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## Disingenuous Applicant Denied Relief: MBCA

In [Rodych v. Rasidescu](#), 2011 MBCA 89 the court dismissed applications for an extension of time to file a notice of appeal out of time and for a stay of proceedings with respect to the attachment and sale of a condominium to satisfy an outstanding order of costs from a 2001 divorce. The self-represented applicant, a non-resident, argued he was never served with either the applications or orders, which had been sent by ordinary mail to five addresses in accordance with an order for substitutional service. Expressing "grave concerns about the accuracy of the applicant's position" the court noted:

it is entirely disingenuous to complain about a lack of service and at the same time refuse to provide information to enable such service to be properly made. It is hard to avoid the conclusion that personal service is being deliberately stymied.

## Pension Equalization Extinguished by Bankruptcy: MBQB

The court has delivered its decision in [MacCoy v. MacCoy](#), 2011 MBQB 273, an equalization/bankruptcy/pension benefits case which had been on hold pending the Supreme Court decision in [Schreyer v. Schreyer](#), 2011 SCC 35. In keeping with the reasoning of the Supreme Court and the [MBCA](#) in [Schreyer](#), the court found that it would be pointless to make a *Family Property Act* order equalizing the parties' pension assets when both parties had been granted discharge orders after intervening bankruptcies. Discharges, said the court, have the effect of releasing bankrupts from all claims provable in bankruptcy, including equalization claims which have been liquidated before bankruptcy. In this case, since the entitlement to equalize the pensions arose upon separation the pensions could be valued, and determining the quantum of the equalization payment would be a fairly simple application of a clear formula. Thus, although sympathetic to the husband's argument that it was inequitable for the wife to retain her much more valuable pension, the court dismissed the motion. The possibility of a spousal support claim by the husband was left open, however, by the court's willingness to entertain a motion by the husband to amend his pleadings.

## Steering Clear of the Ruts: MBQB

In [Doucette v. Doucette](#), 2011 MBQB 265, a care and control/child support variation made unnecessarily complex by the parties' inability to distinguish perception from fact, the judge conducts a thorough review of the evidentiary foundation of the application, highlighting the kind of inconsistencies judges find troubling. It's intended as a cautionary tale, told in the hope that the parties (and other parents) can "steer clear of some of these ruts in the future," and it is instructive reading for family law lawyers as well.

## Family Businesses and Financial Determinations: MBQB

Two recent family court decisions, [Golletz v Nieradka](#), 2011 MBQB 289 and [Russell v. Russell](#), 2011 MBQB 274 show how a party's employment in a family business can complicate financial determinations. In [Golletz](#), both parties contested confirmation of the master's *Family Property Act* reference valuing the husband's company and determining how CCRA reassessments and debt should be treated. In [Russell](#), quantum of interim support was at issue, because the parties disagreed on how certain monies received by the husband from the family business should be characterized. The husband argued that only his declared employment income should be used to determine support obligations, and that other substantial sums of money he consistently received from his father (and used to fund the family lifestyle) were discretionary gifts. The wife argued these monies were salary, characterized as gifts for tax purposes. The judge's overview of the factors he considered in deciding whether to impute income to the husband is informative. (para. 100)

## 2011 Amendments to the Federal Child Support Tables

Amendments to the *Federal Child Support Guidelines*, SOR/97-175, updating the Federal Child Support Tables used to determine child support amounts, were [published](#) in Part II of the *Canada Gazette* on December 7, 2011 and will come into force on December 31, 2011.

[The Federal Child Support Tables](#) were last updated in 2006. The 2011 amendments do not change the formula for calculating child support and any changes to child support amounts under these amendments are due to changes to federal and provincial/territorial tax rules.

Schedule I of Manitoba's *Child Support Guidelines Regulation*, Man. Reg. 58/98, adopts Schedule I of the *Federal Child Support Guidelines* as amended from time to time for the purposes of Manitoba's Guidelines. Therefore, the updated Child Support Tables will also be applicable to cases under Manitoba's *Child Support Guidelines Regulation* as well as to cases under the *Federal Child Support Guidelines*, as soon as they come into force federally.

Justice Canada's Supporting Families [website](#) contains further information about these federal amendments and the [child support online lookup](#). This website will also, in due course, contain a link to the updated Tables.

## New Family Legislation in B.C.

[Bill 16](#), B.C.'s new *Family Law Act*, received royal assent on November 24, 2011 and will come into force gradually, by proclamation. Implementation is expected to take 12 to 18 months according to this government [news release](#), which also contains a background on the legislation. For a summary of the few sections that are already in force see [Family Law Act Receives Royal Assent](#).

## Family Law Publications

These articles may be of interest to family law lawyers:

- [Couples battle shows dangers of text messages](#) - this *Law Times* article shows how modern communication can fuel the high-conflict family law fires and how imprudent text messages are being used as evidence;
- [Frozen moment of judicial compassion](#) - lawyers need to be more sensitive to the issue of low literacy rates among family court clients according to this *Lawyers Weekly* article, which sets out some alarming statistics from the Ontario Court of Justice;
- [Interviewing Children: A Methodology for Views of the Child Reports](#) - a B.C. family law lawyer describes his process for interviewing children in this [Practice Points](#) publication.

## Support Enforcement CPD

Those who missed the December 12 live program on the upcoming changes to [The Strengthened Enforcement of Family Support Payments and Miscellaneous Amendments Act](#) and regulation can still [register](#) for the December 19, 2011 webinar or the live program in Brandon on January 17, 2012. The director of the Maintenance Enforcement Program and two lawyers from the Family Law Branch will review the changes to the legislation and to the MEP, including how to read the MEP printouts and how the new legislation and computer system have changed the program.

## 2012 MBA Mid-Winter Meeting

The Manitoba Bar Association's [Mid-Winter Meeting](#) will be held January 19-20, 2012 at the Fort Garry Hotel. The Family Law section is sponsoring the program **Ketch up with Franks on the Year's Most Important Family Law Cases**, with Aaron Franks of Epstein Cole LLP, Toronto. Other programs that may interest family law lawyers include:

- Innovative Strategies for Effective Communication - sponsored by the Women Lawyers' Forum;
- Ethical Practice in the Electronic Age - The Use of Social Media; and
- Expert Evidence - Co-sponsored by the Civil Litigation and Criminal Justice sections.

For further details see the [registration form](#) or [brochure](#).

## 2012 Annual Joint Family Law Program

The 2012 Annual Joint Family Law Program [What's Time Got To Do With It? Examinations of Shared Custody and Child Support](#) will take place March 16, 2012 at Fort Garry Place. The program is a joint presentation of the Law Society of Manitoba, the Court of Queen's Bench Family Division Judges and the Manitoba Bar Association, Family Law section. Presenters include Justice Laurie Allen, Professor Tonya Brito, University of Wisconsin Law School, Rhoda Dobler and Professor Mavis Maclean, University of Oxford. [Register](#) before February 3, 2012 to take advantage of the early bird discount.

## Legislative Amendments In Force December 20, 2011

[The Inter-jurisdictional Support Orders Amendment Act, S.M. 2011, c. 15](#) and the [Inter-jurisdictional Support Orders Regulation, amendment Man.Reg. 211/2011](#) will both come into force December 20, 2011. These amendments will enhance the process by which family support orders are obtained, varied and recognized for enforcement in cases between Manitobans and parties in other jurisdictions in Canada and elsewhere as noted in this April 2011 [news release](#) and the [explanatory note](#) to Bill 25.

Further information can be obtained from the Family Law Branch, Manitoba Justice at 204-945-0268 or [Tracy.Morrow@gov.mb.ca](mailto:Tracy.Morrow@gov.mb.ca).

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