

**IN THE COURT OF APPEAL OF MANITOBA**

***BETWEEN:***

<b><i>A. A.</i></b>	)	<b><i>J. Schofield</i></b>
	)	<b><i>for the Applicant</i></b>
	)	
<b><i>(Petitioner) Applicant</i></b>	)	<b><i>Chambers motion heard:</i></b>
	)	<b><i>August 14, 2025</i></b>
<b><i>- and -</i></b>	)	
	)	<b><i>Decision pronounced:</i></b>
<b><i>R. R.</i></b>	)	<b><i>August 15, 2025</i></b>
	)	
	)	<b><i>Written reasons:</i></b>
<b><i>(Respondent) Respondent</i></b>	)	<b><i>August 26, 2025</i></b>

**LEMAISTRE JA**

**Introduction**

[1] The applicant sought leave to appeal, without notice to the respondent, an order denying her request for an emergent hearing pursuant to rule 70.24(12) of the MB, *King's Bench Rules*, Man Reg 553/88 [the *KB Rules*].

[2] I granted the request for a hearing without notice and, after the hearing, granted leave to appeal, with brief reasons to follow, on the following grounds:

In denying the request for an emergent hearing:

1. Did the triage duty judge err in law when he concluded that the corporate assets are not subject to *The Family Property*

*Act*, CCSM c F25 [*The Family Property Act*]?

2. Did the triage duty judge err in law when he concluded that the Family Division does not have jurisdiction pursuant to section 41 of the *The Court of King's Bench Act*, CCSM c C280 [the *KB Act*] to provide relief under *The Corporations Act*, CCSM c C225 [*The Corporations Act*]?

### Background

[3] In support of the applicant's motion, she filed an affidavit that sets out the following information. I have relied on the applicant's obligation on a without notice proceeding to make full and fair disclosure of all material facts (see *Melco Developments Ltd v Portage la Prairie (City)*, 2002 MBCA 125 at paras 97-99).

[4] On the date of their separation, the applicant reported to the police that she and her father had been threatened by the respondent. She provided a statement in which she also reported previous incidents of assaults against her and the parties' three children that occurred prior to the separation. The respondent was charged with criminal offences and released on an undertaking with conditions prohibiting contact with the applicant and the children, and attendance at their home, business or any place they may be.

[5] The respondent has also been charged with multiple breaches of the terms of his undertaking based on allegations that he communicated with the applicant and attended places she and the children were.

[6] Meanwhile, the applicant filed a petition and the respondent filed an answer.

[7] The parties hold equal shares in a numbered company that operates a business (the business). The applicant has been solely responsible for operating the business since the date of separation. Without her knowledge, the respondent transferred \$200,000 out of the corporation's account, leaving a balance of \$75,024.90. The bank has refused to disclose any information about the location of the transferred funds.

[8] By the end of August 2025, the applicant will be unable to meet the financial obligations of the business and will have no income. She will be unable to support herself and the children.

[9] The applicant filed a request for an emergent hearing pursuant to rule 70.24(12) of the *KB Rules*. Rule 70.24(12) states:

**Exception — emergent situations**

**70.24(12)** A judge may hear a motion or application prior to the triage conference for a family proceeding if the motion or application relates to a situation involving one of the following:

- (a) an immediate or imminent risk of harm to a party or a child of a party;
- (b) the removal of a child from Manitoba;

**Exception — risques imminents**

**70.24(12)** Un juge peut entendre une motion ou une requête avant la conférence de triage dans une instance en matière familiale dans les cas suivants :

- a) risque immédiat ou imminent de blessures à une partie ou à l'enfant d'une partie;
- b) risque de l'enlèvement d'un enfant vers un lieu situé à l'extérieur du Manitoba;

- |   |                                       |
|---|---------------------------------------|
| (c) the loss or destruction<br>of property. | c) perte ou destruction d'un<br>bien. |
|---|---------------------------------------|

[10] The applicant's request stated, in part:

In the circumstances, the [applicant] is seeking to amend her Petition to seek relief pursuant to s. 234 of *The Corporations Act* on an emergent basis including but not limited to an order requiring the [respondent] to return the funds to the Corporate account and be restrained from further withdrawals pending further Order of the Court. The [applicant] is also seeking protective relief with police assistance.

[11] The triage duty judge issued a Memorandum of Direction Regarding Emergent Hearing Request (the decision) denying the request for an emergent hearing. In the decision, the triage duty judge stated that he denied the request based on risk of harm to a party or child because "[a] further protection order from this court [would] not strengthen the protections already in place." The applicant does not seek leave to appeal that aspect of the decision.

[12] Regarding the request for an emergent hearing to deal with the loss or destruction of property, the triage duty judge wrote:

According to the request for emergent hearing, the parties are equal shareholders in the corporations that they own. These assets therefore are already shared and are not subject to *The Family Property Act*, C.C.S.M. C. F25. The dispute between the parties with respect to the corporate assets is a corporate dispute and not a family dispute. Accordingly, jurisdiction for relief under *The Corporations Act* is not possible pursuant to s. 41 of the Court of King's Bench Act. This ruling does not preclude relief being sought in the General Division of the Court of King's Bench. I note that the civil uncontested list continues to be heard throughout the summer.

### Without Notice Hearing

[13] Based on the respondent's conduct since the date of separation, I am persuaded that it was reasonable to fear that he will act improperly if given notice of the motion for leave to appeal. The applicant's affidavit establishes that the respondent's conduct has escalated, particularly following her filing of the petition. He is not represented by counsel, has been charged with breaching conditions intended to protect the applicant and the children from risk of harm, and has affected the applicant's ability to support herself and the children.

[14] My decision does not permit the appeal to proceed without notice. That issue is not before me.

### Leave to Appeal

[15] Because the decision is an interlocutory order, the applicant requires leave to appeal pursuant to section 25.2(1) of *The Court of Appeal Act*, CCSM c C240. The test for leave to appeal requires the applicant to establish that the proposed appeal has arguable merit, bearing in mind the standard of review, and that it is of sufficient importance to warrant the attention of a full panel of this Court (see *Knight v Daraden Investments Ltd*, 2022 MBCA 69 at paras 20-22). Also relevant to the determination of whether leave to appeal an interlocutory decision should be granted is "the overarching concern for the interests of justice" (*ibid* at para 21).

[16] The decision is a discretionary decision on an interlocutory matter entitled to deference absent an error in principle or a decision that is so wrong

as to amount to an injustice (see *Sawatzky v Sawatzky*, 2018 MBCA 102 at paras 16-20).

[17] As I have concluded that I will be granting leave, I will be circumspect in my discussion of the strength of the applicant's grounds of appeal. In my view, she has raised arguable grounds of appeal as to whether the triage duty judge erred in principle when he found that the corporate assets are not subject to *The Family Property Act* and that the Family Division does not have jurisdiction pursuant to section 41 of the *KB Act* to provide relief under *The Corporations Act*.

[18] The definition of an "asset" in *The Family Property Act* includes a "commercial asset" (s 1(1)). The Court has discretion to order an unequal division of family and commercial assets (see *ibid*, s 14) and can also order the preservation of any and all assets (see *ibid*, s 21(1)) to prevent their dissipation. The definition of "family proceeding" in the *KB Act* includes "the entitlement to division of property . . . or a similar or ancillary proceeding, whether based on common law, a provincial or federal enactment, the inherent jurisdiction of the court or an Indigenous law" (s 41(1); see e.g. *Fletcher v Fletcher*, 2025 MBKB 72; *JMA v LAM*, 2023 MBKB 110). Arguably, the triage duty judge erred in law in concluding otherwise. These errors would be subject to review on the standard of correctness.

[19] I am also convinced that the grounds of appeal raise issues of sufficient importance to merit the attention of a full panel of this Court. The applicant asserts that her inability to obtain an emergent hearing based on an error of law in the circumstances of this case, which involve family violence,

raises issues relating to access to justice and I am satisfied that the legal issues raised are significant.

[20] In response to the triage duty judge's suggestion that the applicant is not precluded from pursuing relief in the General Division, she says that it is important that the matter be heard in the Family Division, where judges have the necessary expertise and experience regarding litigation in the context of family violence.

[21] In terms of the overarching concern regarding the interests of justice, I am mindful that this is an interlocutory proceeding and that the applicant has the ability to pursue a remedy, without an emergent hearing, via the triage process. I would encourage her to continue to engage in that process. However, she asserts that it will take months before the parties will be able to meet the requirements under the *KB Rules* to get to triage. More importantly, she asserts that, based on the respondent's actions, it is not realistic to expect that the issue regarding the money transferred out of the corporate account can be resolved at triage and that it will take even longer to get a hearing date.

[22] It remains to be seen whether the appeal process will be a more expeditious route. However, in my view, this should not prevent the applicant from engaging parallel processes where she has established that it is arguable that the triage duty judge made discrete legal errors.

[23] I appreciate that this is the first time this Court has been asked to hear an appeal of a decision regarding a request for an emergent hearing. I also appreciate the very deferential standard of review applicable to a discretionary order. However, in all of the circumstances, I am nonetheless

satisfied that it is in the interests of justice to grant leave to appeal, particularly in light of the above-identified discrete legal errors.

Disposition

[24] In the result, the motion for leave to appeal was granted on the above-noted grounds without notice to the respondent.

leMaistre JA

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