

C.A. No. 1373 of 2006

CANADA  
PROVINCE OF SASKATCHEWAN

IN THE COURT OF APPEAL FOR SASKATCHEWAN  
ON APPEAL FROM THE COURT OF QUEEN'S BENCH  
(FAMILY LAW DIVISION)  
JUDICIAL CENTRE OF REGINA

BETWEEN:

[REDACTED] and [REDACTED]

APPELLANTS  
(THIRD PARTY RESPONDENTS)

AND:

[REDACTED]

RESPONDENT  
(PETITIONER)

AND:

[REDACTED]

RESPONDENT  
(RESPONDENT)

**MEMORANDUM TO THE CHAMBERS JUDGE**

**RELIEF SOUGHT:**

1. That the stay of execution imposed pursuant to Rule 15 of *The Court of Appeal Rules* for Saskatchewan, be lifted.
2. That the access of the father, [REDACTED] Applicant (Respondent) be governed by the terms of the decision of the Honourable Madam Justice J. A. Ryan-Froslic, dated October 4, 2006.
3. That costs be awarded to the Applicant (Respondent), [REDACTED] on the within motion.

**LAW:**

3. The Applicant relies on Rule 15 *The Court of Appeal Rules*:

- (1) Unless otherwise ordered by the judge appealed from or by a judge, the service and filing of a notice of appeal does not stay the execution of a judgment or an order awarding *mandamus*, an injunction, alimony, or maintenance for a spouse, child or dependant adult. Unless otherwise ordered by a judge, the service and filing of a notice of appeal stays the execution of any other judgment or order pending the disposition of the appeal. (Forms 5a and 5b)
- (2) Where leave to appeal from an interlocutory order is granted, the judge hearing the application may give directions as to staying proceedings.
- (3) Where a writ of execution has been issued but is stayed after being issued because of an appeal, the appellant is entitled to obtain a certificate from the registrar that the execution of the writ has been stayed pending the appeal. On the deposit of the certificate with the sheriff, the execution of the writ is stayed but the execution debtor shall pay the sheriff's fees, and the amount so paid shall be allowed to the execution debtor as part of the costs of the appeal.
- (4) Where a judgment or order is stayed pending an appeal, all further proceedings in the action, other than the issue of the judgment and the taxation of costs under the judgment, are stayed, unless otherwise ordered.

**GROUND:**

4. The decision under appeal is interim in nature and speaks to access only. The decision is silent on the ultimate issue of custody (which issue lies at the heart of the 'custody of a minor' criterion for exemption (under s. 8(2)(ii) of the *Court of Appeal Act, 2000*, S.S. 2000, c. C-42.1) from the usual requirement of an application for leave to appeal an interlocutory order.
5. In other words, the October 25, 2006, decision out of Queen's Bench chambers does not address custody, but speaks to the Respondent father's access to the child only. It appears unlikely the appeal will be heard as the interim issues raised will be overtaken by the trial. This militates in favour of lifting the stay of execution



of the decision appealed from, such that the terms of the Respondent father's ongoing access should be as set out in the decision dated October 25, 2006.

6. The Court of Queen's Bench in its decision of October 25, 2006, was "deeply concerned" by the facts before it and determined that an expedited trial was in the child's best interests. Further the Court of Queen's Bench determined that "immediate action" was required to safeguard the best interests of the child, by implementing the October 4, 2006, order of Mr. Justice R.S. Smith, with certain additional provisions added by Madam Justice J. A. Ryan-Froslic.
7. The decision dated October 25, 2006, does not (contrary to the Notice of Appeal) vary the preceding order of October 4, 2006. Rather, the subsequent decision implements the former, so that the Respondent father might enjoy the weekly access to the child as originally ordered on October 4, 2006.
8. The Notice of Appeal appears premature in that no order has been taken out to appeal from, and further that the decision of October 25, 2006, is reserved on a number of points purportedly appealed from, including *inter alia* the publication ban requested by the Appellant (Third Party Respondents).
9. Particulars of the foregoing are set out in the Affidavit of [REDACTED] dated the 30<sup>th</sup> day of October, 2006.

**MATERIAL FILED:**

AND FURTHER TAKE NOTICE that in support of this within application will be read the following:

- (a) Notice of Motion to Lift Stay of Execution with proof of service.
- (b) The Affidavit of [REDACTED] dated the 30<sup>th</sup> day of October, 2006.

- (c) A Draft Order requiring perfection in accordance therewith.
- (d) This Memorandum specifying the basis for the application.

All of which is respectfully submitted.

DATED at Saskatoon, Saskatchewan this 31<sup>st</sup> day of October, 2006.

**ROE & COMPANY**

Per: \_\_\_\_\_

Mark Vanstone  
Solicitors for the Applicant (Respondent)

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