

# THE VOGEL INSIDER



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INDUSTRY SPOTLIGHT  
**ELGNER  
v. ELGNER**  
THE HIGHEST PERIODIC  
SPOUSAL SUPPORT AWARD  
IN CANADIAN HISTORY.

IN THIS ISSUE

## Welcome From VOGEL LLP

We are excited to be sharing our new and improved newsletter “The Vogel Insider” with you. Within each edition, you will read educational articles about our industry, Vogel LLP lawyer profiles, successful case highlights, our community relations work and of course comments from our current clients.

We encourage you to submit article ideas for our newsletter; “The Vogel Insider” is created for you and your inputs/thoughts would be greatly welcomed.

We hope you enjoy the Fall 2011 Edition!





Industry  
Spotlight

## Elgner v. Elgner

### Industry Spotlight

## Elgner v. Elgner

**The Highest Periodic Spousal Support Award in Canadian History.**

Mr. Elgner, age 62, and Ms. Elgner, age 61, were married for 33 years, and had three children, now aged 31, 28, and 27. They had a traditional marriage; Ms. Elgner was a stay-at-home mom who raised their three children, and Mr. Elgner amassed substantial wealth through his corporate ventures. When the couple separated in 2007, they had considerable assets and Mr. Elgner's income was between \$3 and \$4 million per year.

Mr. Elgner argued that his wife was not entitled to spousal support considering the fact that in 2008 she had received \$775,443 in after-tax income, largely as a result of dividends, and he has already given her \$6.2 million in matrimonial property.

However, the Court found that the couple had lived an extravagant lifestyle during their marriage, and as Mr. Elgner's ability to pay spousal support was not in question, the award of spousal support should allow Ms. Elgner to enjoy a similar standard of living after the marriage. That

meant that the award needed to be high enough to cover Ms. Elgner's expenses, which ranged from \$88,790.33 to \$115,439 per month.

*"... although Ms. Elgner did have substantial assets, she should not have to deplete those assets in order to meet her expenses."*

The court found that although Ms. Elgner did have substantial assets, she should not have to deplete those assets in order to meet her monthly expenses. The court also noted that even if she had invested her assets, they would never produce an income high enough to meet her living costs.

The Ontario Superior Court of Justice released its decision in *Elgner v. Elgner*, awarding \$110,000 per month interim spousal support, and additional retroactive spousal support to one year prior at \$140,000 per month, making it the highest periodic spousal support award in Canadian history. Leave to appeal the decision was refused.

## Cheers To Charity

"I want to thank you for a terrific day at McKenzie Meadows. I was part of a fabulous foursome that really gave me a clinic on how to play golf. The community support that is provided by Vogel LLP is exemplary. Your personal commitment and your promotion of our charities to your clientele is amazing. I want you to know how much this is appreciated by all of us who work with and on behalf of people who have somehow for some reason become disadvantaged.

The Vogels and the staff/colleagues of Vogel and Company are really helping to make a difference in the lives of the people we are dedicated to serving and supporting. On their behalf and on behalf of all of those that you support... THANK YOU!!!"

- Marty Hornstein, Learning Disabilities Association of Alberta - Calgary Chapter

## New Rules Of Court

by Nicholas Maggisano

About one year ago, the new Alberta Rules of Court brought to the law of civil procedure in Alberta the most significant change in over 40 years. These new rules attempt to resolve the most common complaints about the legal system: that it is expensive, slow and inaccessible.

Some of the most important changes are:

### Drop Dead Rule

Under the old rules, an action could be dismissed if nothing had been done to materially advance the action for five or more years. In the new rules, this period has

been shortened to two years. This rule will definitely speed up the litigation process, but may also force parties to take steps too quickly.

### Dispute Resolution

Previously, alternative dispute resolution (e.g. mediation) was encouraged but not required; the new rules now require the parties to engage in some form of alternative dispute resolution before a trial date can be set. This rule attempts to divert disputes from the courts into less expensive and time consuming means, but will also force parties that have no intention of compromising to go through another step before they get their day in court.

### Time

Under the old rules, motions had to be filed and served at least two clear days before the application. Under the new rules this period is five calendar days, allowing proceedings that involve numerous motions more time.

### Service by Email

In litigation, service is often half the battle. The new rules allow service by email, which should make service quicker and less expensive, allowing the parties to focus their time and energy on substantive issues in dispute.

### Service Outside Alberta

Under the old rules, in order to serve a Statement of Claim in another province an Order for Service Ex-Juris was required. Obtaining such an order could be a time-consuming formality. An order is no longer required under the new rules, making service quicker and easier.

While civil procedure law may appear to be relevant only to litigation lawyers, under the new rules it can significantly affect a client's substantive rights, as well as a client's ability to exercise those rights in a timely and cost effective way. It remains to be seen whether the new rules will achieve their goals.

## Obligations For Continuing Professional Development

by Andy Hayher

Recently, the Law Society of Alberta decided that lawyers should be able to demonstrate to the public that the profession

## Lawyer Profile

**NICHOLAS MAGGISANO** comes to Vogel LLP with his LL. B from the University of Calgary and his BA from the University of British Columbia. He practices primarily in the area of family law.



Nicholas has experience in all family law matters, including property division, child and spousal support, and parenting arrangements, both for married and unmarried couples. His approach to family law matters is to strive to resolve matters as efficiently as possible, both in terms of time and cost.

Aside from family law Nicholas also enjoys kickboxing, running, hiking and camping.

## Lawyer Profile

### ANDY HAYHER

Vogel LLP would like to extend our greatest congratulations to Andy Hayher, who was recently called to the bar this past September.



Working at the firm since 2008, Andy comes to Vogel LLP with his Bachelor of Laws from the University of Calgary and his Master of Laws at Bond University in Queensland, Australia. Before getting involved in law Andy obtained his Bachelor of Communication Studies from the University of Calgary and diploma in Journalism from the Southern Alberta Institute of Technology (SAIT). While at SAIT Andy was a member of the volleyball team and helped his team to a national silver medal and was Freshman Athlete of the Year. He continues to stay involved with community sports by coaching volleyball and volunteering as a board member for the Trojan Athletic Foundation. Further, Andy provides pro bono law services with the Sport Dispute Resolution Centre of Canada, where he provides assistance to athletic organizations involved in disputes.

maintains and strives for high levels of professionalism and competence in the practice of law. Hence all active members of the Law Society of Alberta are now required to create a continuing professional development plan, making them obligated to improve and develop substantive, technical, practical and intellectual areas of the practice of law.

Going forward, on or before March 15 of every year The Law Society of Alberta requires every active lawyer to:

- Make and record a CPD plan for the upcoming year.
- Make a declaration to the Law Society of Alberta that they have made the CPD plan
- Retain the CPD plan for a period of five years and produce the CPD plan to the Law Society of Alberta upon request.

There is no mandatory/minimum hour requirement for the CPD program, but the implementation of the CPD program is mandatory for all practicing lawyers. The program is a flexible and convenient method to ensure that lawyers are fulfilling their professional duties as mandated by the Code of Professional Conduct.

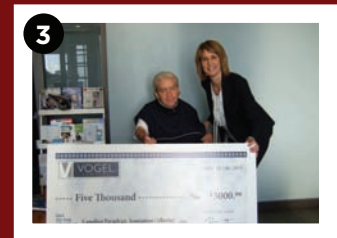
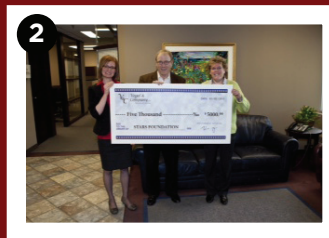
## Vogel LLP Giving Back

**1 - EWI Charity Connect Classic:** This August, Vogel LLP staff including Partner Paule Armeneau, jumped at the opportunity to support a great cause while playing a round of golf with local celebrity and Olympic Athlete, Jesse Lumsden (in photo).

This annual Executive Women International (EWI) golf tournament was once again a huge success! While fundraising for Discovery house the guests of the tournament finished their day listening to the Master of Ceremonies Jesse Lumsden, a former CFL player and current member of the Canadian Olympic Bobsled Team. Vogel LLP sponsored his appearance, golf fees and donated items for the gift bags.

**2 - STARS Donation:** After settling a large motor vehicle accident claim involving a rescue by STARS Air Ambulance a charitable donation of \$5,000.00 was made by Vogel LLP.

**3 - Canadian Paraplegic Association:** : Dana Neilson presents a grateful Cal Schuler with a \$5,000.00 donation to the Canadian Paraplegic Association.



## A Vogel Victory!

Congratulations to Medina Shatz & Abby Griener for their recent Court of Appeal Win - Disclosure in the context of an Adult Interdependent Relationship.



A recent case argued by Medina Shatz & Abby Griener, involving financial disclosure under the Family Law Act with respect to an Adult Interdependent Partnership, was successfully appealed on September 13, 2011. The genesis of the appeal was whether or not a person seeking partner support must first establish that the parties were in an adult interdependent partnership before being entitled to financial disclosure.

In this particular case, the two parties involved lived together for a significant amount of time. One party claims the two were solely roommates while the other party claims that they were in fact in an adult interdependent partnership. Based on the two parties' statements, the Court of Queen's Bench Justice held that an adult



interdependent relationship must be established before being entitled to financial disclosure. The Judge felt that the evidence presented did not establish the two parties in an interdependent partnership.

Shatz & Griener later appeared at the Court of Appeal to appeal this decision, and on January 17th, 2011, the Court of Appeal released its decision by a 2-1 margin, resulting in a success for both Shatz and Griener and their client.

The Court of Appeal held that the individual seeking partner support simply needed to proffer some evidence capable of sustaining the alleged relationship. It was determined by the court that the evidence previously given did not satisfy the evidentiary threshold and thus they allowed the appeal.

The decision can be found at [www.canlii.org](http://www.canlii.org) under the citation of Bitter v. Bell, 2011 ABCA 16.



[www.vogel-llp.ca](http://www.vogel-llp.ca)

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