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Support for Recalculation Orders: MBCA

In the final paragraphs of *How v. How*, 2010 MBCA 11, an unsuccessful child support appeal, Mr. Justice MacInnes expresses his views on how the child support recalculation service should be used. Concerned that the money involved in bringing variation proceedings would be better spent on the children, he suggests that recalculation "provisions be included in child support orders so as to leave no doubt of the obligation of any payor parent and to facilitate ease of adjustment of support annually." He also encourages motion and trial judges to make orders for adjustment of special or extraordinary expenses payable in respect of a child under the age of majority. (para.21)

Lack of Detail Suggests Fishing Expedition: MBQB

The court set aside the petitioner's subpoena and notice to examine the respondent's employer in *Ludlow v. Ludlow*, 2010 MBQB 28, finding that the petitioner's unwillingness to identify the evidence or disclosure required suggested that the intended examination was "a fishing expedition...perhaps embarked upon for ulterior motive." (para. 15) The parties had agreed to a litigation schedule imposed by the court under which dates for cross examination on affidavits and a two hour contested hearing were already set. The respondent, who had met all filing deadlines, argued that the petitioner's bid to examine his employer was an abuse of process. While finding in the respondent's favour, the court cautioned that the petitioner would be able to proceed with the third party examination prior to the hearing in the event that the respondent was uncooperative, non-responsive or evasive in the course of his examination. The court also identified a procedural issue for the consideration of the Queen's Bench Statutory Rules Committee concerning whether Rule 39 or Rule 31 applies to examinations in "post-final order" proceedings, which fall somewhere between interim applications and matters proceeding to final determination. (see para.19)

Imputting Income

Two recent Manitoba decisions consider when it is appropriate to impute income in support cases. In *Fong v. Fong*, 2010 MBQB 5 the court imputes extra income to the husband, accepting the wife's argument that he had unreasonably deducted certain business expenses. The court notes, however, that "it is incumbent upon the party seeking a finding of imputation to bring sufficient evidence before the court to support a conclusion, or to permit a reasonable inference to be drawn, that there ought properly to be imputation of income." In *Chief v. Smith*, 2010 MBCA 16 the court dismisses an appeal from a court order imputing income to the husband on both a retroactive and ongoing basis. The court found no error in the discretionary decision of the trial judge that the self-employed barber was under-reporting his revenues.

Spousal Support Schedules

Lazer Grant LLP has recently published their annual Spousal Support Schedules used to calculate the after-tax cash available to a supporting spouse after deducting spousal support payments. The schedules are based on the current *Income Tax Act* and Manitoba rates. To purchase the schedules contact Suzanne Brasko at 977-3496 or sbrasko@lazergrant.ca.

Recommended Reading

The latest edition of *The Family Way*, the CBA National Family Law section newsletter, contains several articles on topical family law issues, including a primer on pension basics by Sharon Kravetsky, a guide to ISO applications, a comment on children's preferences in custody cases, an article on how new passport requirements should be dealt with in agreements and orders and an interview with Bill Eddy on dealing with high conflict counsel.

Alienating Assessors

The pool of mental health professionals willing to perform assessments for family proceedings is shrinking according to Nicholas Bala, law professor and author of the recent *Lawyers Weekly* article *Protecting assessors from disgruntled parents* (February 19, 2010). He argues that unfounded complaints to professional bodies (mainly by self represented parents trying to discredit the expert testimony) "are a significant factor in driving mental health professionals away from acting as assessors, increasing the delay and expense involved in obtaining assessments." After reviewing several strategies to address this problem Bala concludes that "absent a complaint by both parties that an assessor was unprofessional or incompetent, or a complaint endorsed by a family court judge, the regulatory colleges should not be involved in complaints brought by family law litigants."

Tug of War Author To Speak on Family Court Disputes

The Honourable Mr. Justice Harvey Brownstone of the North Toronto Family Court will offer his insight into the impact and consequences of family court litigation in the presentation *A Judge's Verdict on Separation, Custody Battles and the Bitter Realities of Family Court* on March 26, 2010. The joint Manitoba Bar Association and Collaborative Practice Manitoba program will take place at the Law Society of Manitoba classroom starting at 12:00 noon. RSVP to the Manitoba Bar Association by March 24, 2010.

Continuing Professional Development Programs

Several family law programs are being offered in the next month:

Find out how to draft court orders to avoid contempt motions, when to bring contempt motions and how to defend them at [Contempt Orders in Family Law](#), a law at lunch program presented by the Family Law section of the Manitoba Bar Association. The Honourable Madam Justice Laurie Allen and Randall Horton will also discuss recent Manitoba case law on the subject and remedies available if the motion is successful. The program takes place at 12:00 noon on February 25, 2010 at the Law Society classroom.

'Til Death Do Us Part and Beyond

a full day program examining the issues arising at the intersection of family law and death. The program, jointly sponsored by the Law Society, Q.B. Family Division Judges, and the MBA, will take place on Friday, March 5, 2010 at the Radisson Hotel, Winnipeg. Topics to be covered include spousal and child support obligations, resulting trust and the presumption of advancement, and grandparent guardianship and access.

Collaborative Practice Manitoba and Family Mediation Manitoba are co-sponsoring the program How Fathers Parent Differently: Implications For Children and Families Before, During or After Divorce, a two-day workshop with Dr. Marsha Kline Pruett, Ph.D., M.S.L. The program will address the dynamics of father involvement, special risk factors and overnights for young children, and other custody-related matters on April 15-16, 2010 at the Canada Inn Polo Park. To register or for more information call 945 5961 or e-mail [Collaborative Practice Manitoba](#).

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