

Chapter 3 – The Conceptual Model

In the context of this body of information and research, summarized at Appendix 2, the WG turned its mind to how to structure processes so families could receive support for their legal and non-legal needs in dealing with the unique challenges and dynamics associated with family disputes. The proposed Rules are structured in a way that enables staged implementation. While there is an aspirational model, these proposed Rules will enable an iterative approach to early implementation that will allow the Ministry, the Court, and community service providers to learn as they go. The vision is to start with select early implementation sites that will prototype the model, complete with evaluative components. Currently, some aspects of the model are being prototyped in the Victoria registry.

The early implementation sites will provide key learnings for the model overall as well as operational aspects that will inform a phased approach to implementing the model more broadly. Following the initial prototypes, decisions will be made about the approach to take when expanding both the scope of the reform components made available, as well as the geographical locations. The timing of the application of all the Rules to every registry is dependent on funding and as such the timeline for full implementation is not certain.

Because family separation is more aptly described as a social problem with legal aspects, the proposed model takes an integrated approach, creating a family justice system that relies on the strength of justice system professionals and organizations outside as well as within the courts. The model puts into effect the objectives of the FLA, promoting the early resolution of family matters outside of court. As a general comment, the WG recommends that these processes be described as part of a continuum of resolution processes that could lead to adjudication before a judge but in a great many cases will not.

That aspirational model includes the following elements:

Prioritizing Urgent Matters - If the situation is urgent (e.g. an application for protection order, or a time sensitive issue concerning a child; such as removal from the jurisdiction or a health care decision), then parties will be assisted in directly making an application before a judge.

Early Needs Assessment, Family Violence Screening, and Referrals - Key to the model is an early assessment and referral process. Parties will be required to attend an early needs assessment with a trained assessor. Clients will receive assistance with identifying their needs (legal and non-legal), be screened for safety considerations and risks of family violence and be provided information about the family justice process. The assessor will determine whether there is any reason to exempt the client from consensual dispute resolution (**CDR**) as defined under the Rules, and provide referrals to relevant services, including where they can obtain legal information and advice and help with addressing non-legal issues. This assessment is different than the requirement on family dispute resolution professionals to screen for family violence under section 8 of the FLA. It is a more robust concept of assessment that is currently utilized by Family Justice Centres and Justice Access Centres within Family Justice Services Division (**FJSD**).

Consensual Dispute Resolution - Each party will be required to participate in one CDR session. In most cases, CDR will mean mediation. Each party will attend an individual pre-mediation session followed by at least one mediation session. CDR will provide parties with an opportunity to discuss their legal issues and explore whether they may be able to come to agreement on some or any matters. In some instances, this will result in a full resolution of issues, other times it could lead to a narrowing and better mutual understanding of issues moving forward.

Parenting Education - All families with child-related matters seeking to resolve their issues in the Provincial Court will be required to complete a parenting information and education program, such as the current Parenting After Separation program, before appearing in court on a contested matter (unless they meet exemption criteria). Parenting education programs are designed to support informed and child-focused decisions, including navigating parenting and communication as individuals restructure their families.

Implementing Case Management - Subject to the results of prototyping this process, the WG is recommending a family management conference as a way of helping parties who do not resolve their matters outside of court prepare and plan for resolving their issue through court. The process may in the future be conducted by an individual appointed by the Court who might not be a judge. As this is an entirely new process, early prototypes will be evaluated to determine if this process works in Provincial Court to better serve parties, by taking some of the more administrative and procedural matters out of judges' hands, freeing judges up for trials. The family management conference will be the first court appearance before a judicial officer if a legal matter does not resolve in CDR and requires the court's assistance in seeking a judicial resolution. The purpose is to canvas parties to identify their justiciable issues and to provide an opportunity for them to seek interim (short term) or procedural orders to keep their matters moving on the way to trial.

Based on BC's own experience with voluntary mediation services, as well as other jurisdictions that have implemented mandatory mediation, it is expected that there will be a significant drop in the time Provincial Court spends on family justice matters. These capacity gains provide for ability to address complex family cases and other critical needs in the justice system, including in other sectors such as criminal justice, where there are challenges in meeting the requirements set by caselaw of a reasonable time to trial, or child protection, where the timelines are set by statute. Most importantly, less adversarial processes have the potential to serve families in a way that minimizes rather than exacerbates conflict and helps families to build skills to navigate changes they may need to adapt to over the course of time. The suite of reforms being proposed aim to decrease the adverse impacts of family conflict and to equip parents with the tools and supports to maintain ongoing relationships focused on the well-being of their children.

The following is a visual depiction of the conceptual model that is currently launched in the Victoria registry.

Early Resolution and Case Management Model

