

NOTICE

COURT OF QUEEN'S BENCH OF MANITOBA

RE: RULE AMENDMENTS

The Statutory Rules Committee has passed a number of rule amendments. They were registered on May 30, 2006 and will be gazetted on June 10, 2006, as M.R. 120/2006. They will come into force as of July 4, 2006. They are as follows:

Rule 8 (Partnerships and Other Unincorporated Entities)

Rule 8.10 provided that a proceeding may be brought by or against an association in the name of the association. It may be recalled that the Court of Appeal has held that this rule runs counter to the rule that an unincorporated association is not a legal entity and therefore does not have the standing to sue or be sued and is therefore beyond the Rule Committee's power: *Canadian Reform Conservative Alliance Party Portage–Lisgar Constituency Association v. Harms*, 2003 MBCA 112. The Committee concluded that although the common law rule is that unincorporated associations are not legal entities, that rule has in certain circumstances been abrogated by statutory exceptions. In various public or private acts of Manitoba, certain associations, although not given corporate status, have been either expressly or by implication given the status to sue or be sued. Therefore, instead of repealing the rule in its entirety, the Committee opted to amend the rule to provide for the procedure to be followed where the specific statutory exceptions apply.

Rule 42 (Pending Litigation Orders)

A pending litigation order could be obtained simply by filing an originating process and no supporting affidavit. The Court of Appeal suggested that the Committee reconsider this given the potential for abuse. *Mellco Developments Ltd. v. Portage la Prairie (City)*, 2002 CarswellMan. 409. The Committee agreed that there could be potential for abuse and decided to amend the rule to require supporting affidavit evidence.

Rule 76 (Small Claims Actions)

The Small Claims Hearing Officers had developed a practice of permitting parties or witnesses to give their evidence other than by personal attendance. This has made it much more convenient and less costly for persons who would find it difficult or impossible to appear in person and has been working out well. The Small Claims Committee of the Court requested a rule amendment to sanction and authorize this procedure and the Committee agreed. Rule 76.04 has been expanded to permit the court officer or judge to allow a party or witness to attend and give evidence by telephone, video conference or other means of communication; and a party may contact the registrar before the hearing to arrange this subject to approval by the court officer or judge at the hearing. The amendment will apply to appeals as well.

ISSUED BY:

Original signed by _____

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

DATE: JUNE 12, 2006