



Ministry of Attorney General
Justice Services Branch
Family Justice Services Division

**Evaluation of the Family Justice Registry
(Rule 5)
Pilot Project
Summary**

November, 2002

The Government of Canada contributed funds for the Family Justice Registry (Rule 5) Pilot Project and evaluation.

TABLE OF CONTENTS

RULE 5 AND THE MANDATORY TRIAGE PROCESS	3
EVALUATION ISSUES AND DESIGN	3
EVALUATION RESULTS	4
SUMMARY OF KEY FINDINGS.....	9

On December 1, 1998 the Ministry of Attorney General introduced new Provincial Court (Family) Rules to improve case management and provide more opportunities for early settlement of family cases in the court system. Most of the new court rules applied to all provincial court registries in the province. However one rule, Rule 5, was introduced only at selected sites (called Family Justice Registries) on a pilot basis.¹ Rule 5 was designed to reduce use of the provincial court for *Family Relations Act* (FRA) matters by promoting the use of alternative (non-court) methods of dispute resolution, promote early dispute resolution and reduce the number and complexity of Family Relations Act trials.

To determine the effectiveness of Rule 5, the Ministry of Attorney General contracted with the consulting firm of R.A. Malatest & Associates Ltd. to conduct an evaluation of the Family Justice Registry pilot project. This summary presents the key findings of that evaluation².

RULE 5 AND THE MANDATORY TRIAGE PROCESS

Rule 5 introduced a new process, informally known as "triage", as a required first step in FRA cases at the Surrey, Vancouver (Robson Square), Nelson, Castlegar and Rossland registries. In May 2001 the pilot project was expanded to the Kelowna court registry. In these registries, parties to FRA cases are required to meet with a Family Justice Counsellor (FJC) for a triage appointment prior to a first appearance before a judge. The FJC helps each party individually to clarify their issues and understand the options available for resolving their disputes. Mediation services are available free of charge to families of limited income, at the triage offices. FJCs may refer parties to mediation or other services; the parties may choose to act on these referrals or request a referral to court. Although Rule 5 makes triage mandatory, exemptions from the triage process are permitted where there is an urgent need for a court appearance and in other limited circumstances.

EVALUATION ISSUES AND DESIGN

The triage process was designed to divert parties from court by providing and encouraging the use of alternatives to court. It was also hoped that triage would help parties better understand their issues and perhaps narrow them, so that court cases – where still used - could be shorter and deal only with issues where the parties continued to disagree. A key objective of the evaluation was to determine whether these results have been achieved at the Rule 5 registries.

The evaluation investigated six issues:

Diversion from court: the extent to which Rule 5 diverts family matters from court.

¹ The Government of Canada contributed funds for the Comprehensive Child Support Services Pilot Project and evaluation.

² "Final Report: Evaluation of the Family Justice Registry (Rule 5) Pilot Project", November 2002. Readers who are interested may obtain a copy of the full report at [<http://www.ag.gov.bc.ca/justice-services/index.htm>]

Court use: the extent to which Rule 5 reduces the number of court appearances per application filed at court

Claims of urgency: whether there is evidence to suggest that parties file claims of urgency with their applications simply to avoid the mandatory triage process

Family case conferences: the use and effectiveness of family case conferences to resolve disputes within the court system

Case outcomes: the degree to which cases conclude with court orders, rather than consent orders or agreements, in Rule 5 registries and comparison sites

Benefits to clients: the perceptions of staff, the judiciary and clients themselves regarding the benefits of the triage process.

To evaluate the impact and effectiveness of Rule 5 the researchers conducted an extensive review of court files at the pilot registries and a group of comparison sites. Cases that pre-dated the rule changes at both types of sites were compared to those that began after the new rules were introduced³. In total, 2,800 court files representing nearly 3,400 FRA applications were reviewed.

In addition, researchers conducted 39 in-depth interviews with members of the judiciary, FJCs and court registry staff at Rule 5 and the comparison sites. Client views were obtained by way of a short written survey completed by nearly 300 clients who had attended triage.

Because a sixth registry (Kelowna) was added to the pilot at a later date, evaluators analysed results for this site separately. They found that the experience in Kelowna mirrored that of the original five sites on every performance measure they examined. The results presented below are those for the five original sites. Readers can find the comparable results for Kelowna by referring to Appendix F of the full report by R.A. Malatest and Associates.

EVALUATION RESULTS

Diversion from Court

Evaluation results indicate that the new Provincial Court (Family) Rules, and Rule 5 in particular, have been successful in diverting cases from the courts:

- Prior to the introduction of the new court rules, nearly all cases where an application had been filed went on to have at least one appearance in court. In fact only 2% to 3% of cases did not proceed to any court appearance.

³ Court applications were tracked for two periods: prior to the rules changes (applications filed between December 1, 1997 and November 30, 1998) and after the rules changes (applications filed between April 1, 2000 and March 31, 2002). All new case files with FRA applications filed at the pilot and comparison sites during these periods were tracked for up to 20 months after their filing dates.

- After the new rules were implemented 17% of the cases opened in the comparison sites did not proceed to have a court appearance; the impact was much greater at Rule 5 sites, where 29% of cases did not proceed to court⁴.

The diversion that occurred at the Rule 5 sites was approximately 70% greater than the diversion at the comparison sites.

This conclusion was supported by interviews conducted with FJCs and court registry staff. Both groups felt that cases were being diverted from the courts as a result of triage services. Educating parties about alternatives to court for resolving disputes appears to be key to this outcome. All court registry staff (both Rule 5 and comparison site) believe that a large proportion of parties who file court applications are unaware of alternative means to resolve their disputes. These staff estimated that about 80% of those they serve at the court registry counter are unfamiliar with alternative methods of dispute resolution. In contrast, 74% of clients who attended a triage session and completed the client survey indicated that they would prefer to resolve their disputes without going to court.

Court Use

A second function of triage is to help parties clarify and narrow their issues. After attending triage, clients should have a clearer understanding of their issues, be better prepared to address them and perhaps have a fewer number of issues for the court to deal with. Therefore cases should proceed to a conclusion more quickly than they would have otherwise.

The evaluators looked at Rule 5 cases to see if they required fewer appearances before a judge⁵, than cases that had not been through the triage process. They found that Rule 5 cases do indeed make less use of the courts:

- Before the rules changed the number of appearances per application was higher in Rule 5 sites than at the comparison sites (2.1 versus 1.6 appearances per application).
- After Rule 5 and other rules were introduced, the rate of court appearances declined significantly in both Rule 5 and comparison sites. In comparison sites appearances decreased by 17%. However, the effect was much larger at Rule 5 sites where the rate of appearances per application decreased by 41%⁶.

The reduction in court activities at Rule 5 sites is thought to be the result of two effects. First, Rule 5 is effective in diverting cases from the courts - these applications result in no court activity at all. Second, applications that do proceed to court in Rule 5 sites require fewer appearances than they would have otherwise because the parties have dealt with some issues and are prepared to address the others. Analysis of the court file data indicates that:

⁴ The difference in the decreases observed at the Rule 5 and comparison sites is statistically significant.

⁵ In this analysis appearances before a judge" includes: appearances, hearings and trials.

⁶ The difference in the decreases observed at the Rule 5 and comparison sites is statistically significant.

- About half of the reduction in court activity at Rule 5 sites is due to the outright diversion of cases (21% of the total 41% reduction in court activities).
- The narrowing of issues and better preparation of cases that do proceed to court accounts for the remaining reduction in activity (19% of the total 41% reduction).

In contrast, the reduction in court activity seen at the comparison sites is almost entirely due to the diversion of cases (15% out of a total 17% reduction in activities). Thus, Rule 5 has an added, demonstrated benefit that the other new rules do not seem to impart at all. For *cases that still proceeded to court*, Rule 5 resulted in a reduction in court activity of approximately 19%. This effect was slightly more than 2% at the non-Rule 5 sites.

Again, interview results confirm these conclusions. FJCs perceive there to be a reduction in the number of issues for most parties who receive triage. Similarly, some Rule 5 judges indicated that while the complexity of the issues that come before the court after triage has increased, the number of issues per case has decreased. This could be a result of FJCs assisting people to resolve less complicated issues before they proceed to court.

Claims of Urgency

Rule 5 provides for exemptions from triage for cases where an applicant is seeking a restraining or a no contact order under s.37 or s.38 of the FRA. These proceed as “claims of urgency”. In these cases court registry staff book an appearance before a judge on the same or next day.

In addition to applications under s.37 or s.38, other cases that present “urgent and special circumstances” may also proceed quickly to court as claims of urgency. In such cases, where the applicant is represented by a lawyer, an immediate appearance in court is scheduled⁷. Once in court the applicant may request an exemption from the triage process from the judge.

When Rule 5 was introduced there was some concern that represented parties could circumvent the mandatory referral to triage by making a claim of urgency. Both court files and interviews shed some light on this issue. The court file review indicated that claims of urgency increased very slightly (1%) at Rule 5 sites after the new rules began but decreased slightly (4%) at comparison sites⁸. This difference could be an indication that claims of urgency are being used to avoid Rule 5. Alternatively, the changes could simply reflect trends in urgent cases at Rule 5 and non-Rule 5 sites.

Both explanations are supported to some degree by the interview results. Some Rule 5 judges commented that they have been hearing more claims of urgency (other than applications for restraining orders) that might have benefited from other means of dispute resolution and/or services. However, court registry staff reported that cases are becoming more complex as indicated by an increased number of applications for

⁷ If the applicant is unrepresented, the registry refers him or her to the triage office for a same day appointment with an FJC. The FJC assists the applicant to assess the urgency of the case, and if needed, facilitates an appearance at court.

⁸ The proportions reported here do not include applications with s. 37 or s. 38 issues.

restraining orders. Therefore, the slight increase (1%) in claims of urgency seen at Rule 5 sites might reflect an underlying trend in the nature of family court cases rather than attempts to avoid the triage process.

Family Case Conferences

Family Case Conferences were introduced as an option at all court locations when the new Provincial Court (Family) Rules were introduced. In the Family Case Conference, the judge can mediate any or all of the issues in dispute and seek settlement between the parties. Judges may suggest a family case conference for appropriate cases before them. The evaluation explored the use of this new approach generally.

The researchers reviewed files for 1,460 applications that had been filed after the rules changed. They found that 161 Family Case Conferences had taken place in these cases. They also found that there was no significant difference in the use of Family Case Conferences at Rule 5 and comparison sites.

In general, judges supported Family Case Conferences because:

- Judges can have more impact with parties through Family Case Conferences than through the adversarial court process.
- Parties are provided with an opportunity to gain a clearer focus on the issues and reach resolution of their issues through mediation and consent, rather than have an outcome dictated by the court.

Judges indicated that they prefer using Family Case Conferences as they greatly reduce and sometimes eliminate the need for subsequent appearances in family cases. However, some judges reported that a shortage of time limits their ability to use Family Case Conferences.

Case Settlement Patterns

Because triage informs people about alternative ways to resolve their disputes, it was expected that triage cases would be less likely to conclude by way of a court order than other cases. The evaluators found that:

- Prior to the introduction of the new court rules, 40% to 44% of FRA applications⁹ resulted in a court order made by a judge, at Rule 5 and comparison sites respectively.
- After the rules changed, the proportion of cases that concluded with a court order increased at the comparison sites (from 44% to 48%). In contrast, this proportion decreased (from 40% to 35%) in Rule 5 sites.

The evaluators found that about 5% to 6% of applications concluded with written agreements or consent orders at all sites. This proportion did not change significantly when the new rules and Rule 5 were introduced.

Client Benefits

Triage is intended to provide information, assistance and other benefits to clients. Because triage provides new information about dispute resolution alternatives, clients may choose to resolve their issues without going to court. Ultimately, they could benefit from a faster, less costly and less adversarial approach to resolving their issues and disputes.

The evaluators asked staff and judiciary about the benefits that clients gain from triage. They also asked clients themselves for feedback on the service provided; this feedback was obtained through a survey completed as clients left triage sessions.

These themes emerged from the interviews:

- Triage educates and informs parties about the family justice process and alternative methods of dispute resolution.
- Meeting with an FJC for triage helps parties to clarify and/or narrow issues, and consider the other party's issues.
- Triage has a diffusing effect, addressing the charged emotions that often characterize family justice cases.

A key benefit of Rule 5 is that it increases the possibility that parties will resolve family issues outside of the court process. Judges, especially, commented on the need for a more personal approach to the resolution of family disputes than the adversarial, impersonal approach applied in the courtroom. They cited their preference for referring parties to triage, regular FJC services, Family Case Conferences or other non-court

⁹ Cases without a discernible conclusion were excluded from the calculation.

forms of mediation. Judges also indicated that triage places emphasis on the children's best interests rather than the interests of parents and helps parties consider alternative points of view. Judges also consider triage clients to be better informed, better focused and less emotional.

Results from the client satisfaction survey also indicated strong support for triage and the information it provides:

- 93% agreed or strongly agreed that going to the Family Justice Centre was useful to them, and
- 96% agreed or strongly agreed that they were given useful information by the FJC.

In addition, survey results revealed that the majority of clients agreed or strongly agreed that FJCs treated them with courtesy (98%) and listened to their concerns (97%).

SUMMARY OF KEY FINDINGS

To recap, the key findings of the evaluation are:

Diversion from Court

- Both the new court rules in general, and Rule 5 in particular, have significantly reduced the number of FRA cases coming before the courts. The rate of diversion was 70% greater at Rule 5 sites than at comparison sites.
- Family justice staff and service providers indicated a high degree of support for the diversion of cases to alternative, non-court methods of dispute resolution.
- Education about the alternative, non-court methods to resolve disputes is considered to be a key function of triage.

Court Use

- The number of court appearances per application decreased by 41% in Rule 5 sites compared to a decrease of only 17% in the comparison sites.
 - About half of the reduction in court activity at Rule 5 sites is due to the outright diversion of cases (21% of the total 41% reduction in court activities).
 - The narrowing of issues and better preparation of cases that do proceed to court accounts for the remaining reduction in activity at Rule 5 sites (19% of the total 41% reduction).
 - The reduction in court activity at comparison sites is almost entirely due to the diversion of cases (15% out of a total 17% reduction in activities).
- Thus, Rule 5 has an added, demonstrated benefit that the other new rules do not seem to impart at all. For cases that proceed to court, Rule 5 has resulted in a reduction in court activity of approximately 19%.

- Key informants confirm that triage helps parties to narrow the issues to be addressed in court.

Claims of Urgency

- The proportion of claims of urgency has increased slightly in Rule 5 sites since the new rules were implemented. Two possible explanations are suggested: that claims of urgency are being used to circumvent Rule 5 and/or that cases at Rule 5 registries are in fact, more likely to require an urgent court appearance.

Family Case Conferences

- Interviews with members of the judiciary revealed a number of benefits associated with using Family Case Conferences as a judicial tool for dispute resolution including a reduction in court activity.

Case Outcomes

- Court orders are less likely to be the final outcome of Rule 5 applications than applications filed at comparison sites or before Rule 5 began.

Client Benefits

- Key informants report that triage clients receive information and assistance, and may benefit from choosing a non-court approach to resolving their disputes.
- Clients indicated a high degree of satisfaction with the triage services they received. Over 90% agreed or strongly agreed that going to the Family Justice Centre office was useful and that they were given useful information by the Family Justice Counsellor they had seen.