6 % chance of being discriminated against on the basis of sex when appearing before a panel with justice Abella, there is a 59.4 % sexual bias when appearing before a panel with Justice Feldman, a 62.6 % sexual bias when appearing before a panel with Justice Charron, a 56.2 % sexual bias when appearing before a panel with Justice Simmons, a 50 % sexual bias when appearing before a panel with Justice Lang, and a 46.1 % sexual bias when appearing before a panel with Justice Wheeler.

Part 3

In Parts 1 and 2 duplicate rulings for the same case were not removed. For example, four mobility results could come from two cases if more than one of these judges was on the same panel on those cases. Removing duplicate cases may show a better measure of bias for the category itself by limiting inclusion of the characteristics of any specific cases. It should give an indication if any category was unduly influenced by duplicates.

The figures may be compared with Part 2 where duplicates were not removed. Including duplicate cases is also a valid measure as it allows for real odds a party might have to appear before more than one of these same judges at the same time. 20 duplicate decisions were identified and removed from a total of 182 cases, and are listed in appendix A9. The results were as follows

Decisions in all categories of family issues for males from Part 2

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	18	20	3	43	46
Number of Male Wins	0	3	0	6	9

A summary of decisions with 2 female judges for male appellants derived from Appendix A9

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	4	3	0	5	5
Number of Male Wins	0	1	0	1	2

A summary of decisions in all categories for family issues for male appellants, with duplicate decisions removed

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	14	16	3	37	39
Number of Male Wins	0	2	0	5	7
Percent of Male Wins	0	12.5	0	13.5	17.9

It can be concluded a male has a 12.8 % ($14/109 \times 100$) chance of winning on a family issue. That is one percent lower than the conclusion in Part 2 where duplicate decisions were not considered.

Decisions in all categories of family issues for females from Part 2

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	11	2	8	26	23
Number of Female Wins	7	2	5	19	18

A summary of decisions with 2 female judges for female appellants derived from Appendix A9

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	2	0	0	0	1
Number of Female Wins	2	0	0	0	1

A summary of decisions in all categories for family issue with duplicate decisions removed

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	9	2	8	26	22
Number of Female Wins	6	2	5	19	17
Percent of Female Wins	66.7	100	62.5	65.4	77.3

It can be concluded a female has a 73.1 ($49/67 \times 100$)chance of winning on a family issue. That is 0.2 % percent higher than the conclusion in Part 2 where duplicate decisions were not considered.

Discrimination Indexes by Issue

The results by issue without duplicates removed are as follows

Issue	% Female .. Wins	% Male .. Wins	Discrimination . Index	Discrimination . Category
Custody	63.6	0	63.6	heavy
Access	100	15.0	85.0	full / heavy
Mobility	62.5	0	62.5	heavy
Spousal Support	73.1	13.9	59.2	High / heavy
Child Support	78.2	17.9	60.3	heavy / high
Average	75.5	9.4	66.1	heavy

The results with duplicates removed are as follows

Issue	% Female .. Wins	% Male .. Wins	Discrimination . Index	Discrimination . Category
Custody	66.7	0	66.7	heavy
Access	100	12.5	87.5	full
Mobility	62.5	0	62.5	heavy
Spousal Support	65.4	13.5	51.9	high
Child Support	77.3	17.9	59.4	heavy / high
Average	74.4	8.8	65.6	heavy

Discrimination Indexes by Issue

It can be concluded that: a man has a 66.7 % chance of being discriminated against on the basis of sex when appearing before a panel with one or more of these justices on the issue of custody there is a 87.5 % sexual bias when appearing on the issue of access, a 62.5 % sexual bias when appearing on the issue of mobility a 59.2 % sexual bias when appearing on the issue of spousal support, and a 60.3 % sexual bias when appearing on the issue of child support. When duplicate cases are removed, there are no changes in mobility, the indexes for access and mobility rise slightly and there is a slight drop in child support. Only minor skew was imparted to the data in these categories from inclusion of the duplicates; however a greater difference can be seen in spousal support. A drop from removing duplicates would show that it was more difficult for males to win On a panel with 2 of these judges. The overall difference is only 0.5 %.

Part 4

The Chief Justice of Ontario

For Justice McMurtry the total cases can be summarized as follows:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	13	2	6	5
Female	10	3	4	3

It can be conclude a man had a 46.2 % chance of losing on all issues, but a woman had a an 60 % chance of winning on at least some issues when appearing before Justice McMurtry

For Justice McMurtry, a summary of family decisions produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	3	4	1	4	2
Number of Male Wins	0	2	1	2	1

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	1	1	1	7	3
Number of Female Wins	1	1	1	5	1

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	50	100	50	50
% Chance of Female Win	100	100	100	71.4	33.3

It can be concluded that on a family issue a man has a 42.2 % chance of winning, and a woman has a 69.9 % chance of winning when appearing before Justice McMurtry. D = 27.7 % (moderate)

However it would appear that there is an anomaly in Justice McMurtry's data. Against all odds all men appearing before justice McMurtry in 2005 won and all but one woman appearing before him lost. Prior to 2005 the data was as follows.

For Justice McMurtry prior to 2005 the total cases can be summarized as follows:

Appellant	Number	Win All	Lose All	Win Some/ Lose Some
Male	10	1	6	3
Female	8	3	2	3

It can be concluded a man had a 60 % chance of losing on all issues, but a woman had a an 62.5 % chance of winning on at least some issues when appearing before Justice McMurtry

For Justice McMurtry, a summary of family decisions prior to 2005 produces:

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	2	3	1	3	1
Number of Male Wins	0	1	1	1	0

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	1	0	1	6	2
Number of Female Wins	1	0	1	5	1

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	33.3	100	33.3	0
% Chance of Female Win	100	NA	100	83.3	50

It can be concluded that prior to 2005 on a family issue a male had a 30 % chance of winning and a female had an 80 % chance of winning when appearing before Justice McMurtry . D = 50 % (high)

Conclusions

The study shows that on average men are between 5 and 6 times less likely to win than women on appeal of family law issues. The odds may be even worse on specific issues or in front of specific justices. It is clear that the sex of the appellant and judge that they appear before is a major determinant of the outcomes for family issues at the Court of Appeal. Discrimination indexes show that on average close to 60 % of a decision may be due to sexual biases.

The odds for men are slightly better for men on technical issues but they virtually never win at custody or mobility issues. The odds for women are also slightly lower for custody and mobility issues but they win most of the time at support and access.

The spread between male and female wins may serve as a discrimination index to facilitate comparisons of both judges and issues. Indexes show that sexual bias extends far beyond any possible slight or moderate level that could be explained by the variable characteristics of individual cases. It can be ranked consistently high to heavy against men in all categories. Results are summarized as follows:

By Judge

Justice	% Female Wins	% Male Wins	Discrimination Index (%D)	Discrimination Ranking
Abella	75.0	6.4	68.6	heavy
Feldman	72.7	13.3	59.4	high/heavy
Charron	70.0	7.4	62.6	heavy
Simmons	80.0	23.8	56.2	high
Lang	50.0	0	50.0	high
Wheiler	72.2	26.1	46.1	high
Average	70.0	12.8	57.2	high

By Issue

Family Issue	% Female Wins	% Male Wins	Discrimination Index (%D)	Discrimination Category
Custody	63.6	0	63.6	heavy
Access	100	15.0	85.0	full / heavy
Mobility	62.5	0	62.5	heavy
Spousal Support	73.1	13.9	59.2	high / heavy
Child Support	78.2	17.9	60.3	heavy/ high
Average	75.5	9.4	66.1	heavy

Discrimination indexes are more variable by issue when duplicate cases are removed .On average both approaches show the same result. Inclusion of duplicate cases has raised the index by over 7 % for spousal support and lowered them by a couple of percent for custody and access.

Issue	% Female Wins	% Male Wins	Discrimination index (%D)	Discrimination Category
Custody	66.7	0	66.7	heavy
Access	100	12.5	87.5	full
Mobility	62.5	0	62.5	heavy
Spousal Support	65.4	13.5	51.9	high
Child Support	77.3	17.9	59.4	heavy / high
Average	74.4	8.8	65.6	heavy

It is true this data comes from only 7 of 24 Court of Appeal justices however cases are heard with panels of 3 judges and it appears that the panels are very often composed of 2 males and one female justice. It has been calculated this data comes from 191 decisions on the records of female justices therefore 322 decisions from this data are also on the records of male judges.

It appears the major source of potential error in this study is underinclusion of cases. Error from underinclusion by using the less complete Canlii database was 8.4 % for justice Abella when missing 16 of 40 entries. Error for Justice Charron was 10.2 % when missing 7 of 38 entries. These errors made little difference to the overall average scores resulting in a less than one percent total difference.

Finally it must be said that this study only relates quantitative measures as to wins and losses. It does not relate the severity of the situation or decision. In general it would appear that that men were facing more dire circumstances and received harsher rulings. Cases where females were facing jail could not be found.. There was one case where a females pleadings were partially stricken (Woolf v Woolf, Sept 4 2001). No cases could be found where females had to make lump sum payments in the hundreds of thousands of dollars. No cases could be found where females were paying in excess of 50 K per year support. No cases could be found where females were virtually deprived of all access to their children. The sample below demonstrates such rulings were made against men. It must be concluded that in addition there are also qualitative differences in the rulings that are biased against men.

Case Law Samples

Manis v. Manis, (2001), 55 O.R. (3d) 758

MCMURTRY C.J.O., ABELLA AND MACPHERSON JJ.A.

[5] In October 2000, Lane J. presided over a four week trial dealing with a wide range of matrimonial issues. In a judgment dated November 30, 2000, he ordered Mr. Manis to pay his wife an equalization payment of \$415,486, child support of \$2,333 per month (on the basis of imputed income of \$205,000) and spousal support of \$4,750 per month.

[12] Second, Mr. Manis made a voluntary assignment in bankruptcy on April 2, 2001. He did this even though there was no evidence that any creditor had made a demand on him. One of the consequences of this step was that Mr. Manis, who had imputed income of \$205,000 for the previous year, could no longer practise as a chartered accountant or a securities dealer.

[28] O'Connell J. imposed a punishment of six months imprisonment pursuant to rule 60.11(5) which sets out six forms of punishment, including an order that the person in contempt "be imprisoned for such period and on such terms as are just".

[29] The appellant submits that this punishment is too harsh, especially since it was impossible for him to comply with O'Connell J.'s conditions for purging his contempt.

[31] O'Connell J. was entirely right to send the appellant to jail. Moreover, the six month term of imprisonment, unalleviated by house arrest or week-end service, strikes me as appropriate and necessary

[32] The appeal is dismissed. The respondent is entitled to her costs of the appeal, including the motion for a stay before Simmons J.A.

Kitching v. Ontario (Director Family Responsibility Office), 2002 CanLII 45069 (ON C.A.)

ABELLA, MOLDAVER AND BORINS JJ.A.

[1] This is an appeal by Mr. Kitching from the judgment of Langdon J., who dismissed his appeal from the judgment of Agro J. In enforcement proceedings under s.41 of the Family Responsibility and Support Arrears Enforcement Act, S.O. 1996, C. 31, and pursuant to s.41(9)(g) of the Act, Agro J. ordered the imprisonment of the appellant for 90 days. The proceedings before Agro J. were as a result of the Mr. Kitching's breach of the order of the Ontario Superior Court of Justice that he pay child and spousal support. As of September 3, 2002, the amount of the arrears was \$58,700.03.

[2] Mr. Kitching has served 30 days of his imprisonment. Justice Agro's order was stayed to permit Mr. Kitching to appeal. Since the dismissal of his appeal by Langdon J., Mr. Kitching has not surrendered into custody to serve the remainder of his imprisonment.

[8] Therefore, the appeal is dismissed with costs fixed at \$5,000.

Ballentine v. Ballentine, (2003), 65 O.R. (3d) 481

MCMURTRY C.J.O., WEILER and MACPHERSON JJ.A.

[2] In an order in October 2001, Justice Nancy Backhouse dismissed the appellant's application to vary his spousal support obligation and to cancel his arrears of spousal support. Pursuant to s. 140(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("the *CJA*"), which deals with "vexatious proceedings", Backhouse J. also ordered that the appellant could institute no further proceedings with respect to spousal support, save with leave of the court.

[7] In August 1999, Cullity J. granted the respondent's motion for a writ of seizure and sale. He fixed arrears of spousal support at \$187,491.26 as of July 25, 1999. An appeal from Cullity J.'s order was dismissed by this court on July 31, 2000

[9] On October 9, 2001, Backhouse J. heard an application brought by the appellant in which he sought to vary his spousal support obligation from approximately \$4,500 per month to nil and to cancel all arrears, which at that time were about \$308,000.

[46] I disagree. I agree with Low J.'s analysis and conclusions with respect to these submissions. The payment out of the family trust was possible, not completed, when Low J. heard the application. Moreover, even if the payment were made, it would be far short of bringing the spousal support arrears into good standing. The appellant has known of his cancer for several years and could have made this matter known to Backhouse J.; bringing it to the attention of Low J. was not a new circumstance. Finally, there was nothing in the record to establish that the appellant's illness affected his ability to earn income. Since he sold his business in 1979, he has earned his income from investments, which his illness does not affect.

E. DISPOSITION

[47] I would dismiss both appeals. I would award the respondent her costs of the appeals, on a partial indemnity scale, fixed at \$6,200, inclusive of counsel fee at hearing, disbursements and GST.

Murano v. Murano [2002] O.J. No. 3632

Laskin, MacPherson and Simmons JJ.A

Appeal by the father from the issue of an order of committal for contempt and from an order striking out his pleadings. The mother and father were divorced in 2000.

HELD: Appeal dismissed. While the motions judge was not permitted to enforce a payment order with contempt proceedings, she was not enforcing a payment order when she ordered the warrant of committal. Her reasons focused on the father's default in complying with the production orders. It was not open to her to go behind the finding of contempt. While she had discretion to relieve the father from the consequences of his earlier default, there was no error in the manner in which she exercised that discretion. He had not delivered a complete financial statement, he had provided minimal information concerning the nature of his employment and level of remuneration over the past five years, and he provided little meaningful information concerning the distribution of certain judgment proceeds.

Dauids v Davids [1999] O.J. No. 3930

Labrosse, Doherty and O'Connor JJ.A.

1 THE COURT: — the appellant (husband) appeals from the judgment of Shaughnessy J. dated July 3, 1998. The relevant parts of that judgment can be summarized as follows:

The respondent wife was awarded spousal support in the amount of \$ 3000 per month

The husband was ordered to pay child support of \$ 2524 per month

2 The support orders were premised on the trial judge's finding that the husband's imputed income was \$168,000.00 per year. That figure was based largely, but not exclusively, on the evidence of a forensic accounting expert called by the wife at trial.

3 The trial judge also found that the wife was entitled to her costs on a solicitor-and-client basis almost from the outset of the proceedings and gave detailed directions to the assessment officer to assist in the assessment of those costs.

15 On May 4, 1998, the husband applied for an adjournment of the trial for a period of about six weeks. In his affidavit filed in support of the motion, the husband said he had "almost no funds" and had been denied legal aid

17 Mr. Cole opposed the adjournment. He advised that the arrears on the support orders amounted to over \$100,000.00 and that any payments the wife had managed to extract from the husband had been obtained only after various enforcement proceedings had been taken

22 The terms imposed by the trial judge included the requirement that the husband make three \$10,000.00 payments to the wife between May 15th and July 15th and that he comply with the existing interim orders.

29 Counsel for the husband submits that the trial judge could not impose the terms he did without satisfying himself of the husband's financial circumstances. We cannot agree

43 It is clear from a review of the trial judge's reasons, that the husband's problem at trial was not that he was unrepresented. His real problem was that he was determined to give his wife and children as little as possible and was prepared to lie and cheat to achieve that goal.

47 The appeal is dismissed with costs.

Jacobs v. Jacobs, 1996 CanLII 1685 (ON C.A.)

FINLAYSON, ABELLA AND ROSENBERG JJ.A

The only matter that is properly before us is an appeal from the judgment of Walsh J. dated October 17, 1995, in which he struck out the appellant husband's petition for divorce and corollary relief, including equalization of the parties' net family properties under the Family Law Act

While Walsh J. gave no reasons for making the order striking out the appellant's pleadings, it is obvious from the material before us that he made the order because of the appellant's failure to make any serious attempt to comply with the court's earlier interim order.

Counsel for the appellant has not persuaded us that there is any error in principle in the order under appeal. To permit him to have a trial on the merits of his divorce petition and corollary relief in these circumstances would undermine the proper enforcement of interim orders in matrimonial matters.

R. v. Filipich(1996), 26 R.F.L. (4th) 53

FINLAYSON, DOHERTY and ABELLA JJ.A.

The parties to this appeal agree that, subject to the court's discretion to relieve against arrears of child support, the amounts payable by way of arrears in this case are \$25,350.00 as to John Paul and \$6,500.00 as to Christina.

In our opinion, the motions judge erred in applying a one-year rule. While discretion does reside in the court to restrict the extent to which it will enforce payment of child support arrears, there is no fixed formula.

The order below is set aside, and substituted with an order fixing the arrears in the amounts referred to above and lifting the stay of the order of garnishee. The appellant is entitled to her costs both here and below.

Elik v Elik (1993) OJ No.3554

Houlden, Blair, and Abella JJA

4 We see no reason to make the wife pay support for the children

5 The wife has cross appealed for support at the rate of \$ 3000 per month commencing when the 5 year period for payment of the purchase price has expired

6 The appeal is dismissed with costs. The cross appeal will be allowed as indicated above with costs

Roscoe v. Roscoe, 2004 CanLII 1785 (ON C.A.)

McMURTRY C.J.O., BORINS AND FELDMAN JJ.A

[1] The appellant has demonstrated a most cavalier attitude to say the least to order of the Court over a lengthy period. In our view, there was no error of judicial discretion in the striking out of the appellant's pleadings.

[2] We find no error in the conduct of the trial or in the result.

[3] The appeal is therefore dismissed with costs fixed in the amount of \$10,000.00.

Sagoo v. Sagoo, 1998 CanLII 3204 (ON C.A.)

McKINLAY, ROSENBERG and GOUDGE JJ.A

[1] There was no urgency that required that McIsaac J. proceed with the cross-motion in the absence of the appellant and without giving her a reasonable opportunity to respond

[2] ..., In any event, it was unfair to, in effect, make a finding of contempt based on the material.

[3] In our view, McIsaac J. erred in striking the appellant's pleading. The appeal must be allowed, the order of McIsaac J. set aside and the appellant's pleading restored.

[4] There shall be no costs of the appeal or of the motions before McIsaac J. on May 29, 1997.

Miglin v. Miglin (2001), 53 O.R. (3d) 641

McMURTRY C.J.O., ABELLA and MOLDAVER JJ.A

[9] The releases provided by the wife in the separation agreement were as follows:

(b) The Wife specifically abandons any claims she has or may have against the Husband for her own support. The Wife acknowledges that the implications of not claiming support in this Agreement have been explained to her by her solicitor. At no time now or in the future, including any future divorce proceedings, or upon the Husband's death shall the Wife seek support for herself, regardless of the circumstances.

[43] The trial judge awarded her \$4,400 per month as spousal support, limited to five years. She is content with the quantum, but seeks in a cross-appeal to set aside the five year limit. She was also awarded \$33,204 annually for child support in accordance with the Child Support Guidelines. The trial judge had assessed Eric Miglin's annual income at \$200,000. Ms. Miglin concedes that this amount is erroneous and that the accurate income is \$186,130, thereby requiring a reduction in the monthly amount of child support ordered for the three children from \$3,000 to a total of \$2,767.

[101] ... ,The propriety of the amounts awarded are not, in my view, undermined by the fact that the oldest child is now living with her father.

[103] The quantum of child support will be varied in accordance with the parties' concession. In addition, the order restraining the father's school attendance will be set aside. The appeal is otherwise dismissed with costs. The cross-appeal is allowed, without costs, and the order imposing a five year term on spousal support is set aside. In the circumstances, I see no basis for interfering with the costs order made by the trial judge.

Francis v. Baker, 1998 (1998), 38 O.R. (3d) 481

ABELLA, AUSTIN and CHARRON JJ.A

[10] The trial judge concluded that the separation agreement ought not to be set aside. But she awarded a lump sum in the amount of \$500,000 to Ms. Francis as spousal support pursuant to s. 15(7) [now s. 15.2] of the *Divorce Act*

[16] The Federal Child Support Guidelines came into force on May 1, 1997. The strict application of these Guidelines results in Mr. Baker being required to pay child support in the amount of \$10,034 monthly. Mr. Baker does not suggest that the quantum ordered is an incorrect amount under the Federal Child Support Table. His complaint is that the amount is, on its face, inordinately high and well beyond the reasonable needs of the children. He suggests that such a substantial child support order amounts to spousal support disguised as child support, resulting in a windfall for Ms. Francis

54 ... , Mr. Baker gave no evidence at trial. The onus was on him, as the party alleging the impropriety of the Table amount, to satisfy the court that the amount was inappropriate. I see no basis, therefore, for interfering with the trial judge's conclusion that Mr. Baker did not discharge that burden.

[63] I see no reason to deprive Ms. Francis of the support to which she was found to be entitled merely because the glacial pace of the litigation resulted in a substantial award to her. The principles relied on by the trial judge were sound

[69] I would dismiss the appeal with costs

Tauber v. Tauber, (2003), 64 O.R. (3d) 229

CATZMAN, ABELLA AND CHARRON JJ.A.

[7] At the retrial, the trial judge ordered Mr. Tauber to pay \$11,173 monthly in child support to Ms. Tauber, the amount stipulated by the Child Support Guidelines.

[8] The issue in this appeal is the trial judge's decision to award Ms. Tauber \$500,000 as a lump sum for spousal support.

[17] In our view, the trial judge's decision discloses no error either in principle or in law justifying interference with her discretion.

Airst v. Airst [1998] O.J. No. 5195

Weiler J.A. (In chambers)

This was a motion by the wife to dismiss the husband's appeal from an award directing the husband pay the wife a \$600,000 equalization payment. The wife also sought security for costs of the appeal.

HELD: The motion was allowed, in part. Security for costs of \$100,000 was ordered because of the length of the action, and because the appeal was expected to take a long time.

Williams v. Ellul (1996), 19 R.F.L. (4th)

CATZMAN, LASKIN AND CHARRON JJ.A.

Guy Ellul appeals the order of Madam Justice Wallace made on July 12, 1994, in the Unified Family Court, in which she dismissed the appellant's motion for "indirect access through a qualified expert."

We understand what prompted Wallace J. to make an order that Mr. Ellul could not bring another motion for access or for an assessment without the support of those professionals currently working with the children. Although the children have been making progress emotionally, they suffer setbacks when their father brings a motion for access.

As this chronology demonstrates Mr. Ellul has had no access to his children for nearly seven years.

Paragraph 2 of the order of Wallace J. is deleted but the appeal is otherwise dismissed. There will be no costs of the appeal.

Montgomery v Montgomery (1992) OJ No 2299

Tarnopolsky, Findlayson and Abella JJA

After a trial lasting several days the respondent Bonnie Montgomery was given custody of her daughter Jena born on January 3 1985. The child's father, Bruce Montgomery, the appellant in this appeal was denied access

The doctor in turn referred her to Dr Diana M Johnson a specialist in child and family psychiatry. Dr Johnson after examining Jena advised the mother to stop access visits because in her view there was a possibility that Jena had been sexually abused by the father

The mother having attempted almost unsuccessfully almost from the child's birth to accommodate the father's incessant and obsessive behaviour, to avoid stress for the child found that in the end nothing could attenuate his harassment.

Wright J after having heard the evidence was satisfied that the stress had only increased with time for both the child and the mother. He concluded this stress was a material change of circumstance from the circumstances before Cosgrove J

I Agree with his assessment

Merkand v. Merkand, 2006 CanLII 3888 (ON C.A.)

SIMMONS, CRONK and ROULEAU JJ.A

[2] The appellant's primary argument is that the trial judge erred in law by ordering indefinite supervised access to the children of the marriage, thereby making it impossible in practical and legal terms for the appellant to obtain a future order for unsupervised access to his children.

[3] The trial judge was alive to the fact that her access order was exceptional, in that it provided for neither a transition to unsupervised access nor a fixed review date. We agree that an order of this kind should be made only in rare circumstances.

[5] Moreover, this record amply supported the trial judge's decision to order the continuation of supervised access. In particular, the evidence of the appellant's attempts to manipulate the children of the marriage concerning the custody and access regime, his demonstrated willingness to subject them to repeated professional assessments, and the concern that if access were expanded he would revert to pressuring the children to live with him, grounded the trial judge's order.

[7] Accordingly the appeal is dismissed. The respondent is entitled to her costs of the appeal on the partial indemnity scale, fixed in the amount of \$3000.00, inclusive of disbursements and G.S.T

litigation resulted in a substantial award to her. The principles relied on by the trial judge were sound

[69] I would dismiss the appeal with costs

Punzo v. Punzo (1996), 21 R.F.L. (4th)

GOODMAN, ABELLA and ROSENBERG JJ.A.

It is unfortunate that the learned motions court judge did not give any reasons in disposing of a motion which had the effect of finally terminating the husband's access to the children of the marriage. The husband is now left to speculate as to the basis upon which he has been denied access. While I am concerned about the failure to give reasons, I see no basis for interfering with the order below for that reason alone. (see: *Re Burgess and Burgess* (1995), 24 O.R. (2d) 547 (C.A.) at 549). I am not persuaded that the other grounds advanced on the appeal justify interfering with the order of the learned motions court judge.

Appendix A1 — Cases Examined for Justice Abella

		Sex. of appellant	Grounds of Appeal (Win/Lose)	Cross Appeal (Win/Lose)
1	Allaire v. Allaire (March 28, 2003)	M	(W) CS (L) SS	
2	Andrews v. Andrews (September 29, 1999)	M	(L) CS, SS	
3	Barakat v. Barakat (February 11, 1994)	...W	(W) SS	
4	Bosanc v. Bosanc (March 27, 2003)	M	(L) O, CS, SS	
5	Cox v. Down Stephen (November 20, 2003)	M	(L) C, A	
6	Duma v. Mathews (December 4, 1996)	M	(L) A, CS	
7	Elik v. Elik (February 2, 1993)	M	(L) O, CS	(W) SS
8	Filipich v. Filipich (September 10, 1996)	...M	(L) CS	
9	Farrar v. Farrar (January 27, 2003)	W	(W) O	
10	Francis v. Baker (March 10, 1998)	M	(L) SS	
11	Goldenberg v. Wolf (May 22, 2002)	W	(L) C	
12	Hall v. Hall (October 28, 1999)	W	(W) SS (L) CS, SS	
13	Irwin v. Irwin (September 10, 1998)	M	(L) C, A	
14	Jacobs v. Jacobs (February 23, 1996)	M	(L) O	
15	Lougheed v. Sillett (June 30, 1994)	W	(L) C	(L) O

16	Macedo v. Macedo (April 29, 1993)	M	(L) O, CS	
17	MacGyver v. Richards (March 23, 1995)	M	(L) M	
18	Maule-Ffinch v. Maule-Ffinch (May 7, 1996)	M	(L) O	
19	Maurici v. Maurici (August 9, 1996)	W	(W) O, CS	
20	Manis v Manis (September 18 2001)	M	(L) O	
21	McCord v Holek (March 26 1999)	W	(W) C, A	
22	McGeachy v. McGeachy (September 5, 2003)	M	(W) CS	(L) SS
23	Meiorin v. Meiorin (January 17, 1996)	M	(L) O, CS	
24	Merikallio v. Merikallio (March 22, 1999)	M	(L) CS	
25	Miglin v. Miglin (April 26, 2001)	M	(L) A, SS	
26	Miranda v. Bossio (June 18, 2001)	M	(L) SS	
27	Montgomery v. Montgomery (October 30, 1992)	M	(L) A	
28	Munro v. Munro (October 17, 1997)	M	(W) O (L) SS	
29	Pollastro v. Pollastro (March 31, 1999)	W	(W) C	
30	Politi v Politi (April 18 1997)	M	(L) O, CS	
31	Punzo v. Punzo (March 4, 1996)	M	(L) A	
32	Rumanek v. Rumanek (November 15, 1993)	W	(W) CS	
33	Shefsky v. Shefsky (September 11, 1996)	W	(W) CS, SS	
34	Sherman v. Sherman (April 16, 1999)	W	(W) CS	
35	Tauber v. Tauber (March 31, 2003)	M	(L) SS	
36	Veneziale v. Veneziale (April 21, 1994)	M	(W) O (L) CS	
37	Walsh v. Walsh (July 20, 1998) d	W	(W) C	
38	Woodcock v. Woodcock (September 10, 1996)	M	(L) CS, SS	
39	Woodman v. Deremo (July 23, 1996)	M	(L) O	
40	Wunsche v. Wunsche (April 25, 1994)	M	(W) O	

Appendix A2 — Cases Examined for Justice Feldman

		Sex. of appellant	Grounds of Appeal (Win/Lose)	Cross. Appeal (Win/Lose)
1	Arella v Scobak (July 15 2004)	W	(W) SS	
2	Bezanson v Falle (December 23 1998)	W	(W) O	(L) CS
3	Bremer v Bremer (February 21, 2005)	M	(W) SS (L) O, SS	
4	Brown v Brown (March 5 2005)	M	(L) C, A, CS, SS	
5	Cole v Kew (April 24 2001)	M	(L)	(L)
6	Desramaux v Desramaux (August 28 2002)	W	(W) SS (L) CS	
7	Gerstner v Borg (February 10 1999)	M	(W) O	
8	Johnson v Cleroux (April 8 2002)	W	(W) O	
9	Katsigiannis v Kottick Katsigiannis pril 2001)	W	(L) C	
10	Kelly v Kelly (July 23 2004)	W	(W) O, SS	

11	Koutowska Woof v Woof (August 4 2004)	M	(L) C		
12	Lee v. Lee (August 5, 1999)	M	(L) CS		
13	Mancini v Mancini (February 2 2004)	W	(W) O		
14	Maurici v Maurici (February 20 2001)	W	(W) O	(L) SS	(L) SS
15	Roscoe v Roscoe (July 9 2004)	M	(L) C, A, CS		
16	Scheel v Henkleman (January 16 2001)	W	(W) SS		
17	Sharpe v Waterhouse (February 11 2005)	W	(W) CS		
18	Stone v Stone (August 10 2001)	W	(W) O		
19	Swanson v Swanson (February 16 1999)	M	(W) O		
20	Sydor v Sydor (October 2 2003)	W	(W) O		
21	Tierney – Hynes v Hynes (June 28 2005)	W	(W) SS		
22	Turner v Viau (April 8 2002)	W	(L) O		
23	Walsh v Walsh (February 2 2004)	M	(W) SS		
24	Wreggitt v Belanger (December 10 2001)	M	(W) A	(L) C	
25	Wright v Zavier (March 26, 2002)	W	(L) O		

Appendix A3 — Cases Examined for Justice Charron

		Sex. of appellant	Grounds of Appeal (Win/Lose)	Cross Appeal (Win/Lose)
1	Best v. Best (October 3, 1997)	M	(L) O, SS	
2	Boers v. Boers (December 3, 1996)	M	(L) O, CS, SS	
3	Bogue v Bogue (November 16, 1999)	M	(L) O	
4	Campbell v. Campbell (February 15, 1996)	M	(L) CS, SS	
5	Choquette v. Choquette (July 28, 1998)	M	(L) SS	
6	Coathup v Coathup (May 18, 2001)	M	(L) O	
7	Daoust v Leboeuf (January 14, 1998)	M	(L) C	(W) O, CS (L) SS
8	Duma v Mathews (December 8, 1996)	M	(L) A, CS	
9	Farrar v. Farrar (January 27, 2003)	W	(W) O	
10	Francis v. Baker (March 10, 1998)	M	(L) SS	
11	Gordon v. Solmon (December 2, 1996)	M	(L) CS	
12	Hutchinson v Hutchinson (January 15, 2001	W	(W) O	
13	Irmie v Irmie October 18, 1999)	M	(W) SS	
14	Lachapelle v. Lachapelle (November 15, 2000)	M	(L) O, C, CS	
15	Lamarche v Crevier (November 9, 2001)	M	(W) O	
16	Latcham v Latcham (May 29, 2002)	W	(L) O	
17	Layzell v. Layzell (December 8, 1997)	M	(L) C	
18	Lee v. Lee (August 5, 1999)	M	(L) CS	
19	Maharaj v Maharaj (May 18, 2001)	W	(W) M	
20	Marson v. Marson (May 15, 2001)	M	(L) O, CS	
21	Munro v. Munro (October 17, 1997)	M	(W) O (L) SS	

22	Otterbein v. Otterbein (August 13, 1999)	...W	.(W) SS	
23	Parks v. Barnes (March 7, 2002)	W	(W) C	
24	Pope v. Pope (February 3, 1999)	M	(L) O, SS	
25	Rhys – Jones v Rhys – Jones (April 20, 2000)	...W	(W) SS	
26	Rosien v. McCulloch (May 8, 2001)	.W	.(L) C, CS	
27	Sangster v. Sangster (January 15, 2003)	M	(W) CS (L) O	
28	Scherer v Scherer (January 16, 2001)	M	(W) O	
29	Sleiman v. Sleiman (May 7, 2002)	M	(W) O	
30	Sodhi v. Sodhi (June 19, 2002)	M	(L) CS, SS	(W) M
31	Stanghi v. Stanghi (May 24, 2001)	M	(L) CS, SS	
32	Tauber v. Tauber (March 31, 2003)	M	(L) SS	
33	Taylor v. McWhirter (December 2, 1996)	M	(L) A	
34	Therrien – Cliché v Cliché (April 11, 1997)	M	(L) O	
35	Williams v. Ellul (February 2, 1996)	M	.(L) A	
36	Woodman v. Deremo (July 23, 1996)	M	(L) O	
37	Wright v. Zaver (March 26, 2002)	W	.(L) O	

Appendix A4 — Cases Examined for Justice Simmons

		Sex..of appellant	Grounds of Appeal (Win/Lose)	Cross.Appeal (Win/Lose)
1	Arvai v Arvai (February 20, 2001)	M	(W) O	(W) SS
2	Babchishin v Nicholson (January 8, 2004)	M	(L) C	
3	Bremer v Bremer (February 18, 2005)	M	(W) SS (L) O, SS	
4	Cada v Cada (October 9, 2003)	M	(L) O	
5	Coles v Kew (March 8, 2001)	M	(L) C	(L) O
6	Difrancesco v Couto (November 9, 2001)	W	(W) CS	
7	Elliot v. Elliot (February 2, 2004)	W	(W) SS	
8	Greenberg v Daniels (January 15, 2005)	M	(L) SS	
9	Grifith v Bootsma (September 20, 2005)	M	(W) A, CS (L) C	
10	Hooper v Hooper (May 31, 2002)	M	(W) O (L) CS	
11	Jabbaz v Mouammar (May 5, 2003)	W	(W) M	
12	Klerides v Klerides (May 30, 2002)	M	(W) CS, SS (L) O	
13	Krisko v Krisko (September 23, 2002)	M	(L) A	
14	Kushir v Lowry (June 13, 2005)	M	(L) SS	
15	Manis v Manis (September 18, 2001)	M	(L) O	
16	Marks v Tokarewicz (January 15, 2004)	W	(L) SS	
17	Merkand v Merkand (February 8, 2006)	M	(L) A	
18	Palombi v Palombi (March 19,2001)	M	(L) CS, SS	
19	Reil v Holland (October 8, 2003)	M	(L) O, SS	
20	Sangster v Sangster (January 15, 2003)	M	(W) CS	

21	Segal v Segal (July 4 2002)	W	(W) A	
22	Sharpe v Waterhouse (February 14 2005)	W	(W) CS	
23	Taylor v Taylor (July 8, 2002)	M	(W) O	(W) CS
24	Tennant v Tennant (November 15, 2002)	M	(W) O	(W) SS
25	Toor v Toor (August 26, 2003)	W	(L) O	
26	Turner v Via (April 8, 2002)	W	(L) O	
27	Wolf v Wales (December 13, 2001)	W	(L) M	
28	Wreggit v Belanger (December 10, 2001)	M	(W) A (L) C	
29	Wylie v Leclair (May 21, 2003)	M	(W) O (L) CS	(W) O
30	Wright v Zavier (March 26, 2002)	W	(L) O	

Appendix A5 — Cases Examined for Justice Lang

		Sex..of appellant	Grounds of Appeal (Win/Lose)	Cross.Appeal (Win/Lose)
1	Bubovitch v Bubovitch (October 26, 2005)	W	(W) O	
2	Campbell v Szoke (January 24, 2005)	M	(L) CS, SS	
3	Garvey v Chiarelli (July 5, 2005)	M	(L) C, A, CS	(L) CS
4	Griffin v Obrien (January 13, 2006)	M	(W) O	
5	KCD v SAF (September 13, 2004)	M	(L) C	
6	Kalla v Kalla (February 16 2005)	M	(L) CS	
7	Kallaba v Bylykashi (February 14, 2006)	W	(W) O (L) SS	
8	Lampron v Lampron (January 20, 2005)	M	(L) O	
9	Mackinnon v Mackinnon (April 26 2005)	W	(W) CS, SS	
10	Mancuso v Mancuso (November 29, 2004)	M	(L) A, SS	
11	Osovetsky v Osovetsky (November 26, 2004)	M	(L) SS	
12	Pirner v Pirmir (January 6, 2005)	W	(L) CS	(L) CS
13	Tierney Hynes v Hynes (June 28, 2005)	W	(W) SS	

Appendix A6 — Cases Examined for Justice Weiler

		Sex..of appellant	Grounds of Appeal (Win/Lose)	Cross.Appeal (Win/Lose)
1	Babji v Babji (March 19, 1999)	W	(W) O, SS	
2	Ballantine v Ballantine (June 27, 2003)	M	(L) O, SS	
3	Beaumont v Beaumont (September 15, 2004)	M	(L) O	
4	Bjornson v Creighton (November 19, 2002)	W	(L) M	(L) C
5	Brans v Brans (May 14, 1999)	W	(L) O, CS	
6	Brown v Ferguson (November 30, 2004)	M	(L) CS, SS	
7	Carr v McIntosh (July 14, 1999)	M	(W) O	
8	Chan v Lam (March 26, 2002)	W	(W) O	

9	Contino v Leonelli-Contino(October 28, 2003)	M	(W) CS	(W) CS
10	Daoust v Leboeuf (November 8, 1996)	W	(W) C	
11	Davidson v Davidson (March 4, 1997)	M	(W) O (L) CS	
12	Garvey v Chiarelli (July 5, 2005)	M	(L) C, A	(L) SS
13	Gliech v Kunde (March 25, 1994)	M	(W) O, SS (L) CS	
14	Greenberg v Daniels (January 17, 2005)	M	(L) SS	
15	Horner v Horner (October 21, 2004)	W	(W) CS, SS	(W) SS
16	Huisman v Huisman (June 14, 1996)	M	(L) O, SS	
17	Hutchinson v Hutchinson (January 15, 2001)	W	(W) O	
18	Irwin v Irwin (September 10,1998)	M	(L) C, A	
19	Jordan v Jordan (January 17, 2006)	M	(W) O	
20	Kaplanis v Kaplanis (January 31, 2005)	W	(W) C	(L) O
21	Klerides v Klerides (May 30, 2002)	M	(W) CS, SS (L) O	
22	K(MS) v T(TL) (February 2003)	W	(W) O	
23	Korutowska– Wooff v Wooff (August 4 2004)	M	(L) C	
24	Ladisa v Ladisa (January 31, 2005)	W	(W) SS (L) C	
25	Lamarche v Crevier (November 9, 2001)	M	(W) O	
26	Luckhurst v Luckhurst (June 4, 1998)	M	(L) M	
27	Marinangeli v Marinangeli (July 11, 2003)	M	(W) CS (L) SS	(W) CS
28	Merklinger v Merklinger (November 20, 1996)	M	(L) O, SS	
29	Politi v Politi (April 18 1997)	M	(L) O, CS	
30	Rechsteiner v Kendall (October 25, 1999)	W	(W) M	
31	Roseneck v Gowling (December 24 2002)	M	(W) O	(L) SS
32	Therrien – Cliché v Cliche (April 11, 1997)	M	(L) O	
34	Tremblay v Tremblay (July 6, 1999)	M	(L) O	(W) SS
34	Woodhouse v Woodhouse (June 4, 1996)	W	(W) O, M	
35	Woolf v Woolf (September 4, 2001)	W	(L) O	

Appendix A7 — Cases Examined for Justice McMurtry

		Sex..of appellant	Grounds of Appeal (Win/Lose)	Cross.Appeal (Win/Lose)
1	Ballentine v Ballentine (June 27 2003)	M	(L) O, SS	
2	Balogh v Balogh (November 20 1996)	M	(W) O, SS	(W) SS
3	Baloj v Baloj (March 18, 1999)	W	(W) O, SS	
4	Cada v Cada (October 9 2003)	M	(L) O	
5	Desramaux v Desramaux (August 28 2002)	W	(W)	
6	Griffith v Bootsma (September 20 2005)	M	(W) A, CS (L) C	
7	Huisman v Huisman (June 14 1996)	M	(W) O	
8	Krisko v Krisko (September 23 2005)	W	(W) A	
9	Latcham v Latcham (May 29 2002)	W	(L) O	
10	Manis v Manis (September 18 2001)	M	(L) O	

11	Miglin v Miglin (April 26 2001)	M	(L) A, SS	
12	Murray v Murray (August 29, 2005)	M	(W) SS	
13	Parks v Barnes (March 7 2002)	W	(W) C	
14	Pirner v Pirner (November 30 2005)	W	(L) CS	(L) CS
15	Roscoe v Roscoe (July 9 2004)	M	(L) C, A, CS	
16	Sadhi v Sadhi (April 28, 2002)	W	(W) M (L) SS	(M) C
17	Sabourin v Young (June 10, 2003)	M	(W) M	
18	Scheel v Henkleman (January 16 2001)	W	(W) SS	
19	Scherer v Scherer (April 26 2002)	M	(L) O	
20	Sefton v Bragg (September 11 1999)	W	(L) CS	
21	Slieman v Slieman (May 14 2002)	M	(W) O	
22	Taylor v Taylor (July 8 2002)	M	(W) O	(W) CS
23	Zomparelli v Zomparelli (May 12 2005)	W	(L) O, SS	

Appendix A8 — Accuracy and error of study

Some very small error factor is possible in interpreting the data and transcribing. The major error factor in this study comes from underinclusion of cases. For 5 of the 7 judges the inferior Calii database was used that omits cases. This appendix examines the error factor caused by using the canlii database alone for the 2 judges whose complete records were available on Quicklaw.

Cases Examined for Justice Abella

Quicklaw Database		Canlii Database	
1	Allaire v. Allaire (March 28, 2003)	1	Allaire v. Allaire (March 28, 2003)
2	Andrews v. Andrews (September 29, 1999)	2	Andrews v. Andrews (September 29, 1999)
3	Barakat v. Barakat (February 11, 1994)	3	Cox v. Down Stephen (November 20, 2003)
4	Bosanc v. Bosanc (March 27, 2003)	4	Filipich v. Filipich (September 10, 1996)
5	Cox v. Down Stephen (November 20, 2003)	5	Farrar v. Farrar (January 27, 2003)
6	Duma v. Mathews (December 4, 1996)	6	Francis v. Baker (March 10, 1998)
7	Elik v. Elik (February 2, 1993)	7	Hall v. Hall (October 28, 1999)
8	Filipich v. Filipich (September 10, 1996)	8	Irwin v. Irwin (September 10, 1998)
9	Farrar v. Farrar (January 27, 2003)	9	Jacobs v. Jacobs (February 23, 1996)
10	Francis v. Baker (March 10, 1998)	10	Lougheed v. Sillett (June 30, 1994)
11	Goldenberg v. Wolf (May 22, 2002)	11	Maurici v. Maurici (August 9, 1996)
12	Hall v. Hall (October 28, 1999)	12	Manis v Manis (September 18 2001)
13	Irwin v. Irwin (September 10, 1998)	13	McCord v Holek (March 26 1999)
14	Jacobs v. Jacobs (February 23, 1996)	14	McGeachy v. McGeachy (September 5, 2003)
15	Lougheed v. Sillett (June 30, 1994)	15	Miglin v. Miglin (April 26, 2001)
16	Macedo v. Macedo (April 29, 1993)	16	Pollastro v. Pollastro (March 31, 1999)
17	MacGyver v. Richards (March 23, 1995)	17	Politi v Politi (April 18 1997)

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|----|---|----|---|
| 18 | Martinuzzo v. Janssen (March 17, 1998) | 18 | Punzo v. Punzo (March 4, 1996) |
| 19 | Maule-Ffinch v. Maule-Ffinch (May 7, 1996) | 19 | Sherman v. Sherman (April 16, 1999) |
| 20 | Maurici v. Maurici (August 9, 1996) | 20 | Tauber v. Tauber (March 31, 2003) |
| 21 | Manis v Manis (September 18 2001) | 21 | Walsh v. Walsh (July 20, 1998) |
| 22 | McCord v Holek (March 26 1999) | 22 | Woodcock v. Woodcock (September 10, 1996) |
| 23 | McGeachy v. McGeachy (September 5, 2003) | 23 | Woodman v. Deremo (July 23, 1996) |
| 24 | Meiorin v. Meiorin (January 17, 1996) | 24 | Wunsche v. Wunsche (April 25, 1994) |
| 25 | Merikallio v. Merikallio (March 22, 1999) | | |
| 26 | Miglin v. Miglin (April 26, 2001) | | |
| 27 | Miranda v. Bossio (June 18, 2001) | | |
| 28 | Montgomery v. Montgomery (October 30, 1992) | | |
| 29 | Munro v. Munro (October 17, 1997) | | |
| 30 | Pollastro v. Pollastro (March 31, 1999) | | |
| 31 | Politi v Politi (April 18 1997) | | |
| 32 | Punzo v. Punzo (March 4, 1996) | | |
| 33 | Rumanek v. Rumanek (November 15, 1993) | | |
| 34 | Shefsky v. Shefsky (September 11, 1996) | | |
| 35 | Sherman v. Sherman (April 16, 1999) | | |
| 36 | Tauber v. Tauber (March 31, 2003) | | |
| 37 | Veneziale v. Veneziale (April 21, 1994) | | |
| 38 | Walsh v. Walsh (July 20, 1998) | | |
| 39 | Woodcock v. Woodcock (September 10, 1996) | | |
| 40 | Woodman v. Deremo (July 23, 1996) | | |
| 41 | Wunsche v. Wunsche (April 25, 1994) | | |

For Justice Abella the total cases can be summarized as follows:

Quicklaw Database

Canlii Database

Appellant	No.	Win All	Lose All	Win Some/ Lose Some		Appellant	No.	Win All	Lose All	Win Some/ Lose Some
Male	28	2	23	3		Male	16	2	11	3
Female	12	9	2	1		Female	8	7	1	0

Summarized in percent terms

Appellant	No.	Win All	Lose All	Win Some/ Lose Some		Appellant	No.	Win All	Lose All	Win Some/ Lose Some
Male	100	7.1	82.1	10.7		Male	100	14.2	76.2	4.8
Female	100	75.0	16.6	8.3		Female	100	70	20	10

For Justice Abella, a summary of family decisions from the Quicklaw database

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	2	4	0	8	7
Number of Male Wins	0	0	0	1	2

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	4	1	0	1	1
Number of Female Wins	3	1	0	1	1

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	0	NA	12.5	28.6
% Chance of Female Win	75.0	100	NA	100	100

For Justice Abella, a summary of family decisions from the Canlii database.

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	2	6	1	10	12
Number of Male Wins	0	0	0	0	2

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	5	1	0	4	6
Number of Female Wins	3	1	0	3	5

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	0	0	0	16.7
% Chance of Female Win	60.0	100	NA	75	83.3

Discrimination Index

	% Female Wins	% Male Wins	Discrimination Index (%D)	Discrimination Ranking
Canlii	85.7	14.3	71.4	heavy
Quicklaw	75.0	9.6	65.4	heavy

It can be concluded that using the Canlii database overstated bias against men by 8.4 % for Justice Abella. This represents an error factor of 8.4 % ($100 - (65.4 / 71.4 \times 100)$) from using the Canlii database alone.

Cases Examined for Justice Charron

Quicklaw Database

1	Best v. Best (October 3, 1997)
2	Boers v. Boers (December 3, 1996)
3	Bogue v Bogue (November 16, 1999)
4	Campbell v. Campbell (February 15, 1996)
5	Choquette v. Choquette (July 28, 1998)
6	Coathup v Coathup (May 18, 2001)
7	Cornfeld v Cornfeld (December 4, 2001)
8	Daoust v Leboeuf (January 14, 1998)
9	Duma v Mathews (December 8, 1996)
10	Farrar v. Farrar (January 27, 2003)
11	Francis v. Baker (March 10, 1998)
12	Gordon v. Solmon (December 2, 1996)
13	Hutchinson v Hutchinson (January 15, 2001
14	Irmie v Irmie (October 18, 1999)
15	Lachapelle v. Lachapelle (November 15, 2000)
16	Lamarche v Crevier (November 9, 2001)
17	Latcham v Latcham (May 29, 2002)
18	Layzell v. Layzell (December 8, 1997)
19	Lee v. Lee (August 5, 1999)
20	Maharaj v Maharaj (May 18, 2001)
21	Marson v. Marson (May 15, 2001)
22	Munro v. Munro (October 17, 1997)
23	Otterbein v. Otterbein (August 13, 1999)
24	Parks v. Barnes (March 7, 2002)
25	Pope v. Pope (February 3, 1999)
26	Rhys – Jones v Rhys – Jones (April 20, 2000)
27	Rosien v. McCulloch (May 8, 2001)
28	Sangster v. Sangster (January 15, 2003)
29	Scherer v Scherer (January 16, 2001)
30	Sleiman v. Sleiman (May 7, 2002)
31	Sodhi v. Sodhi (June 19, 2002)
32	Stanghi v. Stanghi (May 24, 2001)

Canlii Database

1	Best v. Best (October 3, 1997)
2	Bogue v Bogue (November 16, 1999)
3	Choquette v. Choquette (July 28, 1998)
4	Coathup v Coathup (May 18, 2001)
5	Daoust v Leboeuf (January 14, 1998)
6	Farrar v. Farrar (January 27, 2003)
7	Francis v. Baker (March 10, 1998)
8	Hutchinson v Hutchinson (January 15, 2001
9	Irmie v Irmie (October 18, 1999)
10	Lachapelle v. Lachapelle (November 15, 2000)
11	Lamarche v Crevier (November 9, 2001)
12	Latcham v Latcham (May 29, 2002)
13	Layzell v. Layzell (December 8, 1997)
14	Lee v. Lee (August 5, 1999)
15	Maharaj v Maharaj (May 18, 2001)
16	Marson v. Marson (May 15, 2001)
17	Otterbein v. Otterbein (August 13, 1999)
19	Parks v. Barnes (March 7, 2002)
19	Pope v. Pope (February 3, 1999)
20	Rhys – Jones v Rhys – Jones (April 20, 2000)
21	Rosien v. McCulloch (May 8, 2001)
22	Sangster v. Sangster (January 15, 2003)
23	Scherer v Scherer (January 16, 2001)
24	Sleiman v. Sleiman (May 7, 2002)
25	Sodhi v. Sodhi (June 19, 2002)
26	Stanghi v. Stanghi (May 24, 2001)
27	Tauber v. Tauber (March 31, 2003)
28	Therrien – Cliché v Cliché (April 11, 1997)
29	Williams v. Ellul (February 2, 1996)
30	Woodman v. Deremo (July 23, 1996)
31	Wright v. Zaver (March 26, 2002)

- 33 Tauber v. Tauber (March 31, 2003)
- 34 Taylor v. McWhirter (December 2, 1996)
- 35 Therrien – Cliché v Cliché (April 11, 1997)
- 36 Williams v. Ellul (February 2, 1996)
- 37 Woodman v. Deremo (July 23, 1996)
- 38 Wright v. Zaver (March 26, 2002)

For Justice Charron the Quicklaw and Canlii databases can be compared as follows (note, - one of the ‘male wins ‘ cases listed above was qualified as only a partial win as in the tables below).

Quicklaw Database

Canlii Database

Appellant	No.	Win All	Lose All	Win Some/ Lose Some		Appellant	No.	Win All	Lose All	Win Some/ Lose Some
Male	27	3	22	2		Male	21	3	16	1
Female	10	7	2	1		Female	10	7	2	1

Summarized in percent terms

Appellant	No.	Win All	Lose All	Win Some/ Lose Some		Appellant	No.	Win All	Lose All	Win Some/ Lose Some
Male	100	11.1	81.5	7.4		Male	100	14.2	76.2	4.8
Female	100	70	20	10		Female	100	70	20	10

For Justice Charron, a summary of family decisions from the Quicklaw database

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	3	1	0	8	6
Number of Male Wins	0	0	0	1	1

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	2	0	2	3	1
Number of Female Wins	1	0	2	2	1

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	0	NA	12.5	16.6
% Chance of Female Win	100	NA	100	66.7	100

For Justice Charron, a summary of family decisions from the Canlii database

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	3	3	0	11	11
Number of Male Wins	0	0	0	1	1

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	2	0	2	3	2
Number of Female Wins	1	0	2	2	1

Summarized in percentage terms

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
% Chance of Male Win	0	0	NA	9.1	9.1
% Chance of Female Win	50	NA	100	66.7	50

Discrimination Index

	% Female Wins	% Male Wins	Discrimination Index (%D)	Discrimination Ranking
Canlii	66.7	11.1	56.6	high
Quicklaw	70	7.4	62.6	heavy

It can be concluded that using the Canlii database understated bias against men by 6 % for Justice Charron. This represents an error factor of 10.2 % ($100 - (56.2 / 62.6 \times 100)$) from using the Canlii database alone.

Appendix A9 — Summary of cases with more than one female judge

	Sex. of appellant	Grounds of Appeal (Win/Lose)	Cross Appeal (Win/Lose)
1	Duma v. Mathews (December 4, 1996)	M	(L) A, CS
2	Farrar v. Farrar (January 27, 2003)	W	(W) O
3	Francis v. Baker (March 10, 1998)	M	(L) SS
4	Irwin v. Irwin (September 10, 1998)	M	(L) C, A
5	Manis v Manis (September 18, 2001)	M	(L) O
6	Munro v Munro (October 17, 1997)	M	(W) O (L) SS
7	Pollastro v Pollastro (March 31, 1999)	W	(W) C
8	Politi v Politi (April 18 1997)	M	(L) O, CS
9	Tauber v Tauber (March 31, 2003)	M	(L) SS
10	Woodman v. Deremo (July 23, 1996)	M	(L) O
11	Coles v Kew (March 8, 2001)	M	(L) C
12	Korutowska – Wooff v Wooff (August 4 2004)	M	(L) C
13	Lee v. Lee (August 5, 1999)	M	(L) CS
14	Sharpe v Waterhouse (February 14 2005)	W	(W) CS
15	Turner v Via (April 8, 2002)	W	(L) O

- 16 Wreggit v Belanger (December 10, 2001) M (W) A (L) C
- 17 Wright v Zavier (March 26, 2002) W (L) O
- 18 Sangster v Sangster (January 15, 2003) M (W) CS
- 19 Greenberg v Daniels (January 17, 2005) ...M (L) SS
- 20 Klerides v Klerides (May 30, 2002) ...M (W) CS, SS (L) O

For family decisions from panels with 2 female judges

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Males	4	3	0	5	5
Number of Male Wins	0	1	0	1	2

Appellant	Custody	Access	Mobility	Spousal Support	Child Support
Number of Females	1	0	0	0	1
Number of Male Female Wins	1	0	0	0	1