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 overall theme of the slide. The background is a solid dark blue.

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

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

**August 23, 2018**

**The Honourable Chief Justice Glenn D. Joyal**

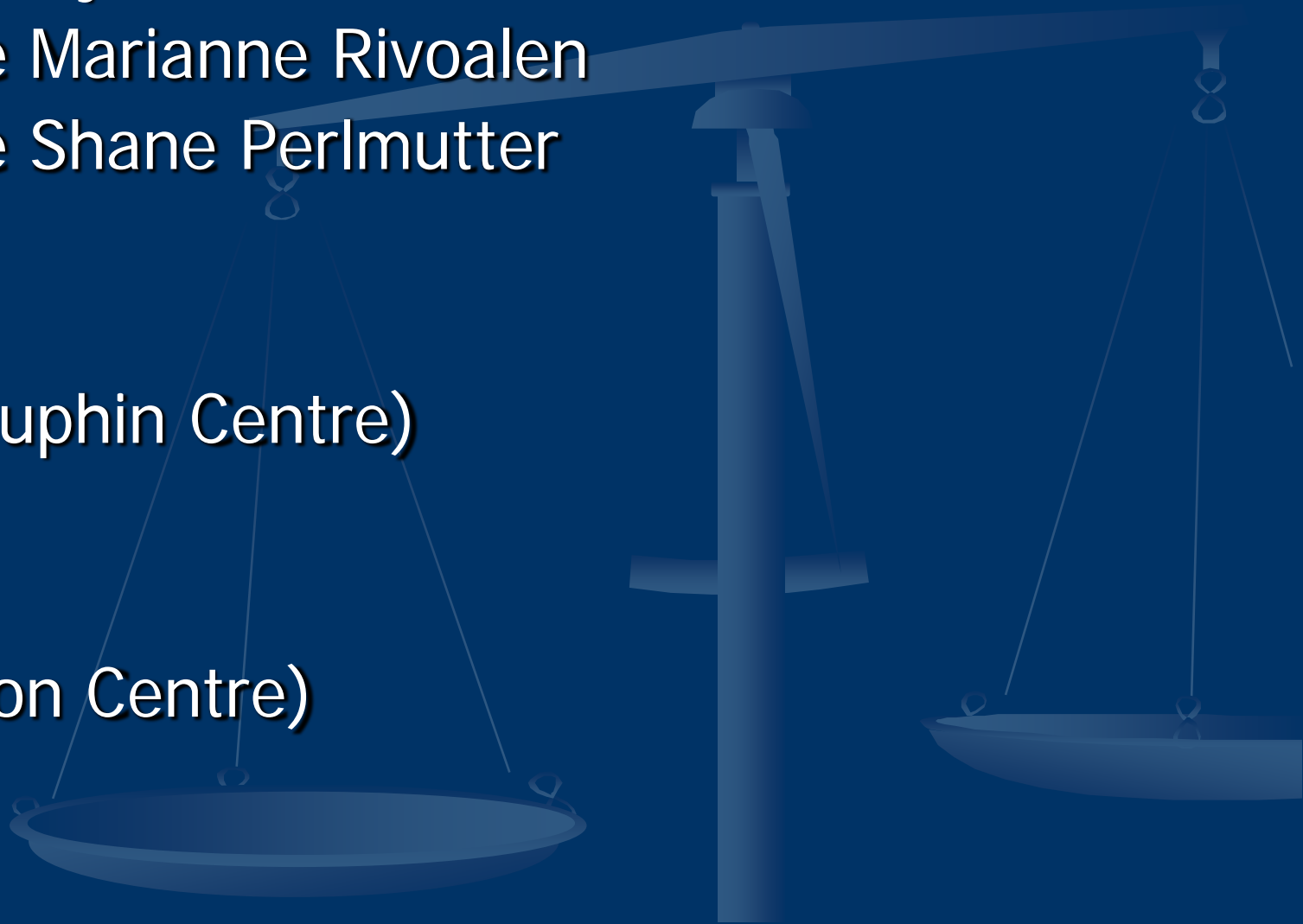
# Agenda for This Session



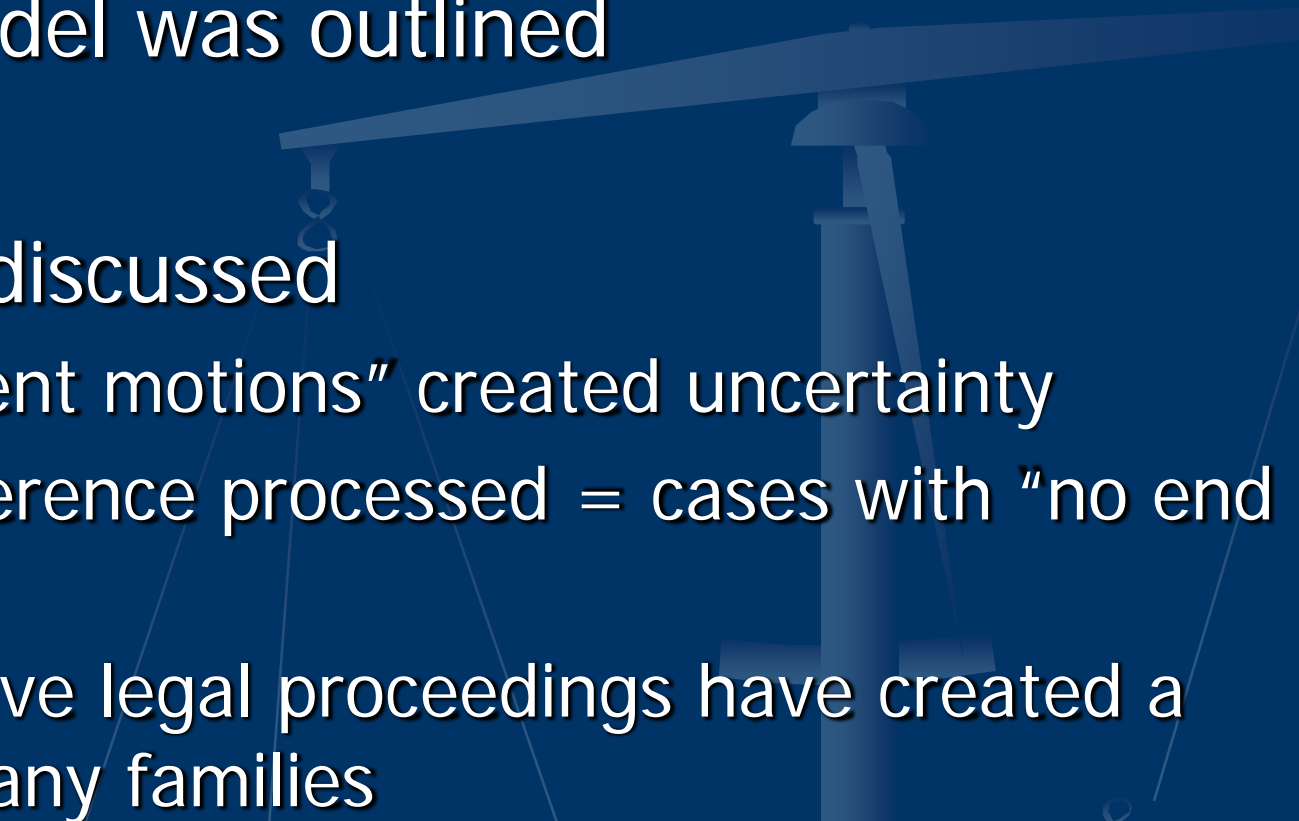
- Review of Highlights of July 18<sup>th</sup> Session
- What We Have Heard from the Bar
- Five Meaningful Events - Procedures, Forms, Timelines
- Q and A

# 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

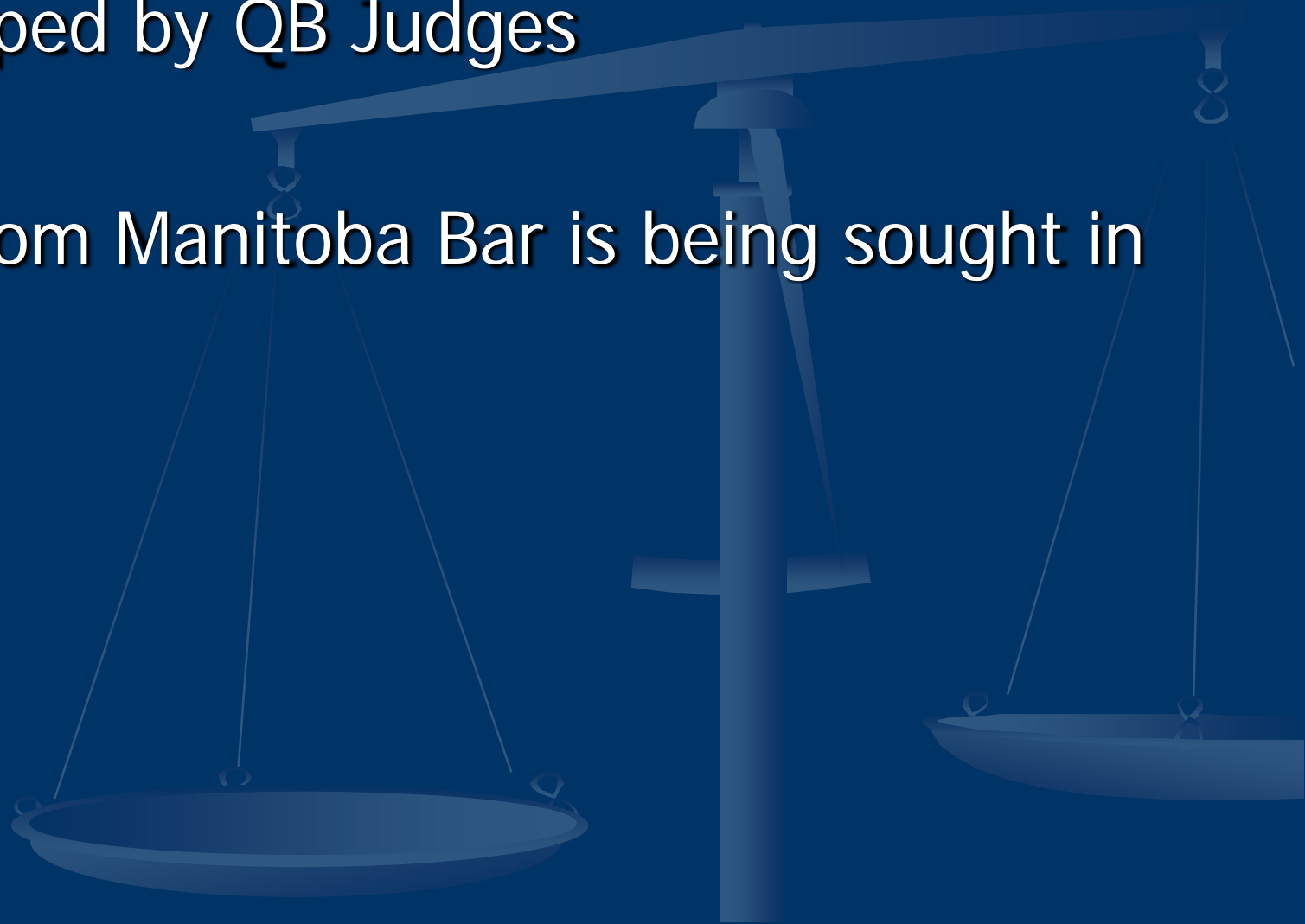


# July 18<sup>th</sup> Session Highlights

- New FD Case Flow Model was outlined
  - Need for change was discussed
    - Ad hoc system of "urgent motions" created uncertainty
    - Inconsistent case conference processed = cases with "no end in sight"
    - Protracted and expensive legal proceedings have created a barrier to justice for many families
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# July 18<sup>th</sup> Session Highlights

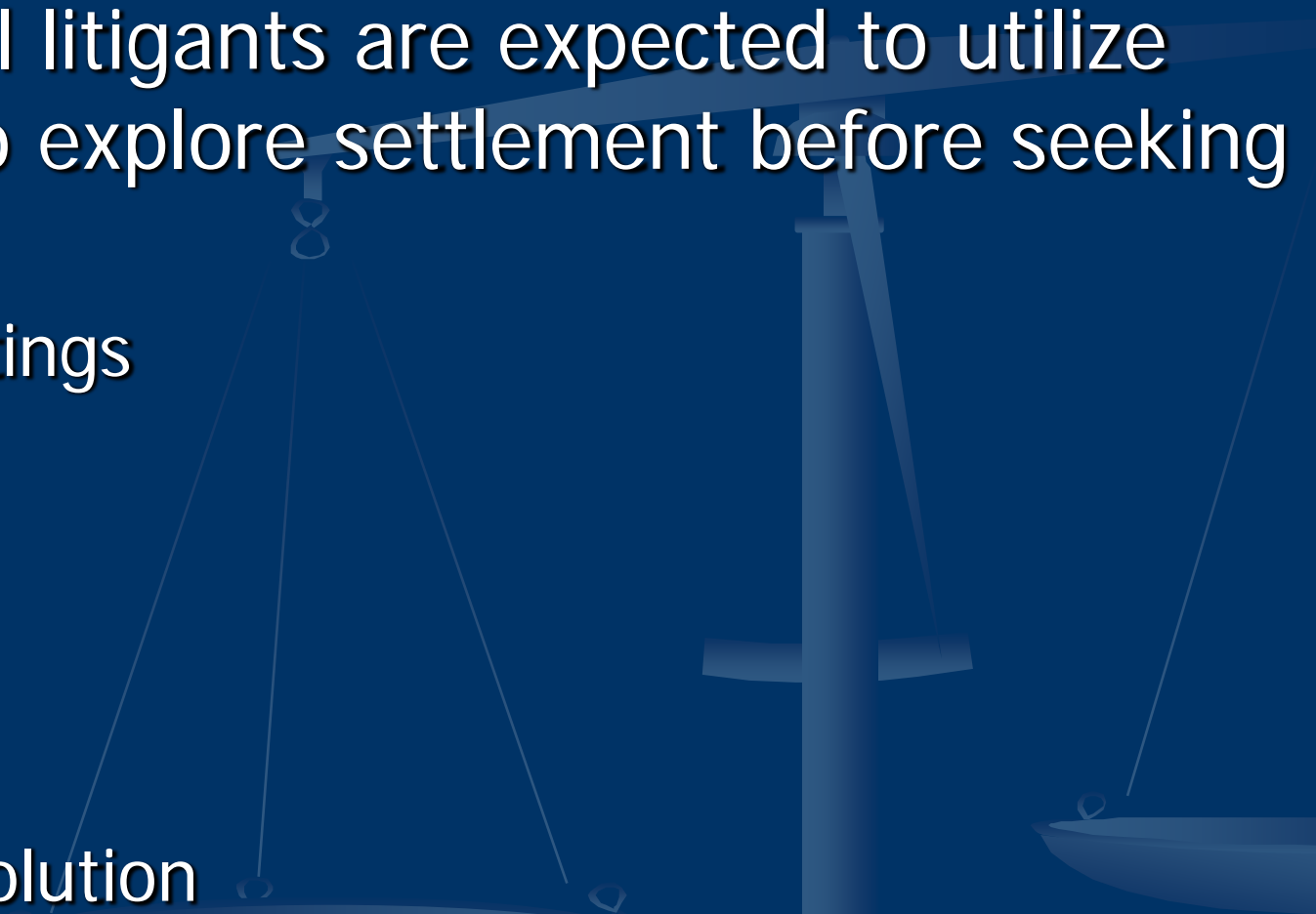
- New FD Model developed by QB Judges
- Input and feedback from Manitoba Bar is being sought in three sessions
  - July 18
  - August 23
  - September 13



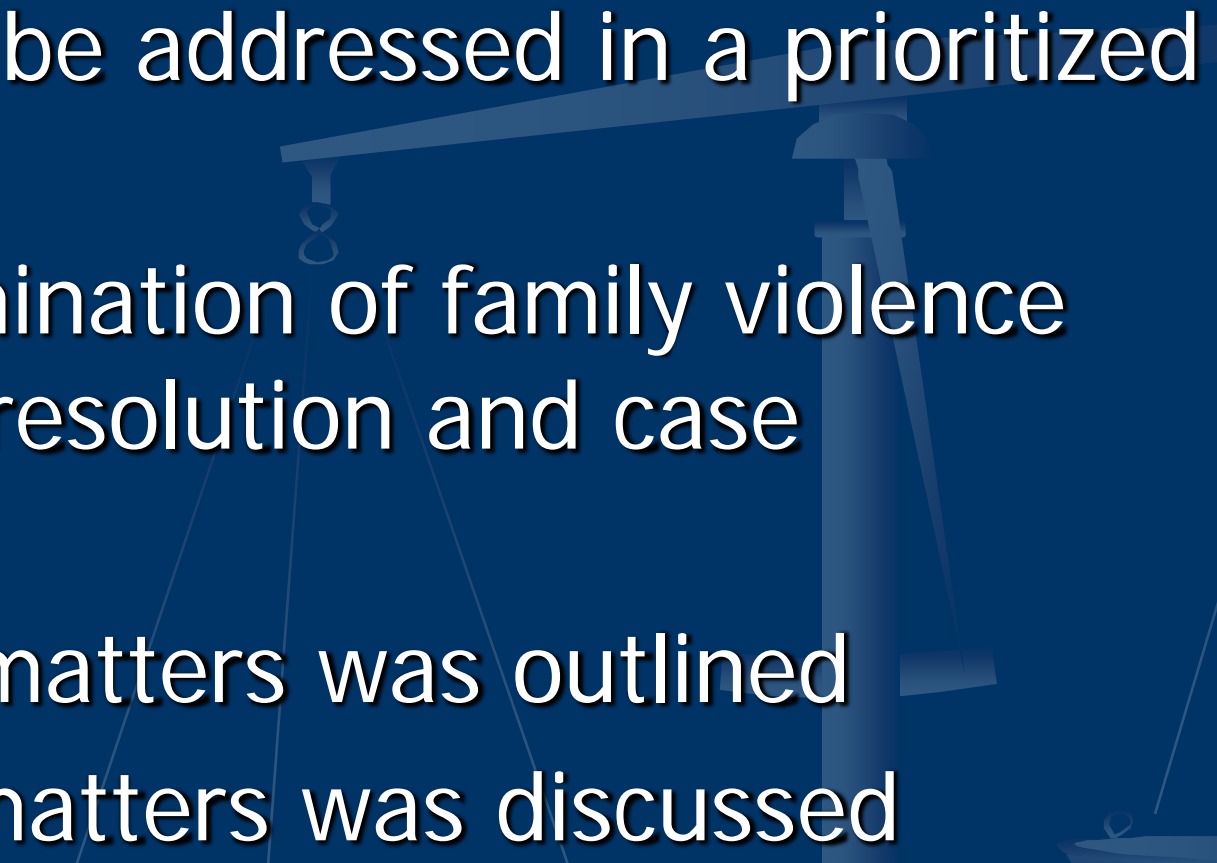
# July 18<sup>th</sup> Session Highlights

- It was stressed that the 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]*
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# July 18<sup>th</sup> Session Highlights

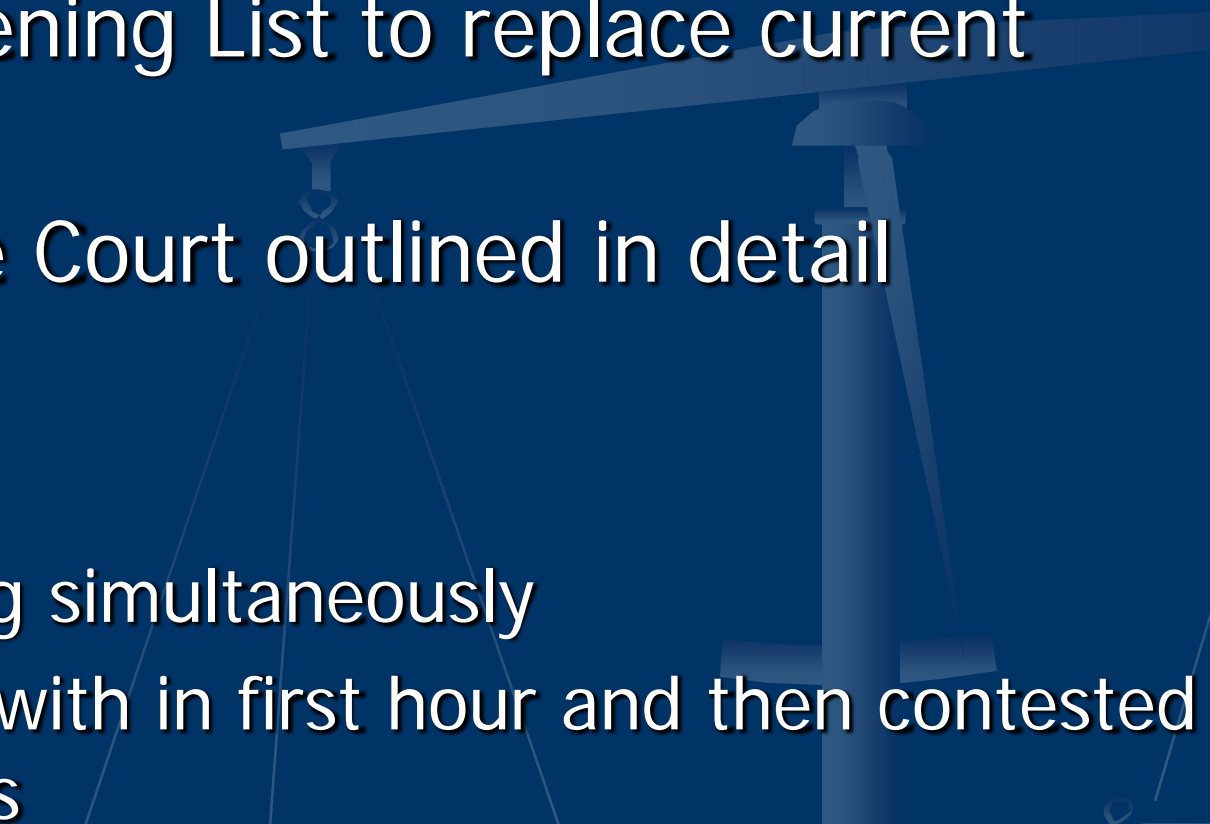
- It was stressed that all litigants are expected to utilize non-court resources to explore settlement before seeking judicial intervention
    - 4-way settlement meetings
    - Mediation
    - Parent coaching
    - Home assessments
    - Counselling
    - Alternative dispute resolution
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# July 18<sup>th</sup> Session Highlights

- Family violence will be addressed in a prioritized way
  - Early factual determination of family violence issues will assist in resolution and case management
  - Process for urgent matters was outlined
  - Criteria for urgent matters was discussed
- 



# July 18<sup>th</sup> Session Highlights

- Pre-Triage Court Screening List to replace current Tuesday List
  - Prerequisites to Triage Court outlined in detail
  - Triage Court
    - Every Monday
    - 4 Triage Courts running simultaneously
    - Consent matters dealt with in first hour and then contested matters in ½ hour slots
- 

# July 18<sup>th</sup> Session Highlights

- Powers of Triage Court Judge described
- Enhanced powers of Case Conference Judge described
- 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 variations set within 120 days
- Trial readiness – by certificate or by trial readiness conference 45 days in advance of trial
- No trial adjournments without leave of Chief Justice

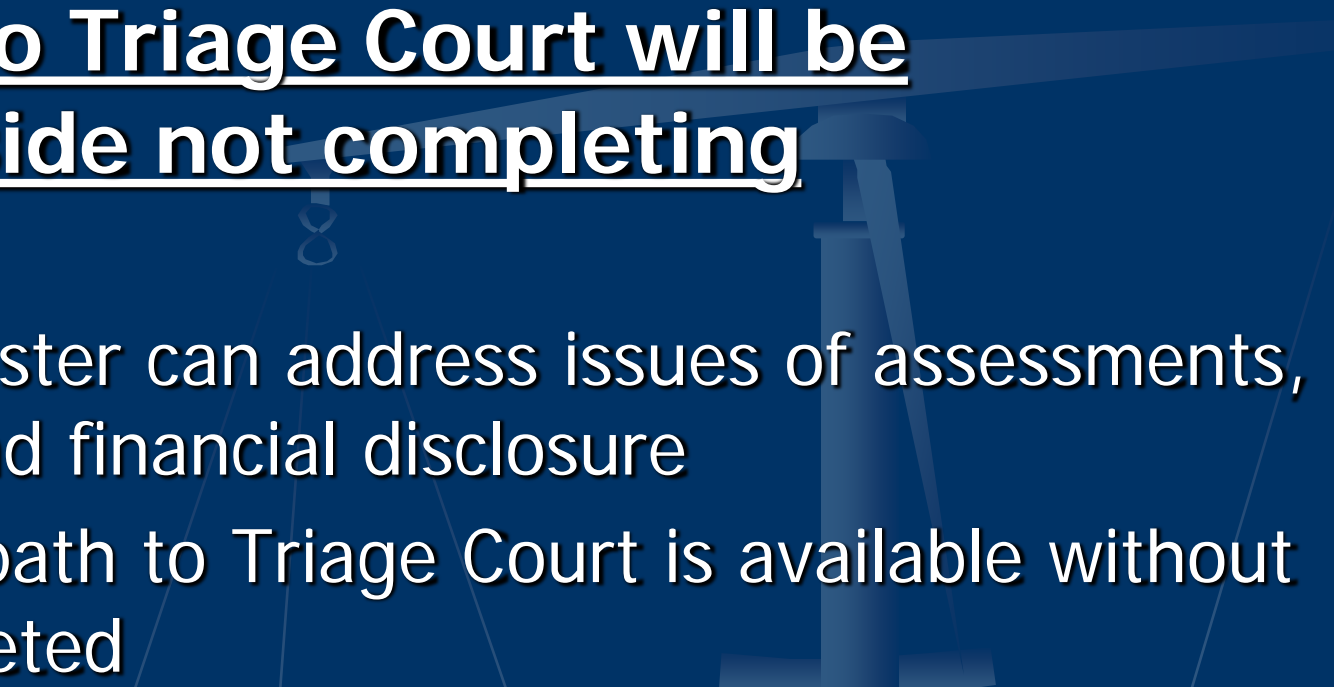
# Objectives of the New FD Model

- 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

# What We Have Heard From You

- Concern that there are too many prerequisites
  - The number of prerequisites has **NOT** changed
  - The need for the prerequisites to be completed before coming to Court has **NOT** changed
  - Counsel's responsibility for completion of the prerequisites has **NOT** changed
  - **The strict enforcement of prerequisites IS a change**

# What We Have Heard From You

- Concern that path to Triage Court will be obstructed by one side not completing prerequisites
    - Effective use of the Master can address issues of assessments, document discovery and financial disclosure
    - In truly urgent cases, path to Triage Court is available without all prerequisites completed
- 

# What We Have Heard From You

- Concern that allotted time at Triage Court is too short
  - The first hour is set aside for consent orders
  - After consent orders then each contested matter will have ½ hour
  - With concise briefs the issues can be flagged for early resolution or further discussion at case conference
  - Each side must come prepared to resolve issues and to articulate clear positions on the issues that are contested

# What We Have Heard From You

- Concern that we are no longer concerned with resolution and are, instead, encouraging litigation
  - The parties are already engaged in litigation
  - Parties have an obligation to seek resolution before coming to Court
  - Once entering the Court system parties are entitled to early judicial intervention to achieve resolution
  - If resolution cannot be reached then the case must flow in a reasonable, predictable manner with a finite end date

# What We Have Heard From You

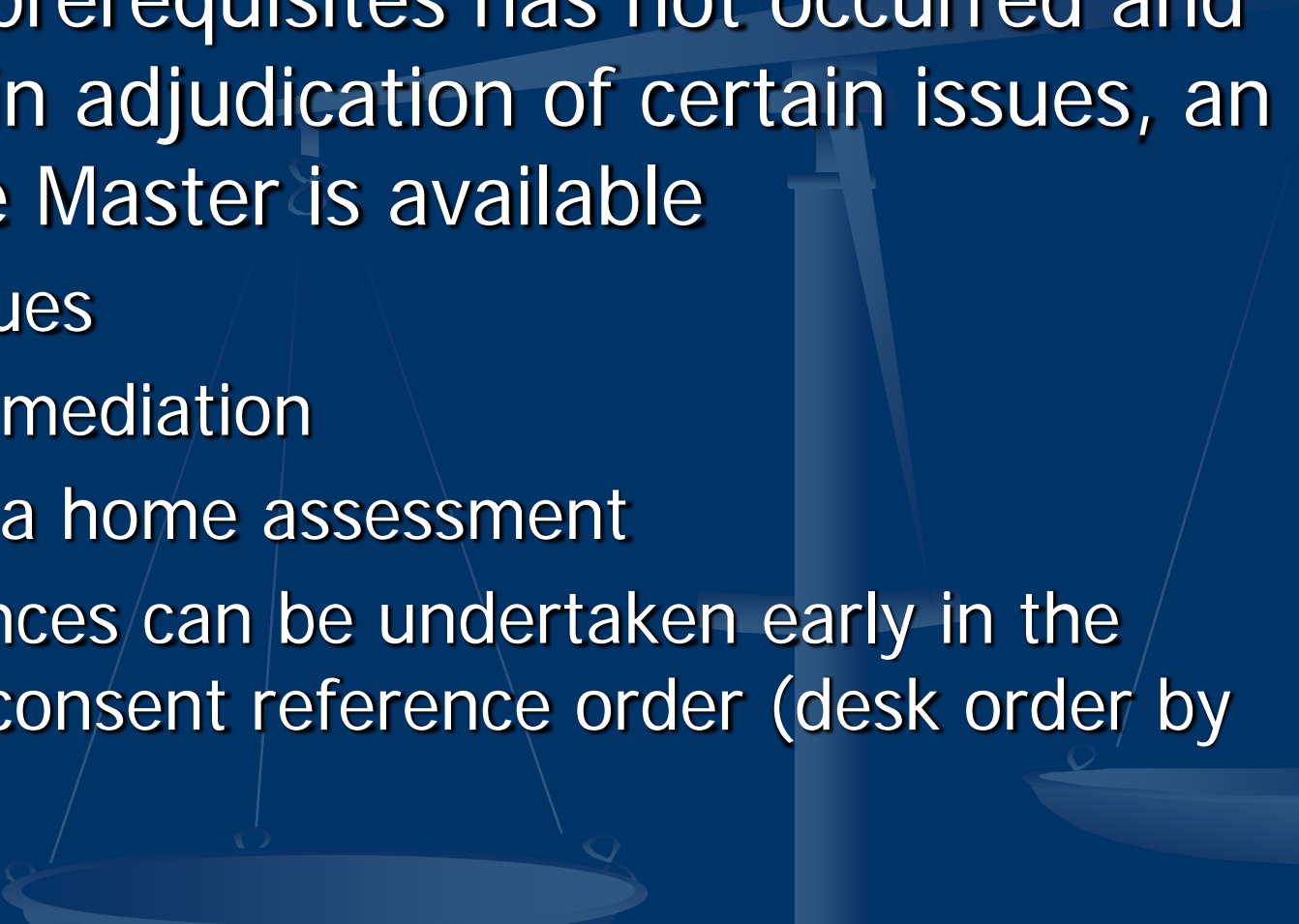
- Concern that by requiring case conference judge to set trial dates at first case conference, settlement will be discouraged
  - Recent studies and reform reports have found the opposite to be true
  - The pressure of trial dates on carefully narrowed issues (through case conferencing) will encourage settlement
  - The expense of the current litigation culture is too much for most families to afford thus leading to increasing numbers of self-represented parties



# What We Have Heard From You

- Concern that the 12 to 15 month trial deadline is too short to allow for home assessments and FPA references
  - The family law culture MUST change so that assessments and references are thought of early in a case and ordered/agreed upon prior to Triage Court
  - As we have learned from the CP Intake Model, as the family law practise changes, so will the resources available to litigants and the speed at which reports are prepared

# Utilizing the Master to Meet Prerequisites

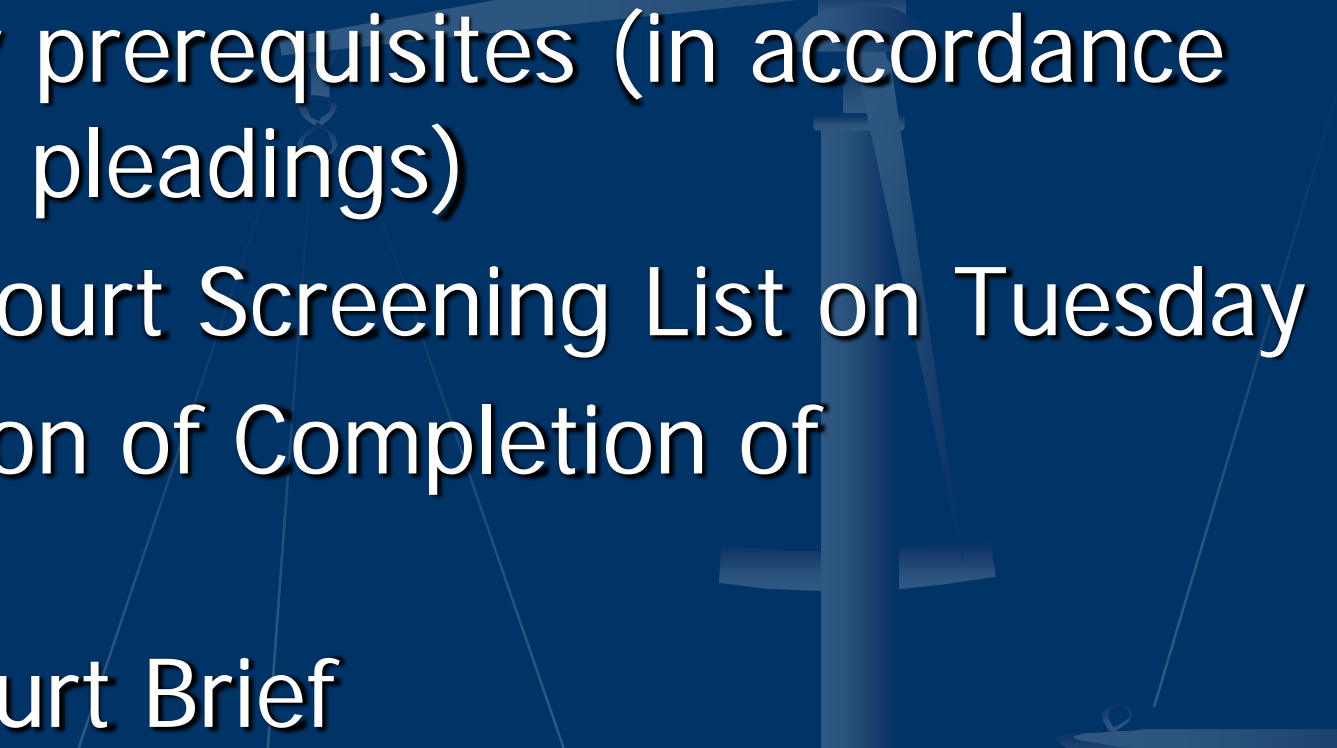
- Where satisfaction of prerequisites has not occurred and it is necessary to obtain adjudication of certain issues, an appearance before the Master is available
    - Financial disclosure issues
    - Obtaining an order for mediation
    - Obtaining an order for a home assessment
    - Family property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

# Five Meaningful Events



- 1. Obtaining a date to appear in Triage Court
- 2. The Triage Court Appearance
- 3. The Attendance at the First Case Conference
- 4. The Certification for Trial Readiness
- 5. The Trial

# 1. Obtaining Triage Court Date

- Complete necessary prerequisites (in accordance with relief sought in pleadings)
  - Attend Pre-Triage Court Screening List on Tuesday
  - Complete Certification of Completion of Prerequisites
  - Complete Triage Court Brief
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# CERTIFICATION OF COMPLETION OF PREREQUISITES AND REQUEST TO OBTAIN DATE FOR APPEARANCE IN FAMILY TRIAGE COURT

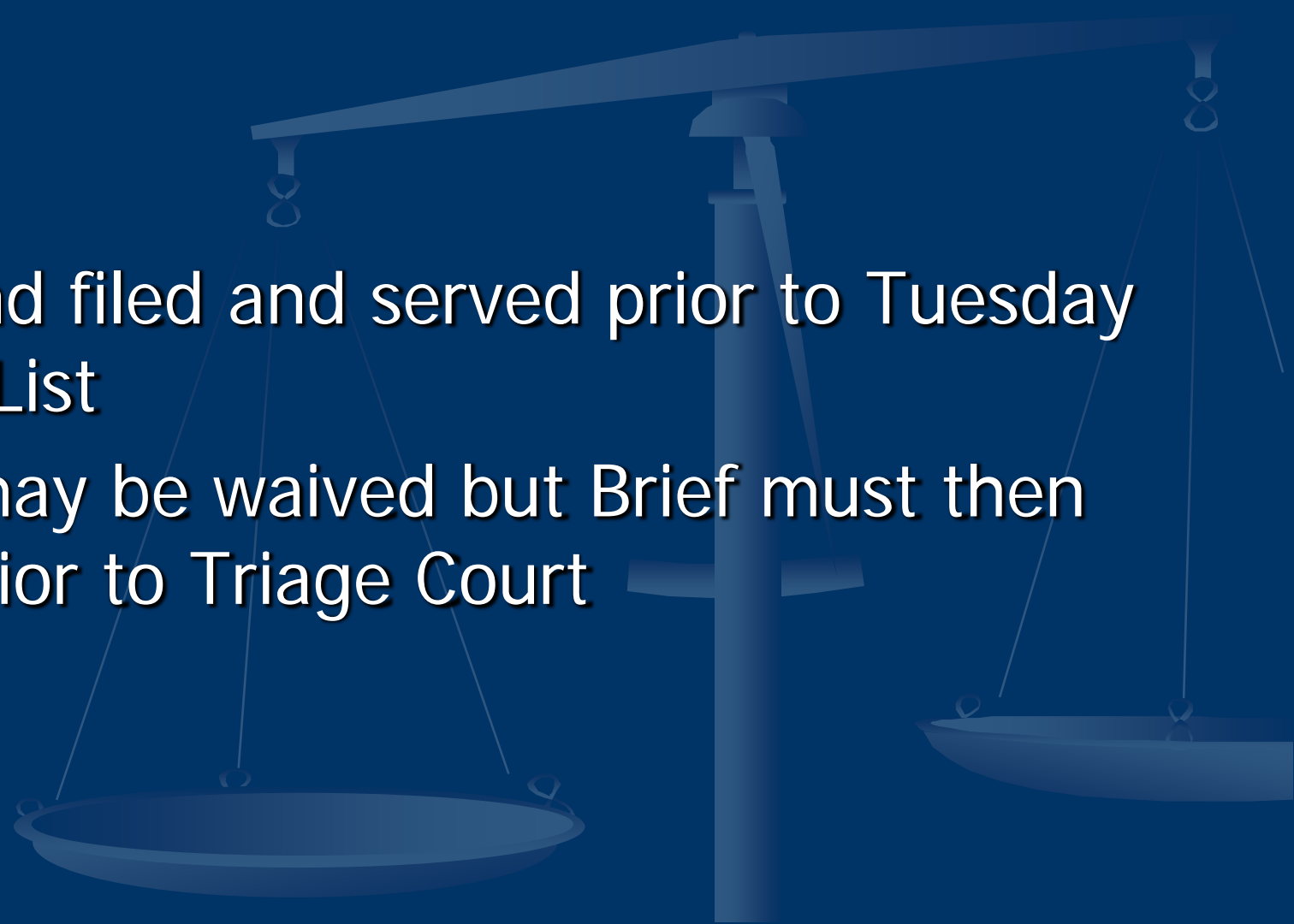
- Refer to handout/PDF
- This is a DRAFT form
- Must be completed prior to Tuesday Pre-Triage List
- If all prerequisites are confirmed then a date will be granted for Triage Court and the form is signed by the Trial Coordinator
- Form is served on the other party with 14 days' notice of Triage Court date or shorter if urgent matter

# Prerequisites for Triage Court (Triage Court Brief)

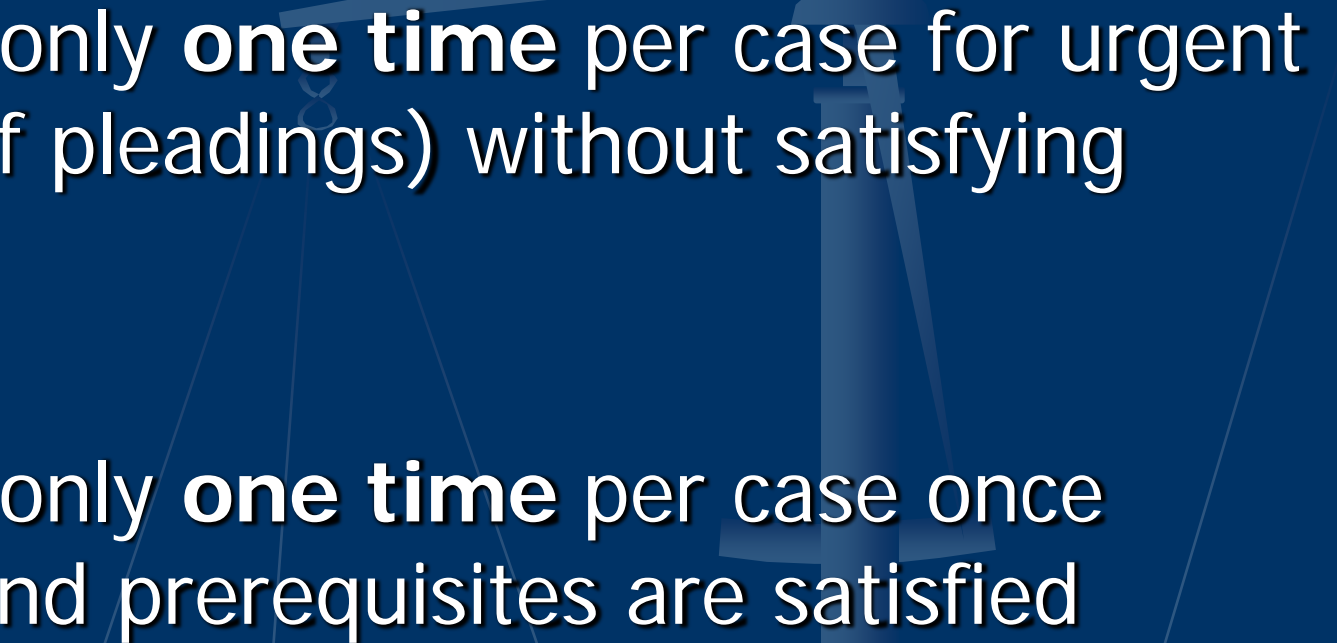
- A **Triage Court Brief** setting out the contested issues in the three main areas:
  - **Custody/care and control of children** [attaching written parenting plans proposed by each party]
  - **Support for children and/or spouse** [attaching calculations under the Child Support Guidelines and/or SSAG]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

# Triage Court Brief

- Refer to handout/PDF
- This is a DRAFT form
- Must be completed and filed and served prior to Tuesday Pre-Triage Screening List
- In urgent cases this may be waived but Brief must then be filed and served prior to Triage Court

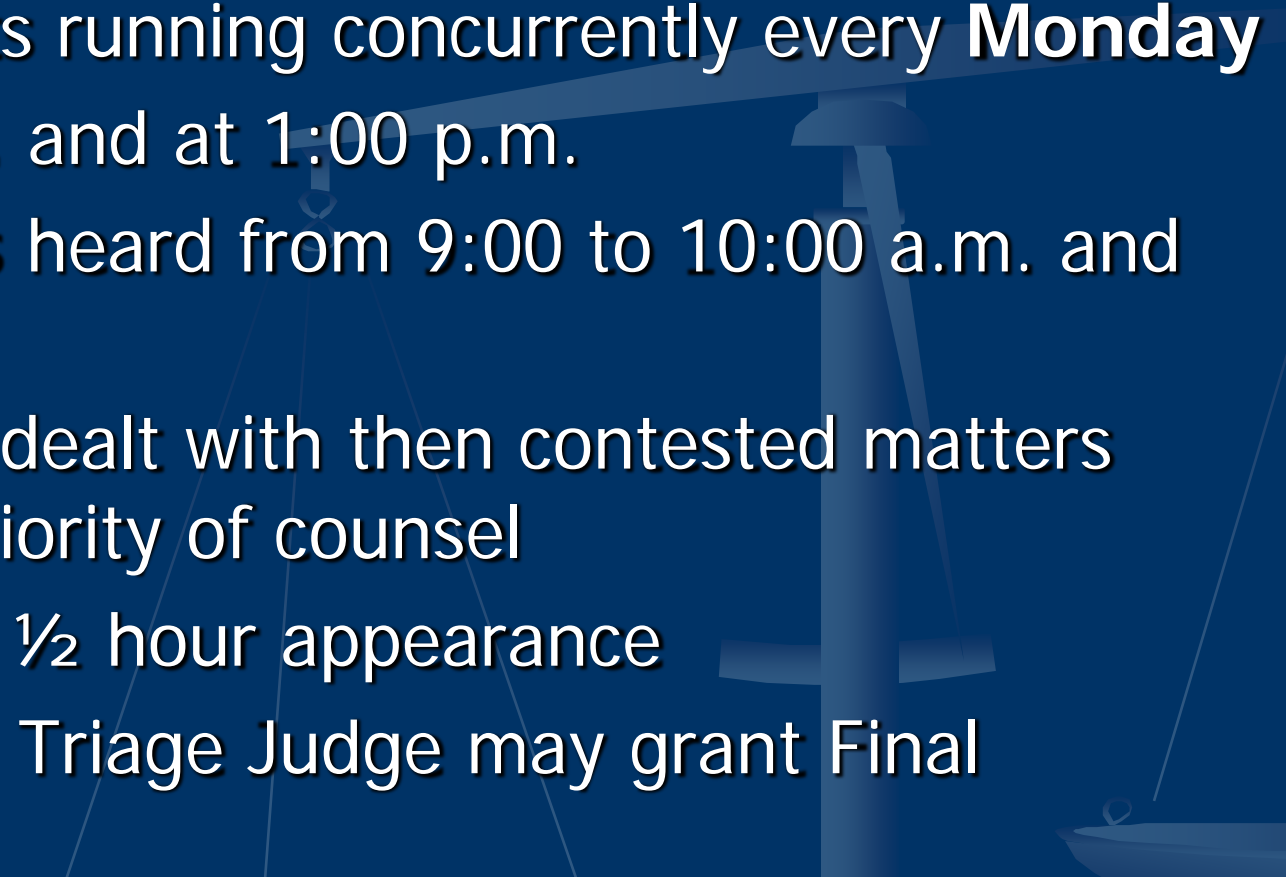


## 2. Attending Triage Court

- Access to triage court only **one time** per case for urgent matter (before close of pleadings) without satisfying prerequisites
  - Access to triage court only **one time** per case once pleadings are closed and prerequisites are satisfied
- 



# Attending Triage Court

- In Winnipeg Centre, 4 lists running concurrently every **Monday**
  - Court begins at 9:00 a.m. and at 1:00 p.m.
  - Consent/resolved matters heard from 9:00 to 10:00 a.m. and 1:00 to 2:00 p.m.
  - Once all consent matters dealt with then contested matters addressed in order of seniority of counsel
  - Each matter to be set for ½ hour appearance
  - If matter is resolved then Triage Judge may grant Final Order/Judgment
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# Attending Triage Court

A faint, stylized background image of a pair of scales of justice, symbolizing law and equity. The scales are positioned on the right side of the slide, with the central pillar and the two pans extending across the width of the page.

- If a party fails to attend Triage Court, they risk having the Triage Judge grant the relief that the judge feels is appropriate without notice to the absent party
- If both parties attend and the matter is **not** resolved the Triage Judge will:
  - Set the first case conference date to occur within 30 days of the Triage Court appearance; and, if required
  - Set an interim hearing date prior to the first case conference on issues requiring immediate resolution. Such a hearing to occur within 14 to 30 days of the Triage Court appearance, in which case the first case conference will occur 30 days after the interim hearing

# Powers of the Triage Judge



- The Triage Judge will have all the newly-amended powers of a case conference judge, as will be discussed below
- While an order of a Triage Judge may be reviewable by the case conference judge, a case conference judge's order is reviewable only by the same case conference judge who granted the order

# 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

# FPA References and the Triage Court

- Ideally, parties may seek a FPA reference order by consent to the Duty Judge 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 and narrow the issues which are referred to the Master.

# 3. Attending the First Case Conference

- Unless all matters are resolved at the first case conference, a trial date **MUST** be set
- Trial dates will be within 12 to 15 months of the first case conference
- Hearing dates on variation motions will be within 120 days of first case conference
- The setting of a trial date at the first case conference is **not** negotiable
- There can be subsequent case conferences with leave of the case conference judge, but all must occur within the 12 to 15-month period prior to trial

# 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 any interim 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



## 4. Certification for Trial Readiness

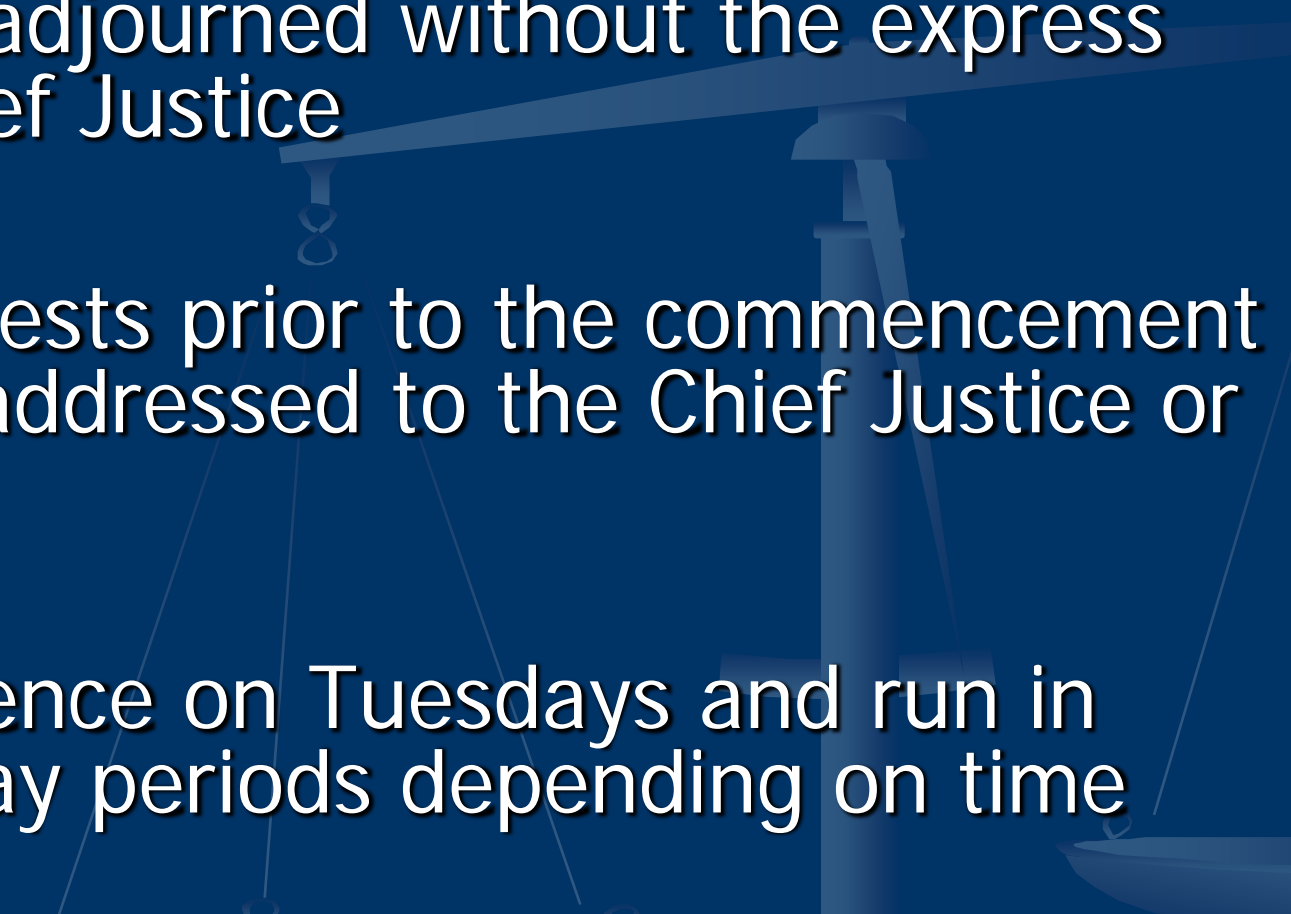
- Trial Readiness Certificate to be filed by each party no later than 45 days before trial date
- If no certification filed then parties will be directed by the Court to then parties must attend Trial Readiness Conference with case management judge
- Trial Readiness Conference will be 30 minutes only and the issue of costs for failure to be ready will be addressed

# Trial Readiness Certificate

- Refer to handout/PDF
- This is a DRAFT form
- Must be completed and filed no later than **45 days** before trial date



# 5. The Trial

- No trial dates will be adjourned without the express permission of the Chief Justice
  - Accordingly, any requests prior to the commencement of the trial are to be addressed to the Chief Justice or his designate
  - Most trials will commence on Tuesdays and run in segments of 4 or 8-day periods depending on time requirements
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# 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

