

**Court of Queen's Bench of Alberta**  
**Edmonton Family Law Town Hall Meeting**  
**January 18, 2012, 1:00 p.m.**  
**Edmonton Law Courts Building**  
**Courtroom 317**

**In Attendance**

Associate Chief Justice J.D. Rooke  
Justice B.A. Browne (Chair)  
Justice L.D. Acton  
Justice A.B. Moen  
Justice V.O. Ouellette  
Justice D.C. Read  
Justice A.W. Germain  
Justice J.M. Ross  
Justice J.J. Gill

Lorna Ross - Executive Director, Edmonton Court Operations  
Edith Captain - Queen's Bench Administrator, Family Law Centre  
Barb Petryk - Manager, Family Law Centre  
Elizabeth Berg - Senior Program Coordinator and Legal Counsel, Family Law Centre  
Sheilla Brown - Supervisor, Divorce  
Diana Lowe, Q.C. - Executive Legal Counsel to the Associate Chief Justice  
Sandra Schulz, Q.C. - Case Management Counsel, Queen's Bench  
Hillary Pittman - Judicial Assistant, Queen's Bench

Approximately 110 members of the Bar were present.

**1. Welcome and Introductions**

Justice Browne, Co-Chair of the Edmonton Family Law Committee of the Court of Queen's Bench, introduced herself, welcomed attendees and called the meeting to order at 1:01 p.m.

Justice Read was thanked and recognized for her many years as the Co-Chair.

The members of the Judiciary and staff in attendance were then introduced.

Justice Browne thanked the members of the Bar for attending the meeting and welcomed their comments.

**2. Announcements and Information Sharing**

- Members of the Bar are invited to send comments and recommendations for improvement to Justice Browne in care of Hillary Pittman, via email at [hillary.pittman@albertacourts.ca](mailto:hillary.pittman@albertacourts.ca) but cautioned that this address/process should not be used as a general complaint outlet.
- Another meeting will be held in June in an effort to more thoroughly and properly address all of the issues.

- Student Legal Services will be appearing in Family Chambers on substitutional service applications and simple child support applications.
- The new Child Support Guidelines and Tables have been released.

### 3. **Divorce**

- Counsel are encouraged to use green Orders. Green is only for family Orders and Judgments. This is not currently mandatory, however, is highly recommended by the Judiciary.
- Sheilla Brown reminded counsel that the Parenting After Separation seminar (PAS) is compulsory for every plaintiff in an action for divorce and every applicant in an application for relief under the *Family Law Act*, where child support, custody, access or parenting is an issue. There is no requirement to take this seminar where the children are 16 years of age or over. The PAS certificate must accompany the application, unless otherwise exempted. If the PAS certificate was previously filed on another action, a filed copy must be included with the new application.

- Sheilla Brown provided a Tip Sheet to the Bar titled, “**Tired of Having Your Divorce Packages Returned for Correction?**” and encouraged them to review this. It is also available at the counter.

- Delays in return of divorce applications: Sheilla Brown advised that the turnaround time at the clerks’ office is approximately 2 weeks. However, if the clearance certificate is not received, the divorce will be delayed until that has been received which can take as much as 4-6 weeks. Further, any divorce application involving children will be processed by the Family Law Centre prior to it being submitted to a Judge for review.

Q: When a divorce application is rejected (by the Judge) involving a foreign jurisdiction marriage and the party is not able to remember the name of one of the witnesses at the marriage, what should be done?

R: The application should be sent back to the Judge asking for further direction as to what that specific Justice requires.

Q: A member of the Bar had a situation, acting for the plaintiff wife, where the defendant husband was self-represented. After the Statement of Claim was served on him, the defendant husband filed a Statement of Defence but did not serve this on the plaintiff - a copy of it was eventually received from the clerks. He asked if this should not be the responsibility of the defendant to serve this document and not the clerks’.

R: Barb Petryk advised that a courtesy copy was sent out to the plaintiff in a situation such as this but that this practice will not be continued as it is not a requirement under the Rules. Associate Chief Justice Rooke indicated that the courtesy copy prevents the plaintiff’s lawyer from going to a lot of work to note in default only to find that the default documents will not be accepted by the clerk because of the Statement of Defence. The issue of the

unserved Statement of Defence may need to be dealt with in Chambers on notice to the defendant to determine the validity of the Statement of Defence and service.

Q: A member of the Bar informed that he has had circumstances such as the above involving children. He acted for the plaintiff - he served the Statement of Claim which stated that the child maintenance is expected to be the guideline maintenance. The defendant did not respond and was therefore noted in default. The desk divorce was then submitted, only to be rejected because it did not have the defendant's signature regarding the child maintenance. He asked why he must then try to go back to the defendant for this - when the defendant did not engage in any of the litigation up to that point, and possibly arrange for another Chambers appearance at the expense of his client.

R: Justice Ouellette expressed his view that perhaps it is rejected as the clerk's notes say "Note no consent of the Defendant/Respondent". It is his view that most judges would ignore that as the defendant has been noted in default. Barb Petryk advised that these should not be rejected by the clerks and invited counsel to follow up with her on these situations.

Q: A member of the Bar informed that, when going to the counter to file a Statement of Claim for divorce, he must stand in line for an extended period of time because the counsel wicket is not available and couriers in line before him will go to the counter with numerous documents to file which takes a great deal of time. He asked for some way to address and correct this.

R: Barb Petryk advised that the counsel wicket operates during set times of the day whenever possible but that it also is dependent on available staff. She advised that if the wicket is not open, counter staff will periodically call for counsel from the lineup. Edith Captain advised that an alternative is to have the runner or an agent file the documents. Different members of the Bar then commented that it is their experience that the counsel wicket is very seldom open and that they are very rarely called out of a lineup. Justice Browne invited counsel to follow up with Barb or with herself through an email to Hillary.

Q: A straightforward divorce application involving no dispute over corollary relief should be granted right away.

#### **4. Morning Chambers**

Q: Would it be possible that the Court Generated Order (CGO) clerks could also **file** ex parte and consent orders right in the courtroom at the time of the hearing, thereby avoiding the lineups mentioned above.

R: Elizabeth Berg advised that the CGO clerks are often in court finalizing orders long after court has ended. If they are also tasked with filing other orders, that time will increase along with the amount of time that people are waiting for their orders. She also advised that the clerks in the Family Law Centre are also already heavily weighed down with their current duties. Further, they haven't been trained in filing documents as it is not in their job description. Justice Browne invited suggestions for improvement in this area from the Bar.

## **5. Special Chambers**

- Barb Petryk advised that available dates have improved.
  - If counsel wishes to adjourn a matter from morning chambers to a family law special, the date must first be obtained from the available dates schedule on the website. Once this date has been confirmed in the courtroom, counsel must then proceed to the Family Law Centre to advise and get deadline sheets. It is the filing of the Notice of Motion and supporting Affidavit that reserves the matter on the hearing list.
  - If adjourning a family law special within one week of the hearing, leave must first be obtained from the assigned Justice. Justice Browne advised that, if for some reason there is not yet an assigned Justice, seek direction from the Supervising Justice. She also reminded that briefs for special chambers need to be delivered to the trial coordinators. The Family Law Centre takes the confirming letters.
  - When counsel is seeking a fiat regarding the late filing of materials for special chambers, they must inform opposing counsel of this ahead of time.
- Q: The time allowed for the respondent's materials to be served on the applicant should be extended. Counsel have been forced to adjourn specials because they received the respondent's materials only days before the hearing date and as such did not have enough time to review and properly prepare.

## **6. JDRs**

- Q: There should be short JDRs of 1 - 1 ½ hours as frequently there is only one issue that the parties cannot surpass which stalls all negotiations.
- R: Associate Chief Justice Rooke advised that if counsel feel that the JDR will only take an hour or so they should advise the JDR coordinator and perhaps this can be arranged. However, usually what we anticipate to take an hour often becomes longer.
- Q: A member of the Bar raised the issue of availability of JDR dates.
- R: Associate Chief Justice Rooke advised that it is a resource issue. Priority is given to those matters that are ready for trial. He suggested perhaps counsel consider the possibility of doing private arbitration/mediation.
- Q: A member of the Bar asked about the statistics for JDRs.
- R: Associate Chief Justice Rooke answered that the biggest problem with JDRs is the adjourned rate. When a JDR adjourns at the last minute the date can't be used for another JDR. The JDR success rate is approximately 80%.

## **7. Case Management**

- Sandra Schulz, Q.C. advised that the Case Management Counsel project is a pilot project and the parameters of this are set out in the Notice to the Profession on the website. A new case management matter may be referred directly to the program before going before the case management Justice. A matter that is already under case management may be referred to the program to deal with matters that do not require a judicial decision such as scheduling and referral to other programs such as mediation. This program is not a form of mediation. FLIC has been providing the court generated orders. Sandra prepares and sends a report to the case management Justice after a meeting on a matter. Any issue requiring a judicial decision is referred back to the Justice. The majority of the matters in this program currently are family matters involving self-represented litigants. Roughly 60% of all files (in Edmonton) that are under case management are family matters. Each judge has roughly 25 case management files therefore this is a big “user” of judicial resources. She invited counsel to follow up with her on the program.

Q: A member of the Bar expressed her view that this is an excellent program and briefly detailed how it has helped to move along one of her more difficult matters.

Q: Could the fact that a matter is under case management be considered a form of Alternative Dispute Resolution.

R: Associate Chief Justice Rooke answered that case management is not a form of mediation. Justice Moen advised that the case management judge can waive the requirement of alternative dispute resolution before a matter is set for trial.

## **8. Self-Represented Litigants (SRLs) in Chambers**

Q: The courtroom have 3 lists and matters should be dealt with in that order: 1) both sides represented by counsel; 2) one side represented by counsel; and 3) both sides self-represented.

R: The Judiciary are struggling with the proper response to the number of self-represented litigants in the courtroom. Some of the thinking is as follows:

That situation is not ideal because Duty Counsel is dealing with SRLs and is working more than one courtroom. As well, CGO clerks need to be kept busy but not overwhelmed. The above proposed order would put undue stress on Duty Counsel and CGO clerks and subsequently slow the progress of the courtroom considerably. There may be other ways to deal with this issue, for example in Calgary there is a self-represented courtroom.

Q: The problem is not necessarily the fact that the self-represented parties are going before counsel but that the court must take extra time to deal with the self-represented parties.

Q: Perhaps SRLs can be made to attend a course on court procedure.

- R: They are starting to hold self-represented court every Friday morning in Red Deer. Before court begins, some lawyers are volunteering (on a rotating basis) to run a short course for SRLs. The feedback from this is expected to be received in the near future.
- Q: A self-represented litigant should be compelled to serve notice of being self-represented on the opposing party's counsel as often they aren't aware of the opposing party being self-represented until they are in court.
- Q: Self-represented parties should be encouraged to go to court on a certain day of the week and that day be put aside by the courts for them.
- Q: Duty Counsel should provide self-represented parties with information on dispute resolution processes.
- Q: Self-represented parties should be given an information handout upon filing. This document would advise of proper procedure both regarding documents and courtroom protocol.
- Q: Any matter involving both sides represented by counsel should begin for example, at 10:30 a.m. thereby allowing time for other matters involving SRLs time before that and alleviating some of counsel's time in the courtroom. Perhaps a timeline of some sort with different start times could be developed.
- Q: Self-represented litigants should be required to attend at the courthouse at 9:00 a.m. to allow enough time to meet properly with Duty Counsel.

## **9. EPOs and Restraining Orders**

Not discussed.

## **10. Rules and Practice Notes**

- Justice Browne advised that a committee has been created consisting of herself, court staff and lawyers. They are preparing a document titled "Clarification of Practice Note 2". This will deal with such things as time limitations and deadlines. A meeting of this committee will take place on January 19 to discuss a proposal for an interpretation or clarification of confirming letters and deadlines so that there is no duplicate filing of material. There is no indication of when this clarification will be complete.

## **11. General Discussion**

- Justice Browne advised that Legal Aid has a Family Settlement Services Program whereby if one of the parties is eligible for Legal Aid the family can be referred to Legal Aid Family Settlement Services. Linda Long advised that it is a limited scope retainer certificate of 5 hours.
- Q: Calgary has a "you've been bounced" project whereby a courtroom is booked to deal with issues such as a divorce application being bounced when simple further direction from a

judge is required. Has something like this has been considered for Edmonton to deal with issues such as this and perhaps others such as Consent Orders?

R: Justice Browne answered that this issue hasn't been viewed as being a significant problem here.

Q: Please clarify the use of a family law application.

R: It was advised that the claim form must be used for the initial instance and thereafter the application form can be used.

Q: The process for summary trial should be streamlined.

Q: Please clarify how to book a case conference.

R: Associate Chief Justice Rooke answered that an application for a case conference can be brought under Rule 4.10 in morning chambers. He advised that if the case conference can be done at that time in 20 minutes then it will be, however, if it cannot then it will be bounced to a special. Justice Browne advised that followup on this subject will be provided at the next meeting.

## **12. Next Meeting**

Justice Browne invited the Bar to send in their suggestions for the agenda for the next meeting to be held in June.

Meeting adjourned at 2:09 p.m.