

# Victoria Early Resolution and Case Management Model Explained

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## INTRODUCTION

This document describes the new Early Resolution and Case Management Model rules and process that will apply in the Victoria Provincial Court registry to Family Law Act matters in Provincial Court, starting May 13, 2019. The format of this document describes the new rule in the shaded boxes, followed by some short summaries of the rule and how it will operate. This is intended to provide information on the new process, but is not intended to be legal advice. It is intended for lawyers and non-lawyers and as a result there are explanations of some terms that are well understood by those practicing family law.

The Victoria Early Resolution and Case Management Model supports early resolution for family law matters in Provincial Court through enhanced assessment and consensual dispute resolution (CDR) along with a court case management process. It has been designed to build knowledge and skills, support active resolution of issues where possible and help the parties prepare for next steps. The model emphasizes the importance of needs assessment and CDR, not as an alternative process, but as a first step in the resolution of any family law dispute.

Many parts of the current rules are left untouched including trials, trial preparation conferences, case conferences, Hague applications, and Family Maintenance Enforcement matters. Any section of the rules not in conflict with a provision of this model still applies.

## RULE 5.01 – EARLY RESOLUTION AND CASE MANAGEMENT MODEL PROCEDURES

- This Rule introduces the Early Resolution and Case Management Model into the Provincial Court (Family) Rules however the bulk of the provisions are in Appendix B.

### Subrule 1: Definitions

In this rule and Appendix B [*Early Resolution and Case Management Model*]:

- Rule 5.01 (1) sets out the definitions introducing new concepts in the Early Resolution and Case Management Model. The definitions in the existing Provincial Court (Family) Rules apply otherwise.

**“certificate of service”** means a certificate in Form E [*Certificate of Service*] of Appendix C that certifies service under the Early Resolution and Case Management Model;

- The certificate of service replaces the affidavit of service in the existing rules. It is filled out by the person who served the document and filed it at the registry.
- The certificate of service is intended to make service easier for self-represented litigants.

**“consensual dispute resolution”** means

- (a) mediation with a family law mediator who is qualified as a family dispute resolution professional in accordance with section 4 [*family law mediators*] of the *Family Law Act Regulation*,
  - (b) a collaborative family law process conducted in accordance with a collaborative participation agreement, or
  - (c) facilitated negotiation of a child support or spousal support matter with a child support officer employed by the Family Justice Services Division of the Ministry of Attorney General;
- The definition of consensual dispute resolution is new and describes the dispute resolution processes that qualify under the early resolution requirements.

**“Early Resolution and Case Management Model”** means the rules for early resolution and case management set out in the provisions of Appendix B [*Early Resolution and Case Management Model*];

- This definition directs people to the appendix for the provisions of the Early Resolution and Case Management Model.

**“early resolution and case management registry”** means the Victoria registry;

- Victoria is the early resolution and case management registry.

**“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*;

- Extraordinary Parenting Matters are time-sensitive matters that need not go through the Early Resolution Process first and can instead proceed directly to a hearing in front of a judge.
- Extraordinary Parenting Matters replace the Notice of Motion process under the old rules in part. Instead of providing a blank motion to appear before a judge, the new rules provide for a closed list of matters that can be addressed before parties participate in the Early Resolution Process.

**“family law matter”** means any of the following matters:

- (a) parenting arrangements;
- (b) child support;
- (c) contact with a child;
- (d) guardianship of a child;
- (e) spousal support.

- The definition of “family law matter” is new and is used to refer collectively to those matters that go through the early resolution requirements.

### **Subrule 2: In the event of conflict**

Unless the court otherwise orders, in the event of a conflict between this rule, including the Early Resolution and Case Management Model, and another rule, this rule, including the Early Resolution and Case Management Model, applies.

- Rule 5.01 (2) ensures that where there are Early Resolution and Case Management Model rules and Provincial Court (Family) Rules, the Early Resolution and Case Management Model rules apply.

### **Subrule 3: Application of this rule and Early Resolution and Case Management Model**

This rule and the Early Resolution and Case Management Model apply to proceedings concerning the following, when initiated in an early resolution and case management registry:

- (a) orders about family law matters that are to be made under Part 3 [*Applying for Orders about Family Law Matters*] of Appendix B;
- (b) case management orders that are to be made under Part 5 [*Case Management Orders*] of Appendix B;
- (c) orders that are to be made under Part 6 [*Applying for Other Orders*] of Appendix B in relation to the following:
  - (i) protection orders;
  - (ii) extraordinary parenting matters;
  - (iii) relocation;
  - (iv) consent orders;

(v) enforcement.

- Rule 5.01(3) establishes the situations in which the Early Resolution and Case Management Model rules will apply.
- While only family law matters are referred into the early resolution requirements, there are new forms for a number of applications and the current notice of motion process will be replaced by a different process for seeking court orders.

#### **Subrule 4: When family law matter must be resolved in early resolution and case management registry**

Subject to subrule (5), a party seeking to resolve any matters in subrule (3) must do so in the early resolution and case management registry when

- (a) there is an existing case filed in the early resolution and case management registry and the family law matter has the same parties as the existing case,
  - (b) the family law matter involves a child related issue and the early resolution and case management registry is the closest registry to where the child lives most of the time, or
  - (c) the family law matter does not involve a child related issue and the early resolution and case management registry is the closest registry to where the party seeking to resolve the family law matter lives most of the time.
- Rule 5.01 (4) identifies when a party seeking to resolve their family law matter through the family justice system is required to use the Victoria registry.

#### **Subrule 5: Protection orders and extraordinary parenting matters**

With permission of the court, a party seeking an order about a protection order or an extraordinary parenting matter may do so in any registry.

- Rule 5.01 (5) establishes that a party seeking a protection order or an urgent “extraordinary” parenting matter can seek permission from the court to apply at any registry.

#### **Subrule 6: When Early Resolution and Case Management Model does not apply**

The Early Resolution and Case Management Model does not apply to matters in a court file if

- (a) the court file relating to the family law matter is transferred to another registry,
- (b) an application to obtain an order is made before the coming into force of this rule, or
- (c) a notice of motion is filed before the coming into force of this rule.

- Rule 5.01 (6) is a transition rule which indicates the situations in which the Early Resolution and Case Management Model rules will not apply. Applications or notices of motion that are commenced before this rule comes into force will proceed under the pre-May 13<sup>th</sup> rules.

#### **Subrule 7: Intention to proceed – court file started before Early Resolution and Case Management Model**

Despite subrule (6), if one year has passed from the date of an activity described in subrule (6) (b) or (c), before the parties may proceed, a party must

- (a) file a notice of intention to proceed in Form B [*Notice of Intention to Proceed*] of Appendix C,
- (b) serve it on the other party,
- (c) file a Certificate of Service, and
- (d) participate in a family management conference.

- Rule 5.01 (7) is also a transition rule which establishes that if a party is operating under the pre-May 13<sup>th</sup> rules but takes no action on the file for a year, that they then will file a notice of

intention to proceed which will require them to participate in a family management conference. The judge at the family management conference will determine what the parties' next steps will be.

- The Notice of Intention to Proceed form is new with these rules and is important as family dynamics and finances can change significantly in a year.
- Service, in this section, should be in accordance with the existing rule 9.

## [Appendix B](#)

### [Early Resolution and Case Management Model](#)

- This Appendix contains most of the Early Resolution and Case Management provisions. Rule 5.01 introduces this Appendix into the Provincial Court (Family) Rules, but the Appendix contains the operative rules.

#### **Part 1 – INTERPRETATION, APPLICATION AND PURPOSE**

- Part 1 sets out miscellaneous provisions that specify how to cite this Appendix, how this Appendix interacts with the existing rules, additional definitions, and the purpose of this Appendix.

#### **Section 1: Definitions**

(1) In this Appendix, the definitions in rule 5.01 (1) apply.

(2) In this Appendix:

**“early resolution requirements”** means the requirements described in section 5 [*early resolution requirements*];

**“these rules”** means the Provincial Court (Family) Rules.

- The section reiterates that the definitions in 5.01 apply as well as those contained in the appendix.
- The section also establishes that the term “these rules” means the Provincial Court (Family) Rules.

#### **Section 2: Citation**

This Appendix may be cited as the “Early Resolution and Case Management Model” and is included within any reference to the “Provincial Court (Family) Rules”.

- This section establishes the citation for the Early Resolution and Case Management Model and that Appendix B is included in any reference to the Provincial Court (Family) Rules.

### Section 3: Designation of early resolution and case management model registry

This Early Resolution and Case Management Model applies in the Victoria registry, which is designated as an early resolution and case management model registry.

- This section explains that the Early Resolution and Case Management Model applies in an early resolution and case management model registry (defined as the Victoria registry, although this could be expanded later if needed).

### Section 4: Purpose

The purpose of the Early Resolution and Case Management Model is to encourage parties to resolve their cases by agreement or to help them obtain a just and timely decision in a way that

- (a) takes into account the impact that the conduct of a case may have on a child and family,
- (b) minimizes conflict,
- (c) promotes cooperation between the parties, and
- (d) provides processes for resolution that are efficient and consistent with the complexity of the cases to be resolved.

- This section sets out the purpose of the Early Resolution and Case Management Model.
- The section signals to users that the Early Resolution and Case Management Model is designed to encourage parties to resolve their cases by agreement or to help them obtain just and timely decisions.

## PART 2 – EARLY RESOLUTION REQUIREMENTS

- This Part establishes and explains the Early Resolution Requirements which are necessary steps to take before filing a Family Law Matter Claim (which replaces the current Application to Obtain an Order).
- This process emphasises the importance of CDR and facilitates access for self-represented litigants to legal information and services.

### Division 1 – General

- This Division sets out the early resolution requirements and provides general information about their operation and exceptions to their operation.

### Section 5: Early resolution requirements

Before filing a family law matter claim under Part 3 [*Applying for Orders about Family Law Matters*], a person seeking resolution of a family law matter in an early resolution and case management registry must, unless otherwise provided in this Early Resolution and Case Management Model,

- (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*].

- This section sets out the requirements before a party is able to file a family law matter claim (equivalent to an application under the existing rule) and directs parties to the sections that provide further details.
- The Notice to Resolve a Family Law Matter is a new form that is the initiating document for the new process. It differs from an Application to Obtain and Order as it identifies the parties but prompts the referral to the early needs assessment and CDR process. It does not ask parties to assert positions or arguments. This approach was taken in order to avoid setting the parties into an adversarial mindset from the beginning of the process.
- The normal rules of service do not apply to the Notice to Resolve a Family Matter. It can be provided by almost any means of communication (including text, social media, email, etc.).
- The reason for not requiring service is that there are no legal consequences that rely on the document being served. Family Justice Services Division will be contacting the second party to notify them of the next steps in the process.

### Section 6: Exception to early resolution requirements

The early resolution requirements described in section 5 are not required if a person is only applying for one or more orders that are to be made under Part 5 [*Case Management Orders*] or 6 [*Applying for Other Orders*].

- This section sets out that parties do not have to comply with the early resolution requirements established in section 5 if they are only seeking the following orders:
  - Case management orders
  - Protection orders
  - Orders about Extraordinary Parenting Matters
  - Orders about Relocation
  - Consent Orders
  - Orders about Enforcement

### Section 7: Protection orders and orders about extraordinary parenting matters take priority

For certainty, if a party applies for an order about

- (a) a protection order under Part 9 [*Protection from Family Violence*] of the *Family Law Act*, or
- (b) an extraordinary parenting matter

in addition to an order about a family law matter, the party may apply for the order about the protection order or the extraordinary parenting matter before complying with the early resolution requirements under this Part.

- This section makes clear for parties that orders about protection orders and orders about extraordinary parenting matters (defined term) are treated on an expedited basis.

### Section 8: Judge may waive or vary requirements

- (1) For certainty, rule 20 (2) [*judge may waive or vary rules*] of these rules applies to this Early Resolution and Case Management Model.
- (2) A party may make an application to waive or vary the early resolution requirements in accordance with Part 5 [*Case Management Orders*] of this Early Resolution and Case Management Model.

- This section provides certainty that the existing rule in the Provincial Court (Family) Rules that provides judges with authority to vary or waive requirements applies in the Early Resolution and Case Management Model as well.

### Section 9: Intention to proceed in certain cases after one year

- (1) The parties must meet the requirements of subsection (2) if no family law matter claim has been filed and more than one year has passed since the latest date on which one of the parties
  - (a) filed a notice to resolve a family law matter in Form A [*Notice to Resolve a Family Law Matter*] of Appendix C,
  - (b) completed a needs assessment,
  - (c) completed a parenting education program, or
  - (d) participated in a consensual dispute resolution session.
- (2) Before the parties described in subsection (1) may proceed under this Early Resolution and Case Management Model,
  - (a) a party must file a notice of intention to proceed in Form B [*Notice of Intention to Proceed*] of Appendix C and provide a copy of the notice to the other party, and
  - (a) the parties must participate in a new needs assessment.

- This section establishes that parties are required to return to assessment if at least a year has passed without further steps being taken since the latest of filing the notice to resolve, attendance at assessment, participation in consensual dispute resolution, or completion of the parenting education course.
- This requirement means that if the parties pause in activity on their file and after a year decide to commence court proceedings, they must tell the other party they are resuming the process and repeat the assessment to refresh the information and referrals, and receive assistance in how to re-enter the process. Families and their dynamics and needs can change quickly while a separation is occurring and this ensures that family violence, information to calculate support and other issues are assessed as those changes occur.

### Division 2 – Needs Assessment

- Each party must participate in an individual needs assessment with a Family Justice Counsellor who will: help the party identify their needs; provide referrals to the Parenting After Separation program, community service providers, and lawyers who can give legal advice; provide information about preparing financial information; identify if there is a risk of family violence; and make a determination about whether CDR is appropriate.

### Section 10: Participating in needs assessment

Each party must participate in a needs assessment conducted by a needs assessor for the following:

- (a) assistance with identifying legal and non-legal needs;
- (b) information about resolving issues, including
  - (i) how to resolve family law matters and other issues out of court, and
  - (ii) how to apply for a court order;
- (c) provision of
  - (i) a referral to an appropriate parenting education program, or
  - (ii) an exemption from a parenting education program under Division 3 [*Parenting Education Program*] of this Part;
- (d) referrals to other resources, including
  - (i) where and how to seek legal advice,
  - (ii) where and how to access legal information,

- (iii) where and how to access resources for issues that are not legal in nature, and
- (iv) where and how to access resources for children dealing with family changes;
- (e) assessment about whether consensual dispute resolution under Division 4 [*Consensual Dispute Resolution*] of this Part is not appropriate;
- (f) assessment about whether there is a risk of family violence;
- (g) referrals to other resources for individuals and families experiencing or concerned about family violence.

- This section requires each party to participate in a needs assessment and describes the needs assessment process.
- Family Justice Services Division currently uses an assessment tool to identify the needs of families and assess for safety, family violence along with a number of other relevant issues, and determine the appropriateness of mediation. Family justice counsellors also receive training on assessing for family violence and other dynamics that may be operating in a family. Assessment helps to identify the legal issues in order to make appropriate referrals to legal advice and information early in the process.
- Assessment also identifies non legal issues that families need support with: how to effectively parent apart, referrals for children dealing with family changes, housing and debt issues, counselling, and referrals for individuals and families experiencing or concerned about family violence.

### Section 11: Needs assessor

For the purposes of this Division, a needs assessor must be a family justice counsellor appointed under section 10 (1) [*family justice counsellors*] of the *Family Law Act*.

- This section establishes that a needs assessor must be a family justice counsellor with Family Justice Services Division appointed under section 10 (1) of the *Family Law Act*.
- The rationale for this is that assessment is considered one of the core steps in this process and ensuring consistency in the tool used, the training to conduct assessment and the ability to monitor performance is important at this stage to ensure consistent and effective service to the parties.
- Family Justice Services Division is also uniquely positioned in that it will work with both parties to do the assessment. Lawyers who are representing a client and advocates typically will only assess the party they are representing.
- The assessment is currently part of practice in family justice centres and Justice Access Centres and is required in Rule 5 sites across the province.

### Division 3 – Parenting Education Program

- The Parenting Education Program requirement is similar to the current program under Rule 21.
- Under the Early Resolution and Case Management Model, parties must complete the Parenting Education Program (Parenting After Separation) before a file can proceed to court, unless exempted.

### Section 12: Completing parenting education program

Each party must complete a parenting education program unless the needs assessor exempts that party because

- (a) that party has already completed the parenting education program in the 2 years before the date of the needs assessment,
- (b) the family law matter is only related to spousal support,
- (c) every child involved in the family law matter has reached 19 years of age,
- (d) that party resides in a community where the parenting education program is not offered in person and the party cannot access the online version,
- (e) the parenting education program is not available in a language in which that party is fluent,
- (f) that party is unable to attend the parenting education program in person and cannot complete an online version of the parenting education program due to literacy challenges, or
- (g) that party cannot complete the parenting education program due to a serious medical condition.

- There are some small differences between the existing Rule 21 and the parenting education requirement in the early resolution and case management model. Rule 21 currently requires completion by only one party before a first appearance date will be set. The second party is supposed to complete Parenting After Separation (PAS) before they can be heard, however this is difficult to enforce.
- The model requires both parties complete PAS before they may file their pleadings (i.e. 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.
- To test all of the pre-court requirements as contemplated in the model, the new PAS rule is used here, rather than continuing to apply PAS as per Rule 21.

## Division 4 – Consensual Dispute Resolution

- This Division sets out the requirement for parties to participate in at least one Consensual Dispute Resolution session unless exempted by a needs assessor or consensual dispute resolution professional.
- It also authorizes consensual dispute resolution professionals to determine the proper form for financial information to take.

### Section 13: Participating in consensual dispute resolution

- (1) The parties must attempt to resolve a family law matter by participating in at least one consensual dispute resolution session unless
  - (a) a needs assessor determines that the parties cannot access consensual dispute resolution services, or
  - (b) a needs assessor or a consensual dispute resolution professional determines that participation at a consensual dispute resolution session is not appropriate.
- (2) To prepare for the consensual dispute resolution session, each party must participate in any preparatory meetings or other preparatory process as required by the consensual dispute resolution professional.

- This section requires that parties must attempt to resolve a family law matter (defined term) by participating in at least one consensual dispute resolution (defined term) session unless an exemption applies.

- Consensual dispute resolution means
  - (a) mediation with a family law mediator who is qualified as a family dispute resolution professional in accordance with the Family Law Act regulations (this includes family justice counsellors and private lawyer and non-lawyer mediators)
  - (b) a collaborative family law process where parties have signed a collaborative participation agreement
  - (c) facilitated negotiation of child or spousal support done by child support officers employed by Family Justice Services Division.

#### **Section 14: Financial information for consensual dispute resolution**

If financial information for consensual dispute resolution is required, it must be provided in the form required by the consensual dispute resolution professional.

- This section allows consensual dispute resolution (CDR) professionals to determine the form in which financial information for CDR is to be provided and requires parties to comply.

### **PART 3 – APPLYING FOR ORDERS ABOUT FAMILY LAW MATTERS**

- This Part explains how to apply for orders about family law matters, how to reply to a family law matter claim, and how to file a counterclaim.
- Family Law Matters are matters that benefit from (and are appropriate for) the Early Resolution Process. They are:
  - parenting arrangements;
  - child support;
  - contact with a child;
  - guardianship of a child;
  - spousal support.
- Orders about Family Law Matters are distinguished from other orders which can be applied for under Parts 5 and 6.

#### **Division 1 – Making Family Law Matter Claims**

- Family Law Matter Claims (Form C) replace the current Application to obtain an order (Form 1).
- A party has to meet the Early Resolution Requirements, as set out in section 5, before filing a Family Law Matter Claim.

#### **Section 15: Early resolution requirements must be met before filing claim**

Before filing a claim about a family law matter, a party must meet the applicable early resolution requirements described in section 5 [*early resolution requirements*].

- This section states that the early resolution requirements (defined term) must be met before filing a family law matter claim.
- This means that both parties need to have attended a needs assessment, completed a parenting education program and participated in at least one consensual dispute resolution session (if

appropriate) before filing their claims or replies. There are exemptions provided for parenting education and consensual dispute resolution (for example the latter may not be suitable for all families).

- Family Justice Services Division (FJSD) will be responsible for monitoring whether the applicable early resolution requirements have been met.
- Upon request of a party, FJSD will forward proof of meeting the requirements to the court registry in a file summary document to be filed on the court file.
- If a party has participated in consensual dispute resolution with a private consensual dispute resolution professional, FJSD will collect proof of compliance to inform their file summary document.

### Section 16: Applying for family law matter claim

- (1) A party who is seeking an order about the following must file and serve a family law matter claim in Form C [*Family Law Matter Claim*] of Appendix C:
  - (a) for a new order about a family law matter;
  - (b) to change or cancel all or part of an existing order or filed written agreement about a family law matter;
  - (c) to set aside or replace all or part of a written agreement about a family law matter that has not been filed.
- (2) The family law matter claim under subsection (1) must be accompanied by the following, as applicable:
  - (a) a financial statement in Form D [*Financial Statement*] of Appendix C;
  - (b) an affidavit;
  - (c) any supporting evidence or documents.

- This section sets out the procedure for applying for family law matter claims.
- For applications concerning family law matters, the title “Family Law Matter Claim” is used. Although more wordy, the title is very clear that these are applications about family law matters as defined in the rules, and fall within the early resolution requirements. Applications for orders that are not about family law matters are made using other forms.
- The Financial Statement in Form D has been changed from the Financial Statement in Form 4. In addition to formatting changes, 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.

### Section 17: Additional documents when applying for certain orders

If the party is applying for one of the following orders, the family law matter claim must be filed with the following appropriate additional documents for the order:

- (a) in relation to an existing order or written agreement, a copy of the existing order or written agreement;
- (b) in relation to child support, if the child support guidelines require the person to provide information, a financial statement in Form D [*Financial Statement*] of Appendix C and any other documents required by the child support guidelines;
- (c) in relation to spousal support, a financial statement in Form D [*Financial Statement*] of Appendix

- C;
- (d) to be appointed as a guardian of a child, an affidavit in Form 34 *[Affidavit]* of Appendix A with the following exhibits attached:
- (i) a record check from the Ministry of Children and Family Development;
  - (ii) a protection order record check from the protection order registry;
  - (iii) a criminal record check.

- Depending on what the subject matter of the family law matter is, this rule directs the user to additional documents that need to be filed depending on the order sought.

### Section 18: Serving family law matter claim

- (1) A party making a family law matter claim under section 16 must arrange for the service of the family law matter claim by arranging for an adult who is not a party to leave a copy of the following documents with the party to be served:
- (a) the family law matter claim;
  - (b) a blank copy of Form F *[Reply to a Family Law Matter Claim]* of Appendix C;
  - (c) any applicable additional documents, as described in section 17.
- (2) The adult who serves documents under subsection (1) is to complete a certificate of service in Form E *[Certificate of Service]* of Appendix C and provide it to the party making the family law matter claim.
- (2) If a reply is not filed under Division 2 within 21 days, the party making the family law matter claim must file the Certificate of Service.

- This sets out the rule for effecting service of a family law matter claim on the other party. A notable difference is that the time period for a reply is 21 days, whereas it is 30 days in the existing rules.
- The time 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 early resolution and case management model provides instructions on how service is effected throughout the rules rather than in one centralized rule (rule 9 in existing rules).
- Family Law Matter Claims have to be served with personal service.

### Division 2 – Family Law Matter Replies and Counterclaims

- Replying to a Family Law Matter Claim works a lot like replying to an application to obtain an order, but the new rules require parties to have met the Early Resolution Requirements before filing 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 so that Party 2 cannot delay the process.

### Section 19: After receipt of family law matter claim

- (1) When a party is served with a family law matter claim, the party may reply to the family law matter claim, as described in section 21 *[replying to family law matter claim]*.
- (2) If the party served with a family law matter claim does not reply, the consequences described in section 23 *[if no reply filed]* apply.

- This section sets out a party's options when served with a family law matter claim, and directs them to the section that sets out the consequences for not filing a reply (section 23)

## Section 20: Early resolution requirements must be met before filing reply

Before filing a reply to a family law matter claim under section 21, a party must meet the applicable early resolution requirements described in section 5 [*early resolution requirements*].

- Under the rules in place prior to May 13th, Rule 5 required only one party to meet with a Family Justice Counsellor before proceeding to First Appearance.
- This new model imposes a stricter requirement on both parties to comply with early resolution requirements by not allowing either party to file pleadings without having met the requirements.

## Section 21: Replying to family law matter claim

If a party is served with a family law matter claim and replies,

- (a) the party must file a completed reply in Form F [*Reply to a Family Law Matter Claim*] of Appendix C within 21 days after the date that the party is served the family law matter claim,
- (b) the party may, in the reply, do any of the following:
  - (i) agree with one or more of the orders applied for in a family law matter claim;
  - (ii) disagree with one or more of the orders applied for in a family law matter claim;
  - (iii) make a counterclaim in accordance with section 22, and
- (c) if the family law matter claim involves child support or spousal support, the party must file a financial statement in Form D [*Financial Statement*] of Appendix C.

- The time to file a reply has been shortened to 21 days. This has been flagged as something to evaluate during the prototype. The rationale for reducing the date is that parties who will be getting more help at the front end will need less time to prepare a reply. It will also reduce delay for those families that are proceeding to court

## Section 22: Applying for counterclaim

- (1) In the reply, a party may include a counterclaim to apply for an order about a different family law matter that was not included in the family law matter claim.
- (2) If the counterclaim involves child support or spousal support, the party must file any applicable additional documents, as described in section 17 [*additional documents when applying for certain orders*].

- This section sets out how a party can apply for a counterclaim and what additional documents may be required.

## Section 23: If no reply filed

If a party does not file a reply in accordance with section 21 (a) [*replying to family law matter claim*],

- (a) the party is not entitled to receive notice of any part of the proceedings, including any conference, court appearance, hearing or trial, and
- (b) a judge may make orders without that party's knowledge.

- This section sets out the consequences for not filing a reply.
- If a party does not reply they are not entitled to receive notice of any proceedings and a judge may make orders without that party's knowledge.
- This is important in order to avoid one party holding up another party's claim for relief by simply not engaging.

### Section 24: Judge may direct matters if party does not file reply

Despite section 23, a judge may direct that a party who does not file a reply under section 21 [*replying to family law matter claim*] receive notice of and attend a family management conference or another conference or hearing.

- This section sets out that, despite the rule that says a party is not entitled to notice of proceedings if they do not file a reply, a judge may direct that the party does receive notice of proceedings.

### Section 25: Copy to filing party

After the reply is filed, the registry must, within 21 days, provide a copy of the reply and all documents filed with the reply to the party who filed the family law matter claim.

- This is the same requirement as in the existing rules. It clarifies that the registry is responsible for forwarding all documents filed with the reply to the filing party, which is current registry practice.

### Section 26: Replying to counterclaim

A party may reply to a counterclaim by filing and serving a reply to the counterclaim in Form G [*Reply to a Counterclaim*] of Appendix C within 14 days after the date that the party receives the counterclaim in the reply.

- This section sets out how a party can reply to a counterclaim. The time period for reply to a counterclaim has been shortened to 14 days.

## PART 4 – FAMILY MANAGEMENT CONFERENCES

- This Part introduces Family Management Conferences, outlines how they work, and sets out what types of orders can be made in that conference.
- This new tool is intended to assist parties with certain orders while increasing trial readiness.
- Family Management Conferences take the place of First Appearances (Family Remand) and will be conducted by a judge.

### Division 1 – Purpose, Participation and Information

- This Division outlines what Family Management Conferences are. It states that attending one is required after complying with the Early Resolution Requirements and provides general information about the Conferences.
- Family Management Conferences are intended to help parties achieve readiness and move cases forward for adjudication.

### Section 27: Family management conferences

A family management conference is an informal and time-limited process in which a judge

- (a) may assist the parties to identify the issues to be resolved,
- (b) may explore options to resolve the issues,
- (c) may, if needed, make orders and directions under Part 5 [*Case Management Orders*] based on information provided by or on behalf of the parties to ensure a file is ready to proceed to the

- next step in the process,
- (d) may, if needed, make interim orders under section 36 [*interim orders*], based on evidence provided by or on behalf of the parties regarding family law matters, to address needs until the parties resolve their family law matters in a subsequent step in the process, and
  - (e) may, if needed, make orders under
    - (i) section 23 [*if no reply filed*], if a party does not file a reply,
    - (ii) section 37 [*consent orders*], by consent of the parties, and
    - (iii) section 41 [*orders made in the absence of a party*], in the absence of a party.

- This section describes the new family management conference which will take the place of current first appearance, or “family remand”, practices in the Victoria registry.

### **Section 28: Family management conference required after compliance with Part 3**

All parties to a family law matter claim must attend a family management conference after complying with Part 3 [*Applying for Orders about Family Law Matters*].

- Once the claim and, if applicable the reply and counterclaim are filed, the next step in the process is to attend a family management conference. This will replace the first appearance process.

### **Section 29: Who must attend family management conference**

(1) All parties must attend the family management conference.

(2) A lawyer of each party may attend the family management conference with the party.

- As the purpose of the family management conference is to assist the parties in achieving readiness and moving the case forward for adjudication, parties must attend the conference. Parties may bring their lawyer if they have one. 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 and use the conference time for substantive outcomes.

### **Section 30: Family management conference may proceed**

A family management conference may proceed without a party who

- (a) does not file a reply, or
- (b) does not attend.

- This section ensures one party cannot delay another party seeking resolution by not filing or participating in the family management conference. Orders can be made in another party’s absence.

### **Section 31: Information presented in family management conferences**

For the purposes of a family management conference, the parties may be required to provide the following for consideration by a judge:

- (a) information provided in a family law matter claim, reply and reply to counterclaim, if any;
- (b) information provided in a financial statement;
- (c) evidence given orally on oath or affirmation;
- (d) affidavit evidence;
- (e) submissions offered by the parties or by the lawyers of the parties.

- This section sets out the types of information that can be presented at a family management conference.

### Section 32: Intention to proceed – family management conferences

- (1) A notice of intention to proceed must be filed in accordance with subsection (2) if
  - (a) a party has filed a family law matter claim,
  - (b) there is no final order in respect of the claim, and
  - (c) more than one year has passed since the parties have taken any action under these rules.
- (2) If subsection (1) applies, before the parties may proceed,
  - (a) a party must file a notice of intention to proceed in Form B [*Notice of Intention to Proceed*] of Appendix C, serve it on the other party and file a certificate of service, and
  - (a) the parties must participate in a family management conference.

- Similar to section 9, this section establishes that if a party has reached the stage where a party has filed a family law matter claim, there has been no final order and over the course of one year there has been no action taken under the rules, the next step to refresh the process will be a notice of intention to proceed which will prompt a return to a family management conference at which the judge will help determine the next steps for re-entering the process.
- This is important as family dynamics and finances can change significantly in a year.

### Division 2 – Scheduling the Family Management Conference

- This division explains how a Family Management Conference is scheduled.
- The process differs substantially from how scheduling first appearances works under the existing rules. The new process involves the parties more, allowing them to find dates that work for them and for their lawyers, if the parties have legal representation. This process should reduce the number of adjournments that occur because of missed appearances.

### Section 33: Scheduling family management conference if reply filed

If a family law matter claim and a reply have been filed, the registry must provide the parties with information about the procedure for scheduling the family management conference.

- Existing Rule 6(1) sets out how the registry notifies parties when a first appearance has been set. In the Early Resolution and Case Management Model, a family management conference is not automatically scheduled. This section explains that the registry will provide the parties with information about how they are to contact the registry to schedule the conference.

### Section 34: Scheduling family management conference if no reply filed

If a family law matter claim has been filed and a reply has not been filed and, based on the certificate of service, at least 21 days have passed since the family law matter claim was served, the registry must provide the party who filed the family law matter claim with information about the procedure for scheduling the family management conference.

- This section sets out how a family management conference is scheduled if no reply has been filed.
- A party has 21 days to file a reply, after which time the filing party may file proof of service and will then be contacted with information on how to schedule the conference.

## Division 3 – Family Management Conference Proceedings

- A Family Management Conference is an informal hearing in front of a judge. During this Conference, the judge may make certain interim orders, make orders with the parties' consent, order to 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.

### Section 35: Directions to attend

At a family management conference, a judge may direct a party to do any of the following:

- (a) attend consensual dispute resolution;
- (b) attend a family case conference;
- (c) return for another family management conference;
- (d) attend a trial preparation conference;
- (e) attend a hearing or trial.

- Part of the role for the judge sitting in a family management conference is to identify next steps for the parties. This section lists the different events (hearing, case conference, trial preparation conference or trial) a judge can order a party to attend after a family management conference.

### Section 36: Interim orders

At a family management conference, a judge may make one or more of the following interim orders:

- (a) an allocation of parental responsibilities;
- (b) an allocation of parenting time;
- (c) contact with a child;
- (d) child support;
- (e) spousal support;
- (f) guardianship of a child.

- This section sets out for parties the types of interim orders a judge may make at a family management conference. An interim order is a temporary order. Often interim orders are put in place until the parties can make an agreement or get a decision at trial. These cover orders around parenting arrangements, guardianship, contact and support issues.

### Section 37: Consent orders

At a family management conference, a judge may make one or more of the following orders, including final orders, with consent of the parties:

- (a) an allocation of parental responsibilities;
- (b) an allocation of parenting time;
- (c) contact with a child;
- (d) child support;
- (e) spousal support;
- (f) guardianship of a child.

- This section sets out for parties the types of consent orders a judge may make at a family management conference. Consent orders can happen when the parties agree. This model is designed to make the consent order process easier and more streamlined than the current model.

### Section 38: Completion of early resolution requirements

At a family management conference, a judge may make an order that a party complete the early resolution requirements under section 5 [*early resolution requirements*].

- This section underscores that the judge at a family management conference can order parties to complete the early resolution requirements.

### Section 39: Conduct orders

At a family management conference, a judge may make any conduct order that may be made under Division 5 of Part 10 [*Orders Respecting Conduct*] of the *Family Law Act*, including the following:

- (a) prohibiting a party from making an application respecting any matter over which a parenting coordinator has authority to act under an agreement or order, other than an application changing or setting aside a parenting coordinator determination, without permission of the judge, under section 223 [*orders respecting case management*] of the *Family Law Act*;
- (b) requiring the parties to participate in family dispute resolution under section 224 (1) (a) [*orders respecting dispute resolution, counselling and programs*] of the *Family Law Act*;
- (c) requiring the parties to attend counselling, specified services or programs, under section 224 (1) (b) of the *Family Law Act*;
- (d) allocating or requiring one party to pay the fees related to the family dispute resolution, counselling, specified services or programs, if the party is ordered to attend, under section 224 (2) of the *Family Law Act*;
- (e) setting restrictions or conditions respecting communication between parties, including respecting when or how communications may be made, under section 225 [*orders restricting communications*] of the *Family Law Act*, unless it would be more appropriate for a protection order to be made by a judge under Part 9 [*Protection from Family Violence*] of that Act;
- (f) reporting to the court or to a person named by the judge at the time and in the manner specified, under section 227 [*other orders respecting conduct*] of the *Family Law Act*.

- As conduct orders often assist in moving parties towards readiness or de-escalating matters, this section sets out for parties the types of conduct orders a judge may make at a family management conference. It explicitly lists some of the more likely orders while giving the judge authority to make all conduct orders under the *Family Law Act*.

### Section 40: Preparing for subsequent hearing

The parties may be required to attend a family management conference to prepare for a hearing, even if Part 3 [*Applying for Orders about Family Law Matters*] does not apply to the parties, if one of the parties has requested one of the following orders:

- (a) reviewing, enforcing, changing or setting aside a determination of a parenting coordinator;
- (b) permitting or prohibiting the relocation of a child under section 69 [*orders respecting relocation*] of the *Family Law Act*;
- (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 62 [*when denial is not wrongful*];
  - (iii) section 212 [*orders respecting disclosure*];
  - (iv) section 213 [*enforcing orders respecting disclosure*];
  - (v) section 228 [*enforcing orders respecting conduct*];
  - (vi) section 230 [*enforcing orders generally*].

- This section establishes that parties may be required to attend a family management conference even when not making a family law matter claim if they are requesting one of these orders. It is anticipated that these particular matters could benefit from additional case management.

#### **Section 41: Orders made in the absence of a party**

- (1) At the family management conference, a judge may make an order, including final orders, in the absence of a party.
- (2) A judge may change, suspend or cancel an order made in the absence of a party, if
  - (a) there is a good reason for changing, suspending or cancelling the order, and
  - (a) that party applies within a reasonable time for the change, suspension or cancellation of the order using Form H [*Application for Case Management Order*] of Appendix C.

- This section sets out for parties the types of orders a judge may make at a family management conference when one party does not attend. It also makes clear how an order made in the absence of a party can be changed, suspended, or cancelled.

### **PART 5 – CASE MANAGEMENT ORDERS**

- This Part outlines the various case management orders that a judge can make. Case management orders are made in Family Management Conferences and include orders such as : waiving or varying early resolution requirements, adding or removing a party to the proceeding, or correcting or amending a filed document.
- The model envisions most of these case management orders being made during the parties' Family Management Conference, with or without application.
- If an application for a case management order is made subsequent to the Family Management Conference, or is required prior to the scheduling of a Family Management Conference, a distinct appearance before the court will be scheduled. The appearance may occur in the form of a Family Management Conference or a hearing.

#### **Section 42: Case management orders – general**

- (1) One or more of the following case management orders may be made with or without application by a party:
  - (a) transferring the court file to another registry for one or more purposes;
  - (b) adding or removing a party to the proceeding;
  - (c) settling or correcting the terms of an order made under these rules;
  - (d) setting a specified period of time for the filing and exchanging of information, including a financial statement in Form D [*Financial Statement*] of Appendix C;
  - (e) correcting or amending a filed document, including the correction of a name or date of birth;
  - (f) requiring that a parentage test be taken under section 33 [*parentage tests*] of the *Family Law Act*;
  - (g) requiring that information be disclosed by a third party;
  - (h) adjourning a hearing or trial;
  - (i) requiring that a person who prepared a report under section 211 [*orders respecting reports*] of the *Family Law Act* attend a trial;
  - (j) respecting the conduct and management of a trial;

- (k) allowing a person to attend a hearing or conference using electronic communication;
  - (l) shortening or extending a time limit set under these rules or a time limit set by an order or direction of a judge;
  - (m) allowing, waiving or modifying any service, delivery or notice requirement, including allowing an alternate method for the service of a document;
  - (n) requiring access to information in accordance with section 242 [*orders respecting searchable information*] of the *Family Law Act*;
  - (o) permitting any other means of proof instead of that required by these rules;
  - (p) waiving or varying any early resolution requirements;
  - (q) recognizing an extraprovincial order other than a support order;
  - (r) permitting a party to be exempt from a requirement under these rules.
- (2) A party may apply for a case management order under subsection (1) by filing and serving the following on any other parties, at least 7 days before the date set for the hearing:
- (a) an application for a case management order in Form H [*Application for Case Management Order*];
  - (a) any supporting evidence or documents.

- This section sets out the case management orders that can be. These can be made with or without an application.
- The section also tells parties how to apply.
- The party would apply for a Case Management Order using Form F, not a Notice of Motion as would be done outside of the Early Resolution and Case Management process. Service, in this section, should be in accordance with the existing rule 9.

### Section 43: Case management orders – without notice or appearance

- (1) A party may request in Form I [*Application for Case Management Order Without Notice or Appearance*] of Appendix C the case management orders described in section 42 (1) (k) to (r) without an appearance or without notice to any other parties.
- (2) The judge reviewing an application under this section for a case management order without notice or an appearance may do the following:
  - (a) grant the order without the attendance of the parties;
  - (b) give directions to obtain further information, including to require the parties to attend to speak to the matter;
  - (c) require that notice be given to any other parties;
  - (d) reject the application with reasons.
- (3) If a case management order is made without notice under this section, the party who applied for the order must ensure that the other party is served the case management order that is made.

- This section sets out that a subset of the case management orders set out in the previous section (section 42) can be requested without notice to the other part(ies) or without an appearance.
- The section also tells parties how to apply using Form I.

## PART 6 – APPLYING FOR OTHER ORDERS

- This Part sets out the rules for applying for orders that do not fall under Orders About Family Law Matters (Part 3) or Case Management Orders (Part 5).

- The types of matters identified under this part are matters that have been identified as not appropriate for the early resolution process (either by nature, or due to time constraints). And so for applications for an order under this Part, parties do not need to meet the Early Resolution Requirements described in section 5 and can proceed directly before a judge (or be heard without appearance, as the case may be).

## Division 1 – Protection Orders

- This Division sets out the rules for applying for orders about protection orders (which includes obtaining, changing and terminating).
- Parties obtain protection orders in a hearing in front of a judge and can obtain protection orders without notice to the other party (i.e. on an *ex parte* basis).
- Protection orders are heard on an expedited basis, requiring only seven days' notice, unless leave to proceed without notice or with short notice is provided.

### Section 44: Priority – protection orders

The application for an order about a protection order may be made before complying with the early resolution requirements described in section 5 [*early resolution requirements*] if a party is applying for both of the following:

- (a) an order about a protection order;
- (b) an order about a family law matter.

- This section underscores that if a party is seeking both an order about a family law matter and an order about a protection order, the application for a protection order can be made before complying with the early resolution requirements.

### Section 45: Applying for *Family Law Act* protection orders or to change or terminate protection orders

- (1) To apply to a judge to obtain, or to change a term or condition of or to terminate, a protection order under Part 9 [*Protection from Family Violence*] of the *Family Law Act*, a person must file
  - (a) an application about a protection order in Form K [*Application about a Protection Order*] of Appendix C, and
  - (b) any supporting evidence or documents.
- (2) A person applying for an order about a protection order under this Division must arrange for the service of the application and supporting documents at least 7 days before the date set for the hearing by arranging for an adult who is not a party to leave a copy of the application and the supporting documents with the party to be served, unless the application is made
  - (a) without notice, or
  - (b) with less than 7 days' notice.
- (3) The adult who serves documents under subsection (2) is to complete a certificate of service in Form E [*Certificate of Service*] of Appendix C and provide it to the person applying for an order about a protection order.

- Feedback from women's serving organizations and other users suggested it would be easier for users if all provisions related to protection orders (PO) were captured in a single division rather than being dispersed throughout the rules.

- The model introduces a new form to use if applying to obtain a PO, change a term or condition of a PO, or terminate a PO. The form is to be served, with at least 7 days notice, unless there is also an application to be heard without notice.
- The new PO form is a guided affidavit so that parties do not need to obtain a separate affidavit.
- As in section 18(2) [*Serving family law matter claim*] above, there is a reminder that the person serving the application is to complete a certificate of service and provide it to the applicant.
- The early resolution and case management model provides instructions on how service is effected throughout the rules rather than in one centralized rule (rule 9 in existing rules). Protection Orders have to be served with personal service.

#### Section 46: Protection orders – without notice

- (1) A person may, under section 45, apply to make the following application without notice to any party by completing Form I [*Application for Case Management Order Without Notice or Appearance*] of Appendix C:
- (a) a protection order under section 183 [*orders respecting protection*] of the *Family Law Act*;
  - (b) to change a term or condition of or to terminate a protection order under section 187 [*changing or terminating orders respecting protection*] of the *Family Law Act*.
- (2) If a judge determines that a party should be given notice of an application made under subsection (1), the judge may make directions regarding
- (a) the date for the hearing,
  - (b) the amount of notice,
  - (c) how notice is to be given, and
  - (a) any other directions that the judge considers appropriate.

- As described in s.45 above, a person may apply to have their application about a protection order heard without notice. If the judge determines there should be notice, he/she may give directions as described in (2). Under the existing rule 20(3), protection orders may be made without notice.

#### Section 47: Evidence at protection order hearing

Evidence at a protection order hearing under section 46 may be given

- (a) orally on oath or affirmation, or
- (b) by affidavit.

- This section sets out how evidence may be provided at a protection order hearing.

#### Section 48: Judge to make new protection order

If a judge changes an existing protection order, including an extension of the protection order, a judge must terminate the existing protection order and make a new protection order.

- Feedback from the protection order registry and police is that when it appears there is more than one protection order in effect, it is confusing and difficult to enforce. This section, together with s.50 below, will help to ensure there is only ever one protection order, with all intended terms, in effect. It will be clearer to the parties and the police what terms are enforceable.

#### Section 49: What happens if protection order is made or changed

If a judge makes or changes a protection order in accordance with this Division, a clerk must

- (a) prepare the protection order unless the judge indicates otherwise,

- (b) provide a copy of the protection order to the protection order registry,
- (c) serve or provide a copy of the protection order on the party against whom the protection order was made or changed, as follows:
  - (i) if that party is present when the order is made or changed, provide the party with the protection order;
  - (ii) if that party is not present when the order is made or changed, arrange for the service of the protection order on that party within British Columbia;
  - (iii) if the registry is unable to arrange service under subparagraph (ii), notify the person who obtained the order and that person would subsequently be responsible for service, and
- (d) provide a copy of the protection order to the person who made the application.

- Under the existing Rule 18(2.1) the clerk prepares a protection order unless a judge orders otherwise, even when parties are represented by counsel. This helps to eliminate delay in preparing the order. This section carries this forward. It also introduces in (c) what has been the practice since December 2016 of using contracted process servers to serve protection order on persons against whom the order was made if they were not present in court.

### Section 50: What happens if protection order is terminated

If a judge terminates a protection order, a clerk must

- (a) prepare the termination order in Form L [*Order Terminating a Protection Order*] of Appendix C,
- (b) advise the protection order registry about the termination of the protection order, and
- (c) provide a copy of the termination order to all parties.

- As referenced in section 48 above, this is a new provision that explains what happens when a protection order is terminated. It introduces a new form, Order Terminating a Protection Order.

### Section 51: Form of orders

A protection order made under Part 9 [*Protection from Family Violence*] of the *Family Law Act* must be in Form 25 [*Protection Order*] of Appendix A of these rules and does not need to be signed by the parties or their lawyers.

- This section sets out which form of order is to be used for a protection order. The existing order form will be used.

### Section 52: No limitation on protection order applications

The expiry of a protection order or the change or termination of a protection order does not prevent a person from applying for subsequent protection orders.

- This section is included in response to feedback from anti-violence organizations who feel women do not always understand they may apply for another or a new or a different protection order. It is also consistent with s.187(3) FLA, “Nothing in subsection (2) of this section prohibits a person from making a subsequent application for an order under section 183”; ((2) says an application respecting an existing PO must be made before it expires).

## Division 2 – Orders about Extraordinary Parenting Matters

- The Early Resolution and Case Management Model introduces the new concept of Extraordinary Parenting Matters, defined in rule 5.01, that can be addressed before meeting the Early Resolution Requirements. Extraordinary Parenting Matters are a closed list of matters (see

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definition in 5.01(1)) that include temporary or permanent relocation, applications for passports or licences, matters having to do with a child's health, etc.

- 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.
- 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.

### **Section 53: Priority – extraordinary parenting matters**

The application for an order about an extraordinary parenting matter may be made before complying with the early resolution requirements described in section 5 [*early resolution requirements*] if a party is applying for both of the following:

- (a) an order about an extraordinary parenting matter;
- (b) an order about a family law matter.

- This section underscores that if a party is seeking both an order about a family law matter and an order about an extraordinary parenting matter, the application about an extraordinary parenting matter can be made before complying with the early resolution requirements.

### **Section 54: Applying for orders about extraordinary parenting matters**

To apply to a judge to obtain, or to change a term or condition of or to terminate, an order about an extraordinary parenting matter, a person must file and serve

- (a) the application for an order about an extraordinary parenting matter in Form M [*Application about Extraordinary Parenting Matter*] of Appendix C, and
- (b) any supporting evidence or documents.

- This section sets out the process for applying for an order about an extraordinary parenting matter.
- These matters are currently applied for using a Notice of Motion.

### **Section 55: Notifying other person about order about extraordinary parenting matter**

To apply to a judge for an order about an extraordinary parenting matter under this Division, a party must serve any other parties as follows:

- (a) with the application and supporting documents at least 7 days before the date set for the hearing unless the application is made without notice or with less than 7 days' notice;
- (b) if there is an address for delivery in the case on the court file for the party to be served
  - (i) by leaving the documents at the party's address for delivery,
  - (ii) by mailing the documents by ordinary mail to the party's address for delivery,
  - (iii) if a party's address for delivery includes an email address, by emailing the documents to that email address, or
  - (iv) if a party's address for delivery includes a fax number, by faxing the documents to that fax number;
- (c) if there is no address for delivery on the court file for the party to be served by arranging for an adult who is not a party to leave the documents with the party to be served, unless otherwise ordered.

- This section sets out the requirements for serving an application for an order about an extraordinary parenting matter.
- The early resolution and case management model provides instructions on how service is effected throughout the rules rather than in one centralized rule (rule 9 in existing rules).

### Section 56: Extraordinary parenting matters – without notice

- (1) A person may, under section 54, apply to make an application for an order about an extraordinary parenting matter without notice to any party by completing Form I [*Application for Case Management Order Without Notice or Appearance*] of Appendix C.
- (2) If a judge determines that a party should be given notice of an application made under section 54, the judge may make directions regarding
  - (a) the date for the hearing,
  - (b) the amount of notice,
  - (c) how notice is to be given, and
  - (a) any other directions that the judge considers appropriate.

- This section sets out how to apply to have an order about an extraordinary parenting matter heard without notice to the order party.

### Section 57: Evidence presented at hearings for orders about extraordinary parenting matters

Evidence for a hearing with respect to the application for an order about an extraordinary parenting matter may be given

- (a) orally on oath or affirmation, or
- (b) by affidavit.

- This section sets out the types of evidence that may be presented at a hearing of an application for an order about an extraordinary parenting matter.

### Division 3 – Orders about Relocation

- This Division sets out the process for applying for an order prohibiting the relocation for a child under section 69 of the FLA.
- Applications specific to relocation are new in these rules and will be made using Form O (not the Notice of Motion process).
- Orders about Relocation are exempt from the Early Resolution Requirements and can proceed directly to a hearing in front of a judge.

### Section 58: Applying for orders about relocation

To apply for an order, under section 69 [*orders respecting relocation*] of the *Family Law Act*, prohibiting the relocation of a child, a person must file and serve

- (a) an application for an order prohibiting the relocation of a child in Form O [*Application for Order Prohibiting the Relocation of Child*] of Appendix C, and
- (b) 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*.

- This section sets out the process for applying for an order, under section 69 of the *Family Law Act*, prohibiting the relocation of a child.

- Service, in this section, should be in accordance with the existing rule 9.

## Division 4 – Consent Orders

- The Early Resolution and Case Management Model improves upon the existing process for obtaining consent orders. Court users have found the process in the existing rules awkward and cumbersome.
- The new process uses only two documents: an application for a consent order (Form N) and the draft consent order (Form 20).
- Parties can apply for consent orders without meeting the Early Resolution Requirements set out in section 5.
- Consent orders can be made in a hearing, or they can be applied for without a hearing.
- This Division distinguishes between consent orders about Family Law Matters, Guardianship and Case Management.

### Section 59: Applying for consent orders about family law matters without hearing

To apply for an order about a family law matter by consent without a hearing, the parties must file the following:

- (a) an application for a consent order in Form N [*Application for a Family Law Matter Consent Order*] of Appendix C;
- (b) a draft consent order in Form 20 [*Consent Order*] of Appendix A signed by the parties or their lawyers;
- (c) any applicable additional documents, as described in section 17 [*additional documents when applying for certain orders*] of this Early Resolution and Case Management Model.

- There is an express desire to improve the current consent order process, which has been described as cumbersome.
- This section sets out what parties need to file as party of a consent order package.
- This rule allows parties to obtain consent orders without a hearing (a trial or Family Management Conference). Judges can already make consent orders in trial or in Family Management Conferences without an application.

### Section 60: Consideration of consent order

In considering whether to make a consent order, a judge may do the following:

- (a) give directions to obtain further information, including to require the parties to attend to speak to the matter;
- (b) amend the draft consent order and require the parties to attend to review and sign the changes;
- (c) reject the application with reasons.

- This section sets out what options a judge has when considering a consent order package.

### Section 61: Consent orders about guardianship

In addition to the material filed under section 59 [*applying for consent orders about family law matters without hearing*], a party who is applying for appointment as guardian of a child must also file an affidavit in Form 34 [*Affidavit*] of Appendix A with the following exhibits attached:

- (a) a copy of a record check from the Ministry of Children and Family Development;
- (b) a protection order record check from the protection order registry;

(c) a criminal record check.

- This section sets out the additional requirements required when seeking a consent order about guardianship of a child.

### Section 62: Administrative matters for consent orders about guardianship

The following time periods apply to applications for consent orders under this Division:

- (a) an affidavit under section 17 [*additional documents when applying for certain orders*] must be sworn no more than 7 days before the date that the material under that section is filed;
- (b) the record checks described under section 61 must be dated within 60 days before the date that the material under section 59 is filed.

- This section sets out the time periods associated with applications for consent order about guardianship of a child. These time periods are intended to ensure current and accurate information is presented.

### Section 63: Applying for consent orders about case management

- (1) The parties applying for a consent order about a case management order must file,
  - (a) if the parties wish to speak to the matter, an application for case management orders in Form H [*Application for Case Management Order*], or
  - (b) if the parties do not wish to speak to the matter,
    - (i) an application for case management orders without an appearance in Form H [*Application for Case Management Order*] of Appendix C, and
    - (ii) a draft consent order in Form 20 [*Consent Order*] of Appendix A signed by the parties or their lawyers.
- (2) The judge considering an application for a consent case management order may do the following:
  - (a) give directions to obtain further information, including to require the parties to attend to speak to the matter;
  - (b) amend the draft consent order and require the parties to attend to review and sign the changes;
  - (a) reject the application with reasons.

- This section sets out the process for applying for consent order about case management orders.
- The process for applying for consent orders 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. If they do not wish to appear before a judge, they need only file Form H and a draft consent order (Form 20).

### Section 64: General process for consent orders

- (1) If an application is made for a consent order without the parties speaking to the matter, a clerk must place the application, draft consent order and supporting documents before a judge, who may
  - (a) approve and sign the consent order without the parties having to attend,
  - (b) require a party to file additional information, or
  - (c) direct that the parties, and any other person specified by the judge, attend before the judge to explain why the order should be made.
- (2) If the judge gives a direction under subsection (1) (c), a clerk must notify the parties and any other person specified by the judge of the direction, including the date, time and place for the court appearance and any other information in the direction.
- (3) If a consent order is made, a clerk must provide a filed copy of the consent order to the parties or their lawyers.

- (4) Parties who have applied for a consent order and have had their application rejected must include a copy of the reasons for rejection with subsequent related applications for consent orders.
- (5) The parties may apply for a consent order at any time while appearing before a judge by providing evidence as the judge may require.

- This section sets out what the clerk must do as part of the consent order processes.
- It also sets out that a party can request a consent order at any time they are before a judge.

## Division 5 – Orders about Enforcement

- This Division sets out how to apply for an order about enforcement or remedies relating to pre-existing agreements or orders.
- In the new Model, parties must apply using out Form P. Previously, these types of orders fall under the Notice of Motion.
- Parties can apply for orders about enforcement without meeting the Early Resolution Requirements set out in section 5.

### Section 65: Applying for orders about enforcement

To apply for an order about enforcement of any of the following, a party must, at least 7 days before the date set for the hearing, file and serve an application for enforcement in Form P [*Application for Enforcement*] of Appendix C, including a copy of the agreement, determination, or order to be enforced:

- (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*.

- This section sets out the process for applying for orders about enforcement.
- This is included in the prototype rule in order to use the stand alone form for enforcement.
- Service, in this section, should be in accordance with the existing rule 9.

## Appendix C Forms

- Appendix C contains many forms for the Early Resolution Model. These forms are either new or they are improved versions of the Appendix A forms. The Appendix A forms are numbered while the new forms use letters.

- The forms will be available at launch on the BC Government website at [www.gov.bc.ca/court-forms](http://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.