



CASE STUDY

RE-IMAGINING THE FAMILY JUSTICE SYSTEM

Integrating Brain Story Science in Alberta

An effort has been underway in Alberta since 2013 to re-imagine the family justice system in response to concerns about the ability of the family justice system to respond appropriately to the needs of families. The initiative began within the formal justice system and coincided with the release of a number of reports by the national Action Committee on Access to Justice¹, including reports from the Family Working Group and the Prevention, Triage and Referral Working Group. These reports emphasized the need for drastic system changes and this message was reinforced in the final Roadmap Report² of the Action Committee, which called for a significant culture shift within the family justice system. The Roadmap Report identified the need to promote a new way of thinking to guide the approach to reform.

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.”

Meetings were held across the country to encourage action on these reports, and in Alberta that meeting provided the opportunity for the creation of the Reforming the Family Justice System (RFJS) initiative.

From the outset, the Co-Convenors recognized that they were engaged in complex systems-change, and that the work required a new approach and a paradigm shift if the desired change was to be realized.³

The following case study will describe the RFJS theory of change, the methods being used to realize this change, the developmental evaluation approach, critical factors for success, challenges, and next steps for the RFJS in integrating brain story science into re-imagining the family justice system in Alberta.



REFORMING THE FAMILY JUSTICE SYSTEM

The RFJS encourages changes “in the behaviour, relationships, actions, activities, policies and practices of individuals, groups, communities, organizations” (Wilson-Grau, Ricardo & Britt, Outcome Harvesting. Ford Foundation, May 2012, revised November 2013). Changes throughout the family justice system are encouraged and supported by the RFJS, through convening, education, pilot projects, and policy changes that align with the theory of change and the Outcomes Framework adopted by the Co-Convenors.

“Society is calling for change to our system of family justice: big change. The RFJS initiative is a large, collaborative, society-wide response to that call.”

Update from Co-Convenors and Backbone Team,
December 2018

- 1 (“Action Committee”). The Reports of the Action Committee are available online at: <https://cfj-fcjc.org/action-committee/publications/>
- 2 Access to Civil and Family Justice: A Roadmap for Change. Report of the Action Committee on Access to Justice in Civil and Family Matters. October 2013 at p.6. Available online at: <https://cfj-fcjc.org/action-committee/publications/>
- 3 Justice Andrea Moen of the Court of Queen’s Bench of Alberta (now retired), observed the toxic stress that was occurring in high conflict families that were appearing before her, and took a study leave to learn about brain science. When she returned from that leave, she went on to lead the efforts of the RFJS, and was the Court’s first Co-Convenor of the initiative.

INCORPORATING BRAIN SCIENCE INTO FAMILY JUSTICE REFORM: THE CULTURE SHIFT

The RFJS approach to family justice is unique in Canada. Unlike reform efforts that are primarily focused on increasing access to the family justice system, the focus of the RFJS has not been on the typical “access to justice” efforts⁴. Rather it has been animated by the Action Committee call for a culture shift, and informed by brain story science as the evidentiary foundation for change. The brain science includes the growing awareness that childhood adversity affects the developing brain in key ways that can set children up to struggle with learning, social, and health outcomes, sometimes even decades into the future. The landmark Adverse Childhood Experiences (ACE) Study⁵, a partnership between the U.S. Centers for Disease Control and Prevention and Kaiser Permanente, was the first study to document and identify 10 types of childhood adversity that are associated with increased risk of developing chronic health conditions such as cardiovascular and metabolic diseases, and addiction and mental health problems, in middle age. These ACEs fall into three categories: maltreatment, neglect, and household dysfunction, including parental separation and/or divorce. Many of these ACEs occur in cases that are heard in family court, which underlines the need for the justice system to be familiar with this science.

Through learning about brain science, RFJS Co-Convenors and Collaborators have come to understand that the toxic stress arising from unresolved family disputes has negative consequences for parents and their children. Brain

science confirms not only the impact of ACEs on future health and social outcomes, but also the ability to build resilience and buffer the effects of toxic stress through supports for families and children who have experienced ACEs. The RFJS theory of change adopted by the Co-Convenors and Collaborators, is grounded in this science.

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The RFJS theory of change was created using a powerful process called “causal layered analysis” which invites participants to work through four layers of understanding about the current system: (1) the problems, (2) patterns, (3) systems, and, (4) beliefs which hold us there.

Through a facilitated exploration of these layers of understanding, Collaborators were able to articulate the current mental model of the family justice system, and then to agree on the new mental model they were seeking to achieve.

There are two key aspects to the RFJS theory of change.

The first is the understanding that, “family justice issues are primarily social, relationship, parenting, and financial, that contain a legal element.” Up until now, family justice issues have been framed as legal, adversarial processes.

As already noted, the focus of justice reform initiatives is typically understood as improving access to justice, which means improving legal processes and increasing access to those processes. What our theory of change has helped the RFJS Collaborators understand is that we actually need to reduce access to legal adversarial processes for many of the challenges families are dealing with. We now say that we need to untangle the social, relationship, parenting, and financial issues from the legal, and to provide families with the supports they need to address their social, relationship, financial, and parenting issues. While there may still be legal issues to resolve, the RFJS encourages parties to first address

4 Access to justice initiatives tend to focus on ways to improve access to courts, lawyers, and legal processes, through efforts to simplify formal processes; to increase funding for legal aid; recent innovations such as pro bono legal assistance, unbundled legal services and an expanded role for paralegals; the creation of self-help centres which provide the public with access to legal information; and by encouraging mediation and alternative forms of dispute resolution. For example, see the 33 recommendations for change in the Meaningful Change for Family Justice: Beyond Wise Words report of the Family Justice Working Group of the Action Committee. April 2013. Available online at: <https://fcj-fcjc.org/action-committee/publications/> See also the review of the previous 10-15 years of family justice reports, recommendations, research studies and papers compiled by the Family Justice Working Group of the Action Committee: 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).

5 Centers for Disease Control and Prevention. Adverse Childhood Experiences (ACEs). <http://www.cdc.gov/violenceprevention/acestudy/index.html>.

6 Jehn, Michelle, Jessica Spina, Diana Lowe and Barb Turner (2015) “Reforming the Family Justice System: Using a Causal Layered Analysis to Develop a Theory of Change”, in Proceedings of Relating Systems Thinking and Design (RSD4) 2016 Symposium. Banff, Canada, September 1-3, 2015. Available online: <https://app.box.com/s/hd2bed6n71u4bj42x6ituunmt7sf1vnn>

7 RFJS Theory of Change.



their social, relationship, parenting, and financial issues, and then if possible, reach agreement on outstanding matters through mediation and collaborative family practice. Only those legal matters that cannot otherwise be resolved should be brought to the court for a legal decision. The role of lawyers in this model is to help ensure that the agreements that the parties have reached reflect this approach, empowering them to move forward in a positive way that values the supports they have put in place, and to the extent possible, to resolve their disputes through non-adversarial approaches.

“While there may still be legal issues to resolve, the RFJS encourages parties to first address their social, relationship, parenting, and financial issues, and then if possible, reach agreement on outstanding matters through mediation and collaborative family practice.”

The second is the key impact that the RFJS seeks, which is that, “families (parents and children) thrive, even while undergoing changes to family structure”⁸.

Over time we have realized that this actually articulates the culture shift at the heart of the RFJS – a shift away from a focus on legal, adversarial processes, to a focus on family well-being. Our goal is simply that “families thrive”. The work that we are engaged in is to re-imagine the family justice system to better address the needs of families.

HOW ARE WE DOING THIS?

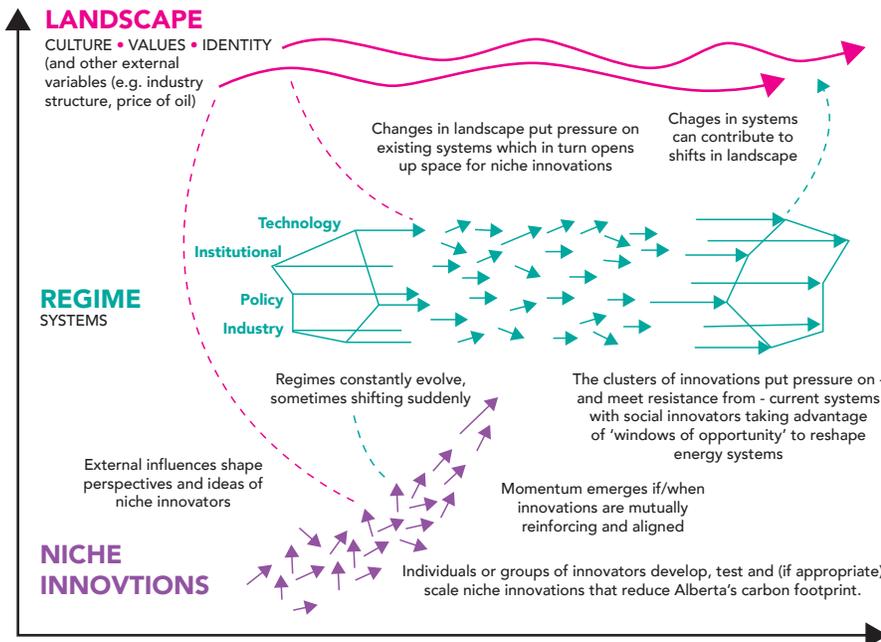
The RFJS is convened by the Court of Queen’s Bench of Alberta, the Ministry of Justice and Solicitor General, and the Law Society of Alberta. The Co-Convenors adopted a broad understanding of family justice, and seeks out diverse viewpoints, including indigenous, faith-based, immigrant, gender, mental health, addiction, and poverty perspectives. It is a large-

scale collaboration, with more than 400 Collaborators that include typical justice system participants such as:

- judges
- lawyers
- government representatives
- legal aid
- public legal education organisations

These have been joined by Collaborators who might not traditionally be considered to be part of the justice community, including:

- psychologists
- social workers
- health care providers
- educators
- financial advisors
- participants from a number of government ministries including Children’s Services, Community and Social Services, Health, and Education
- other family supports, such as the Family and Community Support Services (FCSS) offices that exist throughout the province



The RFJS is a collaborative action⁹ initiative, designed to address change at the systems level.

The RFJS Developmental Evaluation Coach, Mark Cabaj, shared the Geels Framework¹⁰ with the RFJS Collaborators, as a way of understanding the complex process of systems change. This has helped Collaborators to visualize how the work that is underway fits into the larger systems change that is desired, by illustrating that change is occurring at three levels: landscape, regime, and niche innovations.

The upper "landscape" level involves culture, values, and identity, and has helped Collaborators to recognize the culture shift that is underway. All efforts within the RFJS should be aligned with this culture shift, which means that they should be designed to achieve wellness for families.

The second level of the Framework is the systems level, encompassing institutions, law, policy, practices, technology, and industry. While systems are constantly evolving,

in a systems-change process the goal is to accelerate the change in alignment with the new mental model. Both the Queen's Bench adoption of the RFJS theory of change, and the Ministry pilot of the Family Justice Navigators, are systems-level change.

The innovative pilot undertaken by the Ministry of Justice through their Family Justice Navigator program, which was housed in the County of Strathcona within the Family and Community Services (FCS; also known as FCSS in other jurisdictions), is an example of a significant systems shift which brought together a Ministry of Justice program with a municipal program, with the goal of improving outcomes for families. The legislative mandate of FCSS organizations is support for individuals, families, and communities through preventative social programs and services, so these organizations are already aligned with the RFJS. What the pilot has done is to shine a light on the incredible FCSS resource that already exists in 180 communities in the province. By empowering these FCSS organizations to support families as they

are dealing with the social, relationship, parenting, and financial issues that arise on restructuring, in child welfare matters and domestic violence, this promises to expand the reach of family supports to scale across the province. Efforts are also underway to share the experience of the County of Strathcona FCS with other FCSS organizations in Alberta.

One Queen's Bench judge has begun to use a new approach when family matters are brought before him in family chambers.

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've applied some of them in my courtroom. However, I clearly remember the first time I decided to apply the overarching strategy of the Reforming the Family Justice System (RFJS) initiative on a family 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

⁹ The Collaborators adopted a definition of "collaborative action" from the Canadian Forum on Civil Justice: "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."

¹⁰ This visual was created and shared with the RFJS by Developmental Evaluation Coach Mark Cabaj, Here to There, based on the Multi-level framework on sustainability transitions by Frank W. Geels.

now applying to vary it. Both of them had well-paying jobs, but neither of the parties 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.

Instead, 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 them 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 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 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, any more. 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 helping to inspire Collaborators and the families they serve, to change their approach to family matters.

The third level of change is called "Niche Innovations", which are a type of experimentation with new ideas that are explored and tested before they are implemented in practice. There have been many promising innovations considered, including the original idea for the Family Justice Navigator pilot of the Ministry of Justice and Solicitor General and the County of Strathcona FCS. The RFJS initiative encourages the exploration of these kinds of ideas, with the hope that they will lead to changes



in behaviour, relationships, actions, activities, policies, and practices, in alignment with the theory of change.

DEVELOPMENTAL EVALUATION

The RFJS has adopted developmental evaluation, which is a method of evaluation that helps to ensure that the work being undertaken is achieving the desired changes in behaviour, policy, and practice, and that all actions lead to learning. By its very nature, systems change is iterative and does not follow a pre-determined plan. Developmental evaluation supports the process of systems change while ensuring that the work is rigorous and based on evidence. The evaluation happens as part of the innovative process, supports learning, and guides the process. It encourages Collaborators to pursue actions that are succeeding in bringing about change that is in alignment with the theory of change, to shift their efforts when their actions are not achieving the desired change, and to learn throughout this process.

Developmental evaluation has been invaluable to the RFJS, helping to identify challenges experienced in the initial Working Groups and to allow a shift in the way that the justice system responds to family matters.¹¹ After exploring several ways of advancing the work, the Co-Convenors re-focused the efforts of the RFJS initiative on a process they called “Ambassadors for Change”, which works to achieve the desired outcomes by increasing awareness and understanding of the theory of change across broad social networks, and encouraging alignment through changes in behaviour, policy, and practices. Since 2017, hundreds of meetings and presentations have taken place with a wide variety of individuals and organizations across many different sectors. A large proportion of these have arisen through requests to the RFJS from groups seeking to learn more about the initiative, which is a sign that the knowledge is spreading and beginning to take hold. Changes in behaviours, policy, and practices are also beginning to occur as a result of these conversations.

Developmental evaluation is used to assess the alignment of initiatives with the theory of change. We are experiencing significant changes occurring at the systems level, and an interim evaluation is underway by the Ministry of Justice to help to determine whether the Ministry is able to support the expansion of the Family Justice Navigator role to other sites.

The RFJS is currently undertaking an “Outcomes Harvest” to help identify and report on changes in behaviour, policy, and practices that are taking place. We have begun to interview key Collaborators in order to be able to “tell the RFJS story”¹². Steps are also being taken to develop measures that will gauge whether family well-being is improving as a result of the changes promoted by the RFJS theory of change.

CRITICAL FACTORS FOR SUCCESS

Two key factors have contributed to the successful integration of brain story science into the RFJS initiative.

Leadership

The convening of the RFJS by leaders of three of the key institutions of the family justice system has been a significant factor in the success of the initiative to date. In the early days, this convening generated interest and excitement, which helped to ensure that individuals and organizations that were invited to participate were likely to do so. From the outset, the Co-Convenors explained that their role is not to drive change or direct the initiative but rather to bring the Collaborators together to explore questions that empower a deep re-imagining of the family justice system. As the initiative progressed, the Co-Convenors not only supported and participated in the discussions, but also began to adopt the changes within their respective organizations.¹³ These efforts have both signalled the adoption of the theory of change at the highest level in the family justice system, and have modelled the approach that the RFJS is encouraging all Collaborators to adopt. The leadership of the Co-Convenors has created a “licence to innovate”, which inspires confidence and the social licence to undertake real change.¹⁴

Collaboration

The decision to engage a broad collaboration has ensured that the RFJS is focused on the kind of transformational change that was called for in the Roadmap for Change report.¹⁵ As was reported in a Harvard Business School study, *The Network Secrets of Great Change Agents*, “people who bridged disconnected groups and individuals were more effective at implementing dramatic reforms, while those with cohesive networks were better at instituting minor changes.”¹⁶

11 The RFJS has received funding from Innoweave to hire Mark Cabaj as a Developmental Evaluation Coach. Mark has been engaged in the RFJS since 2015, and his evaluations have been instrumental in guiding the work we have engaged in.

12 This was made possible by the generous funding of the Palix Foundation, for a research assistant who was made available to work on the RFJS initiative in 2019. The story above, told by the Queen’s Bench judge, is one of these.

13 The Court of Queen’s Bench adopted the RFJS Theory of Change as part of its Strategic Plan, and has continued to work internally to facilitate opportunities for change in alignment with the Theory of Change. The Ministry of Justice and Solicitor General undertook the Family Justice Navigator Pilot in the County of Strathcona, which signaled a willingness to experiment with the type of change that was being promoted.

14 The authors of *Social Innovation Generation* reflect on the value that a “licence to innovate” can create within a system, fueling a culture of permission and empowerment to work on alternative systems that better address contemporary challenges. Cahill G. and Spitz K., 2017, *The J.W. McConnell Family Foundation*. While they were observing the role of the Social Innovation Generation in creating an ecosystem for change, the Co-Convenors of the RFJS have played that ‘licence to innovate’ role within the family justice system.

15 *Supra*, note 2.

16 Casciaro, Julie Battilana and Tiziana Casciaro. “The Network Secrets of Great Change Agents” *Harvard Business Review*, HBR, July 2013, hbr.org/2013/07/the-network-secrets-of-great-change-agents

CHALLENGES

The following challenges were identified as factors that have had an impact on the progress and capacity of the RFJS to bring about the desired change in the family justice system.

Systems change takes time

Like many systems-change initiatives, the RFJS has been challenged by impatience among Collaborators and funders who wanted and expected to produce a tangible, concrete change. The changes that are now becoming more visible in behaviours, policies, and practices, are helping Collaborators to see that the RFJS efforts are achieving significant change. These are the changes that have already been occurring at the level of culture, system, and niche innovation, as well as new actions underway to expand the knowledge of brain science among family lawyers, and to integrate the theory of change across government ministries. But this has taken time, and the initiative has been criticized by some who did not understand the process of change that was underway.

Funding

Another common challenge to systems change is funding. The funding that has been available for the RFJS has been primarily in the form of in-kind support through staff secondments. Over time, and through changes in leadership of the initiative and in government, these secondments have not been continued. The initiative has been able to adapt and continues to expand its reach and influence in the family justice system in Alberta. Of course, much more could be achieved if there were staff in place

to provide the support needed for this work, and resources for communication both among the Collaborators and with the public. Efforts are underway to obtain the kind of funding support that will expand the impact of the RFJS in achieving the goal of wellness for families.

NEXT STEPS

With the assistance of our Developmental Evaluation Coach, the Co-Convenors developed an Outcomes Framework which identifies key priorities contemplated for the coming years:

Legal Profession

Working with the legal profession to encourage brain science education of family lawyers, and to identify implications for shifts in ethical responsibilities and practices of family lawyers.

Courts

Working with the Provincial Court and the Court of Appeal to ensure that they are familiar with and have considered the theory of change. Continued work with the Court of Queen's Bench on their efforts to bring about internal changes that align with the theory of change.

Justice

Continued work with Justice & Solicitor General on family justice initiatives.

Public

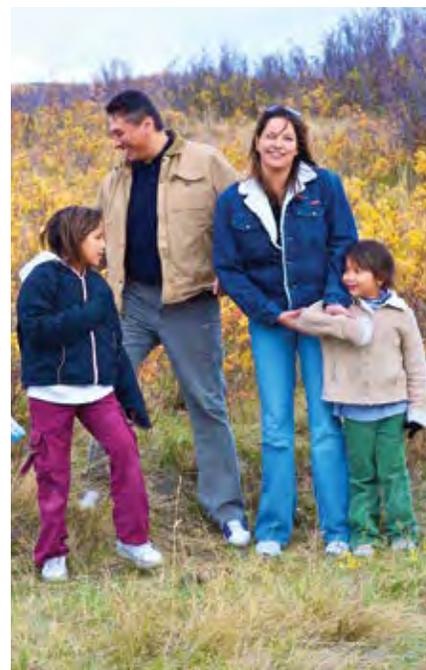
Helping to enhance the public understanding that "parents fighting about their children causes harm", and to ensure supports are in place to improve resilience and well-being.

Wellness

Working with frontline service providers/ supports for families to empower them to provide the social, relationship, parenting and financial supports families need when they are restructuring.

Cross-Ministry

Working with other Ministries (Children's Services, Community and Social Services, Health, Education, Indigenous Relations, Parks & Environment, Mental Health & Addictions, Advanced Education) to share the theory of change and seek their commitment to providing the supports that families need when they are restructuring. In our meetings there are increasing calls for the integration of services for children, family, and youth across Ministries, in order to help families thrive.



The Outcomes Framework is designed to help communicate more clearly with Collaborators, to ensure that the RFJS is more deliberate about priorities, and to accelerate desired changes. There are many opportunities arising out of the Outcomes Framework, including alignment of the Canadian Bar Association and the Law Society in the priorities identified for the legal profession. There is also significant interest in the cross-ministry efforts that have been identified, and the RFJS is working with the Palix Foundation, the Law Society, the Canadian Bar Association, and the Court of Queen's Bench, to encourage the integration of family wellness across nine provincial government ministries. This effort seeks to ensure that these ministries have the mandate to work together and to work with the broad RFJS collaboration to achieve the goal of family wellness.

The work of the RFJS began with a focus on families going through separation and divorce, although was always intended to expand to include child welfare and family violence matters. Work on that expanded focus began in the fall of 2018, and has been empowered by working alongside Collaborators who are engaged in this work and whose efforts are aligned with the RFJS. In the area of family violence, the RFJS is collaborating with organizations and networks seeking to eradicate family and sexual violence through a province-wide collective impact initiative supported by Sagesse.

The RFJS will continue to work with all of the Collaborators that are supporting the theory of change, including professionals, front-line service providers, for-profit organizations, and not-for-profit organizations."

The RFJS has also begun to work with organizations such as Native Counselling Services of Alberta and with Indigenous leaders who are sharing their knowledge about the healing that is required to achieve improved outcomes for Indigenous families and communities dealing with child welfare and family violence. There is real hope that these efforts will both lead to the changes that are needed to improve outcomes for these families, and will be responsive to many of the Truth and Reconciliation Commission Calls for Action.



The RFJS will continue to work with all of the Collaborators that are supporting the theory of change, including professionals, front-line service providers, for-profit organizations, and not-for-profit organizations. The reach of the RFJS continues to expand through the Ambassadors for Change process, and changes are now taking place in alignment with the RFJS in many different ways.

One opportunity that was unexpected, but which confirms that Alberta is leading the way with the RFJS initiative, is a growing interest in this work from other jurisdictions. The RFJS has now been joined in incorporating ACEs into the efforts to reform the family justice system in British Columbia, and has recently received similar inquiries from the Yukon. The potential to expand the scope and impact of the RFJS nationally is something that is being explored with funders and potential Collaborators, and holds much promise for family outcomes not only in Alberta, but across the country.