

1. Scope of Change

Workflows for the proposed process to be implemented in the Fall have been posted to the Court's Family Law Town Hall webpage. My speaking notes will also be posted for your reference after the Town Hall.

Before taking you through the workflows, I'd like to highlight the impacts to you as counsel starting in September, some of which ACJ Nixon touched on. This way, you can watch for those touch points throughout the presentation without fear of having to read workflows:

- Parties will be required to prepare a Procedural Order for Resolution prior to scheduling Chambers
 - Unless: 1) they have been allowed to proceed in UMC; 2) they have been granted a deferral/waiver; or 3) the parties are both represented by counsel or the Applicant is represented by counsel, in which case, they will be permitted to proceed with an initial Chambers application before having to have a POR in place
 - The new Procedural Order for Resolution will function as a passport into Court: unless directed into UMC, permitted to go into Chambers on a time-sensitive matter through the deferral/waiver process or proceeding with an initial Chambers application on a 2-counsel or counsel-Applicant matter, it will be the POR that will allow parties into Chambers and set out what steps they must follow to get there
- We will be implementing SRL-Only Family Chambers
 - This is where 2-SRL or SRL-Applicant matters will be heard
 - We are working with LAA to hopefully relocate Duty Counsel from FDC to SRL-Only Chambers
- We will be implementing a Family Appearance Court
 - FAC will deal with deferrals/waivers of FJS mandatory requirements, POR and leave requests for applications not authorized by an existing POR
 - Mirror the creation of SRL-Only Chambers, in so much as 2-counsel and counsel-Applicant matters will be conducted separately from 2-SRL and SRL-Applicant matters
- The role of RC is expanding
 - We are looking at what the CMO in CA does and seeing whether there is a case to be made for RC to have similar powers, which would allow RC to assist the court to a greater extent and move matters through the system more efficiently
 - In the meantime, RC will be using what is currently available to us to assist
 - We will still mediate in cases where parties may not have been able to access community or private resources
 - We will assist with preparing POR on 2-SRL and SRL-Applicant matters

- Where consent on a POR is not possible, we will prepare recommendations for the Court using our powers as Referees under the *Rules of Court*

2. What is Not Changing

It is important to note that many things are staying the same:

- The FJS mandatory requirements
- The UMC process
- The application of FLPN2, unless ordered otherwise

3. A Few More Things to Note

Before moving on to the workflows, there are a few preliminary matters to note:

- This is being planned with input from CJS, KBO, LAA and in consultation with the FLSC, other justices and the RC Team
 - All departments are still developing forms and specific workflows regarding materials required, filing and scheduling, so this is a very high level picture
- This is an Iterative Process
 - We are inviting ongoing feedback, both from within and without the Court
 - We will be monitoring volumes and reviewing the approaches adopted
 - We will be responsive and make improvements as needed

4. Three Phases

Moving now into the workflow:

- There are three (3) phases: 1) the FJS Family Pre-Court Mandatory Requirements process; 2) the Deferrals/Waivers, UMC and initial Chambers for 2-counsel and counsel-Applicant matters processes; and 3) the POR process
- From there, parties are expected to follow what has been set out in their POR

5. Phase One – FJS Pre-Court Mandatory Requirements

The NPP sets out the steps parties must complete before they may proceed to a court application:

- Taking PAS, meeting with a FCC (SRL with dependent children), providing financial disclosure, and participating in ADR
- The thing to remember about the mandatory requirements is that the NPP also sets out a number of processes not caught by the mandatory requirements:
 - Consent orders and judgments
 - Protection orders and approved urgent applications
 - Desk divorces and desk NTD

- Commencement documents and service
- Appeals from COJ
- Interjurisdictional matters
- I'm not going to focus too much on this phase, because this happens outside of the Court – but I did want to refer to the Requirements because they are a vital component of the overall family justice process, it's the first entry point for parties with a family law issue, and the end of this phase is the start of the KB process

6. Phase Two – Deferrals/Waivers, UMC, initial Chambers applications (2-counsel/counsel-Applicant matters)

This is the step at which parties are funneled to an appropriate process, depending on their situation as determined during the earlier FJS phase:

Out of Court Settlement

- An out of court settlement is what we are hoping is the most common outcome of the FJS phase
- These parties will not have contact with the court other than to potentially file a consent order or divorce package

Mandatory Process Deferral/Waiver Application

- A deferral/waiver application is a step is for parties who believe they:
 - Cannot complete one or more of the FJS Mandatory Requirements;
 - Have a time-sensitive matter that cannot wait for them to complete the FJS Mandatory Requirements
- They will complete a Waiver/Deferral form, which is already being used
- We are referring to it as a “deferral” first rather than a “waiver” because we anticipate that there will be very few matters where a full-on waiver will be appropriate rather than merely a deferral of the mandatory requirements to be completed at later point in time
- We will be revisiting the way the form is used to ensure that it elicits the information the court needs both coming into the deferral/waiver process and going out – this includes more clarity with respect to what the expected next steps or processes will be following a granting of a deferral or waiver
- If parties have counsel, counsel will prepare the form, and if parties are SRL, they will as be assisted by a FCC at the FJS phase
- These deferral/waiver requests will be scheduled into FAC
- However, if RC are given powers similar to the CMO in CA we may be able to shift this work to RC

- If denied, the parties will be directed back to the FJS phase to complete the Mandatory Requirements
- If granted, the parties will be either directed to Chambers (SRL Chambers where appropriate) or to the Procedural Order for Resolution process depending on whether they are seeking time-sensitive relief and whether it is a deferral or waiver that has been granted
- If they go to Chambers, the parties may be referred back to complete the FJS Mandatory Requirements thereafter or be directed to the Procedural Order for Resolution process

Urgent Matters Chambers Request

- UMC will continue to run as it is currently
- Only exception is that if parties are going to want to come into another court process as a next step, rather than completing the FJS Mandatory Requirements, they will have to submit their deferral/waiver form along with their Urgent Request, and unfiled Application and Affidavit
- If allowed to proceed in UMC, the justice hearing the parties in UMC will also determine the deferral/waiver request and direct whether the parties will be allowed to proceed into the Procedural Order for Resolution process after UMC or back to complete the FJS Mandatory Requirements

Procedural Order for Resolution Process

- This is captured in the workflow for this phase, however, this process has its own workflow, which we will come to in a few moments
- This is included in this workflow, because if there is no out-of-court settlement, and the parties have completed their FJS Mandatory Requirements, but they do not have a situation that requires UMC or have a time-sensitive matter that is sent through the deferral process to Chambers) this would be parties' "first contact" with the Court (in the case of 2-SRL and SRL-Applicant matters) or "next contact" with the Court (in the case of 2-counsel and counsel-Applicant matters)
- It would be "next contact" in the case of 2-counsel and counsel-Applicant matters because these matters are permitted an initial Chambers application as shown

7. Phase Three –Procedural Order for Resolution Process

In this phase, parties will be expected to prepare a POR – there will be templates available on the website

- There will be an initial template focused on identifying issues, disclosure, ADR, interim applications and early steps and a second template focused on litigation steps
- Resolution planning may be done in stages as a series of partial orders

- What happens at this stage will depend on whether parties are able to draft a POR and whether counsel is involved
- Before we go into examining the flowchart, I will say that when we talk about parties being able to draft a POR, this contemplates the order being submitted as a consent order, so both parties will have to sign off on the order for it to be submitted for consideration, otherwise it will be addressed in the same way as if the parties are not able to draft one at all
- I will also point out that the POR phase is latest point in the court process that parties will be expected to file an originating document if they have not already done so earlier – for example, prior to proceeding in either UMC or Chambers – this addresses a concern some have had about there being no underlying claim for many of the orders being granted

Parties Draft POR

- If the parties are able to draft a POR, they will be directed to different processes depending on their status as represented parties or SRL - where it is a 2-counsel or counsel-Applicant matter, they will be directed to a process with a justice and where it is a 2-SRL or SRL-Applicant matter, they will be directed to a process with RC
- Where it is a 2-counsel or counsel-Applicant matter, the POR will be reviewed in FAC – the POR will either be determined to be appropriate by the reviewing justice or, if not appropriate, directions for a more appropriate order can be given
- Where it is a 2-SRL or SRL-Applicant matter, the POR will be submitted into a desk process to be reviewed by RC - the POR will either be considered appropriate by the reviewing RC and submitted to the court for consideration, just as our consent orders are presently, or, if not appropriate, the parties will be directed to a RC meeting
- At the meeting with RC, RC will work with the parties to assist them with coming up with an appropriate POR; if the parties can reach a consent on the terms of the POR, it will be submitted to the court for consideration, and if they cannot reach consent, the RC's recommended POR will be submitted as a Reference pursuant to r 6.44 to 6.46 of the *Rules of Court*
- In the Reference process, the RC, as a Referee, will submit a Report which would then come before the Court in FAC, and the Court may:
 - Adopt the report in whole or in part;
 - Vary the report;
 - Require further explanation from the RC;
 - Remit the question back to RC for further consideration; or
 - Decide the question on the same or further evidence

No POR Received

- If the parties are not able to draft a POR, either because it is just beyond their capabilities as a SRL to prepare one or because they cannot agree on the terms, the parties will attend:
 - FAC where it is a 2-counsel or counsel-Applicant matter
 - A RC meeting, if it is a 2-SRL or SRL-Applicant matter
- If there are competing proposed POR or a proposed POR that one party cannot get the other party to consent to, it will be expected that those proposals will be submitted to the Court or RC prior to the attendance in FAC or the RC meeting
- The process from here will run identically to the situation in which the parties had been able to draft a POR

8. Unofficial “Fourth Phase” – Follow the POR

There is an unofficial “fourth phase”, but there is no workflow, because it is simply for the parties to follow what is set out in their current POR

- Of course, if the POR is an initial plan or a partial plan, and it runs its course and the parties still require court intervention, they will return to phase three for a further POR if needed, but we know that sometimes an interim hearing allows parties the space to talk about an overall settlement thereafter or going to questioning spurs resolution once everyone’s cards are on the table, so it would be possible to have an initial plan or partial plan and never return for a further POR because the matter has settled
- The POR may contain:
 - steps to help the parties resolve the matter through ADR, if that possibility has not already been thoroughly explored, and this could involve a mediation with RC, an EICC, a public program outside of the court or private mediation
 - Regular Chambers or Special Chambers for an interim order, if this did not happen prior to the POR phase in UMC, out of the deferral process or because it is a 2-counsel or counsel-Applicant matter
 - I will mention there is also a plan to institute a Special Readiness Form to ensure parties who have been directed to Special Chambers are ready to proceed closer to the day-of
 - If ADR fails, the usual steps towards trial, a streamlined trial or binding JDR, such as exchanging Affidavits of Records, Questioning, expert reports, planning for witnesses
 - Permission for parties to come into court to deal with procedural issues arising from the POR

9. CBA Survey Results

Lastly, I'd like to comment on the results of the survey conducted by the Family Law - South Section of the CBA

- Some of you may have participated in the survey and many of you have had an opportunity to review the results
- The comments included with the responses show that many of you support certain aspects of FDC, but not necessarily FDC in its current incarnation, particularly as it relates to matters involving counsel
- We believe that what we have developed is responsive to many of the concerns raised in the survey
- An earlier iteration of the process had been developed and judicial consultation was ongoing when the results of the survey came to the attention of the Court, so we have certainly been alive to the feedback provided by the survey as the process has evolved through the judicial consultation stage