COURT OF KING'S BENCH OF ALBERTA

Justice R.A. Jerke

Court of King's Bench of Alberta

The Story of Re-Imagining the Family Justice System

Study Leave Report

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EXECUTIVE SUMMARY

In 2013 The National Action Committee on Access to Justice released a series of reports including "A Roadmap for Change." The reports encourage leadership by the Courts and a culture shift to address access to justice issues in relation to the family law system.

The Reforming the Family Justice System initiative (RFJS), launched in 2014, has identified strong societal support for a significant shift in how family matters are addressed. The outcome this multi-stakeholder collaboration seeks to achieve is to re-imagine a family justice system specifically designed to achieve well-being for families. The work, until lately, has been mostly in Edmonton and Calgary, but there are indications of strong support for system change in smaller, regional centers.

Numerous reports confirm that there are serious problems with the family justice system: it is in crisis; it fails to serve families; and it does more harm than good. This report shows how these concerns are explained and confirmed by brain science, and how knowledge of, respect for, and use of brain science can help to address these problems.

The report describes how, by responding at a very broad system level to the strong calls for a culture shift, the entire system can transform from an adversarial model of dispute resolution to a model focused on achieving family well-being.

The report identifies the principles, processes, and tools that can be employed to achieve such a broad-based system change. It goes on to describe the critical steps that have already been taken and are continuing to be made to adopt and use those principles, processes, and tools to effect system transformation.

Concrete examples of system transformation at the cultural, innovation, and regime levels are provided.

The focused and continuing work of RFJS in the community of Grande Prairie is described, as is the process presently underway with community collaborators to design a safe and effective pilot project for use by the Court to further advance the broad-based system change. While this pilot is still in development, significant progress has been made to inform how that pilot can be designed in conjunction with the overall system transformation, not as the end, but as a means to an end: a system designed to achieve well-being for families.

Measurement of outcomes and societal support is discussed from various perspectives: the community; formal justice system (family law system); the strategy mapping tool being used by the collaborators; national and international attention; and plans for formal evaluation of well-being outcomes.

The report then sets out my findings concerning readiness of the community in Grande Prairie to design and implement a re-imagined family justice system, the value of brain science education for law students, and the status of the proposed pilot project for Grande Prairie.

Finally, I offer recommendations to the Court for leadership actions it can take to further advance, scale, and implement a re-imagined family justice system. A number of these have

already been undertaken by the Alberta Court of King's Bench, and they and the other recommendations are offered to the judiciary as a whole.

While I held the pen for this report of my study leave, it is obvious that the work of the RFJS and the information to generate this report involved and continue to involve a great number of very thoughtful and dedicated folks. The Co-Conveners and Co-Leads of the RFJS, all of the community collaborators in the Grande Prairie meetings, the Dean, faculty, staff, and students here at the University of Alberta, articling students from all three Alberta courts, legal counsel, and the many community leaders I have had an opportunity to meet and interact with, have all provided invaluable assistance and contribution to both the RFJS and my study leave.

Thank you to each and every one of you for your unique and important role in this work.

I need to make special mention of Dr. Nicole Sherren for her critical explanations of various aspects of brain science and her steady support of this transformation. Thank you.

And to Diana Lowe, KC I offer my heartfelt thanks for your unwavering commitment to this work, your vast knowledge of RFJS history and the wealth of resources that exist, and your assistance with every aspect of the work undertaken during this leave. Thank you.

Finally, I offer my thanks to Chief Justice Moreau for having the vision to support and advance the work of the RFJS, and for likewise supporting me in this study leave venture.

It's all about the children.

INTRODUCTION

The Story of Re-Imagining the Family Justice System

In 2013 The national Action Committee on Access to Justice in Civil and Family Matters (Action Committee) released a series of reports including *Meaningful Change for Family Justice: Beyond Wise Words*[1] and *A Roadmap for Change*.[2] The reports identify serious problems with our family justice system: not just that it was in crisis, but that it was failing families and causing more harm than good. The reports encouraged leadership by the Courts and a culture shift to address access to justice issues in relation to the family law system.

The RFJS, initiated in 2013, has identified strong and broad societal support for a significant shift in how family matters are addressed. The outcome this multi-stakeholder collaboration seeks to achieve is to re-imagine a family justice system specifically designed to achieve well-being for families. The work, until the last few years, had been mostly in Edmonton and Calgary, but there is strong support for system change in smaller, but important regional centers such as the County of Strathcona, Grande Prairie, and Lethbridge.

The RFJS is advancing a broad-based system change concerning the family justice system which implicates and includes all of the sub-systems within the large system, including the formal justice/adjudication system. The initiative is recognized provincially, nationally, and internationally as a leader in systems change. But system change is complex, non-linear, and takes time. Think how long it took for us to accept that smoking is bad for our health – a simple message, attached to a simple behavioral action, but which still requires significant change at multiple levels to influence well-being of persons and families in a meaningful way. Or to use seatbelts, or blue boxes for recycling. There are already strong examples of real change taking hold in our family justice system, and many people in the broader community and in the RFJS, are empowered when they see the Court and other key institutions embracing the change.

How I've incorporated the RFJS into my own practices

I have been a lawyer and a judge for many years, and have been aware of many of the tools and approaches that have been identified as better approaches to family matters. Indeed, I have applied some of them in my courtroom. However, I clearly remember the first time I

[1] Action Committee on Access to Justice, *Meaningful Change for Family Justice: Beyond Wise Words,* Ottawa, 2013: https://static1.squarespace.com/static/60804beaba3bc03016513a59/t/61620f1e0a00fb64019fb0e8/1633816351446/Report+of+the+Family+Law+WG+Meaningful+Change+April+2013.pdf

[2] Action Committee on Access to Justice, *Access to Civil and Family Justice: A Roadmap for Change*, Ottawa, 2013: https://static1.squarespace.com/static/60804beaba3bc03016513a59/t/6148d41ec33dd65ced337f8d/1632162847278/RoadmapForChange.pdf

decided to apply the overarching strategy of the Reforming the Family Justice System (RFJS) initiative on a file that had been in the family justice system for years.

It was my first time hearing an application by these parties. It was a special chambers hearing with several red flags. That might be what made me feel that this was a case that cried out for a different approach. The file was 14 inches thick. They had a dozen previous orders, all with respect to parenting. They had reached a "final resolution" six months prior and were now applying to vary it. Both parents had well-paying jobs, but neither of them had a lawyer because they had exhausted their financial resources.

In such a scenario, there are legal principles that I could have employed, including simply declining their application and enforcing the previous order. While simple, this approach worried me. I was aware that brain science demonstrated that parental conflict can cause changes in the developing brains of children and can manifest in a host of very serious lifelong outcomes.

I worried for this family.

I decided to try something different. I decided to apply the principles from the RFJS and try to achieve a better outcome for this family.

I'll get back to my story shortly.[3]

My study leave

This study leave builds on significant work that has already been done in the Alberta Court of King's Bench including:

- ✓ The study leave undertaken by Justice Andrea Moen which focused on brain development and the impact of high conflict on the development of children's brains[4].
- ✓ The Court's leadership in the RFJS initiative and numerous learnings and connections which have been developed.
- ✓ The study leave undertaken by Justice Donna Shelley which focused on the development of tools to assist judges in dealing with high conflict matters.[5]
- ✓ The Court's strategic pillar to support the RFJS, early resolution, and referrals given the reality that many family issues are non-legal and better suited to other forums outside of the Court or legal processes.

[3] This story was written based on interviews I did with an RFJS summer student, and has been published in case studies and articles about the RFJS, and used in presentations I've given to describe how the RFJS has influenced my practices in family matters.

[4] Her study leave report is available to Judges on the National Judicial Institute Website. Copy on file with the writer.

[5] Her study leave report is available to Judges on the National Judicial Institute Website. Copy on file with the writer.

- ✓ The Court's strategic priority to critically review the role of the Court in the justice system and align existing services with that defined role, in order to address the current crisis in lead times and facilitate timely access to the Court where appropriate.
- ✓ The Court's support for a single trial Court in Alberta for family law matters including separation and divorce, child welfare and family violence cases.
- ✓ The Court's commitment to addressing the Calls for Action of the Truth and Reconciliation Commission[6].
- ✓ The approach to resolution of family disputes embraced in recent amendments to the *Divorce Act*.[7]

My study leave has 2 objectives, both of which are aimed at the overall objective of re-imagining a family justice system designed to achieve family well-being:

- ➢ To undertake a project to evaluate the readiness of centers outside of Edmonton and Calgary to implement, at the broad system-delivery level, a re-imagined family justice [law] system[8]; and examine how the Alberta Court of King's Bench can act as a leader, to advance, scale out and up, and implement that system.
- ➢ To encourage the understanding, value, and use of brain science in legal training.

I suggest there are 6 key resources to effect re-imagination of the family justice system: and they all begin with "C":

- Creativity
- Curiosity
- Commitment
- Community
- Compassion
- Brain Science. While I understand that's not a "C", it is all about the children.

Now, back to my story … *I decided to do something different. I decided to apply the principles from the RFJS and try to achieve a better outcome for this family.*

I noted to the parents in Court that they had already had too many judges, too many orders, and too much conflict, and this was causing problems for their family. Heads nodded in the gallery. I ordered that, from this point onward, we were doing things differently. Instead of having a different judge for every application, they were to work only with me. I was seized with their file, so any problems would come to me. More heads nodded. Then, rather than

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[6] Truth and Reconciliation Commission of Canada, "Truth and Reconciliation Commission of Canada: Calls to Action," https://publications.gc.ca/collections/collection_2015/trc/IR4-8-2015-eng.pdf

[7] *Divorce Act* (R.S.C., 1985, c. 3 (2nd Supp.))

[8] In this report I refer to the broad system as the family justice system, and the formal justice system which is part of the broad system as the family law system.

making a decision, I directed them to important resources. I told them to watch the Brain Story and Resiliency videos on the Alberta Family Wellness Initiative website. I explained Adverse Childhood Experiences to them and the harm their conflict was causing to their kids. As well, I gave them other practical tools including an on-line parenting tool and key skills (managed emotions, moderate behaviours, flexible thinking) to enhance communication and to help them work through their conflicts. They followed this original direction, and we had three or four conferences over a number of months. I tried to be innovative and creative with them, coaching and encouraging them to address their issues together. I was not making decisions, but rather empowering them to do so.

On the day of their last court application, almost everything had been resolved. They had come to their own decisions. I only made one tiny decision. They had figured everything else out themselves. They didn't need me, or any judge, anymore. All they had needed were the tools to do things differently. They needed somebody to stand up and say: "We're going to do this a different way."

There was a lot of emotion in the courtroom that day. They said, "I don't know why we didn't do this years ago. This feels so much better."

While this was a great outcome for this family, it was also a learning experience for me that I wanted to share more broadly. It underlined that if we do things differently, way differently, people will embrace it. People will embrace it because it's the right thing to do. They know in their hearts that it's the right thing to do. The surprise is not that it might fail. The surprise was that it works so well.

This story is not meant as an end in itself. It is meant as a means to an end. This report is not intended as an end in itself, but is also a means to an end. That end is family well-being.

This is the report of my efforts, and will include:

In **Part 1 – We've Had a Problem,** I summarize factors driving a re-imagination of the family justice system.

In **Part 2 – Calls for Change**, I describe the longstanding calls to bring about drastic change in the family justice system, and how the problems have persisted in spite of efforts to reform the system.

In **Part 3 – Responding to the Problem**, I describe efforts both to improve the family law system and to transform the family justice system.

In **Part 4 – Processes to Support Transformational Change,** I describe the frameworks, processes and tools used by the RFJS to advance system transformation and manage the complexity.

In **Part 5 - The RFJS is a Leader in Transformational Change,** I report on the many examples of the RFJS being used as a case study in transformational change by leading academics and practitioners.

In **Part 6 - Examples of Systems Transformation in Alberta,** I describe the many changes that have been undertaken at the levels of culture shift, innovations and systems change.

In **Part 7 - Re-imagining the Family Justice System in Grande Prairie**, I describe the interest and commitment to change by a cross-sector collaboration of community members in Grande Prairie.

In **Part 8 – Measurement**, I review measurement tools used and proposed for the initiative and the community-level interest in ensuring that the changes are leading to the desired outcomes.

In **Part 9 – Findings,** I set out my findings including how the Court of King's Bench has already exercised leadership to advance change; and observations concerning brain science education.

Finally, my **Recommendations.**

DISCUSSION

PART 1 - WE'VE HAD A PROBLEM

What's the Problem?

On April 13, 1970 the Apollo 13 spacecraft experienced a crippling explosion. Astronaut Jim Lovell called mission control in Houston to report the problem, 'Okay Houston we've had a problem here.' Houston responded, 'Say again please.' The astronaut responded, 'Uh, Houston, we've had a problem.'

The command module later splashed down on target and the mission has been referred to as a successful failure: all crew members survived a catastrophic accident.

The Family Justice Working Group (FJWG) of the Action Committee began its work by assembling and obtaining a comprehensive summary of the large body of material on the topic of enhancing access to family justice, both in Canada and elsewhere. A background report was prepared by Erin Shaw.[9] At pages 5-6 she describes (quoting significantly from the Ontario Civil Needs Report[10]) what she sees as, 'The Problem.'

> Civil legal needs studies … have illustrated the frequency of family law problems, their disruptive impact, and their tendency to cluster … Family relationship problems are also among the most difficult, complicated, and time consuming to

[9] Erin Shaw, *Family Justice Reform: A Review of Reports and Initiatives*, (Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters, April 2012), https://www.cfcj-fcjc.org/sites/default/files/docs/2013/Family%20Justice%20Reform%20Review%20-%20April%2015%20Final.pdf

[10] *Report of the Ontario Civil Legal Needs Project, Listening to Ontarians (May 2010) Ontario Civil Legal Needs Project Steering Committee*, online: http://www.lsuc.on.ca/with.aspx?id=568 p. 57. [Referred to as the "Ontario Civil Legal Needs Report"]

resolve. This reality translates into making them most disruptive to people's daily lives and most draining on their resources.[11]

Not only are family law problems common and complex, people with them appear to be among the most likely of those with civil legal problems to seek assistance from the traditional legal system …While hundreds of thousands of families are turning to the justice system to help them resolve these complex and important problems, there is an almost universal recognition that the system is failing them. Many recent reports take that as a starting point without exploring why that is in detail, but those that do raise consistent and familiar concerns.

First and foremost, is a concern about the impact of parental conflict on children and the tendency of the adversarial system, and the adversarial culture, to promote conflict.

…

The strengths of the adversarial system as an effective truth finding system, as a locus for the public resolution of intractable private disputes, and as a forum to establish or clarify legal principles of wide applicability are recognized and respected. The courts are a valued last resort for those who simply cannot resolve their disputes on their own. However, this does not mean the family justice system needs to be court-focused and it is important to understand how the traditional adversarial culture can not only fail to alleviate conflict, but often exacerbates it. The New Brunswick Access to Family Justice Task Force Report[12] put it bluntly: "It [the adversarial system] is effective in criminal and civil cases, but it is the worst model to resolve family law cases".

…we must not offer as a first resort for separating families an adversarial system that by its very nature often heightens conflict and threatens emotional well-being. (Emphasis added. Quoting from BC's Family Justice Reform Working Group[13])

The final report of the FJWG, *Beyond Wise Words Report*[14], summarized the problems as follows:

> The problems identified in the reports that precede this one were distilled in the background paper prepared for the FJWG as follows:

- there is a built-in tendency for adversarial process to polarize spouses and exacerbate conflict;
- parental conflict can be very harmful to children;

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[11] Ontario tends to refer to "family" as "civil". Hence the reference to "civil legal needs".

[12] *Report of the Access to Family Justice Task Force*, Government of New Brunswick (January 23, 2009), p. 9, online: http://www.legal-info-legale.nb.ca/en/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=34&cntnt01returnid=252

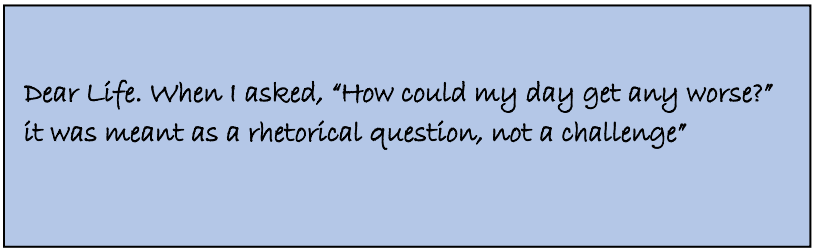
[13] *A New Justice System for Families and Children: Report of the BC Family Law Reform Working Group (2005)*, Justice Review Task Force, online: http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf

[14] *Supra*, note 1

- conflict tends to protract process, which already tends to be complex, costly, lengthy and unpredictable;
- justice systems need to do a better job of providing integrated services and multidisciplinary responses to the many "non-legal" dimensions to issues that arise when families are restructuring: and
- the complexity of family breakdown and the relative inaccessibility of the courts results in many family law problems remaining unaddressed and unresolved[15].

  We see the mounting pressure of unmet family legal need on our courts where increasingly large numbers of self-represented litigants struggle to use a system designed for highly trained professionals. At the same time, research makes increasingly clear the cost and suffering, in the form of additional legal, social, health, and financial problems that result from the failure to resolve family law issues at the first instance. We wonder at the ultimate impact this will have on public confidence in the justice system and on civil society. (p.6**)**

And 'The Problem' gets worse.



16

The material compiled and reviewed by the FJWG included not only a summary of deficiencies in the system, it also considers responses and initiatives undertaken to address these challenges:

> The family justice system has worked hard to respond to these challenges and it has introduced many changes over the last twenty years. Court rules have been modified to accommodate more flexible and informal processes. Judicial roles have expanded to include case management and settlement facilitation. In most jurisdictions governments provide legal information, legal advice, self-help services, parenting programs, subsidized mediation, and referral services for family litigants. In many courts, particularly unified family courts**,** the delivery of such services is seen as indispensable to the mission of the family justice system. Finally, the legal profession has explored and widely adopted non-adversarial ways of thinking about and responding to family law disputes. Consensual family

[15] Thomas A. Cromwell "Access to justice: towards a collaborative and strategic approach" *University of New Brunswick Law Journal* (January, 2012), online: www.highbeam.com/doc/1G1-302776655.html

[16] Sign on the wall in my garage.

> dispute resolution processes like mediation and collaborative law are widely utilized across Canada. (p.7)

But the FJWG concludes (at pages 7-8):

> In spite of all these changes, reports and commentaries on the effectiveness of the family justice system continue to call, often forcefully, for even more change. The recent report of the Law Reform Commission of Ontario, for example, is one of a number suggesting that while past reforms have been helpful, they have not been sufficient, and that change of a fundamental nature is still needed…..The language of "drastic change" and "fundamental overhaul" corresponds with calls made in earlier reports for a "paradigm shift" and for a family justice system that is "fundamentally different from what we have known in the past.[17]"

The Action Committee reports essentially said that the family justice system is in crisis; the system is not working for families; and indeed, the system is doing more harm than good. These reports provide the opportunity for change, and demonstrate the urgency for change.

In other words, "Houston, we've had a problem".

Brain science evidence confirms and explains the problem

The FJWG final report remarked that there is "surprisingly little empirical information about the nature and scale of family disputes in society generally, or about the adequacy of the justice system's response or the consequences of adequate or inadequate resolution of family disputes." (p. 61)

Actually, we know a lot. There is powerful scientific evidence - neuroscience – that has advanced the understanding of the serious consequences of inadequate resolution of family disputes, and the need to build resilience.

Neuroscience is a multidisciplinary science that examines the structure and function of the human brain and nervous system. There is now very solid scientific evidence showing the short and long term impacts of early childhood adversity on both the development of children's brains (neuro-development), and on changes to gene expression (epigenetic changes).

While the evidence base has been building since at least the 1950s, there have been many key advances in understanding since the early 1990s – the biggest one around epigenetics.

Well and broadly known studies show linkages between adverse childhood experiences (ACEs) and bad outcomes. Childhood experiences such as physical, emotional, and sexual abuse; physical and emotional neglect; parental mental illness; domestic violence; and parental substance abuse are some such experiences. The outcomes are serious and include alcoholism;

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[17] BC Justice Reform Working Group, Melina Buckley, *Access to Legal Services in Canada: A Discussion Paper* (Working Group on Access to Legal Services of the Action Committee on Access to Justice in Civil and Family Matters: April 2011)

drug use; depression; suicide attempts; violent behaviour, incarceration, heart disease, and diabetes.

These observations and linkages have been and are being investigated by neuroscientists who study brain development during childhood; brain architecture; changes to gene expression and hormone production, particularly stress hormones (epigenetics); support for development (resiliency); and the ability of brains to reverse or compensate for negative influences (neuroplasticity).

In 2012 Justice Andrea Moen (Alberta Court of Queen's Bench, now retired) studied the linkages and prepared a report for the Canadian Judicial Council following her study leave on 'The Impact of High Conflict in Families on the Brains of the Children". [18]

> There is no doubt in my mind that the research clearly demonstrates that early social adversity causes changes in the brain structures of children and in their endocrine responses to stress. ….. (p.3)

In 2010 – 2012 the Norlien Foundation (now known as Palix Foundation) hosted a symposium called "Early Brain & Biological Development: A Science in Society Symposium." The symposium drew together many of the top neuroscientists in the world and change leaders from Alberta and beyond. In her letter of welcome to the conference Nancy Mannix, Foundation Chair and Patron, stated: "this Symposium will serve as a model for the creation of a foundational base of interdisciplinary knowledge and scientific discourse in early brain and biological development that will significantly contribute to an integrated and comprehensive system of response by creating a common framework of knowledge and language for researchers, policy makers, practitioners, and program developers."[19]

Justice Moen's report very succinctly summarized much of the relevant science. Here are some of her observations:

> The brain is not fixed at birth. It is plastic. Experience shapes it. As we experience life, first as children and then as adults, the brain changes. Synaptic connections become strengthened by experience, or disappear when not used. As a person learns, the post synaptic receptor may become more or less receptive to neurotransmitters.
>
> The brain changes, therefore, as a result of the interaction between nature and nurture. The gene comprises the nature part of development. The environment is the nurture part that influences the expression of the gene. Environment is both chemical and social. (p.14)
>
> Some environmental factors can affect genes in a way that lingers, lifelong, or even into additional generations… These changes include those that organize the development and structure of the brain. (p.15)
>
> … Epigenetics suggests that life-long and intergenerational 'programming' exists, including characteristics such as behaviour, emotion, and personality. This means

[18] *Supra*, note 4

[19] On file with the writer, with thanks to Prof. Chris Sprysak.

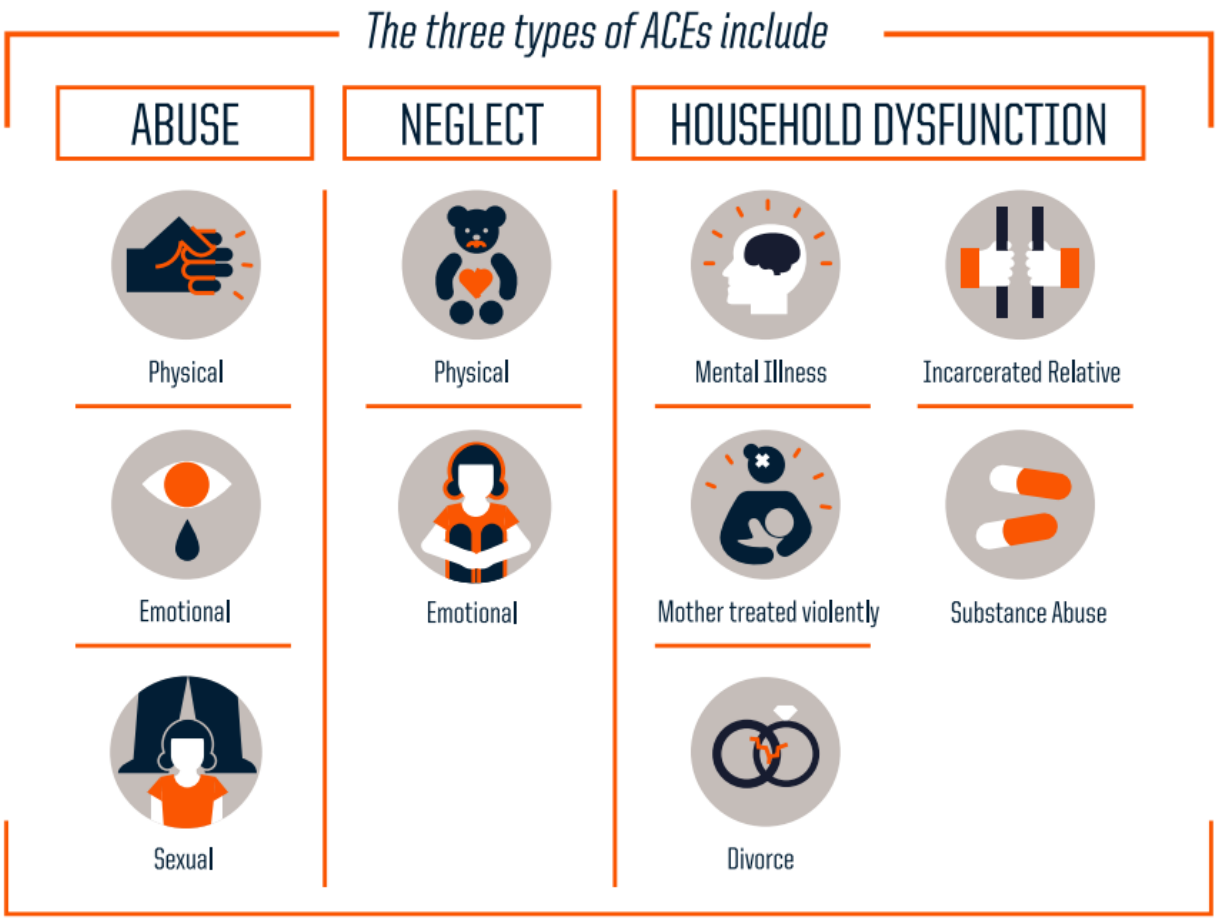
> environment has a lasting impact on children and their offspring. The challenge will be in determining what epigenetics does or does not account for in behaviour of human beings, which behaviours are learned and then preserved via neuron interconnections, and what is a combination of both. (p.20)
>
> There has long been powerful evidence that adults who experience prolonged exposure to highly stressful environments that trigger "fight or flight responses", such as combat, exhibit permanent and highly predictable alterations to their behaviour and psychological state. These deleterious changes occur without any associated physical trauma. Given that fact, it is not surprising to learn that children who are exposed to high levels of stress may undergo similar effects.
>
> Toxic environments are stressful for children. (p.20)
>
> It is my view that the adversarial process followed in the courts across this country exacerbates the conflict in families. We, in the courts, contribute to an even more toxic environment every time we resort to the traditional adversarial process. Every time there is an application before us, that application requires the parents to take at least competing, if not opposing views. By its very nature, a family court proceeding is a conflict. (p. 26)

Brain science includes the Adverse Childhood Experiences Study, or ACEs. This is the largest study of its kind ever done to examine the medical, social, and economic effects of adverse childhood experiences over the lifespan. The original study can be found at:

> Felitti, VJ. "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study."[20]

The 10 adverse childhood experiences identified in this study are often divided into 3 categories: abuse, neglect, and household dysfunction.

[20] American Journal of Preventive Medicine, 1998 May;14(4):245-58.



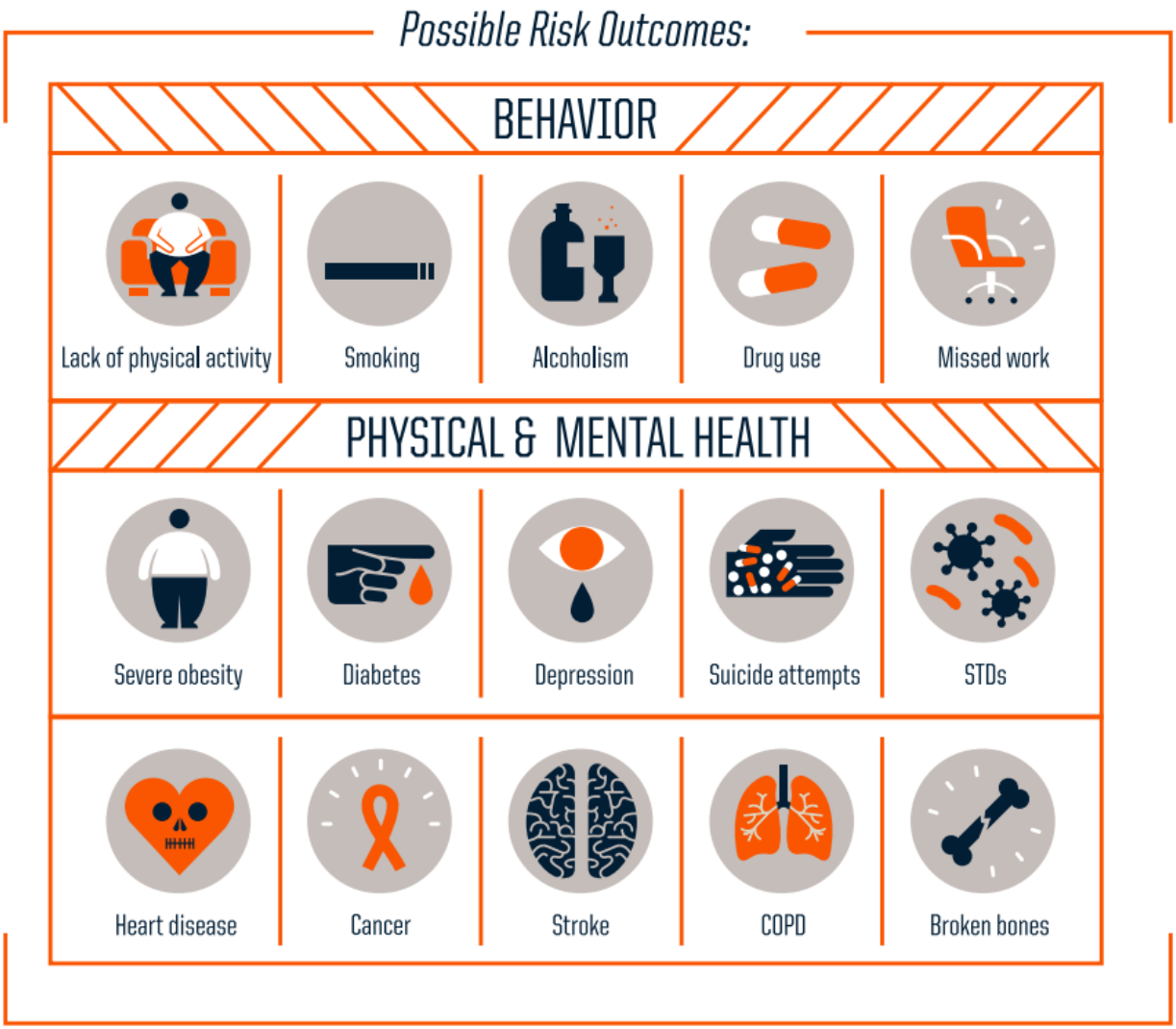
https://www.rwjf.org/en/library/infographics/the-truth-about-aces.html

We can see ACEs are directly relevant to family justice issues:

> Separation and divorce is one of the ten ACEs. The three categories of ACEs: abuse, neglect and other household dysfunction, are also part of the situations arising in child welfare and family violence matters. The family justice system often exacerbates, even causes, toxic stress for children and adults involved with it, because it is based on an adversarial model of dispute resolution that encourages a win-lose paradigm of conflict, rather than de-escalating conflict and creating conditions for collaborative decision-making. Parents can be caught up in a downward spiral that becomes about winning or losing, rather than about acting in ways that reduce the stress and support their child's brain development and resilience. Unfortunately, the removal of children from their family home and the incarceration of a parent are themselves ACEs. So what this means is that the responses we've often had to these situations, have actually added to the adverse experiences of children in these families.[21]

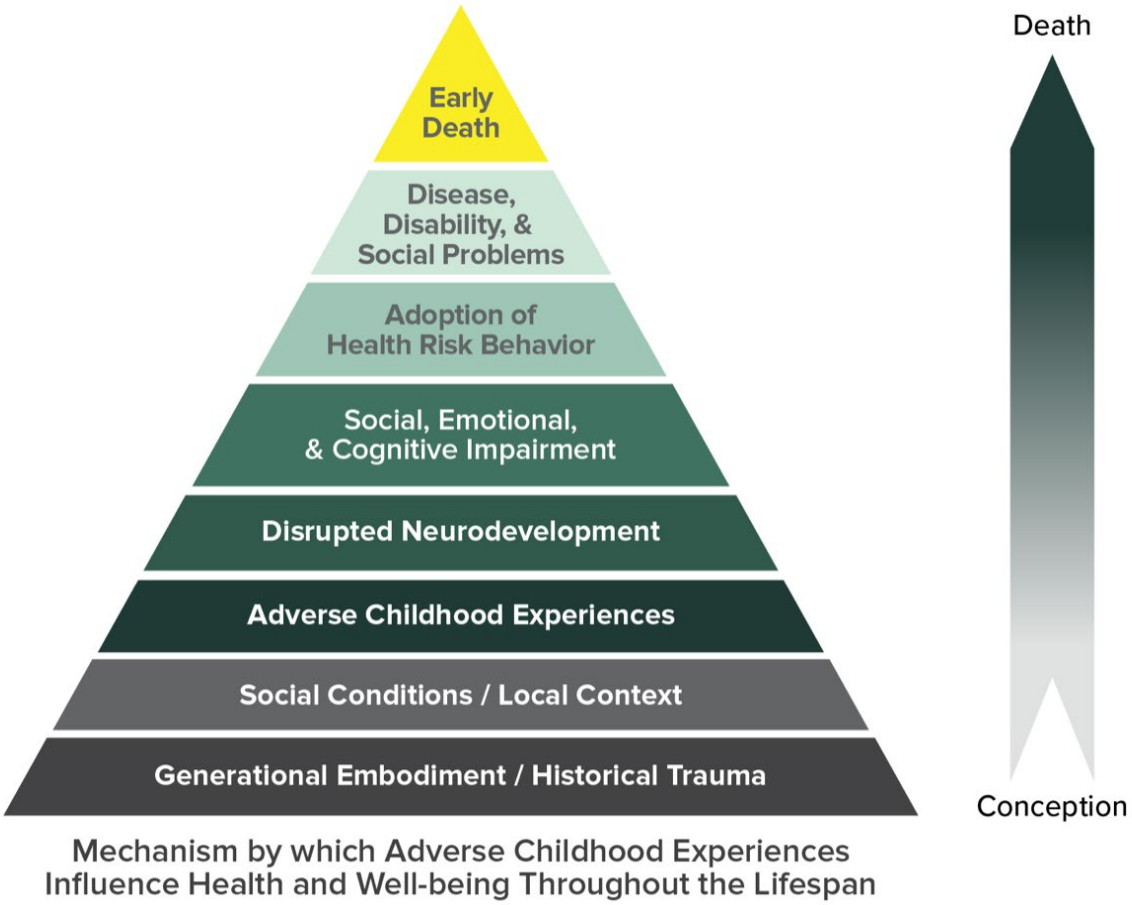
[21] From various slide shows prepared by Diana Lowe, KC. On file with the writer.

And the negative consequences of ACEs can be very serious indeed, and include negative behaviours such as substance abuse; mental health issues such as depression and suicide; and physical health issues such as diabetes, heart conditions, stroke, and cancers.



https://www.rwjf.org/en/library/infographics/the-truth-about-aces.html

The ACE pyramid (below) represents the conceptual framework for understanding the study. Harms arising from adverse childhood experiences occur throughout the lifespan, and can even result in early death.



Mechanism by which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan

https://www.cdc.gov/violenceprevention/aces/about.html

ACEs can also be transferred inter-generationally through epigenetics, which is very much aligned with Indigenous knowledge of inter-generational harm. This relatively new understanding is now well researched and accepted. Here is a question posed to Dr. Nicole Sherren, PhD and her response:

> *Q: The mention of epigenetics caught my ear. My (now somewhat dated) understanding of epigenetics is that this is still novel science with very few conclusive studies showing specific human traits as epigenetic phenomena.*
>
> A: Epigenetics has been a field of study since the 1940s, particularly due to its role in cell differentiation (think fetal development), but it wasn't until the early 1990s that research definitively showed that postnatal experiences and environments also produce stable changes in gene expression. Over the past 30 years, cross-species research from fruit flies all the way to humans has confirmed that this is a basic principle of biological development. Think of it as your biology trying to set you up to do well in the environment you're born into.
>
> ...

> Rather than thinking of epigenetic changes as producing specific "traits", it is more helpful to think of them as producing stable biological changes that affect risk for certain types of outcomes …
>
> There is a strong consensus within the scientific community that most outcomes, whether they are learning, social or health-related, result not just from our biology and not just from our environment, but from the interaction between the two. Epigenetics is one of the key pathways through which the environment influences and shapes our biology, for better or for worse.
>
> However, since we aren't all born with the same genes (i.e., different alleles affect gene function) and we don't all have the same experiences and environments or even perceive those in the same way, the pathway between a specific experience and a specific outcome is rarely clear-cut. The research provides an understanding of the principles of how this works and the risk factors in poor outcomes but it does not provide specific rules that can be applied on an individual basis. For that we need to consider individual context. This distinction is particularly important in the justice system, where professionals are usually required to make decisions based strictly on the evidence in front of them. The evidence does not always tell the whole story and is part of the reason why Gladue reports are required for Indigenous defendants. In the family justice system, where you're seeing families with all sorts of different strengths, challenges, and contexts, what's good for one family may not be good for another, even if it appears on the surface that they have similar circumstances. It may take a deeper dive into the circumstances of that family rather than simply a consideration of the evidence presented to find the best solution for each. In a similar vein, even though it's tempting to think that the research can provide a specific formula that can be applied to all so that judgements across families are seen as fair or egalitarian (e.g., no "overnights" for children before some arbitrary age, say age 3), that might not work for every child or every family. What's unique about the RFJS initiative is that it's trying to empower and equip families – who know their context best – to make those decisions without the need of the court. (Emphasis added)[22]

A very useful and accessible resource to address questions about ACEs has been developed by the Harvard Centre on the Developing Child.[23]

In Alberta, the Palix Foundation's Alberta Family Wellness Initiative (AFWI) has synthesized the extensive research, supported new research, education, and done extensive knowledge mobilization including sharing knowledge of brain science in a free, online, 19-module brain story certification program. Because its online, it is available anywhere - in English and French. I have completed the program, received credit as part of my Continuing Judicial Education, and highly recommend completion of the course by all members of the justice system.[24]

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[22] Dr. Sherren's full response is on file with the writer.

[23] https://developingchild.harvard.edu/resources/aces-and-toxic-stress-frequently-asked-questions/

[24] AFWI has also created a number of public education tools including a video called 'How Brains are Built: The Core Story of Brain Development.' https://www.youtube.com/watch?v=LmVWOe1ky8s

There is a very informative and inspiring video on the AFWI website with Dr. Robert Anda, co-principal investigator of the ACEs research, speaking on the effect of Adverse Childhood Experiences (ACEs) on children, the related social outcomes, and the opportunities that these highly predictable outcomes create for change.[25] He describes the solidly predictable negative outcomes from Adverse Childhood Experiences, and sensibly states that what is predictable, is preventable.

PART 2 – CALLS FOR CHANGE

The Action Committee released its final report, '*A Roadmap for Change'*, in late 2013.[26] The report called for a fresh approach and a new way of thinking:

> ### CULTURE SHIFT
>
> Many dedicated people in our civil and family justice system do their best to make the system work and many reform efforts have been put forward in past years. However, it is now clear that the previous approach to access to justice problems and solutions, far from succeeding, has produced our present, unsustainable situation.
>
> We need a fresh approach and a new way of thinking. In short, we need a significant shift in culture to achieve meaningful improvement to access to justice in Canada — a new culture of reform. As Lawrence M. Friedman observed, "law reform is doomed to failure if it does not take legal culture into account."[27]
>
> This new culture of reform should be based on six guiding principles. Taken together, these principles spell out the elements of an overriding culture of reform. A new way of thinking, while important, is not enough. We also need innovative ideas, creative solutions and specific goals, as we set out in part 3. A full embrace of a new culture of reform is a precondition for developing those more specific measures.[28]

The report offered 6 guiding principles that make up this new culture:

1. Put the Public First

2. Collaborate and Coordinate

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[25] https://www.albertafamilywellness.org/resources/video/the-ace-study-building-self-healing-communities I encourage you to watch this video.

[26] *Supra*, note 2

[27] Lawrence M. Friedman, "Is There a Modern Legal Culture?" (July 1994) 7:2 Ratio Juris 117 at 130.

[28] For a discussion on shifting culture in the legal profession, see Canadian Bar Association, Legal Futures Initiative, *The Future of Legal Services in Canada: Trends and Issues* (Ottawa: Canadian Bar Association, 2013) at 29, 34 and 39.

3. Prevent and Educate

4. Simplify, Make Coherent, Proportional and Sustainable

5. Take Action

6. Focus on Outcomes

The Problem Persists

When the Apollo 13 space mission was dramatized in a film, Hollywood changed the quote from the radio communications between the astronauts and mission control from 'Houston we've had a problem to 'Houston, we have a problem.'

When it comes to the family justice system in 2023, 'Houston, we have a problem.'

And in the family justice system, the calls for change continue. For example, on January 4, 2023 the newly formed Alberta Family Lawyers' Association sent an open letter[29] which stated in part:

> The intent of forming this organization is to add a loud voice for Family Lawyers in advocating for changes to Family Justice in Alberta.
>
> In line with this objective, AFLA is announcing the first ever "Day of Action" for Alberta lawyers to draw public notice to the family justice crisis in this province.

In her 2020 report, Alberta Queen's Bench Justice Donna Shelley (now retired), articulated a number of persistent problems with civil (including family) claims including long wait times for trials and special chambers applications; matters which include a high number of appearances; use by a small number of litigants of a disproportionate amount of Court resources; and stress caused by litigants on many folks: those who must deal with them, other parties, family members, and others close to them (especially their children). She identified that many of the problems she was called on to adjudicate were often not legal, but instead were emotional, psychological, communication, poor parenting skills or inability to parent.

Her report is specifically focused on techniques/methods to manage the issues, of 'challenging litigants' once they are in the formal justice system.[30]

[29] Copy of this letter is on file with the writer.

[30] *Supra*, note 5

PART 3 – RESPONDING TO THE PROBLEM

Responding to the problem by improving the family justice system

Since the release of the Action Committee Reports there have been a number of commendable innovations launched or strengthened in Alberta by the Court in accordance with its strategic plan to 'lead efforts to refocus the litigation process, while at the same time improving the Court's processes.' These initiatives include:

1. Judicial settlement facilitation including mediative-like processes such as Early Intervention Case Conferences (EICCs) which are brief, focussed settlement conferences; and Judicial Dispute Resolutions (JDRs) which are longer and more comprehensive settlement conferences. In both processes Judges very often provide an evaluation (opinion) to assist the parties to come to a resolution. Some JDRs are made binding by agreement of the parties such that the Judge decides the case if the parties are unable to resolve it.

2. A Docket system was implemented in May, 2020.[31] Prior to filing a formal application parties must appear for assessment of the services and court processes they will engage in. Some cases are resolved in docket Court, some are directed to some form of alternative dispute resolution (including mediation, EICC, Resolution Counsel, JDR), some are directed to formal Court processes such as ordinary or special chambers hearings, or even to some form of trial. Procedural matters such as disclosure of documents are frequently addressed. Sometimes conditions are imposed such as completion of the Parenting After Separation course, direction to other educational resources including brain science, and use of on-line parenting tools.

3. The Court also implemented a Resolution Counsel program. Resolution Counsel are lawyers trained in mediation and employed by the Court to help parties experiencing a relationship issue reach an agreement. If substantive issues remain unresolved, Resolution Counsel may assist the parties to prepare a litigation plan. Under the program, parties who are being referred to Resolution Counsel will be provided a date in Docket Court for a 1-2.5 hour meeting with Resolution Counsel. Agreements may be formalized as Consent Orders for approval by the Court. At the end of the meeting, a report will be prepared by Resolution Counsel and is available to the Justice sitting in Family Docket Court.[32]

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[31] https://www.albertacourts.ca/kb/areas-of-law/family/family-docket-court

[32] Referrals can be made to Resolution Counsel in cases where: one of the parties is self-represented; one of the parties earns less than $90,000; no other/limited other forms of alternative dispute resolution are available to the parties; prior efforts at resolution have not been successful; and/or the parties are experiencing high conflict or prolonged litigation.

4. There has been an expanded use of Summary Trials. These are a form of expedited trial designed to define, limit, and expedite the hearing and provide final adjudication of disputes.[33]

While it is clear that each of these initiatives is creative, helpful, and useful they are primarily aimed at improving the court's processes and helping to address symptoms of the current crisis in the family law system. It is less clear what impact they are actually having on the broader system or the well-being of affected families. And while it is widely accepted that these initiatives are aligned with the effort to reduce or resolve conflict, it is noteworthy that they are accessed after the parties have already entered the adversarial Court system.[34] The initiatives are all akin to those described earlier in the report of the Action Committee.

Despite all the commendable innovations we have undertaken since 2013, we continue to observe the same basic concerns about the family justice system as were articulated in 2013. Just as observed by the Action Committee, they are not sufficient to address the systemic problem: a fundamental change is called for.[35]

Justice system players tend to define access to justice as "faster time to trial", "the right to a lawyer", simplified processes", "self-help centres", and so on. These goals and innovations are all aiming to make the existing system work better. Concerns about efficiencies, constitutional issues, and current issues such as "voice of the child" and whether judges should interview children are all front of mind. Even mediation is viewed through the lens of achieving resolution of a dispute between the parties.

These are all important questions that help to ensure that the current system – and particularly our Courts – operate as effectively as possible.

But interestingly, research done by the Canadian Forum on Civil Justice and published by Professor Trevor Farrow in 2014 in the Osgoode Hall Law Journal, found that while some members of the public adopt the concepts of justice and access to justice as we have tended to

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[33] The Rules Committee is currently working on amendments to the Alberta Rules of Court related to summary trials.

[34] Docket appearances can be made before an action or application is filed, but still requires the filing of a court document and attendance before a Judge.

[35] "The family justice system has worked hard to respond to these challenges and it has introduced many changes over the last twenty years. Court rules have been modified to accommodate more flexible and informal processes. Judicial roles have expanded to include case management and settlement facilitation. In most jurisdictions governments provide legal information, legal advice, self-help services, parenting programs, subsidized mediation, and referral services for family litigants. In many courts, particularly unified family courts, the delivery of such services is seen as indispensable to the mission of the family justice system. Finally, the legal profession has explored and widely adopted non-adversarial ways of thinking about and responding to family law disputes. Consensual family dispute resolution processes like mediation and collaborative law are widely utilized across Canada." *Supra,* note 1, page 7.

think of them within the justice system, most spoke of justice and access to justice in terms of **"the right to a good life".**[36]

This should really give us pause. It is so substantially different from what we've tended to seek through our decades of attempting to improve access to justice. Interestingly, the Cree term "Miyopimatisowin" is central to the Cree way of life, and can be understood as the right to a good life. This is a very parallel concept, which confirms and embraces the public's perspective on justice.

In other words, increased access to justice does not equal increased access to judges.

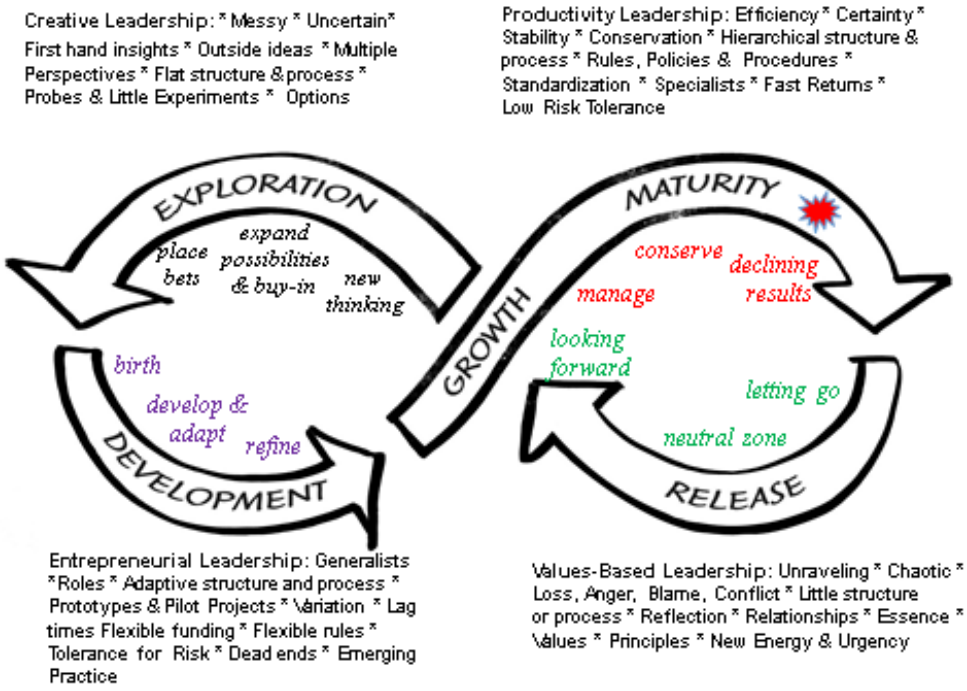
Contrasting Institutional Reform with System Transformation

Broad-based system change-at-scale/transformational change efforts are non-linear, often counter-intuitive, and cannot be solved through incremental change of one of its components.

Here is one way systems change experts illustrate the forces at play in our human systems:[37] systems start as ideas, grow, mature, but peak. Once peaked they begin to decline despite efforts to manage and conserve them. New ideas are generated, old systems released, and the new are imagined, developed, and grown. And so one system transforms to another.

[36] Farrow, Trevor C. W. "What is Access to Justice?" *Osgoode Hall Law Journal* 51.3 (2014): pp. 970-972. https://digitalcommons.osgoode.yorku.ca/ohlj/vol51/iss3/10

[37] The adaptive loop (or adaptive cycle) was developed by C.S. Holling and colleagues at the Resilience Alliance, See the Resilience Alliance website: https://www.resalliance.org/adaptive-cycle . This was discussed in *Getting to Maybe: How the World is Changed*, Westley, Frances et al, at pages 66-67, and further described in Notes 9 and 10 to chapter 3. This diagram was shared with the RFJS by Mark Cabaj, Here to There Consulting



The family justice system is a large complex system. The description of the system as complex is not merely descriptive, but helps to identify the approach to change that is needed, as well as approaches that will be ineffective in a complex system. As systems experts have observed, "complexity isn't complicated": in other words, the approaches for complicated challenges will fail in a complex system. That's why it is important to identify whether the context for change is simple, complicated, complex or chaotic. Efforts to effect incremental change of one component, for example the family law system, are useful to manage, conserve and improve it, but will not succeed in achieving the transformational change that has long been called for. These efforts will bring small improvements to the existing system, but we will still be met with declining results for both the family law and family justice systems.

This is explained in the Cynefin framework which was developed to help leaders determine the prevailing operative context so that they can make appropriate choices. Each domain requires different actions. Here is the executive summary from an article about Cynefin:[38]

> **Summary.** Many executives are surprised when previously successful leadership approaches fail in new situations, but different contexts call for different kinds of responses. Before addressing a situation, leaders need to recognize which context governs it—and tailor their actions accordingly.

[38] A Leader's Framework for Decision Making by David J. Snowden and Mary E. Boone, From the Magazine (November 2007) https://hbr.org/2007/11/a-leaders-framework-for-decision-making

> Snowden and Boone have formed a new perspective on leadership and decision making that's based on complexity science. The result is the Cynefin framework, which helps executives sort issues into five contexts:
>
> **Simple contexts** are characterized by stability and cause-and-effect relationships that are clear to everyone. Often, the right answer is self-evident. In this realm of "known knowns," leaders must first assess the facts of a situation—that is, "sense" it—then categorize and respond to it.
>
> **Complicated contexts** may contain multiple right answers, and though there is a clear relationship between cause and effect, not everyone can see it. This is the realm of "known unknowns." Here, leaders must sense, analyze, and respond.
>
> **In a complex context**, right answers can't be ferreted out at all; rather, instructive patterns emerge if the leader conducts experiments that can safely fail. This is the realm of "unknown unknowns," where much of contemporary business operates. Leaders in this context need to probe first, then sense, and then respond.
>
> **In a chaotic context**, searching for right answers is pointless. The relationships between cause and effect are impossible to determine because they shift constantly and no manageable patterns exist. This is the realm of unknowables (the events of September 11, 2001, fall into this category). In this domain, a leader must first act to establish order, sense where stability is present, and then work to transform the situation from chaos to complexity.
>
> The fifth context, disorder, applies when it is unclear which of the other four contexts is predominant. The way out is to break the situation into its constituent parts and assign each to one of the other four realms. Leaders can then make decisions and intervene in contextually appropriate ways.

A good example of a complicated problem is sending a spacecraft to the moon. Experts employ their knowledge, skills, tools, technology, and resources and solve the complicated problem.

A good example of a complex problem is raising a child.[39]

Changing the family justice system to ensure well-being outcomes is like raising all children! It is complex.

The Alberta Court of King's Bench has not only taken steps to improve the existing family law system, but at the same time, the Court is also supporting the transformation of the family justice system to achieve well-being for families, through its support of the RFJS initiative.

[39] *Getting to Maybe: How the World is Changed*, Westley, Frances et al, at pages 6-12

Obviously, we can't just close down the family law system while we re-imagine a new system. So we need to not only recognize, but really celebrate, the work that the Court has been undertaking to improve the existing family law system, while also supporting efforts to achieve the needed transformation of the system. This is hard, but both are absolutely essential, and the Court is to be commended for taking leadership in this way.

Responding to the call for a culture shift – Alberta's RFJS initiative

In 2013 the Honourable Thomas A. Cromwell (now retired), rolled out the reports of the Action Committee in a cross-country series of meetings.

Leaders in Alberta decided to take on the formidable challenge in a very innovative way. By the end of the Alberta meeting, there was a joint announcement by the Court of Queen's Bench (now King's Bench) and the Alberta Ministry of Justice creating a new initiative: the Reforming the Family Justice System (RFJS) initiative. Justice Andrea Moen (Court of Queen's Bench, now retired) and Assistant Deputy Minister Lynn Varty (Resolution and Court Administration Services, Ministry of Justice, now retired) agreed to be the first Co-Conveners of the initiative.

The focus was to give effect to the significant culture shift called for by the Action Committee, as guided by the 6 principles set out above.

Dwight Eisenhower is credited with stating 'if you can't solve a problem, make it bigger'.

The RFJS leaders recognized that the family law system is a big system, but it is actually a small but important component of the much bigger family justice system.[40]

Work began to draw together collaborators from very diverse aspects of the family justice system. The collaboration includes social workers, psychologists, police, lawyers, judges, faith communities, domestic violence organizations, folks from the government sector, educators, nurses, and many others. There are over 400 collaborators who have been formally involved in the initiative, and countless more who have learned about the RFJS and are embracing the vision for systems change. This has created a growing movement to transform the family justice system in Alberta.

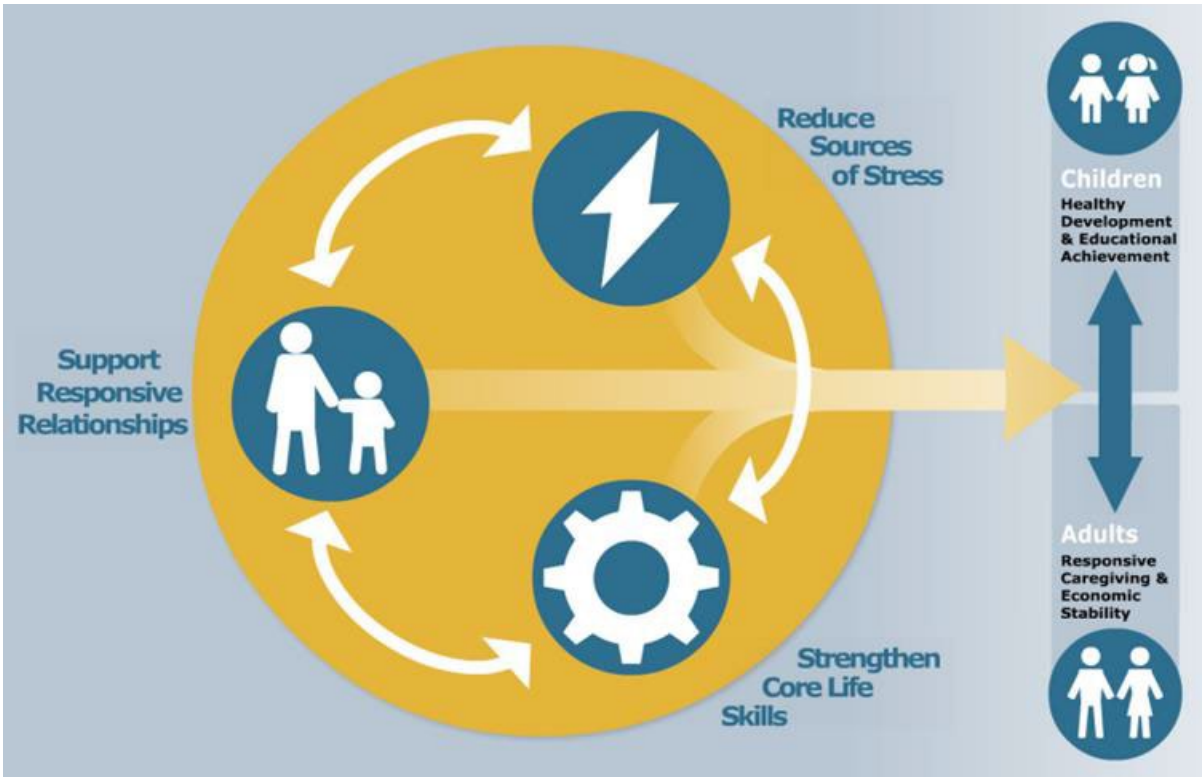
Brain science gives Hope and Helps Power Change

Earlier, when discussing brain science and explaining the negative impacts of toxic stress, I mentioned neuroplasticity. The science of resilience describes neuroplasticity, or the ability of the brain to change and adapt as a result of experience.

> The ideal approach to ACEs is one that *prevents* the need for all levels of services: by reducing the sources of stress in people's lives, whether basic needs like food, housing, and diapers, or more entrenched sources of stress, like substance abuse, mental illness, violent relationships, community crime, discrimination, or poverty. Supporting responsive relationships with a parent or caregiver can also help to buffer a child from the effects of stress, and helping children *and* adults build their core life skills—such as planning, focus, and self-control—can strengthen the building blocks of resilience. These three principles—reducing stress, building responsive relationships, and strengthening life skills—are the best way to prevent the long-term effects of ACEs.[41]

[40] In Note 8 I state that in this report I most often refer to the formal part of the system – Courts, lawyers, judges, etc. – as the family law system. I refer to the broader system as the family justice system. Readers should be aware that in some of my earlier writings (eg. Proposal for study leave) I did not make that distinction.

[41] https://developingchild.harvard.edu/resources/aces-and-toxic-stress-frequently-asked-questions/



https://developingchild.harvard.edu/resources/three-early-childhood-development-principles-improve-child-family-outcomes/

Brain science is powerful evidence that both explains the urgency of change to our family justice system and provides the powerful evidence that guides, drives, powers, and supports a transformational change.

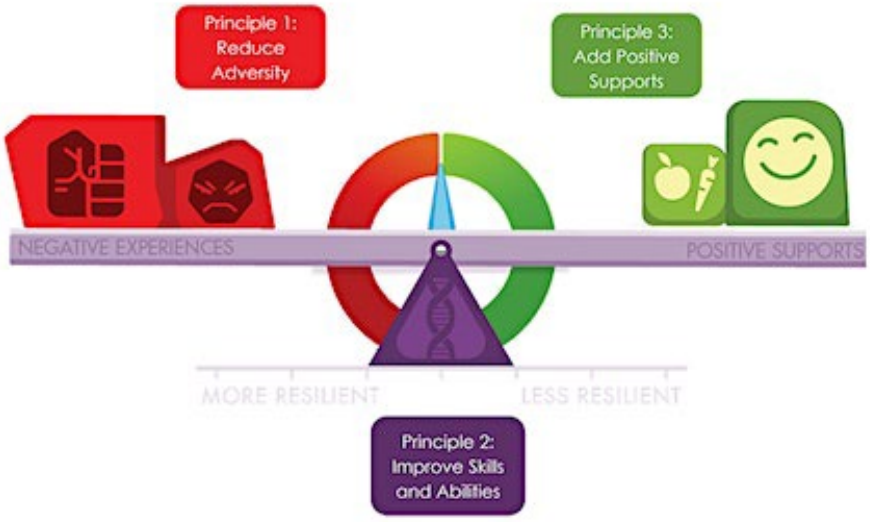
Some of the early work to shift the culture and identify the needed change

Following the November 2013 launch of the RFJS a number of activities ensued. These activities could not and did not proceed sequentially and often activities have occurred simultaneously and are on-going. That is because of the inherent nature of large-scale system change, in a complex system. Activities are non-linear, iterative, and require on-going review and potential change.

The RFJS leaders focused first on determining what goal or outcome this very broad family justice system should pursue. They engaged the collaborators in the causal layered analysis process described below. This diverse group identified the desired outcome of the family justice system to be “helping families thrive”. That stands in sharp contrast to a system focused on resolving disputes.

The collaboration proposed that if we re-imagine our family justice system as a system designed to promote family well-being, (or to help families thrive) we can then focus on these three

Harvard Center Principles. These principles are nicely illustrated by a "Resilience Scale" developed by the Alberta Family Wellness Initiative.[42]



https://www.albertafamilywellness.org/resources/reports/early-learnings-about-the-resilience-scale-metaphor-in-practice

At the outset, significant resources were provided for the RFJS by the provincial government (specifically the Ministry of Justice & Solicitor General). Key leaders and support staff began working collaboratively and in 2014 initiated workshops of a very broad-based group of Collaborators. The decision was taken to broaden the Co-conveners group (initially Justice Moen and ADM Lynn Varty) to include a representative from the Law Society of Alberta: by mid-2015 that occurred. Since then, the Co-Conveners group has been broadened even further to include a representative from Native Counselling Services of Alberta, a Family and Community Support Services organization and most recently, a representative of the Alberta Court of Justice.

Over time Government resources for the initiative have declined from their initial level, however the initiative has continued with the support of volunteers, financial support from grants, direction of resources and support by the Court of King's Bench, and the enthusiasm and active participation of many Collaborators.

It is clear from a review of the last 10 years of RFJS work, that the initiative has remained laser-focused on the desired outcome (family well-being; helping families to thrive) and the theory of change (untangling the social, relationship, parenting and financial issues from the legal, and ensuring supports and skills-building to address all of these needs).

[42] One of the public education pieces offered by AFWI is called 'Brains Journey to Resilience'. https://www.albertafamilywellness.org/resources/video/brains-journey-to-resilience

This is consistent with, informed and driven by brain science, which demonstrates the negative effects (the opposite of well-being) of legal adversarial processes.

Part 4 – PROCESSES TO SUPPORT TRANSFORMATIONAL CHANGE

How can we get there from here?

The RFJS has had the benefit of many different facilitators and leaders, who have guided our efforts to bring about the transformational change.

Developing the RFJS Theory of Change[43]

RFJS leaders engaged in a process called Causal Layered Analysis (CLA)[44]. Many different groups of the RFJS Collaborators (including the RFJS leaders, judges from Alberta Courts, and many other of the Collaborators) have by now undertaken the process[45].

The CLA process is often referred to as an "Iceberg" process. Facilitators guided the discussion, and a very broadly-based consensus emerged. Essentially, participants are helped to work through four layers of understanding: first identifying the litany of issues that we all were concerned about in the family justice system (which can be described as being like an iceberg – these were the issues above the water line, that we are all familiar with and concerned about). I would say that in our experience, these were actually the issues that are most often being addressed in recommendations to ***improve*** the family justice system.

We were then taken down below the water, to look next at patterns in these issues, then at how our systems hold us in those patterns.

And then finally, participants are asked to describe the myths and metaphors that come to mind. In every group we heard metaphors that described fighting: gladiators, sharks, sports and war analogies. This significantly helps to understand how deeply the adversarial nature of our existing system, makes up the way we understand the world.

Facilitators then used our descriptions to define our "current mental model", and then helped us to imagine a "new mental model" that would be different. This was really helping us to see the

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[43] 'Theory of Change' is a systems-change concept that reflects the experimental nature of bringing about change in a large, complex system.

[44] This is a process developed by Sohail Inayatullah, S. as a theory and methodology for longer lasting change, (2013). Causal Layered Analysis: Sohail Inayatullah at TEDxNoosa. Retrieved from https://www.youtube.com/watch?v=ImWDmFPfifl

[45] These processes have been facilitated by Michelle Jehn and Jessica Spina, who have become an integral and valued part of our RFJS initiative for their insight and thoughtful facilitation.

paradigms, and even to transcend the paradigms so that we could imagine something completely different.[46]

What has emerged is a realization that that most of what families are dealing with in their family situations – whether family restructuring, child welfare or family violence – is actually about social, relationship, and financial needs, which may or may not have a legal element. Later, we began to realize that there may also be health needs and that many parenting needs (for example transition times, sporting or musical activities, bed-times, family gatherings, etc.) are really not legal needs.

But the justice system has always focused on the legal: as the saying goes, when the only tool you have is a hammer, everything looks like a nail.

And what we came to understand is that by giving such priority and focus to legal responses, we are definitely not helping families to deal with their social, relationship, parenting, financial or health needs. Indeed, the tools of our legal system often make the situation worse for families, as we really only provide tools for fighting.

So we realized that we need to untangle the social, relationship, parenting, financial and health needs from the legal needs. And then ensure that families have the skills and supports they need to address all of these challenges.

It follows that much of what we need to do is to create a different path for families, to ensure that they obtain the kinds of skills and supports that they need, outside of legal adversarial processes.

In other words, what we are imagining is **a family justice system where families thrive: family well-being is the outcome** we seek to achieve.

This is the RFJS **theory of change**.

Facilitated session with the Court

When the Alberta Court of King's Bench engaged in the facilitated Causal Layered Analysis process it resulted in the adoption of the RFJS theory of change in the Court's Strategic Plan:[47]

[46] A clear description of paradigm shifts was written by Donella Meadows in 1999, in her article *Leverage Points, at p.3* https://donellameadows.org/archives/leverage-points-places-to-intervene-in-a-system/ . Meadows explained that systems change is often counter-intuitive. We are used to thinking in a certain way, and that guides our actions. But for significant change, we need to think very differently. The article is now a chapter in the book "Thinking in Systems", and in it Meadows identified 12 places to intervene in a system, which she sets out in the order of least likely to bring about change up to the most likely to bring about change. The two most likely ways to bring about change are: #2: paradigms, or the ability to see the context that you are working in, and #1: transcending paradigms, or the ability to stand outside of the system and see the other influences, systems and contexts that need to be taken into account.

[47] The court's 2016-2021 was previously on the Court's public website. A copy is on file with the writer.

> The Court recognizes that many cases, particularly family matters, are not suited to the adversarial litigation model and are overwhelming our Court. Accordingly, the Court will lead efforts to refocus the litigation process, while at the same time improving the Court's processes. This will include operational changes, educational priorities, amendments to the rules of Court and legislative amendments.
>
> …
>
> Refocusing the Court's Role in Family Matters – The Reforming the Family Justice System (RFJS) initiative is Co-Convened by the Court, the Ministry and the legal profession, and is a large collaborative effort to improve the family justice system in Alberta. As one of the leaders of this initiative, the Court supports the RFJS theory of change, which recognizes that many of the issues before the Courts in family matters are not legal in nature, but involve relationship, social and financial matters that can better be resolved outside of the adversarial processes of the Court. The RFJS is seeking both to empower service providers to develop practices that will better serve the relationship, social and financial needs of families outside of the Courts, and for Court processes to focus on legal matters that require judicial determination….

This theory of change, this focus on the outcome of family well-being rather than on processes related to resolution of disputes, is profound. This is a paradigm shift: a culture shift as called for by the Action Committee.

A shift away from legal, adversarial processes of dispute resolution to family well-being.

And this culture shift squarely adopts the 6 guiding principles articulated by the Action Committee: put the public first; collaborate and coordinate; prevent and educate; simplify, make coherent, proportional and sustainable; take action; and focus on outcomes.

In short, the outcome of a right to a good life.

Governance appropriate for this kind of initiative: the RFJS Collaboration Platform

A unique governance structure (Collaboration Platform) was developed early in the initiative (November 2014) and has been an important part of the approach used in the RFJS. The structure has been set out in a "working" document, which is updated from time-to-time.[48] Here are some key elements of the unique governance structure:

Collaborative Action Approach. This process is defined as:

[48] This has very much been a 'learn-as-you-go' process. The result is not 'the answer' but 'an answer'. Nor should the result be considered as an easy answer to a hard question. Instead this is a hard answer to a hard question. (I've borrowed this comment from Professor John Bryson who often uses it in describing systems change processes.) A copy of the RFJS Collaboration Platform is on file with the writer.

> *Working together in a cooperative, equitable and dynamic relationship, in which knowledge and resources are shared in order to attain goals and take action that is educational, meaningful and beneficial to all.*

Roles and responsibilities within the RFJS initiative are focused on leadership, transformation and learning. They are designed to encourage innovation and to support the collaborative process. For example:

> *Responsibilities of Convenors* - The Convenors will:
>
> [1] Champion a collaborative vision for achieving change in the family justice system;
>
> [2] provide ongoing leadership, support and direction relating to the initiative; and
>
> [3] facilitate contacts with key stakeholders in the family justice system in Alberta

Michael Quinn Patton is an internationally recognized evaluation expert, and also a co-author of *Getting to Maybe: How the World is Changed*[49] on the dynamics of social innovation, which drew on systems thinking and complexity theory. In his 2018 book *Principles-Focused Evaluation: The Guide*[50] Quinn Patton asks and answers the question "How do innovative programs and initiatives adapt within and navigate the turbulence and uncertainties of complex systems change? *They adhere to principles.*

…

Principles inform and guide decisions and choices. They do so by telling us how to act.

…

Principles-based initiatives, including programs, projects, collaborations, and change efforts of all kinds, base what they do and why they do it on guiding principles.[51]

The RFJS Collaboration Platform essentially sets out the guiding principles for the initiative. While not framed as such, I would suggest that the over-arching principle of the RFJS are:

A. Helping Families Thrive (the outcome of well-being), and

B. It's all about the children.

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[49] *Supra*, note 39

[50] Patton, Michael Quinn, *Principles-Focused Evaluation: The Guide*, 2018, The Guilford Press, New York

[51] *Supra*, note 50 at p. viii (Preface)

These over-arching principles energize the collaboration, while operational principles inform program development and become the basis for evaluation.[52] The RFJS Collaboration Platform also sets out operational principles which include:

A. Genuine collaboration

B. Inclusion – of participants not traditionally part of the family justice system, which is also reflected as working across sectors and opening up silos

C. Evidence-based foundation of brain science and resilience

D. The six guiding principles of the Action Committee

E. Decision-making by consensus

F. Open and transparent communication

G. Conflict resolution processes which recognizes that conflict is not only to be expected, but is invaluable in collaboration, but must be managed well.

The governance platform continues to provide guidance for the work of advancing a broad-based system change/transformation without the benefit of historical models, guided by the principles and approaches articulated both by systems change experts and the Action Committee. As I wrote in a recent update to the Court about the RFJS:

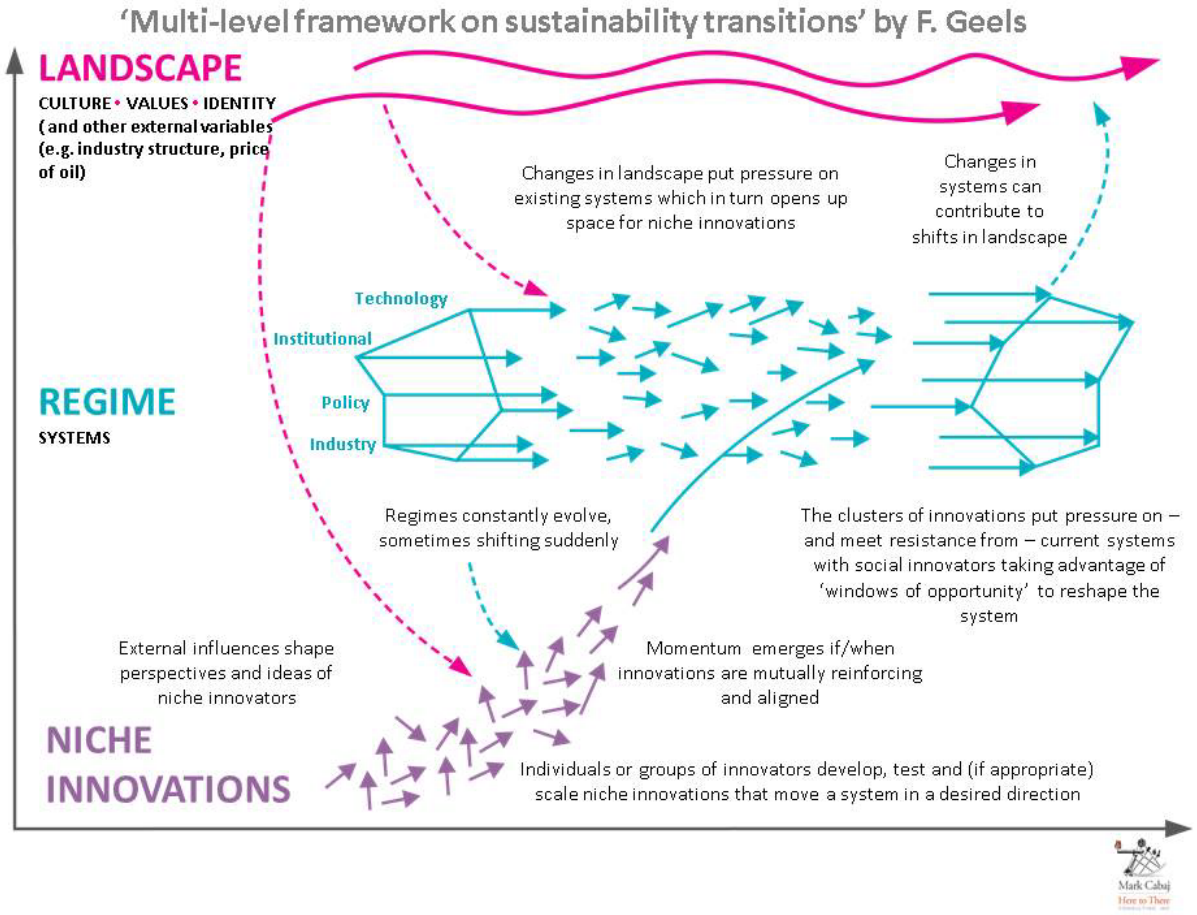
> The kind of change that is underway with the RFJS is truly different than anything that has been done before, in our Court … in our justice system … and in the related systems that support families. The RFJS calls for a different way of thinking, where instead of being focused on applications and processes that will move a case along in our court system, we are concerned with the kinds of supports and skills that families need in order to ensure well-being.
>
> Similarly, we need different processes to get from here to there, and sometimes even different language to describe what is taking place.
>
> We've known this from the outset, and have been using collaborative action to engage whole communities; learning and implementing systems-change approaches; articulating the transformation so that it can guide the efforts of everyone that needs to be engaged; and trusting that creating the kind of large-scale supports for these processes will help us to get to the desired well-being outcome.
>
> We are *leading* the way, and because of this we are also *finding* our way. In order to ensure that we are taking the right steps, we are constantly learning and measuring whether the changes we're engaged in are succeeding in moving us to that well-being outcome. This is a process called "developmental evaluation", or evaluating as we go.

[52] *Supra*, note 50 at pages 137-139

We are seeing evidence almost daily of the shifts that are taking place. Shifts in thinking, where well-being is truly being embraced as the outcome we are seeking.[53]

The Geels' Framework

This 'Geels' framework illustrates how system change happens at 3 levels, simultaneously. This is a very useful tool to understand and influence broad-based system change.[54]



(a) The pink level is culture: the paradigm or culture shift. The arrows show that there is movement from left to right, which we visualize as the move from legal adversarial approaches on the left, to family well-being on the right.

(b) The purple level at the bottom is niche innovations, which are small experiments with new ideas. This is the kind of "social lab" work that occurs to develop and test new ideas. These are experiments/ideas that are developed (prototyped) and when they are

[53] Kings Bench News, February 2023. On file with the writer.

[54] This framework was developed by Professor Frank Geels. This diagram illustrating the framework was shared with us by Mark Cabaj of Here to There Consulting.

considered safe and very likely to be effective they are often implemented on a permanent or pilot basis.[55]

(c) The blue level in the middle is the regime of system: the family justice system in this case. This shows that there are many different sub-systems, actors, and collaborators, who are all aligning their efforts, while retaining their own independence.

Together the culture shift and niche innovations put pressure on the system to change – resulting in changes in legislation, policy, programs and practice.

The RFJS used this framework to explain that changes will occur simultaneously at all three levels, in order to achieve the system-wide transformation that is sought. In 2020 the RFJS moved to develop strategies designed to advance all three levels of action.

Strategy Mapping – a method for managing the complexity and accelerating change

Large-scale systems change requires:

- Organization of complex collaborations of many different organizations involved in different, but mutually reinforcing and aligned actions.
- Management of the details of the short-term actions, while allowing all participants to see how the detail fits into the bigger, jointly held vision of the system change that will take longer to achieve.
- A structure that monitors progress on actions and measures outcomes beyond the efforts of one organization.

Strategy management of single organizations is well understood. But large-scale, boundary-crossing challenges require new techniques.[56]

> Strategic management of single organizations is well understood: It involves processes and techniques for developing a mission, doing strategic planning, aligning organizational structures, deploying resources, implementing actions, evaluating outcomes, and ongoing learning and adjustment. However, new techniques and processes are needed to make sense of the challenging situations involving complex, interconnected issues in which multiple organizations must make contributions to make the changes needed to effectively confront the challenge. Strategy management-at-scale is a boundary-crossing process designed to create direction, alignment, and commitment across agencies and among independent organizations at the scale of the challenge or issue to be addressed.

[55] Sometimes new ideas are put into use in the 'real world', without going through the prototype process.

[56] IBM Center for the Business of Government "Addressing Complex and Cross-Boundary Challenges in Government: The Value of Strategy Mapping", at p.6 https://www.businessofgovernment.org/report/addressing-complex-and-cross-boundary-challenges-government-value-strategy-mapping

> One of the most promising techniques for facilitating strategy management-at-scale is strategy mapping. Strategy mapping is a technique to help leaders across multiple levels, organizations and/or sectors understand the system in need of change and articulate the interventions needed to bring about the desired changes. Strategy mapping helps users visualize the cause-and-effect chains in a system and the actions that can be taken to change the system. In other words, it links aspirations and capabilities, the essence of strategy.
>
> The map and mapping process itself functions as a shared intellectual framework and backbone to help guide the effort. It helps create shared meaning through participation and dialogue. It facilitates negotiation and commitment to agreements about what to do, how to do it, and why; and then communicates strategies in a way that is easily understood and acted upon. It provides a framework, for guiding, monitoring, reviewing, and evaluating strategy implementation.[57]

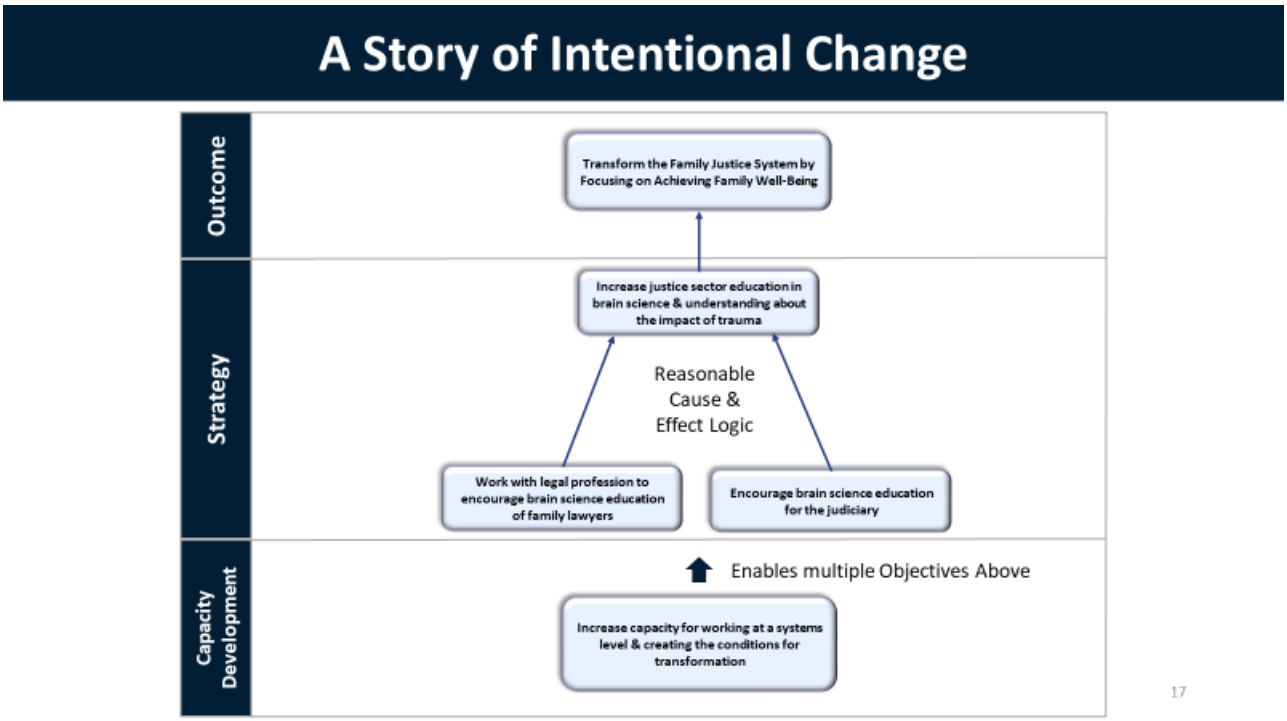
Leaders of the RFJS identified a framework specifically designed for facilitation of large-scale systems change (strategy management-at-scale). This provides collaborators with the means to articulate a common agenda for co-alignment; visually represent strategy in a complex system; methods for articulating shared measurement to inform strategy; coordination of new idea generation; keep track of mutually reinforcing activities; and encourage accountability.

It is really an aid to thinking.

The concept links aspirations (outcomes) with capacity, using strategies and sub-strategies designed to achieve outcomes.

This diagram illustrates the concept by focusing on one strategy: to “Increase justice sector education in brain science & understanding about the impact of trauma”. The actual map is much more detailed and sophisticated.

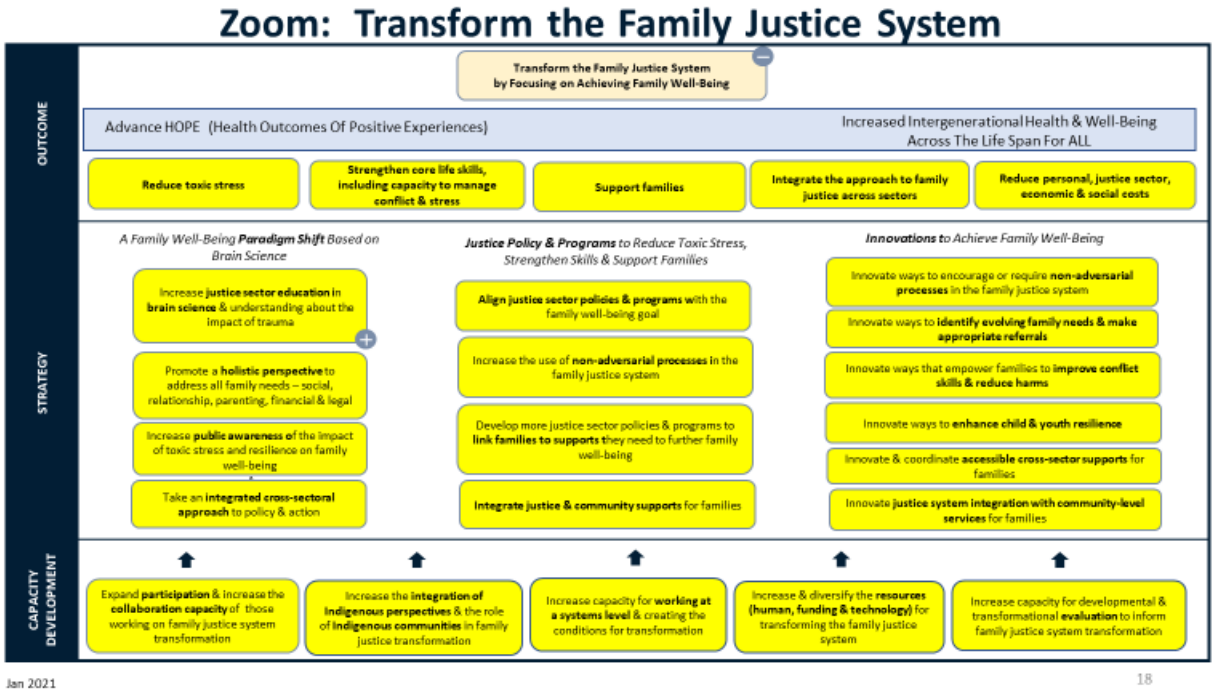
[57] See the associated podcast on the IBM report https://www.businessofgovernment.org/interviews/4853



A very good introduction to strategy mapping can be seen in this 8 minute video.[58]

The RFJS worked with our counterparts in BC to develop a joint "Strategy Map" (the TFJS map) and strategy engagement tools, to more fully support the action that is occurring. The provincial collaborators incorporated the Geels' Framework into the Strategy Map to ensure strategies would address all three levels of change: the mental model shift, innovations and new ideas, and ultimately the systems-level changes. This platform allows 'zooming in' on more detailed strategies, background information, actions and measures, but also allows 'zooming out' to visualize the bigger picture. Here is a point in time version of the 'zoomed out' portion of the TFJS Strategy Map.

[58] https://vimeo.com/795720700/6683b10e29



Here is a link to a webinar on Strategy Mapping generally, and as relates to work on the TFJS strategy map (with Bill Barberg from InsightFormation, Diana Lowe, KC (RFJS) and Jane Morley, KC (A2JBC) "Advancing Your Community's ACEs & Resilience Strategy")[59]

PART 5 – THE RFJS IS A LEADER IN TRANSFORMATIONAL CHANGE

A 2021 webinar with systems experts speaking about Leading Social Transformation uses the BC-Alberta Transforming the Family Justice System (TFJS) initiative as a case study.[60]

In an article published in the Journal of Change Management[61] the authors explore what is involved in leading a social transformation to create public value and advance the common good.

> *Strategic leadership of a single organization* involves a fairly well-known set of tasks and often involves the development of a strategic management system to ensure direction, alignment, and commitment across the organization (Drath et al., 2008). Strategic leadership of collaborations and social movements, though less

[59] https://improvepophealth.org/advancing-your-communitys-aces

[60] https://improvepophealth.org/leading-social-transformations

[61] John M. Bryson, Bill Barberg, Barbara C. Crosby & Michael Quinn Patton (2021) Leading Social Transformations: Creating Public Value and Advancing the Common Good, Journal of Change Management, 21:2, 180-202, DOI: 10.1080/14697017.2021.1917.492 at p. 181. To link to this article: https://doi.org/10.1080/14697017.2021.1917492

> studied, is becoming more common and necessary, given the boundary-crossing challenges we all face. Leading multiple organizations to achieve a common purpose is what we call *leading strategy management-at-scale*, meaning the scale of the challenge to be addressed. Such cross-boundary issues include the global COVID-19 pandemic, or US domestic issues like homelessness, the lack of affordable housing, racial gaps in educational achievement, or the damage from adverse childhood experiences. Such issues occur within a shared-power, no-one-wholly-in-charge environment and demand a response from multiple organizations. Multiple strands of reasonably aligned if not directly coordinated effort are required, but those efforts, while often framed as 'transformational' are not, in the sense that by themselves they typically do not fundamentally alter systems or significantly alter relationships – including power relationships – among people. We discuss two complementary approaches to strategy management-at-scale: collaboration, and especially the popular collective impact (CI) approach; and community organizing, coalition building, and advocacy.
>
> *Leading social transformation* takes the change challenges and responses to a societal or even global level. The required changes are multi-issue, multi-level, multi-organizational, and cross-sectoral, and can cross national frontiers. Deep and broad changes, often involving radical innovations, are needed in education, politics, the economy, organizations, media, attitudes and beliefs, and other areas. Deep and abiding changes in relationships – and power relationships – among people and groups are required. This goes well beyond single organizations, collaborations, and typical social movements. In short, social transformation involves many, many initiatives loosely coordinated or co-aligned – all at least implicitly guided by shared principles and aiming towards common purposes. Numerous complementary theories of change are at work – both in support of the changes and, not surprisingly, in opposition to them. If one thinks of leadership as a response to challenges, leading social transformation is a key element in addressing the most significant challenges – the 'grand challenges' – the world faces, such as climate change and abiding inequality. The essay will explore what seems to be involved in successful efforts aimed at societal transformation and how leadership can help move them along. (Emphasis added)

Re-imagining a very broad system like the family justice system is certainly a shared power, no-one-wholly-in charge environment that demands a response from multiple organizations. It is cross-jurisdictional, cross-ministerial, cross-sectoral, and includes complex power relationships (both actual and perceived). It is certainly a process of strategy-management-at scale and perhaps even social transformation.

The authors include the challenges we are addressing, summarized as ACEs and resilience, as one of the "Wicked Problems" of our age.[62] Wicked problems are resistant to resolution, arise in situations of social complexity and interdependencies, and where efforts to solve one aspect may actually reveal or create other problems. Wicked problems cannot be solved by programs or

[62] This term is credited to Horst Rittel. See for example: https://ssir.org/books/excerpts/entry/wicked_problems_problems_worth_solving

incremental change, but rather require an iterative, cross-sector approach to transformational change.

The Alberta and British Columbia approach to Transforming the Family Justice System (TFJS) is used in the article to illustrate leading strategy management-at-scale/transformational change.

What Does Leadership Look Like?

Bryson et al discuss the form of leadership and the need to change mental models as follows:[63]

> Leadership for social transformation both resembles and differs from strategic leadership of organizations and leading strategy management-at-scale. Leadership for social transformation is far more multi-faceted, broadly based, and political than in most of the management-oriented leadership literature. At the most general level, it means accepting the DAC ontology, an ontology meant to encompass leadership that is 'more peer-like and collaborative … at every level from dyad, to group and team, to organization, to inter-organization, and society overall' (Drath et al., 2008, pp. 636–637). Traditional leadership and management skills are needed, but dispersed across many different kinds of organizations. Unlike traditional leadership, but like community organizing, leadership for transformation also means broadly based leadership, not just top organizational leaders. And it means supplementing traditional leadership skills with:
>
> - Collaboration skills (O'Leary et al., 2012)
> - Organizing and mobilizing ability (Almeida; Bond & Exley, 2016; Kahn, 2010)
> - Shared visualization, strategy mapping, and visually assisted strategy management (Barberg, 2017; Bryson et al., 2014; Cherches, 2020; Sibbet, 2012)
> - Lots of skilled facilitation (Kaner, 2014)
> - Storytelling about humans embedded in complex adaptive systems (Stroh, 2015)
> - Broadly based coalition building and advocacy (Birkland, 2019; Crosby & Bryson, 2005; Rubin, 2018; 't Hart & Tummers, 2019).
>
> As with community organizing, opposition needs to be taken into account and addressed (Kahn, 2010; Ackermann & Eden, 2011; Bryson, 2018). Beyond that, multiple collaboration platforms are required to facilitate interconnections, networking, and multiple initiatives (Ansell & Gash, 2018; Ansell & Miura, 2019). Finally, approaches to evaluation need to be rethought (Patton, 2020).
>
> Leading social transformation involves thinking differently from strategic leadership for organizations and leading and strategy management-at-scale. The following premises are useful guides (Patton, 2020, p. 154):
>
> - Systems transformation is the focus for both design, action and evaluation.

[63] *Supra*, note 61 at pages 191-192

- Complexity theory and systems thinking inform and permeate transformative theory.
- Transformation frames the nature, scope, and magnitude of changes desired and needed, but values, stakes, and perspectives inform judgments about the desirability of the direction of transformation.
- Systems transcend projects and programmes, though those may be thought of as subsystems.
- Transformation transcends project and programme-level changes while building on and integrating them for greater momentum and cumulative impact.
- No one, no organization, no entity, and no network is in charge of, controls, or manages transformation, but synergistic interactions can propel and accelerate transformation.
- Transformational engagement and momentum will generate opposition and resistance from those who benefit from the status quo.

Again from Bryson, Quinn Patton et al:[64]

> An additional thinking change involves changing mental models, at least ultimately if not initially, in a deeper way than in strategy management-at-scale initiatives (Kania et al., 2018; Scharmer, 2018; Senge, 2006). The idea is that mental models are typically implicit, because unconsciously held, yet they provide the powerful underpinnings of relationships and power dynamics, which are typically semi-explicitly acknowledged. In turn, relationships and power dynamics underpin explicit policies, practices, and resource flows. That means that changes to policies, practices, and resources flows are limited by relationships and power dynamics, which in turn are limited by mental models. Deep-seated social changes begin, perhaps ironically, with micro-level changes in the mental models held by change advocates. For example, the adoption of the UN's Sustainable Development Goals involved changing mental models about human and economic development in the context of a need for global resilience and stability (https://sustainabledevelopment.un.org).

The RFJS was not only a case study in this article. In many ways, it is a model or illustration of the kind of leadership, shifting of mental model, and transformational change that these authors are describing.

PART 6 - EXAMPLES OF SYSTEM TRANSFORMATION IN ALBERTA

I will articulate examples using the 3 levels of change identified in the Geels' Framework. It should be noted that the lines between the levels of change can be somewhat blurry: for example change may be considered as a culture shift or a regime change or both; or an innovation or a policy/program change or both. This is due to the complex and fluid nature of broad-based system change involving multiple actors, and also reflects the progression resulting from a

[64] *Supra*, note 61 at page 192

mental model shift, which leads to innovative ideas, and which in-turn may ultimately lead to actual changes in the system.

In an ideal setting innovations are developed by using a prototype process which takes an idea, then develops and tests it through multiple iterations and with many contributors. It is only when it is agreed by systems leaders that the prototype is ready and safe to launch, that it is adopted as a change to a regime, system, policy, or program – on either a permanent or pilot basis. In practice, while not ideal, this process is sometimes short-circuited and ideas are developed directly as a pilot or permanent change and immediately launched.[65]

A) The Pink level (top of the Geels'): a culture or paradigm shift away from legal adversarial processes to family well-being.

Brain Science

Often culture shifts arise when there is new knowledge. Consider climate change or tobacco use. Brain science is the new knowledge that explains the impact of toxic stress on families and in particular children. Legal, adversarial processes contribute to toxic stress which harms children.

The RFJS supports and encourages education in brain science, which is the foundational evidence for the mental model shift away from legal, adversarial processes to a focus on well-being. We have worked closely with the Alberta Family Wellness Initiative (AFWI), which recognizes the importance of the RFJS in applying the brain science to support justice transformation.[66]

The RFJS has promoted brain science education to its many Collaborators at workshops, in publications and in the TFJS Strategy Map. The Chief Justice of the Alberta Court of King's Bench gave approval for my completion of the on-line Brain Story Certification program offered by AFWI as part of my professional development. I share the importance of brain science education with colleagues through our Court's internal newsletter, at NJI education sessions in British Columbia and Saskatchewan, and as one of the speakers at the International Organization for Judicial Trainers (IOJT) conference. I have been asked to share more about the RFJS, and of course the brain science foundation, in the upcoming Alberta King's Bench Education Seminar in September 2023.

There are many other examples. I have made a number of RFJS presentations some of which include: annual Divorce Symposiums; the County of Strathcona Social Summit; and the Association of Family and Conciliation Courts (AFCC). Each of these presentations included information about and encouragement to learn more about brain science.

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[65] Prototyping is a valuable process, because it allows learnings and with that, assurance that the prototype can be safely and effectively launched.

[66] In 2020, AFWI conducted a case study of the RFJS: "Integrating Brain Story Science in Alberta" Copy on file with the writer.

Brain Science for Law Students

During my study leave I made numerous contacts and presentations, both formal and informal, to explain brain science and its importance, and to seek input on its value to law students and new lawyers. They included the following:

- Informal meetings with a number of law students,
- Presentation to Court of Appeal, Court of King's Bench and Alberta Court of Justice articling students,
- Class and noon-hour Lectures,
- Faculty Seminar.

I have received an invitation to provide a lecture this fall at the University of Calgary, Faculty of Law and anticipate receiving a similar invitation from the University of Saskatchewan, College of Law.

Students and Faculty alike have raised many interesting points about the application of brain science to the study and practice of law including:

A. Potential harm caused to children by the adversarial family law system,

B. Potential harm caused to children by the child protection and criminal legal systems,

C. Manifestation of harm to other social systems as damaged children mature,

D. Cost to the family justice, child protection, and criminal justice systems,

E. Implications of brain science to assessment of moral blameworthiness,

F. Intersection of brain science and Gladue factors,

G. Implications of brain science to immigration/refugee law and (yes, even) tax law,

H. The significance of a related topic, trauma-informed practice.[67]

It seems to me that what is being identified is that brain science is relevant to how lawyers need to practice law to take into account and reduce trauma; why lawyers need to understand brain science to serve their clients in a way that both minimizes the negative effects of the system itself on children and also ensures that clients receive the skills and supports to build resilience; why lawyers need to understand brain science to properly advance their client's case; and why and how we need to critically analyze our existing systems and laws and pursue change where necessary. If law students gain this knowledge as part of their studies, they will be ready for and indeed helping to support the mental model shift that is needed, to achieve the outcome of family well-being.

What About Lawyers?

System transformation affects all actors within the family law system: Judges, Court Administrators, Ministry of Justice, the legal profession, and so on. The RFJS has kept all of these actors in mind as part of the collaboration and included them as RFJS leaders, collaborators, and contributors. And the legal profession itself is very broad and includes the Law Society, Canadian Bar Association, Legal Education Society of Alberta (LESA), Legal Aid, Law Schools and legal practitioners in private practice and public service.

In the Action Committee report, '*Beyond Wise Words*'[68] the Family Justice Working Group makes this recommendation:

> That Law Society regulation of family lawyers explicitly address and support the non-traditional knowledge, skills, abilities, traits and attitudes required by lawyers to optimally manage family law files.

[67] Trauma-informed practice is an important approach which is aimed at preventing further harm for individuals who have experienced trauma. I attended the session on Trauma-informed practice at the Court's Education Session in January 2023. I have also learned however, that there are limitations to this approach, as discussed by Shawn Ginwright, PhD in "The Future of Healing: Shifting From Trauma Informed Care to Healing Centered Engagement", May 31, 2018, https://ginwright.medium.com/the-future-of-healing-shifting-from-trauma-informed-care-to-healing-centered-engagement-634f557ce69c . As Ginwright explains, there is risk in seeing those who have experienced trauma as "only their trauma". It is also incomplete, particularly in addressing only the needs of an individual, which leaves "the toxic systems, policies and practices neatly intact". Finally, the focus on the trauma runs the risk that we fail to focus on the possibility of well-being. The concepts of brain science and resilience help to ensure that we don't stop at addressing trauma, but take the further step of supporting resilience. That is where the hope comes from in brain science, and the RFJS is focused both on supporting resilience and on addressing this at the level of systems, policies and practices.

[68] *Supra*, note 1

There are legal obligations on lawyers to discuss reconciliation when acting for a spouse[69], to encourage folks for whom they act to attempt to resolve matters[70], and to inform those folks of family justice services.[71]

When admitted to the bar in Alberta, lawyers promise, "… That I will as a Barrister and Solicitor conduct all causes and matters faithfully and to the best of my ability. I will not seek to destroy anyone's property." There is no promise to refrain from causing neurological disruption and epigenetic changes to brains of developing children. I suggest that knowledge of brain science and the negative impacts of toxic stress on children caused or enhanced by participation in an adversarial system such as the family law system is something every lawyer should know about.

One of the strategies to achieve the well-being outcome of the RFJS, is to encourage lawyers to become brain science informed (or certified), and to reconsider the ethical responsibility of lawyers in family matters – to ensure that toxic stress is reduced while supports are put in place and skills are strengthened – to build resilience in families. These efforts have included a number of efforts: publications explaining and encouraging brain science education; public speaking presentations to lawyers, articling students, and law students; a full day workshop in 2017 (presented with AFWI) on brain science for RFJS collaborators (including lawyers); and a Legal Education Society of Alberta (LESA) seminar on brain science.

RFJS has been encouraging the Law Society of Alberta to explore changes in the ethical responsibilities of family lawyers to include brain science and to focus on family well-being by reducing the toxic stress of adversarial processes and ensuring positive supports and building skills. Given the key role lawyers play in the family justice system, this is seen by many folks as critical and important.

We envision the future of family law as having a very limited role for litigation or other legal, adversarial processes. The role of lawyers will overwhelmingly be that of a trusted solicitor, who assists the parties to come to agreement and to document their agreement, rather than a barrister who brings matters before the Court. The vision of the RFJS is that the role of lawyers in a re-imagined family justice system will be changed, not reduced. It could very well become even more important. (Think of the role of lawyers in the estate planning and administration areas).

Theatre Workshop

Supported by the Chief Justice of the Court of King's Bench, the RFJS hosted a Theatre Workshop on Indigenous Child Welfare for King's Bench and Alberta Court of Justice judges and the Courts' Legal Counsel. The workshop became part of the Doctoral Dissertation by Dr. Lauren Jerke, PhD.[72]

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[69] S7.7(1) *Divorce Act* R.S.C. 1985, C.3

[70] S7.7(2)(a) *Divorce Act*

[71] S7.7(2)(b) *Divorce Act*

[72] http://hdl.handle.net/1828/13934 In full disclosure, Lauren is my daughter.

The workshop aimed to:

> "… demonstrate and examine colonial values and their impact on both personal perceptions of childcare, and the judicial system because it has power over Indigenous childcare." p.184
>
> 'In the initiative's annual report [source referred to by Dr. Lauren Jerke], they suggested a shift in mindset was needed within the justice system in order to address the over-representation of Indigenous children in state care. Rather than insisting that the system was effective but understaffed they suggested that judiciary needed to collectively accept that the child welfare system is failing to protect the best interests of Indigenous children, or communities." p.182

In other words, this work was aimed at shifting mental models. The workshop actually exposed participants to the experiences of child welfare in Indigenous families and communities through theatre, and by doing so, encouraged the shift in mental model that reports call for.

Workshops to Address Mental Models

As described earlier, the RFJS has undertaken the Causal Layered Analysis process on a number of occasions, each of which resulted in shifts in the mental model away from a legal adversarial system to a family well-being model.

Communicating the Shift

The RFJS has engaged a large number of Collaborators (more than 400 by now) and reached out to many other folks about the shift in the approach to family matters through a process called "Ambassadors for Change" and by participation in hundreds of meetings to share information about this shift. This has helped to create awareness and support for the paradigm shift that is underway.

- **The Purple level (bottom of the Geels'): Innovations to Achieve Family Well-Being[73]**

On-Line Parenting Tools

Our Family Wizard and coParenter are online tools. They are both useful to assist parents to communicate and work together to address the everyday challenges of parenting. coParenter is unique as it is based in brain science and designed to assist parents with the challenges of co-parenting. It also provides parents with real time access to coaching and mediation by family mediators.

During the first few months of the pandemic lockdown, the developer provided coParenter free for Alberta families. Our Court encouraged families to use parenting tools in a notice dated May

[73] Some of these innovations have already moved into the regime change level (i.e. implementation as a change in policy, program or practice).

19, 2020.[74] The coParenter tools are still being recommended by the Court's Resolution Counsel and Judges continue to make orders requiring families to use such tools to improve their ability to communicate and resolve their parenting issues.

The RFJS created a case study on the use of coParenter in very high conflict families that are being supported by the Calgary Women's Emergency Shelter[75]. More than 25 families were using the tool during the Case Study, and received supports that help them to deal with the challenges of parenting children not only during a pandemic, but in a situation of high conflict and even abuse.[76]

Divorce Magazine and related innovations

Another innovation is the Divorce Magazine, which is a publication created before the RFJS to inform the public about the wide variety of services that are available for families: co-parent coaching, life-coaching, financial, insurance, mediation and legal. The RFJS introduced the publisher to brain science, which she has adopted, investing significant funding and effort to create symposiums and divorce resource groups that bring professionals together with members of the public who are experiencing separation and divorce. RFJS has contributed articles to each

[74] The notice said: *"There are many parenting apps that can be used to assist parents to resolve disputes and improve communication. Two of those platforms are listed below.*

coParenter – a tool to empower families to resolve their own parenting issues. The platform includes online mediation and coaching, coronavirus-related safety plans, parenting plans, holiday and vacation schedules, agreements, education and support. For a period of 60 days during the pandemic, this tool was made available to Alberta families at no cost. For more information go to https://rfjslab.wordpress.com/2020/05/15/coparenter-is-providing-a-free-60-day-licence-for-alberta-families/#more-925 . Families can register online with their phone and begin to use the coParenter tools by clicking on this link: https://coparenter.page.link/1dY6

Our Family Wizard – tools to manage schedules, track expenses, share files and communication are contained within this app, so parents can solve parenting challenges faster and without confusion: www.ourfamilywizard.ca/"

[75] The shelter was recently renamed "Fear is not Love".

[76] The case study is complete and data was harvested from surveys and interviews. The use of coParenter proved very positive, as was reported both in surveys conducted by the staff of the Calgary Women's Emergency Shelter (CWES) and in interviews with both those who experienced violence and those who used violence. The data is available, but due to a number of staffing changes and the purchase of coParenter by a third party the case study report was not finalized, or approved for public distribution.

of the last 8 issues of magazine.[77] The Divorce Resource Groups meet regularly and include many professionals who share their expertise with members of the public, including an RFJS representative.

A public Symposium is held annually with speakers from among the various professionals. RFJS has provided the keynote address for each Symposium, which allows an opportunity to update participants about the RFJS, and encourage them to become familiar with brain science and to find a path to well-being as they deal with their family issues.

Innovations in Prevention of Family Violence

Family violence is an area of family justice that cries out for new approaches based in brain science. Safety is always an overarching concern, but through changes in the approach to family violence there can be a move away from the binary approach of 'punish the offender' and 'protect the victim' to an approach that seeks to break the cycle of intergenerational harm and reduce and even prevent family violence.

RFJS is working with a number of organizations:

- Sagesse has created a province-wide systems change process called "Impact", which has adopted the goal of "eradicating family & sexual violence". This work engages all of the family and sexual violence networks across the province, who are seeking ways to prevent violence before it happens. Impact recently created an online website to support primary prevention of domestic and sexual violence: https://albertaprimaryprevention.ca/
- SHIFT is a project based at the University of Calgary, and is working with Impact to create a primary prevention framework for domestic and sexual violence.
- The Calgary Domestic Violence Collective has adopted a Strategy Map that seeks to "Address & Eradicate Domestic & Sexual Violence by focusing on individual, family & community well-being". They've adopted outcome strategies that are aligned with the RFJS, including "Supporting healing", "Increasing alignment", "Reducing binary approaches toward people experiencing and using violence", "Cultivating Restorative approaches", and "Supporting belonging, dignity and justice". Their primary funder has now adopted the Strategy Engagement

[77] Here are several links related to Divorce Magazine Canada, and its events, and online activities:

- Online Divorce Resource Group - LEARN
- Online Divorce Resource Group - CONNECT
- Online Divorce Symposium (Tues. Sept. 26th): Tickets
- Divorce Magazine Canada Podcast: Spotify, Apple, Google, Amazon
- Divorce Magazine Canada Homepage
- Divorce Magazine Canada Blog
- Divorce Magazine Canada pdf copies
- Divorce Magazine Canada Social Media: Instagram, Facebook, LinkedIn
- Coming soon - YouTube channel, Video Resources (on website)

approach, described more fully above in relation to the RFJS transformational change initiative.

The "Safe at Home" pilot of Rowan House Society in High River, Alberta is a program aimed at keeping women and children in the family home and with supports, while providing temporary housing (if needed), programs and supports for men who have perpetrated family violence.[78] This is a real shift away from the typical binary approach to family violence, which tends to be focused on concerns for safety of victims and punishment for perpetrators. Very often the family circumstances are far more complex, inter-related, and broader than a binary approach assumes.

Diana Lowe, KC is on the Stakeholder Advisory Committee for Safe at Home. This program aligns with the brain science evidence that people who use violence have often experienced high Adverse Childhood Experiences and are themselves in need of healing. A focus on individual and family well-being can help to heal all of the parties, and prevent future harm. The RFJS has been invited to share information about the systems change that is underway, how the Safe at Home Program aligns with the RFJS and the evidence of brain science, and on resist refuse dynamics, which often arise in high conflict families.[79] And language is shifting away from "victims" and "perpetrators", to "people who experience violence" and "those who use violence", consistent with a shift in culture.

Child Welfare

Brain science shows the harms which can occur by removing children from their families, communities and culture. The RFJS is concerned first and foremost with supporting the well-being of children, and encourages a significant shift in approach throughout the child welfare system – within families, in the Ministry of Children's Services, with lawyers who represent children, and with decision-makers. RFJS supports and encourages the approach that, rather than removal of children from families, supports are provided for families and communities to enable them to keep children in their homes and communities where they should be supported by extended family and connected to their community and culture, to the greatest extent possible.

This has become a critical concern in the Grande Prairie efforts to re-imagine the system (see Part 7 below). Indeed, the community collaborators in Grande Prairie are knowledgeable, skilled,

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[78] https://www.safeathomeab.ca/

[79] Rowan House Society, Journeys to Hope & Healing Podcast: When the System Focuses on Families, March 2021, Diana Lowe, KC spoke with the host, Ally Cramm, about the RFJS (41 minutes) https://rowanhousesociety.buzzsprout.com/887248/8604900-s2-e5-when-the-system-focuses-on-families-ft-diana-lowe-qc

In June 2022, the Rowan House Society, Journeys to Hope & Healing podcast host Ally Cramm spoke with Laurie Anderson and Cindy Marshall, KC, both senior counsel in Calgary who deal almost exclusively with high conflict family matters, and with Diana Lowe, KC, Co-Lead of the RFJS. All three are members of the Calgary Domestic Violence Collective, Access to Legal Services Working Group. Laurie explains the need to move away from the "parental alienation" concept, and why this concept has been so harmful to families experiencing violence. https://www.buzzsprout.com/887248/10688864

and informed about the need to transform the child welfare part of the family justice system to a system that works to achieve family well-being in child welfare matters.

Child Welfare has significant impact in Indigenous communities, and indeed the first recommendations in the Truth and Reconciliation Commission Report are in relation to child welfare. The Journey Home video was created by Native Counselling Services of Alberta, another of our Collaborators, and we feel this is a very strong resource for anyone involved with child welfare matters.[80] Indigenous collaborators have shared concerns, ideas, resources, and leadership to pursue a re-imagination of these matters.

Close alignment with the Alberta Court of Justice has also brought much benefit to the RFJS because of the significant experience and expertise of their Justices, Clerks, and family court counsellors. I anticipate that this aspect of family law will become a real focus of the RFJS efforts in Grande Prairie, and beyond.

- **The Blue Level (middle of the Geels'): Regime/ System Changes**

Family Justice Navigator Pilot

In January 2019 Alberta Justice and Solicitor General, through Resolution and Court Administration Services (now called Court and Justice Services) launched a Family Justice Navigator (FJN) project. A summary of the initiative follows:

> **Resolution and Court Administrative Services (RCAS)** launched a new service delivery approach for families experiencing separation and divorce by focusing on the social, relationship, parenting, financial and legal needs of children and their parents. The intent is to provide supports that assist families to address problems, prevent these problems from escalating or being tangled into legal disputes, and to create a less adversarial environment for these issues to be resolved, regardless of their intended court process (Family Law Act or Divorce Act.). The newly created Family Justice Navigator (FJN) role interacts with families and works collaboratively with caregivers to identify a family's unique needs. The FJNs then support families to narrow and clarify their goals, focus on the needs of their children, and consider different resolution options. This often includes acknowledging and separating the emotional and relational aspects of conflicts to focus attention on the best interests of the children involved. FJNs are able to work with internal and external stakeholders and arrange appropriate services that will focus on skill building or address complicating factors impacting the co-parenting relationship. A significant part of the FJN role is to engage agencies in the communities to ensure information provided is accurate. FJNs help parents navigate new family law matters related to their children by involving both parents as early as possible in the process.

[80] https://www.youtube.com/watch?v=G-q4VepX4vU

> FJNs are trained in brain science and trauma informed care, and develop maps of community services that will be better able to assist families undergoing separation and divorce. The expanded services provided by the FJNs are meant to help families reach healthy resolutions. The program helps families to avoid disputes and toxic stress that is associated with litigation, and to provide supports to help build resilience. Families will be empowered to choose their own path based on their specific needs, making them more likely to adhere to their agreements and more likely to remain engaged, which has a positive impact on children's healthy development. This change in focus away from legal process to family wellness will help promote strong family relationships, and assist families to navigate the legal system better or perhaps the need for legal intervention completely.[81]

Unfortunately, the program was not expanded, and indeed was allowed to expire.[82] Discussions which occurred during operation of the pilot with participant families and staff were positive and showed considerable promise. The pilot has provided a model that's been adopted in Grande Prairie where the Grande Prairie Family Education Society obtained funding in the fall of 2022 for a Family Justice Navigator role[83] and this is seen as part of changing the pathways for families in that community.

New Ways for Families Pilot

New Ways for Families is a method for helping families in separation and divorce. It is intended to inoculate families against becoming high-conflict in the court process, and can also help families after court with difficult, high-conflict co-parenting issues. It is aligned with the RFJS because it is a skill-building and support initiative which encourages and equips parents to resolve their own issues without requiring a Judge to resolve the issues by adjudication. The program operated on a 3-year pilot basis in Calgary and Medicine Hat (from 2012 – 2015, which is where I had experience with it).

Parties could make self-referrals, or be referred by a Court to the program. Once in the program, parents were each assigned a separate counsellor whose function was to teach each parent 3 fundamental skills related to social issues (eg. the use of coercive control), parenting issues (eg. parental communication) , and relationship issues (eg. the tendency to focus on past conduct). Parents were taught the skills of managed emotions, moderate behaviors, and flexible thinking (and a fourth skill of checking yourself). Under Court supervision and if the conflict remained unresolved, the parents were both directed to a new counsellor where they each or both met with

[81] Program summary from documents on file with the writer.

[82] This appears to be a matter of timing, rather than a reflection of the value of the program. The province of Alberta was struggling with budget issues, and then by early 2020 was dealing with the challenges of Covid.

[83] Now referred to as a "Family Resilience Navigator".

the child/ren to teach them the same skills. A number of other impediments to litigation were imposed on the parents.[84]

The results were predictable and encouraging. An executive summary of the case study of the pilot[85] for the first two years of operation stated this:

> These results indicate that there is significant value in using the skills based NWFF intervention to help parents improve communication and cooperation in addressing parenting disputes in order to keep these cases out of the court system where possible. By supporting these parents through the difficult process of establishing appropriate and fair parenting agreements, NWFF helps to decrease conflict, stress and abuse while improving outcomes for children, leading to safer, healthier families and communities. The NWFF program should be continued and expanded to other communities.[86]

Here is what one family had to say about the program:

> Mother: well, I'm just really thankful you ordered it. Um, a lot of things that they talked about, you know, the all or nothing thinking, the extreme behaviour, it really opened my eyes to some stuff that I was doing wrong, you know, and I'm starting to be able to pass that on to the kids with their extreme behaviour, which is working really well. In my opinion Dad and I are getting along really well which is awesome for the kids to see. It's just -- it was a wonderful program and it really -- it really helped the way I'm handling things, thinking about things and just carrying on and trying to have a lot of respect for Dad and, you know, us working together on stuff. So I'm really pleased with -- with it. I'm really glad we took it.
>
> Father: I feel a lot of the same. When we -- when we first started, the first day or two, I didn't know how -- how everything was going to work but as I went through the program, it was definitely beneficial having -- I talked to the counsellors about this too -- but talking to somebody or having a one day parenting course is -- you retain some of that information, as much as you can, but having it consistent, you know, every week you have new issues and you can bring them up and help you through that. We did the group -- the group session together and yeah, they went pretty well. We were able to talk about leaving all things in the past, going forward. I feel really good about it. Me and Cara are communicating much better. I've noticed the children are actually -- things are much better, no anxiety. Like they used to go through a lot of anxiety during

[84] A copy of the template order used in the pilot is on file with the writer. Limitations included a prohibition from parenting applications while in the program, mandatory mediation or collaboration, use of a JDR process, and encouragement of summary trials as a last resort.

[85] A copy of the executive summary, 'Social Return on Investment (SROI) case study: Medicine Hat Family Services New Ways for Families' is on file with the writer.

[86] Some data is also available from the Medicine Hat pilot. On file with the writer.

> pickup and I'm not seeing that anymore. They're -- they're much more relaxed and they're doing better too. So I'm definitely seeing a benefit there.[87]

The pilot program ended when the initial funding was exhausted, but there is real interest in incorporating lessons learned from the NWFF approach in Grande Prairie, which is a demonstration community for the RFJS (which I will discuss in more detail, in Part 7).

Public Statements

In March 2021 the Office of the Child & Youth Advocate for the Province of Alberta, issued its first ever Statement of Concern, regarding the well-being of children whose families are involved in high conflict custody disputes. The statement concludes with this:

> I am calling on the Government of Alberta, with leadership from the Ministry of Justice and Solicitor General and support from child-serving ministries, to take action to ensure that formal and informal supports are readily available to families in high-conflict custody disputes. Timely action can lead to earlier solutions, keep children's best interests at the forefront and minimize the negative impacts on children and families across the province.

The concerns are actually quite well-known, but it is particularly striking for us, as this is an office that is mandated to address issues of children who are harmed while in care. The Child & Youth Advocate doesn't normally engage with the formal justice system, and yet in the Statement he specifically called on the Ministry of Justice to lead the work that is needed in order to address these concerns.[88] The statement is aligned with the RFJS calls to reduce the toxic stress that occurs in high conflict matters, and to provide supports and skills building to support resilience.

PART 7 - RE-IMAGINING THE FAMILY JUSTICE SYSTEM IN GRANDE PRAIRIE

Point-in-time summary of the collaborators' work[89]

Since March of 2020 the RFJS has been bringing together collaborators in the community of Grande Prairie to learn about the RFJS, and create opportunities to shift the pathways that families take in their family matters: from resolution of disputes to family well-being.

So far we have had approximately 29 in-person and virtual meetings with a growing number of collaborating community members (currently over 50) including family lawyers, mediators, collaborative practitioners, Family & Community Support Services representatives, Native

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[87] Court Transcript on file with the writer.

[88] https://www.ocya.alberta.ca/adult/news/child-and-youth-advocate-releases-statement-of-concern/

[89] The work is dynamic, ongoing and is continuing to develop further during final preparation of this report. I attended an in-person meeting on May 4th with local members of the family Bar. This included an opportunity to learn about brain science with Dr. Nicole Sherren. A workshop for community members occurred on May 5th focused on how brain science relates to family well-being, and how this science is relevant to the family justice system.

Counselling Services of Alberta staff, police, Crown, court staff, Family Court Counsellors from both Native Counselling and Court Services, domestic and sexual violence organizations, the RFJS Co-Conveners and Co-Leads, and others.

Here is the big idea. We think of Grande Prairie as a demonstration community for the RFJS on what it means to re-imagine and create a transformed family justice system focused on family well-being. Bearing in mind that every community will have individual needs, resources, and challenges, the idea is that the process the Grande Prairie community uses for transformation and perhaps the transformed system model itself, can be scaled out and scaled up.

RFJS was able to have Dr. Nicole Sherren (neuroscientist and former Research Director with the AFWI) provide an afternoon workshop on brain science and have encouraged our Grande Prairie collaborators to complete the brain science certification course. With funding from foundations, RFJS has engaged InsightFormation to introduce and lead us in working with the Strategy Map tool– developing deeper understanding of outcomes, innovation strategies, and from-to-gap statements. More recently we have been working with identifying measures, actions and commitments from the community to begin working on areas of focus.[90] And most recently work has focused on designing an innovation for use by the Court to safely and effectively enhance, support, and accelerate the broad-based system change.

Through the course of our work a practical tool has been developed: the Community E-Learning Hub. This is an on-line tool designed to provide information, education, and supports on a broad range of social, relationship, parenting, financial, and health matters for folks experiencing relationship issues.[91] Many of the resources it offers are free.

One of the RFJS community collaborators, the Grande Prairie Family Education Society, has been successful in an application for funding from the City of Grande Prairie, Family and Community Support Services. The grant will provide four years of funding to support development of a new Family Justice Navigator role[92]; provide for continuation of the community's work with InsightFormation; assist with brain science education in the community; and expand the Community E-Learning Hub.

In March 2022 the Courts in Alberta – with the support of the Alberta and Federal Ministers of Justice – announced a Restorative Justice Pilot Project, for criminal matters. Interest soon arose in whether it would be possible to apply restorative approaches in family matters, and the RFJS has been invited to join in this discussion. As a result, the community of Grande Prairie is exploring the use of restorative approaches in family matters involving domestic violence.[93] The effort is to shift the focus away from an orientation of punishment, to one of healing and well-

[90] Current versions of portions of the strategy map for Grande Prairie are on file with the writer.

[91] https://www.insightformation.com/academy A number of local Grande Prairie collaborators have signed on to this working group, as have representatives from various provincial organizations including Dr. Nicole Sherren.

[92] This role has now been re-named "Family Resilience Navigator".

[93] A number of local Grande Prairie collaborators have signed on to this working group, as have representatives from various provincial organizations including Dr. Nicole Sherren.

being for families.[94] As the community builds capacity in restorative approaches, this has the promise of expanding to other areas of family justice, which will further help to improve outcomes for families.

Development of a Court Pilot Project in Grande Prairie

My study leave is tied in directly with the work of the RFJS in Grande Prairie. One of my objectives was to explore leadership by the Court to advance a broad-based system change.[95] In my proposal for this study leave I predicted 3 outcomes.

> The Grande Prairie community will explore and identify ways of encouraging or requiring non-adversarial processes in the family justice system, ways of empowering families to improve conflict skills & reduce harms, and coordinating accessible cross-sector supports for families. Together, these will be designed to achieve the goal of enhancing resilience.
>
> For the Court, this will mean that non-legal issues do not enter the Justice-part of the system; and the adjudication sub-set of the Justice system is left to deal with truly legal issues. And that adjudication is a last, not a first, resort for family-related issues and disputes. This work will, by necessity include operationalization of the family dispute resolution processes contained in the recent *Divorce Act* amendments, and the increased role of positive supports and core life skills for children and families.
>
> Recommendations will emerge by which a Court may properly use its leadership and adjudication role to strengthen the directive process**.** Once approved, the model will be piloted in Grande Prairie, providing an opportunity to observe the model and test the approaches. A broader plan will be proposed for the Court on how to exercise its leadership to scale out and up the system re-design work to other regional centers. This plan will be provided to the Court and further circulated as determined by the Court.

It is important to emphasize that a pilot would be intended as the Court's contribution to advance a broad-based transformation from a system focussed on resolution of disputes to a system to achieve family well-being. Essentially, when the community is ready, and supports are in place to assist families with the full spectrum of social, relationship, parenting, financial and legal problems, a business case for a pilot in Grande Prairie will be submitted for consideration by the Court for approval. If approved, that pilot – which is just one of many changes that will move the community to the transformational systems-change - will have been discussed in the community, and there will be confirmation that the community is ready. In addition, attention will need to be

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[94] Outcomes will be unique to each family: restorative approaches must be agreed to by the parties, and will involve healing, accepting responsibility, and making commitments for the future.

[95] To undertake a project to evaluate the readiness of centers outside of Edmonton and Calgary to implement, at the broad system-delivery level, a re-imagined family law system; and examine how the Alberta Court of King's Bench can act as a leader, to advance, scale out and up, and implement that system.

paid to jurisdictional and constitutional questions (such as the right to access to the Court), balanced against the Court's jurisdiction to control its own processes.[96]

Broad-based System Change is Counter-Intuitive, Iterative, and Non-Linear

I came into this study leave with pre-conceived notions of what a Court pilot could look like.[97] As my work progressed it became obvious to me that in order to design a safe and effective pilot, one that would actually achieve the desired result and be safe for the community, it was necessary to have the community collaborators assist in the development of this innovation. That meant spending the time to work together and build relationships in the community, putting design and development of the pilot into the strategy map process, and working at the community level.

I shared an early iteration of a possible court pilot in a community accelerator meeting on March 2, 2023. Notes of the presentation and slide show are included in the PDF of the full meeting agenda and notes at slides 30 through 40.[98]

My summary of key design features coming from the group discussion follows:[99]

- The model should be a robust re-direction of folks away from the court system: COVID court closure was a success
- Word travels quickly in a community if there is clear re-direction
- Any agency or re-direction process should be centralized and include educational materials
- Learnings from the NWFF program can be useful, however it is preferred that the 'referring agency' be accessible and be other than a Judge
- The experiences of folks from around the province to re-direct are very valuable, including the experiences of Judges
- This is really a triage piece where we need to be sure of front-end resources
- Lawyers can and should be gatekeepers

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[96] There have been interesting proposals discussed in the community, which might become the model for the ultimate transformation of the family justice system. There is also a possibility of an interim pilot that will help move the Court (the formal part of the family justice system) toward this transformation, as well as providing leadership for the Bar, parties etc.

[97] Not unlike what Dr. Robert Anda described (Supra, Note 25). In his presentation Dr. Anda shared that the response he gets from physicians when he explains brain science to them:

'Physicians almost all say: 'Tell me exactly what to do.'

'They want a protocol. And its not about protocols. It's about relationships. And its about, in a self-healing community, those health care providers have patients who come in already understanding some of the issues and they can create synergy, and work together.'

[98] Copy on file with the writer. I was beginning to understand the need to "hold my ideas lightly" and to welcome the feedback and input of others, as well as the inevitable change and even discarding of my ideas.

[99] A recording of the discussion is on file with the writer.

- Folks go where they feel they can exercise power and often see the adversarial process as more powerful for them than mediation
- It is necessary to 'sell' folks on this approach as people want to know what's in it for them
- We need the right tool to educate folks on the benefits
- Folks need to be empowered to manage emotions so they can actually deal with important issues, especially parenting

It became obvious that my original idea was not consistent with these key design features. Collaborators decided to utilize a system-change tool known as prototyping. Here is a summary of the tool as prepared by Diana Lowe, KC:[100]

> Prototyping is quite simply a way of bringing new ideas to life. The first versions are usually rough – proofs of concepts, which allow us to explore, learn and think. They're prototypes, not finished products. We have learned in the RFJS to begin with a storyboard, and progress from there.
>
> The point of all prototypes, is really, as you move into an innovation space - a space of unknown and uncertainty - you're trying to decrease risk, decrease uncertainty, increase confidence and increase the tangibility of the shift. So going from this amorphous mental model shift, to going to something that is much more tangible and tactile, and that users of the family justice system can see and experience and participate in.
>
> The three characteristics that make a prototype good are that they are fast, cheap and generative:

- Fast is important, because then you can do lots of prototypes (James Dyson built 6000 prototypes for his first vacuum cleaner)
- Cheap is good because it allows for iteration, and you don't have to ask for permission
- Generative means that even if it fails, it is rich in learning.

> So as you take any of your prototypes, they could have a different test. When you give them to an end-user, what is it that you're trying to learn from that interaction? Are you trying to say "are we going to pause this particular prototype, are we going to discard it, are we going to iterate, are we testing an underlying assumption or are we testing a solution?" Prototyping is a very versatile method that you can use throughout your entire project.

A Prototype Summary tool was prepared by RFJS with the assistance of Alberta Co-Lab, and we are working with this guidance in Grande Prairie.[101]

The possibility of changes in the Court was next considered at a community accelerator meeting on March 22, 2023.[102] Much of the discussion was around building capacity to support families,

[100] Copy on file with the writer.

[101] Copy on file with the writer.

[102] Copy of meeting notes and link to zoom recording on file with the writer.

and improving the awareness and coordination of supports (i.e. the 'community readiness' concern). My summary of the work specifically related to design of the Court pilot follows:

1. The mandatory intake and case flow system (Court of Justice) needs to embrace other domains of skills and supports within the community.
2. There needs to be strong messaging around the harms that are caused through the adversarial processes of the court system.
3. There is a need to ensure that everyone directly involved in the court system (judges, lawyers, court staff and officials) are educated on brain science and referral of folks to appropriate services.

A second draft of the prototype for a pilot was created, and amended.[103] But then new information emerged about a very unique approach to family matters in Denmark: a system where folks deciding to restructure receive a variety of structurally-based resolution principles and supports, agreements are guided and assumed with or without issue-resolution assistance (akin to mediation), and applications for separation or divorce are a simple administrative process, which is on-line, and inexpensive. Interestingly, the processes of the "Agency of Family Law" falls within the mandate of the Ministry for Social Affairs and the Interior (not the Ministry of Justice). Matters not agreed to are dealt with via mediation, with potential for appeal. My next iteration of a draft prototype for a pilot, and information about Denmark were provided together to the collaborators.[104] The intention was to encourage bold thinking and spur imagination.

The work was next considered at a community accelerator meeting on April 5, 2023. The collaborators were inspired to embrace a bold new vision for family justice: they decided, figuratively, to 'go to Denmark'. Here is my summary of some of the rich conversation:

- A Court pilot is very important as one of a number of contributions to advance a bold vision.
- Why re-invent the wheel? Take principles from other models, like Denmark, that are applicable in Grande Prairie and utilize them.
- This is ambitious, but where there is a will, there is a way.
- Grande Prairie is an ideal community to advance a broad-based system change: mid-size communities have advantages (for example they can be more nimble) that are not available in larger ones. Grande Prairie can show that change is possible.
- Grande Prairie is ideal: it is fast-growing and has many young families.
- A Court pilot is an essential component of this major change. Denmark has a significantly different social structure than Canada, and our social structures will need to rise to the challenge of the change. This requires concurrent planning models.
- We should take what we can from other models, but we need to pay attention to the details of specific processes within models: a form of 'functional tracking' must occur.

[103] A copy of the draft is on file with the writer.

[104] Meeting materials on file with the writer.

- A Court pilot would assist us to recognize how we can improve on other models (like Denmark).
- When considering a Court pilot it is more important to ask 'What is the useful role of the Courts?' rather than 'Who will end up there?' For example in domestic violence cases where power imbalance is a problem how can the Court use its 'power to compel' to reduce conflict and stress?
- What would the role of the Court be in a 'Denmark-model' where administrative processes for divorce are employed?

A subsequent draft of the prototype for a Court pilot has been prepared.[105] This draft may really be an interim step that the Court could undertake to help reduce the non-legal matters that are still being brought before the Court. Details of the prototype for a pilot will be further developed as discussion continues at the community collaborator and working group level. As we appear to get closer to a model that is ready for consideration, we will expand the feedback group to further refine the prototype. Once the prototype process is complete, and when the community is ready, a business case will be prepared for consideration by the Court for adoption as a pilot project in Grande Prairie.

PART 8 MEASUREMENT

How are Efforts Being Measured?

Because of the nature of broad-based system change (a complex, long-term undertaking, with interconnected issues, multiple organizations, boundary crossing, the potential for unintentional consequences, etc.) it is worthwhile to consider measurement from a variety of perspectives. Here I consider five viewpoints embedded in the work as our efforts progress.

Community Response and Participation

The RFJS generally, including myself as Co-Convener, have attended countless meetings, made many, many presentations, and published numerous articles about efforts to re-imagine the family justice system and to create a new system aimed at achieving well-being for families: shifting the system away from resolution of disputes and aimed instead at healthy outcomes for families. I have never heard anyone quarrel with that principle. Instead, many folks from all corners of the family justice system have become collaborators, in order to participate in and support the work. And many of these folks

[105] Draft copy on file with the writer. This has not been circulated.

have done this hard work 'off the corner of their desk', on their own time after work, or even purely as volunteers.[106]

Key organizations have demonstrated leadership at the Co-Convener and Co-Lead level: Native Counselling Services of Alberta (Robyn Scott, Chief Operating Officer); County of Strathcona Family and Community Services (Kesa Shikaze, Director); Law Society of Alberta (Don Cranston, KC past-president); Alberta Court of Justice (Justice David Hancock); Court of King's Bench of Alberta (Justice Rodney Jerke); and Alberta Justice (Barbara Turner, KC and Diana Lowe, KC).[107]

A number of organizations have expressed interest in pursuing family well-being as an outcome for the family justice system.[108]

Provincial and international bodies have reported on the work of the RFJS.[109]

Formal Justice System Support

From the outset Alberta Justice has supported the RFJS initiative with resources and as described above, a number of Assistant Deputy Ministers have been Co-Conveners.[110] The Alberta Court of King's Bench adopted the RFJS Theory of Change into its strategic plan and has always designated a judge as RFJS Co-Convener. The Alberta Court of Justice has participated in the initiative from the outset and recently a Court of Justice judge became one of the Co-Conveners. The Law Society of Alberta, regulator of the legal profession in Alberta, has designated an influential lawyer as Co-Convener.

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[106] In the preface of his book "Principles-Focused Evaluation: The Guide" Michael Quinn Patton states,

> "So then, returning to substance, principles-based initiatives are led by principles-driven people. That's what Frances Westley, Brenda Zimmerman, and I found in studying major social movements that successfully solved problems and changed systems. In *Getting to Maybe: How the World is Changed* (2006) we reported what we found, that social innovators are motivated by a strong sense of calling, based on deeply held values. They see some social or ecological problem and act. These are people who look at the way things are, find the status quo intolerable, and want to make a difference. They engage based on their principles."

[107] In the early years of the RFJS, the Ministry requested that Diana Lowe, KC be seconded from her role in the Court to the RFJS, and the Court agreed. The secondment was eventually increased to .8 of her time. Since her retirement from the Court in 2020, Ms. Lowe has continued in the role of Co-Lead on a volunteer basis. Prior Co-Conveners include Justice Andrea Moen, Alberta Court of King's Bench (retired); Assistant Deputy Minister Lynn Varty KC (retired); and former Assistant Deputy Minister Mary MacDonald KC.

[108] For example, the City of Lethbridge is engaged in a well-being initiative and has participated in Grande Prairie community collaborator meetings.

[109] For a description of the RFJS, see an article written by Diana Lowe, KC for the Journal of Family Law in the UK, which was published in September 2021, Vol. 51 Family Law Journal 1156: https://www.familylaw.co.uk/news_and_comment/re-imagining-the-family-justice-system-an-introduction-to-alberta-s-reforming-the-family-justice-system-initiative . See also the AFWI case study report (Supra, note 43)

[110] Government resources have fluctuated but have always included a senior staff person as Co-Lead of the initiative.

Formal justice system actors in Alberta and other jurisdictions have expressed interest in the initiative and as RFJS Co-Convener I have made presentations to law students, articling students, lawyers, judges, and legal educators. Diana Lowe, KC has served on the Board of the ADR Institute of Alberta for the past two years as an ad hoc member, in order to share the RFJS initiative with ADRIA. While her term is coming to an end, she has been asked to Chair a new Family Steering Committee for ADRIA. The topic of this year's AFCC Alberta Chapter Annual Conference was "Transforming Family Justice in Alberta", in alignment with the RFJS initiative.[111] And there are many more examples of this kind.

Alberta and British Columbia have collaborated to create the Strategy Map to transform the family justice system: and this has led to case studies, webinars and the IBM Report on the joint initiative. A Cross Canada Alliance to Transform the Family Justice System has now also been created, including Alberta, British Columbia, Saskatchewan, Quebec, and Nova Scotia. The Canadian Institute for the Administration of Justice is also part of the Alliance.

The Canadian Institute for the Administration of Justice (CIAJ) published a three-part podcast series on the work of the RFJS.[112]

Measurement within the Strategy Mapping Process

The strategy mapping platform (InsightVision) we have used includes an intentional measurement function, to help ensure that we are moving forward with actions to achieve the desired strategies. The process requires identification of strategies aimed at achieving outcomes leading to the desired state: transform the family justice system by focusing on achieving family well-being. Within the strategies are deeper strategies: more short-term or specific actions designed to advance the broader strategy, measures and actions. All of this is tracked in the platform, and can be readily communicated to collaborators, funders etc.

The strategy mapping process includes the development of from-to-gaps and includes a scorecard to measure progress of specific actions.[113]

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[111] The AFCC 2023 Conference Program is here: https://www.afccalberta.org/_files/ugd/f0ed2d_e0bee8eb673c4c918630c483688ee941.pdf A number of participants at the recent AFCC conference have made contact seeking to be involved, and sharing insights.

[112] The first in our series is Episode 48, entitled ***Family Law Reform Part I: The Right to a Good Life:*** https://ciaj-icaj.ca/en/podcasts/family-law-reform-the-right-to-a-good-life/

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The third in our series is Episode 50, ***Family Law Reform Part III: It's All About the Children:*** https://ciaj-icaj.ca/en/podcasts/its-all-about-the-children/

[113] On file with the writer.

Evaluation of the Process Used by RFJS to Manage Strategy Implementation

The work in Alberta and BC to transform the family justice system has recently received international attention. The initiative is used as a case study in a study by the IBM Center for The Business of Government.[114] The report states this:

> Solid progress is being made on the three challenges faced by a system-level transformation of the family justice system: changing mental models, challenging complexity, and managing information. The use of strategy maps and InsightVision is allowing the coalition to plan for the first, visualize the second (even as it changes and changes again), and handle the third.

Measurement of the Re-imagined System

Assessing the impact of a family justice system designed to achieve family well-being requires measuring exactly that. Well-known economist, Mark Anielski[115], has been part of the RFJS collaboration and recently made an informal presentation to the Grande Prairie collaborators on measuring well-being.[116] A working group is being formed to further consider options for use of a well-being survey by the Grande Prairie community, to measure well-being, analyze the survey responses, and inform future efforts to continue to improve outcomes. Opportunities to fund this well-being measurement are in the process of approval.

PART 9 - FINDINGS

Community Readiness

One of the objectives of this study leave was to evaluate the readiness of centers outside of Edmonton and Calgary to implement, at the broad system-delivery level, a re-imagined family justice system.

It is plain and obvious that the community is Grande Prairie is keenly interested in the work of re-imagination and has already taken bold and innovative steps to effect that change.[117] Work has not yet progressed to the point where full implementation is possible, but funding support and community participation and enthusiasm are in place to ensure that progress will continue. And this community will continue this work.

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[114] https://www.businessofgovernment.org/report/addressing-complex-and-cross-boundary-challenges-government-value-strategy-mapping See also the podcast discussing the report: https://www.businessofgovernment.org/interviews/4853

[115] https://anielski.com/about/

[116] Meeting notes and recording on file with the writer.

[117] See 'Point-in-time summary of the collaborator's work' 56 above

At a meeting in Grande Prairie with the Native Counselling Services Family Courtworkers, discussion explored the question of how the family justice system as it impacts Indigenous communities could be re-imagined to achieve better outcomes for families. Many of the frustrations, and challenges of Indigenous communities and workers were raised. But many community-based and culturally appropriate supports were also discussed. In an effort to encourage broader thinking, the participants invited to describe how they would deal with folks if the formal justice system was not an option for families to turn to. It was only when the NCSA Chief Operations Officer (RFJS Co-Convener Robyn Scott) emphatically stated, 'THERE IS NO COURT' that ideas emerged, unimpaired by a focus on our existing systems and challenges.

And to my surprise, after only a few seconds delay, they all had answers. They said, 'We would just do what we do now. We would gather a group together from the community and we would all participate in the solution together. We would help by using the resources that are already in our community.'

What the conversation told me is that these Family Courtworkers needed to be empowered to imagine the possibility of achieving well-being. And where there are shortfalls identified in the supports and skills the community can offer, society needs to be open to contribute.

Thinking about community from a much wider perspective, I suggest there is broad support for significant change. The Action Committee called for 'major change' and urged the system to 'take action'.[118] And there is significant international, national, provincial, formal justice system, and local support for change.

Leadership by the Court

In this study leave I undertook to examine how the Alberta Court of King's Bench can act as a leader to advance, scale out, and implement a re-imagined family justice system at the broad system-delivery level.

Chief Justice Beverley McLachlin (CJSCC, now retired) and Justice Thomas Cromwell (SCC, now retired) established and led the Action Committee. This is a model of bold judicial leadership to advance social change with a goal to improve the ability of every Canadian to access the justice system.

The Alberta Court of King's Bench has likewise exercised bold leadership since the outset of the RFJS. Specifics, as described more fully in the above report, include:

1. Support for the launch of the RFJS initiative in 2013
2. Appointment of Co-Conveners and allocation of staff resources to the initiative
3. Undertaking the causal layered analysis process
4. Adoption of the RFJS theory of change in the Court's strategic plan

[118] *Supra*, notes 1 and 2.

5. Public support for the RFJS
6. Approval of brain science education as a component of continuing judicial education
7. Approval of this study leave
8. Participation in the community collaborator/accelerator process in Grande Prairie
9. Approving judicial time for RFJS work

These tangible actions speak loudly about the Court's support for the re-imagination of the system.

The Court is a powerful institution in Canada. It is widely seen to be powerful even in relation to matters over which it has no direct power. The willingness of the Court to engage as a leader speaks loudly to Canadian society.

And at its heart, re-imaging the family justice system requires a re-allocation of power from Judges (to resolve disputes) to families themselves (*empowering* families to achieve well-being).

In work such as this the Court is a necessary, critical, and valued stakeholder and leader.

Brain Science in Legal Training

In 'Brain Science for Law Students'[119] I outline efforts I made during the study leave to encourage the understanding, value, and use of brain science in legal training. I found interest in and an understanding and acceptance of why brain science is relevant to many aspects of the practice of law. Learning about it matters.

The Action Committee reports made a number of recommendations relative to legal education. It seems to me that education about brain science is linked to the recommendation:[120]

> That stakeholders across the family justice system led by the law schools, collaborate on a study of family law curricula and make recommendations for changes that would better prepare students by providing them with the unique knowledge and diverse skill needed to assist children and families through the contemporary family justice system.

I've learned through discussions with the legal academics who hosted me during my study leave, that this has presented significant challenges for law schools, as it is not in accord with the way law school curriculum is currently developed in Canada. Because of the principle of academic freedom, family law instructors have enormous leeway in designing their course content-there are no established "curricula" in regards to family law. Family Law is also not a required law course, so the accrediting body for law schools (the Federation of Law Societies) also does not currently involve itself in the details of family law education. While this leaves some flexibility

[119] Page 46 above.

[120] Recommendation 1, p.28 *Beyond Wise Words*, FJWG, *Supra*, note 1

for individual instructors and Faculty to include brain science in their curriculum, it also leaves the risk that they might choose not to include it.

Recognizing (as I summarized above, and detail in 'Brain Science for Law Students')[121] that brain science implicates and informs a much broader aspect of our legal systems than just the family law system, it may be preferable to consider incorporating brain science as a more foundational element of law school curriculum, continuing legal education, and judicial education. The notion is reflected in the recommendations contained in the *Roadmap for Change* report:[122]

> **6.1 Law School, Bar Admission and Continuing Life Long Learning** Law schools, bar admission programs and continuing legal education providers should put a modern access to justice agenda at the forefront of Canadian legal education. This agenda will be an important part of a new legal reform culture. While law faculties will need to develop their own particular research and teaching agendas, and recognizing that many innovative initiatives have already begun, the following initiatives should be developed and expanded.
>
> Modules, courses and research agendas focused specifically on access to justice, professionalism, public service, diversity, pluralism and globalization. The needs of all individuals, groups and communities, and in particular self-represented litigants, aboriginal communities, immigrants, other marginalized and vulnerable groups and rural communities should be specifically considered.
>
> Increased skills based learning that focuses on consensual dispute resolution, alternative dispute resolution and other non-adversarial skills.
>
> Social, community, poverty law, mediation and other clinical, intensive and experiential programs.
>
> The theory and practice of family law should be promoted as a central feature of the law school program.
>
> Research and promotion of different ways of delivering legal services that provide affordable and accessible services to the public as well as a meaningful professional experience for lawyers, including a reasonable standard of living.
>
> Similarly, bar admission programs and continuing legal education providers should promote access to justice as a central feature of essentially all lawyering programs.

Proposed Pilot for Grande Prairie

Four key findings have emerged from the work to date. They are all tied to our over-arching principles of "helping families thrive" and "it's all about the children". In this type of work, the

[121] *Supra*, note 119

[122] *Supra*, note 2

principles, the process, the relationships and the trust that builds when individuals work together, are the most important ingredients for success. If we adhere to our overarching principles, follow a process suited to working in complexity, engage in true and respectful collaboration, and allow the time to develop relationships and trust, change will emerge. It isn't possible to know what that change will look like in advance (we are working in complexity, or "unknown unknowns"[123] (remember, system change is counter-intuitive, non-linear, and iterative).

1. Leadership, engagement, and support through action by the Court provides strong inspiration that helps to motivate change.

2. A Court pilot project, of some design, is seen as critical to advance transformation.

3. There is a high level of support for a pilot that is designed with the input and collaboration of the community.

4. Patience is critical. A model for a Court pilot will emerge as the process unfolds, and when the community is ready.

Personal Reflections

There are a number of accomplishments and learnings coming from my own efforts during this study leave and with the much appreciated contributions of many others, including:

1. Significant progress has been achieved to advance the work in Grande Prairie to re-imagine the family justice system and to assess community readiness.

2. This report summarizes a decade's work and leadership by the Court to advance system transformation. That work stands as a model for others.

3. This report is intended to be a resource for other Courts, departments, agencies, organizations, communities, and individuals working to transform the family justice system.

4. The work of the RFJS and the importance of brain science has been described to law students, articling students, law faculty, members of the public, international jurists, and others.

5. Design work for a Court pilot has been significantly advanced.

6. Real progress has been made to explore community collaboration and demonstrate progress on achieving a self-healing community.

For me, this study leave has been a remarkable experience. The opportunity to at least slow down, review more thoroughly, and think through more deeply a complex problem is a beneficial and skill-building experience that can carry into my judicial duties.

[123] See discussion about complexity and the Cynefin framework above, at p. 26

And it has been heartening to hear that the community not only supports, but is hoping for, a major shift away from a dispute resolution model for family justice to a well-being model. I have often seen that folks support innovative approaches because they know in their heart it is the right thing to do (as in my story at the beginning of this report).[124]

And having had an opportunity to look deeper into brain science and to hear the perspectives of others including students, I find that I must heighten my awareness to the need to ensure that my practices empower resilience, and to pay close heed to potential harm being done to children by a system of which I am a part.

I return to my judicial duties (mostly) rested, and certainly much better informed about the critical need to contribute to system level efforts to reduce harm to children.

I will continue with this work by contributing to in-court informational and educational opportunities and continuing in my role as Co-Convener of the RFJS. When a prototype has been adequately developed, is safe, and the community is ready, I will prepare and propose a business case for a pilot project to the Court.

I would be remiss if I did not mention the personal benefit I gained from being at the University of Alberta. I have gained enormously from the counsel and comments of Dean Barbara Billingsley, many faculty members, students, and Steve at 'Hello my Friend' coffee counter. This faculty is filled with thoughtful, devoted, hard-working, intelligent folks.

[124] This observation, in conjunction with an informal discussion with Dr. George Pavlich, has provoked my thinking about how community support for laws or legal systems relates to the rule of law. But that is beyond the scope of this study leave.

RECOMMENDATIONS

I will organize my recommendations in relation to the Strategy Map being developed in Grande Prairie.[125]

Recommendation 1

Court Strategies, objectives, policies and programs must be designed to contribute to the shared goal of transforming the Family Justice System by focusing on achieving family well-being.

Recommendation 2

Courts and justice sector educators and education systems should take steps to increase justice sector education in brain science and understanding about the impact of trauma. Courts can continue to encourage, support, and provide continuing judicial education about brain science and the impact of trauma. Judges can use knowledge on these topics in their judicial practice as it relates to the impact of the adversarial system and conflict on the brains of children. Law schools can consider how to educate law students about brain science, the impact of trauma, and the very broad application of this science to many areas of law, legal systems, and the need to change systems. This might be changes to family law curricula or perhaps as some part of legal education similar to the way that legal ethics forms a broad part of legal education.

Recommendation 3

Courts should use their leadership powers to support communities that are working to promote a holistic perspective to address all family needs – social, relationship, parenting, financial, health, and legal. In particular, the Court should continue to support and contribute to the work underway in Grande Prairie.

Recommendation 4

Courts can assist in capacity development of the transformative process by expanding participation and thereby increasing the collaboration capacity of those working on family justice system transformation. In particular, Courts can participate in opportunities to share information about the work underway by internal communications within the Court, speaking opportunities at legal and community events, in communications with their contacts in the court and judicial administration in the provincial and federal governments, at judicial education or other activities, and justice system organizations at the Provincial, National, and International levels.

[125] P. 38 above

Recommendation 5

Courts should consider innovative ways to encourage or require non-adversarial processes in the family justice system, and to integrate the justice system with community-level services with families. In particular, the Alberta Court of King's Bench should continue efforts to design a pilot for Grande Prairie, in collaboration with the community that is focused on advancing the broad-based system transformation currently in process.

Recommendation 6

Courts should be engaged with the other collaborators in the design of the re-imagined system. The Court will be able to assist by reviewing, aligning and sharing information about changes that will be needed for policies and programs within the Court's control, just as other collaborators will need to do within their respective mandates. This will help to ensure that Court policies, programs and practices align with the family well-being goal. These changes should, however, not be implemented independently, or prematurely. It is important that the community is ready, and that the transformation from a system focused on dispute resolution to a system focused on family well-being, is ready to respond to the needs of families.

Recommendation 7

Courts should take bold judicial leadership to advance social change with a goal to improve the ability of every Canadian to access the justice system. In particular, the Alberta Court of King's Bench, while working to maintain the current system, should continue to supply a Co-Convener to the RFJS as a leader in advancing system transformation.

EPILOGUE

Reforming a complex system like the family justice system is cross-jurisdictional, cross-ministerial, and cross-sectoral. It crosses boundaries. It opens up silos. And the work of the RFJS has likewise, and very intentionally, done the same. Silos take on a different shape when folks work together to achieve a common outcome. When they work in an environment where there is no one in control, but all are working toward a shared outcome, and with aligned efforts. So while the recommendations I make are directed to Courts in their role of leadership they will also have relevance and importance to many others. I hope they will also be of use.

I began this report with my own story. We all know the story of our family justice system. But it too is only a story. The time has come to re-write the story. In fact, it's already being re-written. But every one of us has a stake in this story, and an important contribution to the writing. This new story is one about family well-being. And as Harold Johnson said, "If you tell yourself a story over and over again, no matter how improbable it may sound when you begin, in time the story will manifest itself."

We are lucky. It is already manifesting itself.

Dr. Anda said, 'it's all about relationships'.[126] Harold Johnson said this:[127]

> Remember what I told you about our ancestor's atoms in the soil, how the plants reach down and bring those atoms to the surface and animals eat those plants and we pick the berries off those plants and eat the animals that eat the plants and so we have our ancestors' atoms in us. That, too, is part of the story.
>
> In Cree, when we finish praying, we say "kakithaw nawakomakanak." It means "all my relations." Not just any biological relations. I am also related to the plants and animals here. They contain my ancestors' atoms. I am related to the sky and water. I am related to the fish and the birds and the worms. I am related to the spirit forces here. I call the Great Spirit Grandfather, and I call the Earth Grandmother.

It's all about the children.

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[126] *Supra*, note 25

[127] Harold R. Johnson, *The Power of Story*: *On Truth, the Trickster, and New Fictions for a New Era*, 2022, p.127

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The Divorce Magazine: https://divorcemagazinecanada.com/magazines

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Parenting tools including coParenter and Our Family Wizard

Innovative programs offered by Family Violence organizations including Sagesse: https://www.sagesse.org/, Impact: https://impact.sagesse.org/, Calgary Domestic Violence Collective: https://cdvc.ca/, Alberta Council of Women’s Shelters https://acws.ca , Shift: The project to end domestic violence: https://preventdomesticviolence.ca/

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APPENDIX I

Lectures, meetings, consultations, and discussions during the Study Leave and as Justice in Residence at the University of Alberta, Faculty of Law

September 1, 2022

Meeting with two articling students. Discussion around sentencing principles and factors including mental health, Gladue factors, and the significance of brain science.

September 8, 2022

Meeting with RFJS Co-Conveners and Co-Leads for update on RFJS activities.

Attended lecture by Supreme Court Justice Jamal followed by faculty lunch.

September 11, 2022

Telephone meeting with Edmonton lawyer regarding counsel's experience with summary trials. Various advantages and disadvantages discussed.

September 12, 2022

Participation in RFJS Grande Prairie community accelerator meeting. Included in the meeting was my report on intentions for the study leave.

September 15, 2022

Continuation of RFJS Grande Prairie community accelerator meeting. A significant portion of the meeting was about the use of restorative justice/restorative practice in relation to domestic violence matters.

September 21, 2022

Meeting with Co-Convener, Don Cranston KC, regarding potential Court innovation in Grande Prairie.

September 22, 2022

Telephone meeting with Nancy Mannix, Patron AFWI to discuss tool for measurement of resilience.

October 4, 2022

Attended Diversity, Inclusion, Access committee and provided update on RFJS activities.

October 5-7, 2022

Attended in-Court education session. Made a presentation on summary trials including intentional identification of legal issues and direction of social, relationship, parenting, and financial issues to supports and skill-building; and encouragement of or direction to ADR processes.

October 12, 2022

Meeting with faculty instructor Christine Pratt to discuss upcoming summary trial lecture in civil procedure class.

Telephone meeting with representative to Rankin Inlet Spousal Abuse Counselling program.

October 14, 2022

Telephone meeting with Professor Jennifer Chandler regarding brain science and co-ordination of her and my upcoming lectures at the IOJT conference.

October 18, 2022

Attended a faculty seminar on biodiversity and property law. Informal discussion with faculty member about the relationship of property law and the enforcement of Treaty Rights.

October 25, 2022

Made keynote presentation to Divorce Symposium with RFJS Co-Lead Diana Lowe KC.

October 26, 2022

Meeting with RFJS Co-Convener Robyn Scott, Co-Lead Diana Lowe KC, and Native Counselling Services Family Courtworkers in Grande Prairie.

October 31, 2022 to November 3, 2022

Attended IOJT conference in Ottawa. A number of the presentations were on topics relevant to the study leave including: Violence against women; Effects of trauma; Indigenous practices in youth and family court matters; Trauma-informed judging; Teaching judges science; Basic neuroscience; Teaching judges about social context.

I made a presentation on brain science and the RFJS at the conference.

November 9, 2022

Meeting with Prof Meschel re: ADR/RFJS lecture.

November 23, 2022

Meeting with Co-Convener Justice David Hancock to discuss potential actions for Alberta Court of Justice re: advancing system transformation.

November 24, 2022

Meeting with Prof Pavlich re: upcoming presentation in jurisprudence class.

November 29, 2022

Lecture in civil procedure class on summary trials.

November 30, 2022

Presentation to Court of Justice, King's Bench, and Court of Appeal articling students with Diana Lowe KC on RFJS and brain science.

Meeting with Prof Meschel re: potential amendments to arbitration provisions related to family law matters.

December 1, 2022

Meeting with Co-Convener Don Cranston, KC to update on RFJS activities and consider law reform possibilities related to family law arbitrations.

December 5, 2022

Telephone meeting with Erin Shaw, author of 'A review of Reports and Initiatives' for the FJWG of the Action Committee.

December 8, 2022

Telephone conversation with Dr. Sherren re: epigenetics.

Made a presentation on brain science and RFJS to faculty at a noon hour seminar.

Conversation with Prof Sprysak re: brain science and potential application in tax matters.

December 12, 2022

Meeting with Prof Meschel and Megan McKay re: mediation/RFJS joint lecture.

December 15, 2022

Telephone meeting with RFJS Co-Lead Barb Turner KC and Vince Zalcik of resolution services re: Family Justice Navigator pilot in Strathcona and Northgate.

January 10, 2023

Meeting of judicial advisory committee for NJI Science Tool for Judges.

January 16, 2023

Telephone meeting with Susan Billington KC, University of Calgary, re: proposed RFJS presentation to law students.

January 17, 2023

Meeting with Ellen Doty Assistant Dean, Development re: broad system change work undertaken by RFJS.

Meeting of RFJS Co-Conveners Don Cranston KC, Kesa Shikaze, and Co-Leads Barb Turner KC and Diana Lowe KC for update on RFJS activities.

January 24, 2023

Noon hour lecture with Megan McKay on mediation/RFJS.

January 25 – 26, 2023

Attended KB education session. Symposium on unconscious bias, trauma informed judging, and Calgary Legal Guidance staff lawyer were all applicable to the study leave.

February 7, 2023

Attended KB Smudging Action Plan Committee meeting.

February 8, 2023

Attended KB Indigenous Committee meeting.

February 9, 2023

Telephone meeting with Jim Langston (retire Justice ABKB) re: innovative processes for Indigenous family violence cases in Lethbridge courts which involves Lethbridge Peacemaker program.

February 14, 2023

Lecture by Dr. Amanda Wilson, University of Warwick on 'Restorative Justice Ethics in Process: Reviving the Social Pulse'. Discussion with Dr. Wilson re: RFJS and restorative family justice initiative in Grande Prairie.

February 15, 2023

Provided a lecture on Brain science and RFJS in Jurisprudence class (Science, Law, and Social Change: A Judge's Perspective).

February 20, 2023

Attended KB Indigenous Committee meeting.

February 21, 2023

Meeting with Alberta Council of Women's Shelters (ACWS) representatives re: their materials and initiative for education of legal professionals on family violence and the impact of family violence.

February 24, 2023

Attended informal faculty breakfast with Minister Lametti. He invited RFJS to provide materials to the policy department.

Meeting with Prof Andrew Leach re: measurement of RFJS initiative, and desired outcome.

February 27, 2023

Meeting with Don Cranston, KC for update on RFJS activities.

February 28, 2023

Meeting with student who is pursuing an interest in brain science and law.

March 1, 2023

Meeting with Judicial advisory committee for NJI science tool for judges.

March 2, 2023

Grande Prairie community accelerator meeting.

March 7 - 10, 2023

Meeting with Brea Lowenberger (Access to Justice Co-Ordinator, University of Saskatchewan) re: RFJS update, and invitation to speak at the U of S College of Law.

Attended Indigenous Law seminar. Very relevant materials and discussions on restorative justice initiatives.

March 14, 2023

Meeting with New Brunswick CJ DeWare, Justice Belanger-Richard, and senior Clerk to describe RFJS and for a tour of Wahkohtowin Lodge.

Participated in a short video recording of RFJS initiative.

Meeting of RFJS Co-Conveners Justice Hancock, Don Cranston KC, Kesa Shikaze, and Co-Leads Barb Turner KC and Diana Lowe KC re: RFJS update.

March 16, 2023

Meeting with 2 students pursuing an interest in brain science and law.

March 20, 2023

Attended a brain-storming session with ACWS. Included were Professors Peter Jaffe and Nick Bala.

March 22, 2023

Attended a Grande Prairie community accelerator meeting.

March 25, 2023

Judged at the Morrison LLP Family Law Moot. Attended reception afterwards.

March 27, 2023

Meeting with Ross McLeod KC, LSA practice advisor (retired) re: ethical obligations of lawyers in family law mattes.

Conversations with Prof Pavlich, Judge Morton Minc (Montreal), and KB legal counsel re: proposed Court pilot.

March 28, 2023

Meeting with Barb Turner KC, RFJS Co-Lead.

Meeting with student re: emphasis on role of counsel as gatekeepers in court related family processes.

March 31, 2023

Meeting with Grande Prairie court counsellor re; statistics related to mandatory intake and caseflow project.

Meeting with student to discuss implications of brain science on law and lawyering.

April 3, 2023

Lecture in Family Law class on RFJS and brain science (Science, Law, and Social Change: A Judge's Perspective).

April 5, 2023

Observed moot in Indigenous Law class. This work is very related to a well-being outcome, and to innovative resolution options.

Attended Grande Prairie community accelerator meeting.

April 7, 2023

Judged at the Right Honourable Beverley McLachlin First Year Moot.

April 14, 2023

Meeting with Don Cranston KC, Robyn Scott, and Diana Lowe KC regarding education of lawyers: on brain science, Indigenous ways of knowing, services for well-being, and understanding what well-being really is (including when viewed through a cultural lens). Concerns expressed about the child welfare system and no clear idea of what the system is trying to achieve.

Meeting with Diana Lowe KC, Barb Turner KC, and Don Cranston KC re: efforts to co-ordinate front-end services.

Meeting with Diana Lowe KC and NJI representative for planning fall RFJS education session for KB.

April 17, 2023

Meeting with Prof Pavlich about intersection between a community-designed system and respect for the rule of law. 'Might + right + accepted authority and respect for the law.

April 20, 2023

Meeting with Don Thompson KC, CEO LSA (retired) re: ethical obligations of lawyers in family law matters and to avoid harm to children. Discussion about the necessity to communicate with lawyers and ensure they are on side and lead, not resist, the transformation.

April 25, 2023

Meeting re: Community Justice Centre engagement process.

April 26, 2023

Meeting with judicial advisory committee for NJI Science Tool for Judges.

General

A number of publications on RFJS related matters were prepared and submitted for publication in KB Weekly News.

Multiple discussions with RFJS Co-Lead Diana Lowe KC, about RFJS including history, collaborators, tools, resources, references, presentations, and contacts. Preparation for joint activities including presentations, community accelerator processes, and meetings,