Submission to

SUPREME COURT
RULES REVISION COMMITTEE

CONCEPT DRAFT

BC SUPREME COURT FAMILY RULES

Issued by:

CBABC BC Supreme Court Family Rules Working Group
Canadian Bar Association
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TABLE OF CONTENTS

PREFACE

The Canadian Bar Association nationally represents over 38,000 members and the British Columbia Branch (the "CBABC") itself has over 6,300 members. Its members practise law in many different areas and the CBABC has established 67 different Sections to provide a focus for lawyers who practise in similar areas to participate in continuing legal education, research and law reform. The CBABC also establishes special committees from time to time to deal with issues of interest to the CBABC.

This submission was prepared by a special committee: the BC Supreme Court Family Rules Working Group (the "CBABC Working Group"). The comments expressed in this submission reflect the views of the CBABC Working Group and are not necessarily the views of the CBABC as a whole.

The members of the CBABC Working Group include members from the CBABC *Family Relations Act* Review Working Group, Family Law and Alternate Dispute Resolution (ADR) Sections, the Legislation and Law Reform Committee and other interested CBABC members.

The members of the CBABC Working Group are:

- John-Paul E. Boyd;
- Janet L. Clark;
- Sandra L. Dick;
- David C. Dundee;
- David D. Hart;
- David C. Halkett;
- Lisa J. Hamilton;
- Jack J. Hittrich;
- Kathleen Kendall;
- Kay Melbye;
- Mandy Lai; and
- Cori L. McGuire.

The CBABC Working Group was assisted by Stuart Rennie, CBABC Legislation and Law Reform Officer.

Where questions or issues set out in the Draft Family Rules are not considered by the CBABC Working Group in these Submissions, this does not mean that the CBABC Working Group either accepts or rejects these matters, but that the CBABC Working Group has no comment on these matters at this time.

SUBMISSIONS

BACKGROUND

In 2002, the British Columbia Justice Review Task Force (the "JRTF") was established on the initiative of the Law Society of British Columbia. The JRTF is a joint project of the Law Society, the Attorney General, the British Columbia Supreme Court, the British Columbia Provincial Court and the CBABC.

FJRWG Report

In 2003, the JRTF created the Family Justice Reform Working Group (the "FJRWG"). The FJRWG's mandate is to review the family justice system in British Columbia.

In 2005, the FJRWG released its report (the "Report").[1] The Report recommended, among other things, that:

- rules and forms governing family law cases be streamlined;[2] and

- there be a single set of rules and forms to govern all family law cases (except child protection matters) in whichever court they are filed.[3]

[1] A New Justice System for Families and Children
Report of the Family Justice Reform Working Group to the Justice Review Task (May 2005) (http://www.bcjusticereview.org/working_groups/family_justice/family_justice.asp).
[2] Recommendation 12 at page 61 of the Report.

Draft BC Supreme Court Family Rules

In March 2007, the Attorney General established a Family Rules Working Group (the "FRWG") to prepare draft rules based on the recommendations contained in the Report.

The BC Supreme Court Family Rules Concept Draft is a result of the FRWG's work to date (the "Draft Family Rules"). [4]

The Draft Family Rules are composed of these parts:

- Part 1 Interpretation;
- Part 2 Resolving Cases By Agreement;
- Part 3 How To Start And Defend A Family Law Case;
- Part 4 Family Law Case Commenced By Filing A Notice Of Family Law Claim;
- Part 5 Service;
- Part 6 Amendments Of Documents And Changes Of Parties;
- Part 7 Procedures For Obtaining Information And Documents;
- Part 8 Conferences And Mediations;
- Part 9 Obtaining Orders Other Than At Trial;
- Part 10 Pre-Trial Resolution Procedures;
- Part 11 Property And Injunctions;
- Part 12 Trial Rules;
- Part 13 Court Orders And Their Enforcement;
- Part 14 Petition Proceedings;

[3] Recommendation 14 at page 65 of the Report.
[4] Copy available at: http://www.bcjusticereviewforum.ca/familyrules/index.cfm.

- Part 15 Other Procedures;
- Part 16 Special Rules For Certain Parties;
- Part 17 General;
- Part 18 Court And Registry Matters;
- Part 19 Transition; and
- Forms.

In September 2008, a decision was made to have consultations for the family rules and the civil rules conducted by the Supreme Court Rules Revision Committee (the "Rules Revision Committee").

The Rules Revision Committee is composed of judges, masters, members of the Bar, legislative counsel, and representatives of Court Services of the Ministry of Attorney General. The Rules Revision Committee assists the Attorney General in making recommendations for rule changes regarding the conduct of Supreme Court litigation under the *Court Rules Act*, R.S.B.C. 1996, c. 80.

The proposed draft of the civil rules is available for consultation and feedback until the end of December 2008 (the "Draft Civil Rules).[5]

The Draft Family Rules are available for consultation and feedback until the end of December 2008.[6]

[5] See http://www.bcrulesrevisioncommittee.ca.
[6] See http://www.bcjusticereviewforum.ca/familyrules/index.cfm.

Focus Groups

In April and May 2008, the FJRWG conducted consultations with focus groups.

The focus groups were composed of members of the CBABC Working Group, CBABC members and other members of the Bar. The focus groups were held in three locations: Nanaimo, Vancouver and Kelowna.

These submissions add to the comments made at these focus groups.

PART 1 – INTERPRETATION

General Comments

The CBABC Working Group believes that the goal of making the family rules more accessible to lay people and self-represented litigants is not met in the Draft Family Rules. The Draft Rules as a whole, including Part 1, make too much use of technical legal terminology, employ convoluted syntax and too often require reference to other rules of court and sometimes legislation.

The CBABC Working Group recommends that all of the general Draft Civil Rules referred to in the family law rules should be incorporated directly into the family law rules so that one wouldn't need to keep two sets of rules at hand.

Rule 1-1(1) (Definitions)

The definitions in Rule 1-1(1) should be self-contained and not require reference to other rules and legislation. For example, the definition "notice of application" requires reference to the document described in Rule 7-1(4) of the
Draft Civil Rules. Another example is found in "party" in Rule 1(1)(g)(i), where "party" means, among other things, a matter under the *Family Maintenance Enforcement Act*.

The CBABC Working Group recommends that the definition of "family law case" include the breach of a separation agreement.

The CBABC Working Group recommends that the definition of "undefended family law case" in Rule 1-1(1) should be moved to Division 3 (Final Orders) of Part 9 (Obtaining Orders Other Than At Trial) since Division 3 governs undefended and defended family law cases.

Rule 1-2(5) (Waiver of Rule by Agreement)

Rule 1-2(5) says that the court "may" waive any provision of the rules if the parties consent. While "may" implies that the court retains some residual discretion not to assent to the parties' request, it is recommended that Rule 1-2(5) should state that the relief is not automatic and that there should be a compelling reason to depart from the rules.

The CBABC Working Group also submits that certain procedural steps should be more difficult to escape than others, including:

- attending at a Judicial Case Conference ("JCC");
- making adequate financial disclosure; and
- filing a parenting plan.

Rule 1-3 (Object of Rules)

The CBCBC Working Group largely supports the new objects, but still has concerns around the concept of proportionality. Essentially, Rule 1-3 sets out six objects:

1. to deal with family litigation **fairly**,
2. in a way that **minimizes conflict**,
3. **promotes co-operation**,
4. takes into account the **impact on children** affected by the litigation,
5. makes an adjudication **justly, on the merits** and
6. conducts the case in a manner which the court considers **proportionate** to
    (a) the *needs of the children* affected,
    (b) the *financial resources* of the litigants,
    (c) the *complexity of the case* and
    (d) the *importance of the issues to the law* applicable to British Columbia.

The first and fifth elements are imported from the present Rule 1(5). The others are new, and the CBABC Working Group agrees that such concepts are important for a proper resolution of family disputes. Our concerns revolve mainly around the deletion of the phrase "just, speedy and inexpensive determination" and the fact that "proportionate" is neither defined, nor do subsequent rules elaborate on what this concept might entail in practical application.

The concept of a "just" determination is of course retained and expanded. Expense is also deal with in element 6. Speed is not, however, and for family litigants this is a huge

concern. In many cases, the ability to intervene quickly into an unstable situation will be crucial to any just outcome -- where, for example:

- there is family violence; or
- a denial of access;
- flight to another jurisdiction; or
- one of the parties has been put out on the street, without possessions or support.

This is why the CBABC Working Group has had concerns about the imposition of mandatory mediation. In such circumstances, mediation does not help the situation. Often, it just perpetuates the imbalance of power.

But, conversely, the CBABC Working Group is also aware that in many situations, moving the litigation forward too aggressively can also have a deleterious affect -- where, for example:

- one or both parties need a "time out" to gather their emotions; or
- an interim access or support regime needs time to "take hold"; or
- some collateral process needs to play out, such as an investigation pursuant to the *Child, Family and Community Service Act*, assault trial, employment search or problem, medical or psychiatrist problem or counselling session.

The CBABC Working Group suggests that the objects need to address "timeliness" in some fashion. This would encompass both ideas: that sometimes speed is essential and that sometimes a hiatus is required.

As for the idea of proportionality, we consider that the words "the court's assessment" may be redundant -- or worse, suggest that the court will become too active. We also question whether Rule 1-3(2)(d) should better read "the importance of the issues *to the parties*." Family law is about individuals. We would hate to see a case blown out of all proportion to the needs of a particular family only because it concerns fascinating legal issues.

The CBABC Working Group recommends that "proportionality" might be implemented for three categories of family cases:

(1) **low conflict** with relatively simple subject matter;

(2) **moderate conflict** or with more complicated subject matter; and

(3) **high conflict** parties and/or more complicated subject matter.

On this basis, family law cases could be streamed with different rights of access to the family rules:

Low Conflict:

- no automatic right to examine for discovery;
- no automatic right to expert reports;
- no obligation to fix a JCC;
- no mandatory offers to settle; and
- no costs awards.

Moderate Conflict:

- limited rights of examination for discovery as the Draft Family Rules presently suggests;
- expert reports on joint retainer, as the Draft Family Rules suggests;
- mandatory JCC;
- optional case management;
- optional offers to settle; and
- costs as the Draft Family Rules suggest.

High Conflict:

- limited rights to examine for discovery but optional ability to apply for additional time;
- joint experts not mandatory; sole experts and rebuttal experts optional;
- mandatory JCC, with option to treat JCCs as an extended program;
- mandatory offers to settle;
- seizure of judge optional;
- mandatory case management;
- strict disclosure rules with financial penalties for non-compliance; and
- costs as the Draft Family Rules suggest.

The CBABC *Family Relations Act* Review Working Group in its submissions to the Attorney General, recommended establishing a triage mechanism to be deployed at the

commencement of every proceeding.[7] While implementing a triage mechanism would alter the litigation stream contemplated by the Draft Family Rules, the CBABC Working Group submits that this idea of triage should be revived if the objective of proportionality is to be given substance.

Rule 1-4(2) (Active Management of a Case)

The CBABC Working Group approves of the concept of active case management as described in this Rule 1-4(2) with the caution that haste and efficiency is not warranted in every case. In some circumstances, delay rather than speed is called for, especially where emotional issues must be dealt with before litigation can be meaningfully addressed.

The CBABC Working Group recommends that Rule 17-5(d) regarding the right of the court to make orders if a party does not comply with the rules, should be moved to follow Rule 1-4(3) (duty of parties) so that lay litigants can see (and lawyers can point out to their clients) that there may be consequences for failing to co-operate. The CBABC Working Group also recommends that consideration should be made to enumerate in Rule 1(4)(3) what consequences of non-compliance might be.

[7] Phase 3 Family Relations Act Review (January 2008) at pages 31, 43, 94 and 99 (http://www.cba.org/BC/Initiatives/main/submissions.aspx).

The CBABC Working Group recommends that the term "family break-up" in Rule 1-3(1)(a) be eliminated. The professional literature is now focusing on family restructuring and in some cases no family was formed in the first place, so "family break-up" is inconsistent with the current professional literature.

PART 2 – RESOLVING CASES BY AGREEMENT

Rule 2-1 (Agreements)

Section 122(1) of the *Family Relations Act*, R.S.B.C. 1996, c. 128 relates to written agreements regarding custody and access by a parent, child support and spousal support and provides for filing in the Supreme Court for the purpose of enforcement of those terms only.

The CBABC Working Group recommends that Rule 2-1 clarify that, if an originally signed agreement or a notarial copy of the originally signed agreement is not available, then a copy may be filed with the court instead, if that is the best evidence available. Further, the court may wish a companion affidavit to be filed along with the agreement deposing that the originally signed agreement is not available for filing and that the copy of the agreement provided is a true copy of the original and has not been altered in any way.

Rule 2-2 (Joint Family Law Case)

The CBABC Working Group supports Rule 2-2.

PART 3 – HOW TO START AND DEFEND A FAMILY LAW CASE

Rule 3-1 (Choosing the Correct Form of Proceeding)

Under the Draft Family Rules, most family law cases are commenced by filing a Notice of Family Law Claim, but some must be brought by petition.

Rule 3-1(3) lists the matters that must be brought be petition. This list omits applications under section 68 of the *Family Relations Act*. Section 68 of the *Family Relations Act* permits marriage settlement applications to be made before the Supreme Court. As a result, this suggests that these section 68 marriage settlement applications are to be brought by way of Notice of Family Claim. It is not apparent to the CBABC Working Group why this change was made nor whether indeed such an application for review of such an agreement is to be brought by filing a Notice of Family Law Claim.

PART 4 – FAMILY LAW CASE COMMENCED BY FILING A NOTICE OF FAMILY LAW CLAIM

General Comments

The CBABC Working Group recommends that, in terms of overall organization, it would be more logical to have Part 3 (How to Start and Defend a Family Law Case) amalgamated with Rules 4-1 to 4-4 regarding family law claims.

Also, the CBABC Working Group recommends that Rule 4-5 (Financial Disclosure) be moved and combined with Part 7 (Procedures For Obtaining Information And Documents).

The CBABC Working Group submits that Rules 4-1 to Rules 4-4, which refer to the new forms, are well drafted and should be simple to use. The language is clean and easy to understand for lay litigants. Also, wording in the forms such as "parenting arrangement" and "current arrangement for spousal support" are helpful in underlining the theme of encouraging co-operation.

Schedule 3 (Property) in Form F3 (Notice of Family Claim) does not provide for any boxes or space to claim any injunctive relief such as a section 67 *Family Relations Act* freezing order, exclusive occupancy or orders for sale. As a result, the CBABC Working Group recommends that Schedule 3 (Property) be expanded to cover other property relief notwithstanding that Schedule 5, which has not yet been drafted, could provide for additional relief.

The Lawyer's Certificate in Schedule 4 (Divorce) of Form F3 (Notice of Family Claim) has expanded the wording. This is very good.

Rule 4-2(3)(Counterclaim)

The CBABC Working Group submits that the requirement in Rule 4-2(3) that service only take place within 21 days of a response being filed makes little sense. The CBABC Working Group recommends that it should be no more than 7 days.

The CBABC Working Group submits that service should take place within 7 days applies equally to Rule 4-3(4) and the time requirement for serving filed counter claims.

Rule 4-3(8) (No Notice of Hearing if No Response)

As a practical matter, the CBABC Working Group questions: is it really necessary to force a response to a counter-claim?

Rule 4-4(1)(Person Allegedly Involved in Adultery)

The CBABC Working Group questions why is it necessary in Rule 4-4(1) to go to such lengths to safeguard the identity of a person named in a claim for adultery?

The *Divorce Act* still provides adultery as a ground for divorce. In addition, there are situations when clients have a psychological or emotional need to name the third party who is supposedly responsible for the destruction of the marriage.

Rule 4-4(2)(b)(Marriage Certificate to be Filed)

The CBABC Working Group recommends that Rule 4-4(2)(b) be deleted. There is no logical reason why the registrar need be involved and be satisfied with the reasons given for the failure or inability to file a marriage certificate. Access to the courts should not be delayed for purely administrative reasons.

Rule 4-5 (Financial Disclosure)

The CBABC Working Group is disappointed that Rule 4-5 does not move much beyond the current disclosure rules.

Banking records and accounting ledgers for self-employed individuals can be the key to imputing income and there needs to be specific provisions which address this key area. Lay litigants should have better knowledge about disclosure requirements by a simple review of the court rules.

The practical reality is that what is referred to under Rule 4-5(1)(h)(ii), as "a statement showing a breakdown of all ...payments or benefits paid to, or on behalf of, persons or corporations with whom the person does not deal at arm's length" is rarely complied

with. Further, this is not obvious to less sophisticated self-employed individuals and their spouses who are advancing claims.

The CBABC Working Group recommends that, under Rule 4-5(1)(h), "applicable income documents" for self employed persons, persons controlling corporations under Rule 4-5(1)(j), or particulars demanded under Rule 4-5(13), the following be added:

> If requested in writing, a self employed person or person in control of a private corporation or a partnership from which the person obtained benefits shall, unless otherwise specified by the court, provide:
>
> > a) copies of all account statements from financial institutions the person has in his or her possession relating to accounts he or she controlled for the preceding 2 years; and
> >
> > b) copies of ledgers or internal accounting records of the business, corporation or partnership which show salaries, wages, fees, draws, payments or benefits paid to, or on behalf of the person for the preceding 2 years.

The CBABC Working Group recommends that, ideally there should also be rules relating to disclosure orders against financial institutions. It is important that lay litigants be aware that this is possible.

JCC judges and Masters have to have broad and significant powers to make disclosure orders, without any consent requirement.

As a result, the CBABC Working Group recommends that Rule 4-5 should be amended to make reference to JCC disclosure authority.

The CBABC Working Group further recommends that costs of financial disclosure under Rule 4-5(27) to (29) should be spelled out more clearly and expanded substantially.

The CBABC Working Group recommends as well, that there should be a provision that provides the court with the power to order special costs as a warning to litigants. Special costs should also be clearly defined. A lay litigant does not know what special costs are or how special costs differ from regular costs.

The reference to the imposition of a fine under sub rule Rule 4-5(29)(e) under section 92(1) of the *Family Relations Act* should expressly state what is in section 92(1): that the court can impose a financial penalty up to $5,000.

All of these recommendations by the CBABC Working Group are obviously designed to send a strong signal to family law litigants to comply with disclosure requirements.

There is, however, one area which has been completely overlooked and which would be a radical change in the way lawyers in British Columbia practice family law. It would empower financially disadvantaged litigants to properly understand their cases early on

and hopefully be a powerful tool in resolving family law cases without the financial and emotional costs of protracted litigation.

The court should have the power to award costs at an early stage to fund the disclosure process for the financially disadvantaged litigant!

There is a significant and compelling need for impecunious litigants to be able to have the financial resources to pursue disclosure applications and to hire lawyers, accountants, or other experts. This is an access to justice issue. It would "level the playing field" between family law litigants.

There is case authority for interim orders dividing family assets to fund the hiring of experts but generally legal costs are not covered. Furthermore, the average lay litigant is not aware of this.

If one party is without sufficient means and the other has sufficient means, why should the court not be specifically empowered to make an order for a lump sum payment to fund the discovery process, both for reasonable legal and expert fees?

Consequently, the CBABC Working Group recommends that the Draft Family Rules include a power for the court to award costs at an early stage to fund the disclosure process for the financially disadvantaged litigant.

PART 5 – SERVICE

Rule 5-1 (Address for Service)

The term "delivery" has been scrapped in favour of the more global "service", which is now divided into "ordinary service" and "personal service". A provision for delivery by e-mail has been added. A provision for service on the Director of Maintenance Enforcement under the *Family Maintenance Enforcement Act* has been added.

Rule 5-1(1)(a) requires an address for service "if the person is represented by a lawyer in the family law case". The CBABC Working Group notes that Rule 5-1(1)(a) does not contemplate whether or not the lawyer is solicitor of record. While the Notice of Family Law Claim allows for a lawyer's address for service, this subrule does not deal with changes of counsel and whether or not the counsel is retained to act. The CBABC Working Group recommends that, if there are no provisions to this effect, then a filed notice should be required to confirm that a person is "represented by a lawyer".

Rule 5-1(1)(a)(ii) provides that if the lawyer wishes to provide an additional address for service the lawyer provides one or both of the lawyer's fax number and e-mail address. The CBABC Working Group observes that if the lawyer does not provide a fax number, even if this lawyer has a fax number, then the other party cannot deliver documents by fax. This result runs counter to currently accepted practice in law firms. Consequently, the CBABC Working Group recommends that a provision in Rule 5-1(1) be added to provide, that if a lawyer has a fax number, documents can be delivered to that lawyer by fax regardless of whether the lawyer provides that fax number as part of that lawyer's address for delivery. This is not the same for non-lawyers as these persons are unlikely

to have dedicated fax lines. E-mail, being a newer form of delivery, should not necessarily be treated the same way, although this should be considered.

Regarding emerging technology, Rule 5-1(1)(a)(ii) provides for service by e-mail. Currently, not every lawyer or person has the same software applications. Not all software applications recognize the files formats of every other software application. For example, some versions of Microsoft Word software do not permit documents created in WordPerfect to be opened or shared by e-mail. The CBABC Working Group wonders if the Draft Family Rules should require documents to be submitted in a more neutral format such as Portable Document Format ("PDF") format. PDF format, while clumsy, is becoming a standard in the legal profession and business world and can be used to open and share documents freely.

Rule 5-2 (Service of Documents)

Rule 5-2(3) and Rule 6-1(4) provide for personal service of amended documents, specifically the Notice of Family Claim, Response, Counterclaim and Response to Counterclaim. The CBABC Working Group recommends that Rule 5-2(3) require personal service of amended documents.

Rule 5-2(11) employs "impracticable" in relation to alternative service methods. The general public will not understand well, if at all, the meaning of "impracticable". So, the CBABC Working Group recommends that "impracticable" be deleted and replaced by "impractical".

PART 6 – AMENDMENTS OF DOCUMENTS AND CHANGES OF PARTIES

Rule 6-1 (Amendment of Claims)

Rule 6-1(5)(a)(ii) provides for service in responding to an amended document. Unless service is specifically set out to be personal, this is ordinary service. The CBABC Working Group asks: was this intended given the provisions of Rule 6-1(4)(b)? If it is intended to be personal service, then the CBABC Working Group recommends that it should also be enumerated in Rule 5-2(3).

Rule 6-2 (Change of Parties)

Rule 6-2 repeats those provisions of Rule 15 of the present Supreme Court Rules. Rule 6-2 has no reference to Appearances and does not include provisions relating to deceased plaintiffs.

Under our current law, if a section 57 *Family Relations Act* declaration has been obtained after the death of a party, the estate of that party can pursue the litigation. The CBABC Working Group asks: are additions needed to be made to Rule 6-2 to account for deceased plaintiffs and section 57 of the *Family Relations Act*?

PART 7 – PROCEDURES FOR OBTAINING INFORMATION

AND

DOCUMENTS

General Comments

As mentioned above in our submissions, this area is logically connected to Rule 4-5 (Financial Disclosure), at least for the majority of family law cases in the Supreme Court of British Columbia.

The time limit of 28 days set out in Rule 7-1(1) is an unnecessary burden in some cases. Not all cases require a list of documents immediately. In many cases it takes a considerable time to compile an appropriate list of documents.

However, it may make sense to impose a time limit for providing list of documents prior to trial, unless special circumstances apply.

Rule 7-1(9)(Party May Request Additional Documents)

The CBABC Working Group recommends that Rule 7-1(9) be amended to include a specific demand to list documents in certain categories. This is particularly important given that, in many family law cases, lists of documents contain a great deal of irrelevant or only marginally relevant documents. Often the opposing party does not produce the very documents which are in fact the most useful for the family law case. By being able to demand a listing of specific categories of documents, this will make the discovery process far more pro-active and useful.

This said, there need to be judicial safeguards to prevent abuse in this area. The CBABC Working Group recommends that one of the powers of JCC judges and Masters should be to set document disclosure parameters.

Rule 7-1(10)(Application for Production of Documents)

The time limit of 7 days set out in Rule 7-1(10) to respond to demands is unreasonably short. Accordingly, the CBABC Working Group recommends that the reply deadline should not be any less than 14 days unless there are special reasons.

Rule 7-1(13)(Copies of Documents)

Rule 7-1(13) allowing for copies to be provided is excellent and very helpful.

Rule 7-1(14)(Order to Produce Document)

Rule 7-1(14) is broad and allows for plenty of judicial discretion. The CBABC Working Group recommends that this power should definitely be available to JCC judges and Masters.

Rule 7-1(18)(Party May Not Use Document)

Rule 7-1(18) preventing the use of documents not disclosed on a list of documents already exists in the current Supreme Court Rules, but is very useful to have this clearly repeated in the Draft Family Rules.

Rule 7-2 (Examinations for Discovery)

Rule 7-2 limits examinations for discovery to 3 hours. While there is logic to placing a time limit, the 3 hour duration is simply too short in a complex case. If there are many complex issues or if a litigant who is being examined is evasive or simply unsophisticated or in need of an interpreter, a 3 hour time limit shall unduly constrain the discovery process. As well, this 3 hour time limit will create undue hardship in the preparation of a case for trial. Persons who have things to hide, will have every incentive not to agree to more than 3 hours.

In light of these factors, the CBABC Working Group recommends that a time limit of 6 hours might be appropriate. This 6 hour limit is slightly longer than a full day in Supreme Court but could be done in a day.

Rule 7-3 (Pre-Trial Examination of Witness)

Rule 7-3 regarding pre-trial examination of witnesses appears not to be limited to 3 hours.

Rule 7-4 (Physical Examination and Inspection)

Rule 7-4 regarding physical examination and inspection is clear and simple.

PART 8 – CONFERENCES AND MEDIATIONS

Rule 8-1 (Judicial Case Conference)

Rules 8-1(2) and (4) prevent parties from getting trial dates or setting discoveries before a JCC has been held. The CBABC Working Group recommends that, where parties consented to fixing a trial date or having discoveries, they should be allowed to do so without having to apply for relief from the JCC requirement.

Rule 8-1(6)(How to Apply for Relief)

Rule 8-1(6) allows parties to apply for relief from the JCC requirement by filing an unsworn letter with the court. The CBABC Working Group believes that the speed and accessibility afforded by this means of obtaining exemption nicely balances the generally mandatory nature of JCCs.

However, the CBABC Working Group recommends that Rule 8-1(6) should be amended to require that the letter be produced to the other party at some point in the proceeding, regardless of whether the exemption was granted and regardless of the outcome of any hearing.

Rule 8-1(9), (11) and (12) (F7 Financial Statement Form)

The CBABC Working Group recommends that Rule 8-1(9), (11) and (12) be amended to reflect that financial statements are not always required and that, when they are required, not all of parts 1, 2, 3 and 4 of the form are always required.

The CBABC Working Group further recommends that it should not be mandatory to file financial statements where a JCC would not be canvassing financial issues.

Rule 8-1(16)(What Happens at the Judicial Case Conference)

The CBABC Working Group recommends that, to the enumerated powers of the court in Rule 8-1(16) in a JCC, there be added a power to refer the parties to a special referee, as is currently provided for in Rule 32 of the Supreme Court Rules or to arbitration. This addition is another needed dispute resolution mechanism.

Rule 8-1(16)(r) permits the court to direct the parties to obtain a custody and access assessment on such terms as to payment and otherwise as the court considers appropriate. In order to preserve and emphasize the breadth of the assessments available under section 15 of the *Family Relations Act*, these assessment not limited to custody and access reports, the CBABC Working Group recommends that reference to section 15 of the *Family Relations Act* be added to Rule 8-1(16)(r) as follows:

> What happens at the judicial case conference
>
> (16) The court may do one or more of the following at a judicial case conference:
>
> …
>
> (r) direct the parties to obtain a custody and access assessment**, or other report or assessment under section 15 of the *Family Relations Act,*** on such terms as to payment and otherwise as the court considers appropriate;

Rule 8-1(16)(u) permits the court to make a short-term interim custody, access or support order. The CBABC Working Group submits that giving the court the authority to make orders on subjects in dispute would lessen the utility of JCCs by undermining the atmosphere of frank, without prejudice, discussion. So, the CBABC Working Group recommends that Rule 8-1(16)(u) be deleted.

Rule 8-1(19)(Other Judges or Masters May Hear Applications)

Rule 8-1(19) provides that a judge hearing a JCC may direct that applications be heard by another judge. The CBABC Working Group recommends that while a judge hearing a JCC should be allowed – if not encouraged – to also hearing other JCCs and future settlement conferences, the presumptive rule should bar that judge from hearing future applications and the trial of the matter. The "one family, one judge" principle enunciated in Rule 18-1(8) should apply to such future applications and trials.

Rule 8-2(4)(Not More Than One Mediation under this Rule in any Family Law Case)

The CBABC Working Group recommends that each party should have the opportunity to trigger a mediation.

Rule 8-3 (Settlement Conferences)

The CBABC Working Group recommends that Rule 8-3 enumerate the powers of the court in the manner of Rule 8-1(16). The rationale is that enumerating the powers of the court in Rule 8-3 would be helpful, primarily to lay persons. Rule 8-3 is otherwise a stunning model of brevity and concision.

PART 9 – OBTAINING ORDERS OTHER THAN AT TRIAL

Part 9 contains three divisions. Division 1 addresses procedure and affidavits generally. Division 2 deals with non-final and variation orders. Division 3 deals with final orders: both defended and undefended.

Part 9 is essentially a directory. It refers the reader to the appropriate parts of the rules of civil procedure. There is nothing new in Part 9 of the Draft Family Rules except:

- Rule 9-5(2) alters the notice and service provisions for variation applications;
- Rule 9-6 adds the rules for applying for final orders in an undefended family law case (the old Rule 60 of the Supreme Court Rules); and
- Rule 9-1 adds these to the routing directions.

Part 7 of the Draft Civil Rules makes all chambers applications follow a modified version of the present Rule 51A procedure in the Supreme Court Rules. The Notice of Motion is replaced by a "notice of application," which is really a modified outline. The Notice of Application requires the applicant to set out:

- the order sought;
- the rule or statute relied on;
- a summary of the factual and legal basis for the application; and
- the usual list of affidavits, time estimate, and so on.

The respondent must likewise file an "application response", which is a combination response and outline. There is still a binder requirement, though it is now called an

"application record" rather than a chambers record. The exception for applications under 30 minutes is gone.

Rule 20-1 of the Draft Civil Rules deals with the powers of the court. Rule 20-1 is otherwise the old Rule 52 of the Supreme Court Rules.

Rule 20-2 of the Draft Civil Rules deals with affidavits. It is essentially the old Rule 51 of the Supreme Court Rules.

The CBABC Working Group recommends that Part 9 should include all of the rules in the Draft Civil Rules Part 7 and Rules 20-1 and 20-2.

Family Rules Should be Stand-Alone Code

At present, there are no separate family rules for the Supreme Court of British Columbia. There are rules that apply only to family cases such as Rule 60, 60D, and 60E of the Supreme Court Rules. There are some rules that specifically do **not** apply to family cases such as Rules 66 (Fast Track Litigation) and 68 (Expedited Litigation Project Rule) of the Supreme Court Rules. Otherwise, family law parties use the same rules as all other litigants. The Draft Family Rules have signaled a growing divide between the way litigation will be managed in family cases as compared to the rest of the Supreme Court caseload. This raises the question whether those differences have become significant enough to justify a stand-alone code for family law. The consensus among members of

the CBABC Working Group is that they have and that a stand-alone code for family law is warranted.

There are two reasons for a stand-alone code for family law. Firstly, there are significant problems referring back and forth between the Draft Family Rules and the Draft Civil Rules. Practically speaking, a person not only has to have both Rules in hand, a person almost needs a computer to track the links, back and forth in order to obtain the needed information. For instance, if a person wishes to apply for a non-final order, Rule 9-1(1) refers the person to Rule 9-5(1), which in turn refers the person to Rules 7-1, 7-3, 7-4, or 7-5 of the Draft Civil Rules – **and** a person needs to have the Draft Family Rules open to Rule 1-2 to know what the terms used in the Draft Civil Rules mean.

In a similar fashion, if a person is applying for a final order in a defended proceeding, Rule 9-1(3) refers the person to Rule 9-7, which then refers the person to Rule 10-3, which further refers the person to Rule 9-8 of the Draft Civil Rules– subject to Rule 12-5 of the Draft Family Rules.

It is confusing, and will be especially so for lay litigants.

Secondly, the on-going review of the *Family Relations Act*, the *Divorce Act* and coming legislation concerning matrimonial property rights on First Nation lands make it likely that family cases will continue to evolve separate mechanisms and philosophies for addressing family law cases. Access enforcement, family violence concerns, rules for involving children or their views, mobility cases, inter-jurisdictional disputes or

enforcement and the interaction between family, criminal, native and child protection proceedings, these are all likely to move us even further into new waters and away from the main stream of Supreme Court litigation – even if one assumes that collaborative practices will continue to be applicable across a wide range of litigation cases.

In light of the foregoing, the CBABC Working Group recommends that the Draft Family Rules be a complete, stand-alone code.

Rule 9-1 (Choosing the Appropriate Procedure)

The CBABC Working Group recommends that Rule 9-1 should include both the existing 9-1 and Rule 7-1 of the Draft Civil Rules, except that Rule 7-1(1) and (2) of the Draft Civil Rules would be replaced by Rule 9-1(1) of the Draft Family Rules. There would be needed additional changes to make sure the references to the new sub-rules are accurate and complete.

Rules 9-2 to 9-6 and Ex Parte Proceedings

The CBABC Working Group recommends that Rule 9-2 to 9-6 consist of Rules 7-2 to 7-6 of the Draft Civil Rules, except that Rule 7-5 (now Rule 9-5 of the Draft Family Rules) would include the provisions for proceeding ex parte in family law cases which are set out in a new Schedule.

The CBABC Working Group recommends that the Schedule for ex parte applications be:

SCHEDULE [Add Number] Court File No

APPLICATIONS MADE WITHOUT NOTICE

(EX PARTE) Court Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA FMEP No

1. A person may make an application without notice to another party where:

    a). the other party's whereabouts is unknown and there is no time to serve substitutionally;

    b). to give the other party notice would defeat the purpose for the application;

    c). in case of extreme urgency; and/or

    d). where the court otherwise finds it appropriate to proceed without notice.

2. Before proceeding with such an application, the court must satisfy itself that the application is appropriate for this rule, and must caution the applicant about the obligations and consequences imposed under this rule.

3. The applicant must take case to present the court with all the relevant facts about the application including, where it is known or can reasonably be inferred, the position of the other party.

4. In considering an application brought without notice, the court must be careful to grant only such orders as are necessary to address that aspect of the application that makes it appropriate to proceed without notice.

5. When the court makes an order under this rule, the court must

   a). include a provision in the order that provides for service on the other party and

   - provides that the other party may apply to set aside or vary the order, on such terms as the court finds appropriate;
   - provides for a review of the order; or
   - provides for a termination date for the order, unless renewed.

   b). order a transcript of the evidence and reasons for judgment.

6. When the court makes an order under this rule, the court may

   a). require the applicant to pay some or all of the cost of the transcript;

   b). order that the presiding judge is seized of any or all subsequent proceedings.

FOR PROVINCIAL COURT

If the court subsequently finds that the applicant knowingly withheld material information at the initial hearing, or misled the court, the court may order the applicant to pay a fine, either to the court or to the respondent, of not more than $500.

Rule 9-7 (Final Orders in Defended Family Law Cases)

Even as matters stand, the CBABC Working Group questions whether the Draft Family Rules should not take the opportunity to specifically address issues that commonly arise in family cases.

One issue that commonly arises in family cases is the use of the affidavit. How many times are there complaints from counsel and judges alike about the poor quality of affidavits in family cases? Such complaints are common-place in family law. If there was a family law rule for affidavits, there could be sub-rules that address the problems of:

- double hearsay;
- attacking or assigning motive;
- getting rid of "shock and awe" – avoiding the expressions of shock, horror and amazement at what the deponent presumes to be the other party's outrageous behavior;
- evidence of conduct in applications where it has no relevance, such as child support; and
- costs for frivolous, vexatious or malicious allegations.

The CBABC Working Group recommends that Rule 9-7 consist of the provisions of Rule 20-2 of the Draft Civil Rules, except that it would include additional sub-rules addressing:

- double hearsay;
- attacking or assigning motive;

- getting rid of "shock and awe" – avoiding the expressions of shock, horror and amazement at what the deponent presumes to be the other party's outrageous behavior;
- evidence of conduct in applications where it has no relevance, such as child support; and
- costs for frivolous, vexatious or malicious allegations.

New Rule 9-8 (Chambers Applications)

The CBABC Working Group recommends that there be added a new Rule 9-8.

Rule 9-8 would consist of the provisions of Rule 20-1 of the Draft Civil Rules, except that:

- Rule 20-2(1) of the Draft Civil Rules be replaced by Rule 9-3(1) of the Draft Family Rules;
- Rule 9-7 include the power to have any party examined or cross-examined, at the instance of any party, or on the court's own initiative;
- Rule 9-7 include the power to assign a judge, or for the presiding judge to order that all future applications be heard by that judge or master. This is arguably already in the rules, in Rule 18-1(8), but the CBABC Working Group believes it would help to repeat it here, as it is in Rule 8-1(19).

New Rule 9-9

The CBABC Working Group recommends that there be added a new Rule 9-9.

Rule 9-9 would be the Rule 9-6, except that it should include the definition of "undefended family law case" within the rule itself, as in the present Rule 60 of the Supreme Court Rules. Alternatively, all defined terms within the body of the rules should be italicized, so as to signal to the uneducated reader that they should consult the definitions at the beginning of the rules.

New Rule 9-10 (Summary Trial)

The CBABC Working Group recommends that there be added a new Rule 9-10 providing for a summary trial.

Rule 9-10 would be Rule 9-8 of the Draft Civil Rules. Rule 9-10 would replace both Rule 9-7 and Rules 10-3 of the Draft Family Rules. Rule 9-10 avoids multiple references in the rules, and seems more consistent with the title of Part 9, which refers to all orders other than at trial. The CBABC Working Group thought of including summary trial in Part 12, but thought that most readers would understand "trial" to be a full, conventional trial.

New Rule 9-11 (Variation Application)

The CBABC Working Group supports the inclusion of a specific rule for variation applications, one which would include a mandatory JCC. The CBABC Working Group recommends a specific form of application, which requires the applicant to set out, in summary form:

- the nature of the variation sought;
- a brief statement explaining why the variation is appropriate at this time;
- the legal rule or authority (including a specific term in a previous order) that is relied on; and
- if a review is sought, of what the applicant says the review should consist.

The application need not include an affidavit. The respondent would need to file a brief statement in answer and the JCC would either mediate a settlement of the matter, or case-manage the evidence and procedure for hearing the application.

In light of the foregoing, the CBABC Working Group recommends that there be added a new Rule 9-11.

Rule 9-11 would be the variation rule, including the present draft Rule 9-5(2) and provisions addressing the mandatory JCC. The CBABC Working Group also recommends that there be created a special form, like a notice application, which would require the applicant to set out, in summary form:

- the nature of the variation sought;
- a brief statement explaining why the variation is appropriate at this time;
- the legal rule or authority (including a specific term in a previous order) that is relied on; and
- if a review is sought, of what the applicant says the review should consist.

The application need not include an affidavit. The respondent would need to file a brief statement in answer and the JCC would either mediate a settlement of the matter, or case-manage the evidence and procedure for hearing the application.

Chambers Applications

The CBABC Working Group also recommends that Draft Family Rules should consider additional powers or alternative procedures for chambers applications. This is especially so for problems posed by lay litigants. Those of us family lawyers who have served as Supreme Court legal advice duty counsel know full well that Rule 51A of the Supreme Court Rules is confusing to lay litigants. Lay litigants often make a hash of it, even after receiving assistance.

The thrust of the recommendations by the FJRWG in its Report is that family rules should be easy to understand, easy to use and uniform across all jurisdictions in the province. The CBABC Working Group was divided on the question of whether the Supreme Court and Provincial Court family law rules should be uniform. On the one hand, it was suggested that if the Provincial Court can make do with simplified forms and no, or limited, affidavits, then we should be able to do the same in Supreme Court. On the other hand, many appreciated the focus of Supreme Court on ensuring litigants were informed and prepared **before** coming to court.

There are competing values here. One value is ensuring ease of access. Another value is ensuring best use of the court's time. Ease of access competes with best use of the court's

time. Over all, the CBABC Working Group accepts that the Supreme Court should not start to resemble the Provincial Court on family remand day. Nonetheless, we do think that Supreme Court chambers practice should be more flexible, especially when giving evidence *viva voce*.

Sometimes, when faced with a litigant who has imperfect court materials, the CBABC Working Group believes that the better course would be to let the litigant take the stand rather than simply send the litigant away to correct the court materials and try again. Duty counsel would likely be available to assist in leading the evidence when the litigant takes the stand.

In some cases, the ability to examine or cross-examine the deponent would also be most valuable. These cases include: access enforcement, denial applications, urgent restraining order, urgent mobility cases or ex parte applications. The CBABC Working Group recommends that this option should be expressly included in the court's powers on a chambers application.

Notice Of Application And Application Response

The CBABC Working Group believes that the Draft Civil Rule 7-1 and Rule 14-1 should be modified. Lay litigants will likely not understand what the court means by summarizing the "the rule, enactment or other jurisdictional authority relied on for the orders sought and any other legal bases" for the order sought in Rules 7-1(4)(c), "the factual and legal bases" in both Rule 7-1(6)(b)(i) and in Rule 14-1(5)(b)(iii). The CBABC

Working Group recommends that it would evoke a more coherent reply, to delete "factual and legal bases" and simply ask lay litigants to "include a **brief** statement as to why the order is necessary or appropriate" (or unnecessary or inappropriate, as the case may be) in these Rules.

Part 9 Divisions

The CBABC Working Group believes that the divisions in Part 9 (Obtaining Orders Other Than At Trial) are confusing. Why would Division 2 include both ordinary, interim applications and applications to vary a final order? Division 3 is supposed to address final orders – but as has already been pointed out, final contested orders are covered by Rule 10-3. Because of the CBABC Working Group's recommendations that all rules regarding chambers applications should be contained in Part 9, the divisions will need to be restructured.

The CBABC Working Group recommends that the Part 9 divisions be re-named as follows:

- Division 1 - Procedure Generally (Rules 9-1 through 9-3);
- Division 2 - Special Cases (Rules 9-4 through 9-6);
- Division 3 - Affidavits (9-7);
- Division 4 - Powers of the Court (9-8); and
- Division 5 - Final Orders (Rules 9-9 through 9-11).

PART 10 – PRE-TRIAL RESOLUTION PROCEDURES

Part 10 deals with pre-trial resolution procedures. It is broken into four Rule subsections:

- 10-1 Offers of Settlement;
- 10-2 Striking Documents;
- 10-3 Summary Trial; and
- 10-4 Discontinuance and Withdrawal.

Rule 10-1 (Offers of Settlement)

Regarding Rule 10-1 (Offers of Settlement), it is most notable that there are no longer two sets of costs rules: one for civil and one for family law proceedings. Rule 10-1 applies Rule 9-1 of the Draft Civil Rules to offers to settle. The effect is that rules regarding costs apply to both civil and family matters. It appears that a party no longer has to use a prescribed form when making an offer to settle. A party just uses use certain wording under which the right to bring the offer to the judge's attention regarding costs is reserved.

The important point to note is that double costs are no longer automatic and it is still up to the court's discretion, taking into account a number of factors including the parties' financial circumstances. It seems that the whole basis for the formal offers to settle was the cost consequence. Another consequence was how one party could basically force the other party to accept the offer or settle out of fear of having double costs awarded against that party. Under the new regime in the Draft Family Rules, it is entirely likely that a judge will rarely impose double costs in family law matters given it would totally disrupt

the division of assets and equality that is supposed to be obtained. If the goal of the new Draft Family Rules is to encourage settlement, then Rule 10-1 might not meet the goal.

It is a good idea to allow all forms of written offers to be subject to Rule 10-1. There should not be a requirement for a formal offer in a prescribed form for the costs rules to apply. However, the re-imposition of discretion in the awarding of double costs likely offsets the benefits of the expansion of the form required to make an offer.

Rule 10-2 (Striking Documents)

Overall, Rule 10-2 will likely not have a broad effect on family law practice since applications to strike documents are uncommon.

PART 11 – PROPERTY AND INJUNCTIONS

The CBABC Working Group has reviewed and considered Part 11 (Property and Injunctions) and makes no recommendations regarding Part 11 at this time.

PART 12 – TRIAL RULES

Rule 12-2 (How to Set Trial for Hearing)

Rule 12-2(5) requires a party to serve a copy of the filed notice on each other party promptly. The CBABC Working Group recommends that a deadline be added to Rule 12-2(5) as opposed to "promptly".

Rule 12-2(7) grants the court has discretion to make orders regarding trial dates. Rule 12-2(7)(d) permits the court to order that a trial take precedence over another trial. In light of the new purpose in the Draft Family Rules, the CBABC Working Group recommends that it be stated in Rule 12-2(7)(d) which trial ought to take precedence over others. In family law practice, there appears to be priority given by the registry to custody trials over other trials. It is important for lay litigants and lawyers to be made aware of which trials take precedence over other trials.

Rule 12-3 (Trial Management Conference)

Rule 12-3(1) provide that, unless otherwise ordered, the Trial Management Conference (the "TMC") must take place 15 to 30 days before the scheduled trial date.

In some cases, it may be more helpful to have the TMC earlier, for example, 45 to 60 days prior to the trial. This might make the TMC more useful in considering a party's trial preparation. Note also that Part 12 provides no ability to consent to adjourn a trial within 45 days of the trial date except with court approval. Therefore, the TMC might be useful to address an adjournment if held earlier.

Rule 12-3(2) requires that a TMC is conducted by a judge.
Rule 12-3(2) makes sense as judges hear trials and the TMC focus is based on trial management. Also, Rule 12-3(7) states that the judge, who presided at the TMC, is to hear the trial if reasonably practicable.

Rule 12-3(3) requires that each party must file a trial brief in a required form at least 28 days before the TMC and serve it on each party. In practice, 28 days in advance may be optimistic. While Form F30 (Trial Brief), is not too onerous in itself, it requires a substantive summary of issues and positions, list of witnesses, expert's reports and witnesses to be cross-examined. If parties have a reasonable time to prepare the trial brief, the brief will presumably be thoughtful and more helpful at the TMC for the judge and the parties since they will know what to expect at trial. In looking at Form F30 itself, the CBABC Working Group recommends that Form F30 should be expanded slightly to include the other information currently addressed by judges at pre-trial conferences:

- any parties or witnesses under a disability;
- need for special equipment;
- discovery evidence be read in; or

- interrogatories used.

Rule 12-3(4) and (5) require the parties' (or child's) lawyer to attend the TMC. The parties need not attend if they are represented by counsel and readily available for consultation either in person or by telephone.

The CBABC Working Group notes that it seems helpful to have parties readily available by telephone. It would be helpful for a party who is not attending a TMC to be represented by counsel where that counsel is fully prepared to address everything that trial counsel (or the party) would address. It is proper not to permit agent counsel to appear in place of a party unless agent counsel is fully instructed on all issues that can arise at the TMC.

Rule 12-3(6) permits the judge at a TMC to make a variety of orders.
The focus of the TMC is supposed to be trial management according to the commentary which introduces Rule 12-3. However, there are powers in Rule 12-3(6) to direct a settlement conference and make orders regarding any other matter that may aid in the resolution of the family law case. These settlement powers might be helpful in certain cases: perhaps where there are one or more lay litigants. Also, it may be necessary or advisable that the court could use this settlement power when lawyers are involved when presumably efforts to settle have likely already been made, such as JCC, Notice to Mediate, Offers to Settle and other non-Court related attempts.

It is also noteworthy that the court can make orders with respect to admissions of fact at trial. This is not apparently limited to admissions by consent of the parties. Further, the judge can make orders regarding any other matter that may assist in making the trial more efficient. This is very broad wording. As well, the basics for this broad power namely, trial efficiency, should only be one goal but not at the expense of fairness. The CBABC Working Group has some concerns that, without hearing evidence on the basis of trial briefs alone, a judge might make orders regarding admissions of fact at trial or other orders in order to make the trial efficient at the expenses of other worthy goals.

Rule12-3(7) provides that, if reasonably practicable, the judge who presided at the TMC is to preside at the trial. For the same reasons regarding Rule 5-2(11) in our submissions above, the CBABC Working Group recommends that "practicable" be deleted and replaced by "practical".

Rule 12-4 (Adjournment of Trial Date)

Rule 12-4 permits an adjournment within 45 days of the trial date by consent.

Presumably, the intent of Rule 12-4 is to permit the registry the best available use of trial time. The CBABC Working Group is not aware of this being a problem in Vancouver at least. The CBABC Working Group is not sure why, if both parties or both counsel agree, that a trial cannot be adjourned by consent up to perhaps 14 days before or even closer to trial date. The CBABC Working Group observes that the trial certificate may be filed 14 days before the court date. Presumably this 14 day period is so that the party filing the

trial certificate can advise whether or not the trial is ready to proceed. At the very least, the CBABC Working Group does not see why the court could outright (as provided for in Rule 12-4(2)(d)) refuse an adjournment when receiving a requisition. There may be a host of valid reasons why a trial should be adjourned. A valid reason may be: illness of a party or counsel, illness of a witness, adjournment by consent to try to reach settlement or by consent to obtain further information. Generally, it is positive for the Draft Family Rules to make it easy for either lawyers or lay litigants to govern themselves by consent wherever possible. For example, a common scenario involves parents with child custody. The parents may have an initially secured trial date and agree to have a trial in order to resolve matters quickly. Then the parents may agree that the trial ought to be adjourned, for example, to obtain an export report under section 15 of the *Family Relations Act*. In this scenario, why should these parents not obtain an adjournment by consent?

The CBABC Working Group recommends that Rule 12-4 be amended to permit both of the parties or both counsel to adjourn a trial by consent up to perhaps 14 days before or even closer to trial date.

Rule 12-4(3) gives the court a discretion to adjourn a trial at any time.
Our submissions above regarding adjournment of trial by consent within the 45 day window in Rule 12-4 are applicable to Rule 12-4(3). While parties can apply for an adjournment under Rule 12-4(3), this is an unnecessary expense if the parties are able to consent to an adjournment.

Rule 12-4(4) requires each party to give the registry all available information as to the settlement of a family law case or affecting the estimated length of trial without delay. The CBABC Working Group does not consider Rule 12-4(4) controversial except for the wording of "all available information as to the settlement". If the family law case is settled or the estimated length of trial is somehow affected, that is important information. This substantive information about a settlement and/or without prejudice information should not be required.

Rule 12-5 (Trial Record)

Rule 12-5(1) requires a party to file a trial record that includes the pleadings and the most current financial statement, if any, filed by each party, as well as orders regarding the conduct of trial and any documents required by the registrar under Rule 12-5(2). Rule 12-5(1) is similar to the old Rule but is adapted to require the inclusion in the trial record the most recently filed financial statement. The CBABC Working Group submits that this makes sense.

Rule 12-5(3) requires that the trial record must be filed at least 14 days before, but not more than 30 days before, the scheduled trial date and needs to be served on all other parties promptly after filing.

Rule 12-5(3) is similar to the old Rule. Like for Rule 12-2(5), the CBABC Working Group recommends that a deadline be added to Rule 12-5(3) as opposed to "promptly".

Rule 12-6 (Trial Certificate)

Rule 12-6(1) requires each party to file a trial certificate.

The CBABC Working Group questions the need for each party file to a trial certificate. In Rule 12-6(5), if no party files a trial certificate, the trial is removed from the trial list. However, the trial is not removed from the trial list if one party files a trial certificate. Often, one party wishes to file the trial certificate and proceed with the trial, but the other party does not.

Rule 12-6(2) requires that the trial certificate must be filed at least 14 days before, but not more than 28 days before, the trial date. Why is this 28 days different than the 30 days for the trial record, since it would seem simpler to make them match?

Rule 12-6(3) requires that the trial certificate must contain required information, including that the party filing it would be ready to proceed on the trial date.
In practice, it is common for trial certificates that state that the party is ready to proceed, for example, having completed all examinations the party intends to conduct. In fact, that has not been the case. In practice, perhaps there should be other options to reflect the true status of the litigation to provide the court and the other party. Sometimes there are further examinations that will be completed by consent. Sometimes, the party wishes to proceed with the trial if at all possible, but if the trial is adjourned for some other reason beyond that party's control, that party does wish to conduct further discoveries at a later date. Alternatively, or in addition, perhaps there should just be consequences to filing a

trial certificate that states the party is ready to proceed but then brings on another application for either documents, further discovery or adjournment.

Rule 12-6(4) requires a party to promptly serve a copy of the filed trial certificate on other parties.

Like for Rule 12-2(5) and Rule 12-5(3), the CBABC Working Group recommends that a deadline be added to Rule 12-6(4) as opposed to "promptly".

Rule 12-6(5) requires that, if no party files a trial certificate, the trial must be removed from the trial list. Since trials cannot be adjourned by consent within 45 days of the trial, what happens if the adjournment is refused under Rule 12-2(d) but no party files a trial certificate? This may be an oversight.

Rule 12-6(6) states that the party who fails to file a trial certificate is not, without leave of the court, entitled to make further applications. Is there a good reason for Rule 12-6(6)? For example, if a party genuinely cannot certify that the trial will be ready to proceed--not all necessary documents have been provided--can the party not bring on an application to adjourn the trial or for further documentation?

Part 12 Division 4 (Court Ordered Reports and Expert Witnesses)

This appears to be the largest substantive change to trials. Division 4 addresses section 15 expert reports under the *Family Relations Act* and contains several rules regarding experts. This division is lengthy and at times inconsistent. A significant change is that expert evidence on financial matters in a family case must be by a jointly appointed expert.

Rule 12-9 (Court Ordered Reports Under Sections 15 of the *Family Relations Act)*

Rule 12-9 deals with the process for obtaining and introducing section 15 expert reports under the *Family Relations Act* and calling the report writers as witnesses. Rule 12-9 is based on Rule 11 of the Provincial Court (Family) Rules.

Expert reports under section 15 of the *Family Relations Act* are normally used for custody and access reports. But case law confirms that section 15 can be invoked to appoint another type of professional, such as a chartered accountant to investigate family assets. It is unclear to the CBABC Working Group whether or not Rule 12-9 only deals with custody and access reports under section 15 of the *Family Relations Act* or the full gamut of possibilities under this section 15 as provided by case law. Since Rule 12-9 follows Rule 11 of the Provincial Court (Family) Rules and the Provincial Court does not deal with property claims or other financial matters pursuant to Parts 5 and 6 of the *Family Relations Act*, perhaps then Rule 12-9 is only meant to address custody and access reports. This is an important issue and the CBABC Working Group recommends that this be clarified.

With respect to wording, the CBABC Working Group is not sure what it means for the report to be "released" in Rule 12-9(1)(b): "released" to whom? This is unclear because Rule 12-9(1)(b)(i) and (ii) mandates that after release the report is to be served on the parties and the court. The CBABC Working Group is also not sure of the purpose of the court being provided with a copy of the report before the case is litigated. Normally, custody and access reports will be received by the parties and often greatly assist in negotiations and settlement of custody and access. If a matter is settled and never proceeds to trial, neither party may wish a copy of the report to be filed with the court in order to preserve privacy. This is particularly acute given that Rule 18-3 now permits anyone with access to the Internet to search family files.

Rule 12-9(2) requires that the party who wishes to cross-examine the author of a section 15 report at trial must, at least 14 days before the trial date, serve a notice in a new form on the person and other parties.

In light of the other Draft Family Rules with respect to service of other expert reports and TMCs, for example, 14 days before trial appears to be very close to trial. Perhaps the deadline should be with 14 days of receiving the report.

Rule 12-9(3) requires that an expert must attend for cross-examination at the date, time and place set out in the notice. When there are multiple day trials, as is most common is Supreme Court, in practice, experts will often be inconvenienced if they have to set aside more time than what it would take to provide their evidence. The CBABC Working

Group recommends that, at the TMC, the judge should address the time or day when the particular expert will testify.

Rule 12-9(4) permits the court to order, if the court determines it was unnecessary for a party to cross-examine the person who prepared the report, the party to pay the reasonable costs associated with that person's attendance in the matter and to the person ordered by the court. In practice, experts will often seek, and obtain, a retainer in advance for their travel and for trial. Therefore, in addition to the notice that is required to be served on the expert that the expert must attend for cross-examination under Rule 12-9(2), the CBABC Working Group recommends that there ought to be a requirement for that party to provide the retainer (unless otherwise ordered by the court to be covered by another party). In practice, if the expert report comes out in favour of one party, it is the other party who wishes to cross-examine the author and ought to at least pay the advance costs of the expert to have them attend at trial. If the cross examination was found necessary, then the other party could be ordered to pay the costs as a disbursement.

Rule 12-10 (Appointing Expert Witnesses)

Rule 12-10(2) requires a jointly appointed expert for evidence on financial issues.

Rule 12-10(2) is controversial. It restricts the advocacy process and choice of experts. It may also be problematic in that many experts such as valuators and pension experts may not agree to be jointly retained.

Rule 12-10(3) requires a jointly appointed expert for evidence other than financial issues. Rule 12-10(3) would apply to a report on a party's income for guideline purposes. It seems odd that both parties could obtain their own experts reports on income, but not obtain their own experts reports on the valuation of a business. For example, the business valuation will often be the same expert returned to provide the opinion regarding income.

Rule 12-11 (Duty of Expert Witnesses)

Rule 12-11(1) provides that, in giving an opinion to the court, an expert appointed by the parties or by the court has a duty to assist the court and is not to be an advocate for any party or any position of any party.

Given the use of the plural in "parties", it appears that Rule 12-11(1) applies only to experts appointed jointly by the parties (as opposed to one party). This appears to be an oversight. Rule 12-14 requires that a party's expert certify that the expert has followed the duty required under Rule 12-11(2).

Rule 12-12 (Jointly Appointed Experts)

Rule 12-12 mandates the process by which a joint expert is retained either by consent or by court order. Parties should be encouraged to retain joint experts where possible, but not be forced. Forcing joint experts onto litigants may result in unfairness to one or both parties.

Rule 12-12(1) states that specific matters must be settled prior to a joint expert being appointed:

> (a) identity of the expert;
>
> (b) the issue in the family law case the expert opinion may help to resolve;
>
> (c) any facts or assumptions of fact agreed to by the parties;
>
> (d) for each party any assumptions of fact not included under paragraph (c) that the party wishes the expert to consider;
>
> (e) the questions to be considered by the expert;
>
> (f) when the report must be prepared by the expert and given to the parties;
>
> (g) which of the parties is to serve the experts report under Rule 12-14(4)(a);
>
> (h) responsibility for fees and expenses payable to the expert.

While Rule12-12(1)(a),(b), (g) and (h) seem relatively straight forward, Rule 12-12(1)(c) through to (f) seems difficult in most cases. In practice, experts are often retained early on, before all documentary information is made available and before discoveries. In fact, the deadlines and expediency itself encourage parties to retain experts early on. It would seem that a potential difficulty with this is that the party without the financial documentation in a family law file may be forced to either agree to or have the court order what facts or assumptions ought to be used or what questions ought to be considered prematurely.

Rule 12-12(3) permits the court to order a joint expert if the parties do not agree. It also seems strange that if the court has to order an expert report be prepared and make orders regarding the terms of the report, then that is truly not a "joint expert". Perhaps it would be better to simply leave the ability of either party to obtain his or her own reports on any issue, remove the Rule regarding jointly appointed experts, and keep the Rule with respect to court appointed experts (12-13). One could perhaps keep Rule 12-11 to address the duty of all expert witnesses but not force people to have joint experts. If the purpose of forcing parties to jointly retain experts is to save time at having 2 experts at trial, perhaps expert reports, being addressed at the TMC, a judge could order that the parties have their respective experts meet to assess exactly what they agree upon and exactly what they disagree upon.

Rule 12-12(5) limits the court appointed expert as the only expert who may give expert evidence in the family law case on the issue.
Our submissions regarding Rule 12-12(3) above, apply equally to Rule 12-12(5).

Rule 12-12(7) authorizes the court to permit evidence of an additional expert if the court is satisfied that the evidence of that additional expert is necessary to ensure a fair trial. The CBABC Working Group finds that "necessary" will be a tough test to meet. If, for example, the non-informed or less informed spouse still does not have full documentation is may be difficult to satisfy that the additional expert is necessary. As a practical matter, it is also expensive to bring a Rule 12-12(7) application when such monies could be used to pay for the party's own expert report.

Rule 12-12(8) permits the court, in assessing whether to grant leave for the evidence of an additional expert, to consider specified matters, including whether the parties have fully cooperated with the joint expert and made full and timely disclosure of all relevant information and documents to the joint expert. How does the non-informed spouse prove that the other spouse has not fully cooperated in providing all relevant information and documents?

Rule 12-12(9) requires all parties to cooperate fully with the joint expert and make full and timely disclosure of information and documents to the joint expert. In practice, it is hard to imagine Rule 12-12(9) going far enough to ensure fairness in every case.

Rule 12-12(10) provides each party in a family law case a right to cross-examine a joint expert.

It would seem there should be notice provided within 14 days of receipt of the report, if the party wishes to cross-examine the expert. Rule 12-9(4) provides costs of an expert's attendance for a section 15 report under the *Family Relations Act*. The CBABC Working Group recommends that costs for an expert under Rule 12-9(4) be added to Rule 12-12 (10).

Rule 12-13 (Appointment of Court's Own Expert)

Rule 12-13 permits the court to appointment its own expert. Rule 12-13 is similar to the current Rule 32A of the Supreme Court Rules. The CBABC Working Group's submissions in the previous section apply here as well regarding the possibility of removing Rule 12-12, the requirement of a jointly retained expert for financial matters and retaining this option of the appointment of the court's own expert. Rule 12-13 could be used more often than it has been historically in Rule 32A if parties have not made the appropriate prior arrangements for experts.

Rule 12-13(7) provides that, unless the court otherwise orders, an expert appointed under this Rule can be cross-examined by each party. It is not specified why a court would otherwise order that an expert cannot be cross-examined by each party. In what circumstances should one or both parties not be entitled to cross-examine the expert? The CBABC Working Group recommends that Rule 12-13(7) be clarified to state the circumstances when a court would otherwise order that an expert cannot be cross-examined by each party.

For consistency and simplicity, the CBABC Working Group recommends that the cost provisions in Rule 12-13(10) and (11) be same as in Rule 12-9(4) regarding costs of an expert's attendance for a section 15 report under the *Family Relations Act*. The CBABC Working Group asks: how does the court obtain evidence regarding what fees are normally charged by which expert and what retainer requirements are necessary?

Rule 12-14 (Expert Reports)

Rule 12-14(2) requires an expert's report to set out specified matters, including the expert's qualifications. The CBABC Working Group recommends that Rule 12-14(2)(a) be clarified: does "expert's qualifications" require a *curriculum vitae* or statement? This should be clear, particularity for lay litigants.

Rule 12-14(3) states that the assertion of qualifications of an expert is evidence of them. Under the current Rule 40A(6) of the Supreme Court Rules, the assertion of qualifications of an expert is prima facie proof of them. Rule 12-14(3) does not include proof. The CBABC Working Group queries whether the omission of proof of an expert's qualifications is an oversight?

Rule 12-14(4) sets out the requirements for service of the expert's report. The definitions of "assertive report" and "responsive report" in Rule 12-14(1) may be confusing in light of the fact that a responsive report appears to simply be a report in reply. The CBABC Working Group recommends that "responsive report" be defined as an expert's opinion report in reply to an assertive report.

Rule 12-14(9) requires that an objection to expert opinion evidence must be served on all other parties. The CBABC Working Group recommends that Rule 12-14(9) add details of what the objections to admissibility are, at least by the time of the TMC.

Rule 12-15 (Expert Opinion Evidence at Trial)

Rule 12-15(5) deals with costs of cross-examination of experts. As stated above, the CBABC Working Group recommends that should be consistency with respect to costs in each of the types of expert reports.

PART 13 – COURT ORDERS AND THEIR ENFORCEMENT

Rule 13, with the exception of Rule 13-7 "Costs", is largely unchanged from existing Supreme Court Rules Rules 41, 42 and 43 and Rule 60 regarding D*ivorce Act* orders.

Rules 13-1, 13-2 and 13-6 of the Draft Family Rules refer back to the Draft Civil Rules. The cross referencing is, here (as elsewhere in the Draft Family Rules), a barrier to clarity and practicality. As we have previously submitted, the Draft Family Rules should be a complete code. Otherwise, any attempts at making the Draft Family Rules understandable to the lay litigant are likely doomed.

Rule 13-7 (Costs)

Rule 13 extensively references the Draft Civil Rules and the *Divorce Act*. Therefore, there is little to say about them. The exception is Rule 13-7 (Costs). Rule 13-7 is significantly different from both the Draft Civil Rules and the current Supreme Court Rule. The simplification is laudable. There is some confusion in Item 3 (Preparation for and attendance at each examination for discovery) and Item 4 (Preparation for and attendance at each contested application) as to whether the $1,000 is for preparation and attendance jointly or severally. The CBABC Working Group recommends that this confusion needs to clarified by amending Items 3 and 4 of Rule 13-7.

There is no item for mediation. Some members of the CBABC Working Group think this is an oversight. Some CBABC Working Group members do not and ask: if there is a will to encourage mediation, should there be a cost consequence to either party?

The simplification will have a positive consequence for families of modest means. A few cost orders on this simplified scale could have a significant impact on the pot of money left to divide at the end of the day. The simplification will also make it easier for parties to ask for costs. The simplification will also make it easier for lawyers and others to explain potential cost consequences to litigants.

Rule 13-7(1) sets out three levels of difficulty: less than ordinary difficulty, ordinary and more than ordinary difficulty. It seems inevitable that the family cases that involve more property will be assessed as more than ordinary difficulty. It can be reasonably expected that there will be rough parity between assessments and ability to pay, if not between difficulty and importance of the issue.

PART 14 – PETITION PROCEEDINGS

Part 14 (Petition Proceedings) requires a party to file according to the procedure set out in Rule 14-1 of the Draft Civil Rules and is very similar to the current Supreme Court Rules Rule 51A chambers procedure. As a result, see our submissions above to Part 3 (How To Start And Defend A Family Law Case).

PART 15 - OTHER PROCEDURES

The CBABC Working Group has reviewed and considered Part 15 (Other Procedures) and makes no recommendations regarding Part 15 at this time.

PART 16 - SPECIAL RULES FOR CERTAIN PARTIES

The CBABC Working Group has reviewed and considered Part 16 (Special Rules For Certain Parties) and makes no recommendations regarding Part 16 at this time.

PART 17 – GENERAL

Rule 17–1 (Time)

Rule 17-1 refers to Rule 20-4 of the Draft Civil Rules. Rule 20-4 sets out the computation of time, extending or shortening time and extending or shortening time respecting pleadings such as the current Supreme Court Rule 3 does.

To work with Rule 17-1 requires a person to flip back and forth between Rule 1-2 and Rule 20 of the Draft Civil Rules. These time rules are often referred to and are necessary to use in order to compute time for service of documents under the Supreme Court Rules. As such, the CBABC Working Group recommends that Rule 1-2(3) and Rule 20-4 of the Draft Civil Rules be reproduced in their entirety in the Rule 17-1 of the Draft Family Rules.

Rule 17–2 (Forms and Documents)

Rule 17-2 refers one to Rule 1-2(3) and Rule 20-3 of the Draft Civil Rules. Rule 20-3 of the Draft Civil Rules is the same as the current Supreme Court Rule 4.

Like Rule 17-2, Rule 17-2 requires a person to flip back and forth between rules. For the same reasons as Rule 17-1, the CBABC Working Group recommends that Rule 1-2(3) and Rule 20-3 of the Draft Civil Rules be reproduced in their entirety in the Rule 17-2 of the Draft Family Rules.

In addition, the CBABC Working Group recommends that consideration be given to addressing service by e-mail and e-filing of documents.

Rule 17-4 (Change of Lawyer)

Rule 17-4 allows a party to a family law case to change lawyers, act on his or her own, engage a lawyer to act or discharge a lawyer and act on his or her own behalf. Rule 20-6 of the Draft Civil Rules applies to Rule 17-4.

For the same reasons as Rule 17-1 and 17-2, the CBABC Working Group recommends that Rule 1-2(3) and Rule 20-6 of the Draft Civil Rules be reproduced in their entirety in the Rule 17-4 of the Draft Family Rules.

Rule 17-5 (If Parties Fail to Comply with These Rules)

Rule 17-5 allows the court to strike out a claim or counterclaim and grant judgment dismissing the claims made in the notice of family claim or counterclaim, set aside a step taken or make any other order it considers will further the object of the Supreme Court Family Rules.

The CBABC Working Group hopes that Rule 17-5 will be used to ensure that one party cannot delay proceedings unduly without running the risk of their claims being dismissed or orders obtained being set aside.

Rule 17-6 (If Parties Fail to Attend)

Rule 17-6 allows the court to proceed with hearings/trials, draw adverse inferences from the non attendance, including attributing income to a party and make orders.

Rule 17-6 just codifies the usual relief sought by counsel when the opposing party, duly served, fails to show up at a hearing or trial. As long as a person is aware of the relief being sought, including the amount of income being attributed to that person, that person should have orders made against them, drawing inferences from the non attendance at court.

PART 18 – COURT AND REGISTRY MATTERS

The CBABC Working Group has reviewed and considered Part 18 (Court And Registry Matters) and makes no recommendations regarding Part 18 at this time.

PART 19 – TRANSITION

The CBABC Working Group has reviewed and considered Part 19 (Transition) and makes no recommendations regarding Part 19 at this time.

FORMS

The Forms section lists these forms:

- Form F1 – Notice Of Joint Family Claim;
- Form F3 – Notice Of Family Claim;
    - Schedule 1 (Family);
    - Schedule 2 (Spousal Support);
    - Schedule 3 (Property);
    - Schedule 4 (Divorce);
- Form F4 – Response – Family;
- Form F5 – Counterclaim – Family; and
- Form F30 – Trial Brief – Family.

The CBABC Working Group recommends that the documents used to commence and reply to an action should include plain-language explanations of legal concepts like "ordinary residence," "marriage-like relationship" and "collusion".

The CBABC Working Group recommends that the Parenting Plan Form drafted by J.P. Boyd of the CBABC Working Group be included in the forms. This Parenting Plan Form is attached as Appendix A to these submissions.

It is important that parents be required to turn their minds to the minutia of their children's lives at an early point in proceedings and put forward a comprehensive proposal to deal with this issues following separation and into the relatively near future. The Parenting Plan Form will also assist with objectives of the family rules by emphasizing the interests of children and forcing parents to contemplate how separation may affect their children.

Form F1 (Notice of Joint Family Claim)

Form F1 is a fill-in-the-blank document. Form F1 is straightforward, easy to read and similar to the current Provincial Court form.

The CBABC Working Group recommends that the date married couples began to cohabit be added to section 2 of Form F1.

The CBABC Working Group further recommends that Form F1 also recite the means by which a party may withdraw from the joint process and file a response and/or counterclaim.

Given the current difficulties counsel have with joint family claims, Form F1 should likely only be used when parties intend on pursuing their claims without counsel. These joint family claims will likely continue to cause difficulty for the registry and there is no real cost savings for the client if both have to execute documents in support of the relief sought, especially as one lawyer will not act for both clients.

Form F3 (Notice of Family Claim)

Like Form F1, Form F3 is straightforward.

Like Form F1, the CBABC Working Group recommends that the date married couples began to cohabit be added to section 2 of Form F3.

The CBABC Working Group recommends that Form F3 recite, for the benefit of the respondent, the due date for the response and counterclaim and the consequences of failing to deliver these documents in time.

Also, the CBABC Working Group recommends that an explanation of "address for service" would be helpful and some information about the claimant's financial disclosure obligations be included.

Schedule 1 (Family)

The CBABC Working Group recommends that Schedule 1 (Family) include a section on the opposing party's income in the same manner of the schedule for spousal support claims.

Schedule 3 (Property)

The CBABC Working Group recommends that a plain-language explanation be added to describe the different property rights of married and unmarried persons and the distinction between an "equal division" of assets versus a "reapportionment".

Moreover, the CBABC Working Group recommends that Schedule 3 is also the appropriate place to locate claims under the *Partition of Property Act*, rather than leaving such claims to Schedule 5.

Schedule 5 (Other Relief)

Schedule 5 is not included in the Draft Family Rules and is yet to be drafted.

The CBABC Working Group thought it was critical that this yet-to-be-designed form for "other relief" not restrict counsel's ability to frame the pleadings. This will be the only means to raise claims based on the laws of tort and contract or on legislation apart from

the *Divorce Act* and the *Family Relations Act*. Consequently, lawyers must have the latitude to state a claim in the manner appropriate to the client's circumstances.

Form F4 (Response – Family)

Form F4 is simple and straightforward. Like Form F3, Form F4 does not have any timelines in it for filing of the response or content of the financial information to be disclosed. Hence, the CBABC Working Group recommends that time limits within which responses must be made and the content of financial information that must be made be added to Form F4.

Form F5 (Counterclaim – Family)

Like the other forms, Form F5 is simple and straightforward.

Form F30 (Trial Brief – Family)

Again, like the other forms, Form F30 is a simple document that will be easy for parties to complete.

SUMMARY OF RECOMMENDATIONS

As a result of our submissions above, the recommendations of the CBABC Working Group are summarized below for each of Parts 1 to 19 and Forms.

The CBABC Working Group recommends that:

PART 1 – INTERPRETATION

1. all of the general Draft Civil Rules referred to in the family law rules should be incorporated directly into the family law rules so that one wouldn't need to keep two sets of rules at hand;

Rule 1-1(1) (Definitions)

2. the definitions in Rule 1-1(1) should be self-contained and not require reference to other rules and legislation;

3. the definition of "family law case" include the breach of a separation agreement;

4. the definition of "undefended family law case" in Rule 1-1(1) be moved to Division 3 (Final Orders) of Part 9 (Obtaining Orders Other Than At Trial) since Division 3 governs undefended and defended family law cases;

Rule 1-2(5) (Waiver of Rule by Agreement)

5. Rule 1-2(5) should state that the relief is not automatic and that there should be a compelling reason to depart from the rules;

6. certain procedural steps should be more difficult to escape than others, including:

   - attending at a JCC;
   - making adequate financial disclosure; and
   - filing a parenting plan;

Rule 1-3 (Object of Rules)

7. the objects need to address "timeliness" in some fashion. This would encompass both ideas: that sometimes speed is essential and that sometimes a hiatus is required;

8. "proportionality" be implemented for three categories of family cases: low conflict, moderate conflict and high conflict; on this basis, family law cases could be streamed with different rights of access to the family rules;

9. a triage mechanism be deployed at the commencement of every proceeding if the objective of proportionality is to be given substance;

Rule 1-4(2) (Active Management of a Case)

10. that Rule 17-5(d) regarding the right of the court to make orders if a party does not comply with the rules, should be moved to follow Rule 1-4(3) (duty of parties) so that lay litigants can see (and lawyers can point out to their clients) that there may be consequences for failing to co-operate;

11. consideration be made to enumerate in Rule 1(4)(3) what consequences of non-compliance might be;

PART 2 – RESOLVING CASES BY AGREEMENT

Rule 2-1 (Agreements)

12. Rule 2-1 clarify that, if an originally signed agreement or a notarial copy of the originally signed agreement is not available, then a copy may be filed with the court instead, if that is the best evidence available. Further, the court may wish a companion affidavit to be filed along with the agreement deposing that the originally signed agreement is not available for filing and that the copy of the agreement provided is a true copy of the original and has not been altered in any way;

PART 3 – HOW TO START AND DEFEND A FAMILY LAW CASE

PART 4 – FAMILY LAW CASE COMMENCED BY FILING A NOTICE OF FAMILY LAW CLAIM

13. in terms of overall organization, it would be more logical to have Part 3 (How to Start and Defend a Family Law Case) amalgamated with Rules 4-1 to 4-4 regarding family law claims;

14. Rule 4-5 (Financial Disclosure) be moved and combined with Part 7 (Procedures For Obtaining Information And Documents);

15. Rules 4-1 to Rules 4-4, which refer to the new forms, are well drafted and should be simple to use and the wording in the forms such as "parenting arrangement" and "current arrangement for spousal support" is helpful in underlining the theme of encouraging co-operation;

16. Schedule 3 (Property) in Form F3 (Notice of Family Claim) be expanded to cover other property relief notwithstanding that Schedule 5, which has not yet been drafted, could provide for additional relief;

17. the expanded wording in the Lawyer's Certificate in Schedule 4 (Divorce) of Form F3 (Notice of Family Claim) is very good;

Rule 4-2(3)(Counterclaim)

18. the requirement in Rule 4-2(3) that service only take place within 21 days of a response being filed makes little sense and that it should be no more than 7 days;

19. that 7 days apply equally to Rule 4-3(4) and the time requirement for serving filed counter claims;

Rule 4-4(2)(b)(Marriage Certificate to be Filed)

20. Rule 4-4(2)(b) be deleted;

Rule 4-5 (Financial Disclosure)

21. under Rule 4-5(1)(h), "applicable income documents" for self employed persons, persons controlling corporations under Rule 4-5(1)(j), or particulars demanded under Rule 4-5(13), the following be added:

> If requested in writing, a self employed person or person in control of a private corporation or a partnership from which the person obtained benefits shall, unless otherwise specified by the court, provide:
>
> a) copies of all account statements from financial institutions the person has in his or her possession relating to accounts he or she controlled for the preceding 2 years; and
>
> b) copies of ledgers or internal accounting records of the business, corporation or partnership which show salaries, wages, fees, draws, payments or benefits paid to, or on behalf of the person for the preceding 2 years.

22. there should also be rules relating to disclosure orders against financial institutions;

23. Rule 4-5 should be amended to make reference to JCC disclosure authority;

24. costs of financial disclosure under Rule 4-5(27) to (29) should be spelled out more clearly and expanded substantially;

25. a Rule be added that provides the court with the power to order special costs as a warning to litigants and that "special costs" be clearly defined;

26. Rule 4-5(29)(e) should expressly state that, under section 92(1) of the *Family Relations Act*, the court can impose a financial penalty up to $5,000;

27. a Rule be added for the court to award costs at an early stage to fund the disclosure process for the financially disadvantaged litigant;

PART 5 – SERVICE

Rule 5-1 (Address for Service)

28. a filed notice be required to confirm that a person is "represented by a lawyer" under Rule 5-1;

29. a subrule in Rule 5-1(1) be added to provide, that if a lawyer has a fax number, documents can be delivered to that lawyer by fax regardless of whether the lawyer provides that fax number as part of that lawyer's address for delivery;

Rule 5-2 (Service of Documents)

30. Rule 5-2(3) require personal service of amended documents;

31. "impracticable" in Rule 5-2(11) be deleted and replaced by "impractical";

PART 6 – AMENDMENTS OF DOCUMENTS AND CHANGES OF PARTIES

Rule 6-1 (Amendment of Claims)

32. if Rule 6-1(5)(a)(ii) is intended to be personal service, then Rule 6-1(5)(a)(ii) should also be enumerated in Rule 5-2(3);

PART 7 – PROCEDURES FOR OBTAINING INFORMATION AND DOCUMENTS

Rule 7-1(9)(Party May Request Additional Documents)

33. Rule 7-1(9) be amended to include a specific demand to list documents in certain categories;

34. one of the powers of JCC judges and Masters be to set document disclosure parameters in order to prevent abuse;

Rule 7-1(10)(Application for Production of Documents)

35. the reply deadline in Rule 7-1(10) should not be any less than 14 days unless there are special reasons;

Rule 7-1(13)(Copies of Documents)

36. Rule 7-1(13) allowing for copies to be provided is excellent and very helpful;

Rule 7-1(14)(Order to Produce Document)

37. the order to produce documents in Rule 7-1(14) should definitely be available to JCC judges and Masters;

Rule 7-1(18)(Party May Not Use Document)

38. while Rule 7-1(18) preventing the use of documents not disclosed on a list of documents already exists in the current Supreme Court Rules, is very useful to have this clearly repeated in the Draft Family Rules;

Rule 7-2 (Examinations for Discovery)

39. 3 hours for examinations for discovery is too short and a time limit of 6 hours might be appropriate;

Rule 7-3 (Pre-Trial Examination of Witness)

40. Rule 7-3 regarding pre-trial examination of witnesses appears not to be limited to 3 hours;

Rule 7-4 (Physical Examination and Inspection)

41. Rule 7-4 regarding physical examination and inspection is clear and simple;

PART 8 – CONFERENCES AND MEDIATIONS

Rule 8-1 (Judicial Case Conference)

42. where parties consented to fixing a trial date or having discoveries, they should be allowed to do so without having to apply for relief from the JCC requirement;

Rule 8-1(6)(How to Apply for Relief)

43. Rule 8-1(6) be amended to require that the letter be produced to the other party at some point in the proceeding, regardless of whether the exemption was granted and regardless of the outcome of any hearing;

Rule 8-1(9), (11) and (12) (F7 Financial Statement Form)

44. Rule 8-1(9), (11) and (12) be amended to reflect that financial statements are not always required and that, when they are required, not all of parts 1, 2, 3 and 4 of the form are always required;

45. it should not be mandatory to file financial statements where a JCC would not be canvassing financial issues;

Rule 8-1(16)(What Happens at the Judicial Case Conference)

46. there be added to the enumerated powers of the court in Rule 8-1(16) in a JCC, a power to refer the parties to a special referee, as is currently provided for in Rule 32 of the Supreme Court Rules or to arbitration;

47. Rule 8-1(16)(r) be redrafted to add a reference to section 15 of the *Family Relations Act* as follows:

> What happens at the judicial case conference
>
> (16) The court may do one or more of the following at a judicial case conference:
>
> …
>
> (r) direct the parties to obtain a custody and access assessment**, or other report or assessment under section 15 of the *Family Relations Act,*** on such terms as to payment and otherwise as the court considers appropriate;

48. Rule 8-1(16)(u) be deleted;

Rule 8-1(19)(Other Judges or Masters May Hear Applications)

49. while a judge hearing a JCC should be allowed – if not encouraged – to also hearing other JCCs and future settlement conferences, the presumptive rule should bar that judge from hearing future applications and the trial of the matter. The "one family, one judge" principle enunciated in Rule 18-1(8) should apply to such future applications and trials;

Rule 8-2(4)(Not More Than One Mediation under this Rule in any Family Law Case)

50. each party should have the opportunity to trigger a mediation;

Rule 8-3 (Settlement Conferences)

51. Rule 8-3 enumerate the powers of the court in the manner of Rule 8-1(16);

PART 9 – OBTAINING ORDERS OTHER THAN AT TRIAL

52. Part 9 should include all of the rules in the Draft Civil Rules Part 7 and Rules 20-1 and 20-2;

53. the family rules be a complete, stand-alone code for family law in British Columbia;

Rule 9-1 (Choosing the Appropriate Procedure)

54. Rule 9-1 include both the existing 9-1 and Rule 7-1 of the Draft Civil Rules, except that Rule 7-1(1) and (2) of the Draft Civil Rules would be replaced by Rule 9-1(1) of the Draft Family Rules. There would be needed additional changes to make sure the references to the new sub-rules are accurate and complete;

Rules 9-2 to 9-6 and Ex Parte Proceedings

55. Rule 9-2 to 9-6 consist of Rules 7-2 to 7-6 of the Draft Civil Rules, except that Rule 7-5 (now Rule 9-5 of the Draft Family Rules) would include the provisions for proceeding ex parte in family law cases which are set out in a new Schedule;

56. the Schedule for ex parte applications be:

SCHEDULE [Add Number] Court File No

APPLICATIONS MADE WITHOUT NOTICE

(EX PARTE) Court Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA FMEP No

1. A person may make an application without notice to another party where:
    a). the other party's whereabouts is unknown and there is no time to serve substitutionally;
    b). to give the other party notice would defeat the purpose for the application;

c). in case of extreme urgency; and/or

d). where the court otherwise finds it appropriate to proceed without notice.

2. Before proceeding with such an application, the court must satisfy itself that the application is appropriate for this rule, and must caution the applicant about the obligations and consequences imposed under this rule.

3. The applicant must take case to present the court with all the relevant facts about the application including, where it is known or can reasonably be inferred, the position of the other party.

4. In considering an application brought without notice, the court must be careful to grant only such orders as are necessary to address that aspect of the application that makes it appropriate to proceed without notice.

5. When the court makes an order under this rule, the court must

a). include a provision in the order that provides for service on the other party and

- provides that the other party may apply to set aside or vary the order, on such terms as the court finds appropriate;
- provides for a review of the order; or
- provides for a termination date for the order, unless renewed.

b). order a transcript of the evidence and reasons for judgment.

6. When the court makes an order under this rule, the court may

a). require the applicant to pay some or all of the cost of the transcript;

b). order that the presiding judge is seized of any or all subsequent proceedings.

FOR PROVINCIAL COURT

If the court subsequently finds that the applicant knowingly withheld material information at the initial hearing, or misled the court, the court may order the applicant to pay a fine, either to the court or to the respondent, of not more than $500.

Rule 9-7 (Final Orders in Defended Family Law Cases)

57. Rule 9-7 consist of the provisions of Rule 20-2 of the Draft Civil Rules, except that it include additional sub-rules addressing:

- double hearsay;
- attacking or assigning motive;
- getting rid of "shock and awe" – avoiding the expressions of shock, horror and amazement at what the deponent presumes to be the other party's outrageous behavior;
- evidence of conduct in applications where it has no relevance, such as child support; and
- costs for frivolous, vexatious or malicious allegations;

New Rule 9-8 (Chambers Applications)

58. there be added a new Rule 9-8. Rule 9-8 would consist of the provisions of Rule 20-1 of the Draft Civil Rules, except that:

- Rule 20-2(1) of the Draft Civil Rules be replaced by Rule 9-3(1) of the Draft Family Rules;
- Rule 9-7 include the power to have any party examined or cross-examined, at the instance of any party, or on the court's own initiative;
- Rule 9-7 include the power to assign a judge, or for the presiding judge to order that all future applications be heard by that judge or master. This is arguably already in the rules, in Rule 18-1(8), but the CBABC Working Group believes it would help to repeat it here, as it is in Rule 8-1(19);

New Rule 9-9

59. there be added a new Rule 9-9. Rule 9-9 would be the Rule 9-6, except that it should include the definition of "undefended family law case" within the rule itself, as in the present Rule 60 of the Supreme Court Rules. Alternatively, all defined terms within the body of the rules should be italicized, so as to signal to the uneducated reader that they should consult the definitions at the beginning of the rules;

New Rule 9-10 (Summary Trial)

60. there be added a new Rule 9-10 providing for a summary trial;

New Rule 9-11 (Variation Application)

61. there be added a new Rule 9-11 permitting a variation application;

62. there be added a new prescribed form which would require the applicant to set out, in summary form:

- the nature of the variation sought;
- a brief statement explaining why the variation is appropriate at this time;
- the legal rule or authority (including a specific term in a previous order) that is relied on; and
- if a review is sought, what the applicant says the review should consist of;

Chambers Applications

63. the Draft Family Rules should consider additional powers or alternative procedures for chambers applications;

64. the ability to examine or cross-examine the deponent be expressly included in the court's powers on a chambers application;

Notice Of Application And Application Response

65. reference to "legal bases" in the Draft Civil Rule 7-1(4)(c) and "factual and legal bases" in Draft Civil Rules Rule 7-1(6)(b)(i) and Rule 14-1(5)(b)(iii) be deleted and replaced by with a requirement that lay litigants "include a **brief** statement as

to why the order is necessary or appropriate" (or unnecessary or inappropriate, as the case may be) in these Rules.";

Part 9 Divisions

66. the Part 9 divisions be re-named as follows:

- Division 1 - Procedure Generally (Rules 9-1 through 9-3);
- Division 2 - Special Cases (Rules 9-4 through 9-6);
- Division 3 - Affidavits (9-7);
- Division 4 - Powers of the Court (9-8); and
- Division 5 - Final Orders (Rules 9-9 through 9-11);

PART 10 – PRE-TRIAL RESOLUTION PROCEDURES

Rule 10-2 (Striking Documents)

67. overall, Rule 10-2 will likely not have a broad effect on family law practice since applications to strike documents are uncommon;

PART 11 – PROPERTY AND INJUNCTIONS

PART 12 – TRIAL RULES

Rule 12-2 (How to Set Trial for Hearing)

68. a deadline be added to Rule 12-2(5) as opposed to "promptly";

69. it be stated in Rule 12-2(7)(d) which trial ought to take precedence over others;

Rule 12-3 (Trial Management Conference)

70. Form F30 (Trial Brief) be expanded slightly to include the other information currently addressed by judges at pre-trial conferences:

- any parties or witnesses under a disability;
- need for special equipment;
- discovery evidence be read in; or
- interrogatories used;

71. "practicable" in Rule12-3(7) be deleted and replaced by "practical";

Rule 12-4 (Adjournment of Trial Date)

72. Rule 12-4 be amended to permit both of the parties or both counsel to adjourn a trial by consent up to perhaps 14 days before or even closer to trial date;

Rule 12-5 (Trial Record)

73. Rule 12-5(1) is similar to the old Rule but adapted to require the inclusion in the trial record the most recently filed financial statement and the CBABC Working Group submits that this makes sense;

74. a deadline be added to Rule 12-5(3) as opposed to "promptly";

Rule 12-6 (Trial Certificate)

75. a deadline be added to Rule 12-6(4) as opposed to "promptly";

Rule 12-9 (Court Ordered Reports Under Sections 15 of the *Family Relations Act)*

76. Rule 12-9 be clarified as to whether or not Rule 12-9 only deals with custody and access reports under section 15 of the *Family Relations Act* or the full gamut of possibilities under this section 15 as provided by case law;

77. Rule 12-9(1)(b) be clarified: what does it mean for the report to be "released"- "released" to whom? And what is the purpose of the court being provided a copy of the report before the case is litigated?

78. for Rule 12-9(3), at the TMC, the judge should address the time or day when the particular expert will testify;

79. for Rule 12-9(4), there be a requirement for that party to provide the retainer for the expert (unless otherwise ordered by the court to be covered by another party);

Rule 12-11 (Duty of Expert Witnesses)

80. Rule 12-11(1) be clarified: given the use of the plural in "parties", it appears that Rule 12-11(1) applies only to experts appointed jointly by the parties (as opposed to one party) and this appears to be an oversight;

Rule 12-12 (Jointly Appointed Experts)

81. costs for an expert under Rule 12-9(4) be added to Rule 12-12 (10);

82. Rule 12-13(7) be clarified to state the circumstances when a court would otherwise order that an expert cannot be cross-examined by each party;

83. the cost provisions in Rule 12-13(10) and (11) be same as in Rule 12-9(4) regarding costs of an expert's attendance for a section 15 report under the *Family Relations Act*;

Rule 12-14 (Expert Reports)

84. Rule 12-14(2)(a) be clarified: does "expert's qualifications" require a *curriculum vitae* or statement?

85. Rule 12-14(3) be clarified: is the omission of proof of an expert's qualifications an oversight?

86. "responsive report" in Rule 12-14(1) be defined as an expert's opinion report in reply to an assertive report;

87. Rule 12-14(9) add details of what the objections to admissibility are, at least by the time of the TMC;

Rule 12-15 (Expert Opinion Evidence at Trial)

88. Rule 12-15(5) be amended to ensure consistency with respect to costs in each of the types of expert reports as noted above in our submissions;

PART 13 – COURT ORDERS AND THEIR ENFORCEMENT

89. Rules 13-1, 13-2 and 13-6 of the Draft Family Rules that refer back to the Draft Civil Rules be amended so that there is no cross-referencing and that the Draft Family Rules work as a complete code as noted above in our submissions;

Rule 13-7 (Costs)

90. Item 3 (Preparation for and attendance at each examination for discovery) and Item 4 (Preparation for and attendance at each contested application) be clarified as to whether the $1,000 is for preparation and attendance jointly or severally;

PART 14 – PETITION PROCEEDINGS

PART 15 - OTHER PROCEDURES

PART 16 - SPECIAL RULES FOR CERTAIN PARTIES

PART 17 – GENERAL

Rule 17–1 (Time)

91. Rule 1-2(3) and Rule 20-4 of the Draft Civil Rules be reproduced in their entirety in the Rule 17-1 of the Draft Family Rules;

Rule 17–2 (Forms and Documents)

92. Rule 1-2(3) and Rule 20-3 of the Draft Civil Rules be reproduced in their entirety in the Rule 17-2 of the Draft Family Rules;

93. consideration be given to addressing service by e-mail and e-filing of documents;

Rule 17-4 (Change of Lawyer)

94. for the same reasons as Rule 17-1 and 17-2, Rule 1-2(3) and Rule 20-6 of the Draft Civil Rules be reproduced in their entirety in the Rule 17-4 of the Draft Family Rules;

Rule 17-5 (If Parties Fail to Comply with These Rules)

95. Rule 17-5 be used to ensure that one party cannot delay proceedings unduly without running the risk of their claims being dismissed or orders obtained being set aside;

PART 18 – COURT AND REGISTRY MATTERS

PART 19 – TRANSITION

FORMS

96. the documents used to commence and reply to an action should include plain-language explanations of legal concepts like “ordinary residence,” “marriage-like relationship” and “collusion”;

97. the Parenting Plan Form drafted by J.P. Boyd of the CBABC Working Group be included in the forms (this Parenting Plan Form is attached as Appendix A to these submissions);

Form F1 (Notice of Joint Family Claim)

98. that the date married couples began to cohabit be added to section 2 of Form F1;

99. Form F1 also recite the means by which a party may withdraw from the joint process and file a response and/or counterclaim;

Form F3 (Notice of Family Claim)

100. the date married couples began to cohabit be added to section 2 of Form F3;

101. Form F3 recite, for the benefit of the respondent, the due date for the response and counterclaim and the consequences of failing to deliver these documents in time;

102. an explanation of "address for service" be given and some information about the claimant's financial disclosure obligations be included;

Schedule 1 (Family)

103. Schedule 1 (Family) include a section on the opposing party's income in the same manner of the schedule for spousal support claims;

Schedule 3 (Property)

104. a plain-language explanation be added to describe the different property rights of married and unmarried persons and the distinction between an "equal division" of assets versus a "reapportionment";

105. Schedule 3 is also the appropriate place to locate claims under the *Partition of Property Act*, rather than leaving such claims to Schedule 5;

Schedule 5 (Other Relief)

106. while Schedule 5 is not included in the Draft Family Rules and is yet to be drafted, Schedule 5 not restrict counsel's ability to frame the pleadings in the manner appropriate to the client's circumstances; and

Form F4 (Response – Family)

107. time limits within which responses must be made and the content of financial information that must be made be added to Form F4.

CONCLUSION

The CBABC Working Group would welcome the opportunity to provide further input and dialogue with the Rules Revision Committee regarding these submissions.

Any communications can be directed to:

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Email: ddundee@kamloopslaw.com

APPENDIX A

PARENTING PLAN –
DRAFTED BY J.P. BOYD OF THE CBABC WORKING GROUP

Court Stamp

File Number:
_____

☐ **Supreme Court of British Columbia**
Court Location:
_____

☐ **Provincial Court of British Columbia**
Court Location:
_____

BETWEEN:

Name(s)		**CLAIMANTS(S)**
Address for Service, Phone Number, Fax Number		

AND:

Name(s)		**RESPONDENT(S)**
Address for Service, Phone Number, Fax Number		

(This form is mandatory and must be completed where a parent requests an order about the parenting arrangements for a child or a parent's time with a child in a Claim, Response or Application, and the request is opposed. Use this form to tell the court and the other party how you think the child's current circumstances should be arranged.)

This is the proposed Parenting Plan of:

☐ the Claimant (name), _____
☐ the Respondent (name), _____
☐ another person (name), _____

The date of this proposed Parenting Plan is (date):_____

This proposed Parenting Plan is about (name of child) _____ who was born on (date) _____ .

A. DAYCARE ARRANGEMENTS (Complete if the child is not going to school yet.)

1. Daycare is necessary on the following days (circle):

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
morning	morning	morning	morning	morning	morning	morning
afternoon	afternoon	afternoon	afternoon	afternoon	afternoon	afternoon
evening	evening	evening	evening	evening	evening	evening
overnight	overnight	overnight	overnight	overnight	overnight	overnight

2. Daycare will be provided by (name): _____

   This daycare provider is:

   ☐ the current daycare ☐ a new daycare

3. In the event that I need someone else to care for the child, I will ask the other parent to care for the child before I ask someone else:

   ☐ yes ☐ no

4. The emergency contact for the daycare will be:

   ☐ me ☐ the other parent ☐ both of us

5. The names and phone numbers of my contacts at the daycare are:

Name	Telephone
_____	
_____	
_____	
_____	

B. SCHOOL ARRANGEMENTS (Complete if the child is going to school.)

6. The child will go to school at (name of school): _____

   This school is:

   ☐ the child's current school ☐ a new school

7. The emergency contact for the school will be:

   ☐ me ☐ the other parent ☐ both of us

8. Before-school daycare will be provided by (name):
_____

This daycare provider is:
☐ the current daycare ☐ a new daycare

9. After-school daycare will be provided by (name):
_____

This daycare provider is:
☐ the current daycare ☐ a new daycare

10. The emergency contact for the daycare provider will be:
☐ me ☐ the other parent ☐ both of us

11. The names and phone numbers of my contacts at the school are:

Name	Telephone
_____	
_____	
_____	
_____	
_____	_____

12. I will give the other parent copies of all materials I receive from the school, including report cards and important notes from the child's teachers:
☐ yes ☐ no

13. I will tell the other parent about special events at school, including parent/teacher nights, concerts, sports days and other events:
☐ yes ☐ no

14. Field trip permission slips, sports permission slips, travel permission slips and other authorizations can be signed by:
☐ me ☐ the other parent ☐ either of us

15. I will make sure the child completes his or her homework when the child is with me:
☐ yes ☐ no

16. I will tell the other parent about homework and important assignments that must be completed when the child is with the other parent:
☐ yes ☐ no

17. I will tell the other parent if the child is falling behind in the child's schoolwork:

☐ yes ☐ no

18. I will talk to the other parent if the child needs special help with school, including tutoring or extra assignments:

☐ yes ☐ no

19. I will talk to the other parent if the child is having behaviour or discipline problems at school:

☐ yes ☐ no

C. EXTRACURRICULAR ACTIVITIES

20. The child will be involved in the following sports activities:

	Activity	Coach's Name	Telephone
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

21. Practices for these activities are held on (circle):

22. Games or meets for these activities are usually held on (circle):

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
morning	morning	afternoon	afternoon	afternoon	afternoon	afternoon
	afternoon	afternoon				
evening	evening	evening	evening	evening	evening	evening

23. The child requires transportation to the following activities:

	Activity	Practice	Game
1.	_____	☐	☐
2.	_____	☐	☐
3.	_____	☐	☐

24. These activities are:

	Activity	Current	New
1.	_____	☐	☐
2.	_____	☐	☐
3.	_____	☐	☐

25. The child will be involved in the following music, dance, art or other lessons:

Activity	Instructor's Name	Telephone
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

26. Lessons for these activities are held on (circle):

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday morning	Sunday morning
afternoon evening	afternoon evening	afternoon evening	afternoon evening	afternoon evening	afternoon evening	afternoon evening

27. Special events in these activities are usually held on (circle):

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday morning	Sunday morning
afternoon evening	afternoon evening	afternoon evening	afternoon evening	afternoon evening	afternoon evening	afternoon evening

28. The child requires transportation to the following activities:

Activity	Lesson	Event
1. _____	☐	☐
2. _____	☐	☐
3. _____	☐	☐

29. These activities are:

Activity	Current	New
1. _____	☐	☐
2. _____	☐	☐
3. _____	☐	☐

30. The child will be involved in the following groups, clubs and other activities:

Activity	Leader's Name	Telephone
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

31. Meetings for these activities are held on (circle):

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
					morning	morning
afternoon	afternoon	afternoon	afternoon	afternoon	afternoon	afternoon
evening	evening	evening	evening	evening	evening	evening

32. Special events in these activities are usually held on (circle):

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
					morning	morning
afternoon	afternoon	afternoon	afternoon	afternoon	afternoon	afternoon
evening	evening	evening	evening	evening	evening	evening

33. The child requires transportation to the following activities:

Activity	Meeting	Event
1. _____	☐	☐
2. _____	☐	☐
3. _____	☐	☐

34. These activities are:

Activity	Current	New
1. _____	☐	☐
2. _____	☐	☐
3. _____	☐	☐

35. I will give the other parent copies of all materials I receive about the children's activities, including calendars:

☐ yes ☐ no

36. I will tell the other parent about special events in the children's activities:

☐ yes ☐ no

37. I will list the other parent as a contact on the children's enrolment sheets their activities:

☐ yes ☐ no

38. Field trip permission slips, sports permission slips, travel permission slips and other authorizations for the child's activities can be signed by:

☐ me ☐ the other parent ☐ either of us

39. The emergency contact for the child's coaches, instructors and group leaders will be:

☐ me ☐ the other parent ☐ both of us

40. The names and telephone numbers of the child's main friends are:

Name	Telephone
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

D. DAY TO DAY CARE OF THE CHILD

41. The child's doctor or paediatrician is:

Name	Telephone
_____	
_____	

This doctor is:

☐ the current doctor ☐ a new doctor

42. The child's medical specialists are:

Name	Telephone
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

These specialists are:

☐ the current specialists ☐ all or some new specialists

43. The child's dentist is:

Name	Telephone
_____	
_____	

This dentist is:

☐ the current dentist ☐ a new dentist

44. The child's orthodontists or dental surgeons are:

Name	Telephone
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

These orthodontists are:

☐ the current orthodontists ☐ all or some new orthodontists

45. The child's counsellor or therapist is:

Name	Telephone
_____	_____
_____	_____
_____	_____

This counsellor is:

☐ the current counsellor ☐ a new counsellor

46. The child has regular appointments with (name) _____ for (reason for appointment) _____.

These appointments are at (time) _____ on (circle):

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
morning	morning	morning	morning	morning	morning	morning
afternoon	afternoon	afternoon	afternoon	afternoon	afternoon	afternoon
evening	evening	evening	evening	evening	evening	evening

These appointments are:
☐ the current appointments ☐ all or some new appointments

47. The child takes the following medications:

Medication	How and when medication is taken
_____	_____
_____	_____
_____	_____

These medications are:
☐ the current medications ☐all or some new medications

48. The child has the following allergies:

Allergy	How to avoid
_____	_____
_____	_____
_____	_____

49. The child has the following special food or dietary requirements (describe):
_____
_____

These food requirements are:
☐ the current requirements ☐all or some new requirements

50. I will tell the other parent about the child's new health problems and developments in any current problems:
☐ yes ☐ no

51. I will tell the other parent about the child's new dental problems and developments in any current problems:
☐ yes ☐ no

52. I will tell the other parent about the child's new mental health problems and developments in any current problems:
☐ yes ☐ no

53. The child's usual weekday bedtime is (time): _____

54. On weekends, the child can sleep in until (time): _____

55. The child's usual weekend bedtime is (time): _____

56. On weekdays, the child can watch television for (amount) _____ hours.

57. On weekdays, the child can use the computer or play computer games for (amount) _____ hours.

58. On weekends, the child can watch television for (amount) _____ hours.

59. On weekends, the child can use the computer or play computer games for (amount) _____ hours.

60. The child receives an allowance of (amount) $_____ paid (weekly, every two weeks/once each month): _____

The allowance will be paid by:
☐ me ☐ the other parent ☐ each of us alternating

61. I will tell the other parent about the child's new behaviour problems and developments in any current problems:
☐ yes ☐ no

62. I will tell the other parent about any important actions I have taken to discipline the child:
☐ yes ☐ no

63. I will talk to the other parent about any important actions which need to be taken to discipline the child:
☐ yes ☐ no

E. PARENTING ARRANGMENTS

64. At present, the child should generally be with me on the following schedule (circle):

WEEK ONE

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
morning	morning	morning	morning	morning	morning	morning
afternoon	afternoon	afternoon	afternoon	afternoon	afternoon	afternoon
evening	evening	evening	evening	evening	evening	evening
overnight	overnight	overnight	overnight	overnight	overnight	overnight

WEEK TWO

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
morning	morning	morning	morning	morning	morning	morning
afternoon	afternoon	afternoon	afternoon	afternoon	afternoon	afternoon
evening	evening	evening	evening	evening	evening	evening
overnight	overnight	overnight	overnight	overnight	overnight	overnight

65. The following religious or cultural holidays are important to me and/or the child, and I want special arrangements for the child's parenting schedule on these days:

Name of Holiday	Date(s)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

66. The following religious or cultural holidays are important to the other parent and/or the child:

Name of Holiday	Date(s)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

67. I want special arrangements for the child's parenting schedule on these days (check all that apply):

- ☐ Mothers' Day
- ☐ Fathers' Day
- ☐ Canada Day
- ☐ BC Day
- ☐ Labour Day
- ☐ Thanksgiving Day
- ☐ Halloween
- ☐ Remembrance Day
- ☐ New Year's Eve
- ☐ New Year's Day
- ☐ the child's birthday
- ☐ my birthday
- ☐ the other parent's birthday

68. I want special arrangements for the child's parenting schedule during the child's winter school holiday as follows (describe):

_____
_____

69. I want special arrangements for the child's parenting schedule during the child's spring school holiday as follows (describe):

_____
_____

70. I want special arrangements for the child's parenting schedule during the child's summer school holiday as follows (describe):

_____
_____
_____

71. The following important family, religious or cultural events will be taking place in the next six months, and we will need to make special arrangements for the child's parenting schedule for these events:

Nature of Event	Date(s)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

72. The other parent and I will exchange the child between our homes (choose one):

- ☐ by dropping the child off and picking the child up from school or daycare or another activity
- ☐ I will take the child to the other parent's house, and the other parent will take the child to my house
- ☐ the other parent will take the child from my house, and I will pick the child up from the other parent's house
- ☐ I will take the child to and from the child's time with the other parent
- ☐ the other parent will take the child to and from the child's time with me
- ☐ the other parent and I will meet at a halfway point between our homes
- ☐ the other parent and I will meet and exchange the child at a public place
- ☐ someone else will take care of taking the child between our homes
- ☐ the child is old enough to travel between our homes alone

73. The other parent and I will communicate with each other (check all that apply):
- ☐ when we exchange the child
- ☐ by telephone, whenever we need to speak to each other about the child
- ☐ by telephone on a fixed schedule, plus whenever emergencies happen
- ☐ by telephone only when emergencies happen
- ☐ by email
- ☐ by internet messaging
- ☐ by fax
- ☐ by exchanging notes when we exchange the child
- ☐ using a note book that will travel with the child between our homes

74. When the child is in my care, the other parent can communicate with the child (check all that apply):
- ☐ by telephone, as long as the call is before the child's bedtime
- ☐ by telephone on a fixed schedule
- ☐ by email
- ☐ by internet messaging during the child's computer time
- ☐ by internet messaging on a fixed schedule

75. When the child is in my care, the child can call the other parent whenever the child wishes, within reason:

☐ yes ☐ no

76. When the child is in the care of the other parent, I can communicate with the child (check all that apply):
- ☐ by telephone, as long as the call is before the child's bedtime
- ☐ by telephone on a fixed schedule
- ☐ by email
- ☐ by internet messaging during the child's computer time
- ☐ by internet messaging on a fixed schedule

77. Any equipment, uniforms, supplies or instruments that are necessary for the child's school and extracurricular activities will be:
- ☐ exchanged with the child when we exchange the child
- ☐ kept at my home
- ☐ kept at the other parent's home

78. When the child is in the care of the other parent, the child can call me whenever the child wishes, within reason:

☐ yes ☐ no

79. I agree that it is important for the child to maintain a meaningful relationship with the members of my extended family.

☐ yes ☐ no

80. I agree that it is important for the child to maintain a meaningful relationship with the members of the other parent's extended family.

☐ yes ☐ no

81. At present, the child should live in (name of city or town):

_____

This is:

☐ the child's current hometown ☐ a new hometown

82. I do not object to the child traveling with the other parent:

☐ within British Columbia
☐ within Canada
☐ outside of Canada

83. If the child will be traveling outside of Canada with the other parent on holiday or vacation, I will sign any necessary travel authorizations:

☐ yes ☐ no

END