

Family Law Section Report 2012-2013

Members of the Manitoba Section Executive are as follows:

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

CONTINUING LEGAL EDUCATION

1. The Family Law Subsection of the Manitoba Bar Association presented or co-presented a number of educational and social programs over the past year.
2. The educational programs that have occurred since our last report and/or which are scheduled were/are:
 - A. September 2012 – Kerr v. Baranow and Access to Justice – We held a review with the Honourable Mr. Justice Cromwell (SCC). We were very privileged to have the Honourable Mr. Justice Cromwell speak. Justice Cromwell reviewed the decision he wrote in Kerr v. Baranow in an educational format. Justice Cromwell was generous enough with his time to permit questions to be asked by the audience dealing with Kerr v. Baranow and its fallout.

Justice Cromwell also discussed issues related to access to justice. In that context, a speaker from the Legal Help Centre was also present to advance the cause of more ready access to justice in Manitoba.

- B. November 2012 – Grandparent Access - The Honourable Madam Justice Rivoalen (AACJ) spoke with respect to grandparent access. Manitoba has certain unique provisions in its Child and Family Services Act that recognize the importance of grandparents and their relationship with children. The Act defines the purpose of one Section (Section 78(1) as facilitating the relationship between children and their grandparents inter alia where those relationships are in the child's best interests, and to recognize that children can benefit from a positive nurturing relationship with their grandparents. The Honourable Madam Justice Rivoalen reviewed the issues involved in a recent decision she rendered touching on this issue, as well as the existing case law.
 - C. December 2012 – The annual holiday party was held at the offices of Tapper Cuddy in Winnipeg.
 - D. January 2013 – The Manitoba Bar Association Mid-Winter occurred. We held a seminar reviewing the top cases from across Canada in family law over the past year. Aaron Franks of Epstein Cole joined us to present on this topic.
 - E. February 2013 – Parent Coordination and Arbitration - We hosted a seminar dealing with parent coordination. Parent coordination has not "taken off" in Manitoba as it has

elsewhere. Recently however, its use has grown. This seminar was intended to draw attention to this area.

- F. March 2013 – Our annual Bar, and Bench, Law Society Symposium was conducted this year dealing with The Family Property Act. Specific topics included trusts, corporations, and farms. We enjoyed record enrollment of approximately 270 people. Speakers included Lorne Wolfson, Bob Klotz, Masters Harrison and Cooper, Associate Dean Lisa Fainstein, Sharon Kravetsky, John Neufeld, Q.C., Stephen Vincent, and Lawrence Pinsky.
- G. April 2013 – Breaking the ISO and Provisional Orders – What Happens in Vegas May Not Stay There. We held a session dealing with the ISO legislation as well as Provisional Orders under The Divorce Act and Family Maintenance Act. The Honourable Madam Justice Joan MacPhail spoke, as did Tracy Morrow of the Family Law Branch. An excellent paper/Power Point was provided touching on many of the multiple nuances, challenges, and difficulties in this area.
- H. May 2013 – We held a session on tax issues dealing with multiple matters respecting support and related issues led by two tax experts in Manitoba. A range of topics were addressed dealing primarily with support and secondarily with other tax issues in family law.
- I. June 2013 – A session was held with respect to the sale of jointly held property. Senior Master Lee spoke on this issue, with excellent attendance considering the time of year and excellent weather.
- J. June 2013 – The annual summer barbeque was held at Taylor McCaffrey on June 13, 2013.

LEGISLATIVE INITIATIVES

3. a. Shared Parenting and Child Support

Over the past year, we spear-headed an initiative to establish a formula for child support in shared parenting situations. The child support formula was rebuttable in the event that common expenses were not shared. While there was general consensus, unfortunately this initiative was stalled. We continue to advocate with the government to have this matter pushed forward.

4. b. Relocation

A Relocation Committee has been established to deal with a proposal to amend The Family Maintenance Act to establish legislative relocation principles. Members of that sub-committee are: Andrea Dodgson (counsel), Jessica Dillon (counsel), Dr. Roslyn Golfman (psychologist), Prof. Nick Bala (Queen's University), and Lawrence Pinsky (Chair, Family Law Subsection). In addition, the Honourable Madam Justice Diamond is acting as advisor given her role internationally. We have also consulted with Professor Rollie Thompson.

5. Relocation is considered one of the leading areas requiring legislative redress in family law internationally. The committee is studying international advancements in this area.
6. We are attempting to establish a unified position, both from a legal and social sciences perspective. While this is anticipated to be a lengthy endeavour, there is positive initiative moving forward.
7. One challenge that has been raised is that many relocation cases are Divorce Act cases. Accordingly it is unclear if amendments to The Family Maintenance Act would be effective for individuals pleading under The Divorce Act given federal paramountcy issues.
8. In accordance with the foregoing, the Manitoba committee is of the view that the issue should be advanced federally (though not to the exclusion of advocating for legislative changes in this area provincially) with the Department of Justice. It is viewed as of major importance that the federal government be on board to begin looking at this issue in an active fashion nationally.

GENERAL REVIEW

9. Finally, our subsection has been advocating a more fullsome review of family law legislation in Manitoba. There have been several meetings with provincial authorities. We hope that there will be positive uptake in this respect. We are also in contact with our counterparts in other Provinces respecting the specific legislature changes we are advocating. Members' involvement in legislative change initiative has been invited, canvassed repeatedly, and is as always welcome.

CHILD SUPPORT RECALCULATION

10. The Child Support Recalculation Service continues to suffer from some difficulties. There continues to be an effort to enact legislative change in this area. Unfortunately, this initiative has not been able to be advanced. While failure rates have decreased somewhat, this is an ongoing problem that needs to be addressed. We continue to seek legislative change in this area.

LEGAL HELP CENTRE

11. 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

12. 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 delays in the system, with the First Choice Program being the least delayed. Full assessments will presently take approximately eight months to completion. All services are provided free of charge.

13. The Bar raised the issue of tracking the incomes of individuals participating, which process is now under way. It may well be that if circumstances warrant a modest fee could be charged for those who could afford to pay it (while ensuring service availability) in order to fund additional services through Family Conciliation. This project is in the very initial stages with the program studying various models from across Canada.

LEGAL AID

14. Legal Aid in Manitoba has experienced serious cutbacks and recently replaced its chair. Legal Aid has also lost several staff positions and continues to suffer through financial crises. Part of the problem apparently 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.
15. 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, although we are attempting to review a more active role on the governing body. Legal Aid problems however remain large and are not easily resolved in the age of budget deficits in which we are living.

AUTO ORDERS

16. The Auto Orders Committee continues to meet to update and publish Auto Order clauses. Auto Orders are a list of recommended sections of Orders in standardized form to be included in Orders in order to "simplify" and rationalize Orders. The effort is to ensure a smoother and faster process in the production of formal Orders which can be readily understood by a reader thereof (police or party or otherwise). This is a large ongoing project (in two languages) in which the Section remains active.

STAKE HOLDER COMMUNICATIONS

17. The Section chair and vice chair continue to attend at the Joint Committee meetings convened by the Acting Associate Chief Justice, the Honourable Madam Justice Rivoalen. 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.
18. Communication continues to occur at Laws at Lunch in election updates and otherwise. Programming has been well received. Members have also been invited to share their views in terms of legislative change.

MISCELLANEOUS UPDATES

19. The Executive of the Subsection 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 aforementioned, Child Protection Committee, and others.
20. The Family Law Subsection continues to host its annual winter parties and summer barbeques for Bench, Bar, and Court staff. This tradition continues to be enjoyed by all stakeholders.
21. The coming year is a particularly challenging year in terms of funding. In addition to funding problems at Legal Aid, federal funding is under review. Federal funds have been used to support numerous programs including the Support Recalculation Service and multiple educational programs, and public access to justice. CBA has advocated strongly for a continuation of funding in this area and the MBA continues to assist locally on that issue to the extent of possible. Members should be particularly sensitive to complete questionnaires and other time information gathering processes in order to try to ensure ongoing funding challenges as they presently exist.
22. We appreciate the opportunity to report on our plans to date and going forward.

Respectfully Submitted,
Lawrence Pinsky, Chair