

THE VOGEL INSIDER

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EMILY GAJDA &
MELODY RODGER
CALLED TO THE BAR

A SWORD
INSTEAD OF A SHIELD

DISAGREEING ABOUT
AN AGREEMENT



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FALL 2017 ISSUE

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Welcome from Vogel LLP

We are pleased to share the Fall 2017 Edition of "The Vogel Insider" with you. In this edition, you can find information about our recent successful cases, Vogel LLP lawyer spotlights, interesting articles related to our industry and highlights of our work in the community.

A Sword Instead of a Shield



Recently, Vogel LLP Partner Andy Hayher and Associate Emily Gajda acted for a father (“SK”) who was attempting to have his 3 year-old son returned after he was wrongfully removed from the jurisdiction by the mother (“MK”) in April 2014, when the child was only 3 months old. The matter was heard by Mr. Justice A.G. Park over seven days at the Court of Queen’s Bench in Alberta in Calgary. From 2014 to the date of the Hearing the parties spent a significant amount of time in the courts with multiple

long battle to have his son returned to Alberta.

SK’s criminal conditions prevented him from seeing his son. His criminal trial took place and after hearing evidence from the Calgary Police Service and MK, the Crown stayed the charges. SK was no longer facing any criminal charges for assault. Soon after he applied for access to his son and began the arduous journey of getting access to his son. He began flying to Ontario

credibility. He found her to be untruthful and inconsistent with her answers. In his Reasons for Judgment, he outlined 10 examples of her inconsistent evidence at the Hearing. Mr. Justice Park held that he could not find that SK abused MK or threatened the child in any way. Mr. Justice Park also found that the father was the “friendly parent” and a willing co-parent, however, Justice Park could not say the same about the mother. He found that she could not even distinguish if it was more important for her son to have a relationship with SK (the child’s father), or her brother. He also highlighted that since she absconded to Ontario, she has made access incredibly difficult for the father.

the parties were to have an equal shared parenting arrangement. If MK chose to remain in Ontario, the child would come back to Calgary and reside with his father. This decision highlights the implication of an Emergency Protection Order. Sadly, this tool designed to protect individuals from potential family violence, was used to gain a tactical advantage. It is clear from Mr. Justice Park’s decision that the Court is mindful of this.

You may read the full decision at CanLii:

SK v. MK, 2017 ABQB 249

“...in my opinion she manipulated the judicial system.”

appearances at the Court of Queen’s Bench and one trip to the Alberta Court of Appeal (SK v. MK, 2016 ABCA 341). The background facts are that the mother, MK, obtained an Emergency Protection Order (“EPO”) and had the father, SK, charged with assault with a weapon. She alleged the assault was with a golf club. The father was criminally charged for the assault and awaited his Trial. After obtaining the EPO and notwithstanding that she was told she needed a Court Order to leave Alberta, MK absconded with the child to Ontario. This started this fathers

to visit his son. Soon after, he wanted more time and applied for more access. MK refused, however, a Court of Queen’s Bench Justice awarded access wherein the child would come to Calgary every other month to visit SK for 10 days. MK refused to comply with this Order. Eventually a viva voce date was obtained and the matter was heard by Mr. Justice A.G. Park.

The Hearing was vindicating for SK. Mr. Justice Park found that MK was not truthful in her evidence. Justice Park had grave reservations about her

In what might be his most scathing criticism of MK, Mr. Justice Park held that she manipulated the judicial system. He held that she used the Emergency Protection Order legislation as a sword and not a shield. Mr. Justice Park ordered the return of the child to Calgary. If MK chose to return to Calgary,

“She used the Emergency Protection Order legislation as a sword and not as a shield.”

Golf! Golf! Golf!

Lawyer Spotlight: Anthea Law



Left: Mike Vogel was one of the lucky few to have the opportunity to play a round at the famous St. Andrews Links in Scotland in August.

Bottom, left: Our hole at the 8th Annual Gordon Hoffman Charity Classic for Foothills Academy.

Bottom, centre: Our hole at the Seva Golf Classic.

Bottom, right: We were happy to sponsor the Jewish Family Services Charity Golf Classic. Max Lipsman pictured.



Anthea Law is the head of Vogel LLP's Estates practice group, and focuses her practice on Estate and Trust Administration, Estate Litigation and Estate Planning. She probates and administers estates, advises executors, administrators, trustees and beneficiaries, provides litigation support, and works with families whose loved ones have lost their capacity.



Building on skills gained by working in-house in the wealth management division of a large trust company, Anthea also brings experience to the planning and drafting of complex Wills, along with Enduring Powers of Attorney and Personal Directives. A double graduate of the University of British Columbia in her hometown of Vancouver, Anthea has degrees in English Literature/Philosophy and Law, and has

had several articles published in *The Barrister* magazine, a publication of the Alberta Civil Trial Lawyers' Association.

She is a frequent presenter on the topic of estates for financial institutions, investment firms, charities and post-secondary institutions. Anthea enjoys helping her clients work through the sensitive, emotional and challenging legal issues that are inherent in Estate Law.

Emily Gajda and Melody Rodger Called to the Bar



Andy Hayher, Emily Gajda, the Honourable Mr. Justice W.T. deWit



The Honourable Mr. Justice R.J. Hall, Melody Rodger, Medina Shatz

Disagreeing About an Agreement

Vogel LLP Associate Erica Pridham was recently successful in having the Court of Queen's Bench of Alberta find that two parties had an enforceable mediation/arbitration agreement. The matter was heard in Edmonton before Mr. Justice D.R. Mah. Vogel LLP acted for the husband in this application. At the application, the wife sought certain relief and the husband contested the relief sought and suggested the parties were in the wrong forum. The husband's position was that the parties should be directed to mediation/arbitration, which they previously had agreed to. The wife, through her counsel, denied any such agreement.

Before dealing with the wife's application for support, Justice Mah dealt with the issue of proper forum. To that end, before him he had evidence which included the husband's affidavit which included an email from the mediator to both counsel confirming the interim agreement reached in a mediation session and the mediator confirming that the parties would sign a mediation/arbitration agreement, which was attached to the email. The wife took the position that there was no agreement and her affidavit evidence before Justice

Mah suggested that under the advice of her lawyer, she was not going to speak about any discussions in mediation because mediation is without prejudice forum and what is spoken about in mediation cannot appear in an affidavit and be used in court. Justice Mah disagreed. He held that there can be one exception, and that is where the existence or interpretations of a consensual agreement is at issue in subsequent litigation.

The Court held that what was at issue was the very existence of an agreement. What was being sought to be admitted into evidence is not the content of the negotiations, but rather the consensual outcome of the mediation as documented by the mediator. Justice Mah concluded that there was in fact an agreement and that the parties did agree to attend binding mediation/arbitration. The Court relied on the Arbitration Act and directed the parties back to mediation/arbitration as the proper forum to determine the balance of the issues between them.

The full Memorandum of Decision can be found at **Heinzelman v. Heinzelman, 2017 ABQB 424.**

ACTLA Women's Legal Forum Gala



From left to right: Melody Rodger, Brett Coleman, Medina Shatz, Marie Henein, Aida Rafie, Erica Pridham, Kathryn Tweedie. Photo by David Zhao Photography

The Alberta Civil Trial Lawyers Association's (ACTLA) Women's Legal Forum Gala was held on April 28, 2017, for which Vogel LLP was a proud sponsor. The gala is a bi-annual event, bringing together more than 400 lawyers, businesses, and community leaders from across Alberta. This marked the first year the event was held in Calgary and featured such prominent speakers as the Honourable Madam Justice Marriott, the Honourable Madam Justice Martin and key speaker Marie Henein. All funds raised at this year's gala went to the Calgary Drug Treatment Court, a provider of community-based alternatives to incarceration for non-violent, drug-addicted offenders.

Client Testimonial

In May of 2017, I was faced with the prospect of preparing my will. Something like this can be very overwhelming. When I was referred to Vogel Lawyers by my bank. I took their advice and arranged to see Anthea Law. Anthea was very compassionate toward my requests, not to mention very thorough. Every base was covered. Every situation considered. Every aspect of my will was dealt with on a very professional, yet personal platform. When I walked away with my will in hand, I took a great sigh of relief that a very important part of my life had been looked after, and that there will be no confusion when it comes time for my will to be read. I truly thank Anthea Law and VOGEL LLP for a job well done. – P.W.



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