

Publisher’s Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

EVIDENCE IN FAMILY LAW Harold Niman Release No. 2, April 2024
--

This unique resource is structured to follow the evolution of a family law case through trial and appeal and provides detailed analysis regarding how to best obtain, preserve and present evidence. It also examines specialized areas of family law such as Charter litigation and child protection proceedings, looking at how to establish the proper evidentiary framework.

What’s New in this Update

This release includes updates to Appendix SLL (Selected Legal Literature) and Appendix CD (Case Digests).

THOMSON REUTERS®	Customer Support 1-416-609-3800 (Toronto & International) 1-800-387-5164 (Toll Free Canada & U.S.) E-mail CustomerSupport.LegalTaxCanada@TR.com
-------------------------	---

This publisher’s note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Highlights:

Appendix CD Case Digest – To make this Appendix more useful it has been re-organized by sorting the case digests under their specific Canadian Abridgment classifications. In addition, new case digests have been added and include the following:

- **Family law — Division of property — Entitlement** — Parties separated after six and one-half years of cohabitation when mother left home in which they had been residing with two children and commenced proceeding for parenting orders, child and spousal support and division of property including home, registered in father’s name, and father’s RRSP and employment pension — Although parties were able to resolve number of issues before trial, they could not agree on mother’s property claims based on resulting trust, unjust enrichment and/or joint family venture — Mother’s property claims dismissed — Doctrine of resulting trust had no application to facts of case — Evidence did not support mother’s contention home had been purchased using \$50,000 gift from father’s father, either to her alone or to couple jointly, as down payment — As result of her failure to respond to father’s request to admit, she was, in any event, deemed to admit home had been purchased using proceeds of sale from father’s former matrimonial home as down payment — Evidence also did not support mother’s contention she had made any substantial contributions to acquisition, maintenance or improvement of home or to father’s pension assets — Although parties had shared responsibility for some household expenses and children’s care, father had not been unjustly enriched, or mother correspondingly deprived, by her contributions — Based on evidence parties had kept finances separate, there was no support for suggestion they had been engaged in joint family venture — Mother had no claim to father’s property. *Gaddon v. Da Silva*, 2023 CarswellOnt 15257, 2023 ONSC 5400
- **Family law — Domestic contracts and settlements — Validity — Existence of binding agreement** — Husband and wife separated after six years of marriage, retaining counsel to negotiate and finalize separation agreement — In correspondence, parties’ counsel provided schedules of assets and liabilities and made various offers, ultimately agreeing that wife would make two payments of \$50,000 each upon execution of written agreement — Dispute arose as to documentation of settlement, with husband seeking to have wife execute “spousal support waiver” — Wife’s action to enforce settlement agreement in relation to division of family property and family debt was allowed, in summary trial — Husband appealed — Appeal dismissed — It was open to

chambers judge to find that parties had reached settlement agreement limited in scope to issue of division of family property and debt — There was support in evidence for chambers judge’s conclusion that scope of settlement was defined in one letter and did not change — Letter setting out counteroffer expressly limited scope of proposed settlement to division of family property and debt, and all subsequent offers and counteroffers up to acceptance referred back to that letter as basis of nature and scope of offer under consideration — In absence of palpable error, chambers judge’s interpretation of agreement concluded in correspondence must be deferred to — Chambers judge expressly adverted to most of evidence that husband pointed to as having been ignored, including post-agreement conduct and parties’ intention to reach full and final settlement — It was open to chamber judge to weigh later statements by husband’s counsel’s statements as reflecting position of one party after dispute arose — Chambers judge noted that parties’ expressions of intent to reach comprehensive settlement did not change correspondence’s description of specific, limited settlement — Chambers judge did not ignore evidence that parties sought to have “separation agreement” executed and expressly addressed husband’s argument that “separation agreement” was necessarily more than agreement to divide property — Evidence supported chambers judge’s conclusions that, objectively, agreement was limited, its essential terms were clear and did not involve any ambiguity warranting application of contra proferentum doctrine, and that it was not vitiated by mistake. *Campbell v. Campbell*, 2023 CarswellBC 2966, 2023 BCCA 384