

Family Law Section Report 2011-2012

Members of the Manitoba Section Executive are as follows:

Lawrence Pinsky, Chair
Andrea Dodgson, Vice Chair
Sharon Kravetsky, Past Chair
Members-at-Large:
Jessica Dillon
Robynne Kazina
Jurgen Feldschmid and
Connie Petersen.

CONTINUING EDUCATION

1. The Manitoba Family Law Section presented or co-presented a number of educational programs in the past year. Though most were localized to issues of interest to Manitoba practitioners, our March program attracted international speakers and was of more national application.

2. The educational programs we presented and/or in which we participated over this past year are set out below:

- a. How to Improve your Practice – In November 2011 we held a seminar addressing multiple practice tips from issues of formality and cordiality to Courtroom etiquette. The presentation involved both procedural and substantive law. The Honourable Madam Justice Goldberg presented, as did Lawrence Pinsky. Notes from the presentation were requested by the Nova Scotia Court and were forwarded accordingly. Connie Petersen chaired.
- b. Maintenance Enforcement Program Update – In December 2011 the Law Society was the driving force behind a program with respect to updates as to our Maintenance Enforcement Program in which our members participated. The particulars of the legislative changes dealing with Maintenance Enforcement were set out in our fall report.
- c. Ketchup with Franks – Updating Top Cases of the Past Year – The most important cases over the past twelve months were canvassed at our Mid-Winter session. We were honoured to host Aaron Franks as our general speaker. Mr. Franks, braving Winnipeg in January, presented on some of the most important cases from across the country over the past approximate year. From *Kerr v. Baranow* to *Schreyer* to *Thibodeau*, *Greenglass* to *Ethier v. Skrudland*, among many others. Mr. Franks conducted a detailed review of current cases. Lawrence Pinsky chaired.
- d. Privacy Law and Family Law – In February, Andrea Dodgson was scheduled to host a session on privacy law. We were very pleased to have Brian Bowman and Terry Unruh as our speakers. This session addressed some of the major issues at the intersection of family law and privacy law including recent decisions from across the country. The program was coordinated by Andrea Dodgson.

- e. Domestic Violence Legislation Review – In April we hosted a seminar dealing with the Domestic Violence legislation. This was the first occasion for the Judicial Justices of the Peace who operate and preside over the administration of Protection Orders to dialogue with practitioners and the Court. We were very fortunate to have as presenters, Judicial Justice of the Peace, Benji Harvey, Greg Evans, and the Honourable Mr. Justice Yard. Multiple issues were discussed, including process, procedure, practical tips, case law, and some possibilities of legislative procedural changes to address certain difficulties that continue to persist in the system. Robynne Kazina chaired.
- f. Shared Parenting Symposium - On March 16, 2012 our Section spearheaded and co-sponsored an event addressing the issue of shared parenting both from the perspective of the child, analyzing the latest social science research internationally, and in terms of child support. The event was the largest single event ever undertaken by the Bar, Bench, and Law Society or any single one of those entities. Attendance was approximately 250.

Speakers at the event included professor Mavis Maclean from Oxford University (by video), the Honourable Madam Justice Allen, Dr. Rachel Birnbaum, Professor Tonya Brito, Rhoda Dobler, and Professor Lucinda Ferguson (Oxford). The event was very successful and has furthered us along the way of reviewing the possibility of statutory reform in terms of support, while sounding a best interests cautionary note reminding all of the necessity of individualized justice for children inter alia.

The organizing committee consisted of the Honourable Mr. Justice Little, the Honourable Mr. Justice Johnston, Tracy Lloyd (Law Society), Sharon Kravetsky, and Lawrence Pinsky. The Honourable Mr. Justice Johnston and Lawrence Pinsky chaired this event.

- g. Attachment Theory – On June 19, 2012 Monique Gougeon will be speaking on Attachment Theory.

UPCOMING EDUCATIONAL INITIATIVES

3. We are engaged presently in trying to establish a family law litigation module. The notion is to create a hands-on experience for practitioners in dealing with trial work. As we understand it, this would be a unique program in Canada.

4. While there are numerous Motions, the Case Conferencing system has changed the lay of the land such that there are far fewer trials. Accordingly, when trials do occur there is sometimes a dearth of experience among some practitioners and other stake holders.

5. By organizing a module dealing specifically with family law trial work, the hope is to improve the skill sets of all concerned. A subcommittee involving a member of the Law Society, the Honourable Mr. Justice Thomson and Lawrence Pinsky are working on coordinating that event, which hopefully will occur in the fall or winter of 2012 and include a faculty comprised of members of the Judiciary practitioners.

6. Additional educational programs will follow in the New Year, which may well include an ethics component in family law, grandparent access, among other potential topics.

LEGISLATIVE INITIATIVES

7. Our Section is actively looking at certain legislative changes. We have an active legislative changes committee.

8. One area that we are spearheading addresses a formula as a starting point for child support where a shared parenting regime has first been determined to be in the best interests of subject children. This should not be confused in any way with a presumption.

9. Our Section is working actively on this project and together with the provincial authorities we are studying appropriate formulas (if any). If a formula is viable, the notion would be to retain ultimate authority in the Court to make any decision it wishes in terms of child support, i.e. veering off the formula in appropriate circumstances. Having said that, a legislative formula is considered to be a positive method by which to reduce disputes. Accordingly such a formula is seen as serving children's best interests.

10. In addition, the Legislative Changes Committee has studied the BC White Paper (as it then was). Among other things, we are actively involved in consultations to address issues of reproductive technology and legislative amendments that ought to follow.

11. Additional discussions are occurring in an effort to enact legislative amendments in other respects including for financial disclosure, mobility/non-mobility issues, among others. This is a work in progress that is expected to be ongoing for years.

CHILD SUPPORT RECALCULATION

12. The Child Support Recalculation Service continues to be suffering from some difficulties. There is a drive to a legislative change in that area to avoid the difficulties in enforcement. The Child Support Recalculation Service reports a significant failure rate which we have attempted to address through education and possibly legislative change. The Child Support Recalculation Service recently submitted an article for the CBA's The Family Way April 2012 edition explaining its functioning.

LEGAL HELP CENTRE

13. The Legal Help Centre is an initiative to address access to justice. The Centre is attached to the University of Winnipeg and provides free consultations on various legal matters to the public. Legal Help Centre has found that family law is an area where they continue to require assistance. Various members have participated from time to time at the Legal Help Centre and the Subsection has facilitated the promotion of that volunteer activity.

FAMILY CONCILIATION SERVICES

14. Family Conciliation continues to offer several services to members of the public. These include brief consultations, focused assessments, full assessments, the First Choice Program, comprehensive mediation, mediation, and family law legal education as it affects children (parental education and information sessions). There are some delays in the system, depending on the service sought. Full assessments will presently take approximately eight months to completion. All services are provided free of charge. The Bar has raised the issue of tracking the incomes of individuals participating in order to determine if a system can be put in place, on an ability to pay basis, whereby augmented or

additional services might be made available to Manitobans. It may well be that if circumstances warrant, a modest fee might be charged for those who could afford to pay it (while ensuring service availability) in order to fund additional services. This exploration is in the very initial stages.

FLAC

15. The Family Law Access Centre began and remains a pilot project offered by the Law Society of Manitoba to assist families in affording legal services where they do not otherwise qualify for Legal Aid and could not afford private counsel. Many counsel involved are MBA members.

16. Eligibility for the FLAC program is based on family size and gross income. The guidelines are as follows:

Family Size	Gross Income
1	\$35,000.00
2	\$45,000.00
3	\$50,000.00
4	\$54,000.00
5	\$57,000.00
6 or more	\$60,000.00

17. An approved applicant for FLAC signs a contract pursuant to which they promise to repay the cost of legal fees which are at a reduced rate. Legal fees are paid out on the following schedule:

Years of Experience	Hourly Rate
Less than 5 years	\$100/hour
5-10 years	\$130/hour
10 years or more	\$160/hour

18. Presently approximately 40 lawyers are registered in Winnipeg to participate in the FLAC program, though anyone can sign up at any time. There are additional lawyers in rural areas of Manitoba. There are presently 140 cases on the waiting list as of September 2011.

19. Of 28 cases that were opened, fees have been paid out in the amount of \$99,000.00 with \$97,368.00 having been recovered to date.

20. Although the project began as a pilot project in April 2010, it was renewed in April 2011 as a continuing pilot project. At the end of May, the issue of renewing the project was revisited but the results were not available at the time this report was written.

LEGAL AID

21. Legal Aid in Manitoba has experienced serious cutbacks. They have lost several positions and continue to suffer through financial crises. Part of the problem results from low interest rates as Legal Aid is not in receipt of the income from trust account interest balances that used to be the case. There is an attempt underway to try to find additional funds, however there are serious difficulties at the moment with the system being bogged down and potentially understaffed. The Bar has a representative sitting on a Legal Aid Review Committee. The problems however remain large and not easily resolved in an age of budget deficits.

STAKE HOLDER COMMUNICATIONS

22. The Section chair and vice chair continue to attend at the Joint Committee meetings convened by the Associate Chief Justice or more currently, Justice Mercier. These meetings are 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 forums continue to be an excellent occasion for interested stake holders or to discuss current issues in family law, the administration of Justice, and attempt to remedy, where appropriate, issues that arise from time to time.

MISCELLANEOUS UPDATES

23. The Executive Section meets on a monthly basis and participates through various designated committees with the Bench and other applicable groups and various ongoing projects to effect positive change for Manitobans. Some examples of ongoing committees include Delay/Case Conference Committee, an Auto Order Committee, and others.

24. The Family Law Section continues to host its annual winter parties and summer barbeques. This tradition continues to be enjoyed by all stakeholders. This year's summer barbeque was held June 13, 2012 at 5:30 pm at Taylor McCaffrey.

CONCLUSION

25. This past year has been busy and enlightening in terms of education. There continue to be many items on our agenda, both over the short term and long term.

26. We appreciate the opportunity to report on our plans to date and going forward.

Respectfully Submitted,
Lawrence Pinsky, Chair