

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

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

**July 18, 2018**

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

# Why Change and Why Now?

- Over the past few years the Court of Queen's Bench has undertaken reforms in its processes and case flow in the areas of criminal law, civil law and child protection
- The reforms to the scheduling and flow of family cases are part of the ongoing commitment and duty of the Court in ensuring that all Manitobans have access to justice, while ensuring that our court processes and the court's case flow are, more than ever, judged on a standard of "proportionality"

# Court Outreach

- Court changes to processes and case flow instituted in the areas of criminal, civil and child protection were made following outreach to and feedback from the profession
- Today's presentation will provide information about changes to scheduling and case flow in non-child protection family matters

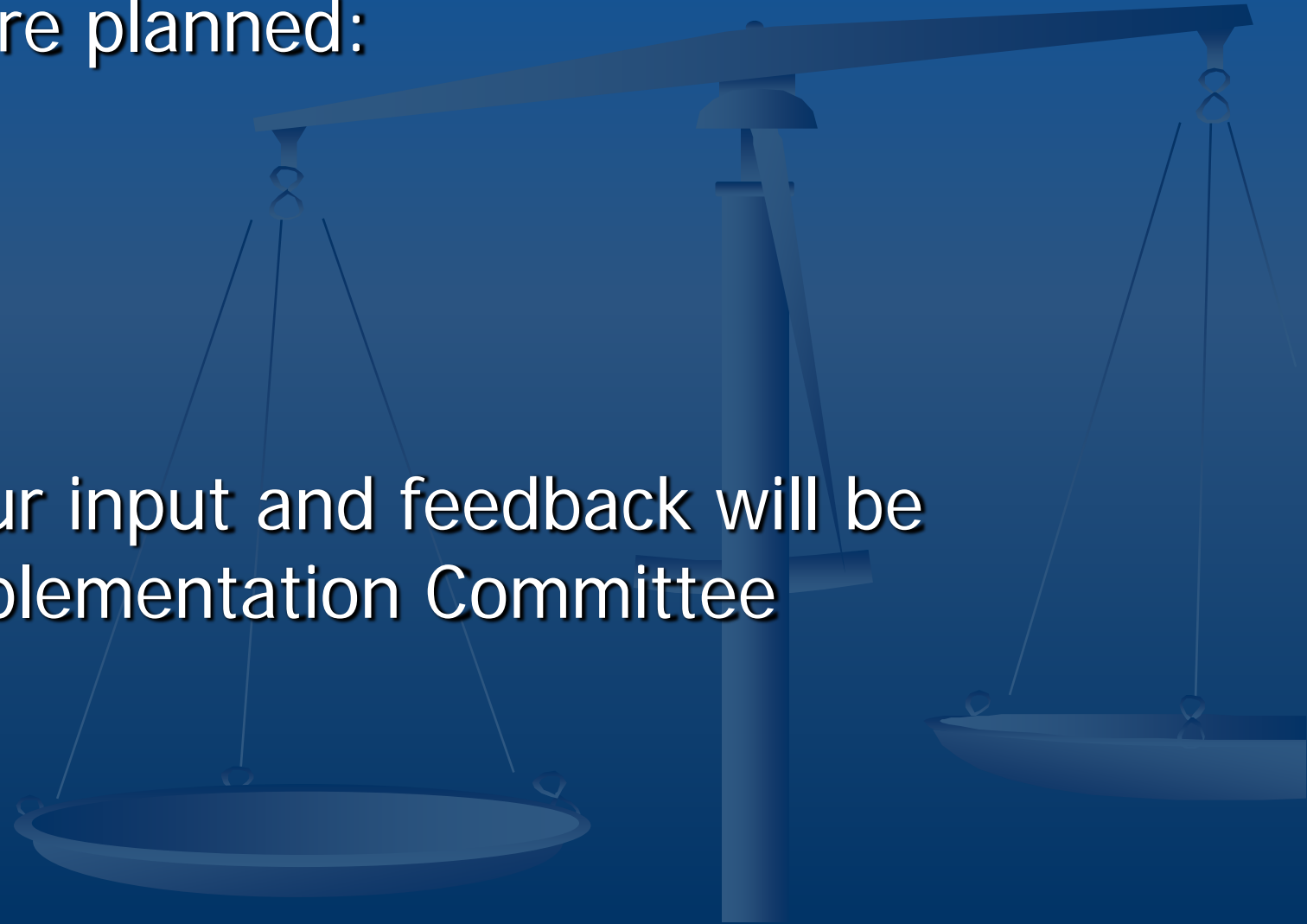
# Goals for Outreach

- To provide information regarding the proposed reforms
- To receive feedback regarding areas of improvement that ought to be considered
- To reach as many family law practitioners in the Province of Manitoba as possible through in-person and on-line consultation



# Ongoing Process

- 3 sessions/webinars are planned:
  - July 18
  - August 23
  - September 13
- After each session your input and feedback will be considered by the Implementation Committee



# The Standard of Proportionality



- The standard of proportionality has been set out in case law and in our Court Rules:
  - QBR1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits

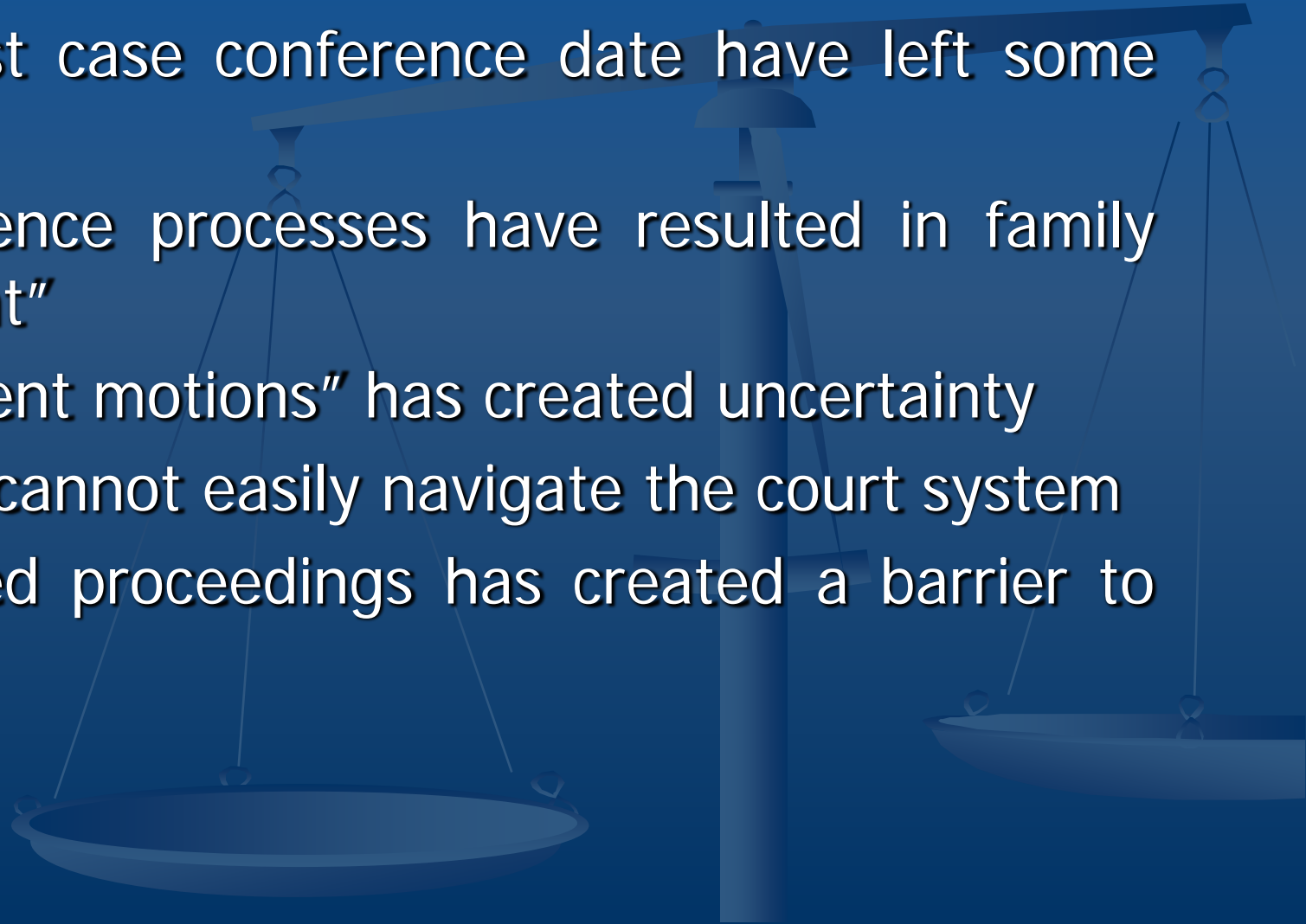
# The Standard of Proportionality



- QBR 1.04(1.1)
  - In applying these rules in a proceeding, the court is to make orders and give directions that are proportionate to the following:
    - (a) the nature of the proceeding;
    - (b) the amount that is probably at issue in the proceeding;
    - (c) the complexity of the issues involved in the proceeding;
    - (d) the likely expense of the proceeding to the parties.

# The Problem in Family Law

- Delays in obtaining a first case conference date have left some families in distress
- Inconsistent case conference processes have resulted in family cases with "no end in sight"
- An ad hoc system of "urgent motions" has created uncertainty
- Self-represented litigants cannot easily navigate the court system
- The expense of protracted proceedings has created a barrier to justice for many families



# A Necessary Culture Shift

- The Supreme Court of Canada addressed the problem of access to justice in its landmark decision *Hryniak v. Mauldin*, [2014] 1 SCR 87, 2014 SCC 7
- The Court determined that there needs to be a “*necessary culture shift*” away from cumbersome court processes
- New processes must be “*proportionate, timely and affordable*” and lead to a fair result

# Legislative Reforms on the Horizon

- Both the federal and provincial governments are contemplating major legislative reforms to family law which will emphasize administrative law models as alternatives to Court
  - Bill C-78 Divorce Act reforms introduced in May 2018
  - "Modernizing Our Family Law System" report released in Manitoba in June 2018



# The Problem in Manitoba

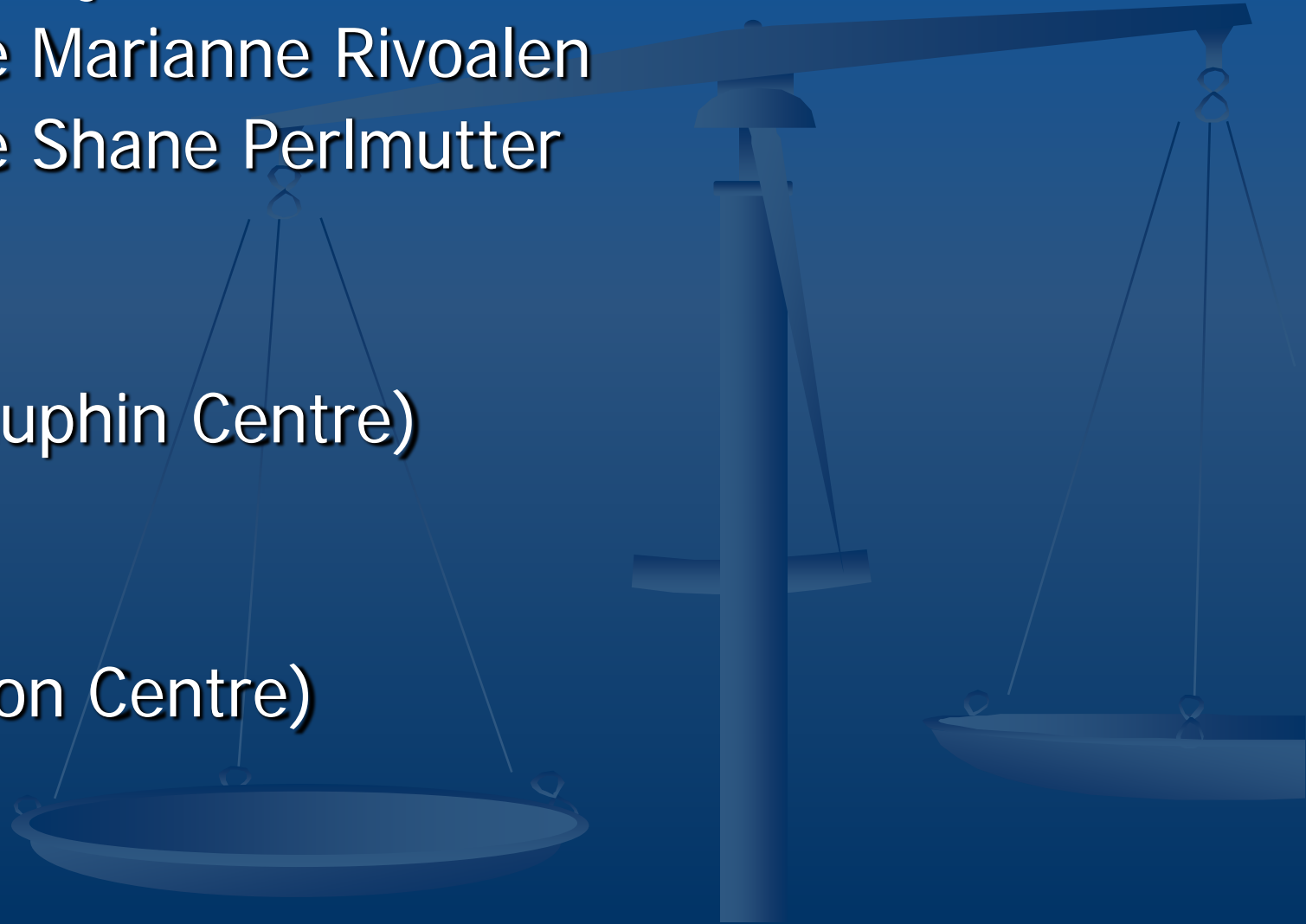
- "In other cases, indeed most, parties should not be required to face the continuing trauma of significant expenses and protracted proceedings at an exceedingly vulnerable and emotionally charged period of their lives, namely, marital and family breakdown. There has to be a better way."
- Chartier, CJM in *Dunford v Birnboim*, 2017 MBCA 100

# A Better Way

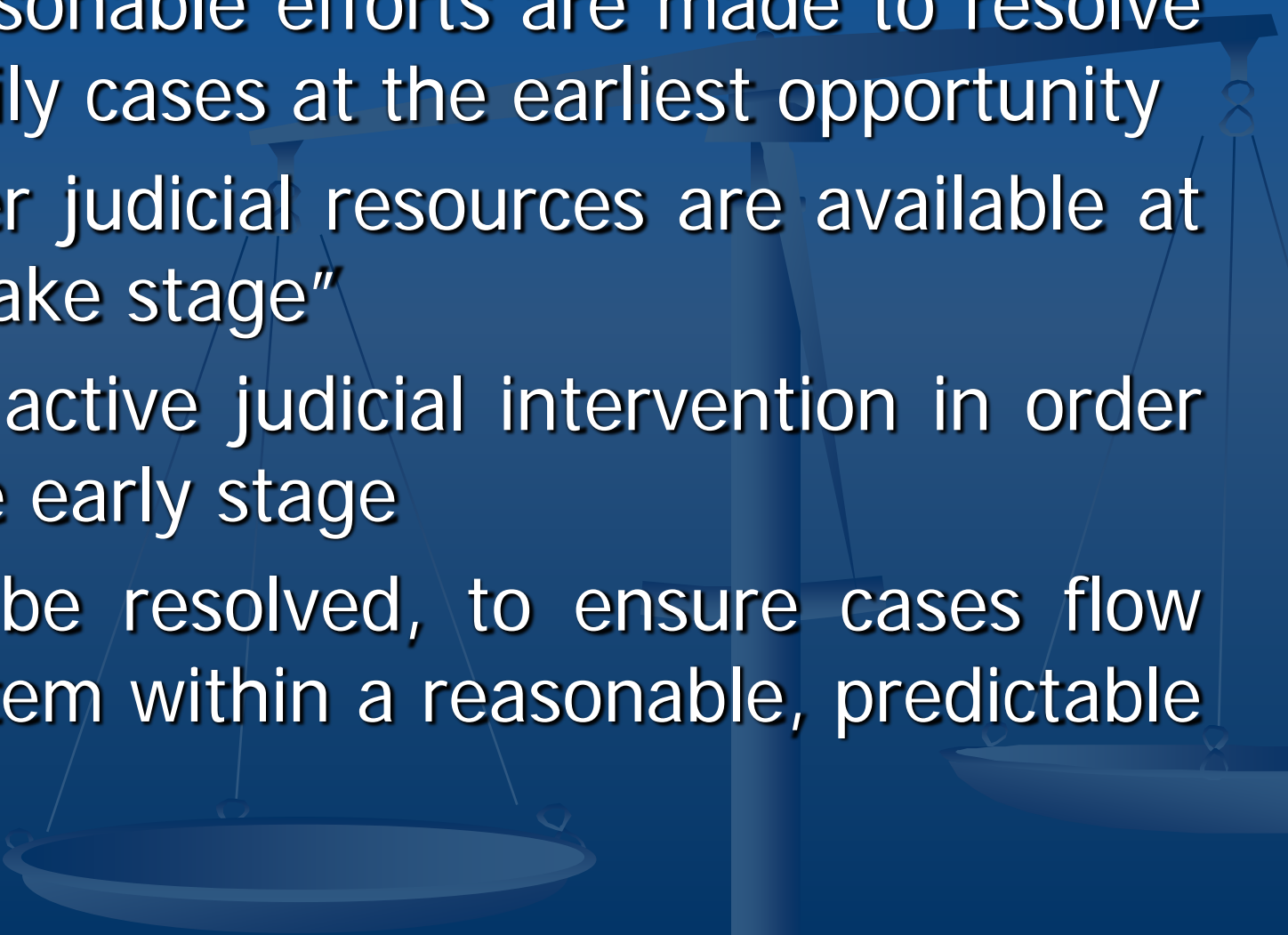
- In March 2018 our Court began reviewing its own family law processes
- Areas of improvement were identified and case flow mechanisms were examined
- On June 5, 2018, after robust consultation within the Court, a New Model for Scheduling and Case Flow of Non-Child Protection Family Division Matters was announced
- The New FD Model will apply to all judicial centres in the Province, with some adjustments for local resources and practices

# 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



# 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
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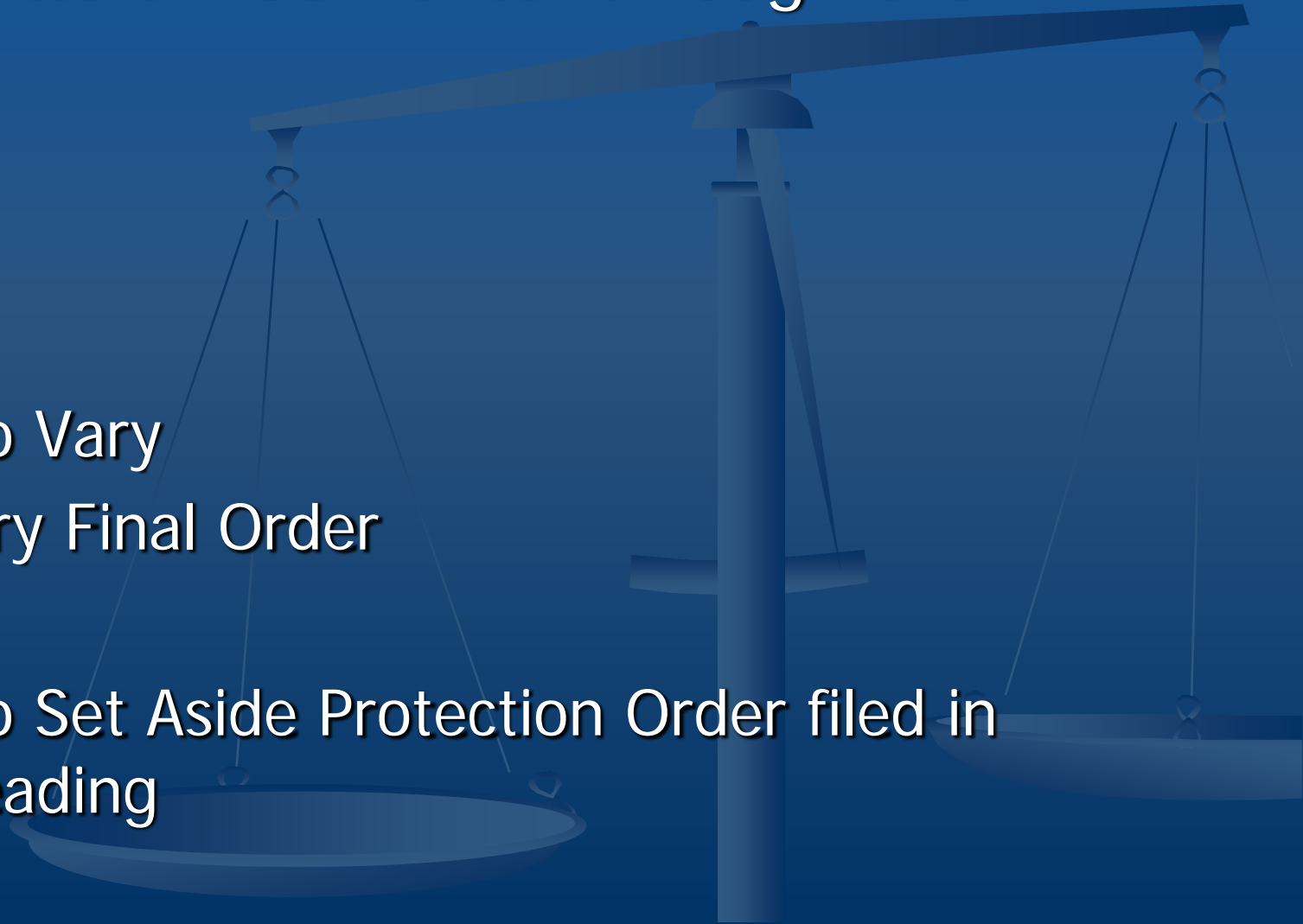
# Applies Only to Certain Family Matters

- Certain cases will not enter the FD Case Flow Model
    - 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]*



# Applies Only to Contested Family Matters

- All other contested matters MUST enter through the FD Case Flow Model
  - Petition for Divorce
  - Petition (FMA)
  - Notice of Application
  - Notice of Application to Vary
  - Notice of Motion to Vary Final Order
  - Statement of Claim
  - Notice of Application to Set Aside Protection Order filed in connection with FD pleading



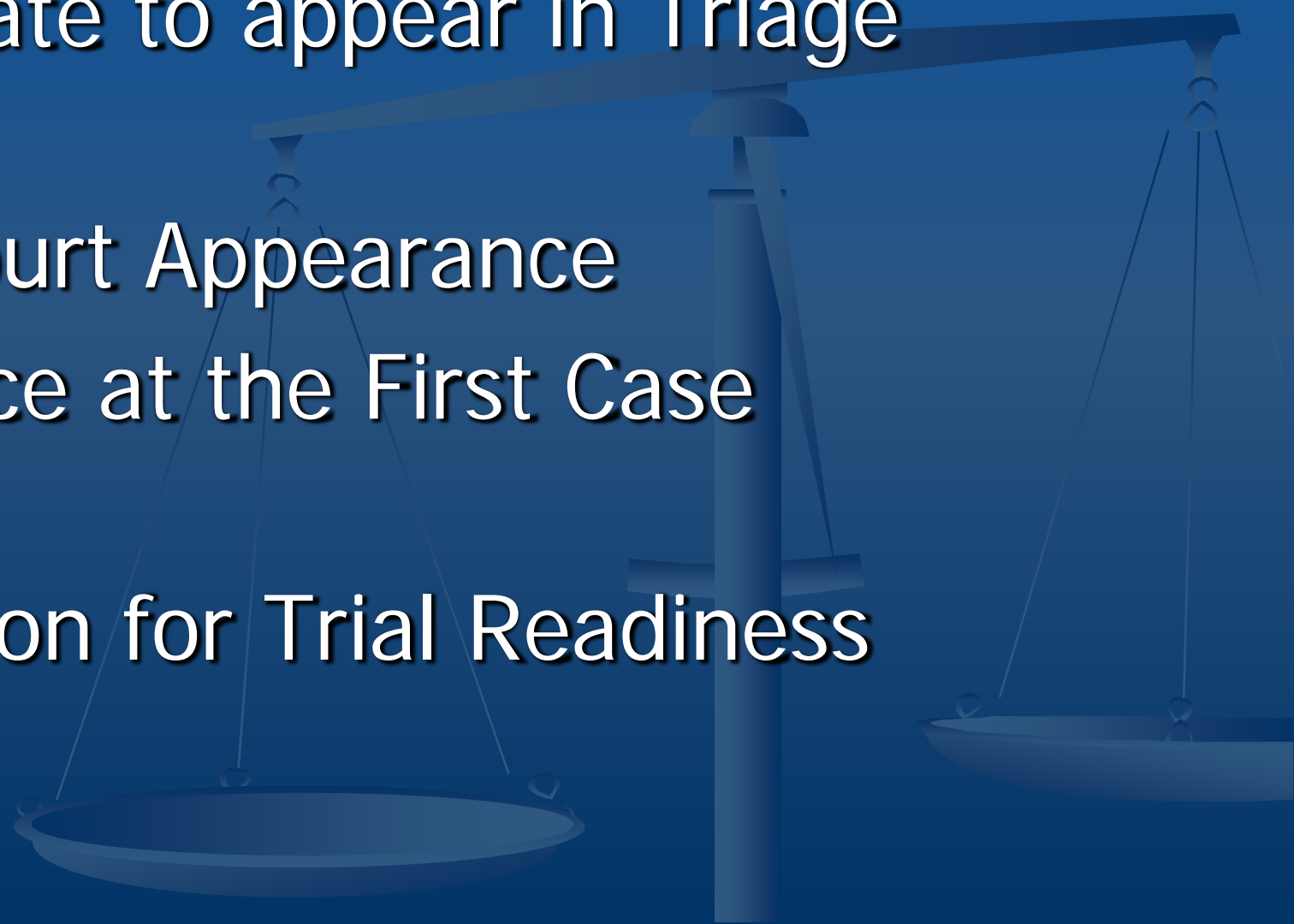


# Meaningful Events: The Provision of an Identifiable and Predictable Framework

- **"Meaningful events"** = those events during the life of the case that contribute substantially to the resolution of the case even if the ultimate resolution requires an adjudication
- Meaningful events guide the flow of cases
- Meaningful events ensure that the "process" does not become an end in and of itself
- Meaningful events ensure that the process remains simple, fast, effective and as inexpensive as possible

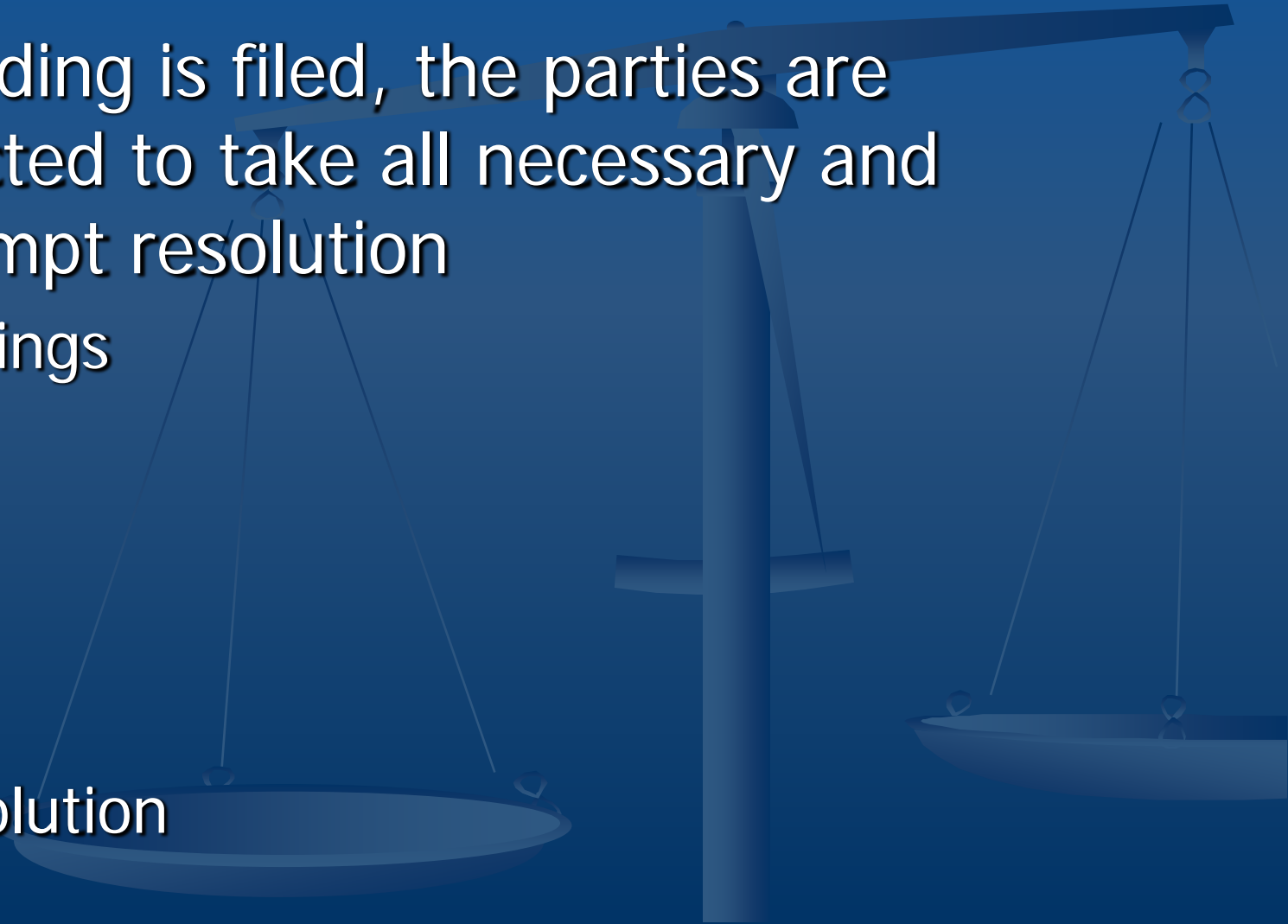
# Five Meaningful Events

- 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



# Prior to Obtaining a Date to Appear at Triage Court

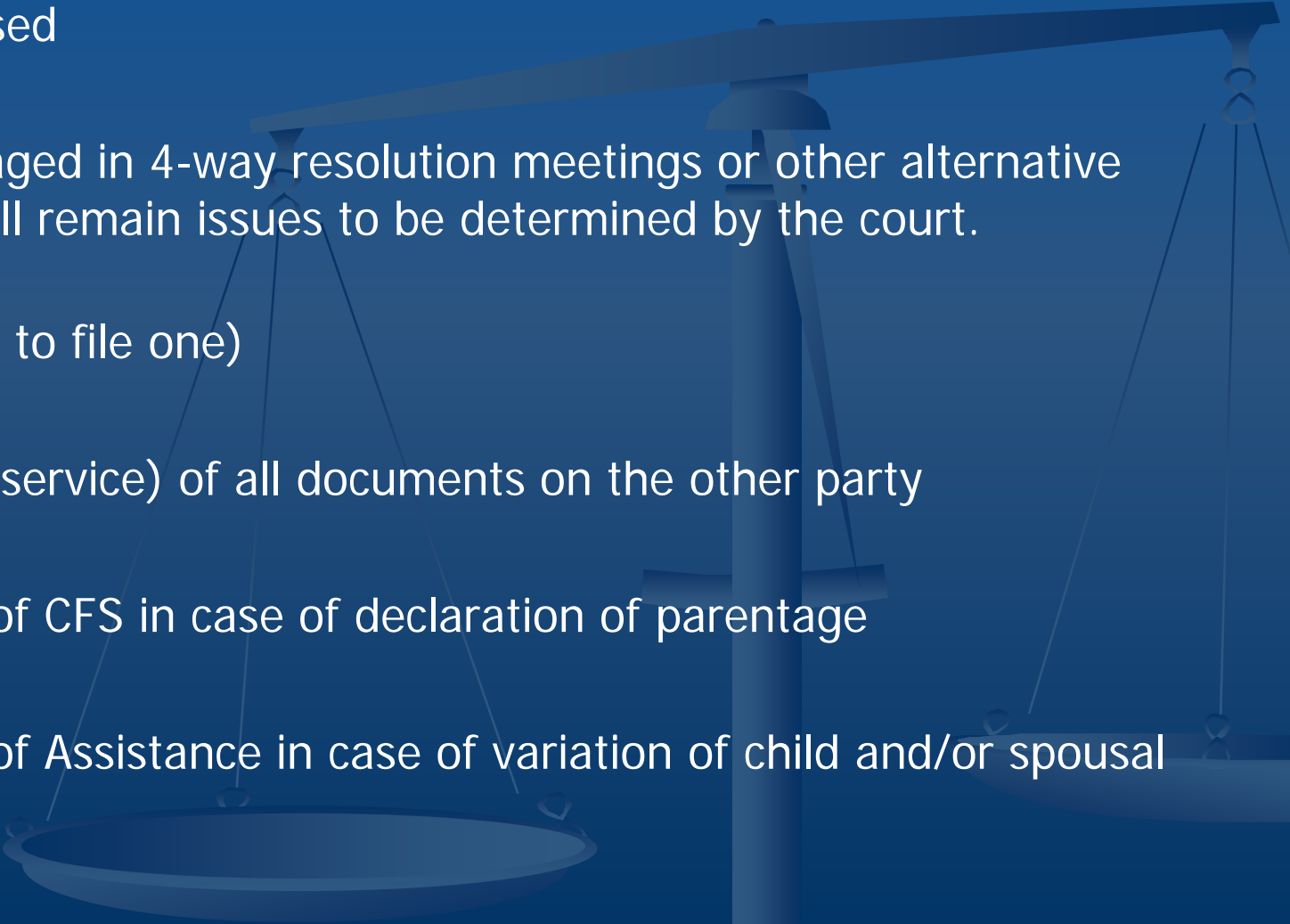
- Once an initiating pleading is filed, the parties are encouraged and expected to take all necessary and available steps to attempt resolution
  - 4-way settlement meetings
  - Mediation
  - Parent coaching
  - Home assessments
  - Counselling
  - Alternative dispute resolution



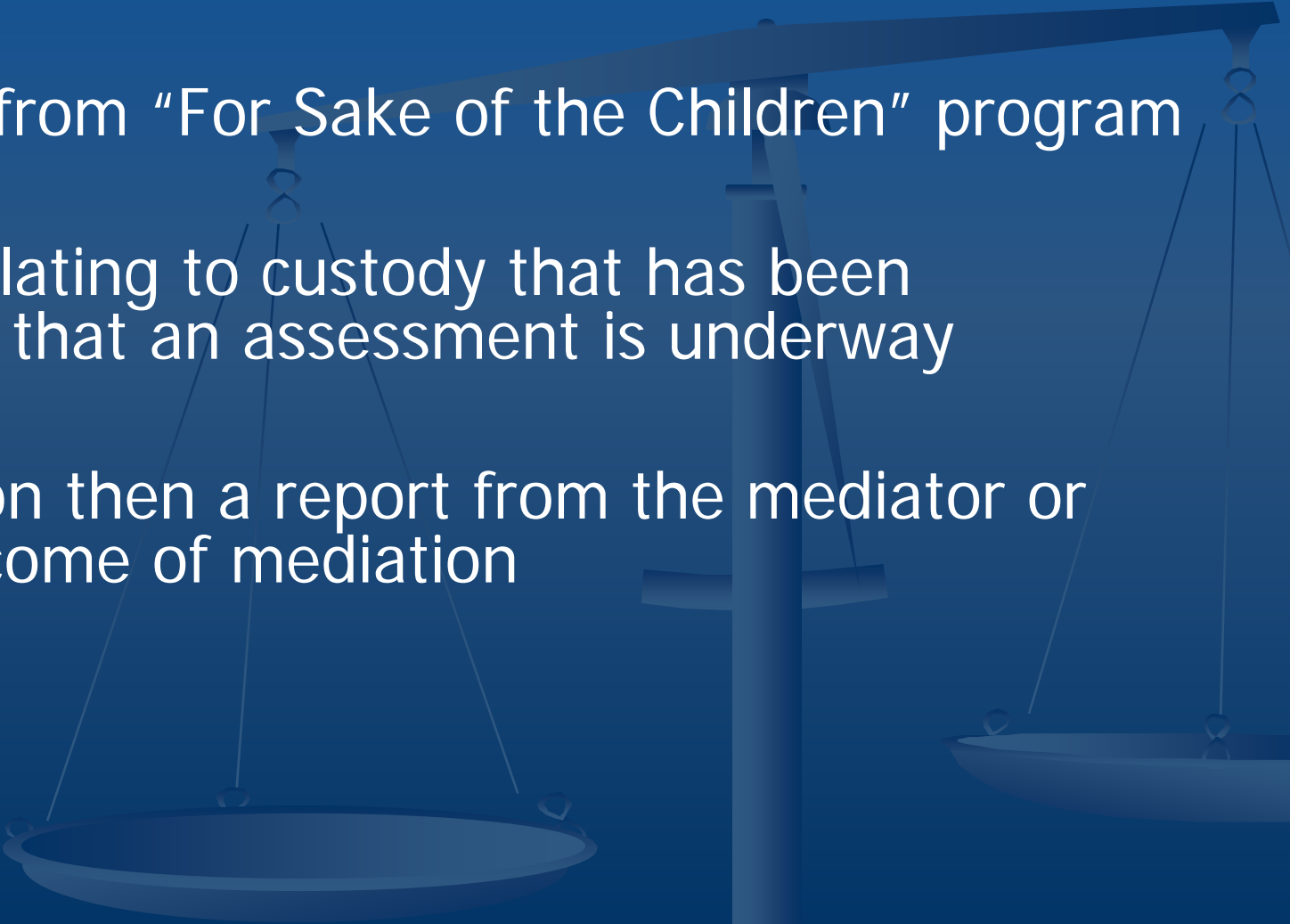
# Pre-Triage Screening

- If resolution is NOT possible then the case must be readied for Triage Court
- No matter will be placed on the weekly Triage Court List unless and until the parties have attended the Pre-Triage Screening List
- Pre-Triage Screening List will replace the "Tuesday List" in Winnipeg
- Parties must satisfy the Pre-Triage Screening Coordinator that the matter is ready for Triage Court
- Each matter will be screened and certified that the prerequisites have been met before an appearance date will be booked

# Prerequisites for Triage Court (Pleadings and Service)

- 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.
  - 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
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# Prerequisites for Triage Court (Custody)

- Certificate of attendance from “For Sake of the Children” program
  - Any assessment report relating to custody that has been completed or information that an assessment is underway
  - If parties sought mediation then a report from the mediator or letter advising of the outcome of mediation
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# Prerequisites for Triage Court (Financial Information and Family Property)

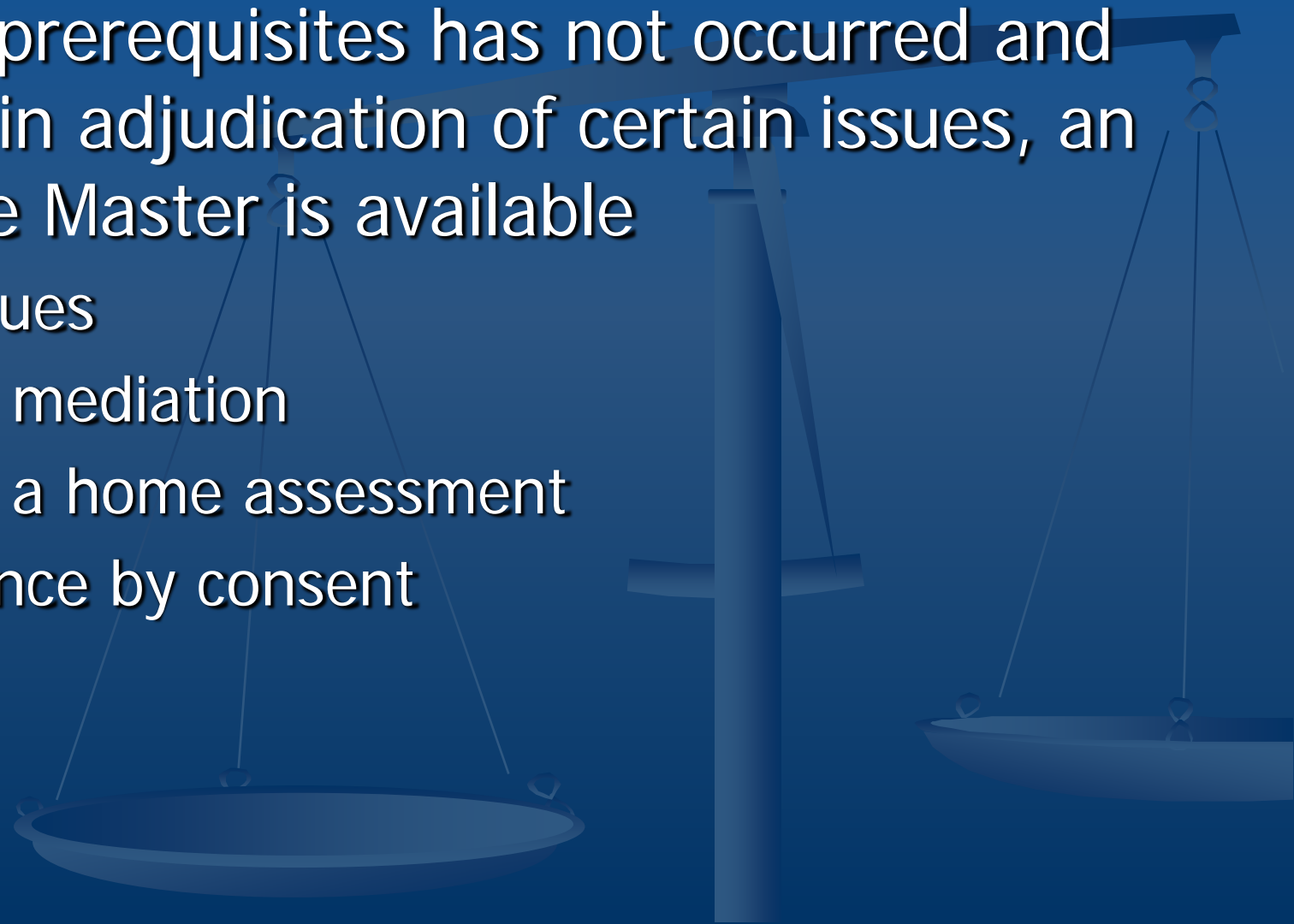
- Fully completed **Form 70D Financial Statement** with attached income tax returns/proof of income if child support or spousal support and/or property is at issue
- If family property is at issue, a new form setting out a draft Family Property Accounting and each party's position on same
- If a Family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

# 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]

# 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 reference by consent
  - Service issues



# Accessing a Judge in Urgent Cases Where Prerequisites Not Met

- If pleadings are **not** closed and matter is urgent, a short statement setting out reason for urgency and need for ex parte/short notice with the following criteria:
  - the situation is urgent (immediate risk of harm to self or child, serious factual situation which will result in loss of property, risk of child being taken to another country, etc.)
  - they will face hardship if they have to wait until other party responds and pleadings are closed to bring their motion for interim relief
  - it is in the "interests of justice" that their motion be heard without notice or on short notice
  - the litigant will undertake to complete service and file other pre-requisites in due course

# Urgent Matters

- As noted above, if there is an urgent matter then an early Triage Court date can be booked by the Pre-Triage Screening Coordinator
- Party/parties must file a brief with concise statement of urgent issue and the relief sought
- The Triage Court Judge will determine if an urgent hearing is required – to be heard within 14 to 30 days
- After the urgent matter is dealt with the case will return to Pre-Triage Screening for the remaining prerequisites to be completed

# Access to 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

# Attending Triage Court

- 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

# Family Violence is Prioritized

- Family Division cases which also involve a Protection Order, where the application to vary/set aside the order is opposed, will be prioritized
- Early factual and legal determination of family violence is essential before addressing the other legal issues in any family case
- Greater adherence to the urgent and summary process contemplated under *The Domestic Violence and Stalking Act*, C.C.S.M. c. D93



# Family Violence is Addressed

- Hearings will be set for ½ day with both viva voce and affidavit evidence being considered
- Once the family violence matter is decided, the balance of the family issues will proceed to a case conference date that had been set at the Triage Court appearance



# 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
- 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

# Double Booking in the Scheduling of a Trial Date at the First Case Conference

- Any concerns about the setting of a trial date must be addressed to the office of the Chief Justice after the trial date is set at the first case conference
- Given the current collapse rate of the majority of family trials, and in order to ensure a litigant access to an early trial date, and in order to balance the limited resources of the Court, counsel must be prepared to double book
- Double booking is an accepted and recognized practice in criminal, civil and child protection proceedings and has been addressed in a recently released Law Society of Manitoba Communiqué

# 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

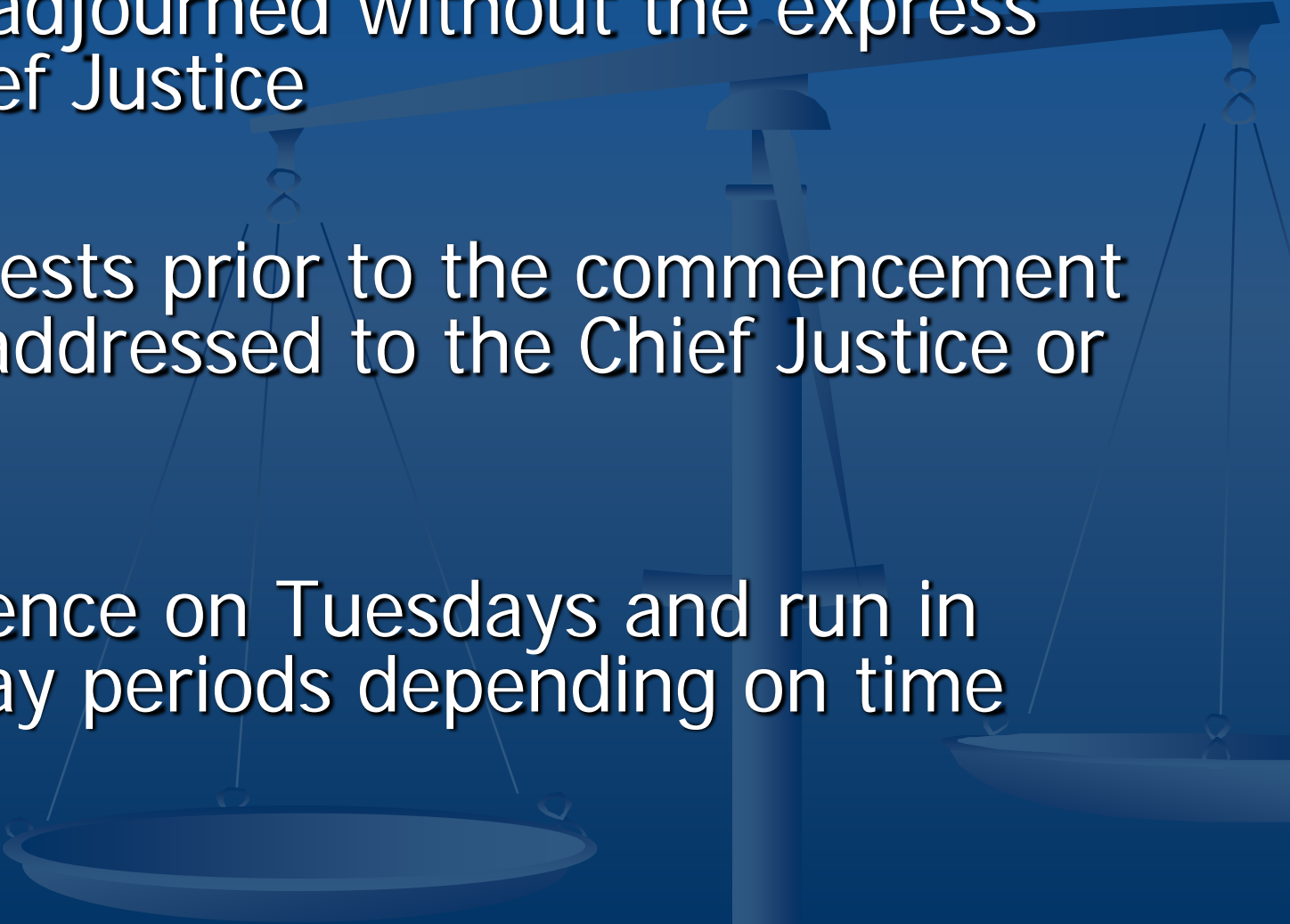
- The case conference judge will be best positioned to understand the issues in dispute and, by extension, will be in the best position to provide feedback (mindful of the principle of proportionality) in respect of the viability and necessity of prospective motions
- The amendments to the powers of the case conference judge will stipulate that a case conference judge's order is reviewable only by the same case conference judge



# Certification for Trial Readiness

- If both parties agree, they may file a written certification of trial readiness
- If no certification, then parties must attend Trial Readiness Conference with case management judge
- Date for Trial Readiness Conference must occur not later than 45 days before trial date

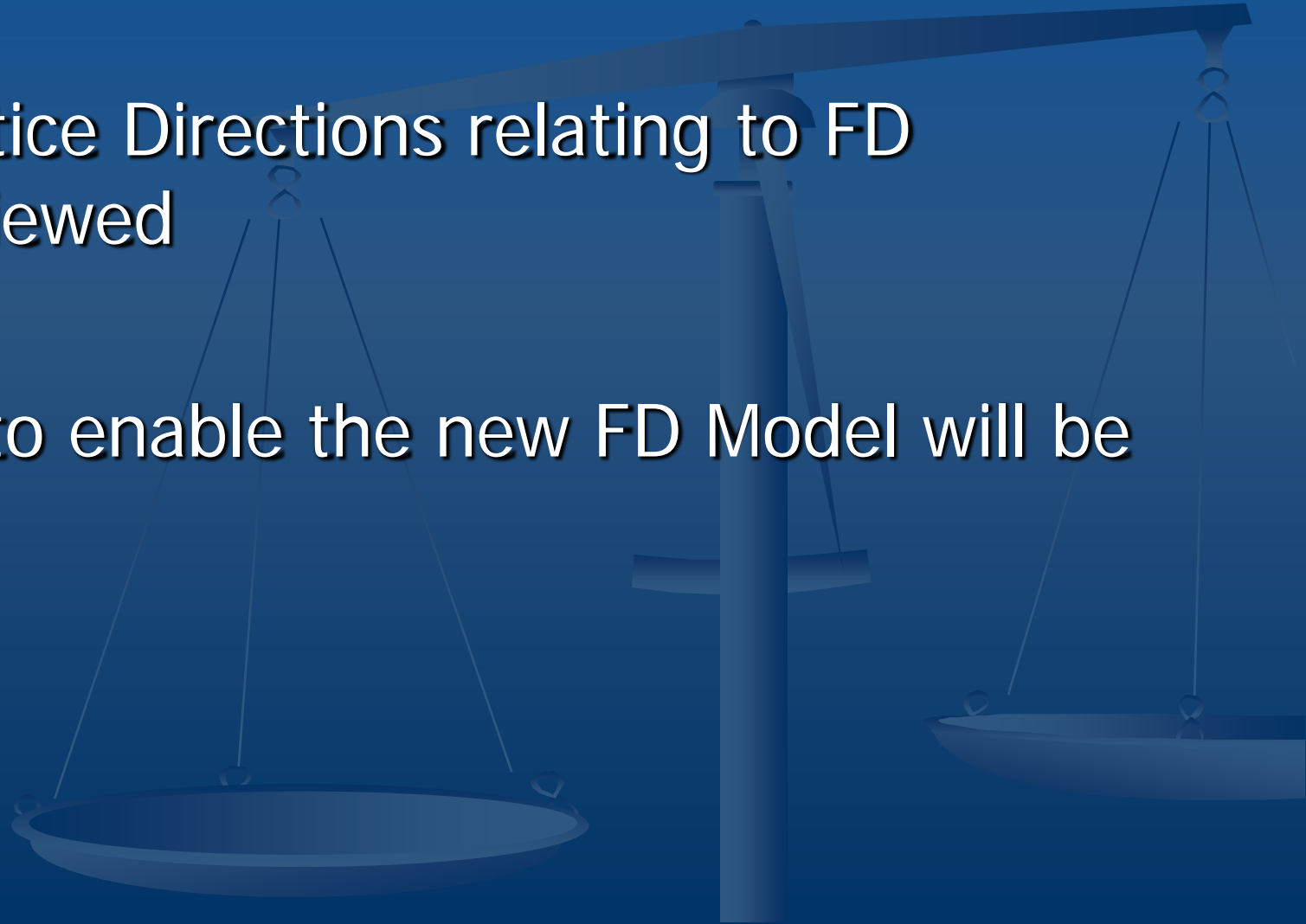
# The Trial

- 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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# QB Rules and Practice Directions

- All QB Rules and Practice Directions relating to FD matters are being reviewed
- Any changes needed to enable the new FD Model will be made



# 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

