

NOTICE TO THE PROFESSION

COURT OF QUEEN'S BENCH OF MANITOBA

RE: ADOPTION FILES

The purpose of this notice is to remind the profession of section 26(4) of *The Adoption Act*, and the requirement to file an originating process when opening an adoption file with the Queen's Bench Registry.

It has come to my attention that it is common practice to allow adoption files to be opened by filing a Notice of Motion.

Prior to an Application for Adoption being filed, a Notice to the Birth Father must be provided in a prescribed form. Section 26(4) of the Act provides that:

Dispensing with notice of proposed adoption

26(4) On application, a judge or master may dispense with notice to a birth father, or may direct the manner of effecting service if the judge or master is satisfied that

(a) it is in the child's best interests to do so; or

(b) the birth father cannot be located after reasonable efforts have been made to find him.

Paragraph 2 of The Notice to the Birth Father states that "The mother plans to place the child for adoption and placement may occur 48 hours after the birth of the child." It does not contemplate that the Application for Adoption has been filed. Hence, the necessity to deal with the issue of service of the Notice to the birth father prior to an Application for Adoption being filed.

Once the Notice to the Birth Father has been served, or once notice to the Birth father has been dispensed with, the Application for Adoption can be filed and served. The issue of service of the Application for Adoption is dealt with in section 27(a) and (b) of the Act. It provides that:

Service on person required to consent

27 Where an application is made for an order of adoption under Division 2, 5 or 6 of Part 3, if a judge or master is satisfied that a person required to consent under clause 13(a)

(a) has not in any way been involved in a parental relationship with the child, the judge or master may dispense with service of the copy of the application on that person; or

(b) cannot be located after reasonable efforts have been made, the judge or master may direct the manner of effecting substitutional service of a copy of the application, or may dispense with service.

In either case, it is clear from the Adoption Act that an application must be filed (not a motion). I have directed that the Deputy Registrar responsible for adoptions immediately change the practise to no longer allow adoption files to be opened by the filing of a Notice of Motion. Files will only be opened once a Notice of Application is filed, either to dispense with the Notice to the Birth father, or as part of the overall Application for Adoption.

ISSUED BY:

Original signed by

“M. Rivoalen”

**The Honourable Madam Justice M. Rivoalen
(Acting) Associate Chief Justice (Family Division)
(Manitoba)**

DATE: June 4, 2013