

# Re-imagining the Family Justice System

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Webinar Presentation

Building a Family Law System ...  
for Separating Families

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I want to thank you for inviting me to speak with you today, to share information about our journey to re-imagine the family justice system in Alberta, Canada.

The RFS is a multi-sector, multi-year initiative aimed at improving outcomes for families who are dealing with family justice issues. It is convened by the Court of King's Bench of Alberta, the Law Society of Alberta, the Ministry of Justice and Solicitor General of Alberta, Family & Community Services in the County of Strathcona, and Native Counselling Services of Alberta. We have hundreds of collaborators engaged in this work, from across many different sectors.

## My goals today

1. Share an introduction to the systems transformation underway in the family justice system in Alberta, Canada
2. Explain how this is founded in brain science
3. Describe the paradigm shift that we are seeking, which shifts our focus to improving outcomes for families
4. Invite you to consider how you can incorporate the goal of “helping families thrive” within the family just efforts that are underway in Ireland

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I'm going to cover quite a bit of ground with you today, and much of it will be introducing a paradigm or mental model shift that is underway in our family justice system in Alberta, Canada.

The RFJS is about system transformation. As I'll explain, systems transformation is often counter-intuitive, so the things I speak about may surprise you. I hope they will also inspire you, just as they have us.

I can share that there is tremendous concern about our family justice system in Alberta, and really across Canada. There's an appetite for change that is often expressed as transformational change, however to be honest there isn't a lot of expertise or experience in doing this. So big calls for change have tended to be answered by efforts which focus on improving the existing system of family justice.

By contrast, the RFJS has taken a much larger systems transformation approach to the wicked problems of family justice.

There has been a longstanding concern about family justice which recognizes that family justice can do more harm than good



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This slide reflects the kind of very strong statement that is often made about the family justice system.

When we show this to members of the public who have experienced family justice processes or who know others who have been involved in separation, divorce, family violence or child welfare matters, they nod their heads.

We start here, because this helps to underline the **urgency** for change.

There have been  
many reports  
recommending  
reforms to improve  
access to justice



Meaningful Change for Family Justice:  
Beyond Wise Words

Final Report of the Family Justice Working Group  
of the  
Action Committee on Access to Justice  
in Civil and Family Matters

April 2013

\*Resolved that the Action Committee approve the Working Group report for  
distribution and consultation on March 12, 2013\*

In 2013 a number of reports came out from Canada's national Action Committee, which were focused on improving access to justice. This Committee was started by our former Chief Justice, Beverley McLachlin, and so was given a lot of attention in jurisdictions across the country.

These reports created the **opportunity** for change that led to the RFJS.

## What does “justice” and “access to justice” mean to you?



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If we were in a room together, I would pause here to ask you to reflect on how you define “Justice” and “Access to Justice. These terms are used a lot in Canada, and I’d like to describe the evolution of our thinking about them.

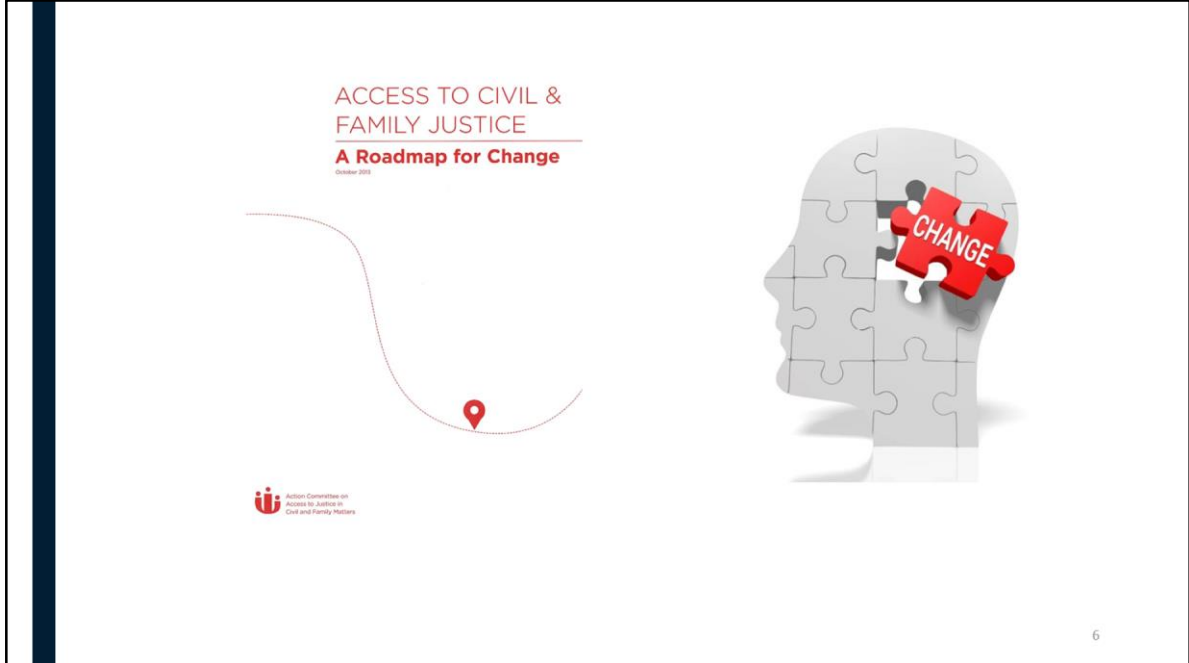
We know that justice system players tend to define access to justice as “faster time to trial”, “the right to a lawyer” (which often translates to increased funding for legal aid and experiments with paralegal assistance), “simplified processes”, “self help centres” and increased use of mediation. We engage in questions about how to make the system work better. We concern ourselves with questions about efficiencies, about constitutional issues, and with current issues such as “voice of the child” and whether judges should interview children.

These are all important questions that help to ensure that the system – and particularly our Courts – operate as effectively as possible. And of course, we want our legal and court system to work well.

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 think of them within the justice system, most spoke of justice and access to justice in terms of **“the right to a good life”**.

This has really given us pause. It is so substantially different from what we’ve tended to seek through decades of attempting to improve access to justice.



Now I'd like to go back to the 2013 Action Committee Reports, and particularly the Family Law Report, which said that:

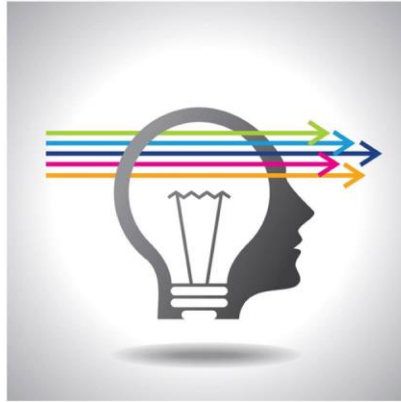
- ✓ The family justice system is in crisis
- ✓ That we all know family law isn't working for families
- ✓ And indeed, it is doing more harm than good

A later report: the Roadmap Report, called for a culture or paradigm shift. The report didn't discuss what that meant or how to make it happen. Indeed, the specific recommendations in the reports were really focused on *improving* the current paradigm, *rather than creating a new one*.

So we had to find our own way to articulate and achieve the culture shift.

We had some guidance from the public's definition of justice as the right to a good life. And also from the concern about poor *outcomes* identified in the Action Committee Reports.

## What is a culture shift, or paradigm shift?



A paradigm shift is one of the most challenging concepts to describe, as we often don't even realise that we operate in paradigms. It is just "the way we see the world"

Some important systems experts have written about this and helped us to understand that this involves about opening up our minds to imagine what is possible.

A 2018 report called "The Water of Systems Change" by systems-change experts at FSG explains paradigm shifts. The name of the report refers to a story they tell about two fish swimming by each other, and one calls out "how's the water over there?" The other responds with the question "What's water?" This is a humorous way of pointing out that we tend to not even think about the underlying patterns, beliefs, myths and metaphors of our system. We don't recognize that we're breathing air, or in the case of the fish, that we're swimming in water. So shifting a paradigm really requires us to recognize and reflect on our ways of seeing the world.

A very powerful resource to understand paradigm shifts, was written by Donella Meadows. I first read her article *Leverage Points* when it came out in the early 2000s, and I can tell you it caused me to think a lot.



Meadows explained (and I think tried to console readers) that systems change is often counter-intuitive. We are used to thinking in a certain way, and that guides our actions. But if we are really going to bring about change, we need to think very differently.

In her leverage points article, which is now a chapter in the book “Thinking in Systems”, she 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. 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.

She also told a story about her own mentor, Jay Forrester at MIT, who described efforts to bring about change in any system or organization. What he told his students was that you can almost always find the leverage points in a system, as these are areas of significant focus that everyone is working on. But remember, that they are usually pushing in the wrong direction.

I remember reading that the first time (and many times after) and really thinking about work that I had personally been involved in for many years, and wondering if we were actually pushing in the wrong direction.

It turns out that in terms of systems change, we probably were.



<https://www.albertafamilywellness.org/resources/video/how-brains-are-built-core-story-of-brain-development>

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At the same time that the Action Committee reports were being released and discussed Canada, Justice Andrea Moen of Alberta’s Court of King’s Bench had become concerned about the impact of adversarial processes on families, and particularly children. She took a study leave to learn about brain science, and when she returned, sought to bring about changes on the basis of this evidence.

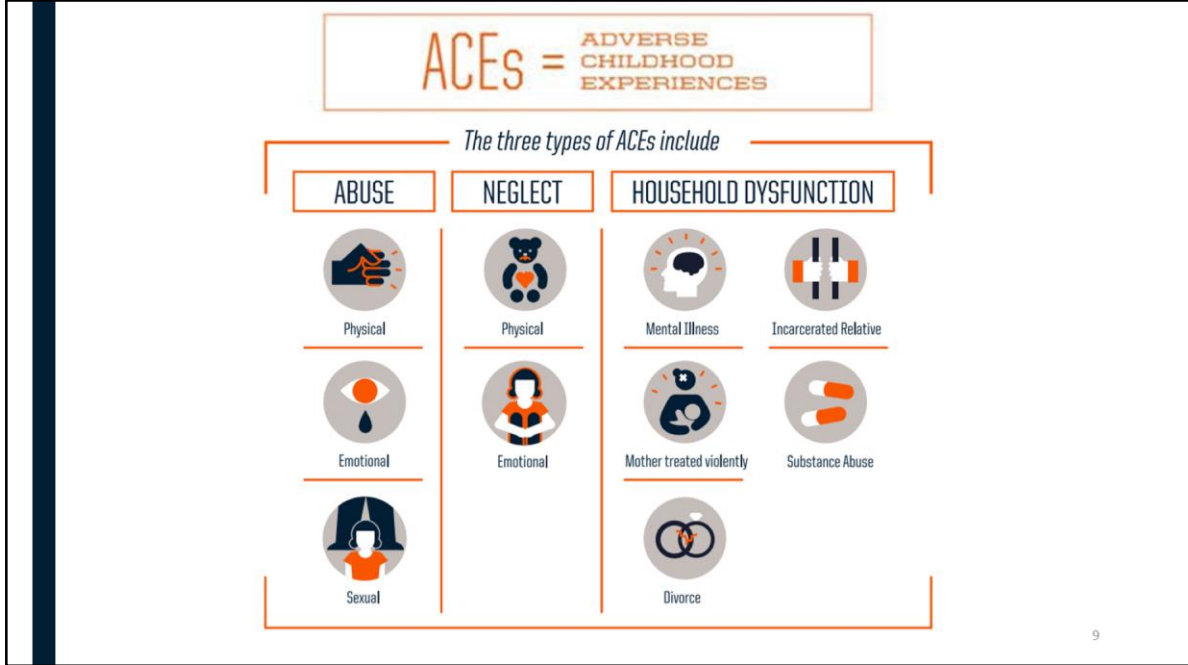
We know that systems change is most likely to occur when there is new evidence, and brain science is the **evidence** that supports the change in our family justice system.

Andrea was the first of our RFJS Leaders, and her involvement helped to ensure the support of the Court, which was key to making the initiative possible.

In Alberta, we have the benefit of the Alberta Family Wellness Initiative (AFWI), which has done extensive research, education, knowledge mobilization and implementation of brain science into policy and programs. They’ve created a wonderful 4 minute video that explains the core story of brain science, which I highly recommend. They’ve also made available a free, online, 19-module brain story certification program, and we encourage our Collaborators – and especially justice system participants – to become brain story certified. The Alberta Court of King’s Bench has approved the certification as part of

Continuing Judicial Education.

This certification is available not only in Alberta, but anywhere in the world ... so is something that you can take also advantage of.



Brain science includes the Adverse Childhood Experiences studies, or ACEs.

From these studies we know that the impact of ACEs increase exponentially, the more ACEs a young person experiences.

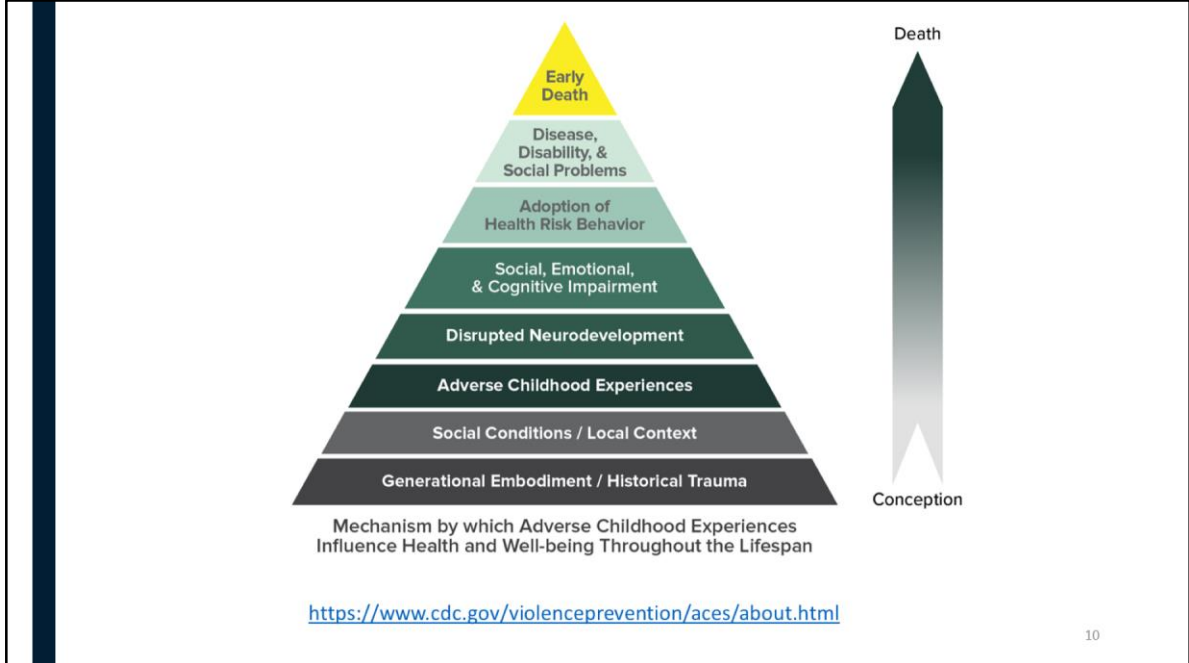
I thought you might find it helpful if I speak about how we see ACEs as directly relevant to family justice issues:

- 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 the system has had to situations of abuse, neglect and violence, have actually added to the ACEs burden of children in these families.

It really is no wonder that so many family justice reports have suggested that family justice processes do more harm than good. The science proves it!



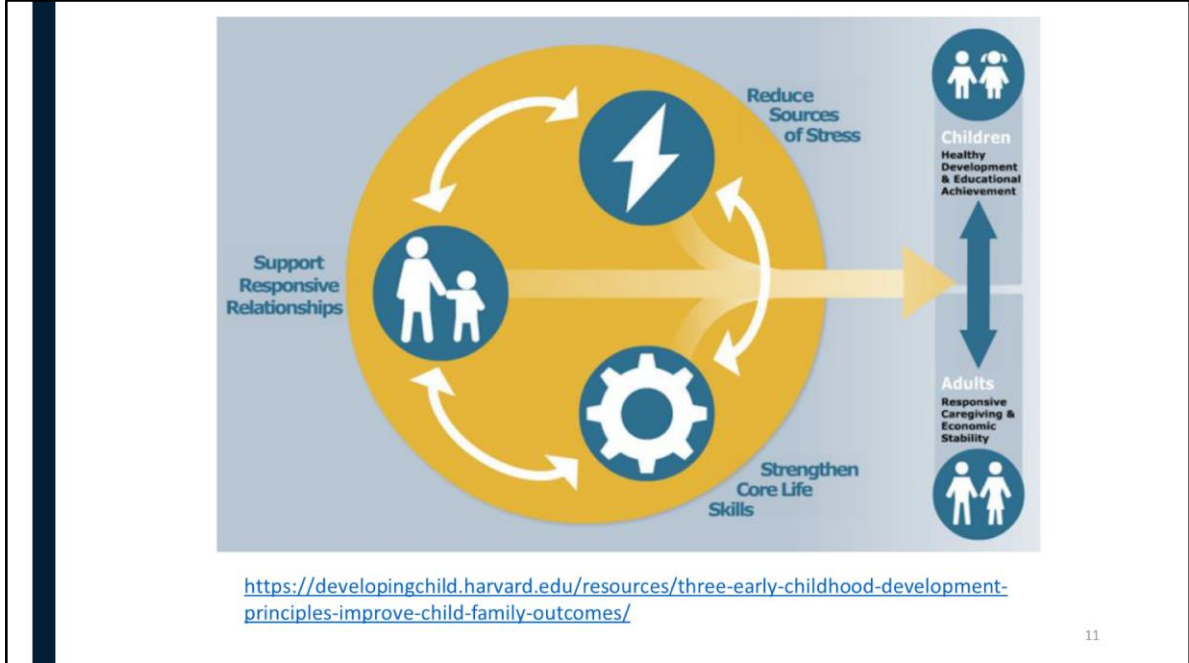
This ACE pyramid represents the conceptual framework for understanding the internationally recognized, groundbreaking 1998 Adverse Childhood Experiences study. As you can see, this shows that the harms arising from adverse childhood experiences occur throughout the life span, and include disrupted neurodevelopment; social, emotional & cognitive impairment; the adoption of health risk behaviours; disease, disability & social problems; and even early death.

The pyramid was expanded to take into account social conditions and historical trauma that also influence outcomes (in addition to adverse childhood experiences). The later inclusion of these base levels of the pyramid was in recognition that the original ACE studies involved middle class patients, and so hadn't taken into account social conditions such as poverty, endemic racism and historical traumas that have inter-generational impacts.

What it shows is that these contexts of poverty, racism and historical trauma add to the risks and poor outcomes for children growing up in these communities.

In our Courts we certainly see high rates of these kinds of health and social outcomes in families and communities that are particularly disadvantaged.

**In spite of this, there is hope in the brain science knowledge.** It helps us to know what causes harm and how we can prevent or reduce that harm. And we need to remember that our family justice processes are a human-designed system. We can, and we say **MUST**, bring about fundamental change.



The science of resilience tells us about neuroplasticity, or the ability of the brain to change and adapt as a result of experience. If we take steps to reduce sources of stress, establish supports to help build responsive relationships, and strengthen core life skills, we can strengthen resilience and improve outcomes. **This is where the hope comes from.**

These three principles to build resilience were established by the Harvard Center on the Developing Child, and are important for reshaping policies and programs to ensure that we focus our approach on helping families to achieve healthy outcomes in spite of adverse experiences.





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

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In the RFJS, we refer to this as “helping families thrive” and we’re focusing on all three of the Harvard Center Principles. The 3 principles are represented by the AFWI’s “Resilience Scale” which illustrates that we are working to

1. Decrease negative experiences (which often means reducing the role of courts, and legal adversarial processes)
2. Provide positive supports (which we can achieve by helping families to gain the kinds of supports that are available for their social, relationship, parenting and financial matters).
3. Strengthen skills and abilities to manage stress (which can include skills that help to reduce conflict, to improve communication, and to learn better parenting skills). This is represented by shifting the fulcrum and helping to increase resilience.

This is a significant shift in the focus of the family justice system. The present system is all about resolving disputes, so it focuses on things like providing access to courts and lawyers, simplifying processes, and improving time to trial. What we know from brain science though, is that litigation is a kind of trauma. We need better ways to address the

needs of families, and in Alberta we've been exploring and putting these into place.

This has enabled us to shift away from focusing on legal processes and disputes, and instead to focus on family outcomes.

## How have we interpreted the paradigm shift required in the family justice system?



Photo credit: Istock <http://www.istockphoto.com/photo/difficult-choice-4879520?st=3912863>

The RFJS Theory of Change was developed through a powerful “Iceberg” process that we were able to undertake with many different groups of our Collaborators, including judges in our Courts.

Facilitators helped us 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 they 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 to you that in our experience, these were actually the issues that are most often being addressed in recommendations to **improve** the family justice system.

They then took us 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, they asked us 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 really helped us to understand how deeply the adversarial nature of our existing system, makes up the way we understand the world.

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

What we realized as we did this, is 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, parenting and financial needs, which may or may not have a legal element.

But the justice system has always focused on the legal.

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 or financial 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 needs from legal. And then ensure that families have the skills and supports they need to address all of these challenges.

This is our paradigm shift.

From this, we realise 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. We are working with many different sectors outside of the formal justice system, to engage with them and get their assistance in creating these new pathways.

And really, what we are imagining is a family justice system where families thrive.

## So how are we doing this?



<https://www.strathcona.ca/council-county/administration/departments/family-and-community-services/>

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We've been working over the past 8 years to learn about approaches, frameworks and to create strategy maps that help us to support tremendous change. And we are seeing real change take hold.

We believe this is due to many factors:

- First, the RFJS effort to ensure an understanding of brain science and shift the mental model in the justice system and beyond.
- It is also important that our initiative has been convened by the major institutions of the justice system, so they are helping to lead and provide permission for change to occur.
- Increasingly we're opening up the silos that have kept us from providing families with the social, relationship, parenting and financial supports they actually need.

A great example is that we've moved out of our justice system silo, and discovered that there are 180 Family & Community Services offices across the province, all with the legislative mandate to support families and prevent harm.

In 2019 the Ministry of Justice undertook an important pilot which embedded Family Justice Navigators (formerly known as Family Court Counsellors) into an existing Family & Community Services office. Family Court Counsellors are Social Workers, who assist families to frame their legal issues and proceed to Court.

The pilot opened up access to the supports that families need, beyond legal issues. This both resulted in better supports for families, and helped the FCS Counsellors to see that they have an important role in supporting families that are dealing with family justice issues.

This pilot provides a great potential for scaling out to FCSS organizations and other support services across the province. We've just received a four-year grant to extend this role into a community that we are using as a demonstration project for the large-scale change that is underway.

**There are so many other examples that I would love to share with you, but there really isn't time today. I know that you are focusing on implementation of your new Family Justice Strategy, and I would be delighted to speak further with the Family Justice Implementation Group, or anyone who is interested in learning more about the RFJS approach. I've shared a list of resources with Karen, and will also share these slides and notes.**

## Reflecting on our journey so far



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**I'll just close by observing that systems change takes time.** We often reflect on how long it took for us to accept that smoking is bad for our health. 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 this change.

There are a number of resources that we need, and that I want to share with you. The seven we've identified all begin with "C"

- ❖ The strongest is **creativity**: we must reduce the barriers to innovate, and enable people to be creative
- ❖ We need to be open to new ideas – **curiosity** – and be open to learn
- ❖ We must be **committed**. This is hard work!
- ❖ There must be a **community** to do this – everybody has to be a part of it. This means having people who agree you're doing the right thing, and then start doing it with

you. (Systems change is not a spectator sport!)

- ❖ **Compassion** (or love) for each other and especially for the families we serve.
- ❖ **Cash**: we know that if we had more resources, we could do more. We would be able to communicate more, collaborate more, encourage more and better support those that are working with us.
- ❖ The final is brain science, and while that's not a "C", it is all about **children**.



**Thoughts?**

Comments?  
Questions?  
Opportunities?

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When it is your turn to ask questions, I would love to hear your comments, questions, ideas or opportunities!

**Thank you!**

