

Michelle Jehn, Jessica Spina, Diana Lowe and Barb Turner
Reforming the Family Justice System Initiative
A Case Study in Systemic Design

Abstract

Family breakdown is common and brings with it many challenges for parents and their children. These challenges are compounded by the current family justice system, which is adversarial in nature, complex and costly for families. Over the years, the justice community has tried isolated interventions to improve access to justice, and while these projects, reforms and programs have achieved some good, they have not created the system-wide change we desire. We've learned from past experience that the only way to bring about meaningful, systemic change is to have a broad collaboration of all the participants in the justice system come together to work collectively to create the change we desire. In the RFJS initiative, we are exploring systemic design processes to address complex problems through systemic change.

This case study includes a description of the steps taken to bring together a collaborative alliance made up of approximately 200 individuals and organizations representing ten sectors that work within the broadly defined family justice system. Over the past year, we have held four workshops designed to build community and relationships among the collaborators; to gather information about the focus of concern within our collaborative alliance; to develop an understanding of systemic change and innovative lab processes; and to ensure that there is a shared commitment to change.

The main technique and method used throughout this process was Causal Layered Analysis (CLA) developed by Sohail Inayatullah, a futures studies researcher. While our current family justice system is characterized by a focus on family breakdown and legal responses, the space created through CLA enables us to consider solutions that might exist entirely outside the current understanding. Additionally, the language of the mental model and Theory of Change help us to understand and talk about the system in new ways that are much more focused on helping families to thrive, and recognize that family justice issues are primarily social and relationship problems which contain a legal element.

This initiative is increasing the knowledge and capacity for systemic change among all participants in the RFJS. We are building an awareness and understanding of innovative approaches, developmental evaluation and collaborative action that has not previously existed among these participants. This project is opening up a space to enable stakeholders (clients, families, and those who work within the system) to reframe the problems that they encounter in family justice. We are creating a culture of learning that allows us to learn as we go forward, and will support continued improvement in the family justice system.

Introduction

Family breakdown is common and brings with it many challenges for parents and their children. These challenges are compounded by the current family justice system, which is adversarial in nature, complex and costly for families. There are gaps in services which need to be addressed,

there are processes that are doing more harm than good, and there are many families who are in need of better supports in times of deep personal challenge.

In Canada, the legal tradition relating to family law is actually relatively recent. It is only in the last 40 years that has divorce been accessible in Canada, with the passage of the Divorce Act (1968).

In many ways, this legislation making it possible for parties to divorce, was positive. However, it also led to the “legalization” of the process for dissolution of marriage, and all of the related issues arising upon divorce of relationship breakdown.

That “legalization” has meant that the tools of our adversarial legal system have become part of the approach to family breakdown. Unfortunately, many family matters are not being probably resolved, with many cases identified as “high conflict”. There are issues of cost, delay and lack of public understanding in the current system. In addition, science on brain development demonstrates that unresolved conflict can have significant impact on the healthy development of children (Shonkoff et al., 2012).

Reform efforts since the early 90’s have focused on the development of programs and services to address family needs. These programs and services have not taken non-legal issues out of the legal processes, but rather have been made available parallel to – and often in connection with – court processes. Dispute resolution, case management, information and education for parents are some examples of the services being made available in the legal system, in response to the issues of family breakdown.

The overall effect has been that the courts are dealing with many matters that are not truly legal in nature. There’s great cost & delay, and indeed the processes often do more harm than good for families.

Science on brain development demonstrates that unresolved conflict can have significant impact on the healthy development of children growing up in such conditions. These and other concerns were identified in the 2013 reports of the national Action Committee on Access to Justice in Civil and Family Matters (the “Action Committee”).

Catalysts for Reform

While these reports identified the crisis in the family justice system, other emergent knowledge included the science on brain development and recent successful experience with collaborative action in the justice system.

Justice Andrea Moen of the Court of Queen’s Bench was determined to bring about change that would protect children from the effects of toxic stress in unresolved family law matters. With the support of the three levels of Courts in Alberta, she approached Alberta Justice, and invited Assistant Deputy Minister Lynn Varty to co-convene an initiative aimed at reforming the family justice system in Alberta. This was done in the context of a one-day Joint Action Forum of leaders in the justice community in Alberta, gathered to consider action on the Action Committee Reports and recommendations.

Approach

There has been a significant amount of effort on reform of the justice system in Canada and internationally, as well as research initiatives aimed at improving the justice system – often characterized as efforts to improve “access to justice”. Over the years, the justice community has tried isolated interventions to improve access to justice, and while these projects, reforms and programs have achieved some good, they have not created the system-wide change we desire. The RFJS is very different from these efforts. We are seeking systemic change to better address the needs of families, and not assuming that more programs and more law - even if it leads to greater “access to justice” - is the answer.

How did we recognize that the approaches that were being taken weren't addressing these issues?

In 2006 a national conference brought together the players in the justice system to discuss research and reforms. The participants celebrated new understandings from research initiatives in Canada and internationally that focused on the public needs, and looked at new developments such as dispute resolution approaches. While there was much to be excited about, during the conference there was a growing recognition and concern that in spite of all of the well-intentioned efforts, the problems were actually worse. This was seen in the growth in self-represented litigants, as well as the high cost of justice and the significant delays still experienced by litigants. We have reached a crisis in the family justice system.

There was a growing recognition of the complexity that we were dealing with and that we needed a different approach. The national Action Committee on Access to Civil and Family Matters grew out of this recognition, and the RFJS is founded on the reports of the Action Committee. This foundation has enabled us to ensure both that our work is based on a deep foundation of knowledge, and that our work will be focused at the level of systemic change.

We've learned from past experience that the only way to bring about meaningful, systemic change is to have a broad collaboration of all the participants in the justice system come together to work collectively to create the change we desire. In the RFJS initiative, we are exploring systemic design processes to address complex problems through systemic change.

This case study includes a description of the steps taken to bring together a collaborative alliance made up of approximately 250 individuals and organizations representing ten sectors that work within the broadly defined family justice system. We have intentionally included participants who would not traditionally be considered part of the justice community, but which we recognize as key members, such as psychologists, social workers, health care providers, educators and financial advisors. The Convenors lead the initiative and provide guidance, support and expertise through a backbone group that is tasked with guiding the RFJS vision and strategy, supporting aligned activities, establishing shared measurement practices, building public will, advancing policy and mobilizing resources. Over the past year, we have held four workshops designed to build community and relationships among the collaborators; to gather information about the focus of concern within our collaborative alliance; to develop an understanding of systemic change and innovative lab processes; and to ensure that there is a shared commitment to change. We have developed an outcome statement, objectives and guiding principles. Participants are organized into sectors

designed to ensure that all of the key actors are involved in the RFJS, and further to strengthen communication within the sector and to break-down silos. We are also using a Sector framework to encourage participants to keep their respective organizations and communities informed, and to bring information and ideas into the RFJS. This should help to build a broader understanding of the RFJS initiative, strengthen the foundation of our work, and lead to commitments at the institutional level as reforms are underway.

The RFJS is grounded in systems thinking and complexity theory, and has adopted a collective impact approach. Systems thinking shows us that “living systems have integrity. Their character depends on the whole,” and therefore, understanding the whole is necessary in order to be able to shape systemic change (Senge, 1990). Complexity theory focuses on the intricacy of relationships that exist within complex systems, where changes in one area can have profound and sometimes unanticipated changes in other parts of a system, or that may be difficult to attribute to a particular action. Indeed, “*dynamic complexity*... [occurs when] the effects over time of interventions are not obvious” (Senge, 1990). Collective impact is an approach that is based on the notion that groups of diverse actors working towards a commonly held objective can have far greater impact and success at enabling lasting social change, than can individual organizations working independently. In collective impact, it is connections and unexpected opportunities that arise through collaboration that lead to the most impactful system changes (Kania & Kramer, 2013).

We have developed a Theory of Change to ensure a clear, testable and actionable logic of change for the initiative. A Theory of Change is essentially a roadmap that articulates, provides narrative, or visually depicts how the change being planned for will occur. The Theory of Change for an initiative can also help with evaluation of success because it clearly describes what will be different under the initiative and the expected outcomes. This can support development of solid performance metrics and data collection strategies as well. The Reforming the Family Justice System Initiative is employing the use of developmental evaluation as it moves forward, a topic that will be returned to in a later section outlining next steps. The Theory of Change for this initiative is highly aspirational and seeks to make significant moves away from the current family justice system.

The main technique and method used throughout this process was Causal Layered Analysis (CLA) developed by Sohail Inayatullah, a futures studies researcher (Inayatullah, 2013). CLA enabled us to open up an honest and difficult dialogue about current understandings of the family justice system, and to examine the underlying roots of our beliefs, by drilling down through four layers of reality that shape our system and our experiences of it: litany, systemic structures, worldview, and metaphors/myths. Through CLA project collaborators have identified problems, strategies and key outcomes, which has enabled them to articulate a Theory of Change that will guide the reform process and enable a framework for evaluation and deep systemic change.

While our current family justice system is characterized by a focus on family breakdown and legal responses, the space created through CLA enables us to consider solutions that might exist entirely outside the current understanding. Additionally, the language of the mental model and Theory of Change help us to understand and talk about the system in new ways that are much more focused on helping families to thrive, and recognize that family justice issues are primarily social and relationship problems which contain a legal element. This opens a space for new solutions.

Further benefits will be realized over time as the prototypes are implemented and tested, which is the current phase of the initiative.

Observations and Lessons Learned

The family justice system can be understood as a complex adaptive system, similar to an ecosystem where one small structural change can open up a space for further changes that impact the system as a whole. We are learning as we move forward, and embracing this new culture of learning.

Leadership supported this approach and participants were open to try a new process and became increasingly engaged, furthermore participants were flexible and comfortable with emergence in the moment. Metaphoric videos provided a way to imagine how change could occur and being flexible and comfortable with emergence in the moment is helpful, having a positive effect on the project - rather than force a process, you are helping respond to the needs of the group.

We also learned that going through CLA is not a linear process. Recognizing how participants move from layer to layer, is mainly in language and reflective expression, where language becomes more subjective and less factual, more of a narrative, less quantifiable, more uncertain, less normative, more interpretive. The power of CLA in developing shared understanding and seeking some of the core beliefs that shape and guide a system subconsciously, is important to get at what might begin to actually change a complex system. It's the difference between understanding the root cause and having an end of pipe solution (or we would say, "adding new programs which effectively keep everyone busy re-arranging the deck chairs on the sinking Titanic"). For example the shared understanding (metaphor) that emerged through this process with RFJS, is "lawyers are gladiators, and the court a battleground".

We worked through the CLA with backbone and sector leads, but not with the whole group of collaborators. We were only able to tell them about it and present them with the TOC. We now think it would have led to a greater understanding, if we had worked through CLA with all collaborators. Following Relating Systems Thinking and Design Thinking 4 symposium in Banff, we began the CLA process with members of the working groups that are iterating prototypes of possible systemic changes. A total of 3 CLA conversations were completed, further increasing their understanding of the level of systemic change that the backbone wanted to happen along with a sense of ownership over their specific working group topics (Triage, Education of Young People, Engaging the Public). We were surprisingly able to use video conference technology to carry out the CLA with participants in Edmonton and Calgary, and successfully go through the CLA process.

A final lesson is that a Theory of Change is valuable and continues to be refined and guide the direction of the working groups. The continued refinement allows the groups to anchor their progress in something tangible that belongs to the whole system.

Lasting Benefits

This initiative is increasing the knowledge and capacity for systemic change among all participants in the RFJS. We are building an awareness and understanding of innovative approaches, developmental evaluation and collaborative action that has not previously existed among these participants. This project is opening up a space to enable stakeholders (clients, families, and those

who work within the system) to reframe the problems that they encounter in family justice. We are creating a culture of learning that allows us to learn as we go forward, and will support continued improvement in the family justice system.

As mentioned previously, the initiative is working with developmental evaluators in order to support real-time collection and analysis of data, which enables learning about what works and what doesn't, promoting iteration and improvement of our strategies over time.

Bibliography

- Kania, J. and Kramer, M. (2013). Embracing Emergence: How collective impact addresses complexity. *Stanford Social Innovation Review*.
- Senge, P. M. (1990). *The Fifth Discipline: The art and practice of the learning organization*. New York: Doubleday.
- Shonkoff, J. P., Garner, A. S., Siegel, B. S., Dobbins, M. I., Earls, M. F., McGuinn, L., ... & Wood, D. L. (2012). The lifelong effects of early childhood adversity and toxic stress. *Pediatrics*, 129(1).
- Inayatullah, S. (2013). Causal Layered Analysis: Sohail Inayatullah at TEDxNoosa. Retrieved from <https://www.youtube.com/watch?v=ImWDmFPfifI>