

NOTICE TO THE PROFESSION

COURT OF QUEEN'S BENCH OF MANITOBA

RE: ENDORSEMENTS

Based on consultations with the profession, a concern raised in the context of some proceedings is that excessive time is spent by the judiciary on the provision of extensive reasons for judgment where, in some instances, a more economic disposition is appropriate. Such a disposition facilitates not only the speed with which the parties get a decision, but the overall speed with which the proceeding then advances.

Based on the experience in other jurisdictions, it would seem that the concept of a written "endorsement" serves as a potential solution which addresses the above concerns and at the same time, provides a concise and required explanation for a given result. In Ontario, for example, the use of endorsements began in the Ontario Court of Appeal as an attempt to more efficiently address the volume of cases heard. Endorsements are now also increasingly used by the trial court. That approach by the Ontario Superior Court of Justice has been validated by various appellate decisions which recognize that this is not only a fair and expedient approach, but, as well, a further means of facilitating access to justice. These endorsements are a potentially available conclusion to a case in whatever area of law and in various proceedings, including applications, motions, summary conviction appeals and relatively straightforward trials.

Mr. Justice Archie Campbell has described an endorsement as follows:

"An endorsement is a brief judgment that contains only the essence of what is necessary to decide the case, and to show how you got to your decision.

An endorsement may be written by hand on the back of the record at the end of argument, it may be typed and attached to the record, it may be dictated orally in court and then transcribed. ...

An endorsement may be written out on the bench or in the retiring room at the conclusion of argument and then read out in court before court adjourns. Or an "oral endorsement" may be given at the end of the case and then transcribed. An endorsement may be reserved overnight or for a few days. Because speed is one of the great advantages of an endorsement, its utility diminishes in direct proportion to the length of time you reserve it. ...

The basic difference between an endorsement and an extended judgment is this: the endorsement contains only the bare bones of the decision.

The extended written or oral judgment is free-standing. It assumes the reader knows nothing about the case. It contains the factual background, the procedural history, the positions and arguments of the parties, the findings of fact supported by as much reference to the evidence as necessary, and often a lot more.

An endorsement is not free-standing. It assumes the reader knows what the case is all about, and assumes the reader is familiar with the issues, the positions of counsel, the procedural history, and the factual background. It is usually impossible to understand the endorsement without access to some of the papers such as the notice of application, submissions or factums, affidavits, evidence, exhibits and the like."

Use of an endorsement in those appropriate cases, needless to say, does not preclude where matters need elaboration, reasons which either briefly or more thoroughly satisfy the minimal requirements for "sufficient reasons." The judiciary will be guided by what they understand is the governing law respecting sufficiency of reasons. The decision to proceed by endorsement will be within the discretion of the presiding master or judge.

When the court gives reasons for making an order or judgment, they may be endorsed by hand on an endorsement sheet. In some cases, the endorsement sheet will be typed. In each case, the clerk will add the endorsement sheet to the court record. Where a master or judge delivers a decision by way of endorsement in open court, a copy of the endorsement sheet will not be

provided unless requested. Where a master or judge delivers the decision by way of endorsement at a later date, the court will send a copy to the parties or counsel by mail, facsimile or electronic mail.

A sample endorsement sheet is attached.

ISSUED BY:

Original signed by Chief Justice Joyal _____
The Honourable Chief Justice Glenn D. Joyal
Court of Queen's Bench (Manitoba)

DATE: July 17, 2014