

The Standing Joint Committee for the Scrutiny of Regulations has the honour to present its

FOURTH REPORT

(Report No. 49)

Pursuant to its permanent reference, section 19 of the *Statutory Instruments Act*, the Joint Committee wishes to draw the attention of the Houses to the *Central Registry of Divorce Proceedings Fee Order* (SOR/86-547, as amended). For the reasons explained in this Report, your Committee considers that this Order represents an unusual and unexpected use of the authority conferred on the Minister of Justice by the *Minister of Justice Authority to Prescribe Fees Order*.

The central registry of divorce proceedings ("the registry") was established by section 3 of the *Central Registry of Divorce Proceedings Regulations* in order to facilitate the administration of the *Divorce Act*. The Regulations establishing the registry require the registrar of any court in which divorce proceedings are commenced to record and transmit to the registry information concerning the identity of the parties to the proceedings. The registry will subsequently notify the court registrar of whether or not proceedings are pending between the same parties in any other court of competent jurisdiction. These procedures are designed to facilitate the application of section 3 of the *Divorce Act*, which sets out rules governing the jurisdiction of a court to hear and determine divorce proceedings when proceedings between the same spouses have been initiated in different courts.

Subsection 27(1) of the *Divorce Act* provides that the Governor in Council may authorize the Minister of Justice "to prescribe a fee to be paid by any person to whom a service is provided under this Act or the regulations". Acting pursuant to this authority, the Governor in Council adopted the *Minister of Justice Authority to Prescribe Fees Order*. Pursuant to this Order, the Minister of Justice in turn made the *Central Registry of Divorce Proceedings Fee Order* ("the Order"), which requires the payment of a \$10 fee by any person who files an application for divorce in a court of competent jurisdiction and in respect of whom a service is provided by the registry. The "service" to the applicant consists of the filing of information in the registry and the subsequent notification to court registrars.

Your Committee notes here that while divorce applicants may arguably be characterized as "persons to whom a service is provided" by the registry¹, they are neither the most direct nor

¹ The Joint Committee believes that it could reasonably be argued that the services provided by the registry are not services provided to divorce applicants. The service provided by the registry is meant to assist the courts in determining their jurisdiction to hear divorce proceedings and on this basis, it could be said that the courts or court registrars are the recipients of the service provided. The difficulty of characterizing the applicant for divorce as a "person to whom a service is provided" was apparently perceived by the draftsman of the *Central Registry of Divorce Proceedings Fee Order*; it is significant that section 2 of the Order does not refer to the person who files an application for divorce as a "person to whom a service is provided" but as a "person in respect of whom a service is provided". Given that the legal authority of the Minister is confined to the prescription of fees payable by persons to whom a service is provided, this point could be relevant to the validity of the *Central Registry of Divorce Proceedings Fee Order*.