

# NOTICE

## COURT OF QUEEN'S BENCH OF MANITOBA

### RE: RULE AMENDMENTS

The Statutory Rules Committee has recently passed a number of amendments to the rules of which you should be aware. They include amendments to Rules 7 & 9 pursuant to amendments of ***The Public Trustee Act***, an amendment to Rule 39.02(4) (Cross-Examination on an Affidavit) and Rule 70 amendments with respect to case management. Copies of the amendments are attached.

#### **AMENDMENTS TO RULES 7 & 9 PURSUANT TO AMENDMENTS OF THE PUBLIC TRUSTEE ACT**

At the request of the public trustee, the legislature has amended ***The Public Trustee Act*** to clarify that the public trustee is an appointment of last resort and acts as litigation guardian only after being so appointed by the court; similarly, where there is no legal personal representative in Manitoba of the estate of a deceased person. The Rules Committee was informed that the rationale for these amendments was to give the public trustee an opportunity to make representations to the court both as to the propriety of the appointment and any special conditions that should apply.

#### **RULE 7**

Section 2(2) of ***The Public Trustee Act*** provided that the public trustee is in the capacity of official guardian the litigation guardian of every infant except an infant who has a litigation guardian authorized to act for him or her.

The ***Act*** has been amended to provide that the public trustee may act as litigation guardian of an infant unless (a) a person is acting as such for the infant in accordance with the rules; or (b) the infant has retained and instructed counsel when permitted to do so under a statute.

Subrule 7.03(2) provided that where a proceeding is against a minor in respect of the minor's interest in an estate or trust, the public trustee shall act as litigation guardian of the minor defendant or respondent unless the court orders otherwise.

This subrule has now been repealed.

## **RULE 9 (ESTATES AND TRUSTS)**

Section 4 of *The Public Trustee Act* provided that where there is no legal personal representative in Manitoba of the estate of a deceased person and representation of the estate is required in any proceeding in the Queen's Bench, then the public trustee shall represent the estate with the rights, authority and responsibility of an administrator *pendente lite*.

This section has now been repealed.

Subrule 9.02(1) provided that where there is no personal representative in Manitoba, a person wishing to commence or continue proceedings against the estate of a deceased person may (a) proceed in accordance with section 4 of *The Public Trustee Act* or (b) move for the appointment of a litigation administrator by the court.

This subrule has been amended to remove the reference to section 4 of *The Public Trustee Act*.

The amendments to the *Act* and the rules will come into force on January 1, 2005.

## **AMENDMENT TO RULE 39.02(4)**

This rule has been amended to provide that a party who cross-examines on an affidavit need only serve a copy of the transcript on the person being examined free of charge; previously, the rule had provided that the transcript was to be served on every adverse party free of charge. This change was in response to what was perceived by the committee to be a general feeling in the Bar that the rule – which was patterned on the Ontario rule – was unduly onerous and went too far in requiring the transcript to be served on every adverse party irrespective of whether they had even attended the examination or had any interest in it.

## **RULE 70 – CASE MANAGEMENT**

The amendment came about largely as a result of the recent Family Division Case Management Evaluation conducted by Prairie Research Associates Inc. Their findings and recommendations were that the case management regime was very successful, but was placing an unsupportable burden on the judiciary and court staff. The decision was made to modify the case management rules in the hope of placing less pressure on the system. The

thrust of the changes to Rule 70.24 is to make the case management system somewhat less mandatory but at the same time to discourage undue delay through an automatic 200-day time limit.

Highlights are:

Under the current rules [70.24(10)], the first case conference is triggered by:

- (a) setting of date for first contested motion or application;
- (b) on an answer being filed;
- (c) 90 days from date of originating process if no answer filed, unless default noted and set down for hearing;
- (d) any time on the request of a party.

Under the rule change [70.24(10)], the first case conference will be scheduled:

- (a) on the setting of a hearing date for the first contested motion or application;
- (b) at any time on the request of a party

The triggering mechanisms of an answer and the 90-day expiry date have been removed.

Under the current Rule [70.24(16)], the case conference judge must schedule a date for a subsequent case conference.

Under the rule change [70.24(16)], a subsequent case conference may be scheduled:

- (a) at any time by a party to the proceeding
- (b) at the conclusion of a case conference, at the discretion of the case conference judge.

Under Rule 70.24(30), a matter may only be set down for trial at a case conference unless a judge otherwise orders.

Under Rule 70.24(32) to 70.24(38), if 200 days after the date the originating process was filed there have been no proceedings, then the registrar will send out to the parties a notice of dismissal giving 30 days to proceed, failing which the proceeding will be dismissed. A judge may, on motion, set aside a registrar's dismissal order.

Parties are required to file a Requisition and a Case Management Information Statement for each case conference hearing date set.

The Family Division Case Management pamphlet is being revised and anticipated distribution by March 1, 2005.

*Family Division Case Management (Winnipeg Centre) Consolidated Practice Directives* can be found at the Manitoba Courts web site: <http://www.manitobacourts.mb.ca>

#### **AMENDMENT TO RULE 70.06(5)(b)**

This has been amended to accommodate a change of official.

Rule 70.06(5) (Dealing with the Service of Petition) provides that a party who is seeking a change in the amount of a support order or relief that may result in cancellation of arrears of support or suspension of enforcement of support shall serve on the Director of Field Services, Employment and Income Assistance, appointed under ***The Social Services Administration Act***, a copy of the document by which the relief is sought.

The document is now to be served on the "Director of Employment and Income Assistance, appointed under ***The Employment and Income Assistance Act***".

#### **ISSUED BY:**

**The Honourable Mr. Justice G.O. Jewers  
Chairperson, Queen's Bench Rules Committee  
(Manitoba)**

**DATE: FEBRUARY 2005**