Chapter 4 – The Proposed Rules

Summary

The description of the proposed Rules is arranged by Parts. For each Part there is a general description of the policy underlying the Rule and attached as Appendix 3 is a table that sets out the actual language of the Rule and the description of what the Rule does. The main features of the proposed model are:

Part 1 – Purpose and Interpretation	This Part contains definitions and informs users what subject areas the Rules govern. It guides the user as to which Parts apply to certain registries.
Part 2 – Early Resolution Registries	In some registries (currently Victoria) there are early resolution requirements for parties to attend parenting education, assessment, and if determined appropriate, to participate in consensual dispute resolution.
Part 3 – Family Law Matter Claims	This Part sets out the process for applying for orders as well as replying and counterclaiming on "family law matters" which are parenting arrangements, child support, contact, guardianship and spousal support.
Part 4 – Family Management Conferences in Case Management Registries	In some registries called case management registries (currently Victoria) the Rules introduce a new process for parties first appearance in court. This Part describes a family management conference, what orders can be made and how they are scheduled. This Part contemplates that in the future, a family justice manager could be appointed to conduct family management conferences if early prototyping shows that efficiencies can be created for conferences, hearings and trials conducted by judges.
Part 5 – Readiness Hearings	In registries that are not case management registries the first appearance of parties will be at a readiness hearing.
Part 6 – Applying for other Orders	This Part sets out processes for how parties obtain case management orders, protection orders, orders about extraordinary parenting matters, orders about relocation, and consent orders.
- Case management orders	A new Rule and form will be used to apply for case management orders which replaces the current notice of motion process.
- Protection orders	A stand-alone Rule, and form are proposed for protection orders.
- Orders about extraordinary parenting matters	A Rule and form are proposed to address time sensitive matters that will result in risk of harm to a child if there is a delay. This Rule also addresses preventing removal of a child and other urgent parenting matters.
- Orders about relocation	A Rule and form are proposed to apply for an order prohibiting relocation of a child.
- Consent Orders	A new process and form are proposed for applying for consent orders.

Part 7 – Family Justice Registries	This Part carries forward the requirements under the current Rule 5 for an applicant to meet with a family justice counsellor before being set down for a court appearance.
Part 8 – Parenting Education Program Registries	This Part carries forward the requirements under the current Rule 21 which requires that parties attend parenting education programs.
Part 9 – Family Settlement Conferences	This Part replaces case conferences with settlement conferences and clarifies that they can be used for support issues including spousal support.
Part 10 – Trials	This Part provides for trial preparation conferences, trial processes and proposes Rules that enable a pilot of an informal trial process.
Part 11 – Enforcement	This Part addresses processes for enforcing various orders or determinations including parenting coordinator determinations, agreements or orders, interjurisdictional orders and FMEA orders.
Part 12 – Consequences	This Part deals with sanctions and extraordinary remedies.
Part 13 – General Rules	This Part addresses general procedures, attendance by means of electronic communication, appointment of a child's lawyer, service and other areas.
FORMS – See Chapter 5	Chapter 5 introduces new forms which are attached as Appendix 4.

Part 1 – Purpose and Interpretation

This Part introduces a purpose section for the Rules. It also discusses what subject areas the Rules cover. This Part also includes definitions and general guidance for when certain Parts apply.

Division 1 – General Information for These Rules

Purpose statement: The current *Provincial Court (Family) Rules* do not contain a Rule that articulates their general purpose or objectives. Including a purpose statement was not a standard drafting practice when these Rules were developed in 1998. Purpose statements provide general guidance about the intention and reveal the governing principles and policies behind the statute or regulation. They assist judges and other users to understand the statute or regulation, as a whole and guide interpretation in a particular direction, helping to resolve ambiguous wording.

When reviewing examples of family court rules from other jurisdictions, the WG found the BC *Supreme Court Family Rules*[26] and the Alberta *Rules of Court*[27] particularly helpful. Both of these examples contain purpose statements that discuss achieving a fair resolution in a timely way, encouraging cooperation and agreement and using processes that are proportionate to the matters in dispute.

Using language that is simple and easy to understand, the purpose statement in this Part emphasizes that the new Rules are intended to encourage parties to resolve family law matters in ways that consider the impact of family law proceedings on children and families, minimize conflict and promote cooperation. A further objective of the Rules is to encourage parties to choose processes that are likely to require levels of personal and financial investment that corresponds with the significance of the matter that needs to be resolved.

The proposed Rules continue to apply specifically to matters arising under the FLA and the FMEA.

Interpretation: The new Rules continue to include a series of defined terms. Generally, terms that are defined in the FLA are not defined in the Rules. However, there are a few exceptions which may be included if consultation feedback confirms it could be helpful for users to have this information immediately available while using the Rules. Two of these are "**family member**" and "**family violence**". The FLA definitions are repeated here, to emphasize how seriously family violence is treated within the family justice system and make it easier for people to understand what family violence is and who can apply for a protection order.

[26] *Supreme Court Family Rules*, BC Reg 169/2009, Rule 1-3. Accessed at http://www.bclaws.ca/civix/document/id/complete/statreg/169_2009_01/search/search?40.
[27] *Alberta Rules of Court,* AB Reg 124/2010, Rule 1.2. Accessed at http://www.qp.alberta.ca/documents/rules2010/Rules_vol_1.pdf.

The new Rules introduce several terms that are not used in the existing Rules or in the FLA. Refer to the Appendix 3 for a description of the new definitions and where they are utilized. There are a few policy decisions to highlight in the definitions:

The definitions include "**case**" and "**family law matter**". Family law matters are a subset of cases and the definition enables Part 2 of the proposed Rules to operate to trigger the early resolution requirements for cases pertaining to parenting arrangements (parenting responsibilities and parenting time), child support, contact, guardianship or spousal support issues.

"Consensual dispute resolution" (CDR), a term which is increasingly used amongst family dispute resolution practitioners, is defined in the Rules to mean a specified type of family dispute resolution process which meets the requirement in Part 2. Although the reasons for requiring most parties to try to resolve their family law matters using a CDR process before making a court application are explained later in this paper at Part 2, the processes included in the definition are mediation, collaborative family law, and facilitated negotiation of a child support or spousal support matter with a Child Support Officer.[28] If using mediation, the mediator must be a family law mediator who is qualified as a family dispute resolution professional as per section 4 of the *Family Law Act Regulation*. If using a collaborative family law process, it must be pursuant to a collaborative participation agreement. Each of the three processes proposed in the definition of CDR are processes that are often used to try and reach agreement at the early stages of a dispute (e.g. in contrast to parenting coordination for example, which is only used once there is an agreement or court order in place).

The proposed new Rules also introduce a definition for "**extraordinary parenting matters**". Extraordinary parenting matters are a subset of matters that may proceed to adjudication on an expedited basis, before the parties are required to complete the early resolution requirements in Part 2 (e.g. assessment, CDR and parenting education). Extraordinary parenting matters have been intentionally limited to applications which require an immediate judicial determination including matters to prevent harm to a child's health or safety, prevent removal of a child or seeking an extraordinary remedy under the FLA. There is provision in Part 6 to apply to the court for a case management order to waive or modify any other requirement under these Rules, including a time limit set under these Rules.

[28] Child Support Officers are specialized staff employed by the FJSD who provide parents with assistance related to child and spousal support matters. In addition to information and relevant referrals, services include gathering relevant financial disclosure, preparing support calculations using DivorceMate (as per the federal child support guidelines and spousal support advisory guidelines) and providing dispute resolution services to obtain or change support orders and written agreements.

The definition of a "**family justice manager**" is also new. This definition contemplates the possibility that in the future there could be a decision-maker other than a judge to make a limited number of decisions described in these Rules under Part 4.

Section 215 of the FLA was recently amended to allow for the possibility of a new judicial decision maker appointed under the *Provincial Court Act* and prescribed by regulation to fill this role. This role could resemble a judicial justice and is similar in concept to a Supreme Court master.

"**Needs assessor**" is defined as a family justice counsellor. The reason for this is as follows: unlike advocates or lawyers who are representing one party, the assessment process is based on meeting with both parties. The WG felt that the process should be publicly funded and that the service should be provided by trained professionals whose training and continuing education requirements are supervised and who use a consistent and validated assessment tool. After reviewing the educational requirements[29] and screening tools[30], the WG proposes that assessments as required by these Rules will be done by FJSD and that assessment be a first step rather than mediation so that parties can be interviewed individually by a family justice counsellor to determine appropriate referrals and next steps. It should be noted that this assessment and referral process does not diminish the requirements on family dispute resolution professionals under section 8 of the *FLA* to assess for family violence, discuss

[29] Family justice counsellors are hired by FJSD with a variety of different background training and experience, but at minimum to apply they are required to have:

- Recognized undergraduate degree;
- Completion of 80 hours of conflict resolution courses (with mediation skills focus); and,
- A minimum of one year of recent work or volunteer experience in a directly related human service field (e.g., counselling, community service agencies, dispute resolution, court services, legal services, etc.).

FJCs are required to complete a 6-month post-employment training and practicum program that includes a thorough focussed program of courses through the Justice Institute of British Columbia as well as in office training and practicum experience. Following the post-employment training FJCs must successfully complete certification through Family Mediation Canada. Training related to family violence includes a dedicated 21-hour online course as well as content in other courses with relevant context (e.g. family violence as it relates to the role of the family justice counsellor, culture and family justice, court processes, and the impacts of separation and divorce on children). In addition to these FJCs also receive training specific to the assessment tool and process used by FJSD. Following initial training, FJCs are required to complete at least 20 hours of related professional development annually.

[30] FJSD has implemented the current assessment tool in a limited capacity in 2007 and has been using it consistently with all clients province-wide since 2011. The tool was developed in consultation with experts in the field, and implementation included several positive evaluations. The tool includes a questionnaire completed separately with each party and reviewed during individual assessment interviews with the family justice counsellor. The questionnaire addresses: management of conflict, family violence, financial/debt management, substance use and mental health as well as issues related specifically to the child. In addition to the questionnaire, the tool also contains additional resources for family justice counsellors, including many additional probing questions and approaches used to gather a fulsome and holistic understanding of the circumstances and a scoring guide to assist with making a determination about the suitability of mediation based on the results of the assessment interview. In addition to the initial assessment family justice counsellors continue to assess for issues related to safety, family violence and power imbalances throughout the delivery of services. If concerns arise at any time the family justice counsellor responds accordingly and may shift or terminate the process.

various types of dispute resolution processes and resources, or to advise on the need to make arrangements in the best interests of the child.

Division 2 - Understanding How to Use These Rules

For the benefit of self-represented litigants, this Division describes what issues can be addressed under these Rules and what issues must be addressed under a different process. This division provides a guide to which Parts apply in specific registries.

As resources currently only enable phased implementation, this section will indicate which registries have been designated as early resolution registries, registries where family management conferences are in place, registries designated as family justice registries (current Rule 5) and registries designated as parenting education program registries (current Rule 21).

To introduce consistent practices and to address the problem of having multiple court files for the same family in different court registries, the proposed Rules provide more detailed direction on where initiating documents are to be filed. If the case concerns a child, then the parties file in the court registry closest to the location where the child lives. If there is no child related matter, the person who files the initiating documents must file in the registry closest to their residence. This will help to ensure that in cases concerning children, the applications are brought in the location closest to where much of the information about the child is likely to be located. Similar to the existing Rule 2(2), where there is an existing order or filed agreement the application is to be filed in the same registry, the proposed Rule extends the requirement to any application, not just applications respecting an existing order or agreement.

The proposed Rules also specify that if a person other than the parties in the existing family law case (e.g. a grandparent applying for contact with a child) is making an application, then the application is to be filed in the same registry, but in a new file. Further, the court may grant permission for an application for a protection order or extraordinary parenting matter to filed in another registry. The proposed Rules are intended to ensure the court is aware of all files relating to the family, while preventing the complications that arise when another person (like a grandparent or other relative seeking contact) is also made a party to the primary court file.

Discussion Questions:

1. Do you have any general feedback on this Part?
2. Extraordinary parenting matters is a new defined term. The working group considered defining these matters as “urgent” but recommended the language of “extraordinary” as these are matters that are not usual matters in dispute. There are mechanisms described in Part 6 Case Management orders around requesting short notice and without notice orders and requesting leave to dispense with process or timelines.

3. Does the language “extraordinary parenting matter” adequately describe the time sensitivity and type of matter that should require the court’s immediate attention before parties go to assessment and/or mediation in an early resolution registry? If not, is there a better term?
4. The WG heard a possible concern around the requirement that applications need to be filed in the registry nearest to where the child resides or where the applicant lives.
   The concern raised is that access to either legal aid or affordable lawyers is difficult in some communities and filings are often done in the registry convenient to the individual lawyers. The majority of the WG felt the policy should be as proposed to avoid multiple proceedings and potentially conflicting orders but agreed to ask for feedback on this particular issue. Do you have any comments on the proposed Rule requirements on where to file?
5. The definition of “family violence” is one of the few definitions that are defined in the FLA and repeated in the Rules to recognize and emphasize the importance of the issue. Is this approach helpful?

Part 2 – Early Resolution Registries

Part 2 of the proposed Rules enables the early resolution aspects of the conceptual model. This Part resembles some of the Rules adopted for the Victoria early resolution and case management model that has been in place since May 13, 2019 in the Victoria Provincial Court registry operating under Current Rule 5.01. Based on experience in Victoria, some changes have been made to both the Rules and forms and are reflected in this draft.

Victoria and any additional early sites will provide key learnings for the model overall and 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. Over time and as resources are available, the number of designated registries will increase, with the intention being that eventually the model will be in place throughout the province. Because the WG did not want early resolution requirements to cause significant delay to parties, there is a need for increased investment in FJSD to handle the increase in client volumes that are anticipated in this model. Additional resources have been invested in the Victoria Justice Access Centre for the initial implementation.

The model builds on existing family justice services including assessment, mediation, and parenting education, but moves the referral to those services earlier in the process. While the FLA enables courts to order families into mediation, the WG observed that this happens very late in the process, often when parties are starting to entrench in positions and conflict.

Division 1 – Definition and Application to Early Resolution Registries

This division designates which registries will operate under this Part. When the new Rules come into force, Victoria will continue as an early resolution registry but under this Part rather than existing Rule 5.01.

Division 2 – Early Resolution Requirements

Before filing a family law matter claim (parenting arrangements (parenting responsibilities and parenting time), child support, contact with a child, guardianship of a child or spousal support), a person with a matter in the early resolution registry must (unless exempted),

(a) file a Notice to Resolve in Form 1 *[Notice to Resolve a Family Law Matter]*,
(b) provide a copy of the Notice to Resolve to the other person,
(c) attend a needs assessment under Division 4 of this Part *[participating in needs assessment]*,
(d) complete a parenting education program under Division 5 of this Part *[completing parenting education program]*, and
(e) participate in at least one consensual dispute resolution session under Division 6 of this Part *[participating in consensual dispute resolution]*.

The Model includes a process for seeking protection orders or orders about extraordinary parenting matters on a time sensitive basis. In those cases, a judge will hear those matters independent of the early resolution requirements and if there are outstanding family law matters, families proceed through the early resolution process once the urgent part of their matter has been dealt with. In addition to extraordinary parenting matters and protection orders, there are also some processes and orders that will not require early assessment or consensual dispute resolution: enforcement, relocation, and matters that are proceeding with the consent of both parties.

The Rule changes also introduce a case management order application (see Part 6), which includes things like short notice requirements and in some cases, a judge may determine a family law matter can proceed before the early resolution requirements are met.

Parties who do not comply with the early resolution requirements may not be permitted to file a claim or reply or counterclaim.

Division 3 – Notice to Resolve

Current Rules

The current initiating document to seek an order on a parenting issue or support issue requires parties to complete an application to obtain an order, with supporting financial and other documentation. It requires that parties state a position and attaches formalities (e.g. affidavits, service of documents) to the process at this early initiating stage.

Proposed Policy

The WG recommends a Notice to Resolve be filed with the court registry to signal the intention of one or both individuals to seek resolution of family law matters and to trigger the assessment process. The amount of information and level of detail required in the proposed notice is minimal by design. One of the criticisms articulated by users of the current Rules is that completing a detailed application like the current Forms 1 and 2 at an early stage requires parties to articulate positions before opportunities to resolve disputes by agreement have been fully explored. They may become entrenched in an adversarial perspective, making them less likely to explore CDR processes. It is also possible that parties have not received assistance in identifying issues and accurately documenting the relief they are seeking from the court which can also be one of the benefits of the assessment process. A notice that is simple to complete will also avoid saddling the assessment, information, and CDR portions of the process with the trappings of adversarial court-based processes. The proposal that the initial notice contain minimal information and that more detailed information be subsequently provided in a claim and schedules specific to the type of issue in dispute bears some resemblance to the *Supreme Court Family Rules* forms. Only the information that specifically relates to the claim being made is included in the Supreme Court Notice of Family Claim (and Counterclaim).

In some cases, all parties voluntarily engage in processes to resolve their family matters. However, in other cases the parties do not agree on the need to resolve issues, or one party is stalling and the party seeking resolution is unable to engage the other outside of a court process. A notice that is filed in the court registry is a mechanism to require the other party to respond and participate, operating as a trigger to initiate the assessment process. One of the findings from the user experience research and from evaluations informed by users of current services is that while they can compel parties to participate in an adversarial process, they have less ability to do so in a non-court process.

Under the proposed process, the court registry will immediately refer the party filing the Notice to a needs assessor.

The Notice, as well as the assessor, will advise the other party of their requirement to attend an assessment. The WG also felt it was important that the date the Notice to Resolve is filed should be used to indicate when court involvement was first requested. This is because of that date's potential importance in determining the appropriate start date for retroactive support and to preserve limitation periods.

The Notice to Resolve a Family Law Matter is Form 1. It contains a description of next steps for parties. It is also anticipated many parties will continue to use the services of Family Justice Centres and Justice Access Centres or the services of private mediators and collaborative law professionals voluntarily. If there is difficulty getting the second party to participate, then the Notice to Resolve can be used to compel a second party into the process where they would not participate voluntarily. In these cases, the FJSD staff will explain the Notice to the parties and assist them with the form if needed.

The proposed Rules also provide that in cases where a Notice is filed and then no further steps in the process are taken within one year, parties will be referred back to assessment before pursuing further steps with FJSD or the Court. This is because circumstances may have changed considerably and attending a needs assessment will help to ensure that the parties are now moving forward appropriately and that new dynamics and needs of families are considered.

Division 4 – Needs Assessment

Current Rules

While there is no assessment process required of all parties with family law disputes, those filing an application in one of four designated family justice registries[31] are required under current Rule 5 to attend an assessment and informational meeting with a family justice counsellor. The assessment process used with Rule 5 clients is the same comprehensive assessment completed by all clients accessing services through a Family Justice Centre or Justice Access Centre.

[31] Kelowna, Nanaimo, Surrey and Vancouver (Robson Square)

The FJSD assessment tool supports a multi-disciplinary response to people's family law related issues, providing for screening for family violence, level of conflict, mental health, substance abuse, financial/debt management, and issues related to the children. This is separate and distinct from the requirement under the FLA section 8 to assess parties for the presence of violence. The current Rule 5 positions assessment to occur after filing an application but before matters are set down for a hearing. A recent internal client survey of the program suggests that more can be done to compel a second party to participate in assessment.

A 2002 evaluation of Rule 5 concluded that the process helps to divert cases from court and better prepares parties who do go on to court by educating them, clarifying and narrowing the issues and defusing emotions.

Since then, the use of early needs assessment in the family justice system has been increasingly supported in justice access reports, in academic literature and in the BC Family Justice Summit report.[32] A process that identifies parties' issues and considers which dispute resolution process is best suited to resolve those issues is considered critical in ensuring that families obtain the appropriate processes, services and outcomes. In the proposed model, early needs assessment is pivotal to the model's capacity to assist families to identify their needs and issues at an early stage to direct them to non-adversarial processes that support early dispute resolution. It is also critical to ensure parties are not being directed into mediation where it may not be appropriate.

Proposed Policy

Under Division 4, in an early resolution registry, each party will be required to complete an assessment conducted by a needs assessor (a family justice counsellor) before proceeding to court to ask for a court order, unless they are making an application that does not trigger the early resolution requirements (protection order, extraordinary parenting matter, enforcement, consent, case management or applying to prohibit a relocation).

As discussed under Part 1, definitions, "needs assessor" is defined as a family justice counsellor. The reason for this is as follows: unlike advocates or lawyers who are representing one party, the assessment process is based on meeting with both parties. The WG felt that the process should be publicly funded and that the service should be provided by trained professionals whose training and continuing education requirements are supervised and who use a consistent and validated assessment tool.

[32] Justice Summits are held at least once a year, encouraging innovation, collaboration and frank discussion between justice system leaders. The 3rd Justice Summit Report of Proceedings (May 4-5 2014) includes recommendations for early needs assessment/triage and referral. British Columbia Justice Summit, "Report of Proceedings" (2014) at 3. Accessed at: https://www.justicebc.ca/app/uploads/sites/11/2016/03/ThirdSummitReport.pdf.

After reviewing the educational requirements[33] and screening tools[34], the WG proposes that assessments will be done by FJSD and that assessment be a first step rather than mediation so that parties can be interviewed individually by a family justice counsellor to determine appropriate referrals and next steps.

It was recognized that under the current FLA, there is the ability for the court to order parties into mediation, but it was observed that the time constraints and open court setting where both parties are present may mean the ability to fully explore suitability of mediation is limited. While there is increasing awareness and training on intimate partner violence amongst the bar and the bench, a number of reports point to limitations in assessing family violence. One report found there is often either no assessment or a limited assessment of either the nature and extent of the violence or the risk of future harm in the court environment. [35]

[33] Family justice counsellors are hired by FJSD with a variety of different background training and experience, but at minimum to apply they are required to have:

- Recognized undergraduate degree;
- Completion of 80 hours of conflict resolution courses (with mediation skills focus); and,
- A minimum of one year of recent work or volunteer experience in a directly related human service field (e.g., counselling, community service agencies, dispute resolution, court services, legal services, etc.).

FJCs are required to complete a 6 month post-employment training and practicum program that includes a thorough focussed program of courses through the Justice Institute of British Columbia as well as in office training and practicum experience. Following the post-employment training FJCs must successfully complete certification through Family Mediation Canada. Training related to family violence includes a dedicated 21 hour online course as well as content in other courses with relevant context (e.g. family violence as it relates to the role of the family justice counsellor, culture and family justice, court processes, and the impacts of separation and divorce on children). In addition to these FJCs also receive training specific to the assessment tool and process used by FJSD. Following initial training, FJCs are required to complete at least 20 hours of related professional development annually.

[34] FJSD has implemented the current assessment tool in a limited capacity in 2007 and has been using it consistently with all clients province-wide since 2011. The tool was developed in consultation with experts in the field, and implementation included several positive evaluations. The tool includes a questionnaire completed separately with each party and reviewed during individual assessment interviews with the family justice counsellor. The questionnaire addresses: management of conflict, family violence, financial/debt management, substance use and mental health as well as issues related specifically to the child. In addition to the questionnaire, the tool also contains additional resources for family justice counsellors, including many additional probing questions and approaches used to gather a fulsome and holistic understanding of the circumstances and a scoring guide to assist with making a determination about the suitability of mediation based on the results of the assessment interview. In addition to the initial assessment family justice counsellors continue to assess for issues related to safety, family violence and power imbalances throughout the delivery of services. If concerns arise at any time the family justice counsellor responds accordingly and may shift or terminate the process.

[35] Donna Martinson and Jackson, M., "Judicial Leadership and Domestic Violence Cases – Judges Can Make a Difference" (2012) at 23. Accessed at http://fredacentre.com/wp-content/uploads/2010/09/NJI-Final-Judicial-Leadership-and-Domestic-Violence-Cases.pdf

While it is recognized that the court has the continued ability to refer parties back into a variety of services, including mediation, the WG sees benefits to this early assessment service.

Assessments will be scheduled as soon as possible after being requested and may be conducted in person or by using phone or videoconferencing where appropriate. The length of the meeting with the assessor will vary depending on the needs and issues each party presents. There are resource implications to implementing a model that requires an assessment of each person who is party to a family proceeding in which a Notice to Resolve a Family Matter has been filed. While FJSD family justice counsellors currently conduct assessments with all of their clients, there are many parties who file family applications in the Provincial Court each year who are not FJSD clients. Additional resources will be needed to increase capacity to conduct assessments and as such implementation of this Rule is dependent on resources. Victoria's Justice Access Centre has increased its capacity for the prototype currently in operation.

The assessor meets separately with each party, providing information and referrals to each of them.

The assessor will:

- assist the parties in identifying their legal and other related issues;
- screen for family violence and urgency;
- provide information about dispute resolution options and family justice processes; and
- refer parties to further information, legal advice, and resources that may help families to address non-legal problems they are dealing with (e.g. debt, employment and disability, substance abuse problems, or mental health issues).

Based on the information acquired during both meetings, the assessor considers whether CDR is appropriate. CDR may be considered inappropriate for reasons such as risk of violence, power imbalance or another factor that cannot be adequately mitigated in the CDR process. The assessor explains to the parties what they need to do next to engage in the CDR process or a court-based process, depending on the outcome of the assessment.

FJSD has implemented an initial needs determination process as well as an assessment tool to assess suitability for mediation. It was developed in consultation with leading experts and was subject to evaluation. It is currently being reviewed to determine whether any modifications or updating is required based on experience, current practices and the changes to the Rules proposed in this paper.

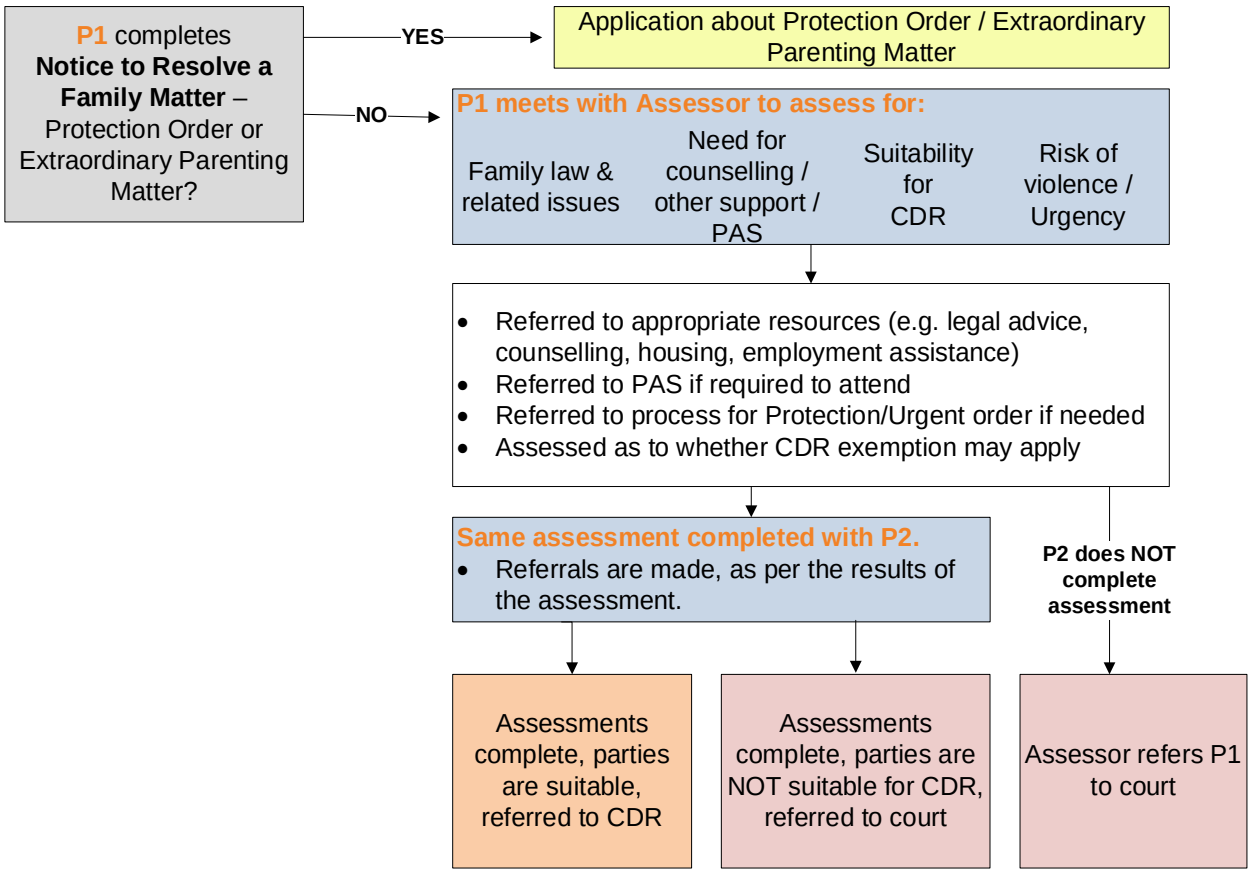
If there are issues of power imbalances, safety or family violence, the family justice counsellor will consider whether it is possible to adapt the dispute resolution process by creating sufficient safeguards to the mediation environment for all participants, or they may determine that consensual dispute resolution is not appropriate.

Feedback during some early engagement on this model suggested there are some misconceptions about the degree to which FJSD will assist parties where family violence has been identified or is considered a risk. FJSD takes a cautious approach when considering mediation by ensuring that both parties have the capacity and support to engage in a mediation process.

Whenever family violence and/or safety issues have been identified, family justice counsellors work with each party and make a determination about whether a careful process design can sufficiently mitigate the concerns (e.g. including support people, legal advice, shuttle mediation, caucusing, substantive safety planning) or whether the situation is not suitable for mediation. If a determination is made that mediation is not appropriate at that time, other supports are provided such as assisting families with information on community supports, assisting parties in obtaining protection orders and helping both parties generally with information on the court process.

The family justice counsellor will document completion of the needs assessment and can provide ongoing assistance to both parties. Where the other party is unreachable or unwilling to participate, the family justice counsellor will document that as well, so the initiating party can proceed with an application to court.

Below is a schematic of what is involved in assessment.



Division 5 – Parenting Education Program

Current Rules

Pursuant to Rule 21, parties with applications in 17 designated Provincial Court registries are required to attend PAS unless a specified exemption applies, or a judge grants an exemption or deferral. The Rule requires that at least one party attend PAS before a first court appearance date will be set, and both parties must attend PAS and file a Certificate of Attendance before the date of the appearance. Parties seeking an exemption may file the Form 31 Parenting After Separation Exemption Request. There are some automatic grounds for exemption (e.g. having attended PAS within the past 24 months) and in other cases a request for an exemption is decided by the PAS program administrator.[36]

Each party must complete a parenting education program unless they have done one within 2 years of filing the exemption request, the only matter at issue is spousal support, every child involved is over 19 or the party isn't able to access it due to geographic, literacy, linguistic, or technological unavailability or due to a serious medical condition.

The Ministry offers PAS through an online program. Online PAS is available to fulfill the mandatory requirement as well as being accessible for persons wishing to take PAS on a voluntary basis. PAS is free and available online 24/7 in English, Mandarin or Punjabi at www.familieschange.ca. Family Justice Services Division is currently reviewing its PAS program content.

In addition to the online PAS currently offered, FJSD has created an online version of PAS for indigenous families that will be hosted through the Justice Institute of British Columbia beginning in fall 2019. This course was guided in its creation by an advisory committee made up of indigenous representatives from family, community, and legal support organizations from across BC. This online version includes a section on domestic violence and addresses issues related to indigenous peoples in Canada, including colonization, and includes culture in parenting plans. It is a video-based course, accessible on smart phones, with options including audio or text only. Upon completion of this course, the party will receive their Certificate of Completion which they file with the court. The course can be taken where it is mandatory or voluntarily.

[36] Automatic grounds for exemption additionally include: a consent order under s.219 of the FLA is filed for this application, the application is for child support only and the person who has rights to child support receives Assistance under *the Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act* and has assigned those rights to government, the Ministry for Children and Families is one of the parties, this application is for a matter related to the *Interjurisdictional Support Orders Act*, or this application is for a mater related to the *Convention on the Civil Aspects of International Child Abduction* signed at The Hague on October 25, 1980. The following are exemptions that must be approved by the Program Administrator: there is no PAS session in their community and they have no electronic access to PAS, they are not fluent in English, they are incapable of attending due to a serious medical condition.

Proposed Policy

This proposed Part will expand the current Rule 21 to require parties in an early resolution registry with child-related matters to attend an approved parenting information and education program before filing a claim or reply (earlier than the current Rule requirement of before appearance), unless an exemption applies.

User feedback on the existing PAS requirement suggests that the exemption process functions well, although dissatisfaction is regularly expressed by parties whose only dispute is over support issues. Parties who do not have issues concerning guardianship and parenting arrangements find many aspects of PAS irrelevant to their situation.

There are some small differences between the existing Rule 21 and the parenting education requirement in the early resolution registries. Rule 21 currently requires completion by only one party before a first appearance date will be set. The second party is supposed to complete PAS before they can be heard, however this is difficult to enforce. Under this Part, both parties must complete PAS before they may file their pleadings (e.g. family law matter claim or reply). Exemptions to PAS are also clarified in the model, updating some of the language around inability to access the program or participate due to language barriers.

The requirement under this Part pertains to parenting education in an early resolution registry which is different from Part 8 of these Rules which applies to parenting education registries that are **not** early resolution registries.

Division 6 – Consensual Dispute Resolution

Current Rules

There are presently no Rules requiring parties with a family law dispute to participate in CDR before a court appearance in Provincial Court. In four designated family justice registries, Rule 5 of the *Provincial Court (Family) Rules* requires parties to meet with a family justice counsellor before setting a date for a first court appearance. The Rule 5 interview is not a mediation session. The parties may choose to participate in mediation with a family justice counsellor or another CDR process, but they are not required to do so.

Parties appearing before a judge in a first or subsequent appearance or at a family case conference may be ordered to participate in family dispute resolution, pursuant to the current Rules 6(3)(i), 6(5) or 7(4)(c). These Rules are used on a case by case basis to order parties who are already before a judge to participate in dispute resolution in the hope they resolve their issues outside of court.

Proposed Policy

A number of jurisdictions have introduced mediation as a process that parties must engage in prior to using the resources of the court.

The WG looked at Australia, North Dakota and took note of current developments in Saskatchewan and Manitoba where consideration is being given to requiring parties to engage in mediation, where appropriate.

This Part of the proposed Rules requires that, in early resolution registries, all parties who are seeking an order about parenting arrangements, child support, contact, guardianship or spousal support (family law matters) must attempt CDR prior to appearing before a judge, unless they are resolving all matters by consent or the assessor has determined they are inappropriate for participation in CDR. As discussed earlier in this Part, the assessment includes a comprehensive screening process for urgency, family violence and power imbalances, and other concerns that may signal to the assessor that a family law matter is not appropriate for CDR. Assessment has an immediate benefit to the parties by providing them with early information about the process, identification of non-legal needs and referrals to legal advice and appropriate community resources. If the needs assessor determines CDR to be appropriate, parties are required to participate in at least one CDR session, not inclusive of any preliminary preparatory meetings. This can happen in multiple ways. A family justice counsellor can mediate or (if the only issue is child or spousal support), a child support officer can lead a facilitated negotiation; both services are free of charge. Parties may also hire a private family mediator or participate in a private collaborative law process under a collaborative participation agreement. However, it is the responsibility of the CDR professional to further assess whether the particular CDR service provided is appropriate for a family. The CDR professional always has the discretion to determine or recommend when it is not appropriate for a family to begin or continue a CDR process.

The WG considered whether parties who participate in family arbitration or parenting coordination should be considered to have met the CDR requirement. The WG recommends that participation in a strictly adjudicative form of arbitration should not meet the requirement. The WG further recommends that participation in parenting coordination not meet the CDR requirement, as parenting coordination helps parties resolve disputes once there is already a parenting agreement or order in place.

The WG also deliberated on whether “Consensual Dispute Resolution” was the right term to use. This is a term used by the FRWG although its usage is broader in scope. The WG wanted to capture mediation, collaborative law processes, and facilitated negotiation by a child support officer, so it needed to find one term that captured these different processes. The WG deliberated on whether describing it as a consensual process meant that by definition it needed to be voluntary. However, the WG proposes this term because it best describes the consensual nature of the decision-making process in contrast to an adjudicative form of decision-making. The requirement is that parties attempt CDR, not that they reach agreement through the process.

Once the parties have participated in one "session", they may choose to continue the process to try and narrow or resolve their dispute or they may choose to file a court application. Parties that have participated in CDR prior to filing the Notice to Resolve a Family Matter will be considered to have fulfilled the CDR requirement and will not be compelled under the early resolution requirements to attempt CDR again for the same issues (note judges still retain authority to order parties back to CDR at any time).

Note also that Rule 17 does set out a requirement that if parties have not been engaged in any of the early resolution requirements for more than a year, they must participate in a new needs assessment.

The WG took note of the diversity of opinion on whether mediation is appropriate when family violence is present. Some individuals are of the view that families are screened out of mediation processes too often where, through adjustments to the process such as shuttle mediation, safety concerns can be managed which often cannot be managed in a court setting.

The BC Family Mediation Violence Against Women Project, a 2017 study, explored whether family mediation is safe and effective when there are concerns related to violence against women, through looking at strengths and weaknesses of current practices by family mediators.[37] While the results of the study were somewhat inconclusive, some key takeaways were identified as to how to effectively conduct mediation in situations where there has been violence against women. Most importantly, the study identified the need for consistent use of well-developed assessment tools and protocols for screening for violence to determine the suitability of mediation at all parts of the process. Additionally, the study discussed the need for mediators to be aware of and make use of alternative mediation models when violence against women is at issue, such as shuttle mediation, co-mediation, caucusing and videoconferencing. The study also underscored the critical need for mediators to avoid re-victimization of survivors of violence as a result of the mediation process, and to be able to appropriately refer women to resources and counselling that are accessible to them.[38]

Even if parties are deemed suitable for CDR in assessment, ongoing screening occurs in the CDR process around dynamics, family violence and power imbalances. Families change over the course of trying to resolve their issues. Innovative mediation practices have evolved for dealing with power imbalance and family violence in cases that do proceed to mediation.[39]

Many people feel that if structural adjustments *safely* allow victims[40] of family violence to take part in the CDR process, those individuals should be able to choose to utilize the service.

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[37] Kamaljit K. Lehal, Fitzgerald, A., Kaur, H., Nellani, S., and Sainty, K., "The Exploration of the Effectiveness of Current BC Methods of Family Mediation in cases of Violence against Women and Lessons to be learned from Other Jurisdictions Models (BC Family Mediation VAW Project)" (2017). Accessed at http://www.saintylaw.ca/wp-content/uploads/2019/03/3b1b43_9ce59534c0524c1688664258e08c76a1.pdf.

[38] *Ibid* at 9.

[39] Semple, *supra* note 14 at 228, 229

[40] Victim is used here and throughout this paper, however survivor may be a more accurate term.

The definition of family violence is broad and captures a range of behaviours and dynamics. In some situations, the nature of family violence may make it difficult for parties to work in a co-operative and consensual way to resolve disputes.

The WG determined that assessment was a critical step in the early resolution requirements in order to assess the circumstances and capabilities of parties in determining whether they are suitable.

Other jurisdictions with a mandatory CDR requirement have demonstrated success with on-going screening and referral back to court where CDR is attempted. In Australia, evaluation demonstrates that CDR practitioners are responsive to dysfunctional behaviours, including the fear of a party during a session, and practitioners issue certificates accordingly (certificates move the case to the court system and end family dispute resolution).[41]

Mediation can potentially save parties from heavy individual costs (financial and emotional) that result from going to court, and the process can provide a more constructive, respectful dispute resolution experience when compared to the adversarial nature of court processes. CDR is an empowering process because the goal is for parties to achieve self-determination. The parties do not have a decision imposed on them. Self-determination distinguishes mediation from most other third-party approaches to conflict resolution and explains why even if attendance at a session is mandatory, the benefits remain. It provides a constructive environment in which co-operative bargaining and consensus decision making are possible.[42]

Because the exchange of information is so important to both an effective CDR process and a court hearing, families will also be required to exchange financial information early in the process. All financial and other disclosure requirements set out in the Rules and the FLA must be met, to encourage early resolution, narrow the issues, and ensure parties are prepared before appearing before a judge. The WG had a discussion on the topic of whether there should be a universal form prescribed for financial disclosure, not just for the court process but also for the mediation or collaborative law processes. The reason in favour of that approach is so that users are not asked to fill in multiple and potentially different forms of financial disclosure. On the other hand, it was recognized that mediation and collaborative law processes often occur on a voluntary basis or before parties have initiated any court proceedings so the ability of the Rules to regulate how those processes are conducted is limited.

[41] Kaspiew R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & The Family Law Evaluation Team, "Evaluation of the 2006 family law reforms", Melbourne: Australian Institute of Family Studies (2009), ["Evaluation of the 2006 Family Law Reforms"]. Accessed at https://aifs.gov.au/sites/default/files/publication-documents/evaluationreport.pdf.

[42] Field, Rachael, *FDR and victims of family violence: ensuring a safe process and outcomes,* Australasian Dispute Resolution Journal, 21(3). Accessed at https://eprints.qut.edu.au/42787/1/42787.pdf.

The recommendation in this paper is that financial information must be provided in the form required by the CDR professional which does not necessarily have to be the same as Form 4 under these proposed Rules. The WG agreed to canvas this question in this discussion paper.

The WG also acknowledges that the availability of CDR services varies across the province. This disparity has lessened in recent years as distance mediation services continue to expand, however, the reason for the staged implementation of this model is to ensure that mediation services are publicly funded just as the court system is.

It will take time and investment to ensure that the existing network of publicly funded mediation services (through FJSD) can meet increased volumes that are expected from this model.

Division 7 – Requirements Before Filing

The requirements for this Part must be met before a party can file a family law matter claim or a reply or counterclaim to a family law matter claim. If the assessment, parenting education and CDR requirements have not been met, a party will be unable to file their pleadings (e.g. family law matter claim or reply) without leave of the Court. However, if one party is willing to participate in CDR and the second party refuses to participate, the willing party will be able to proceed to file a court application and the Rules provide for the court to hear the matter in the absence of the other party.

Discussion Questions:

1. Do you have any general feedback on this Part?
2. The Rules require that financial disclosure in mediation be determined by the family justice dispute resolution professional. The WG was concerned that prescribing a particular form of financial information would impact practices of mediators and collaborative professionals who customize their own tools for their practices and for the particular needs and circumstances of their clients. As well, these processes often are initiated outside of court without anticipating that court may be part of their process. Should meeting the CDR requirement include a requirement that the financial disclosure in CDR be in Form 4 under these Rules?
3. Is “Consensual Dispute Resolution” an appropriate term and if not, do you have another suggestion?

Part 3 – Family Law Matter Claims

Current Rules

Under the existing Rules, an application to obtain is often the first step a party takes to seek resolution of a family law issue in Provincial Court. Parties are often confused as to when to use the application to obtain, the application respecting existing orders or agreements, or the notice of motion, and report delays and frustration when the wrong process is used. When the application to obtain is used to apply for a protection order, the process for filing, serving, replying and then scheduling a court appearance, is rarely followed, as the process is not suited for these time-sensitive applications. Further, the application to obtain does not support exploration by the parties of the specific orders they are requesting from the court. The process requires a certain level of sophistication and legal knowledge that is often missing at this early stage.

Proposed Policy

A Rule and form regarding a "Family Law Matter Claim" specific to obtaining orders on parenting arrangements and support is proposed. "Family Law Matter Claim" was chosen because it references a defined term "family law matter". As well it is distinct enough from the names of any other forms to reduce the possibility that a party might use the wrong form. For example, there is no other claim in the Rules, and in the Small Claims or Supreme Court Rules, there is no other family law matter claim. This important distinction will assist court users in conversation with legal service providers as they navigate through the justice system and ensure they are using the appropriate form.

In early resolution registries, the parties must have met the Early Resolution Requirements under Part 2, unless exempt, in order to file the claim or a reply. This ensures that there is a way for the court to have both parties exposed to the early resolution requirements and there is incentive to comply with the requirements. In early resolution registries if parties are proceeding to court, once they have met the early resolution requirements, they will then complete this application for a family law matter order. In registries where the early resolution processes under Part 2 are not required, the family law matter claim will be the initiating document to request an order on family law matters.

Division 1 – Applying for Family Law Matter Orders

The WG proposes the application to obtain be replaced by a number of subject specific applications. Applications regarding family law matters as defined in Part 1 include parenting arrangements (parenting responsibilities and parenting time), child support, contact, guardianship, and spousal support orders. These applications will be sought using a Family Law Matter Claim (Form 3).

The proposed Family Law Matter Claim (Form 3) combines the existing application to obtain an order and application respecting existing orders or agreements.

It is used to apply for a new family law matter order, changing or cancelling all or part of an existing order or to set aside or replace all or part of an agreement.

The use of a single form allows a party to customize their claim to their needs by completing only the applicable schedule(s). Each schedule takes a party through guided questions to present key information needed to assist in decision-making, and to articulate the orders they are seeking from the court.

Note that applications for orders that are not about family law matters, including protection orders and extraordinary parenting matters, are made using different Rules and forms (see Part 6 Applying for Other Orders).

The family law matter claim must be accompanied by applicable documentation, which may include a financial statement, guardianship affidavit or other supporting evidence or documents. The proposed Financial Statement in Form 4 has been revised from the existing Financial Statement. The proposed Financial Statement is more tailored to the information that parties need to provide depending on their specific claim. Additional changes include moving information regarding section 7 expenses from the financial statement to the relevant schedule of the claim form, collapsing some of the expense categories, and removing expenses for medical services premiums from the Financial Statement.

Service requirements are set out in Rule 30. A notable difference is that the time to file a reply has been shortened to 21 days to reduce delay for those families that are proceeding to court. A party may apply to the court for an order to modify the time to reply, as required; however, it is expected that because the model is premised on there being more support and help available to parties that the time is appropriate. It was also felt that 21 days was easier for users in that it could be calculated in weeks.

Division 2 – Family Law Matter Replies and Counterclaims

The Reply To A Family Law Matter Claim in Form 6 allows a party to agree with one or more of the orders applied for in the family law matter claim, disagree and propose order terms they would agree to, or to include a counterclaim for an order about a different family law matter that was not included in the family law matter claim.

A new form is proposed specifically for filing a Reply To A Counterclaim (Form 8). The form will restrict a party to agreeing or disagreeing with the counterclaim and proposing order terms they would agree to through relevant schedules.

Discussion Questions:

1. Do you have any general feedback on this part?
2. Do you agree that 21 days is the appropriate time under the proposed Rules to file a reply?
3. Is the approach of using schedules which may apply to the claim more helpful and easier for users than a single long form?
4. Is there a better name for these applications and forms other than “Family Law Matter Claim” or Family Law Matter Replies and Counterclaims?

Part 4 – Family Management Conferences in Case Management Registries

Current Rules

The current *Provincial Court (Family) Rules* do not include a coordinated case management approach but do include a number of disparate features that may have some characteristics of case management.

Currently a first appearance before a judge is a central process under the Rules as it serves a triage role. The registry clerk will set a first appearance date upon a Reply being filed or at the request of the applicant if no Reply has been filed and it has been at least 30 days since the application was served. There is a range of things the judge may do at a first appearance, including ensuring financial disclosure, giving directions on procedural matters, and making substantive interim orders for parenting arrangements and support.

Feedback from the user experience research demonstrates that in many locations these first appearances and expected obligations on parties can be pressure points of confusion, frustration and delay. People are often required to appear and wait in court for a significant amount of time to accomplish scheduling tasks or be told to return to court on another date because there is insufficient time to deal with their matter. Parties frequently must return to court several times before a substantive decision is made. Self-represented parties with family matters in the Provincial Court express frustration because they are unsure what options they have, what procedural steps they need to take, and when things are supposed to happen. They often do not know which documents they need to file, or how to complete the necessary forms. There are backlogs and delays; in some cases, initial appearances before a judge deal with administrative rather than substantive matters; and adjournments are often necessary because documentation in the court file is incomplete or missing.

The WG acknowledges that the practice regarding the first appearance is uneven throughout the province. Some registries can accomplish meaningful tasks the first time that parties attend and in other instances high volumes and caseloads prevent those outcomes during the first appearance.

Under the current Rules all of these hearings are conducted by a judge. In some instances, judges are hearing matters such as adjournments, setting dates or ordering disclosure.

Proposed Policy

The WG believes that case management, particularly at an early stage, increases the chances of settling substantive and procedural matters and has the potential to reduce the costs associated with lengthy proceedings. This Part introduces a new form of a first appearance – the Family Management Conference (**FMC**). The WG envisions that this conference works best in conjunction with an early resolution registry. In Victoria, a prototype is operating under existing Rule 5.01 that has aspects of both Part 2 (early resolution registry) and this Part (case management).

However, it is acknowledged that to give maximum flexibility there may be instances where the resources are not available to designate a registry as an early resolution registry but there may still be value in implementing a different approach to early court case management.

Under this Part, the WG considered some of the following specific project objectives to ensure:

- 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;

The WG looked to examples in other jurisdictions and BC's own Supreme Court use of masters in considering whether the new model for resolving family disputes could include someone other than a judge making procedural, administrative or interim determinations that often are before judges in the current first appearance process. The WG took note of the examples in both New Brunswick and parts of Ontario where family masters are used to address administrative, procedural and interim matters.[43] The WG recommends exploring the use of judicial officers who, in some registries, could assist with helping files achieve a ready state and provide users with relief in a timelier way. Additionally, case management using non-judge resources has the potential to increase capacity for judges to deal with family settlement conferences (formerly family case conferences), hearings and trials.

The proposed Rules allow for the possibility that in the future a family justice manager could be appointed who would be a non-judge to manage some of these matters to create capacity for judges to deal with more substantive matters. The definition of "family justice manager" means a person appointed as a decision maker under section 215 *[changing, suspending or terminating orders generally]* of the *Family Law Act* to carry out duties under these proposed Rules. In the future this could be a judicial justice or other decision maker with family expertise appointed under the *Provincial Court Act*.

The WG recommendation is that the family justice manager be a judicial officer and that its jurisdiction would be slightly more limited than a judge. The proposed jurisdiction is a discussion question in this paper and the current proposal reflects a balancing of multiple objectives including: responding to parties in a timely way, creating capacity for the court for hearings and trials and preserving the appropriate jurisdiction of a judge in making final substantive orders.

[43] Ontario Family Law Rules, Rule 42 – Appointing of Family Case Manager in the Family Court of the Superior Court of Justice in Ottawa, gives authority to a Family Case Manager. *Ontario Family Law Rules,* O Reg 114/99 at Rule 42. Accessed at https://www.ontario.ca/laws/regulation/990114.
In New Brunswick Case Management Masters have authority under section 56.2 of the Judicature Act. *Judicature Act,* RSNB 1973, c J-2 at s.56.2. Accessed at http://laws.gnb.ca/en/ShowPdf/cs/J-2.pdf

At the same time, it was envisioned this role would help to address urgent matters and assist parties to achieve readiness for a hearing before a judge. In reviewing qualifications in some of the other jurisdictions the WG is contemplating that a family justice manager would be a lawyer with a minimum of 10 years experience in family law and qualified as a mediator and arbitrator under the FLA.

This will ensure that the family justice manager has the essential family law expertise, familiarity with the family court system, and the skills needed to help families move towards resolution and to make procedural and interim determinations where necessary. This is not specified in the Rules but gives context for what the WG's vision of the role is.

There was some concern that not all registries would benefit from such a role and it might introduce delay or duplication. Because a judicial justice is appointed for a 12-year term, and to determine whether this might be a workable role and achieve the intended outcomes, the WG and the Steering Committee have recommended a prototype of the role before such an appointment is made. In Victoria, the FMC is being prototyped and evaluated to determine what benefits and possible costs are associated with conducting a more active case management first appearance and to also determine the benefits of a non-judge performing the role. For purposes of the prototype, judges are conducting the FMCs with authority similar to Division 4 below but are tracking issues that would have been out of scope if a non-judge had conducted the conference.

Division 1 – Application and Purpose

The FMC will take the place of first appearances and will be conducted by a judge or a family justice manager, if and when one is appointed. An FMC is a scheduled, informal opportunity for all parties to the family law matter claim (and their counsel, where applicable) to meet with a judge to further identify and clarify the issues and options for resolution as well as preparing the parties for next steps.

Division 2 - Scheduling the Family Management Conference

How scheduling occurs is not specific in the Rules and will be dictated by the circumstances of each registry. In Victoria, unlike current practice where first appearance is set one day a week regardless of party availability, the FMC is scheduled by the judicial case manager using email or other contact information to achieve a conference date with the input of parties and their counsel. This is intended to avoid adjournments because of missed appearances and use the conference time for substantive outcomes. In Victoria, a limited number of matters are scheduled during the same "block" of time. Where duty counsel are available to provide assistance to parties who qualify for services, they will be able to attend FMCs as they do with first appearances. In Victoria, duty counsel has worked with the registry and judicial case manager to develop a workable schedule for the FMCs. An FMC can be scheduled if no reply is filed and orders can be made if a party does not attend.

Division 3 – Attendance and Procedural Matters for Family Management Conference

At the FMC, parties can be required to provide information from their claim, reply, counterclaim or financial statements or other supporting documents. Evidence may be given orally or by affidavit and submissions may be offered by the parties or their counsel. The judge can also direct a party to do things like attend CDR or a family settlement conference (previously a family case conference), return for another FMC or to attend a trial preparation conference, hearing or trial.

If a party previously reached the stage where a family law matter claim was filed, but no final order was issued and no further action pursuant to the Rules was taken within a year, the process can be resumed by filing a Notice of Intention to Proceed and participating in an FMC.

The Victoria prototype will be an opportunity to learn how to best implement the FMC, and tailor the details of the process based on the results. At this point however, the FMC is anticipated to incorporate the following characteristics:

- On record – Although it is envisioned that an FMC will be less formal than a court hearing, there will be evidence called and decisions made. Therefore, there is a need to keep a record regarding at least the portion of the conference dedicated to adjudication.
- Public hearing – A FMC will be a "public" hearing in the same way as current family court processes are public. However, the expectation is that rather than "list days", parties will be given a time and place where there are fewer parties attending specified blocks of times.
- Sheriff presence – A FMC will require there be a sheriff presence attached to the conference even if it is a roving sheriff.

Division 4 – Family Management Conference Proceedings Before a Judge

At an FMC, the judge can make interim or final consent orders regarding allocation of parental responsibilities, parenting time, contact with a child, child support, spousal support or guardianship of a child. The judge may also order a party to complete early resolution or other registry specific requirements under Parts 2, 7 and 8. As conduct orders often assist in facilitating settlement or managing behaviours that might frustrate the resolution of a family law matter, conduct orders under the *Family Law Act* can be made at an FMC.

Parties may also be required to attend an FMC if they are not making a family law matter claim but are requesting certain types of orders identified in Part 6 (Applying for Other Orders), for which it is anticipated that additional case management would be beneficial.

At an FMC, a judge may make an order, including final orders, in the absence of a party. A judge may also change, suspend or cancel an order made in absence of a party for good reason or if that party applies within a reasonable time for a change, suspension or cancellation of the order using Form 9 *[Application for Case Management Order].*

Division 5 – Family Management Conference Proceedings Before Family Justice Manager

This Division sets out what the authority of a family justice manager would be under an FMC when and if they are appointed. Essentially, they can make the same orders as a judge under Division 4 with the following exceptions: a final substantive order, an interim guardianship order, an order changing or suspending an order of a judge, and specific conduct orders. A family justice manager could change or suspend an order of a family justice manager but not a judge.

The WG distinguished final orders and interim guardianship orders as reserved for the authority of a judge to preserve some formality to a final order and, in the case of interim guardianship, because of the legal importance of being assigned guardianship status.

It should also be noted that decisions of a family justice manager can be reviewed by a Provincial Court Judge. A party must seek leave of a judge to ask for a review of a family justice manager order. A review is only to be granted if the order or direction conflicts with any other order or direction pertaining to the parties, is incorrect or the proposed review involves matters of sufficient importance. Sufficient importance is intended to define a different test than the test under the FLA of whether evidence of a "substantial nature" has become available when considering changes to an interim order.

Currently, section 216(3) of the FLA allows an interim order to be changed, suspended or terminated only if there is a change in circumstances since the interim order was made or evidence of "a substantial nature" became available that was unavailable when the interim order was made. Amendments have been made to section 216(3)[44] of the FLA to ensure reviews of interim decisions made by FJM's can be conducted by a Provincial Court Judge.

Discussion Questions:

1. Do you have any general feedback on this Part?
2. Do you agree that there are benefits to having a judicial officer make some orders that are currently solely made by judges? Is there anything that should be added or removed from the scope of decision-making authority of a family justice manager?
3. Is "sufficient importance" the appropriate bar for a judge to review reviewing an order or direction of a family justice manager?

[44] *Family Law Act*, SBC 2011, c 25, at s 216(3). Accessed at *https*://www.canlii.org/en/bc/laws/stat/sbc-2011-c-25/latest/sbc-2011-c-25.html.

Part 5 – Readiness Hearings

Current Rules

Under the current Rules, a first appearance before a judge is a central process under the Rules as it serves a triage role. The registry clerk will set a first appearance date upon a Reply being filed or at the request of the applicant if no Reply has been filed and it has been at least 30 days since the application was served. There is a range of things the judge may do at a first appearance, including ensuring financial disclosure, giving directions on procedural matters, and making substantive interim orders for parenting arrangements and support.

As described under Part 4, the first appearance can be a source of frustration. There are backlogs and delays; in some cases, initial appearances before a judge deal with administrative rather than substantive matters; and adjournments are often necessary because parties or counsel are unavailable or because documentation in the court file is incomplete or missing.

Proposed Policy

Part 4 describes how the first appearance will be replaced in registries that are case management registries under the Rules. This Part has very close resemblance to Part 4 Case Management registry however, there are several distinctions. A readiness hearing is only conducted by a judge. An FMC can be conducted by either a judge or a family justice manager. The orders and proceedings of a readiness hearing bear strong resemblance to the orders a judge can make under an FMC.

In practice, the distinction between a readiness hearing and an FMC may be a difference in scheduling. As well, it is intended that a FMC is an opportunity for more active case management – FMCs are implemented in registries where either there is an early resolution requirement which is expected to result in attrition of cases, where an additional role has been added to the court such as a family justice manager to handle much of the administrative and procedural work or where a registry might be able to manage larger blocks of time to give more time to the conferences.

The WG considered that an FMC would work in conjunction with an early resolution registry so that parties having completed all the applicable first steps (e.g. assessment, CDR, PAS) before filing an application for a court order and proceeding into a court-based dispute resolution process. In non-designated registries, assessment and CDR will not be required of parties (although some may participate in these processes voluntarily). As a result, many parties will not arrive at their first court appearance with the same level of information about their family law issues, understanding about their interests, or familiarity with the court process and their dispute resolution options. As often happens with first appearances now, there may be problems with parties' court documents, and uncertainty about next steps.

The proposed Rules try to address these issues by introducing readiness hearings, improving upon the current first appearance hearing even though many parties will not have had the benefit of assessment and CDR. As registries move from non-designated status to designated early resolution registries, all the early resolution requirements will apply, and the readiness hearing will be replaced with the FMC.

Similar to how the FMC is structured, registries will determine how they schedule readiness hearings. A readiness hearing can be scheduled if no reply is filed and orders can be made if a party does not attend. Evidence may be given orally or by affidavit and submissions may be offered by the parties or their counsel. The judge can also direct a party to do things like attend consensual dispute resolution or a family case conference, return for another readiness hearing or to attend a trial preparation conference, hearing or trial.

If a party previously reached the stage where a family law matter claim was filed, but no final order was issued and no further action pursuant to the Rules was taken over the course of a year, the process can be resumed by filing a Notice of Intention to Proceed and participating in a readiness hearing.

At a readiness hearing, the judge can make interim or final consent orders regarding allocation of parental responsibilities, parenting time, contact with a child, child support, spousal support or guardianship of a child. As conduct orders often assist in moving parties towards readiness or de-escalating matters, conduct orders under the *Family Law Act* can be made at a readiness hearing.

Parties may also be required to attend a readiness hearing if they are not making a family law matter claim but are requesting certain types of orders identified in Part 6, for which it is anticipated that additional case management would be beneficial.

At a readiness hearing, a judge may make an order, including final orders, in the absence of a party. A judge may also change, suspend or cancel an order made in absence of a party for good reason or if that party applies within a reasonable time for a change, suspension or cancellation of the order using Form 9 *[Application for Case Management Order].*

Discussion Questions:

1. Do you have any general feedback on this Part?
2. The Rules that pertain to the Family Management Conference as conducted by a judge and the Readiness Hearing have a number of similarities. The primary difference is how these hearings are scheduled, the longer allocations of time to the FMCs and the possibility that an FMC can be conducted by a family justice manager, not a judge. Is it valuable to have these two Parts separated and named different things or should they both be called FMCs acknowledging that scheduling practices will vary across registries?

Part 6 – Applying for Other Orders

This Part addresses applications for orders other than "Family Law Matters". Each of these orders has its own process and forms.

Division 1 – General

Part 6 sets out the Rules for applying for orders other than orders requested as part of a Family Law Matter Claim (Part 3). The orders included in this Part are matters that have been identified as not appropriate for the early resolution process or family law matter claim process, due to either the nature or urgency of the order sought.

Division 2 – Case Management Orders

This Division outlines the various case management orders that a judge or a family justice manager can make. Case management orders can be made at an FMC as described in Part 4, a readiness hearing as described in Part 5 or at any other time in a proceeding. It includes orders such as: waiving or varying requirements under the Rules including early resolution requirements, adding or removing a party to the case, or correcting or amending a filed document.

Current Rules

Rule 12 of the current Rules provides a Notice of Motion process for requesting orders or directions similar to those contemplated by this new process. Current Form 16 contains a list of specific orders that may be requested. The Rule provides for evidence to be provided orally, on oath or affirmation, or by affidavit to be filed in support of the motion. Although not explicit, the Rule also allows for a judge to order a matter to be heard without notice to the other party and allows judges to proceed if a party does not appear.

Notice of Motion matters are typically scheduled for hearing on list days along with first appearance matters. Although scheduled to be heard on the date assigned, Notice of Motion matters may be re-scheduled or scheduled for a further date if it is anticipated significant time will be needed to deal with them.

There are several concerns about the use of the current Notice of Motion process in some registries:

- numerous interim applications are being made by Notice of Motion in some files, making it difficult to track and ascertain whether there are outstanding issues; and
- the Notice of Motion process is sometimes used to obtain final orders more quickly than scheduling the matter for trial. Here, a Notice of Motion is filed requesting an interim order and then evidence is led and the matter is conducted as if it were a trial. This leads to lengthy "interim" hearings.

Proposed Policy

The WG recommends that the Rules include specific processes and forms for the orders being sought rather than one Notice of Motion form.

This Division describes case management orders and the corresponding Forms associated with this Division are Forms 9 and 11. These orders are intended to capture procedural matters and orders that are necessary for a case to ensure readiness at a hearing or trial.

This Division applies to all registries. In case management registries where there is a family justice manager, that manager can make only a subset of the case management orders that a judge can make. The following table compares where there are differences in the authority between a judge and a family justice manager. There was considerable discussion around how much authority to give the family justice manager and the recommendation of the WG is that the types of case management orders a family justice manager can make should be procedural and administrative and that there is a category of decisions that only a judge should make. The WG agreed to ask about this scope of authority in the discussion paper.

Judge	Family Justice Manager
transferring a court file to another registry for all purposes or specific purposes;	transferring a court file to another registry for all purposes or specific purposes;
adding or removing a party to a case;	
settling or correcting the terms of an order made under these rules;	settling or correcting the terms of an order made by a family justice manager under these rules;
setting a specified period for the filing and exchanging of information or evidence, including a financial statement in Form 4 *[Financial Statement]*;	setting a specified period for the filing and exchanging of information or evidence, including a financial statement in Form 4 *[Financial Statement]*;
correcting or amending a filed document, including the correction of a name or date of birth;	correcting or amending a filed document, including the correction of a name or date of birth;
requiring that a parentage test be taken under section 33 *[parentage tests]* of the *Family Law Act*;	requiring that a parentage test be taken under section 33 *[parentage tests]* of the *Family Law Act*;
specifying or requiring information that must be disclosed by a person who is not a party in a case;	specifying or requiring information that must be disclosed by a person who is not a party in a case;
adjourning a conference, hearing or trial;	

requiring that a person who prepared a report under section 211 *[orders respecting reports]* of the *Family Law Act* attend a trial as a witness;	
respecting the conduct and management of a case, including pre-trial and trial process and evidence disclosure, as set out in rule 126 (2) (c) of these rules;	
appointing a lawyer for a child;	
allowing a person to attend a conference or hearing using electronic communication;	allowing a person to attend a conference or hearing using electronic communication, if the conference or hearing is to be heard by a family justice manager;
waiving or modifying any requirement related to service or giving notice to a person, including allowing an alternative method for the service of a document;	waiving or modifying any requirement related to service or giving notice to a person, including allowing an alternative method for the service of a document;
waiving or modifying any other requirement under these rules, including a time limit set under these rules or a time limit set by an order or direction of a judge, even after the time limit has expired;	waiving or modifying any requirement under Parts 1 *[Purpose and Interpretation]* to Part 4 *[Family Management Conferences in Case Management Registries]*, that is within the jurisdiction of a family justice manager, including any related time limit set by an order or direction of a family justice manager, even after the time limit has expired;
requiring access to information in accordance with section 242 *[orders respecting searchable information]* of the *Family Law Act*;	requiring access to information in accordance with section 242 *[orders respecting searchable information]* of the *Family Law Act*.
recognizing an extraprovincial order other than a support order.	

This Division also provides for a subset of the case management orders set out in this Division to be requested without notice to the other part(ies) or without attendance at court. Either a judge or, in case management registries, a family justice manager, may make such an order, depending on their authority over the substance of the matter. Any order made without notice must be served on the other party.

Division 3 - Protection Orders

Current Rules

Under the current Rules, there is no separate process or form to apply for protection orders.

Instead, parties tick a protection order box from a list of other things that may be applied for using the Form 1 Application to Obtain an Order. This is not a prominent field. There is a separate form of order for protection orders (Form 25), and as of November 2015 there is also an Affidavit of Personal Service of Protection Order. These facilitate filing the protection order in the Protection Order Registry and improve the ability of police and Crown Counsel to enforce breaches of protection orders. Changes to the protection order provisions in the *Provincial Court (Family) Rules* in November 2015 also require all protection orders be drafted by a court clerk unless otherwise ordered by a judge, permit a judge to designate someone else to sign a protection order on the judge's behalf, and clarify that protection orders shall not be served by the person applying for protection. If a protection order is required on an emergency basis outside of regular court hours, applications may be determined using the Emergency Family Applications After Hours judicial roster.

References to protection orders remain scattered throughout the Rules, notwithstanding recent amendments to improve the use of consistent terms and prevent delay in filing protection orders and sending them to the Protection Order Registry.

Proposed Policy

The WG recommends a stand-alone Division and Form for Protection Orders. This Division reiterates that applications about protection orders can be made before complying with any requirements on parties before they apply on other orders (e.g. early resolution requirements under Part 2).

The proposed Rules consolidate all provisions concerning protection orders within a single division and introduce a new application form that is to be used specifically when the applicant is applying for a new protection order, or to change or terminate an existing protection order. All necessary information will be captured on the application form and an affidavit. The Application for an Order Without Notice to the Respondent Checklist (the "green form") that is currently used to provide information about the parties, any children, and other information pertinent to a protection order application will be retired.[45] The proposed Rules clarify that evidence may be provided by affidavit or oral testimony, and that the application may be made without giving notice to the other party. When a protection order is made, the registry will continue to draft the order, unless the judge orders otherwise, and provide a copy to the Protection Order Registry. Under the proposed Rules, the registry will also draft an order and send it to the Protection Order Registry when a protection order is terminated.

Finally, the proposed Rules explain how the respondent is to be provided with a copy of a protection order, depending on whether they are present in court when the order is made.

The consolidation of the protection order provisions responds to user feedback that the current protection order Rules are scattered, making them difficult to find and use.

[45] This is a Court Services Branch administrative form, ADM 869, implemented June 2016. It is to be completed in any application made without notice to the other party and is often called the green form because it is printed on green legal-size paper for ease of reference in the court file.

Similarly, introducing a unique form accompanied by detailed instructions on how to complete it will make protection order applications clear and user-friendly. The proposed Rules will fill a gap because orders were not being prepared to indicate when an existing protection order was terminated. This will make it very clear to police when an order has been terminated and assist in enforcing orders appropriately. The provisions around providing the respondent with a copy of the protection order reflect the registry's current practice of providing the respondent with a copy of a protection order if it is made and the respondent is not present in court but does reside in BC. In that case, the registry has been arranging for personal service of the protection order on the respondent using a contracted process server. If the respondent resides outside BC, the applicant is responsible for arranging service.

There was some feedback from organizations that assist individuals in obtaining protection orders that parties do not always understand that there is no limit on the number of times they may apply for a protection order. Although section 187 of the FLA states that nothing prohibits a person from making a subsequent application for a protection order, the proposed Rule 93 reiterates this within the body of the Rules.

As a result of feedback that was obtained from a user research study on protection orders conducted in 2014, a separate form will be used to make it easier to understand how to obtain a protection order. The form is currently being prototyped in Victoria and can be found at Form 12. Further, early testing of a web-based app for completing a protection order application is underway.

The usual service requirements are for 7 days notice, but an application can be made for shorter notice or no notice. The usual practice will be for court clerks to prepare the order and these Rules have formalized the practice of contracted process servers serving the protection orders where necessary.

Division 4 – Orders about Extraordinary Parenting Matters

Current Rules

There are no special processes that offer a distinct mechanism to obtain short-term relief for urgent family matters. Parties are required to work within the regular process and will sometimes try to circumvent some steps in an effort to obtain an order more quickly. Current Rule 20(2) gives a judge discretion to waive or vary the Rules, including to accommodate urgent circumstances, and Rule 20(3) allows a judge to make an order where the opposing party has not been served if the matter is urgent or special circumstances exist (e.g. without notice orders). Neither "urgent matter" nor "special circumstances" are defined.

Proposed Policy

There are situations where an order on one or more issues may be needed quickly, often on an interim basis until all of the family matters may be dealt with fully.

For example, an order preventing the removal of a child from a specified jurisdiction may be needed on an interim basis until parenting arrangements can be addressed.

There needs to be a way to deal effectively with truly urgent issues while disallowing parties whose matters are not urgent from inappropriately using a process intended for interim matters to make final determinations. Referring parties back to the mainstream resolution process to deal with any remaining, non-urgent matters will allow speedy determination of truly urgent issues while dissuading misuse of the expedited process and helping parties to realize the benefits of assessment and CDR processes in early resolution registries.

The WG has recommended a Rule and form for applying for orders about Extraordinary Parenting Matters. The Rule will replace the Notice of Motion process in part, while providing quick access to a judge for the parties that most need it. **"Extraordinary parenting matter"** (a defined term under Part 1 and repeated for reference) means any of the following matters:

- giving, refusing or withdrawing consent, by a guardian, to medical, dental or other health-related treatments for a child, if delay will result in risk to the health of the child;
- applying, by a guardian, for a passport, licence, permit, benefit, privilege or other thing for the child, if delay will result in risk of harm to the child's physical, psychological or emotional safety, security or well-being;
- relating to the removal of a child under section 64 *[orders to prevent removal of child]* of the *Family Law Act*;
- determining matters relating to interjurisdictional issues under section 74(2)(c) *[determining whether to act under Part 4 – Care of and Time with Children]* of the *Family Law Act*;
- relating to the wrongful removal of a child under section 77(2) *[wrongful removal of child]* of the *Family Law Act*;
- seeking an extraordinary remedy under section 231(4) or (5) *[extraordinary remedies]* of the *Family Law Act*;
- relating to the return of a child who has been wrongfully removed or retained under the Convention on the Civil Aspects of International Child Abduction signed at the Hague on October 24, 1980.

Parties can request orders about Extraordinary Parenting Matters at any time. The process for applying for orders about extraordinary parenting matters requires only 7 days notice. Under some circumstances, parties can also apply to be heard without notice, or with short notice. Evidence may be given orally on oath or affirmation or by affidavit.

Division 5 - Orders About Relocation

Current Rules

Currently, orders prohibiting the relocation of a child are made using the Notice of Motion process. There is not a specific application or form for this very specific application.

Proposed Policy

The process for applying for an order prohibiting the relocation of a child under section 69 of the FLA is new in these proposed Rules. It does **not** use the Notice of Motion process.

Applications for an order prohibiting the relocation of a child are to be made in Form 16 *[Application for Order Prohibiting the Relocation of Child].* The application and a copy of the existing order or agreement and the notice of relocation described in section 66 *[notice of relocation]* of the *Family Law Act* must be filed and served in accordance with this division.

Division 6 - Consent Orders

Current Rules

The current method for obtaining consent orders has been observed to be cumbersome and awkward. The amount of paper and process required for parties who have reached agreement to document that agreement is seen as inconsistent with the objectives of trying to encourage parties to engage in CDR processes.

Proposed Policy

The proposed process improves upon the existing process for obtaining consent orders. The process for applying for a Consent Order now requires only two forms: Form 17 *[Application for a Family Law Matter Consent Order]* and the draft consent order Form 18 *[Consent Order]* and any applicable additional documents described in Rule 27 *[additional documents when applying for certain orders].*

Consent orders may be made with a hearing or, on application, without a hearing. Note that the process distinguishes between consent orders for: Family Law Matters and Case Management.

The judge may give directions to obtain further information, require parties to speak to the matter, amend the draft consent order, and require the parties to attend to review and sign the changes or reject the application with reasons.

The process for applying for consent orders about case management has been simplified. If parties wish to speak to the matter (and obtain the order in a hearing) they only need to file Form 9 *[Application for Case Management Order]*. If they do not wish to appear before a judge, they only need to file Form 9 *[Application for Case Management Order]* and a draft consent order Form 18 *[Consent Order]*.

The clerk's responsibilities as part of the consent order process are set out in section 103. Section 104 sets out that a party can consent to an order at any time during a conference, hearing or trial.

Discussion Questions:

1. Do you have any general feedback on this Part?
2. Regarding Division 2 case management orders: In cases where a family justice manager may be making case management orders, is the authority described in the role appropriate?
3. Is eliminating the Notice of Motion process helpful? Why or why not?

Part 7 – Family Justice Registries

Current Rules

Under the existing Rule 5, there is a requirement in 4 registries (Kelowna, Nanaimo, Surrey and Vancouver (Robson Square)) that once an application is filed in one of those registries, before a date is set for a party to appear, the applicant must meet with a family justice counsellor. A respondent who has filed a reply is also to be referred to and is required to meet with a family justice counsellor. At any time after participating in their individual meeting with a family justice counsellor a party may request an appearance in court or seek a consent order.

Proposed Policy

This Part mirrors many of the requirements under Rule 5 but some of the language has been updated to refer to "needs assessment" which is also used in Part 2 [*Early Resolution registries*] to describe what will occur in the referral to a family justice counsellor.

Before attending a family management conference under Part 4 *[Family Management Conferences in Case Management Registries]* or a readiness hearing under Part 5 *[Readiness Hearings]*, parties seeking resolution of a family law matter must meet the requirements set out in this Part. As and when there are resources available to manage volumes expected by having suitable parties participate in consensual dispute resolution, it is expected some of the registries designated under this Part will become Early Resolution Registries under Part 2.

The Rule applies to the current Rule 5 registries. In order to add additional registries to this list there would need to be resources allocated to additional registries. While other Family Justice Centres are equipped to receive clients on a voluntary basis, the increased volume that results from Rule 5 would result in delay in time to assessment if there were no resources added to address that additional volume.

Discussion Questions:

1. Do you have any general feedback on this Part?

Part 8 – Parenting Education Program Registries

Current Rules

Under existing Rule 21, parties with applications in 16 (previously 17) designated Provincial Court registries are required to attend a Parenting After Separation (PAS) program unless a specified exemption applies, or a judge grants an exemption or deferral. The Victoria registry just recently came under Rule 5.01 (the early resolution and case management registry) which includes its own reference to parenting education requirements. The Rule requires that for applications for parenting issues, child support or changes to those matters, a date for court appearance will not be set until either the applicant or respondent files a certificate of attendance. Subrule 21(9) requires that both the applicant and respondent must attend a program before the date of first court appearance.

The Ministry offers PAS through an online program. Online PAS is available to fulfill the mandatory requirement as well as being accessible for persons wishing to take PAS on a voluntary basis. PAS is free and available online 24/7 in English, Mandarin or Punjabi at www.familieschange.ca. FJSD is currently reviewing its PAS program content.

Each party must complete a parenting education program unless they have done one within 2 years prior to assessment, the only matter in issue is spousal support, every child involved is over 19 or the party is not able to access it due to geographic, literacy, linguistic or technological unavailability or due to a serious medical condition. Parties seeking an exemption may file the Form 31 Parenting After Separation Exemption Request. There are some automatic grounds for exemption (e.g. having attended PAS within the past 24 months) and in other cases a request for an exemption is decided by the PAS program administrator which is FJSD.

Proposed Policy

The WG recommends that all parties with child-related matters seeking to resolve their issues in the Provincial Court be required to attend a parenting information and education program, like the current PAS program, before appearing in court on a contested matter. The Rule will refer to parenting education since it is anticipated in the future there could be various programs available to meet this requirement. While there is currently only one PAS program, FJSD has recently created an online version of the PAS program for indigenous families which will be available in the fall of 2019.

Early intervention programs for families experiencing separation and divorce have numerous positive outcomes, including: increased parental cooperation, restoration of parental alliance, improved children's well-being, as well as positive impacts on the parties' subsequent participation in mediation and court proceedings.[46]

[46] Susie Burke, McIntosh, J., and Gridley, H., "Parenting After Separation: A Literature Review Prepared for the Australian Psychological Society" (2009) at 18 ["Parenting After Separation"].

With the development of online parenting education, it is anticipated that in the future the parenting education requirement can be expanded province-wide and require parties in all registry locations to complete the program before appearing in court, although the proposed Rule continues to apply to the current 16 registries (Victoria is covered by the early resolution Rule in Part 2).

Feedback suggests that the exemption process functions well, although dissatisfaction is regularly expressed by parties whose only dispute is over support issues. The proposed Rule is explicit that if the only matter is spousal support the parenting education requirement does not apply. Some of the exemptions from completing parenting education have been expanded to address literacy, medical conditions and circumstances where all children are over 19.

Discussion Questions:

1. Do you have any general feedback on this Part?

Part 9 – Family Settlement Conferences

Current Rules

The existing Rules presently describe two case conferences: the family case conference (**FCC**) set out in Rule 7 and the trial preparation conference described in Rule 8. The focus of the FCC is on settlement, and the Rules specifically state that the judge presiding at the FCC may mediate any of the issues in dispute. An FCC is not required in every case but may be ordered by a judge when parenting arrangements, contact or guardianship is disputed. Support is not one of the grounds for which an FCC may be ordered, and judicial practice varies as to whether support will be addressed at an FCC where there are other child-related issues. FCC dates are chosen by the court registry in consultation with the parties when possible, and the parties are notified of the time and place of the FCC by Notice of Hearing or Conference. There are no Rules or practice directives that address whether a judge who has presided at an FCC may subsequently preside at a hearing or trial of the same matter.

Judge-led conferences have been used in the Provincial Court for a long time as a way of moving parties towards dispute resolution. The user experience research suggests these conferences are regarded positively and considered to be helpful by many parties, lawyers and judges alike. The user experience research and the WG discussions suggest there are support-related questions that are appropriate for discussion in an FCC, including special and extraordinary expenses.

Proposed Policy

The WG recommends that there continue to be an equivalent to judge-led FCCs but recommends they be called a family settlement conference (**FSC**) to distinguish their purpose from family management conferences and readiness hearings. The FSC is not required in every case but may be ordered by a family justice manager or a judge as a next step following the family management conference or readiness hearing to move the parties towards dispute resolution. In some cases, parties who were not receptive to settlement at an earlier stage in the proceeding may be more inclined to reach agreement when the matters are discussed with a judge who brings a sense of importance and whose judicial opinion may be a reality-check for parties with unrealistic expectations.

Early experience in Victoria suggests that in registries that have the early resolution requirements and family management conference there may be less usage of the FSC process. Nonetheless it remains as a tool that can be used particularly in registries that do not have some of the early resolution services or the benefit of a family management conference as a way of supporting parties in identifying needs, facilitating resolution and helping parties achieve readiness if they are proceeding to a hearing or trial.

The language in the proposed Rule is broader to capture any issues in dispute, not just parenting arrangements, contact or guardianship. The intention is that conferences may include support issues where the family justice manager or a judge deems appropriate.

In cases where it is determined to be appropriate, there may be more than one family settlement conference (e.g. a series of conferences) or there may be a continuation of a conference.

Trial preparation conferences may occur in the same meeting if settlement is not reached on all issues. In registries where there is a family justice manager, if a judge is not available to conduct a settlement conference a family justice manager may do so. The proposed Rules also specify that a judge who conducts a family settlement conference may conduct a trial in respect of the same issues only if no other judge is available to conduct the trial. It is impractical given the current method of assigning judges and the size of judicial complement in some registries to stipulate that a settlement conference judge can never conduct the trial.

Discussion Questions:

1. Do you have any general feedback on this Part?

Part 10 Trials

Division 1 - Trial Preparation Conferences

Current Rules

If a trial is necessary, a date may be set for a trial preparation conference under Rule 8. The objective is to ensure both parties will be ready for trial and the correct length of time has been estimated for the trial. At the trial preparation conference, the judge may make orders about such things as exchanging witness lists and summaries of evidence the witnesses will give; filing agreed statements of fact; or disclosing documents.

Proposed Policy

It is recommended that judges continue to conduct trial preparation conferences. Because judges may approach a case in different ways, it is considered important that the judge who conducts the trial preparation conference is the judge who will be presiding over the trial, whenever possible. It is not possible to set a strict requirement given the current method of assignment of judges, which gives the court maximum flexibility in utilizing judicial resources.

There are some changes proposed to the Rule regarding who must attend a trial preparation conference to reflect that parties may not be represented and there is also provision for a child's lawyer to attend if a child is represented by a lawyer at trial.

The WG recommended that the Rules provide for the ability of a judge at a trial preparation conference to determine whether some alternative trial processes will apply to a case including setting maximum time for the trial or parts of the trial, limits on witnesses and directions on the type of evidence to be introduced.

The proposed Rules would enable the parties and the judge to tailor the trial process to meet the needs and interests of the parties and the court. The final decision as to whether an alternative trial process will be used will be at the discretion of the judge and if an alternative trial process is ordered, the same judge must conduct the trial.

The WG also considered whether it would be helpful to introduce a discovery process to prevent unnecessary extension of trial time or to create lists of documents, discoveries or interrogatories to reduce the number of documents that people are considering as evidence. Some members of the WG felt that this could be useful in cases involving counsel, upon application, but noted that if one of the parties was unrepresented, he or she would be at a significant disadvantage in the discovery process.

Members of the WG stressed that an important goal behind the proposed Rules is to make them as informal as possible.

The absence of anything like the discovery process used in the BC Supreme Court exists in part because the limited financial means of many families using the Provincial Court dictates the need for simple straightforward ways to be able to obtain and present evidence at trials.

The WG is concerned about using language that suggests parties have a right to an examination for discovery because of the potential for misuse. The WG took the view that there was sufficient authority in this Part and under the case management orders in Part 6 for a judge to order forms of discovery where appropriate. The WG also agreed to canvas the issue in this paper.

On another topic, the WG discussed the fact that it can be problematic where family violence has been alleged to allow self-represented litigants to examine and cross-examine each other. Proposed Rule 126 (3)(d) provides that a judge may determine at a trial preparation conference that there be alternative ways for examination and cross examination to occur in instances where family violence is an issue. There are no current provincial or territorial family court rules that address cross-examination in cases of alleged family violence. Some international jurisdictions have rules that authorize judges to intervene in examination and disallow questions to prevent abuse. The WG reviewed some legislative reforms happening in the United Kingdom, New Zealand and Australia.[47] The WG recognized the fact that ordering appointment of counsel for purposes of cross-examining would have resource implications that had not yet been canvassed with LSS or any other provider and which would necessitate some funding. The proposed Rules will leave open the possibility that a judge can order other ways of having examination or cross-examination occur.

The WG also considered whether completion of a form should be required to facilitate a trial preparation conference or trial scheduling. Many registries make use of a form that is either used for counsel to complete or to serve as a checklist for the judges conducting a trial preparation conference. The purpose of the form is to inform trial readiness, including determining the date and duration of the trial, the need for interpreters or other supports in the courtroom, and any document exchange or disclosure orders that may be required (e.g. up to date financial information, witness lists, expert reports, etc.).

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[47] *Australia Family Law Act 1975,* Compilation No.89 at 102 NA, 102 NB. Accessed at https://www.legislation.gov.au/Details/C2019C00182/Html/Volume_2

New Zealand Evidence Act, 2006 at s.95(1). Accessed at http://www.legislation.govt.nz/act/public/2006/0069/latest/DLM393926.htmlHM Government, "Transforming the Response to Domestic Abuse Consultation Response and Draft Bill" (2019) at 129 (Part 4B, Sections 31Q & 31R). Accessed at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772202/CCS1218158068-Web_Accessible.pdf

Attached as Appendix 5 is an example of what a trial readiness form could look like.

The WG was concerned about prescribing a form that might be difficult for self -represented litigants to complete but also considered that many of the questions in the form are necessary in order to effectively estimate the time for trial. The WG is asking for feedback on whether this should be a prescribed form or a best practice used by registries and set by policy.

Division 2 - Trial Processes

Current Rules

Rule 11 currently deals with changing the trial date, section 211 reports and experts.

Proposed Policy

Proposed changes to existing Rule 11 are as follows:

Consent adjournments: There is a provision that, if parties consent to an adjournment, that an application can be made up to 14 days before the scheduled trial date. If an adjournment application is not with the consent of parties, then the existing 45-day time requirement applies. Parties will be able to file a consent desk order for adjournment, articulating reasons why, at least 14 days before the scheduled trial date or less if there are exceptional circumstances.

Child's evidence: The current Rules do not stipulate that a child's views are to be considered, nor do the Rules describe any processes for doing so (aside from addressing examination of a person who prepared a section 211 report). There is a new Rule proposed to allow a trial judge to admit a child's evidence in the form a trial judge determines appropriate. The WG recommends that, except for Rules related to section 211 reports, the Rules do not set out specific mechanisms for involving the views of children within the court process but that judges have the discretion to admit evidence about the views of children in any way a judge considers appropriate under the circumstances of a particular case.

The proposed Rules address a few new areas with respect to expert and section 211 reports. The proposed Rules introduce a requirement that section 211 reports include the qualifications, employment, and educational experience of the person who prepared the report. As section 211 report writers may come from a variety of professional backgrounds, this requirement ensures their qualifications are before the court, just as the qualifications of an expert must be included in an expert report being introduced as evidence. The proposed Rules also clarify the process for applying for an order requiring a person who prepared a section 211 report to attend trial. Under the existing Rules, a Notice of Motion is used if a party wishes to call a person who prepared a report under section 211 as a witness. Under the proposed Rules, this is accomplished by making an application for a case management order. The proposed Rules further clarify the documents that are to be served on the report writer and the information they may provide to the court to assist in determining whether they should be required to attend as a witness.

If a section 211 report writer is required to attend trial as a witness and the trial judge determines their attendance was unnecessary, the party who called the writer may be ordered to pay for costs associated with their attendance.

Division 3 - Informal Trial Pilot Project Rules

Current Rules

There are no Rules that set out an informal trial process or that specifically authorize suspending strict rules of evidence and an inquisitorial role for the judge. It was acknowledged that in many instances, judges adopt informal trial processes when self-represented litigants are involved.

Proposed Policy

The WG observed that the traditional adversarial trial process often breaks down when one or both of the parties are not represented by a lawyer. Self-represented litigants find the traditional trial process overwhelming and difficult to understand. They often do not understand the rules of evidence and are uncertain how to offer relevant evidence. This lack of knowledge often leads to confusing and convoluted evidence including ineffective testimony and cross-examination which unnecessarily lengthens the time needed for hearings.

The WG reviewed a number of examples of less adversarial or less formal trial processes with interest. The WG took note of Rule 9.1 of the *Small Claims Rules* which contains a simplified trial process for claims under $5,000.00 filed in the Robson Square and Richmond small claims registries. The Rule specifies that a simplified trial is to be conducted without complying with the formal rules of procedure and evidence, unless the adjudicator determines there are reasons to include formal examination and cross-examination of parties and witnesses.

A less adversarial trial process is being used in Australia for most family law matters that proceed to court. The process is intended to be less formal than trials typically are and is more flexible to better meet the needs of the parties. The judge presiding over a less adversarial trial has control of what information is put before the Court and only addresses the issues that are relevant in the dispute. The registrar will order the family to take part in the Child Responsive Program prior to attending a less adversarial trial to ensure everyone knows and understands the needs of the child(ren). To prepare for the less adversarial trial the parties are asked to fill out and serve a Parenting Questionnaire. Parties must also complete a Financial Questionnaire and a joint Balance Sheet if the trial is to also involve financial matters.[48]

[48]Family Court of Australia, "Less adversarial trials" (2013). Accessed at http://www.familycourt.gov.au/wps/wcm/connect/169173f5-d570-48f3-b4db-a8f99e10283/BRLESSADV_0313+V2.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-169173f5-d570-48f3-b4db-9a8f99e10283-lMpaocL

New Trial Division Family Rules (now "Supreme Court Family Rules") were introduced in Newfoundland and Labrador March 1, 2017. Rule F31[49] introduced a new informal trial as a "method of enhancing access to justice by providing parties with the option of a simplified process".

Key elements of the process are:

- Both parties must consent and complete a waiver explaining participation may impact appeal;
- Consent to participate may be withdrawn at any time before the trial begins. If this happens, a regular trial must proceed and the judge may make any order considered appropriate;
- Determining the type of trial the parties prefer occurs at a case management hearing;
- The judge takes an active role and admits any evidence that is relevant, material and reliable despite the possibility that it may be inadmissible under the strict rules of evidence.

Examples of cases that may particularly benefit from an alternative trial process include cases where:

- the parties have substantially agreed on the facts of the case and require only a decision applying the law;
- there is only a single issue that requires adjudication; or
- the involvement of self represented litigants makes strict adherence to the rules of evidence or procedure impractical or not in the best interests of the parties or any children involved.

While less adversarial trials have been used successfully in other jurisdictions, the current Rules in BC do not formally define an approach. While some judges conduct their trials in a format that is less adversarial and formal, the WG proposes a Rule that might encourage such processes and that it be introduced on a pilot basis. It was acknowledged that there may be some unique training requirements on judges conducting trials in this manner. Also, there are unique judicial scheduling requirements (these trials tend to take longer) and possible un-anticipated costs associated with less adversarial trials that suggest a smaller roll-out is appropriate. As there is an attempt throughout these Rules to make processes less adversarial, including provisions under the trial preparation conference to manage and limit processes, evidence and witnesses, the WG adopted the language used in Newfoundland of "informal trial process" as opposed to the Australian language of "less adversarial trial".

Discussion Questions:

1. Do you have any general feedback on this Part?
2. The WG determined that discovery, interrogatories and lists of documents as prescribed processes did not fit with the informality of the Provincial Court and were also costly and difficult for self-represented litigants to comply with.

[49] *Rules of the Supreme Court,* 1986, SNL 1986, c 42, Sch D, PART IV-TRIAL DIVISION FAMILY RULES at Rule F31. Accessed at https://www.assembly.nl.ca/legislation/sr/regulations/RulesSc/rc86PartIV.htm#F31

Do you have comments on whether discovery, interrogatories or lists of documents should be part of the *Provincial Court Family Rules*?

3. The issue of cross-examination and examination when family violence is an issue is one that many jurisdictions are reviewing. Do you have any comments on the recommendations in this Part?
4. Do you have any comments or concerns with the proposal to enable an Informal Trial Pilot Project?

Part 11 – Enforcement

Current Rules

Other than enforcement of support under the *Family Maintenance Enforcement Act* (**FMEA**), the current enforcement Rules are scattered within various other Rules. The current Notice of Motion process is used for many enforcement applications.

Proposed Policy

Division 1 – Applying for Orders

Part 11 addresses court enforcement of agreements, court orders, and parenting coordinator determinations relating to parenting arrangements, contact and support. An objective of the Rules reform is to make the Rules easier for people to understand and use. Part 11 attempts to do this by bringing together relevant Rules and organizing them in a way that parties can better understand the enforcement process they are expected to follow. A single form will be used to apply for enforcement of a range of matters.

One thing to note about applications brought under Part 11 is that they do not attract the use of the early resolution processes described in Part 2 of the Rules. The usefulness of consensual dispute resolution under Part 11 is limited since applications are about how to enforce existing arrangements, not about creating or changing them.

Part 11 begins by authorizing the filing of the agreements, determinations, and orders that may be enforced. Proposed Rule 145 lists the agreements that can be filed. It should be noted that the parenting coordination agreement between parties and a parenting coordinator required by section 15 of the FLA is listed along with agreements respecting substantive relief such as: parenting arrangements, contact and support. Filing a parenting coordination agreement for an application to enforce a determination is necessary because the agreement establishes the parenting coordinator's authority or lack thereof, to make the determination. Rule 146 specifically authorizes the filing of the parenting coordinator's determination.

Regarding orders, generally the same court file is used for proceedings to obtain an order and for proceedings to enforce it. Therefore, there is no need for a Rule authorizing orders to be filed because the order is already on the relevant court file. However, the Provincial Court can enforce certain court orders made in other jurisdictions or by the Supreme Court, and Rule 147 authorizes the filing of those orders.

Like other Rules that address how to make an application, Rule 148 identifies the application form to be completed and filed along with the relevant agreement, order or determination to be enforced, Form 27 *[Application About Enforcement]*. The Rules also explain that service of the application and its accompanying materials must occur at least 7 days before the date of the hearing.

This Division also provides that the application for enforcement can address setting of reasonable and necessary incurred expenses for failing to comply with an order (e.g. denial of parenting time or contact) and determining whether arrears are owing under a support order.

Form 27 is also to be used to make an application to set aside the registration of a foreign order under section 19 (3) of the *Interjurisdictional Support Orders Act*.

Division 2 – Enforcement of Support Orders Under the *Family Maintenance Enforcement Act*

Division 2 makes up the majority of Part 11 and relates to enforcement of support under FMEA. It is largely an updated carry-forward of the current Rule 17 – Applying for Enforcement of Maintenance Orders under the FMEA. One proposed addition is Rule 151 which allows proceedings under Division 2 to be held separately from other proceedings and more significantly, allows the applicant to choose where the enforcement matter is heard. The application can be heard either at the registry where the original case is filed or the registry closest to the debtor's last known address. This Rule deals with a concern expressed by the Director of Maintenance Enforcement (the Director) about hearing delays caused when a support paying party is unable to easily attend hearings set in a registry that is a significant distance from their residence. The proposed Rule allows the Director to bring support enforcement proceedings near to the residence of the paying party. It should be noted that this Rule is permissive. It allows proceedings to be brought in the original registry if it makes sense in the circumstances. For example, if the recipient lives near the original registry and is expected to be needed for the enforcement hearing, it may be appropriate for the enforcement proceedings to be heard in the original registry.

Other than Rule 151, the most significant change in Division 2 is the expanded explanations about the various enforcement orders that may be applied for. For example, whereas the current Rule 17(2)(a) provides for the issuance of a "summons in Form 7", the proposed Rule 152 is more explanatory about the purpose of the summons and warrants. Similar explanations are provided for all the relief that may be requested under the Division. This will assist unrepresented parties to better understand the orders requested.

Discussion Questions:

1. Do you have any general feedback on this Part?

Part 12 – Consequences

Current Rules

The FLA contains a number of provisions that grant a judge the authority to: make orders to control proceedings before them; ensure court orders made are complied with; and impose sanctions on parties that fail to comply. However, the current Rules do not contain provisions specific to the issue of contempt or how to implement orders such as imprisonment made under section 231 of the FLA (Extraordinary Remedies).

There is also nothing in the current Rules to address the imposition of any of the financial sanctions in the FLA such as the reimbursement of expenses.

Proposed Policy

Effective case management includes the ability of a judge to control the proceedings over which he or she presides, including the ability to deal with the conduct of litigants that is considered inappropriate. For example, in some cases, judges need to control the conduct of the hearing or trial through actions like disallowing parties from introducing certain evidence. In other cases, judges may need to control the proceedings by striking documents, restricting parties from bringing additional motions, or deciding how a matter will proceed when one or both parties do not attend.

The authority to make orders or directions to control behaviour goes hand in hand with an ability to ensure compliance with those orders. Failure to comply with court orders is frustrating for the other party and creates a barrier to resolving the family law matter. Participants in the user experience research conducted at the outset of this project commented that there should be "more sanctions to get financial [information] in on time or for not doing as you are told", and "conduct orders are good – but they are not enforced". Although the FLA provides judges with legislative authority to order sanctions, the existing *Provincial Court (Family) Rules* provide few specifics about how to implement these sanctions.

The proposed Rules contain a number of provisions in Part 12 (Consequences) that make it clear what the consequences are for not complying with the court process or a court order. For instance, the proposed Rules list things that a judge may do if a party does not comply with the Rules, including:

- Disregarding a document that has been filed,
- Changing or cancelling an order that has been made,
- Imposing a financial consequence in the form of paying another person's expenses incurred as a result of non-compliance, paying an amount not exceeding $5000 to or for the benefit of someone affected by the party's actions, or paying a fine not exceeding $5000, and
- Determining how to proceed if a party does not attend a hearing or trial, including whether the hearing or trial will be cancelled, adjourned, or continue in a party's absence.

The proposed Rules also make it clear that a Provincial Court judge may make an order for an extraordinary remedy under section 231 of the FLA, if satisfied that no other order under the Act will be sufficient to secure the person's compliance. One of the extraordinary remedies available under section 231 is an order that a person be imprisoned for no more than 30 days.[50] Given the serious nature of these consequences and potential restrictions on a person's liberty, the proposed Rules introduce a hearing for section 231 extraordinary remedies as well as provisions for suspending an order for imprisonment or releasing a person from prison. One of the gaps in the existing Rules is the lack of a process for issuing a warrant for arrest and release from custody. Part 12 introduces processes and forms for warrants for arrest and release from custody for cases involving extraordinary remedies as well as cases where a judge is issuing a warrant for arrest for a party who has failed to attend a hearing or trial.

Discussion Questions:

1. Do you have any general feedback on this Part?

[50] Section 231 of the *Family Law Act* also authorizes a court to make an order for a police officer to apprehend a child and return the child to the appropriate person in cases in which parenting time or contact is being wrongfully withheld or when a person with contact is wrongfully withholding the child.

Part 13 General Rules

Part 13 of the proposed Rules contains general Rules that apply in all registries, organized in the following six divisions:

- Division 1 – General Procedural Rules
- Division 2 – General Procedure for Orders
- Division 3 – Affidavits and General Rules for Filing
- Division 4 – Service
- Division 5 – Changing a Filed Document
- Division 6 – Electronic Filing

Many of the provisions contained within Part 13 carry forward the existing Rules. The following highlights changes and new provisions included in the proposed Rules.

Division 1 – General Procedural Rules

This division contains a new Rule that clarifies a clerk may refuse to accept a form for filing if it is not in the correct form or completed in accordance with the instructions. This will help to correct significant errors in forms before they are filed, preventing delay to parties and inefficient use of court resources. Two new Rules concerning children are included in this Part. The first echoes the language in section 37 of the FLA, reminding parties and decision-makers that a child's views will be considered unless it is inappropriate to do so. The second concerns situations where a case involves a child and the child is being represented by a lawyer. The Rule addresses concerns raised by the Child and Youth Legal Centre[51], establishing a process for the child's lawyer to indicate when they begin and cease to represent the child. It also describes how a child's lawyer is entitled to participate in the proceedings. Finally, there is a Rule that authorizes the court to order a person to attend a conference, hearing or trial by electronic communication and sets out a list of factors the court may consider when making that determination. This is in response to feedback that some parties may need or desire to participate in a court proceeding by some mechanism other than appearing in person. The general term "electronic communication" is broad enough to encompass appearances by telephone, videoconferencing, or some future mode of communication.

As explained above, the proposed Rules include a process for a lawyer representing a child to indicate to the court when they begin and cease to represent the child.

[51] The Child and Youth Legal Centre assists vulnerable children and youth with having their rights and interests heard, as well as advocates on their behalf. More information can be found at https://www.scyofbc.org/child-youth-legal-centre/#1510100822947-de4e8985-11e6.

There is no specific process for other lawyers to withdraw as counsel of record or set out the specifics of a limited scope representation that has been agreed to by the party and their lawyer.[52]

The practice of filing a form to indicate a lawyer acts for a client or withdraws from acting, is formalized in the Supreme Court by Supreme Court Family Rules 21-4(1), and (6). Both Alberta and Ontario formalize procedure for lawyers to indicate whether they act for a client at both the provincial and superior courts.[53]

Presently in BC, a lawyer can file Form 11 "Notice of Change of Address" of the *Provincial Court (Family) Rules* to ensure they are included in communications and to notify the court, the other party, and opposing counsel that they act for a client. Similarly, a lawyer could file Form 11 changing the address and particulars back to that of a client's in order to be removed from communication and to notify the court, the other party, and opposing counsel that the lawyer ceases to act for a client. Filing Form 11 is neither formally nor explicitly the avenue by which lawyers indicate they are on "the record" or withdraw from "the record". The WG believes that it would be helpful for a form and possibly a Rule to be added that would establish a formal procedure to indicate the scope of representation and/or whether counsel is ceasing to act for a client. See discussion question below on this topic.

Division 2 – General Procedure for Orders

This division carries forward some aspects of Rule 18 of the current Rules. However, the proposed Rules are clearer about who shall prepare an order that has been made, depending on whether legal counsel are involved and whether the order is by consent. There are new requirements introduced imposing timelines on when an order must be prepared, and there is also a new Rule that permits a judge or family justice manager to designate someone to sign an order on their behalf, which will prevent delay in orders being signed when the judge or family justice manager is unavailable to do so.

Division 3 – Affidavits and General Rules for Filing

This division improves on the existing Rule 13 (Affidavits) by providing direction on how an affidavit is to be written, organized and executed. This is in response to feedback that self-represented parties often do not know how to create affidavits, which are used to introduce evidence in many cases. Particularly when used in conjunction with public legal information materials on how to prepare affidavits, this Rule will assist self-represented parties to create affidavits that are in the correct format, containing

[52] A number of American states have introduced a Notice of Limited Scope Representation that must be filed if the lawyer is to appear for the party at a trial, hearing or conference. For an example, see California's Form FL950 at https://www.courts.ca.gov/documents/fl950.pdf.

[53] The *Alberta Rules of Court*, *Alta Reg 124/2010* set out procedure to change "lawyer of record" at Rule 2.28, and for "withdrawal of lawyer of record" at Rule 2.29; this procedure is the same for the Provincial Court of Alberta as well as for Queen's Bench. The Ontario *Family Law Rules, supra* note 43, set out procedure to "choose a lawyer", effect a "change in representation", and for a "lawyer's removal" at Rule 4, which allows a lawyer to remove themselves from the record

appropriate information that complies with the laws of evidence and helps the court in determining the matter before it.

Division 4 – Service

This division contains the general Rules pertaining to service of documents. Service is an important aspect of the court process, as principles of justice require all parties are made aware of legal proceedings that involve them and are provided with an opportunity to participate. Feedback from court users suggests that service is one of the areas that can be confusing or frustrating to parties. Sometimes the frustration stems from confusion over how documents must be served. The proposed Rules explain more clearly what is meant by "ordinary service" and "personal service" as well as explaining how documents are to be served on the Director of Maintenance Enforcement and a person who is not a party to the proceeding. A new Rule is proposed to set out when service is considered to have been completed, depending on how and when the document was served. In addition to having the general Rules on service set out together in Division 4, the proposed Rules also include directions regarding service each time service of documents is required. This approach is intended to make it easier for users to find the provisions about how to serve the documents for a particular type of application.

Some parties also experience frustration related to service when they encounter difficulty actually serving another party. Following a separation, one or both parties are often transitioning from one living arrangement to another and may not have established a new permanent address. While the proposed Rules continue to require that certain documents (e.g. a family law matter claim, a summons or subpoena, documents related to a protection order application) be served personally, other documents may be served by email in cases where a party has provided an email address for service. Email is increasingly used to transmit documents in all aspects of our professional and personal lives and offers convenience and expedience for parties who have agreed to its use. If service cannot be effected using one of the mechanisms set out in the Rules, the proposed Rules continue to offer parties the option of applying to court for an order permitting an alternative method of service.

Division 5 – Changing a Filed Document

This division contains Rules that describe when a party may make changes to a family law matter claim, reply or counterclaim, and the process for doing so.

Division 6 – Electronic Filing

This division is included in the proposed Rules as the Ministry is working towards expanding electronic filing capabilities to include all family cases, improving access to court registries. Although there are electronic filing provisions in the existing Rule 22 (Electronic Filing), they are not in use as electronic filing is not yet available for FLA matters.

The proposed provisions are briefer than Rule 22, focusing on the process for electronic filing. There is also a fax filing Rule, again focusing on the process for using fax filing. Unlike the existing Rule 5.1, fax filing will no longer be limited to particular registries.

It is anticipated that fax filing will continue to be used in locations where geography makes it difficult to file documents in person, and where internet coverage may not be adequately reliable to consistently allow electronic filing when that service becomes available.

Discussion Questions:

1. Do you have any general comments on this Part?
2. While the Rules provide for the ability for a child's lawyer to get on and off the record, there is no provision that explicitly provides for the ability of a lawyer for a party to get off the record. Would such a Rule help to support the provision of unbundled legal services? Would a specific form addressing whether a lawyer is on record or only represents a client for a specific scope of service be helpful or is the equivalent of current Form 11 sufficient?