Date: 2013 04 30

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LARRY GUMMESEN

Petitioner

-and-

LORRA GUMMESEN

Respondent

MEMORANDUM OF DECISION

[1] Larry Gummesen applies *ex parte* for an order permitting him to file a Petition for Divorce and Notice to Respondent by surface mail, rather than in person.

[2] Rule 720(1) of the *Rules of the Supreme Court of the Northwest Territories* provides:

> 720 (1) Unless otherwise provided by these rules or an order of the court, the business of a party may only be transacted in an office of the Court on the personal attendance of
>
> (a) the party;
>
> (b) the solicitor of the party;
>
> (c) the clerk or agent of the solicitor;
>
> (d) the clerk of the agent of the solicitor; or
>
> (e) the agent of the party, duly authorized by the party in writing.

[3] Transacting business includes filing originating documents, such as a Petition for Divorce, and other documents required to be issued by the Clerk.

[4] The basis for the application is set out in a letter from Mr. Gummesen to the Court:

> I am making a request of leave of the Court to allow me to file the documents via mail and to have a Fort Smith address of service. I am requesting this, as I reside in Fort Smith and do not travel to Yellowknife for personal or work reasons very often. The last time I was in Yellowknife was over a year ago. I have no agent in Yellowknife to file the documents for me, as I do not have any close friends that reside there and I do not wish for my personal business to become public to an acquaintance.

[5] For reasons that follow, the application is dismissed.

[6] First, the application has not been put before the Court properly. At the very least, there should be a Memorandum to Judge setting out the relief requested and summarizing the basis for it. This must be accompanied by an affidavit, sworn or affirmed, setting out the evidentiary basis for the application. The letter that Mr. Gummesen submitted, being neither sworn nor affirmed, is not evidence.

[7] Second, even if the application was in the proper form and what is contained in the letter was sworn or affirmed, it would not be granted. Mr. Gummesen is asking for an order exempting him from having to comply with Rule 720(1) based on inconvenience, not necessity. There is nothing to indicate that he has made any effort to find an agent or a solicitor and has been unsuccessful. Rather, it appears that he simply does not wish to do so. Inconvenience alone is not a sufficient basis upon which to grant a court order.

[8] Court proceedings are serious matters and must be treated as such by the courts and the parties. The outcomes – or merely the fact of an active lawsuit - have real consequences for all involved, whether they are plaintiffs, petitioners, applicants, defendants or respondents. Accountability and certainty are of the utmost importance. Accordingly, there are rules in place to promote accountability and certainty by governing the manner in which proceedings are to be commenced and conducted. Rule 720(1) is one of these.

[9] Our law is replete with time limitations and notice requirements. Requiring the personal attendance of a party or his or her solicitor or agent at the Court registry to commence proceedings ensures that there will be little or no uncertainty about when a suit was commenced. There is no question about whether the document was received in the mail or when. There is no contest between the delivery records of a courier or mail service and those of the Court registry. The party commencing the action, those involved in the action and the Court can all rely on filing date stamp placed on the

document by the Clerk as proof certain of both when the document was received *and* when the suit was commenced.

[10] Requiring the personal attendance of the party, his or her solicitor or their agents, also reduces the likelihood of mistake, which may have financial and other consequences for litigants. This is exactly what happened in *Muldoon v. Simcoe P.U.C.* [1945] O.W.N. 863 (H.C.J.); CarswellOnt 342. In that case, an originating document was amended on instructions received by mail. Master Conant stated the following in relation to an equivalent rule in Ontario:

> 21 Although it is not clear from this statement, it appears that the "instructions" were sent to the Local Registrar by mail or otherwise in violation of Rule 756, which reads as follows:
>
> > Except as provided in respect of Quieting Titles matters, no business shall be transacted in any of the offices of the courts, either in procuring or issuing process, or in entering judgments or taking any proceedings whatever in a cause, unless upon the personal attendance of the party on whose behalf such business is required to be transacted, or of the counsel or solicitor of such party, or the clerk or agent of the solicitor, or the clerk of the agent.
>
> 22 In his affidavit filed on this application (sworn 20th February 1945), the Local Registrar states that when he received instructions to amend the writ, not being familiar with the Rules, he issued a new writ, with, as it otherwise appears, both the Commission and the Town as defendants. If the solicitors for the plaintiffs had attended personally to have the writ amended, as required by Rule 756, a great deal of trouble that has since developed, and the expenses involved, might have been avoided. I am afraid that in many jurisdictions Rule 756 is more honoured in the breach than in the observance. More general compliance with the Rule would avoid trouble for solicitors and for Local Registrars and expense for litigants.

[11] Given the importance of certainty and accountability in the context of court proceedings, exceptions to compliance with the rules that govern those proceedings should be granted only when an applicant has shown that it is justified. The Applicant has not done that here. Accordingly, the application is dismissed.

K.Shaner
J.S.C.

Dated at Yellowknife, NT, this
30th day of April, 2013.

Mr. Gummesen: Self-represented

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MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE K. SHANER