THE COURT OF QUEEN'S BENCH OF ALBERTA

CONSOLIDATED NOTICES TO THE PROFESSION

The procedural rules for civil (and some criminal) actions in the Court of Queen's Bench of Alberta (the Court) are primarily composed of those under the *Alberta Rules of Court* (Rules) issued by the Alberta Rules of Court Committee and Practice Notes (PN) issued by the Council of the Court. However, occasionally for good reason over the past a more informal notice of procedure has developed which has seen the issuance of Notices to the Profession, Notices, Directions of the Court, Guidelines and other instruments (collectively Notices to the Profession) by, or on behalf of, the Chief Justice of the Court. Regrettably such Notices to the Profession have not always been broadly distributed to the Bar, and new members of the Bar have not received them. Indeed some are even practices that have developed internally within the Court without publication. In almost all cases they have not all been collected and published in one place, with the result that, on occasion, members of the Bench and/or Bar are not familiar with them. To avoid this problem, we hereby issue the Court's **CONSOLIDATED NOTICES TO THE PROFESSION** (CNP) that we believe to exist and remain generally applicable as at September 1, 2004.

We propose to update this consolidation periodically in the future, usually as at September 15 and January 15 each year, if there are amendments in the intervening period. We say "generally applicable" because we recognize that some now need amendment due to the passage of time and change in circumstances - however, our primary purpose in this consolidation is to publish what currently exists. We will send them to the Secretary of the Rules of Court Committee and request that they be published in the Alberta Rules of Court binders. As time passes we will prepare appropriate amendments and will determine which of these might be reissued more formally as Rules or Practice Notes, or be repealed.

If you are aware of any Notice to the Profession of the Court that we have omitted in this consolidation, please advise the Court in writing to the attention of Justice John Rooke, Court of Queen's Bench designate to the Rules of Court Committee.

September 15, 2004

Honourable A.H. Wachowich,
Chief Justice
Honourable A.B. Sulatycky,
Associate Chief Justice

September 15, 2004

THE COURT OF QUEEN'S BENCH OF ALBERTA

CONSOLIDATED NOTICES TO THE PROFESSION

A. CIVIL

1. MASTERS' JURISDICTION[1]

The attached document outlines the Masters' jurisdiction. Applications involving matters within the Masters' jurisdiction should be returnable before the Masters in Chambers, not a Justice of the Court of Queen's Bench. I have given instructions to the Clerk to vet the list of all motions before the court, including morning chambers and special chambers, to ensure that all applications over which the Masters have jurisdiction are put on the Masters' list. The Clerk will remove matters from the Judges' list and put them on the Masters' list.

In the future, would you please ensure, where appropriate, that your application is returnable before the Master.

December 15, 1993

Honourable Allan H. Wachowich
Associate Chief Justice

Masters' Jurisdiction

The Court of Queen's Bench Act, sets out the jurisdiction of the Masters. A Master in Chambers has the same jurisdiction as a Queen's Bench Judge sitting in Chambers with the following exceptions:

A. Statutory exceptions:

- appeals or applications relating to appeals: s. 9(1)(a)(i);
- applications to vary or rescind an order made by a judge: s. 9(1)(a)(i);
- applications to stay an order or a judgment of a judge unless all parties consent to a Master hearing it: s. 9(1)(a)(i);
- trials: s. 9(2)(a)(i);
- criminal matters: s. 9(2)(c);
- applications relating to the liberty of a person: s. 9(2)(c);
- applications relating to civil contempt: s. 9(2)(c);
- applications for an injunction: s. 9(2)(d);
- applications for judicial review: s. 9(2)(d);

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[1] Originally issued to the Members of the Bar in the Edmonton Judicial District, but in fact applies to all Judicial Centres where the Masters sit. It is recognized that some amendments are required to this Notice.

- anything which by law is required to be done by a judge i.e. where a Rule or a statute expressly says "judge", instead of "Court": s. 9(2)(e).

B. Case law and other exceptions

- applications to the Surrogate Court, because the Masters are not appointed for that court;
- applications under the *Divorce Act*: Klassen v. Klassen (1978) 10 AR 606 (CA);
- judgment for or assessment of damages in an unliquidated damage claim: S.B.I. Management v. 109014 Holdings (1982) 32 AR 6 (CA).

C. Administrative exceptions:

- applications under R. 229 to have two actions heard together (July 22, 1988 memorandum);
- application to have a civil trial heard with a jury (May 22, 1992 memorandum);
- applications brought after a certificate of readiness has been filed (September 27, 1991 memorandum).

2. GOWNING

When does the Court (and counsel) gown? The answer may vary with the Judicial Centre (e.g. Calgary v. Edmonton), but the following are the general rules as to when gowning is necessary (when in doubt, ask the Trial Co-ordinator(s)):

- Anytime *viva voce* evidence is to be heard
  - trials, special chambers (only if *viva voce* evidence)
  - Reciprocal Enforcement of Maintenance Orders Act (provisional and confirmation)[2]

  But not
  - pretrial conferences or mini trials [judicial dispute resolution]
  - divorces - Calgary = No, but Edmonton = discretion of Judge[3]
  - C.U.P. [Parentage and Maintenance] (Docket)

- All criminal trials, and most criminal proceedings, including
  - guilty pleas
    arraignments
    jury selection

  But not
    for bail, bail forfeitures, pretrial conferences (perhaps unless an accused is unrepresented and the conference is on the record), remands only & adjournments

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[2] Now add Summary Trials, even without *viva voce* evidence.

[3] Generally all oral hearings for divorce require gowning.

All civil trials (including uncontested divorces, summary trials, estate trials and assessments)

- All appeals (except Masters)[4]
  - summary convictions'
  - small debt
  - surface rights

- Parentage (C.U.P.'s) & Maintenance Recovery & Dependent Adult
  - for *viva voce* hearings only, not docket - if both together the judge should be gowned for all and counsel for those where there is *viva voce* evidence

For Judgment (Except where no gowning for the hearing) - see *Wong v. Vancouver Art Gallery* [1986] B.C.J. No. 2694 (S.C. - Gibbs, J.)

Ceremonial Hearings
- Adoptions (Calgary = in the discretion of the Judge - remember it is an important ceremony to those involved) (Edmonton = gowning)
- Bar Admissions (for students-at-law, although transfer and second bar admissions are at the discretion of the Judge)
- Swearing-in Ceremonies

Not for (unless *viva voce* evidence is to be heard):
Bankruptcy hearings
Board of inquiries
Chambers, unless *viva voce* evidence
Maintenance Enforcement Show Cause Hearings

January, 2001 (Unsigned)[5]

3. CONDITIONAL CERTIFICATE OF READINESS (CALGARY)

As a courtesy to counsel, the Civil Trial Co-ordinator had been allowing a short period of grace to complete conditions specified in a Conditional Certificate of Readiness after the deadline. Some counsel have challenged the additional time as unreasonable.

In order to avoid similar occurrences, I have directed the Trial Co-ordinator not to allow any additional time for the completion of conditions specified in a Conditional Certificate of Readiness. I have also directed that cases set for trial by Conditional Certificate of Readiness be removed from the trial list immediately upon default of any

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[4] The list that follows is not exhaustive - obviously included should be appeals from Provincial Court, Family Division.

[5] This Notice was not formally publically issued by the Court, but has been utilized internally within the Court as a general reference, and often referenced by the Clerks' Offices and sometimes distributed to counsel. It is recognized that some minor different practices may be followed in some Judicial Districts and by some Justices.

condition without further notice. Trial dates may only be reinstated thereafter by order of the Chief Justice or Associate Chief Justice.

To ensure that trial dates are not lost, counsel are encouraged to advise the Civil Trial Co-ordinator that all conditions have been met prior to the deadline specified in the Conditional Certificate.

February 19, 2003

A.B. Sulatycky
Associate Chief Justice
Court of Queen's Bench

4. EARLY PRE-TRIAL CONFERENCES

It has been over ten years since Judicial Dispute Resolution was introduced to the Court of Queen's Bench. The success of this summary procedure to settle disputes is apparent from the extensive use made of it by the Litigation Bar.

Our Court continues to be concerned about the length of trials, the number of experts and the cost of litigation generally, all of which have been noted in numerous studies of the civil justice system. To address this concern, commencing in April 2004, the Court is introducing a pilot project in Edmonton called, "Early Pre-trial Conferences". As with our JDR procedures, this will be totally voluntary; all parties must agree to apply for such a conference.

The premise behind this pilot project is simple. The civil justice system should be "front-end loaded" with the resources focused on resolution since most cases settle and very few go to trial.

The Early Pre-trial Conferences will be directed to:

(1) determining the real issues;
(2) reaching agreement on as many items as possible which are not in dispute;
(3) canvassing whether some or all experts can be jointly retained and failing this, to agree on the experts who are truly required;
(4) agreeing on "will say statements" to either avoid discoveries or reduce their length;
(5) considering appropriate possible settlement, early JDR, private ADR, summary trial or other means to reduce the length and the cost of litigation.

Initially, Justices Agrios, Moreau, Belzil, Slatter and Macklin have agreed to do Early Pre-trial Conferences commencing April 1, 2004, either during their JDR weeks or Pre-trial weeks. We will evaluate the pilot project later in the year and decide if it should be expanded throughout the province. Bookings for Early Pre-trial Conferences may be made through Brent Rosin, the Edmonton Trial Co-ordinator (422-2313), in the same fashion as JDR's, and will usually be for one hour.

December 2, 2003

Allan H. Wachowich
Chief Justice

5. CLASS PROCEEDINGS ACT

The Class Proceedings Act, S.A. 2003, c. C-16.5, has been proclaimed in force effective April 1, 2004.

Section 15 of the Act contemplates that all class proceedings will be subject to case management. Accordingly, counsel in any proposed class proceeding should apply as soon as possible to the Chief Justice or the Associate Chief Justice for the appointment of a case management judge.

Until further notice, Civil Practice Note No. 1 on "Case Management" will apply to all class proceedings.

March 1, 2004

Allan H. Wachowich
Chief Justice
Court of Queen's Bench of Alberta

6. POLICE ENFORCEMENT/ASSISTANCE CLAUSES (see D "FAMILY", item 5)

B. COMMERCIAL

1. SCHEDULING OF BANKRUPTCY APPLICATIONS

I give notice of a change in the Court's procedure regarding the scheduling of applications in bankruptcy.

Our practice has been to assign a judge to hear bankruptcy applications for 3 days about every 6 weeks in both Edmonton and Calgary. The applications have been scheduled for the Monday, Tuesday and Wednesday of the "bankruptcy week". The judge has been assigned to other matters on the Thursday and Friday.

Frequently bankruptcy applications do not proceed. However by the time it is known that they will not proceed, it is too late to assign the judge to other matters on the days originally scheduled for bankruptcy matters.

Further the court's experience is that it would be more useful to have the judge free for other assignments at the beginning of the week than at the end of the week.

Therefore the following procedures will apply to bankruptcy applications beginning September 1, 2003:

1. Bankruptcy applications will be scheduled for the last three days of the "bankruptcy week" – Wednesday, Thursday and Friday.

2. The clerk's office will be instructed to book applications starting with the Friday – so that no applications will be scheduled for Thursday until Friday is fully booked and none will be scheduled for Wednesday until Thursday is fully booked. A half day will be considered fully booked when applications estimated to occupy between 2.5 and 3 hours in total have been booked into it. Exceptions will be made only with the leave of the judge assigned to the bankruptcy week.

3. No new bookings will be made later than the Monday of the week preceding the bankruptcy week. Again exceptions will be made only with the leave of the assigned judge.

I invite comments on these new procedures from members of the profession either now or after we have had some experience with them.

July 9, 2003

A. H. Wachowich
Chief Justice
Court of Queen's Bench of Alberta

C. CRIMINAL

1. REVIEW OF DETENTION UNDER S. 525 OF THE CRIMINAL CODE

On January 22, 1991, I circulated a directive relating to s. 525 of the Criminal Code. In indicated that in the case of a person charged with an offence and whose bail has been refused, it was necessary, in light of the judgment of the Court of Appeal of Alberta in R. v. Neill, for a review of the continued detention of the accused forthwith on the expiration of the period of time prescribed by the Section, being 90 days for indictable offenses and 30 days for summary conviction offences.

I advised that the Court of Queen's Bench, in cooperation with the Department of Justice and members of the Criminal Bar, will institute a plan to ensure that all persons in custody will be brought before the Court for a review within the period of time prescribed by s. 525.

The Defence Bar were also advised at that time that when the Court of Queen's Bench received an Application from the Director within whose custody the accused resides, the Trial Co-ordinator of the Court of Queen's Bench will contact defence counsel to arrange for an early review date.

On reviewing s. 525(1), I propose the following directive:

> When the Court of Queen's Bench receives an application under s. 525(1) from the Director within whose custody the accused resides, the Trial Co-ordinator of the Court of Queen's Bench shall place the application before a judge of the Court of Queen's Bench, who under s. 525(2), shall direct, by way of a Court Order, the date for the hearing, where the hearing shall take place, that the accused shall be present, who shall be served, including the accused, the prosecutor and the defence counsel, if one appears on the record.

A copy of the above directive has been forwarded to the Criminal Law Clerks throughout Alberta.

The Court of Queen's Bench, together with the Department of Justice will very much appreciate the co-operation of all of the members of the Bar in ensuring that all persons in custody have their bail review within the period of time prescribed under s. 525 of the Criminal Code.

(Undated - post January 22, 1991)

W.K. Moore
Chief Justice of the
Court of Queen's Bench

2. BAIL APPLICATIONS - INVOLVING SPOUSAL ASSAULTS

At a recent meeting of the Criminal Practice & Procedure Committee of the Court of Queen's Bench, it was proposed that at all bail applications involving spousal assaults that the Crown should provide more information to the court including:

i) What is the current status of the relationship? Is there a history of separation in this relationship? During the past separations has the offender stalked or harassed the victim?

ii) What is the history of violence or abuse in the relationship? Include physical, sexual, verbal, financial and emotional abuse. Has the abuse escalated during the last twelve months? Has the abuse ever required medical attention?

iii) Has the offender ever hurt, injured pr threatened to use weapons, own a firearm or have plans of purchasing a firearm?

iv) Has the offender ever used weapons, threatened to use weapons, own a firearm or have plans of purchasing a firearm?

v) Are there any children under the age of 18 who have witnessed the abuse or who have been abused by the offender? Is Child Welfare presently involved with the family? Has Child Welfare been involved?

vi) Has the offender abducted or threatened to abduct the children?

vii) Is the offender currently employed? Has the offender's employment history changed during the previous twelve months, become less stable?

viii) What is the offender's current status with the legal system? Has he ever violated a court order, including a no-contact order and/or peace bond?

ix) Have drugs or alcohol ever been a problem for the offender? Does the offender have a history of mental illness including threats of suicide?

x) How does the victim feel about the offender being released?

It is not intended that a judge should have to ask all the questions listed above, but the Committee feels each of you should be aware of the kind of information that the Crown should disclose at a bail hearing.

Thank you.

December 9, 1999 W.K. Moore

3. ARRAIGNMENTS (CALGARY)

A number of changes will be made in the next few months to the arraignment procedures in the Judicial District of Calgary. They are intended to allow counsel greater opportunity to control their own schedules within reasonable limits. Where the opportunity afforded counsel is not taken, trial scheduling will be determined solely by the availability of court time.

The changes, which depart from Criminal Practice Note 1, are made possible by the recent addition to the Criminal Code of s. 650.01 (Designated Counsel).

The changes are as follows:

Pre-booking - Commencing immediately, (1) all criminal trials, including judge and jury, may be pre-booked through the trial co-ordinator by counsel who has filed a designation under s. 650.01. (2) All trials may be pre-booked up to eight months in advance, with the consent of the Crown. Beyond the eight month period trials maybe pre-booked only with leave of the Chief Justice or Associate Chief Justice, otherwise they will require appearance at arraignments.

Committal-Arraignment Interval - Commencing January 1, 2003 the interval between the committal for trial and the arraignment date will be lengthened by one month, i.e. to the second arraignment day following committal for trial. The additional time is intended to enable Crown and defence to complete discussions concerning disposition or resolution of the case and to pre-book the trial, as well as to permit perfection of retainers, receipt of transcripts, and other steps which previously necessitated an adjournment to a succeeding arraignment day.

Arraignment Day - Commencing March 12, 2003 arraignments will take place on the second Wednesday of each month, but at 1:30 p.m., a time reported to be more convenient to the bar than before noon. It is expected that with the greater opportunity to pre-book few if any counsel will find need to appear at arraignments. However, when a matter has not been pre-booked for trial before the appointment arraignment date, counsel of record will be required to appear in person and not by agent. If defence counsel intends to allege at arraignment that the failure to pre-book results from any default by the Crown, notice of that allegation must be given to the Crown counsel concerned who will also be required to appear in person at the arraignment date or as otherwise scheduled.

Public Notices - In order to ensure that the public may continue to be informed of the date when any given case is scheduled for trial, a list of all cases pre-booked since the preceding arraignment day will be available at each arraignment day.

December 3, 2002 Associate Chief Justice A.B. Sulatycky

4. JURY SELECTION (CALGARY)

Commencing March 1, 2003 a number of changes will be made to the jury selection procedures in the Judicial District of Calgary. These are intended to maintain respect for the justice system by considering the convenience of counsel and members of the public who are called for jury duty.

The Court of Queen's Bench recognizes the high level of co-operation between the Crown and defence bar which allows for re-election from judge and jury to judge alone. This results in very few judge and jury trials proceeding in Calgary. That co-operation is to be encouraged and fostered. However that co-operation has the unavoidable consequence of often eliminating the need for a jury panel. When large numbers of citizens respond to a jury summons only to be told they are not required they tend to lose respect for the system. The judge who must attempt to give an explanation to the panel bears the brunt of the disrespect.

To ensure that persons who are summonsed for jury duty do not attend unnecessarily the Court several months ago installed a telephone line which those persons are advised to call before coming to court. If as a result of re-elections there are no juries to be selected a recorded message advises callers that they need not attend. This system has been very effective in dramatically reducing the number of people who respond to a jury summons when no juries are to be selected. But it only works when counsel re-elect in a timely way. The changes are intended to facilitate that.

The changes will provide counsel with a period of no less than 24 hours in which to decide whether to re-elect or not. They will also permit court administration 24 hours to call off the jury panel. Late re-election which results in empaneled citizens attending unnecessarily may result in any one of the sanctions within the range available for disrespect to the Court and the administration of justice.

The changes are as follows:

1. Jury selection will take place at 10:00 a.m. on the Friday (or the last juridical day) of the week preceding the commencement of the trial.

2. Counsel will be advised as early as possible, but in no event later than noon on the Wednesday preceding jury selection of the judge assigned to the trial.

3. Any re-election to judge alone is to be communicated to the Trial Co-ordinator prior to noon on the Thursday preceding jury selection.

4. In those cases where a trial date is already set and jury selection is scheduled for 2:00 p.m. of the Thursday preceding the commencement of trial the jury selection is adjourned to the following day (Friday) at 10:00 a.m.

December 3, 2003 Associate Chief Justice A.B. Sulatycky

5. NOTICE TO THE EDMONTON CRIMINAL LAW BAR PRACTICE DIRECTIVE - CRIMINAL ARRAIGNMENTS

I am writing to advise you that effective September 1st, 2004, a new procedure for criminal arraignments will be implemented in Edmonton. A similar procedure has been implemented in Calgary and has been found to be very successful in reducing the criminal arraignment lists. A Practice Directive outlining this procedure is attached, as well as a list of the amended cut-off dates for 2004.

Thank you for your cooperation in the implementation of this new procedure.

June 8, 2004 Allan H. Wachowich

6. PUBLICATION BANS (see Criminal Practice Note No. 4 and E. GENERAL, items 4 and 5)

D. FAMILY (see also "CIVIL", item 7)

1. RUSH DIVORCES[6]

As you know, all desk divorces must go through the Clerk's Office in the usual manner. The wait time to obtain a divorce judgment is now approximately six weeks simply because our Clerk's Office in the divorce area is incredibly understaffed. As a result what happens is that lawyers come into Chambers and tell a Judge that everything is in order and asks that the divorce judgment be signed. This is inappropriate as often the documents are not in order and sometimes the matter is not an emergency.

After discussions with [the Supervisor, Divorce] it was decided that the best way to handle any applications by lawyers in Chambers for an expedited disk divorce judgment is as follows:

1. First of all, the Judge determines whether or not the matter is truly an emergency and must be expedited or can it wait its turn in the normal course.

2. If counsel is successful in convincing you that the matter is of sufficient urgency that it should be dealt with forthwith, then the Clerk in Chambers has a form with her called a Rush Divorce Checklist (attached). The Judge will initial the Checklist which is the confirmation to the Clerks that you have granted leave.

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[6] The practice in this Notice, except as permitted by an individual Justice, has generally been limited in application to Calgary.

3. Counsel complete the Rush Divorce Checklist, confirming that all major matters which the Clerks would normally check have been checked by the lawyer and the lawyer signs the form certifying that such is the case.

4. The lawyer then returns to the Judge who allowed the expedited divorce with all of their divorce documents and the Rush Divorce Checklist fully completed and signed by counsel. At that point the Judge would sign the Divorce Judgment if all was in order after reviewing the documents. Counsel would return the whole package to the Clerk's office for final review and filing.

Therefore, [the Judge's] only responsibility is first of all to be satisfied that the matter is of sufficient urgency to "bump the line" and therefore sign the Checklist and secondly when counsel re-attends before [the Judge] which will presumably be during the same duty week with all of the documents and the completed form, [the Judge] will be able to review and sign the Divorce Judgment if appropriate.

January 18, 1999 W.K. Moore

Counsel must fill out this Form Personally

RUSH DIVORCE CHECKLIST

4801- _____ Date _____

STYLE _____ vs _____

CLAIM
- Grounds have been met
- Bars for Divorce are correct
- Relief requested is accurate
- Clearance has been received from Ottawa *MANDATORY*

PROOF OF SERVICE
- Affidavit of Service has been commissioned properly
- Exhibits have been marked and are attached properly
- Service admitted by Solicitor (Alberta Bar) *CANNOT NOTE IN DEFAULT WITHOUT LEAVE*

ADDITIONAL PLEADINGS
- Praecipe to Note in Default *FIAT REQUIRED IF SERVICE WAS ADMITTED*
- Demand of Notice
- Statement of Defence and Counterclaim
- Answer and/or Counter Petition

REQUEST FOR DESK DIVORCE
- Request for Divorce
- With Consent (Affidavit of Execution attached if consented to by an individual)
- Child Support Centre has reviewed guideline forms *MANDATORY*

EVIDENCE
- Affidavit of Applicant has been commissioned properly

Government issued marriage certificate attached as an exhibit
Marriage has been proven in solemn form *APPLIES TO MARRIAGES OUTSIDE CANADA*
Affidavit of Adultery has been commissioned properly

WAIVING APPEAL PERIOD YES/NO
Special circumstance detailed in Affidavit
Undertakings not to appeal by both parties *MANDATORY*
Judgment is in the proper format

PARENTING COURSE
Certificate or Exemption obtained

I hereby certify to the Court I have reviewed and completed the above personally and that all rules and regulations have been complied with in full.

Dated this _____ day of _____ 19____ Signed _____
Counsel for Applicant

2. MARRIAGE CERTIFICATES AND SERVICE

1. Marriage Certificates

As directed by the Chief Justice, if parties are married in Canada, they must produce a marriage certificate as part of their affidavit evidence in order to obtain a divorce. If parties were married outside of Canada then they must prove the marriage in solemn form in the affidavit. It is helpful, but not necessary, to attach a marriage certificate for marriages outside of Canada, either a religious or government type certificate, if the same happens to be available to the lawyer or their client. One of the reasons as to why this is helpful is that many people do not remember when they were married and it is simply another check to see if that certificate corresponds with the information in solemn form.

2. Service

a) On those occasions where the Affidavit of Service cannot be located and is required for the proceedings, it would be sufficient if either they signed an affidavit or, as part of the client's affidavit for the divorce, indicated under oath what they had done to search for the Affidavit of Service. The affidavit from the respondent's lawyer should confirm that in fact their client is the respondent, and the respondent has given them instructions throughout the file with respect to pleadings and other matters. In that way the Court will be satisfied that service has actually been made. The Rules of Court do not specify what is to be contained in the Affidavit of Service or who is to be the deponent of an affidavit with respect to the service so there are a number of alternatives available. Rule 564(3) basically says that the proof of service is to be given in a manner that satisfies the Court that the party required to be served has been personally served. Therefore, this can be achieved simply by a note to the justice so that the justice can determine whether or not on the evidence the respondent has been served. The Clerks cannot enter a Note in

Default where service is not in order. Therefore, in default situations, the lawyer for the Plaintiff must first attend in Chambers to try and obtain a Fiat deeming service good and sufficient. The documents can then be sent to the Clerk's Office.

b) Where there is an Affidavit of Service but a different means of identifying the respondent has been used, i.e., driver's license, credit card, etc., it will be sent to the justice with a note from the Clerk pointing out the problem. The judge will then determine whether or not they are satisfied with the method of service.

October 12, 1999 Moore, C.J.

3. ORDERS - FAMILY LAW MATTERS[7]

Commending July 1, 2001, it is requested that orders in family law matters be filed on green paper, pale enough that it can be photocopied. The purpose of having orders on coloured paper is so that they can be easily found on the court files.

Please note that the use of green paper is not mandatory as orders on white paper will still be accepted, but it would be appreciated if parties would voluntarily prepare their orders on green paper.

June 5, 2001 The Honourable Madam Justice Trussler, for the Court

4. NOTICE TO THE EDMONTON FAMILY LAW BAR CHILD SUPPORT RESOLUTION PROJECT

I am writing to advise you that effective September 1st, 2002, a Child Support Resolution Project, somewhat like the Dispute Resolution Officer ("DRO") Project in Calgary, will be implemented in Edmonton. The project will be restricted to matters where applicants are self-represented. Prior to a court hearing, the applicant and respondent will be required to attend in front of a Child Support Resolution Officer, who are counsel in the Family Law Information Centre, in an attempt to resolve the application by consent. At times a respondent may be represented by counsel. Counsel may either send their clients by themselves to appear before the Child Support Resolution Officer or counsel may also attend with their clients. The parties will be required to bring all of their financial information to the meeting.

Thank you for your cooperation in the implementation of this new project.

August 30, 2002 Allan H. Wachowich

5. SUMMARY OF CHILD SUPPORT GUIDELINE

1. Summary of Child Support Guideline Calculations (one page)
2. Undue Hardship Claims Only - Standards of Living Test (two pages)

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[7] This request was not formally issued as a Notice to the Profession but rather expressed in the form of letters to chairs of Bar committees and the judiciary. What follows is an edited summary of the salient elements of this request.

These forms are designated as the required "information and data sheets" pursuant to the Court of Queen's Bench Family Law Practice Note '3', paragraphs A.2 and B.3. These forms replace and simplify the former Child Support Information and Data Sheets. They will be instituted gradually to allow the various software companies to update the child support programs. The Court will not reject child support applications for reason fo submission of old forms for approximately three months time to allow for this transition.

These forms are required for both desk (consent orders and divorce judgments) and contested applications. They replace the former Child Support Information and Data Sheets effective November 1, 2000. However the forms presently being used will be accepted during the transition period of four months.

As the title suggests, the 2 page "Undue Hardship Claims Only" sheet need only be submitted if there is an undue hardship claim.

Please note that the Summary of Child Support Guideline Calculations is to contain a calculation of child support in accordance with the Federal Child Support Guidelines and will not necessarily be the same as the amount requested in a consent child support order or by reason of special circumstances. If asking the Court for a different amount, you must indicate so at the bottom of the form, providing both the different amount and the reasons for departing.

These forms are available on the Alberta Courts Web Page at:

http://www.albertacourts.ab.ca/

and at the Family Law Information Centre in Edmonton and Calgary (formerly the Queen's Bench Child Support Centre).

November 27, 2002

Trussler, J., for
Chief Justice W.K. Moore

6. POLICE ENFORCEMENT/ASSISTANCE CLAUSE[8]

After consultation with the Police Services in both Edmonton and Calgary, the Court of Queen's Bench has developed a standard form police enforcement clause that may be used in family law matters other than restraining orders. The clause presently mandated for restraining orders will remain the same but the following clause will be used in other matters:

If either of the parties or any other person on their behalf, breaches any of the terms of this Order, then a Peace Officer shall provide assistance to ensure that the offending party complies with its terms. Before enforcing the terms of this Order, a Peace Officer

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[8] This Notice replaces the Notice on the same subject dated June 21, 2002. Notwithstanding its wording, it is used for both restraining orders and other family orders. While this Notice may apply to other cases, it is primarily seen in Family Law cases and therefore the reason for inclusion here.

must first ensure that the party has been served with a copy of this Order. If not served, the party must be shown a copy of the Order by the Peace Officer and be given a reasonable time to comply with its terms. If the party fails or refuses to comply with this Order, the Peace Officer shall do such lawful acts as may be necessary to give effect to its terms including, if necessary, arrest, detain and bring the party at the earliest possible time before a Justice of the Court of Queen's Bench to show cause why the party should not be cited for civil contempt.

June 19, 2003 A.H. Wachowich

7. SPOUSAL SUPPORT WAIVERS

As a result of the ***Miglin*** case, the Court has developed a policy with respect to agreements to waive spousal support:

There shall be no reference in the body of a Consent Divorce Judgment to a party waiver of spousal support, whether that waiver be mutual, one sided or at a future time. Nor shall any relinquishment of the right to apply for spousal support appear in the body of the Consent Divorce Judgment. Rather, an agreement to waive or relinquish rights may only be contained in the Recitals to the Consent Divorce Judgment.

Time limited spousal support shall appear in the body of the Judgment. The right to apply before a certain time shall also appear in the body of the Judgment. However, an agreement to waive or relinquish which takes effect after the conclusion of a payment stream or before a certain date shall appear in the Recitals.

The following are acceptable Recitals to a Consent Divorce Judgment:

And Whereas the parties hereto have agreed to the following _____ (waiver/relinquishment of rights) in relation to Spousal Support:

"Quote the paragraph from the agreement"

(If applicable)
And Whereas the parties each received independent Legal Advice in relation to their agreement on Spousal Support.

June 19, 2003 A.H. Wachowich

8. FAMILY LAW PRACTICE NOTES OF THE COURT OF QUEEN'S BENCH OF ALBERTA

The Family Law Bar is reminded that it is expected to comply with all Family Law Practice Notes of the Court of Queen's Bench of Alberta. It was noted recently by a number of judges that there is a substantial noncompliance, particularly with respect to Practice Note 3. All members of the Family Law Bar should have the detailed knowledge of the practice notes.

The clerk in each judicial district has been requested to ensure that all requirements of the practice notes are met. Practitioners should be aware that costs pursuant to Rule 599.1 may be imposed against them personally for lack of compliance.

The Family Law Bar is also reminded that the Court is requesting that all interim orders and divorce judgments be filed on green paper.

June 19, 2003 A.H. Wachowich

9. PILOT PROJECT - CALGARY UNCONTESTED DIVORCE PROCEDURES

As you are undoubtedly aware, the time that it is taking to process uncontested divorces through the Divorce Clerk's Office and the Family Law Information Centre in Calgary continues to be a problem. The Court has made what changes it can but the delay is still excessive. This delay is compounded when documents are returned for correction as they are processed in the same fashion as documents coming in for filing for the first time. Over the last one to two years, the delay has been anywhere from 4 weeks to 9 weeks.

As a result, Chief Justice Wachowich and Associate Chief Justice Sulatycky have authorized a pilot project to deal with uncontested divorces in Calgary starting in September of 2004. This will provide a more expeditious process for those cases which simply cannot await the delays which we have been experiencing with uncontested divorces.

This process is not intended to replace the desk procedure currently in place but, rather, to augment it; in particular, to deal with emergent matters or matters which may require correction or additional information. The process will commence Monday, September 13th, 2004 and continue on the second Monday of each month thereafter.

These matters will be set on the Uncontested Divorce Docket which is scheduled for the second Monday of each month commencing at 2 p.m. If it is a long weekend, the matters will be scheduled on the Tuesday following the Monday holiday.

The process for setting the matter down will be by Notice of Motion. All of the same documents required for desk divorces (except for the Request for Divorce) must be filed with the Motion. The affidavit will be the Affidavit of Applicant as currently required. All documents are to be filed and served at least seven (7) days before the hearing date. There will be no *viva voce* evidence unless requested in the Notice of Motion.

This will allow the Justice to deal with any and all issues right then and there. If satisfactory, the Justice will sign the Judgment at the hearing.

We thank you for your patience in getting this pilot project up and running and we hope that it will assist in dealing with the backlog and delay we are currently experiencing. The effectiveness of the project will be reviewed in the new year.

August 5, 2004 The Honourable Madam Justice Kenny, for the Court

E. GENERAL

1. GUIDELINES FOR JUDICIAL DISPUTE RESOLUTION

1. The purpose of judicial dispute resolution is to reach a settlement on all issues, or to resolve as many issues as possible, with the assistance of a Justice of the Court of Queen's Bench.

2. Generally all counsel and partes must agree to judicial dispute resolution, although exceptions may be made in special circumstances.

3. Most frequently the process will be initiated when a matter has been or is ready to be set down for trial. However, the Chief Justice may approve judicial dispute resolution at an earlier stage, where appropriate.

4. To arrange judicial dispute resolution, counsel should contact the Trial Co-ordinator to select a judge and date, which must be confirmed in writing to the Trial Co-ordinator.

5. Counsel should meet with the named judge to discuss and agree upon the materials and procedures required for the judicial dispute resolution process, Counsel may request and with the consent of all parties the judge may agree to give an opinion or make a decision, in the event that a settlement is not reached.

6. Parties with authority to make settlement decisions must be present and participate in the process.

7. Judicial dispute resolution is normally conducted informally in a conference room setting. Gowning is not required.

8. The process in confidential. Statements made by counsel or by the parties are confidential and without prejudice and cannot be used for any purpose or referred to at trial, should the matter proceed to trial. After judicial dispute resolution, all briefs, submissions, notes and papers in the judge's possession will be destroyed.

9. Unless the parties consent, the judge will not hear any applications or the trial of the matter. The judge will not discuss the judicial dispute resolution process with the trial judge, should be matter proceed to trial.

10. In the course of judicial dispute resolution, parties and their counsel may meet privately, with or without the judge. If the judge meets privately, anything said by a party or counsel to the judge in confidence will remain confidential and will not be disclosed to the other parties unless the confidentiality of the communication has been waived.

11. The only document which will survive a successful judicial dispute resolution process will be a Memorandum of Agreement. Various terms of the Agreement

may require Consent Orders, Discontinuances, Releases and other documents which will be prepared and filed by counsel.

12. The judge is non-compellable as a witness in any proceedings.

June 14, 1996 (Unsigned)

2. ELECTRONIC CITATIONS OF CASE LAW

I issue the following direction to counsel in response to inquiries received regarding the citation of case authority to electronic data bases and the provision to the court of copies of cases taken from such databases.

1. In any written submissions used in the Court of queen's Bench, counsel may cite case authority to a reliable electronic database.

2. If a citation to a reliable electronic database is used in a written submission, a printout of the case cited should be provided with the submissions.

3. If an alternative citation to a conventional report series is easily obtainable, it should also be provided.

4. When presenting copies of case authority to the court counsel may provide either copies of cases printed from the reliable electronic database, or copies of cases taken from conventional hard-copy reports, as counsel may choose.

5. "Electronic database" is intended to include proprietary online databases, CD-ROM databases and internet databases. The following data bases will be considered reliable for the purposes of this direction:

    a. Any database maintained by or on behalf of a Canadian court,
    b. Any QuickLaw case database
    c. Any eCarswell case database
    d. Any Maritime Law Book database
    e. Any Canada Law Book case database
    f. Any CCH Canadian case database
    g. Any Butterworths case database
    h. Any Lexis-Nexis case database
    i. Any Westlaw case database

Other databases may be added to this list when the court is satisfied they also are reliable.

February 1, 2002

Allan H. Wachowich
Chief Justice
Court of Queen's Bench of Alberta

3. COURT HOUSE FILE ROOM - CALGARY

You are no doubt aware that a species of mould which may be harmful to humans has been found in the file storage room of the Court of Queen's Bench Building in Calgary. All files in actions commenced more than two years ago, including documents filed until recently but not hereafter, are in that room. We are not yet certain how extensive the mould contamination is and further testing is being done to ascertain that. In the meantime access to the file storage room is limited and files which may be required in chambers or for trial may not be available when needed. Therefore, it would be prudent for all counsel appearing before the court in any matter to have copies available of all filed materials to which the judge may be referred as necessary.

In those cases where a file, or document, for any reason must be retrieved from the file storage room, it will be scanned and thereafter reproduced in a clean environment. The product of the scanning process will replace the original for all purposes and the replacement documents will thereafter be stored in clean premises.

Since the scanning process cannot produce more than two or three pages per minute obtaining documents in that way will almost certainly result in delaying matters before the court. You can ensure that your matter will not be delayed if you bring copies from you file of all relevant material for presentation to the court whenever you appear in Queen's Bench

Your co-operation will be greatly appreciated.

March 21, 2002

A.B. Sulatycky
Associate Chief Justice

4. NOTICE TO MEDIA OF PUBLICATION BANS AND SIMILAR ORDERS

In an effort to ensure compliance by the media with Publication Bans and other orders made by Judges of the Court of Queen's Bench, effective January 1, 2002, applications for Publication Bans and similar orders shall be accompanied by a written Notification to Media using the attached form. Once the order is granted, the document will be signed by the Judge and placed on the Clerk's file. Throughout the course of the trial or other proceeding, the journalists will be given access to the Notification to ensure that the nature and extent of the order is understood.

Counsel are reminded of the requirements of Criminal Practice Note No. 4 when applying for publication bans made pursuant to a Judge's common law or legislated discretionary authority.

November 8, 2001/Revised June 21, 2002

Allan H. Wachowich
Chief Justice

5. NOTIFICATION TO MEDIA - PUBLICATION BANS - REVISED FORM

After consultation with members of the media, the bar and comments from some of the judges, we have re-drafted the "Notification to Media - Publication Bans". Attached is a re-drafted form.

The changes are intended to emphasize the fact that you as a judge will only be identifying publication bans which you order.

June 21, 2002 A.H. Wachowich

NOTIFICATION TO MEDIA
PUBLICATION BANS

Courts of Queen's Bench of Alberta

Action No. _____

Location: _____

Style of Cause: _____

1. This Notice addresses only those bans for which an application must be made to a judge. There are publication bans which by statute are in place in some proceedings. The media are responsible for ensuring that they comply with any such statutory bans.

2. This Notice addresses only those bans issued by this judge in this proceeding.

3. Bans issued pursuant to sections of the *Criminal Code*:
   517 (Bail Hearing)
   486(3)(4) (Identity of Complainant/Witness)
   The court ordered ban will expire on _____ (specify date)
   Other: _____ (specify)

4. Discretionary Publication Bans

   The file has been sealed
   File is sealed permanently
   File temporarily sealed - expiry date _____(specify date)
   Other _____
   (Please specify particulars of order)

Dated this _____ day of _____, 200 _____
at the _____ of _____ in the
Province of Alberta

_____
J.C.Q.B.A.

NOTE: Counsel are reminded of the requirements of Criminal Practice Note 4.

F. SURROGATE

1. DEPENDENT ADULTS ACT - PERFECT SERVICE OF DOCUMENTS

You will recall that I circulated amongst all the members of our Court a memorandum dated June 6, 2002 which updated a directive of 1998 as to the manner in which service is to be completed upon interested parties in any dependent adult application.

With the assistance of the CBA: Wills and Estate Sections of both Edmonton and Calgary comprehensive directions have now been prepared regarding service of all stages of dependent adult applications. My directive of June 6 dealt with only one.

Attached hereto is a directive for the benefit of all members of our Court which you might refer to when dealing with these applications and this further clarifies the directive of June 6.

July 5, 2002 Allan H. Wachowich

SERVICE OF DOCUMENTS
DEPENDENT ADULT APPLICATIONS (DESK)

The *Dependent Adults Act* does not prescribe any particular form of service of either an original application or a review application, nor on a passing of accounts.

The Act gives discretion to the court to direct the manner of service or approve a manner of service that has been effected. See:

Section 3(8)(b)	initial application to appoint guardian
Section 23(8)(b)	review of guardianship order
Section 31(8)(b)	initial application to appoint trustee
Section 49(8)(b)	review of trusteeship order

The following manner and proof of service are to be used.

INITIAL APPLICATION TO APPOINT A GUARDIAN AND/OR A TRUSTEE

Service of documents on an initial application to appoint a guardian and/or a trustee must be served:

a) Personally (Rule 14).

Personal service includes an acknowledgment of service by the party (whether on the document itself or in a separate letter signed by the party), and a form of Consent signed by the party.

or

b) By registered mail (Rule 22)

or

c) By any manner of service requested by the applicant in the initial application and approved by the judge. If the judge does not approve the manner of service requested, the applicant must serve the application again on the necessary parties.

The court may approve another manner of service under sections 3(8)(b), 23(8)(b), 31 (8)(b), and 49(8)(b) of the Act.

Proof of Service

Proof of service must be filed in Form DAD 24 Affidavit of Service. This must indicate the manner of service by one of the following:

a. Personal service:

(i) By personal service on the party.
(ii) By acknowledgment of service.
Attach the form of acknowledgment signed by the party as an exhibit to the affidavit;
(iii) By consent.
Attach the form of Consent signed by the party as an exhibit to the affidavit.

b. By registered mail.

Attach the Acknowledgment of Receipt and Signature (see attached example) as an exhibit to the affidavit.

Where the party did not sign the Acknowledgment (but someone else did), an affidavit to the effect that the deponent confirmed by telephone with the party that the party received the documents is sufficient proof of service.

c. By any manner of service requested by the applicant in the initial application and approved by the judge.

Provide an Affidavit of Service showing the manner of service used for which approval is sought.

APPLICATION TO REVIEW GUARDIANSHIP AND/OR A TRUSTEESHIP APPOINTMENT

Service of documents on an application to review a guardianship and/or a trusteeship appointment must be served:

a. Personally (Rule 14).

Personal service includes an acknowledgment of service by the party (whether on the document itself or in a separate letter signed by the party), and a form of Consent signed by the party.

or

b. By registered mail (Rule 22).

or

c. By the manner of service for review applications (if any) as directed in the initial Order appointing the guardian and/or the trustee.

or

d. By any manner of service requested by the applicant in the review application and approved by the judge. If the judge does not approve the manner of service requested, the applicant must serve the application again on the necessary parties.

The court may approve another manner of service under sections 3(8)(b), 23(8)(b), 31(8)(b), and 49(8)(b) of the Act.

Proof of Service

Proof of service must be filed in Form DAD 24 Affidavit of Service. This must indicate the manner of service by one of the following:

a. Personal service:

(i) By personal service on the party.

(ii) By acknowledgment of service.

Attach the form of acknowledgment signed by the party as an exhibit to the affidavit.

(iii) By consent.

Attach the form of Consent signed by the party as an exhibit to the affidavit.

b. By registered mail.

Attach the Acknowledgment of Receipt and Signature (see attached example) as an exhibit to the affidavit.

Where the party did not sign the Acknowledgment (but someone else did), an affidavit to the effect that the deponent confirmed by telephone with the party that the party received the documents is sufficient proof of service.

c. As directed by previous court order.

Attach a copy of the previous court order as an exhibit to the affidavit.

d. By any manner of service requested by the applicant in the review application and approved by the judge.

Provide an Affidavit of Service showing the manner of service used for which approval is sought.

APPLICATION TO PASS ACCOUNTS

Service of documents on an application to pass accounts must be served.

a. Personally (Rule 14).

Personal service includes an acknowledgment of service by the party (whether on the document itself or in a separate letter signed by the party), and a form of Consent signed by the party.

or

b. By registered mail (Rule 22).

or

c. By the manner of service for passing of accounts applications (if any) as directed in a previous Order appointing the guardian and/or the trustee or in any other order passing accounts which provides for it.

or

d. By any manner of service requested by the applicant in the passing of accounts application and approved by the judge. If the judge does not approve the manner of service requested, the applicant must serve the application again on the necessary parties.

The court may approve another manner of service under sections 3(8)(b), 23(8)(b), 31(8)(b), an d 49(8)(b) of the Act.

Proof of Service

Proof of service must be filed in Form DAD 24 Affidavit of Service. This must indicate the manner of service by one of the following:

a. Personal service:

(i) By personal service on the party.

(ii) By acknowledgment of service.

Attach the form of acknowledgment signed by the party as an exhibit to the affidavit.

(iii) By consent.

Attach the form of Consent signed by the party as an exhibit to the affidavit.

b. By registered mail.

Attach the Acknowledgment of Receipt and Signature (see attached example) as an exhibit to the affidavit.

Where the party did not sign the Acknowledgment (but someone else did), an affidavit to the effect that the deponent confirmed by telephone with the party that the party received the documents is sufficient proof of service.

c. As directed by previous court order.

Attach a copy of the previous court order as an exhibit to the affidavit.

d. By any manner of service requested by the applicant in the passing of accounts application and approved by the judge.

Provide an Affidavit of Service showing the manner of service used for which approval is sought.

2. FIAT AND DIRECTIVE RE DEPENDENT ADULT DESK APPLICATIONS (SERVICE)

Rule 22 of the *Alberta Rules of Court* provides for service by mail.

Enclosed is a copy of a fiat which I have today issued, as an interim measure, to cover the problem caused by service deficiencies on an addressee when the desk application includes an acknowledgment or consent from the addressee.

"Where service is:

a) authorized by registered mail by any enactment or an Order of the Court, and

b) there is an acknowledgment of service or a consent signed by the addressee

the enclosure of the acknowledgment or the consent shall be deemed good and sufficient service on the addressee."

October 22, 2002

Allan H. Wachowich
Chief Justice
Court of Queen's Bench of Alberta

G. REPEALED NOTICES TO THE PROFESSION

The following Notices to the Profession of the Court are repealed:

1.	Caseflow Management Pilot Project	October 10, 1997

September 15, 2004

Honourable A.H. Wachowich
Chief Justice
Honourable A.B. Sulatycky
Associate Chief Justice