

MEMO

RE: **Changes to the Children's Law Reform Act and Family Law Rules
Coming into Effect on March 1, 2010**

Family Statute Law Amendment Act, 2009

- The sections in the *Family Statute Law Amendment Act, 2009* (Bill 133) that amend the custody and access provisions in the *Children's Law Reform Act* will come into force on March 1, 2010.

Family Law Rules

- Effective March 1, 2010, amendments will be made to the *Family Law Rules* (Rules) that address the following:
 - Legislative requirements arising from Bill 133;
 - Service issues;
 - Financial disclosure;
 - The need to address issues relating to expert evidence early in a case and the timing of the service of expert witness reports; and
 - The secure treatment application form

Parenting Affidavit

- As of March 1, 2010, s. 21 (2) of the *Children's Law Reform Act* (CLRA) will require that an application for custody of or access to a child be accompanied by an affidavit that sets out:
 - the person's plan for the child's care and upbringing;
 - information about the person's involvement in any family, child protection or criminal cases; and
 - any other information known to the person that may be relevant to the child's best interests as defined by the Act.
- In order to accommodate this requirement, rule 35.1 and Form 35.1: Affidavit in Support of Claim for Custody or Access (Form 35.1) were created.
- New Subrule 35.1 (2) directs that if an application, answer or motion to change a final order contains a claim for custody or access, the party making the claim must also serve and file a Form 35.1.
- Rules 8, 10, 11 and 15 will be amended to require that any application, answer, amended claim or motion to change that includes a claim for custody or access be accompanied by the documents required by rule 35.1.
- In addition, subrule 23 (22) will require that a Form 35.1 be filed in an uncontested hearing, if applicable.

Non-parents

- The legislation requires additional information from a non-parent who is seeking custody of a child.
- Subrule 35.1 (1) defines a “parent” for these purposes as:
 - A biological parent of a child;
 - An adoptive parent of a child;
 - An individual declared under Part II of the CLRA to be a parent of a child; and
 - An individual presumed under s. 8 of the CLRA to be the father of a child.
- Non-parents will be required to complete both Parts A and B of Form 35.1.

Police Records Check

- As of March 1, 2010, s. 21.1 of the CLRA will require that a non-parent seeking custody of a child file a recent police records check with the court.
- New Subrule 35.1 (3) requires that a non-parent seeking custody of a child attach to his/her Form 35.1 either:
 - a police record check that was obtained not more than 60 days before the person started the claim; or
 - proof that they have requested a police record check.
- If the person does not file the police record check with his/her claim, they are required to serve and file it within 10 days of receiving the check from the police.
- These requirements are dealt with in paragraph 13 of Form 35.1.

CAS Record Check

- As of March 1, 2010, s. 21.2 of the CLRA will require that a non-parent seeking custody of a child submit a form to CASs and that the CASs report back within 30 days whether they have any records relating to the person and the dates any files were opened or closed.
- Subrule 35.1 (5) requires every person who is required to submit a report to a CAS to provide the court with a copy of the request along with Form 35.1
- Paragraph 15 of Form 35.1 requires a non-parent to list all of the places they have lived since they turned 18 or became a parent.
- If a party does not want the court or other parties to know that he/she had involvement with a CAS, s. 21.2 (6) enables the party to bring a motion to the court within 20 days of the last report being received asking that the report be sealed.

Ensuring Documents are Filed and Updated

- New Subrule 35.1 (6) authorizes court staff to refuse to accept for filing any claim for custody or access that is not accompanied by the necessary documents (Form 35.1, CAS record check etc.)
- New Subrule 35.1 (7) requires parties to immediately serve and file either an updated Form 35.1 or affidavit (Form 14A) setting out any corrections or changes in the information contained in their parenting affidavit.
- This requirement to update the information is reinforced in paragraph 11 of Form 35.1.

Associated Case Reports

- As of March 1, 2010, in non-parent custody application cases, s. 21.3 of the CLRA will require the clerk of the court to provide to the court and the parties written information about any other family proceedings in which the person was involved.
- New Subrule 35.1 (8) requires that the party serve this “associated case report” if he/she is given one by the clerk.
- New Subrule 35.1 (9) permits the party to file an affidavit indicating that they are not “one and the same” as any or all of the persons with the same name mentioned in the associated case report.

Service Issues

- At the request of judicial members of the Family Rules Committee, two amendments were made to rule 6, which deals with service of documents.
- As of March 1, 2010, Subrule 6 (1.1) will require that anyone serving documents under the Rules be at least 18 years old.
- Essentially, subrule 6 (4.1) will require that someone other than the actual party serve all documents that originate a new proceeding or may lead to the imprisonment of a person. The forms that the actual party (other than a person who works for or represents an agency such as a CAS, FRO, Ontario Works etc.) would not be able to serve would be:
 - Form 8: Application (general)
 - Form 8A: Application (divorce)
 - Form 8B: Application (child protection or status review)
 - Form 8B.1: Application (status review for Crown ward and former Crown ward)
 - Form 8B.2: Application (general) (*Child and Family Services Act* cases other than child protection and status review)
 - Form 8C: Application (secure treatment)
 - Form 8D: Application (adoption)

- Form 8D.1: Application (dispense with parent's consent to adoption before placement)
 - Form 15: Motion to Change
 - Form 15A: Change Information Form
 - Form 34L: Application for openness order
 - Form 34N: Application to change or terminate openness order
- Form 6B: Affidavit of Service (version date November 15, 2009) has been amended to require the person who served the document to confirm that they are at least 18 years old (paragraph 10) and to indicate what their affiliation, if any, is with the party (paragraph 9).

Financial Disclosure

- As of March 1, 2010, Rule 13 will be amended and litigants will no longer have the option of providing a Form 13A: Direction to Canada Revenue Agency.
- There are new versions, dated November 15, 2009, of Form 13: (Financial statement: support claims) and Form 13.1: Financial Statement (property and support claims).
- NOTE: These forms may be replaced with further amendments before March 1, 2010.

Expert Evidence

- Subrule 23 (23) is amended to require that a party who wants to call an expert witness at a trial serve a report signed by the expert at least 90 days before the start of a trial in a family case or 30 days before the start of the trial in a child protection case.
- Subrule 23 (24) is amended to require that reply reports be served 60 days (or 14 days in child protection cases) before the start of the trial.
- Subrule 23 (26) requires that any supplementary report be served at least 30 days before the start of the trial.
- Subrule 23 (25) requires that an expert report contain the following:
 - The expert's name, address and area of expertise;
 - The expert's qualifications and employment, educational experiences in his or her area of expertise; and
 - The substance of the expert's proposed evidence.
- If these rules are not followed, a party will not be able to call the expert witness unless the judge allowed otherwise.
- Rule 17 is also amended to direct the parties and court to consider expert evidence issues in case conferences, settlement conferences and trial management conferences.

- The following conference briefs will be amended with version dates of November 15, 2009:
 - Form 17A: Case conference brief—General
 - Form 17B: Case conference brief for protection application or status review
 - Form 17C: Settlement conference brief—General
 - Form 17D: Settlement conference brief for protection application or status review
 - Form 17E: Trial management conference brief

Secure Treatment

- The current version of Form 8C: Application (secure treatment) does not include a box in the name of the case for “respondents” and does not indicate when and where the first court date will be. It also referred to the *Young Offenders Act*, which was replaced by the *Youth Criminal Justice Act* in 2003.
- Form 8C (version date November 15, 2009) has been amended to include the missing and corrected information.