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Ruling raises family law bar

BY JULIUS MELNITZER

Ontario's family law bar is under siege and it will be well into 2007 before anyone knows how well the fort will stand up. The profession's concerns arise from the Ontario Court of Appeal's decision in *Ristimaki v. Cooper* handed down earlier this year. The court reversed a trial decision dismissing allegations of

negligence against Gregory Cooper, a senior family law practitioner at Cooper Kleinman in Toronto. The court ordered a new trial, now scheduled for June. The ruling raised the bar for lawyers wishing to avoid negligence allegations when they recommend settlements in family law proceedings. The upshot is that lawyers making such recommendations may face a heightened risk of negligence suits. "The family bar will be watching the new trial very closely because recommending a settlement is an art, not a science," says Paul Pape of Pape Barristers Professional Corp., who, with colleague Susan Chapman represented Mr. Cooper. "It's a very difficult thing to do and even more difficult when the courts start looking over lawyers' shoulders the way the Court of Appeal did in this case." The involvement of a number of top-tier members of the Toronto bar in *Ristimaki* suggests that the stakes for the profession in

this case were very high indeed. Burke Doran, a solo practitioner based in Toronto represented Mr. Cooper at trial; Tom Bastedo of Bastedo Stewart Smith represented Mr. Ristimaki in the divorce proceedings; Philip Epstein of Epstein Cole attempted to mediate the dispute; Mr. Epstein's colleague Malcolm Kronby and Alfred Mamo of London's Mamo & Associates appeared as experts for the defence; and Gerald Sadvari of McCarthy Tétrault's Toronto office and Harold Niman

Toronto's Niman Zemans Gelgoot were experts for the plaintiff. The case arose in November 1993 when Mr. Ristimaki summarily advised Ms. Ristimaki that he was leaving her and terminating their 33-year marriage. He was a successful businessman who owned 51% of Auto-Trans Holdings Ltd. (ATH), the largest car transporter in Canada. Ms. Ristimaki retained Mr. Cooper, a family law specialist. From the outset, she warned

him that her husband was planning to sell his business and leave the country. She told him that Mr. Ristimaki habitually moved funds offshore. She repeated these concerns on many occasions. In April, 1994, Mr. Cooper requested financial statements from Mr Bastedo, Mr. Ristimaki's lawyer. When he did not receive them by June, he threatened proceedings. Less than a month later, Mr. Ristimaki told Ms. Ristimaki he was selling ATH. See *NEGLIGENCE* on next page

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