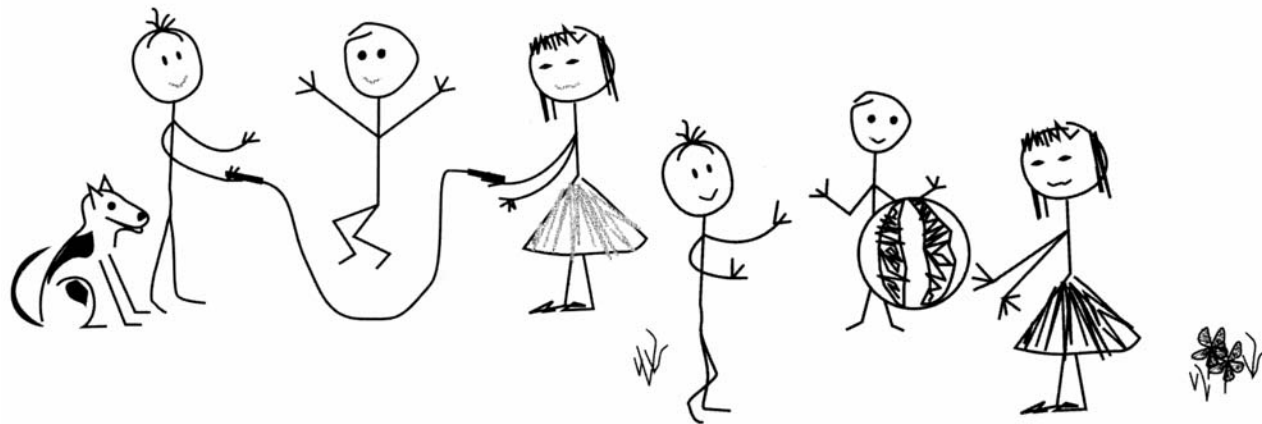


FAMILY JUSTICE

N E W S L E T T E R



Volume 2

Winter 2004

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Kids
come
first

Update from the Family, Children and Youth Section

The Hague Special Commission

The first Special Commission on the International Recovery of Child Support and Other Forms of Family Maintenance was held May 5th to 16th, 2003, at The Hague. Its goal was to negotiate a new and more efficient international convention.

The Hague Conference on Private International Law has already adopted four conventions on maintenance obligations. In addition, there is a United Nations convention on maintenance to which most Member States of The Hague Conference are signatories. Simultaneous application of these five conventions is a source of difficulties for the states. They are also outdated and don't meet current needs. For example, none of the conventions addresses the development of new technology, such as the electronic transfer of funds, which can ease enforcement of support obligations.

Given the problems outlined above, Member States decided to replace existing conventions with a new agreement and retain the best features of the existing conventions. Canada, as a Member State of the Hague Conference, was invited to participate in the negotiations.

Update from the Family, Children and Youth Section (cont'd)

The Hague Special Commission

(cont'd from page 1)

Canada's participation at the Special Commission provided delegates with an opportunity to establish links with foreign officials and to promote the development of international cooperation in the field of maintenance obligations.

A delegation composed of representatives from Civil Law (Denise Gervais, Quebec), Common Law (Tracy Morrow, Manitoba) and the federal government (Manon Dostie and Danièle Ménard) took part in the negotiations. The negotiations of a new Convention on family maintenance should be completed in 2005 or 2006. ❖

Assessing the Feasibility of Spousal Support Guidelines

The Department of Justice is exploring the possibility of developing spousal support guidelines. Responding to concerns that the current spousal support law is too discretionary, the Department has initiated a project to explore ways of bringing more consistency and predictability to spousal support. The Department contracted with Professors Carol Rogerson of the University of Toronto and Rollie Thompson of Dalhousie University to direct the project in September 2001. The project has an over-all time frame of five to six years.

One of the first products of the project was a background paper by Professor Rogerson entitled, "Developing Spousal Support Guidelines in Canada: Beginning the Discussion." That paper was first presented at the 2002 National Family Law Program in Kelowna, B.C. The paper included an outline for developing guidelines that would reflect current practice but would not require amending legislation. In essence, the process is one of building guidelines "from the ground up" rather than "from the top down."

The project is now in its second stage, which involves discussions with a national advisory group of family law experts and, occasionally, other regional groups. The goal of this stage is to clarify and reach some rough consensus on the assumptions underlying spousal support and then to develop options for guidelines to implement those assumptions. If there is sufficient consensus on this important phase, the project would move to a third stage, which would involve a proposal

and further consultations. Again, if some rough consensus emerged, a fourth stage would involve developing pilot projects in a few locations.

It is important to emphasize that the third and fourth stages of the project are speculative, and no firm predictions about the future of the project can be made.

The background paper is available on the Department of Justice Internet site at <http://canada.justice.gc.ca/en/dept/pub/spousal/index.html> ❖

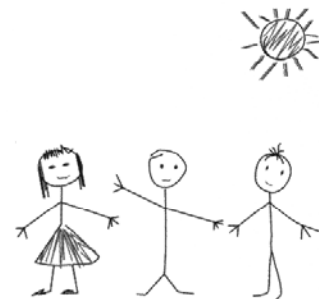
Workbooks Available

We still have copies of *A Workbook for Parents* and *The Complete Workbook* available free of charge. The workbooks set out the steps for estimating the child support payments a judge would likely set in making a new child support order, or in changing an order under the *Federal Child Support Guidelines*. You will find worksheets, forms and step-by-step instructions to help you make the right calculations.

A Workbook for Parents is used when parents have a regular income from a salary or wage and when the children usually live with one parent.

The Complete Workbook covers all types of custody arrangements, recalculation of income and undue hardship.

To order, please call our Family Law Information Line at 1-888-373-2222 or (613) 946-2222. These publications are also available on the Department of Justice Canada's Internet site at <http://www.canada.justice.gc.ca/en/ps/sup/pub/lstpub.html> ❖



Update from the Family, Children and Youth Section (cont'd)

Provincial/Territorial Corner

Alberta Justice

Evaluation of Pilot Projects in Alberta

Through special research funding provided by the Department of Justice Canada, Alberta Justice commissioned an evaluation of the Dispute Resolution Officer program in Calgary and the Child Support Resolution pilot project in Edmonton.

The evaluation's overall assessment of the two pilot projects was very favourable. Most of those interviewed agreed that the projects helped parents settle family law disputes before reaching court. This reduced the clients' legal costs and saved court time and expenses. Most informants felt that the programs should be mandatory for parties bringing applications dealing with child support, and they would recommend them to others. Approximately one-half of the interviewees thought that one hour was not enough time for the meetings. Over 50 percent of the informants felt that the Child Support Resolution project in Edmonton should be expanded to include other family law matters.

The report will be available on the Department of Justice Canada and Alberta Justice Internet sites. ❖

Saskatchewan Justice

Parent Education

Saskatchewan's *Queen's Bench Act, 1998* requires each party to a family law proceeding commenced in a designated judicial centre to attend a parenting education program, unless he or she has attended one in the past two years, has been exempted by the court following an ex parte application, or the parties have already settled all issues relating to custody, access, and child support. Currently there are only two designated judicial centres: Saskatoon and Yorkton. This year, Regina and Prince Albert will also become designated judicial centres.

Where a party fails to attend parenting education, that party's pleadings may be struck, he or she may not be able to make submissions on applications or at trial, or he or she may be ordered again to attend parenting education. Parents can also attend the program voluntarily. Saskatchewan's judiciary has been very supportive of the program, frequently ordering parents in non-designated judicial centres to attend the program.

Parent education sessions include options for resolving disputes, including those over child support issues; child support guidelines, stages of separation and divorce; the impact of separation and divorce on children and parents, as well as emphasizing positive parenting. These sessions promote co-operative program solving and decision-making in the best interest of the children by providing education that provides awareness, knowledge and tools to assist parents. It is also an effective program for parties to learn about other services that may be beneficial for them.

Saskatchewan Justice has contracted Dr. Brenda Bacon of the University of Manitoba to conduct an evaluation of the parent education program. Focus groups have been held with parents and lawyers, and interviews have been held with judges and Family Justice Support Services staff. Dr. Bacon's report is due next year. ❖

Office of the Children's Lawyer—Personal Rights Department

The Office of the Children's Lawyer is a law office in the Ontario Ministry of the Attorney General that is responsible for protecting the civil legal interests of children. The Personal Rights Department provides services, when ordered by the court, to children who are the subjects of child protection or custody and access proceedings in Ontario.

In child protection cases, the court may direct that the child have legal representation to protect his or her interests. The case is then referred to the Office of the Children's Lawyer, and the matter is handled by either an in-house lawyer or by a member of the Personal Rights Legal Panel.

Provincial/Territorial Corner (cont'd)

Office of the Children's Lawyer—Personal Rights Department

(cont'd from page 3)

In custody and access cases, the court may request that the Office of the Children's Lawyer become involved. This may take the form of legal representation or an investigation and report. When the court makes such a request, it sends the order to the Office and the parties are required to submit intake forms, which staff review to determine which service, if any, to provide.

If legal representation is considered appropriate, then either an in-house lawyer or a member of the Personal Rights Legal Panel handles the case. In some cases, a clinical investigator will help the lawyer in the representation of the child. If an investigation and report is prepared, either an in-house clinical investigator or a member of the Personal Rights Clinical Agent Panel completes them. The report is filed with the court and constitutes evidence in the case.

The involvement of the Office of the Children's Lawyer is often critical in helping the parties negotiate a resolution, and in ensuring that the children's interests are heard in the court process. ❖

Administrative Recalculation Projects

Alberta

Alberta Justice has been using ChildView child support calculation software to simplify and speed up the calculation of child support orders and recalculations of existing orders since the *Federal Child Support Guidelines* were introduced in May of 1997. This program is made available to the province's two Family Law Information Centres, court staff, the judiciary, the Family Law section of Alberta Justice and other government departments as appropriate. The software is widely used and is recognized for its ease of use and efficiency.

Alberta's two Family Law Information Centres are using similar pilot projects to help parties reach out of court settlements or reduce the number of issues in dispute. Failing that, both projects inform the parties of the procedures and requirements to move applications

through the court process as quickly as possible. The Dispute Resolution Officer program in Calgary uses the volunteer services of leading family law practitioners to meet with parties to all applications involving child support. The program is mandatory and the Rules of Court set out the process.

Edmonton's Child Support Resolution Officer project uses volunteer lawyers as well as the legal counsel in the Family Law Information Centre and focuses on unrepresented parties. It helps parents with child support issues and other matters such as arrears, custody and access. The Chief Justice of the Court of Queen's Bench issued a Practice Directive detailing the qualifications and requirements of participants. ❖

B.C.'s Comprehensive Child Support Service

In February 2002, the B.C. Ministry of Attorney General launched the Comprehensive Child Support Service (CCSS) pilot project in the Kelowna Family Justice Centre. The pilot complements other family justice services by providing parents with:

- specialized assistance in child support matters;
- information on child support enforcement; and
- access to dispute resolution alternatives and related services.

The service is voluntary, and all parents who wish to establish or change child support arrangements are eligible to receive CCSS services.

A Child Support Officer (CSO) helps parents obtain and change child support orders or agreements. The CSO helps with income disclosure, calculating child support amounts and preparing court documents. If the clients wish, the CSO can also help them reach agreement on their child support issues using facilitated negotiation. The CSO may refer parents to other services, including the Family Maintenance Enforcement Outreach project (to better understand enforcement and the particulars of their case), family mediation and limited legal advice.

Provincial/Territorial Corner (cont'd)

B.C.'s Comprehensive Child Support Service

(cont'd from page 4)

A lawyer is available through the Family Justice Centre to give limited legal advice one morning a week. CCSS clients may have up to three hours of this lawyer's time to review options, draft written agreements and prepare legal documents should they go to court. The lawyer does not represent CCSS clients in a legal sense and does not appear for or with them in court. A key role of the CSO is to manage case flow for clients.

As the result of a positive evaluation conducted last year, the Ministry is expanding the CCSS to two other Family Justice Centres in Surrey and Vancouver this fall. ❖

New Brunswick Child Support Variation Service

The Child Support Variation Service (CSVS) is a pilot project in the Saint John Court of Queen's Bench, Family Division. The project has experienced lawyers, called Conciliation Officers, who meet with the parties in child support variation cases before a scheduled hearing. At the meeting, they review the evidence, ensure the required documentation has been provided, and calculate child support. If the parties agree with the amount calculated, a consent order is prepared, signed and forwarded to a judge for approval. If the parties do not agree, the calculation is forwarded to the court as a recommendation.

Both the applicant and the respondent to a motion to vary child support must appear before the conciliation officer. Parties may sit in separate rooms, or participate by teleconference if the situation warrants. Meetings are scheduled on Fridays each week and are held within four to six weeks of the motion being filed.

The project was implemented in October 2002 as a six-month pilot that has been extended to March 2004. This project is being funded through an agreement with the Department of Justice Canada under the Child-centred Family Justice Initiative. ❖

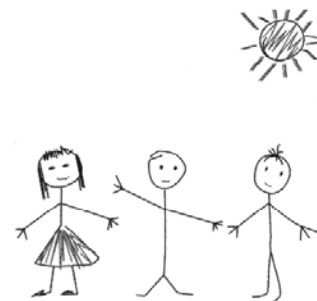
Nova Scotia Administrative Recalculation Program

The Nova Scotia Department of Justice is establishing a program in the Supreme Court (Family Division) that provides for the annual recalculation of child maintenance orders and court-registered agreements.

Administrative recalculation will be limited to orders and agreements involving the basic table amount of child maintenance in sole, joint (not shared) or split custody cases. Cases in which discretion is required to determine the amount of child maintenance payable fall outside the scope of recalculation.

The threshold of change is one dollar. If there is no change, the parties are so advised and the file is brought forward to the next year anniversary date. If there is a change, the parties are notified of the payor's obligation to pay the recalculated amount of child maintenance and of the right to object to that amount within 30 days.

The program is in the final stages of implementation. The regulations have been drafted and are proceeding through the approval process. Nova Scotia is now prepared to enter into an agreement with the Government of Canada to have the Supreme Court (Family Division) designated as a child support service. Training for the recalculation clerks will begin soon. ❖



Provincial/Territorial Corner (cont'd)

Prince Edward Island—Administrative Recalculation of Child Support

As of September 6, 2003, PEI began the administrative recalculation of child support in orders and agreements made under provincial legislation. Under the *Family Law Act* and the *Administrative Recalculation of Child Support Regulations*, the Recalculation Office can recalculate child support amounts for anyone whose separation or parental agreement or court order provides for the review and recalculation of child support in accordance with the Child Support Guidelines.

To trigger recalculation, orders or agreements made after September 6, 2003, must include a standard recalculation clause and be filed with the Recalculation Office by either party. Recalculation is automatic until the obligation to pay child support ends under the terms of the order or agreement. Neither party can opt out of the program unless the Recalculation Office receives a subsequent order or agreement that precludes administrative recalculation.

The Recalculation Office can refuse to recalculate a support order or agreement, despite a judicial direction to do so, or a provision in an agreement to do so, if the order falls outside the scope of the administrative recalculation program.

To encourage parents to provide the required financial information to the Recalculation Office, the office will attribute an amount that is ten percent higher than the most recent preceding year for which the Recalculation Office was provided with income information for any party that does not provide the required financial information.

Standard clauses have been developed which will be inserted into orders/agreements setting out the particulars required in accordance with section 13 of the Child Support Guidelines.

As section 7 expenses may require discretion, the Recalculation Office will not recalculate them. Parents seeking a variation for section 7 expenses must ask the court to vary the original order. ❖

Saskatchewan Justice Support Variation Project

For many divorced or separated parents who receive or pay support, making changes to the order or agreement providing for the support is excessively difficult. For some, the cost of bringing the matter to court is beyond their means—they cannot afford a lawyer and they don't qualify for legal aid. To respond to this need, Saskatchewan Justice implemented a Support Variation Project in Regina in October 1, 2002.

The project helps low-income parents who have a child support agreement or order registered in Saskatchewan. It provides them with the administrative support they need to reach agreement on a variation of the order or agreement. The project also provides child support calculations using the ChildView program, which the courts use. If parents reach an agreement, project staff help them prepare the consent order or agreement, and encourage and help them to obtain independent legal advice before the order is issued. If the parents cannot agree, project staff refer them to more appropriate services, provide assistance with the court Application to Vary, or simply close the file. The parties pay for all court fees related to the court application and the issuance of the consent order. Parties are required to disclose financial information to the same extent that a court would require. However, where a party fails or refuses to disclose information, the process may be terminated. At all times, the parties are entitled to seek legal advice.

In addition to its fundamental role as an administrative support variation program, the Support Variation Project also responds to requests for assistance completing self-help kits for court applications relating to child support variation (the kits are available in all Queen's Bench Court Houses), as well as requests for public information and referrals to other family law services. This service, referred to as the Information and Resource Centre, is available to all members of the public, regardless of income. ❖

Provincial/Territorial Corner (cont'd)

Provincial/Territorial Information

For further information on provincial or territorial child support guidelines and related programs, please call the following number within each province or territory:

Alberta

Calgary (403) 297-6600

Edmonton (780) 415-0404

Dial 310-0000 for toll-free access

British Columbia

1-888-216-2211

Vancouver (604) 660-2192

Manitoba

1-800-282-8069 ext. 0268

Winnipeg (204) 945-0268

New Brunswick

1-888-236-2444

Newfoundland and Labrador

(709) 729-1831

Northwest Territories

1-888-298-7880

Nova Scotia

Halifax

1-800-665-9779 ext. 2

(902) 455-3135

Nunavut

Iqaluit

1-800-792-4183

(867) 975-6137

Ontario

1-800-980-4962

Prince Edward Island

Charlottetown

1-800-240-9798

(902) 892-0853

Quebec

Communication-Québec

1-800-363-1363

Ministère de la Justice du Québec

(418) 643-5140

Saskatchewan

1-888-218-2822

Yukon

Whitehorse

1-800-661-0408 ext. 3066

(867) 667-3066

Public Legal Information and Education News

Manitoba

A Guide to Changing Child Support Orders in Manitoba

Recently, Manitoba Justice produced *A Guide to Changing Child Support Orders in Manitoba*, with the financial assistance of the Department of Justice Canada. Manitoba Justice contracted with Community Legal Education Association (CLEA) to write the guide and arrange for focus testing. CLEA hired a legal writer, who worked with an Editorial Committee. The Committee comprised of representatives of the Court of Queen's Bench, Manitoba Justice, Legal Aid Manitoba and the Family Law Subsection of the Manitoba Bar Association.

The guide is available in French and English. It is hoped that the guide will be useful for self-represented litigants. In Manitoba, as in other parts of the country, the number of self-represented litigants is growing. Many of these people need to change the terms of a child support order, but find themselves in the position of not qualifying for Legal Aid, yet not being able to afford to hire a lawyer.

One of CLEA's core programs is the Law Phone-In & Lawyer Referral Program, which is staffed by two lawyers. Callers can call from anywhere in Manitoba with their legal questions. In appropriate circumstances they can also be referred to a lawyer or a law-related agency. Approximately one quarter of the calls and lawyer referral deal with family law issues. ❖