

Chapter 1 – Background to the *Provincial Court Family Rules Reform Project*

Background

The current *Provincial Court (Family) Rules (the Rules)* are used by the Provincial Court to manage cases and resolve issues within the jurisdiction of the court (parenting arrangements, child support, contact, guardianship, and spousal support). The Rules also apply to enforcement of child and spousal support under the *Family Maintenance Enforcement Act (FMEA)*. Property division under the *Family Law Act (FLA)* and divorce under the *Divorce Act* are not within the jurisdiction of the Provincial Court. Similarly, *Adoption Act* proceedings are under the jurisdiction of the Supreme Court.

It should also be noted that it was not the mandate of the project to review the FLA and substantive changes to that Act, although amendments that enabled certain new processes to occur were identified during the project. As well, proceedings under the *Child Family and Community Services Act (CFCSA)*, which are governed by a separate set of Provincial Court rules, were not within scope of this project.

When the FLA was brought into force in 2013, the *Provincial Court (Family) Rules* were amended to bring them in line with the provisions of the FLA. The amendments to the Rules at that time did not reform the family court rules or family court processes beyond the minimum necessary to align the Rules with the new Act. However, the Ministry of Attorney General and the Provincial Court committed to a second phase of family court rules reform to encompass a more wide-ranging review. This commitment resulted in the *Provincial Court Family Rules Reform Project*, a collaborative project undertaken jointly by the Ministry of Attorney General and the Provincial Court of British Columbia.

The purpose of the project is to transform the family court process, Rules and forms to embrace the vision and direction articulated in the National Action Committee on Access to Justice Report¹, and various other reports and recommendation on family justice. Specifically, the project aims to improve the efficiency and effectiveness of the family court process for people who take their legal issues to court, and to reflect that process in court Rules and forms that are easy for the public to understand and use.

Project Objectives

The objectives of the project are to ensure:

- a transformative vision for *Provincial Court Family Rules*;

¹ Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters, *Meaningful Change for Family Justice: Beyond Wise Words* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013) [“FJWG”].

Accessed at The Canadian Forum on Civil Justice <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf>

- that all court events are meaningful;
- that only cases which require judicial direction, mediation, or determination go before a judge;
- that cases which go to a judge are “court ready”;
- the most efficient use of court staff, judicial officers, and judicial resources;
- proportionality between the issues to be resolved and the processes used to resolve them;
- consistent service across the province;
- efficient and effective use of technology in support of case management;
- decisions affecting a child are made in a time frame that is appropriate to the child’s sense of time;
- that the court process is oriented to the needs of children and families;
- that court processes, in and of themselves, do not increase family conflict; and
- parents can effectively move between and use both court and non-court dispute resolution processes and community-based services to resolve their family law disputes.

The scope of the project includes:

- Consideration of ways to improve the Provincial Court process for people bringing their family disputes to the court to provide them with timely decisions;
- Consideration of ways to simplify the Provincial Court process to make it easier for people bringing their family disputes to the court to understand and navigate;
- Consideration of structures, technology and processes designed to streamline the court process and use court time most efficiently;
- Consideration of court Rules and forms required to implement a more efficient and effective court process.

The following item is out of scope:

- Recommendations on non-court related program and service reforms.

Project Structure and Governance

A working group was assigned the task of reviewing research, making policy recommendations and developing draft Rules and forms.

The working group membership includes judges of the Provincial Court, representatives from the Ministry of Attorney General, the Legal Services Society, the Law Society of BC, the Canadian Bar Association (British Columbia) Branch, and a representative from a community-based organization that assists self-represented litigants.

The recommendations were made and approved by a Steering Committee chaired by the Chief Judge of the Provincial Court and the Deputy Attorney General. Membership of the original and current working group is attached as Appendix 1.

General Approach

The Working Group (**WG**) met regularly starting in September 2014. The WG took the approach of starting from scratch. Rather than review the Rules as they are and consider changes to an existing Rule, the WG took the approach of doing a series of policy discussions on key topic areas, looking at literature, research, surveys and cross jurisdictional information to develop consensus on the direction forward. There are, however, a number of Rules that remain similar to what they are now. The WG did not take the approach of change for the sake of change. There was some recognition that case law attached to certain words and where there were no significant policy objectives to be met by changing the Rules, existing language was carried forward.

The WG received submissions on specific Rule changes and also had the opportunity to bring in experts to speak on select topics, including those from other Canadian jurisdictions. In addition, the Ministry undertook a user experience research project at the beginning of this initiative where it observed court proceedings and sought input from a wide array of users of the Provincial Court family justice system on ideas for reform and feedback on the existing system. Individual members of the WG also met with stakeholders and reported back on those meetings on an ongoing basis.

There was a concerted effort to try to make the language clearer and simpler for a self-represented litigant to understand. The primary focus of these efforts was on the forms. While the Rules themselves enable and govern how judges conduct procedure, it is really the forms that are the primary interface that users will have with the new process. See Chapter 5 for a discussion on the approach to new forms which was informed by a Ministry user design team who have tested and received feedback on the approach to forms.

For the most part, the WG has worked on the basis of achieving consensus on the policy recommendations. Some of the areas where questions remain regarding the policy are highlighted in this discussion paper.

Although the intent is for these Rules to apply across the Province, factors exist that may make the immediate implementation of some of the proposed reforms impractical in all registries.

For example, the number of clients anticipated to require service or the level of community resources available may necessitate a modification to the model or delay in adopting certain aspects of the model in some registries.

Recommendations on non-court programs and services were out of scope of the WG but given the model's reliance on publicly funded programs and services it was not possible to make recommendations without considering the program and service availability.

The justice system consists of not just the law and procedure that governs family relationships but also includes programs and services that help families respond to and manage issues related to separation and divorce. In BC these include the Parenting After Separation Program, the many services available through the network of provincial Family Justice Centres and Justice Access Centres, Legal Services Society (**LSS**), as well as programs and services provided through a range of non-government organizations.