

The Victoria Early Resolution and Case Management Model

Overview

Provincial Court Rule 5.01

A) Objective:

This paper is intended to provide an overview of the Victoria Early Resolution and Case Management Model process that will be implemented in Victoria on May 13, 2019 as Rule 5.01 of the *Provincial Court Family Rules* (PCFR or the Rules). The intent is to contribute to a better understanding of the changes in process, practice and key forms.

B) Additional material:

In addition to this overview, the document called Early Resolution and Case Management Rule Explained and the Provincial Court Family Rule (PCFR) Process Map are provided for information.

C) Background:

1) Context

The Provincial Court (Family) Rules were updated when the Family Law Act was implemented in 2013; amendments at that time were limited to those necessary to mirror new terminology and concepts in the new Act. Government and the Provincial Court committed at that time to undertake a more comprehensive review and reform of the family court system. Numerous reports reinforce the need for services for families for their legal and non-legal needs, the benefits of non-adversarial processes for families, and the need for early information and advice as well as active case management and support through the court process.

The Provincial Court and the Ministry are collaborating on an initiative to change the rules of procedure for family matters in Provincial Court. Early implementation of key aspects of the model will be launched in Victoria, where funding for additional services has been provided.

The model builds on existing family justice services including assessment, mediation and parenting education, but moves the referral to those services to earlier in the process. The model will also introduce new forms designed to make it easier for users to provide

the information needed by the court. As well, a family management conference will replace the current first appearance for family matters.

The new Victoria Early Resolution and Case Management Model begins May 13, 2019 for Family Law Act matters filed in the Victoria Provincial Court registry. Family justice services related to this initiative will be provided through Victoria's Justice Access Centre.

2) Changes to the PCFR

[Order in Council #137](#) adds the Early Resolution and Case Management Model through Rule 5.01, Appendix B and Appendix C to the Provincial Court (Family) Rules (PCFR for implementation on May 13, 2019).

The model helps families focus on earlier, more collaborative resolution. Where issues aren't fully resolved, they will be clarified and narrowed and families will be better prepared to proceed. Helping parents reduce conflict and work towards a collaborative resolution better positions them to keep the children's best interests front and centre.

Rule 5.01 introduces the Early Resolution and Case Management Model into the Provincial Court (Family) Rules, providing definitions, identifying the types of matters covered by the new model and situating it in relation to the rest of the Rules.

Appendix B contains the operative provisions for the Early Resolution and Case Management Model

- Part 1 – Interpretation, Application and Purpose
- Part 2 – Early Resolution Requirements
- Part 3 – Applying For Orders about Family Law Matters
- Part 4 – Family Management Conferences
- Part 5 – Case Management Orders
- Part 6 – Applying for Other Orders

Appendix C – provides the prescribed forms for the Early Resolution and Case Management Model

D) Getting started

1) When the Early Resolution and Case Management Model applies

Starting May 13, 2019, people who want to resolve family disputes, in particular, family law matters like child support, spousal support, parenting time, contact or guardianship

at the Provincial Court in Victoria (at the Victoria Law Courts, on Burdett Street) will use the Early Resolution and Case Management process. Those who have filed an application for an order or notice of motion prior to May 13, 2019 will continue under the previous process.

Victoria is the only court location in the province that will use the new process at this time. Most people will be dealing with family law matters like child support, spousal support, parenting time, contact or guardianship. There are, however, other changes to the rules including how protection orders and extraordinary parenting matters (time sensitive decisions for children) are addressed. The forms and process for consent orders is also changed. New forms will be introduced to replace the current notice of motion process including forms for case management orders, relocation and enforcement matters.

- A “family law matter” is defined as including: parenting arrangements, child support, contact with a child, guardianship of a child or spousal support.
Rule 5.01(1)
- Cases already filed with the Victoria Provincial Court will continue there. As of May 13, 2019, where there are children involved, file in Victoria if it is the closest registry to where the children live most of the time. If there are no children involved, the person starting the process files in the registry closest to where they live.

See Rule 5.01 (4)

2) When the Early Resolution and Case Management Model does not apply

Early Resolution and Case Management is only for family matters under the Family Law Act in Provincial Court. It does not apply to proceedings under the Divorce Act.

The model is also not for child protection matters under the Children, Family and Community Services Act, or matters under the Adoption Act or matters brought to Provincial Court by the Ministry of Children and Family Development or a Delegated Aboriginal Agency. For those involved in a child protection matter and interested in mediation, there is a separate [Child Protection Mediation program](#) that may be available. The [Parents Legal Centre](#) in Victoria provides services to people who are at risk of having their children removed from the family home, and focus on early collaborative processes and helping with underlying issues such as housing and addictions

3) Early Resolution Requirements

Generally, before filing a family law matter claim under Part 3, a person with a matter in the early resolution and case management registry must (unless exempted),

- (a) file a notice to resolve in Form A [*Notice to Resolve a Family Law Matter*] of Appendix C,
- (b) provide a copy of the notice to resolve to the other person,
- (c) attend a needs assessment under section 10 [*participating in needs assessment*],
- (d) complete a parenting education program under section 12 [*completing parenting education program*], and
- (e) participate in at least one consensual dispute resolution session under section 13 [*participating in consensual dispute resolution*].

See Appendix B, section 5

4) Transition

The Early Resolution and Case Management Model will not apply where a file is transferred from Victoria to another registry, where an application for an order or notice of motion is made prior to May 13, 2019.

See Rule 5.01(6)

E) Orders that do not use the Early Resolution stream

The Model includes a process for seeking protection orders or extraordinary parenting matters on a time sensitive basis. In those cases a judge will hear those matters first and if there are outstanding family law matters families will still use the early resolution and case management process. There are also some processes and orders that will use new forms under this model but they will not require early assessment or consensual dispute resolution: enforcement, relocation, and matters that are proceeding with the consent of both parties (see item G, below). The rule changes introduce a case management order application, which includes things like shortening notice requirements (see Appendix B, Part 5)

With the permission of the Court, an application for Protection or Extraordinary Parenting order can be made in any registry.

1) Protection and Extraordinary Parenting Matters have priority

i) Protection Orders

Based on feedback, the provisions for protection orders have been kept together.

The single Protection Order on file will have all the relevant provisions as changes to

protection orders will result in a termination of the existing protection order and the issuance of a new, updated protection order. A single, updated Protection order will reduce confusion and difficulties with enforcement that flow from having multiple orders on file.

Applications to obtain, change or terminate a protection order can be made by filing an application about a protection order in Form K [*Application about a Protection Order*] of Appendix C, and any supporting evidence or documents.

Usual service requirements are for 7 days, 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. Section 52 makes it explicit that expiry, change or termination of a protection order does not prevent application for subsequent protection orders.

See Appendix B, Part 6, Division 1

(ii) Extraordinary Parenting Matters

The Model introduces a new term, “extraordinary parenting matter”, defined in rule 5.01, that can be addressed before meeting the Early Resolution Requirements. Extraordinary Parenting Matters 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**” means any of the following matters:

- (a) 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;
- (b) 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;
- (c) preventing the removal of a child under section 64 [*orders to prevent removal of child*] of the *Family Law Act*;
- (d) 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*;
- (e) preventing the wrongful removal of a child under section 77 (2) [*wrongful removal of child*] of the *Family Law Act*;

- (f) seeking an extraordinary remedy under section 231 (4) or (5) [*extraordinary remedies*] of the *Family Law Act*;

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.

See Appendix B, Part 6, Division 2

F) The Early Resolution and Case Management Model process

Most people will use the Early Resolution and Case Management process for their child support, spousal support, parenting time, contact or guardianship matters.

Appendix B, section 5 Early Resolution Requirements

- 1) The Victoria Justice Access Centre (JAC) is the best place to get information about where and how to start and make an appointment for a needs assessment. Those who need access to a computer can use the JAC's self-help resource room to check out information about the process will be available close to implementation on both the government and provincial court websites.
- 2) Parties who want to initiate a court process first will file a Form A [*Notice to Resolve a Family Law Matter*] at the Victoria Court Registry. A copy of this must be given to the other party but it can be done by email or text - it does not have to be formally served. The Notice to Resolve also directs parties into the Victoria Justice Access Centre for needs assessment.

See Appendix B, Part 3, Division 1, sections 15-18

- 3) Each party has to 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 isn't able to access it due to geographic, literacy, linguistic or technological unavailability or due to a serious medical condition. PAS is free and available online 24/7 in English, Mandarin or Punjabi at www.familieschange.ca. In Victoria, you can also complete PAS in person (through a three-hour session). For information about signing up, see www.fsgv.org.

See Appendix B, Part 2, Division 3, section 12

- (4) Each party will need to complete an individual needs assessment with a Family Justice Counsellor at the JAC. A needs assessment involves talking to a Family Justice Counsellor about the situation, what issues the parties would like to see resolved and what supports in the community might be helpful to the family. Information and referrals for how to get early legal advice will also be provided. As part of the needs assessment, the Family Justice Counsellor will discuss with the parties whether consensual dispute resolution is appropriate. If there are issues of power imbalances, safety or family violence, the Family Justice Counsellor will consider whether or not it is possible to adapt the dispute resolution process to make it safe for people to participate or may determine that collaborative dispute resolution is not appropriate.

The JAC 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 JAC will document that as well, so the initiating party can proceed.

[See Appendix B, Part 2, Division 2, section 10](#)

- (5) If the Family Justice Counsellor determines consensual dispute resolution to be appropriate, parties are required to participate in at least one consensual dispute resolution session, including preparation for the session. This can happen in a number of ways. At the Victoria Justice Access Centre a Family Justice Counsellor can mediate or (if the only issue is child support), a Child Support Officer can lead a facilitated negotiation; both services are free of charge. Parties may also hire a private family mediator (who meets the requirements of being a family dispute resolution professional under s. 4 of the *Family Law Act*) or participate in a private collaborative law process under a collaborative participation agreement. Financial information must be provided in the form required by the consensual dispute resolution professional.

[See Appendix B, Part 2, Division 4, sections 13-14](#)

- (6) When issues have been resolved, parties can choose to file the agreement with the court registry or apply to the court for a consent order. If issues are resolved through services provided at the Victoria Justice Access Centre, staff can document the arrangements in a written agreement or consent order, refer parties to legal advice and other services.

(7) Applying for Orders about Family Law Matters

If, after meeting the Early Resolution Requirements under rule 5.01(5), there are family law issues remaining to be resolved, a party may proceed by filing a Form C [*Family Law*

Matter Claim] with financial statements and supporting affidavits. Form C replaces Form 1 [*Application to Obtain and Order*].

Family law matters are defined in Rule 5.01 as:

- parenting arrangements;
- child support;
- contact with a child;
- guardianship of a child;
- spousal support.

A family law matter claim (s. 16) is specific to family law matters, in particular, a new order, changing or cancelling all or part of an existing order or filed agreement or to set aside or replace all or part of a filed agreement. Note that applications for matters that are not about family law matters are made using other forms. Note that the application must be accompanied by applicable documentation, which may include a financial statement in Form D [*Financial Statement*], affidavit or other supporting evidence or documents. The Financial Statement in Form D has been changed from the Financial Statement in Form 4. The new 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 claim form, and removing MSP from the financial statement.

Service requirements are set out in s. 18. A notable difference is that the time period for a reply has been shortened to 21 days to reduce delay for those families that are proceeding to court. It is expected that because the model is premised on there being more support and help available to parties that the time period is appropriate.

The responding party must have met the Early Resolution Requirements in order to file 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.

After a reply with supporting documentation is filed and the completion of the Early Resolution requirements are certified for both parties, the parties can proceed to work with the registry to schedule their appearance at a Family Management Conference. If there has been no reply filed within 21 days, the originating party can file a certificate of service and begin the process of scheduling an appearance for a Family Management Conference.

[See Appendix B, Part 3](#)

(8) Family Management Conference

The Family Management Conference (FMC) will take the place of First Appearances (Family Remand) and will be conducted by a judge. It 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.

Duty counsel will continue to be available to provide assistance to parties who qualify for services, attending FMCs as they do with First Appearances.

Based on evidence provided by or on behalf of the parties, the judge may make case management orders and directions under Part 5 and may also make interim orders (s.36). The judge may also make consent orders or orders if a party has not filed a reply or has not appeared at the FMC.

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 FMC. (s. 32)

[See Appendix B, Part 4, Division 1](#)

i) Scheduling the Family Management Conference

The process for scheduling a FMC is new and different. FMC's are not automatically set and scheduling will now involve the parties more in finding dates that work for them and their lawyers, if represented. A limited number of matters will be scheduled during the same "block" of time.

The family management conference will be 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

Parties will be advised to arrive a half an hour before their scheduled block if they wish to access duty counsel.

A FMC can be scheduled if no reply is filed (s. 34) and orders can be made if a party does not attend (s.41)

[See Appendix B, Part 4, Division 2](#)

ii) Family Management Conference Proceedings

A Family Management Conference is an informal hearing in front of a judge. During this Conference, the judge may make interim orders, make orders with the parties' consent, make orders assist the parties in getting disclosure and other thing to assist with readiness for a hearing or trial (case management orders), as well as making conduct orders to manage interactions between the parties.

At the FMC, parties can be required to provide information from their claim, reply, counterclaim or financial statements. 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 FMC or to attend a trial preparation conference, hearing or trial.

[See Appendix B, Part 4, Division 3](#)

iii) Potential orders from a Family Management Conference

At a FMC, the judge can may interim or 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 requirements under section 5. As conduct orders often assist in moving parties towards readiness or de-escalating matters, s. 39 lists a number of specific potential orders, while also providing authority for the judge to make all conduct orders under the *Family Law Act*.

Parties may also be required to attend a FMC if they are not making a family law matter claim, but are requesting certain types of orders identified in s. 40, for which it is anticipated that additional case management would be beneficial.

At a 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 H [*Application for Case Management Order*] (s. 41)

[See Appendix B, Part 4, Division 3, sections 36 – 41](#)

Case Management orders

In a FMC, the judge can make case management orders for things that affect how the case progresses. S. 42 provides a list of possible case management orders that

can be made with or without an application for a case management order in Form H [*Application for Case Management Order*]. For certain types of case management orders identified in s. 42, parties can request that those orders be made without notice or appearance using Form I [*Application for Case Management Order Without Notice or Appearance*]

See Appendix B, Part 5

G) Other orders exempt from the early resolution requirements

In addition to Protection Orders and orders for Extraordinary Parenting matters, applications for orders about relocation, consent and enforcement are exempt from meeting the early resolution requirements.

i) Relocation

The process for applying for an order prohibiting the relocation for a child under section 69 of the FLA is new in these 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 O [*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 the existing rule 9.

See Appendix B, Part 6, Division 3

ii) Consent

The new process improves upon the existing process for obtaining consent orders. Court users have found the process in the existing rules awkward and cumbersome.

The process for applying for a Consent Order now requires only two forms: Form N [*Application for a Family Law Matter Consent Order*] and the draft consent order Form 20 [*Consent Order*] and any applicable additional documents described in s. 17. [*additional documents when applying for certain orders*].

Consent orders may be made in a hearing or application made without a hearing. Note that the process distinguishes between consent orders for: Family Law Matters, Guardianship 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.

For consent orders about guardianship, s.61 requires that the party applying to be appointed as the guardian of a child must also file an in Form 34 [*Affidavit*] and attach a criminal record check as well as record checks from the Ministry of Children and Family Development and the protection order registry. Note that time periods apply to affidavits and record checks; this is intended to ensure that current and accurate information is presented.

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 one form Form H [*Application for Case Management Order*]. If they do not wish to appear before a judge, they need only file Form H and a draft consent order Form 20 [*Consent Order*] of Appendix A

The clerk's responsibilities as part of the consent order process are set out in s. 64. It also sets out that a party can request a consent order at any time they are before a judge.

[See Appendix B, Part 6, Division 4](#)

iii) Enforcement

The process for applying for an order for enforcement is set out in s. 65, which sets out how to apply for an order about enforcement or remedies relating to pre-existing agreements or orders:

- (a) enforcing a written agreement or order, including enforcement under the *Family Maintenance Enforcement Act*;
- (b) reviewing, enforcing, changing or setting aside a determination of a parenting coordinator;
- (c) setting reasonable and necessarily incurred expenses under any of the following sections of the *Family Law Act*:
 - (i) section 61 [*denial of parenting time or contact*];
 - (ii) section 212 [*orders respecting disclosure*];
 - (iii) section 213 [*enforcing orders respecting disclosure*];
 - (iv) section 228 [*enforcing orders respecting conduct*];
 - (v) section 230 [*enforcing orders generally*];

- (d) in respect of extraordinary remedies under section 231 [*extraordinary remedies*] of the *Family Law Act*;
- (e) determining whether or not arrears are owing under a support order made under the *Family Law Act*.

In the new Model, parties must apply using Form P [*Application for Enforcement*] to apply. Previously, these types of orders fall under the Notice of Motion process.

See Appendix B, Part 6, Division 5

H) Forms approach

The new forms enhance accessibility by using plain language and a conversational format. They minimize repeated requests for the same information, while balancing the person's need to tell their story in a meaningful way with what the Court needs to know to make decisions. They will be available at launch on the BC Government website at www.gov.bc.ca/court-forms as fillable pdfs.

Workbooks with an overview of when to use the form and the steps to take to complete and file it, along with instructions for completing the forms, will be available to assist self-represented litigants with key forms.