

NOTICE

COURT OF QUEEN'S BENCH OF MANITOBA

RE: AMENDMENTS TO COURT OF QUEEN'S BENCH RULES

The following amendments will come into force on February 1, 2008:

Queen's Bench Rule 19.01 – Noting Default

The rule has been amended to extend the time for filing a statement of defence in circumstances where a motion to strike pursuant to Rule 25.11 has been filed and served. The extension is until the motion to strike the claim has been finally determined. For specifics see Regulation 13/2008 registered January 23, 2008.

Queen's Bench Rule 70 – Family Proceedings

Various amendments respecting cases brought pursuant to The Hague Convention on the civil aspects of international child abduction.

On June 8, 2007 the Court of Queen's Bench of Manitoba adopted a Procedural Protocol for the handling of return applications under the 1980 Hague Convention on the civil aspects of international child abduction. Implementing the protocol required amendments to Rule 70.

New sub-rule 70.01.01 defines the *Hague Convention and the Civil Aspects of Child Abduction*.

New sub-rule 70.03(7.1) provides, in accordance with paragraph 4(a) of the procedural protocol, that return applications pursuant to the Hague Abduction Convention are to be commenced by the filing of a Notice of Application (Form 70E).

Proposed amendments to sub-rule 70.06(5)

A number of amendments are proposed to sub-rule 70.06(5). The non-housekeeping amendments relate to proposed new clauses (e) and (f).

Proposed new clause 70.06(5)(e) requires that any individual making a direct application to Court for the return of a child pursuant to the Hague Abduction Convention (i.e. rather than through the province's Central Authority under the Convention, the Family Law Branch of the Department of Justice) must serve the application on the Central Authority. Paragraph 7 of the procedural protocol requires that the Central Authority be given notice of direct applications.

Proposed new clause 70.06(5)(f) indicates that where notice has been given to the Court of a request for the return of a child, be it through the filing of a Requisition or an application requesting the child's return, any party seeking custody or private guardianship of, or access to, the child in question thereafter must serve all documents on the Central Authority until the return application has been determined by the Court. This requirement was contemplated by paragraph 8 of the procedural protocol.

Proposed new clauses 70.24(2)(i) and (j) exclude return applications initiated through the Central Authority and proceedings to enforce a custody order proper pursuant to *The Child Custody Enforcement Act*, respectively, from the application of the Case Management Rules. In order to ensure that proposed new clause 70.24(2)(j) only relates to custody orders, it was necessary to expressly exclude access and visitation orders. These types of orders are included in the definition of "custody order" in *The Child Custody Enforcement Act*.

These amendments were contemplated pursuant to paragraphs 5 and 9 of the procedural protocol.

Proposed amendments to sub-rule 70.26(2.1) exclude return applications initiated through the Central Authority and proceedings to enforce a custody order proper pursuant to *The Child Custody Enforcement Act*, respectively, from the application of the Pre-Trial Conferences Rule. This approach is consistent with the amendments to sub-rule 70.24(2) to exclude these proceedings from the application of the Case Management Rules and the intention of paragraphs 5 and 9 of the procedural protocol.

Proposed new sub-rule 70.45(1) acknowledges the practice of the Central Authority of filing a Requisition in certain cases to give notice of an alleged wrongful removal or retention of a child as contemplated under Article 16 of the Hague Abduction Convention.

Proposed new sub-rule 70.45(2) allows the Registrar to open a file in the Family Division with respect to the matter referred to in the Article 16 Requisition if a file does not already exist with respect to the parties.

Proposed new rule 70.45 is consistent with paragraph 3 of the procedural protocol.

For further details see Manitoba Regulation 14/2008 registered January 23, 2008.

ISSUED BY:

Original signed by

**The Honourable Mr. Justice D.D. Yard
Chairperson, Queen's Bench Statutory Rules Committee
(Manitoba)**

DATE: April 25, 2008