

**Edmonton Family Law Town Hall Meeting
January 20, 2010 @ 1:00 p.m., Courtroom 317
Edmonton Law Courts Building**

Justices in attendance: Rooke A.C.J., Marshall J., Bielby J., Smith J., Belzil J., Acton J., Moen J., Greckol J., Ouellette J., Read J., Topolniski J., Crighton J., Mandersheid J., McNabb Prov. Ct. J.

A large number of members of the Bar and court staff in attendance.

Meeting called to order at 1:00 p.m. by Madam Justice Read, Co-Chair of the Family Law Core Committee of the Court of Queen's Bench.

1. Introductions

Read J. introduced Rooke A.C.J. and McNabb Prov. Ct. J. She also introduced Barb Petryk, Manager of the Family Law Centre; Edith Captain, Family Law Centre Queen's Bench Administrator; and Sheilla Brown, Divorce Supervisor.

2. Booking Family Special Applications

Judge McNabb indicated that last summer Barb Petryk and Brenda Hanynes had explained to him the difficulties encountered in booking family law special chambers applications. He was asked to assist in designing an efficient system for booking Edmonton family law special applications. He has developed an Excel program which allows parties, counsel, the clerks and the judiciary to go on-line to determine available dates and time slots. Since about the end of December-beginning of January, the Alberta Courts web page has had a link to a .pdf file (no password needed) that will display dates and times available for special family law applications, current to the date and time of the last update. Those wishing to book a special application should check to see what dates are available and then call a dedicated phone line to speak to a data entry clerk (780-638-3637). To adjourn a matter, call 780-643-1137 and speak with a clerk, who will ensure compliance with Family Law Practice Note #3. In all cases, counsel should provide the complete name of the parties, their own name, phone number and e-mail address and the estimated time for the application. [A handout was provided explaining in greater detail how to access the .pdf file on the web site. An explanation can also be found on the web site itself.]

A basket was provided for the collection of business cards to allow for input of counsel's e-mail addresses into the system .

If counsel who is asking for the special chambers date provides his or her e-mail address, the clerk will immediately e-mail them a .pdf version of the "Deadline Sheet" specifying the deadline dates pursuant to Family Law Practice Note #3.

McNabb Prov. Ct. J. and Read J. solicited comments from the Bar as to whether the Deadline Sheet should be e-mailed to counsel for the respondent as a matter of course. After discussion by Read J., Rooke A.C.J. and members of the Family Law Bar on the issue, Read J. advised that the

Deadline Sheet will be e-mailed to respondent's counsel only if his or her name is provided by applicant's counsel.

3. Cover/Header

McNabb Prov. Ct. J. explained that the clerks do not have the time to read through documents when they are filed and therefore, the record is not as complete as it might be. Read J. advised that it would be helpful if members of the Family Law Bar would identify as a heading on their document whether it is the applicant's notice of motion, affidavit, written memoranda etc. or the respondent's, as opposed to simply the plaintiff's or defendant's.

4. Confirming Letters

Moen J. asked that in confirming letters for family law special chambers applications, counsel indicate in the first paragraph who they act for (applicant, respondent) and in the second paragraph what the issues are in the case.

5. Attaching Letters Written by Professionals to an Affidavit

Acton J. noted that Rule 305(3) applies to family law and that affidavits based on the information and belief of the deponent with the grounds for that belief are acceptable on interlocutory motions (see *Proprietary Industries Inc. v. Workum*, 2006 ABCA 226). As a result, a letter written by medical or other professionals may be attached as an exhibit to an affidavit as the foundation for the deponent's belief without requiring an affidavit from the professional. It is a question of weight.

6. Child Support Recalculation Program

Read J. reminded the Family Law Bar that counsel should ensure that child support orders comply with the prerequisites of the Child Support Recalculation Program if the parties want to take advantage of automatic recalculation of their child support obligations. Orders should clearly indicate if the parties do not wish to participate. The program permits registration of old and new orders by one party to the order to provide for automatic recalculation of support each year, including table amounts and proportionate shares of special or extraordinary expenses. Income tax returns must be submitted annually by the payor (and recipient if the program is recalculating proportionate shares of special expenses). There is a deemed increase in support of ten percent for the first year and a further three percent for each additional year up to a maximum of 25 percent that a party does not comply with the requirement to file their income tax returns. Counsel must be familiar with the parameters of the program. It applies to *Family Law Act* and *Divorce Act* orders, including retrospective orders. The program does not apply to orders that pre-date May 1, 1997, interim orders, situations where the Court has imputed income, where one of the parties is self-employed (except in narrow circumstances) or where the support ordered was not in accordance with the *Guidelines*. Clients must advise the program of any change in their address information. Their ordinary address is used. [A handout was provided giving more details of the program.]

A member of the Bar asked what procedure should be followed where a party disagrees with the recalculation. There is a 30 day objection period once a recalculation decision has been issued. To object to a recalculation decision, an application must be brought to court to vary, suspend or terminate the child support order by the objection deadline stated in the decision. Read J. advised that the procedure for this has not yet been addressed.

Read J. noted that Maintenance Enforcement deals with retroactive awards like arrears. Therefore, counsel should ensure that support orders include a provision outlining how retroactive awards are to be collected i.e. collected over time or immediately?

7. Rush Divorce Requests

Sheilla Brown advised that there must be special circumstances (outlined in an affidavit) before a divorce will be processed on a rush basis. A divorce file will not be sent to the justice for signature on a rush basis without the appeal period having been waived by both parties. They also must undertake not to appeal.

Members of the Family Law Bar suggested that they occasionally have to wait 6-10 weeks for a desk divorce to be finalized. Sheilla Brown indicated that it normally only takes three weeks if there are no children and four weeks if there are children. This can increase by up to two weeks if there is a delay in obtaining the clearance certificate (in which case, Court Administration will e-mail Ottawa to determine the reason for the delay and when it may be expected) or if there is vacation time or illness in the office. Once the desk divorce has been processed through the Family Law Centre, it goes to the Family Law Information Centre. There are only 1.5 clerks dealing with desk divorces. Ms. Brown asked that counsel not call to inquire about the status of their divorce judgment unless three to four weeks have passed.

Kudos were given to Ms. Brown by members of the Bar and the Bench for her handling of divorces.

Edith Captain advised that counsel need not always request to speak to Ms. Brown as other support staff often can assist them.

8. Adjournments for Morning Chambers

Barb Petryk indicated that adjournments for family law morning chambers must be received by hard copy (including e-mail or fax) by 9 a.m. If the adjournment has been submitted by the deadline, counsel should not appear in chambers to speak to the matter.

When adjourning family law special applications, the main line (780-643-1062) rather than the phone number for the data entry staff should be called so that the clerks can ensure that Family Law Practice Note #3 has been met.

Ms. Petryk noted that the Administration has been receiving angry calls from firm assistants when documents are sent back. She asked that more consideration be given to the clerks.

Ms. Petryk indicated that if an order is submitted for a judge's signature that does not match the clerk's notes, the order will be returned to counsel with a note that they will have to have the judge sign the order. A copy of the clerk's notes generally will be enclosed. She asked that, as a courtesy, when the order is re-submitted for the judge's signature, the clerk's notes be included so that Administration does not have to look them up again.

9. Issues Raised by Members of the Family Law Bar

The Bar appreciates that the Family Law Centre is understaffed, but asked that consideration be given to having a separate lawyers' line.

Read J. indicated that the Court understands the frustration with understaffing at the Family Law Centre but pointed out that there is a hiring freeze, which is a political issue.

A member of the Bar noted that wicket #7 on the Provincial Court side of the Family Law Centre is almost never used whereas there are only two wickets for Court of Queen's Bench filings and the lineups at those wickets can be very long. The suggestion was made that there should be a third wicket opened for QB in the morning. It was pointed out to the Bar that there is a lawyer/runner wicket, which usually is open from 9:30 a.m. -10:30 a.m. If there is a lineup at other times, someone from Divorce Section generally will open another wicket, unless there is not enough staff.

A member of the Bar suggested that some of the filing for lawyers could be done by a clerk in the courtroom. Another member of the Bar said that the clerks could invite runners and lawyers to go to the front of the lines.

Read J. said that it will be left with Administration to decide what can be done to speed up filing.

Frustration was expressed by a member of the Family Law Bar concerning situations where counsel for the respondent has not adjourned the matter before the 9 a.m. deadline and counsel for the applicant must attend family law chambers in order to ensure that their client's matter is not struck. Acton J. suggested that counsel who find themselves in this situation should request costs.