A faint, stylized image of a pair of scales of justice is visible in the background, centered behind the text. The scales are rendered in a light blue color, matching the background, and are positioned behind the main title and session information.

NEW MODEL FOR SCHEDULING AND CASE FLOW MANAGEMENT OF NON-CHILD PROTECTION FAMILY DIVISION MATTERS Session III

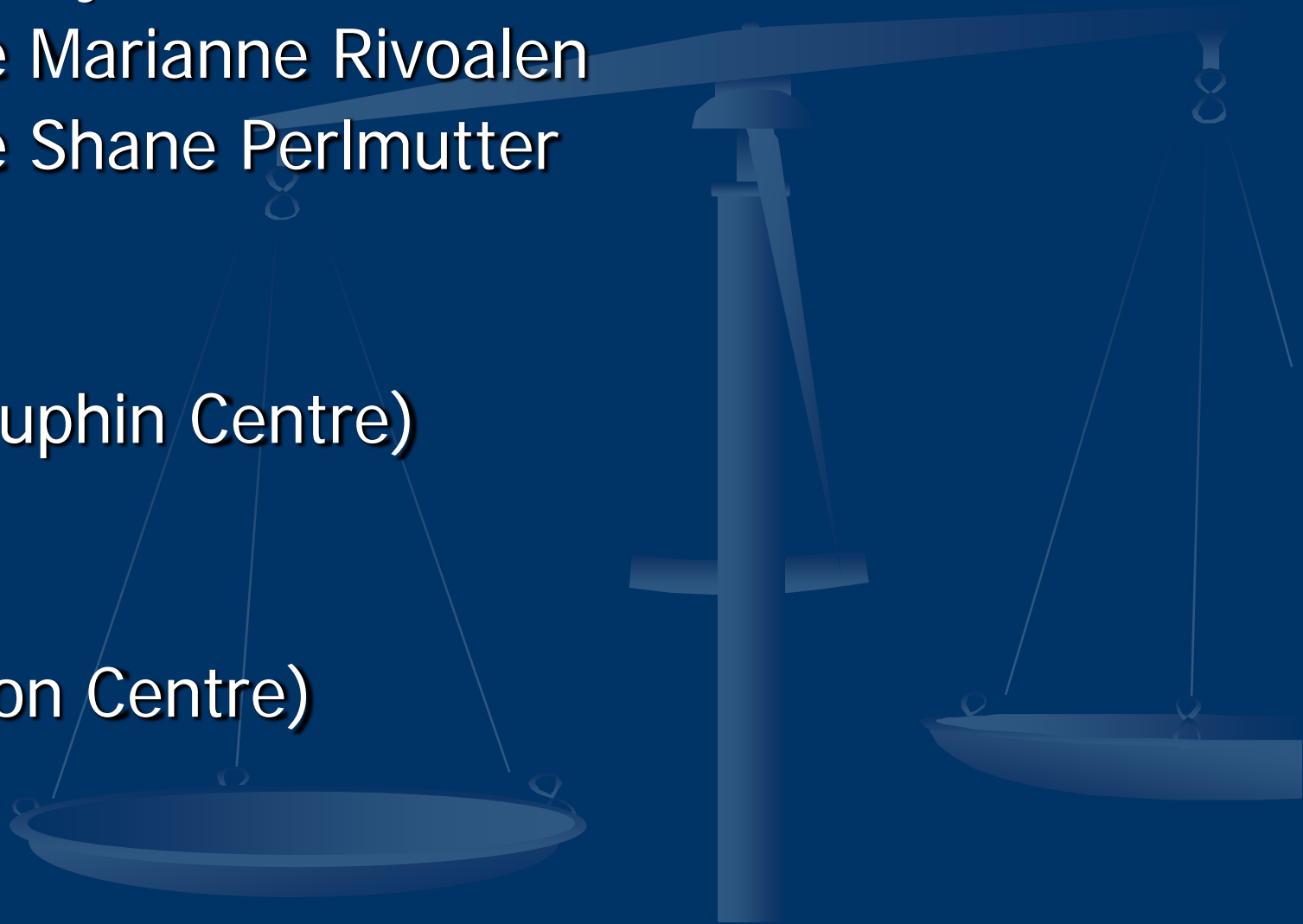
**Presentation to the Members of the
Manitoba Family Bar**

September 13, 2018

The Honourable Chief Justice Glenn D. Joyal

The Implementation Committee

- Chief Justice Glenn D. Joyal
- Associate Chief Justice Marianne Rivoalen
- Associate Chief Justice Shane Perlmutter
- Justice W. Johnston
- Justice A. Dueck
- Justice S. Zinchuk (Dauphin Centre)
- Justice K. Dunlop
- Justice L. Mirwaldt
- Justice S. Abel (Brandon Centre)
- Master S. Berthaudin



Agenda for This Session



- FD Model Basics
- Meeting the Prerequisites
- Roles of the Triage and Case Conference Judges
- Emergent Cases
- Transition to the New FD Model
- Practice Concerns

Objectives of the New FD Model

- To ensure that all reasonable efforts are made to resolve and/or dispose of family cases at the earliest opportunity
- To ensure that greater judicial resources are available at the "front end" or "intake stage"
- To provide early and active judicial intervention in order to resolve cases at the early stage
- Where cases cannot be resolved, to ensure cases flow through the court system within a reasonable, predictable and finite time period

FD Model Basics



- New FD Model developed by QB Judges
- Input and feedback from Manitoba Bar has been sought in three sessions
 - July 12
 - August 23
 - September 13

FD Model Basics



- New FD Model applied only to CONTESTED matters
- Other matters will NOT enter the new case flow
 - Affidavit divorces*
 - Final Orders (FMA) by default or consent*
 - Uncontested guardianships (will be dealt with administratively)
 - Adoptions*
 - Child Protection matters (CP Intake Model)
 - Contested guardianships – will enter into Child Protection Intake Model
 - ISO*
 - Hague Convention/Child Custody Enforcement applications*
 - Child Support Recalculation*
 - Set Aside Protection applications with no related FD proceeding*

[No change from current practices]*

FD Model Basics



- All litigants are expected to utilize non-court resources to explore settlement before seeking judicial intervention
 - 4-way settlement meetings
 - Mediation
 - Parent coaching
 - Custody assessments (if necessary and justified in the case)
 - Counselling
 - Alternative dispute resolution

FD Model Basics



- Pre-Triage Court Screening List to replace current Tuesday List
- Prerequisites must be completed before Triage Court dates will be set
- Triage Court
 - Every Monday
 - 4 Triage Courts running simultaneously
 - Consent matters dealt with in first hour and then contested matters in ½ hour slots

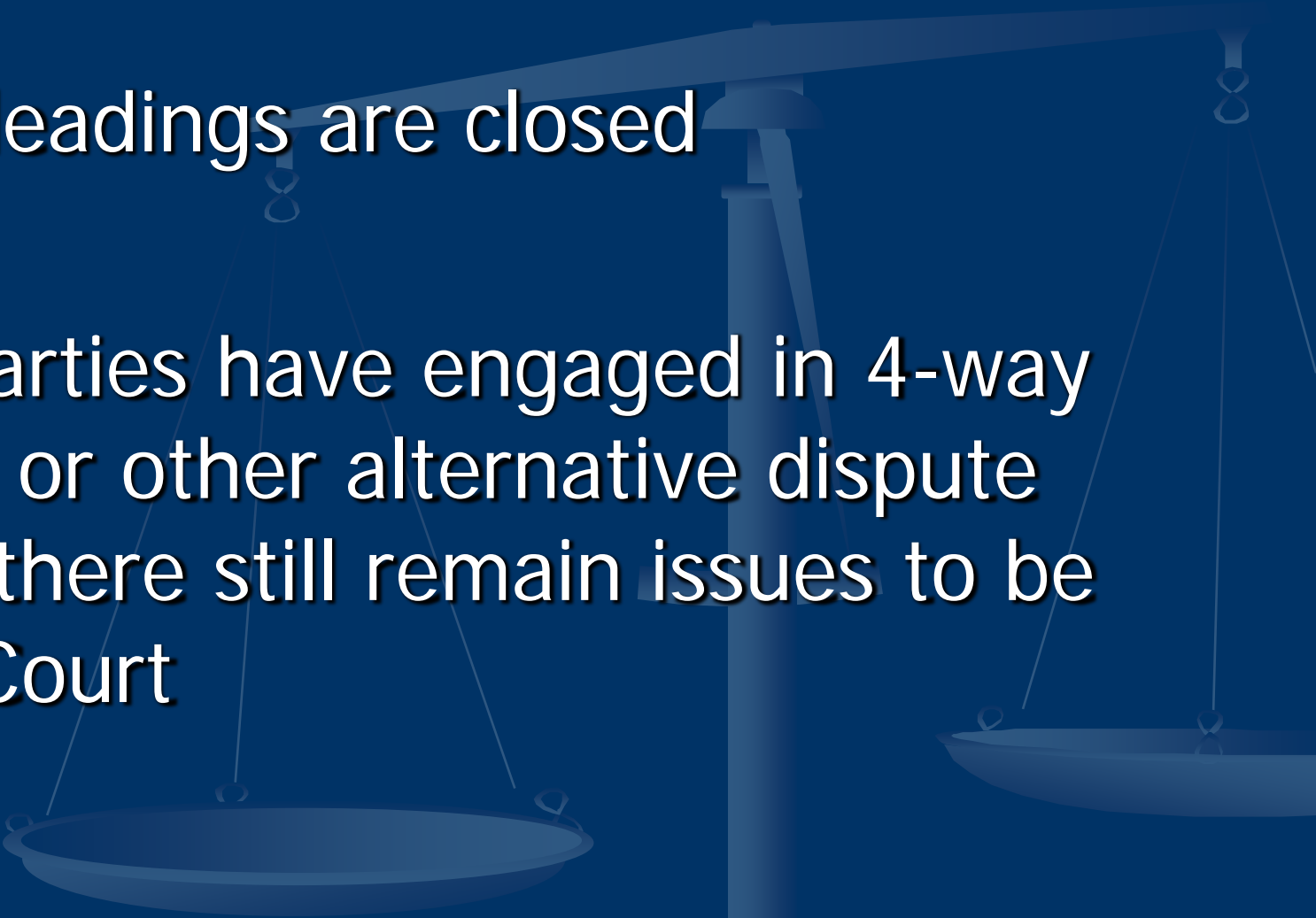
FD Model Basics

- Following satisfaction of prerequisites and an appearance at Triage Court, where a matter cannot be resolved, a case conference (and in some cases, a prioritized motion) will be set within 30 days of the Triage Court
- In the case of a prioritized motion, the Triage Judge will set both the hearing date of the motion to occur within 30 days, and also the case conference date, which will occur within 30 days after the prioritized motion hearing date.

FD Model Basics

- Trial/hearing dates set at first case conference
- Trial dates to be set no later than 12 to 15 months after first case conference
- Hearing dates for support variations set within 120 days after first case conference
- Trial readiness – by certificate or by trial readiness conference 45 days in advance of trial
- No trial adjournments without leave of Chief Justice

PREREQUISITES – Pleadings and Resolution

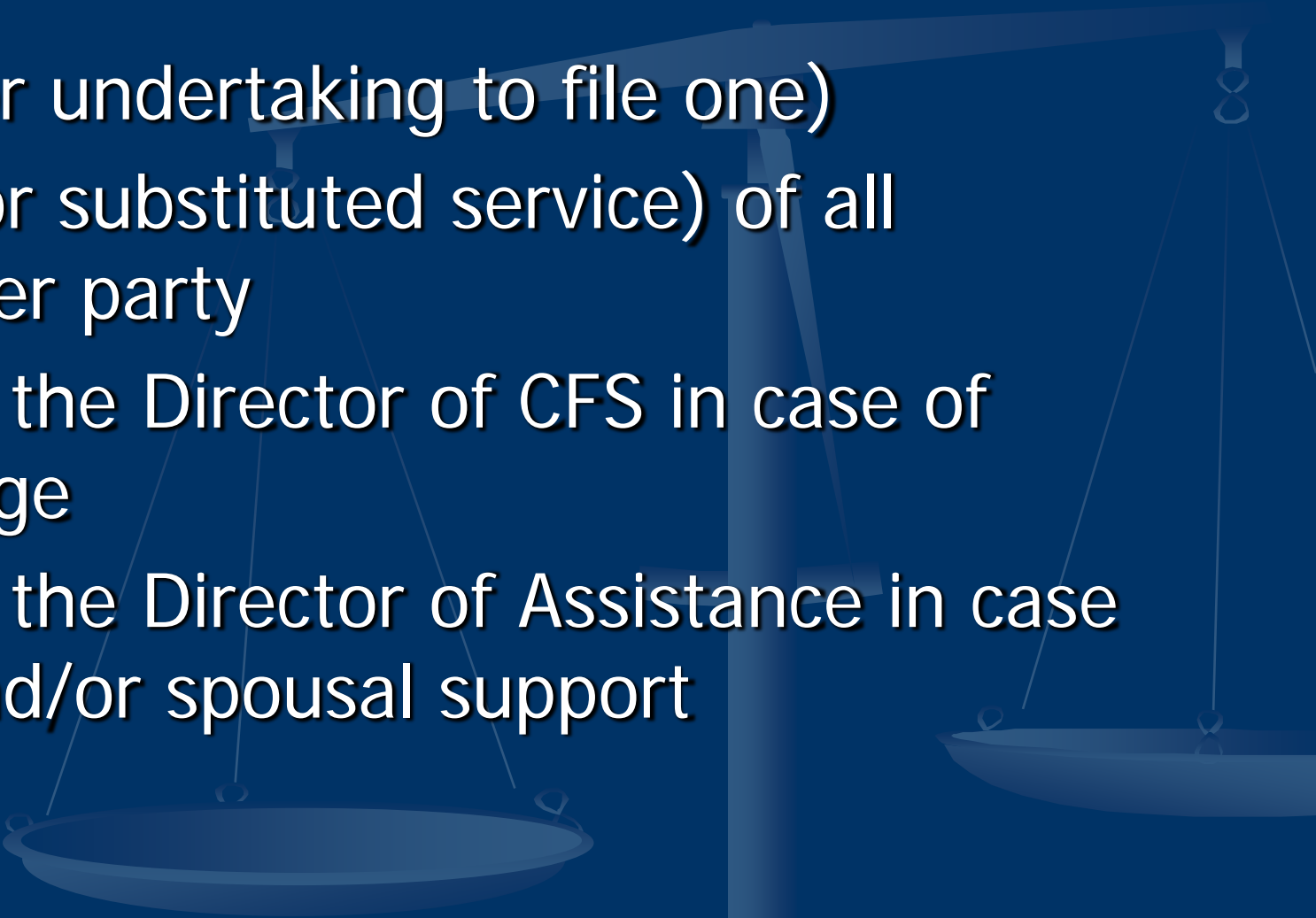
- Confirmation that pleadings are closed
 - Confirmation that parties have engaged in 4-way resolution meetings or other alternative dispute resolution and that there still remain issues to be determined by the Court
- 

PREREQUISITES- Discovery

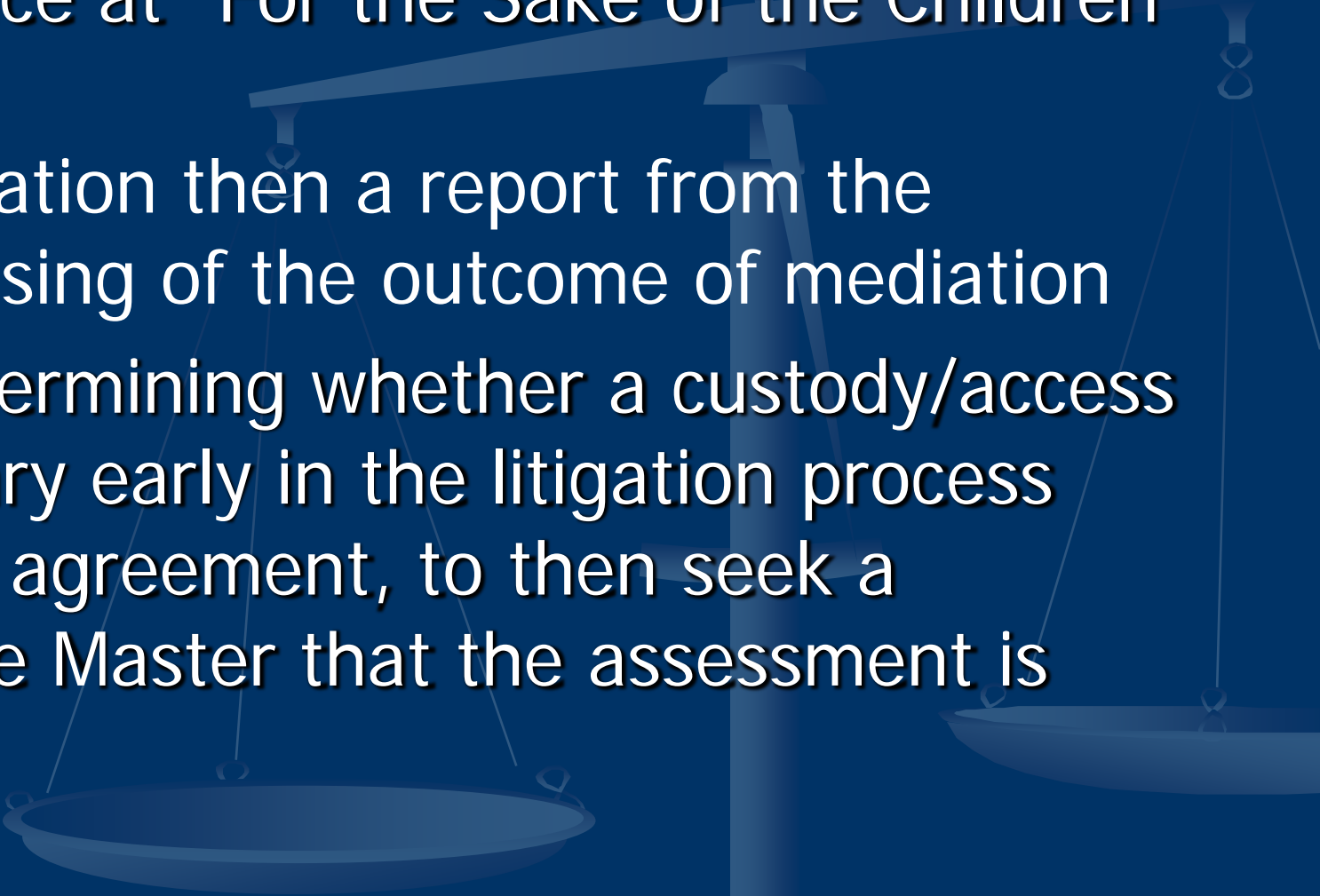


- Confirmation that discovery process is either unnecessary or has been completed and/or undertaken
- NOTE: The scope and nature of any “ongoing discovery” may be limited by either the Triage Judge or Case Conference judge

PREREQUISITES – Documents and Service

- Marriage Certificate (or undertaking to file one)
 - Affidavits of Service (or substituted service) of all documents on the other party
 - Affidavit of Service on the Director of CFS in case of declaration of parentage
 - Affidavit of Service on the Director of Assistance in case of variation of child and/or spousal support
- 

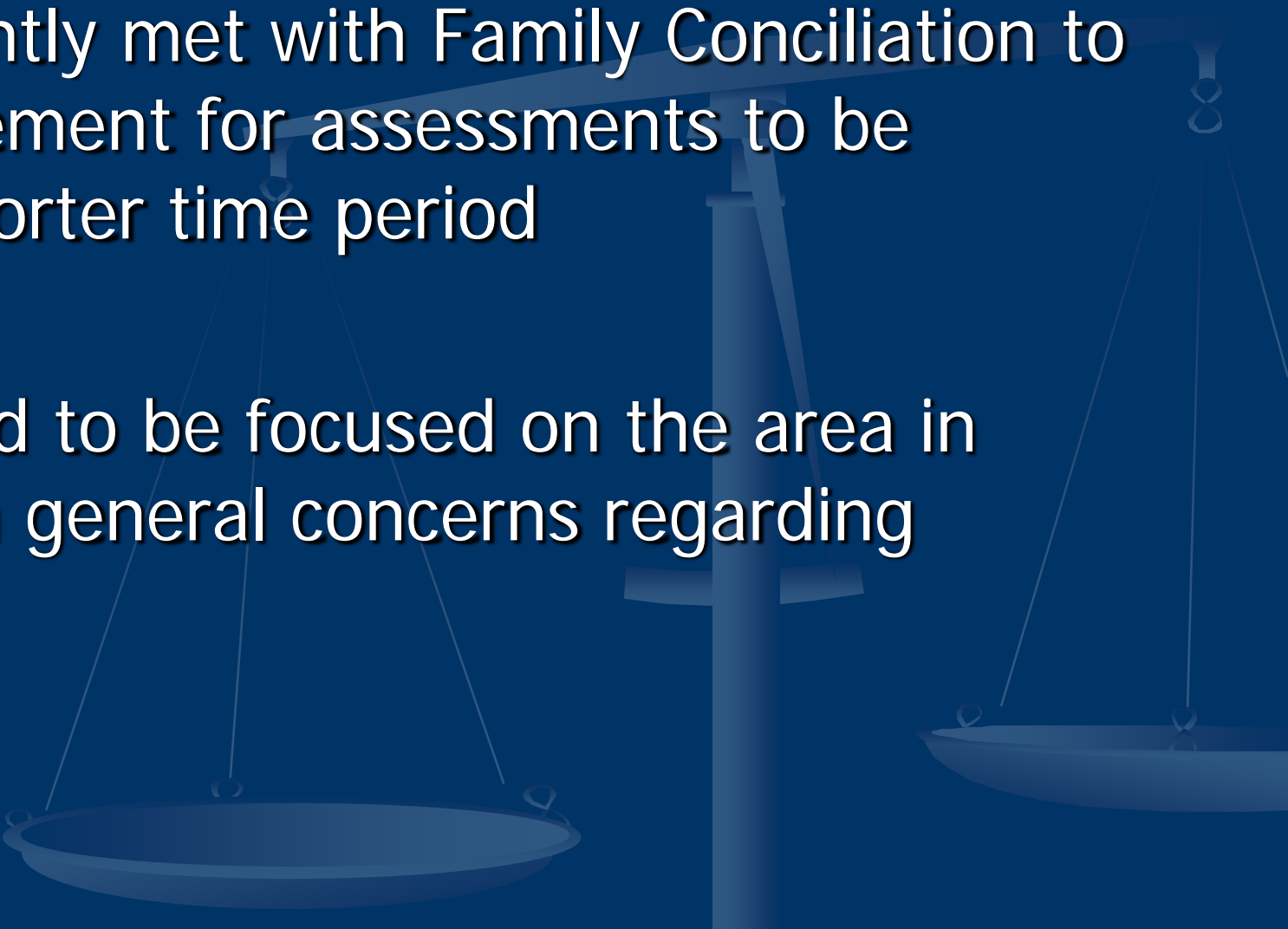
PREREQUISITES – Custody/Access

- Certificate of attendance at “For the Sake of the Children”
 - If parties sought mediation then a report from the mediator or letter advising of the outcome of mediation
 - Counsel should be determining whether a custody/access assessment is necessary early in the litigation process and where there is no agreement, to then seek a determination from the Master that the assessment is necessary or justified
- 

PREREQUISITES – Custody/Access

- Where custody/access is an issue and where the parties do not agree on an assessment, the parties will have already attended before the Master for a determination of whether the assessment is necessary or justified
- Where the Master has ordered the assessment, or where the parties are in agreement that an assessment is necessary or justified, it is a prerequisite that the assessment be underway by the time the parties appear at Triage Court

Assessments – Family Conciliation

- Chief Justice has recently met with Family Conciliation to discuss Court's requirement for assessments to be completed within a shorter time period
 - Assessments may need to be focused on the area in dispute rather than on general concerns regarding parenting and access
- 

Written Parenting Plans

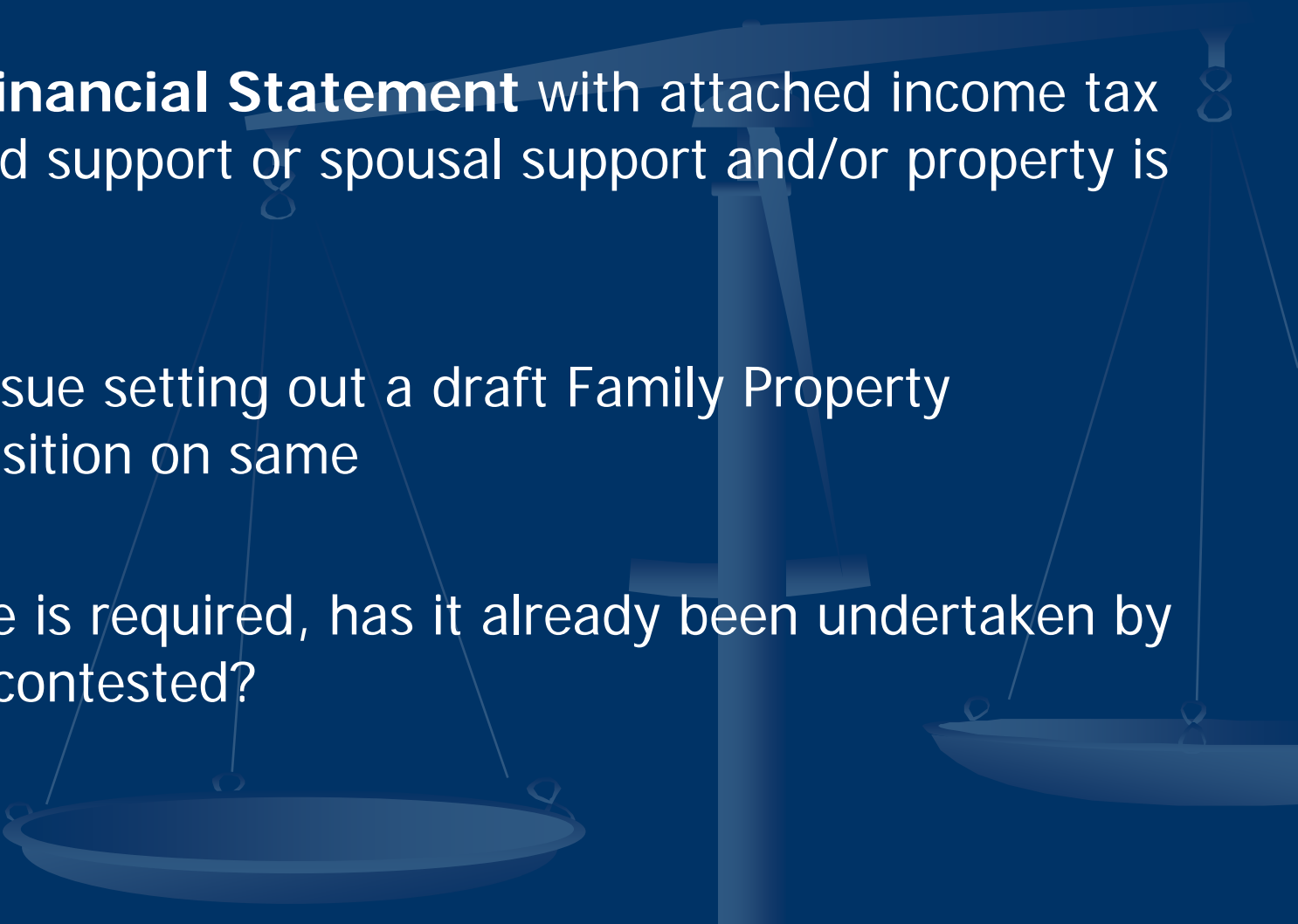


- Need not be written by a professional (therapist or social worker)
- Good guide/checklist can be found on Justice Canada website:
 - <http://www.justice.gc.ca/eng/fl-df/parent/plan.html>

Mediation

- Chief Justice has recently met with some members of the Bar who practice collaborative family law
- It is clear that there is a need for more mediation services in Manitoba, both private and public
- In light of the emphasis on early resolution in this Model and given future legislative reforms which emphasize non-adversarial front-end services, we hope that government and the profession engage in creative ways to fill the identified need. We will keep a watchful and optimistic eye on development in this area

PREREQUISITES – Financial Information and Family Property

- Fully completed **Form 70D Financial Statement** with attached income tax returns/proof of income if child support or spousal support and/or property is at issue
 - A new form if property is at issue setting out a draft Family Property Accounting and the party's position on same
 - If a Family Property Reference is required, has it already been undertaken by consent referral or is referral contested?
- 

FPA References and the Triage Court

- Ideally, parties may seek a FPA reference order by consent to a Judge (desk motion) BEFORE coming to Triage Court
- If parties cannot agree then the reference issue can be addressed by Triage Court Judge who may make the reference order

FPA References and the Triage Court

- The Triage Judge may assist the parties in resolving the property issues
- If the dispute cannot be resolved and a reference order is required, the Triage Judge will be able to narrow the issues and focus the reference because of the robust information available through full financial disclosure and completion of the new comparative family property form
- Both the financial disclosure and new form are absolute prerequisites for Triage Court and will not be waived

PREREQUISITES – Triage Court Brief

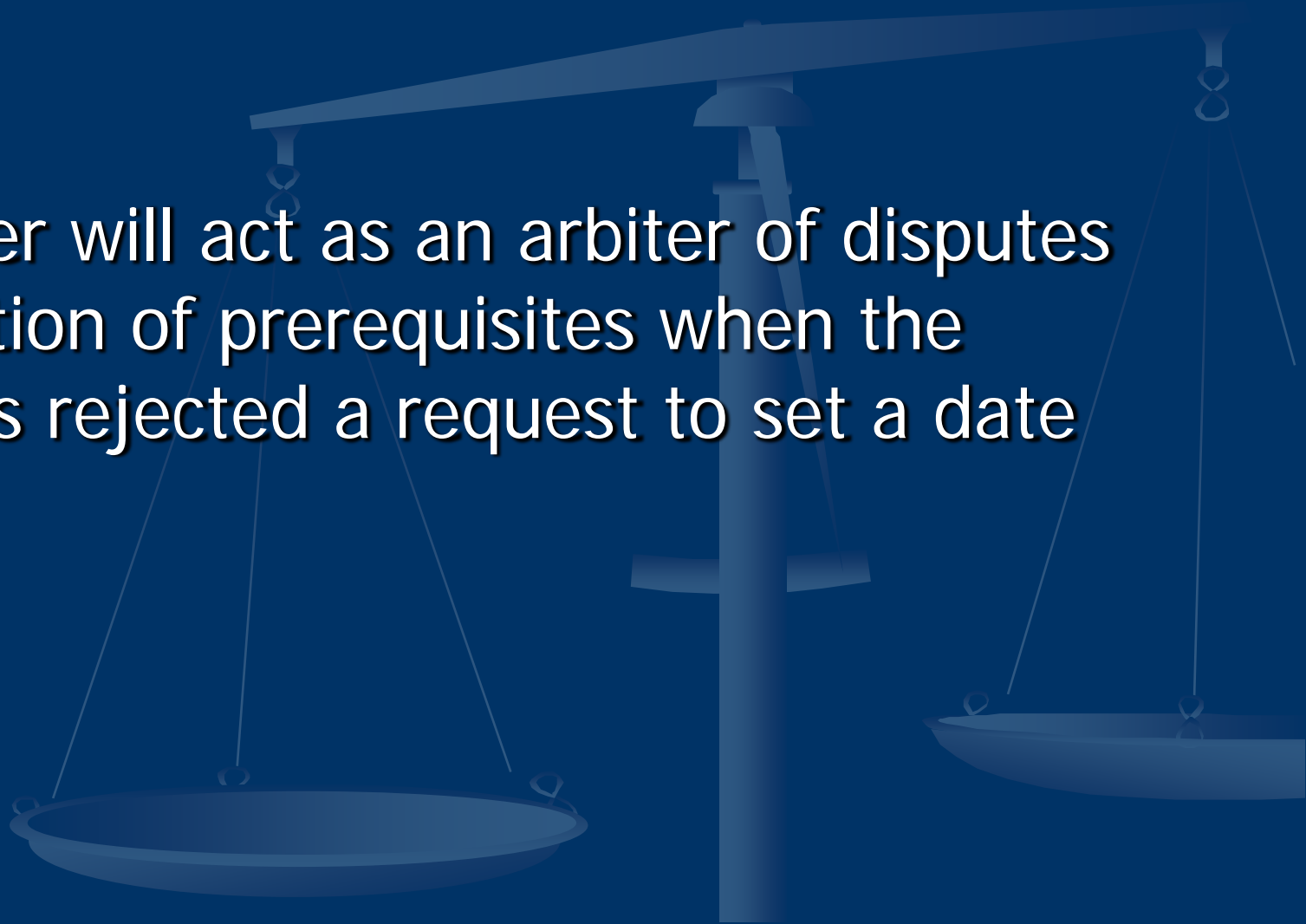
- A **Triage Court Brief** setting out the contested issues in the three main areas:
 - **Custody/care and control of children** [attaching written parenting plans proposed by each party]
 - **Support of children and/or spouse** [attaching calculations under the Child Support Guidelines and/or SSAG]
 - **Sharing of property** [attaching new form – Draft Family Property accounting]

Utilizing the Master to Meet Prerequisites

- Where satisfaction of prerequisites has not occurred and it is necessary to obtain adjudication of certain issues, a motion before the Master is available
 - Financial disclosure issues - QBR 70.09
 - Obtaining an order for mediation- s.47 QBA
 - Obtaining an order for a custody assessment - s.49 QBA
 - Family property references can be undertaken early in the process pursuant to a consent reference order (desk order by Judge)
 - Service issues

Utilizing the Master to Meet Prerequisites

- Additionally, the Master will act as an arbiter of disputes regarding the satisfaction of prerequisites when the Triage Coordinator has rejected a request to set a date for Triage Court



Role of the Triage Judge



- The gatekeeper dimension of the Triage Judge's function will require him or her to focus on resolving issues as early as possible, narrowing issues that remain in dispute, and prioritizing matters that require immediate adjudication prior to the first case conference, either for reasons of urgency, practicality, or proportionality

The Enhanced Role of the Case Conference Judge

- Pursuant to the New FD Model, the Rules will be amended to reflect that the best practice requires that it will be the case conference judge who adjudicates all motions that arise between the first case conference and the trial date
- QBR 50, governing Queen's Bench civil proceedings, will be adopted in respect of Family Division case conferences
- Accordingly, in some cases, the case conference judge may, for reasons of proportionality and fairness to all parties, refuse permission to have a motion brought and adjudicated before trial

The Enhanced Role of the Case Conference Judge

- The case conference judge will be best positioned to understand the issues in dispute and, by extension, will be in the best position to provide feedback (mindful of the principle of proportionality) in respect of the viability and necessity of prospective motions
- The amendments to the powers of the case conference judge will stipulate that a case conference judge's order is reviewable only by the same case conference judge
- The case conference judge will no longer be prohibited from presiding at the trial of a matter

The Emergent Case

- As a result of your input and our further consultations we have determined that the previously used term "urgent case" will no longer be used
- The term "emergent case" will be used
- The "emergent case" contemplates those situations, prior to the satisfaction of prerequisites, where a party requires immediate relief in relation to risk of immediate harm to the party or a child, the removal of a child, or loss or destruction of property.

Emergent Case Rule

- A judge may hear a motion or application before the triage conference for a family proceeding if the motion or application relates to a situation involving one or more of the following:
 - (a) an immediate risk of harm to a party or a child;
 - (b) the removal of a child from Manitoba;
 - (c) the loss or destruction of property

Scheduling an Emergent Case



- The availability of a Judge in an emergent case will be the same as the current practice
- In an emergent case counsel will contact the Registrar and the matter will be referred to a Triage Judge

Prerequisites Must Be Completed After Emergent Hearing

- When the hearing of a motion or application into an emergent situation has concluded, the parties are still required to comply with the requirements (prerequisites) in order to obtain a triage conference date



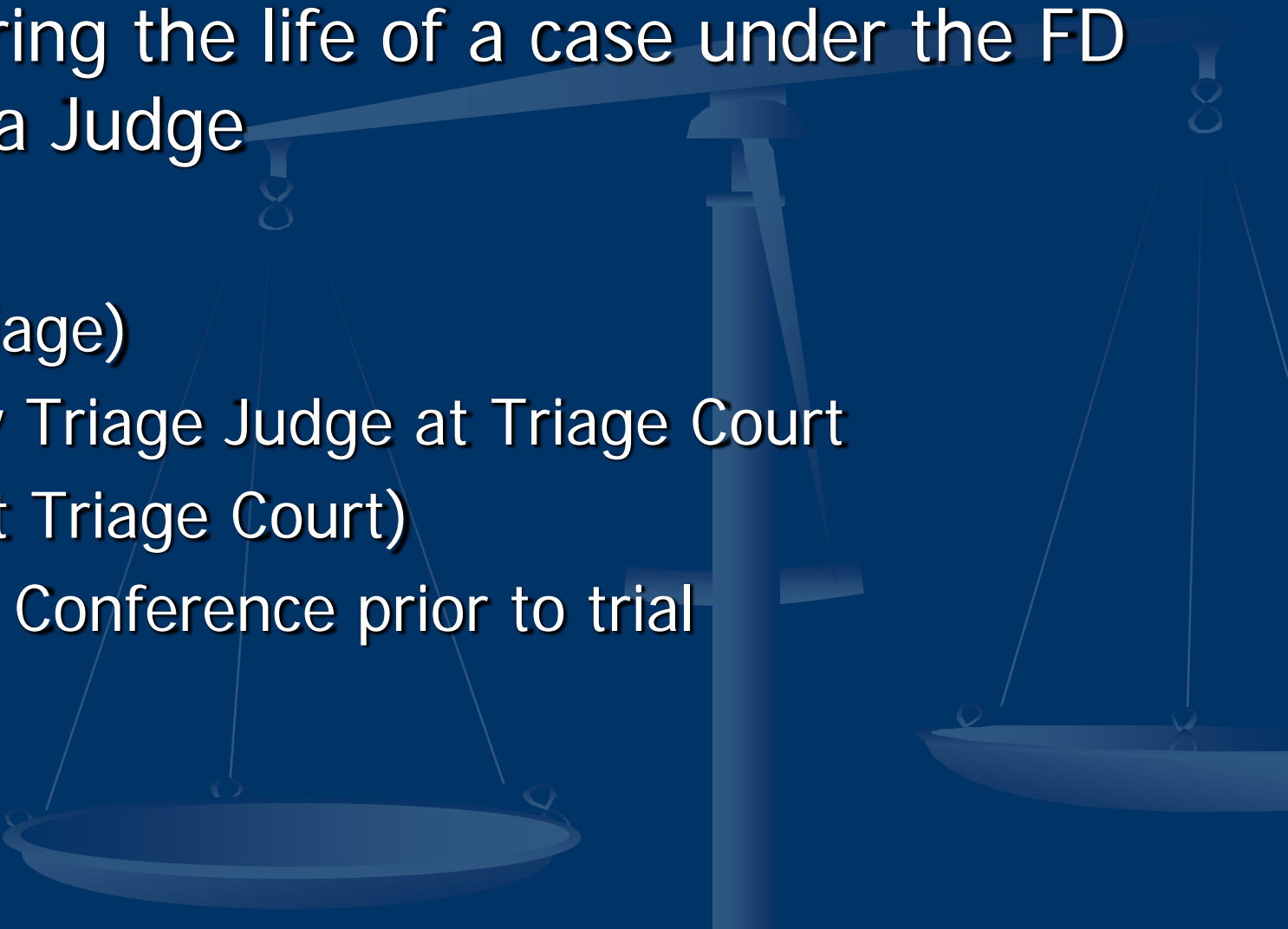
Emergent Hearing is Not a Prioritized Hearing

- There are some situations that are not emergent but are, nevertheless, of a nature that may require an early judicial intervention
- Such cases will enter the Triage Court (after prerequisites are met) and the need for a prioritized hearing will be determined by the Triage Judge
- Prioritized hearings can occur at the Triage Court or within 30 days of the Triage Court, and before the first case conference, as directed by the Triage Judge

Not All Cases Require a Prioritized Hearing

- Given the quickness of the setting of the first case conference (within 30 days of Triage Court) and given that it will be the Case Conference Judge who is expected to screen and adjudicate all motions, prioritized hearings may be exceptional and will be set down for hearing by the Triage Judge only where it is determined that immediate or prioritized adjudication is necessary for reasons of urgency, practicality or proportionality

MOTIONS UNDER THE FD MODEL

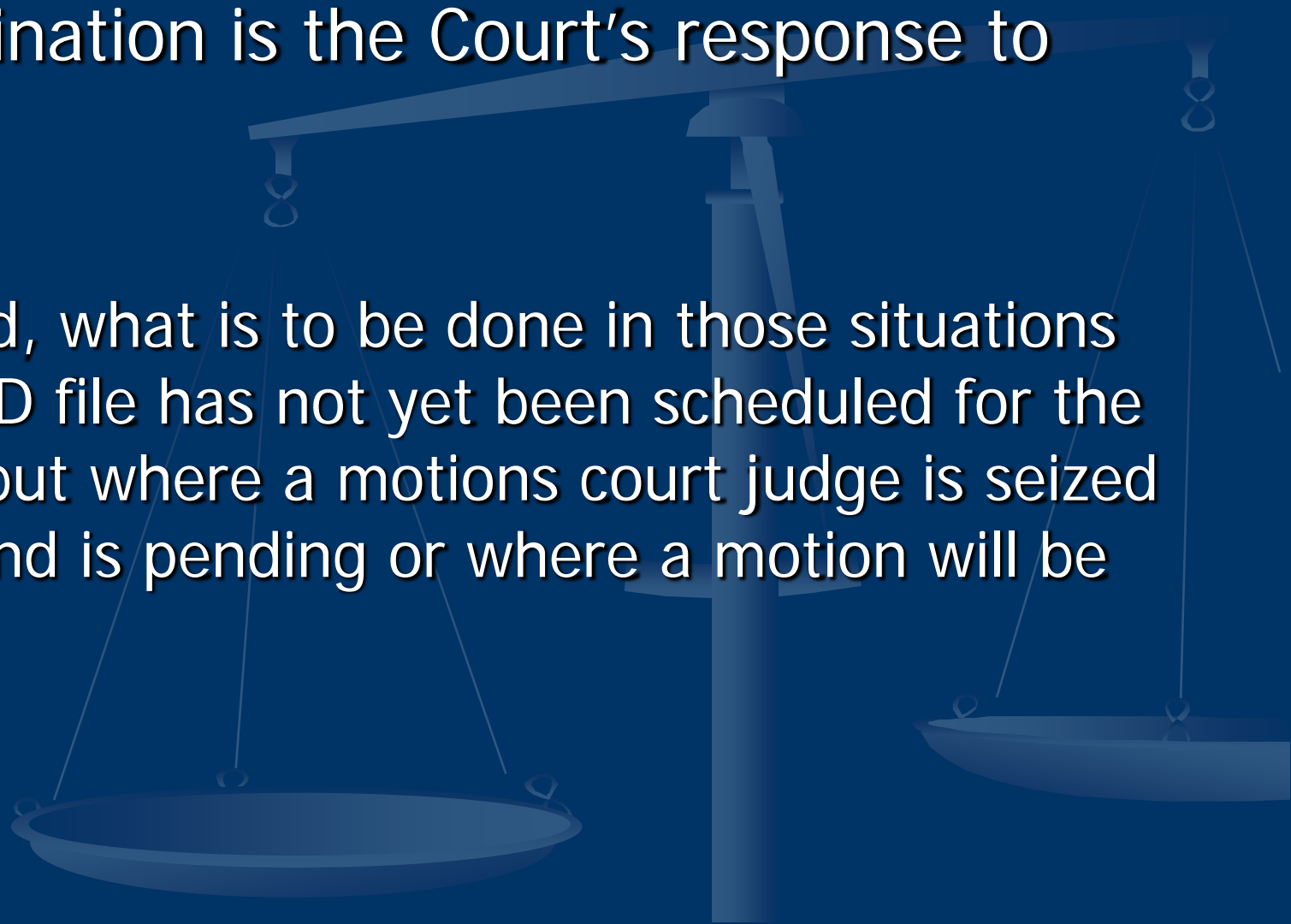
- 4 types of motions during the life of a case under the FD Model to be heard by a Judge
 - Emergent case (pre Triage)
 - Motions to be heard by Triage Judge at Triage Court
 - Prioritized motion (post Triage Court)
 - Motions heard by Case Conference prior to trial
- 

Transition to the New FD Model

- All cases currently pending and in the case conference stream will be subject to the new FD Model in that a trial date will be set at the next case conference
- All cases filed before December 31, 2018 will not be required to go through Triage Court but will be dealt with under the new FD Model case flow as of the first case conference
- All cases filed after January 1, 2019 must adhere to the new FD Model

Transition to the New FD Model

- Currently under examination is the Court's response to the following query:
 - In this transition period, what is to be done in those situations where a pre-existing FD file has not yet been scheduled for the next case conference but where a motions court judge is seized and a motion is filed and is pending or where a motion will be filed?



Practice Concerns



- The Chief Justice has met recently with Legal Aid Manitoba to discuss the new FD Model impact on legal services provided to Manitobans through Legal Aid
- Legal Aid will be adjusting the retainer letter sent to clients to emphasize the responsibilities on the clients to:
 - Attend "For the Sake of the Children"
 - Try to resolve all matters using an out of court resolution process; and
 - To provide all required financial information

Practice Concerns

- Legal Aid will continue to require counsel to provide a written legal opinion to the Area Director and to receive Director approval prior to setting a matter for trial
- Given the new Rule that trial/final hearing dates will be set at the first case conference, it will be imperative that counsel assess their case and get approval before the first case conference
- The Court will not adjourn a matter pending trial approval from Legal Aid

Your Input is Important



- We invite the Family Bar to provide the Court with feedback on the New FD Model
- You may do so through the Manitoba Bar Association or by sending us your feedback to:
 - **Court of Queen's Bench, Judges Chambers, Room 226,
408 York Avenue, Winnipeg, MB R3C 0P9
Attention: FD Model Implementation Committee**
- All replies will be kept confidential

Thank You

