

NOTICE

COURT OF QUEEN'S BENCH

RE: RULE AMENDMENTS – JULY 2005

The Statutory Rules Committee has recently passed a number of amendments to the rules of which you should be aware. They relate mainly to Family Law matters and are summarized under the following headings:

RECOGNITION OF EXTRA-PROVINCIAL GARNISHING ORDERS

Bill 18, The Improved Enforcement of Support Payments (Various Acts Amended) Act allows for recognition of extra-provincial garnishing orders for support that are issued by an enforcement authority in a reciprocating jurisdiction. The Bill provides that the documents to be served on the garnishee are the documents forwarded by the other jurisdiction and that all payments required are to be sent directly to the other jurisdiction. The Bill also provides that the extra-provincial orders be filed in the Queen's Bench Registry so that the judgment debtor may make an application to vary or to establish a repayment schedule. This led to a number of amendments to Rule 60.08 (Garnishment after Judgment), which has been amended to reflect these changes.

SERVICE OF GARNISHMENT DOCUMENTS BY FACSIMILE

The Family Law Branch advised that garnishing orders are the collection tool most commonly used by the Maintenance Enforcement Program; that over the years the experience has been that most Manitoba employers and financial institutions are very cooperative and readily comply with garnishing orders issued by the Program; that many, however, have suggested that it would be more convenient for their businesses if garnishment documents were sent to them by facsimile; and that service in this manner would also result in considerable time and cost efficiencies for the Program and allow better utilization of support collection resources.

Accordingly, Rule 60 was amended to permit this change.

CHILD SUPPORT RECALCULATION

MANITOBA'S CHILD SUPPORT RECALCULATION SERVICE

Both the *Divorce Act* and *The Family Maintenance Act* contain provisions allowing child support orders to be "recalculated" by a provincial child support service "at regular intervals...on the basis of updated income information". The

recalculation provisions in Manitoba's provincial legislation are closely modeled on those in the *Divorce Act*.

A child support recalculation is different from a child support variation in a number of ways. A recalculated order takes effect 31 days after both parents are advised of its terms. Unlike a variation order, it cannot deal with support prior to that date nor can it deal with any arrears of support. A variation order can take into account changes other than income (such as a child no longer being dependent or moving to live with the other parent) and deal with relief other than child support, a recalculated order cannot.

If a parent disagrees with/opposes the recalculated support payments in a recalculated child support order, he or she may apply for a child support variation. Filing a variation application within 30 days after both parents are notified of the recalculation operates to suspend the coming into force of the recalculated order. Where a variation application is subsequently withdrawn, the paying parent becomes liable to pay the recalculated amount on the same day he or she would have had the variation application never been initiated.

This led to a number of amendments to Rule 70, including definitions of "Recalculated Child Support Order", "Recalculation Order" and "Support Determination Officer". Also that: subrules regarding motion briefs, case management and pre-trial conferences do not apply where all that is involved is a Recalculation Order; recalculated child support orders are not subject to the auto order rules; an affidavit in support of a child support variation include particulars and a copy of the last recalculated child support order.

CPP CREDIT SPLITTING RULES – "STAND ALONE" RULES NOS. 1 TO 9

Spouses and common-law partners have a right to an equal division of CPP credits earned during cohabitation provided they have cohabited for a continuous period of at least one year. For divorcing spouses, CPP credit splitting is to occur upon divorce and upon the Federal Government being informed of the decree or judgment and receiving the prescribed information. On the other hand, separating (but not divorcing) spouses and common-law partners must apply for a credit split. Due to historically low take-up rates for CPP credit splitting, Social Development Canada and the Manitoba government have recommended the development of a pilot project in Manitoba with the intent of having divorcing spouses consider credit splitting at the time of commencing a divorce and to also make it easier for them to obtain a credit split; also, the project intends to increase the awareness for separating spouses and common-law partners with respect to their rights to credit splitting and to also make it easier for them to apply for a credit split.

This led to the passing of "stand alone" rules, which are to be appended to but not form part of the main body of rules, and which are to be temporary only,

coming into force on October 1, 2005 and being repealed effective October 1, 2008. The rules provide for the registrar to give to the petitioner copies of the "CPP Credit Splitting Notice to Parties" Form in the form approved by the registrar, as well as two copies of the CPP Credit Splitting Request also in the form approved by the registrar. The petitioner must serve the respondent with these forms in the same manner and at the same time as the petition. Also, the registrar must include information regarding CPP credit splitting with every divorce judgment mailed to the parties; if the court mails the judgment to a party's lawyer, the lawyer must give the CPP credit splitting information to the party at the same time the lawyer gives the party the divorce judgment.

"HOUSEKEEPING" AMENDMENTS

The Domestic Violence and Stalking Prevention, Protection and Compensation Amendment Act, S.M. 2004, chapter 13 has been amended to shorten the name of the statute to *The Domestic Violence and Stalking Act* and Rule 70 has been amended in several places to reflect this change.

Rule 48 (Setting Down of Matters for Trial) has been amended to reflect that a pre-trial brief for a family proceeding is to be governed by subrule 70.26(5) instead of subrule 70.17(2), which no longer exists.

Subrule 50.01(3) (Pre-trial Conferences) has been amended to make it clear that it does not apply to a family proceeding since Rule 70 now contains detailed provisions addressing pre-trial conferences for these proceedings.

Form 70D has been amended to correct a typo ("banks accounts").

The amendments to Rule 60 (recognition of extra-provincial garnishing orders and service of garnishment documents by fax) are encompassed in M.R. 48/2005 and this regulation:

- (a) was made by the Rules Committee on March 24, 2005;
- (b) was registered on March 28, 2005;
- (c) will come into force on March 31, 2005; and
- (d) will be published in The Manitoba Gazette on April 9, 2005.

The amendments to Rule 70 (recalculation of child support) are encompassed in M.R. 92/2005 and this regulation:

- (a) was made by the Rules Committee on June 22, 2005;
- (b) was registered on June 24, 2005;
- (c) will come into force on July 1, 2005, except for subsection 7(7); and
- (d) will be published in The Manitoba Gazette on July 9, 2005.

The various “housekeeping” amendments are encompassed in M.R. 93/2005 and this regulation:

- (a) was made by the Rules Committee on June 22, 2005;
- (b) was registered on June 24, 2005;
- (c) will come into force on June 24, 2005, except for section 4 which comes into force on October 31, 2005; and
- (d) will be published in The Manitoba Gazette on July 9, 2005.

The “stand alone” CPP Credit Splitting Rules are encompassed in M.R. 94/2005 and this regulation:

- (a) was made by the Rules Committee on June 22, 2005;
- (b) was registered on June 24, 2005;
- (c) will come into force on October 1, 2005; and
- (d) will be published in The Manitoba Gazette on July 9, 2005.

ISSUED BY:

**The Honourable Mr. Justice G.O. Jewers
Chairperson, Queen’s Bench Rules Committee
(Manitoba)**

DATE: JULY 2005