

Family Law Section Report 2010-2011

The Section presented or co-presented a number of educational programs in the past year:

1. A Law at Lunch program was held on November 2, 2010 to provide information on new amendments to our legislation:
 - (a) Bill 30, *The Strength and Enforcement of Family Support Payments and Miscellaneous Amendments Act* adds provisions to *The Family Maintenance Act* to include genetic testing as well as blood testing in relation declarations of parentage. *The Family Maintenance Act* is also amended to clarify that initial child support Orders may take effect on a retroactive basis. The provisions dealing with Variation Orders are clarified to specify that a material change in circumstance is required. A provision is added to require a report by a family evaluator appointed by the Court if a party refused to cooperate. This Act also includes amendments designed to enhance the enforcement tools and options available to the Designated Officer of the Maintenance Enforcement Program including enhanced penalties and costs. Most of the Maintenance Enforcement related amendments have not yet come into force.
 - (b) Bill 19, *The Protection From Domestic Violence and Best Interests of Children Act* creates an exception to a protection Order to allow parties with a protection Order to both attend Court, Court referred mediation or other Court ordered processes. The exception is subject to specific restrictions imposed on the person against whom the protection Order is made. The amendment also adds specific criteria to *The Family Maintenance Act* that the Court must consider in determining a child's best interests in relation to custody and access. Such criteria are intended to make for more predictable resolutions of child custody and access cases and to encourage parents to focus on the needs of their children. To date, *The Family Maintenance Act* has not had a definition of best of interests. These amendments came into force October 17, 2010. Other amendments that have recently made to *The Pension Benefits Act* were also discussed.

Speakers were Cheryl McGibbon and Clair Burland of the Family Law Branch and Debbie Lyon of the Office of the Superintendent of the Pension Commission.

2. On December 3, 2010, Robert Johnson, Q.C. spoke on "A Deal is a Deal". Mr. Johnston discussed the underlying legislative tests and case law with respect to the validity of separation / settlement agreements and cohabitation / prenuptial agreements.
3. The annual holiday party was held at the Blackstone Lounge at Taylor McCaffrey LLP in December 2010. It was well attended by both the bench and bar. The Family Subsection thanks the members of Taylor McCaffrey LLP for welcoming us again.
4. In February 2011, the Family Subsection participated in the Midwinter Bar Conference. We welcomed Phil Epstein who provided an entertaining and enlightening discussion of the most important family law cases of the past year.
5. The premier event of the section was a full day seminar on March 11, 2011, which was a joint presentation of the Law Society of Manitoba, the Court of Queen's Bench Family

Division Judges and the Family Section. "Getting to 20/20 – Refining Our Focus: Putting Children First" included presentation by Joan Kelley and Professor Roley Thompson on children's adjustment after separation and divorce, using child development and divorce research to develop an age appropriate parenting plan, child alienation including refusal to visit and what to do about it and mobility which included an update on the law as well as discussion of mobility research and child adjustment. Over 200 people attended.

6. The Honourable Madam Justice Goldberg and Lawrence Pinsky spoke on April 1, 2011 on "Improving Your Practice", tips from both sides of the bench. This discussion was so well received that a follow up session is being planned for the fall.
7. On May 6, 2011, the Honourable Mr. Justice Michael Thompson and Terry Beley spoke on the topic of retroactive child and spousal support. This seminar provided an important update on developments regarding retroactive Orders in initial applications, as well as in application to vary exiting Orders. The discussion included a review of the development of the case law from the Supreme Court of Canada decision D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra through decisions of the Manitoba Court of Appeal such as Rebenchuk v. Rebenchuk, Mellway v Mellway, K.E.K. v. L.E.L.
8. The traditional summer party was held in June 2011 at the home of Dean and Cathy Kropp. This party is always well attended and is enjoyed by members of the Bench, Bar and the Court staff allowing us to further our collegial relationships.
9. The executive of the Section meets on a monthly basis and continues to participate through designated representatives on various Committees. The legislative sub-committee has offered input into potential changes to legislation. The Section was recently consulted with respect to changes in the First Choice Pilot Project (further details below).
10. The Section Chair and Vice-Chair continue to attend at the Joint Committee Meetings, convened by Associate Chief Justice Douglas. Attended by representatives of various bodies, including the Bench, the Master's Office, the Family Law Branch, the Support Recalculation Office, Court Administration, Family Conciliation, Legal Aid and the Bar, these meetings continue to be an excellent forum for these interested stakeholders to discuss current issues in family law and the administration of justice.
11. Family Law Access Center - The Law Society's pilot project known as the Family Law Access Center (FLAC) is operational. Intake closed only a few months after the project began, as the waiting list created was sufficient to complete the pilot phase.

Briefly, the FLAC program is designed to provide legal services to individuals who do not qualify for Legal Aid, but still require financial assistance in obtaining legal services. The Law Society has negotiated a reduced fee with members of the profession, and guarantees the payment of the lawyer's account. It is up to the FLAC program to determine which parties qualified for the program, and to collect fees from them.

Because the engagement is between the client and the lawyer, and the client is actually paying for all of the services which they receive (although at the negotiated and discounted FLAC rate) plus all disbursements, the Law Society will not monitor the steps taken, nor will they have any role to play in deciding whether steps should be funded. All of those

decisions will be left between the lawyer and client as in any other file. FLAC will be available to fund any dispute resolution process a client might desire.

12. First Choice is a Pilot Project of Family Conciliation Services. It is a voluntary program whereby parties (with or without their lawyers) attend at a meeting with a First Choice team. The team facilitates the presentation of the custody / access dispute and each party's views. The team then assesses the information presented and provides a Summary Report with their opinion on the probable recommendations of a full custody / access / guardianship evaluation. This may assist the parties in resolving their custody / access / guardianship dispute. Recently, as a result of input from the Bar, the Project was amended to delete the requirements that the Summary Report be provided to the Court, and be available to the hearing Judge. The matter may also proceed to mediation, following the First Choice Summary Report, should the parties wish.

13. In the coming year, our committee will be comprised as follows:

Sharon Kravetsky, Past Chair;
Lawrence Pinsky, Chair;
Andrea Dodgson, Vice Chair;
Jessica Dillon;
Robynne Kazina;
Jurgen Feldschmid; and
Connie Petersen.

Respectfully Submitted,
Sharon Kravetsky, Chair of the Family Law Section