

Journey Toward a Social Lab Approach to Change

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How do we create deep and lasting change in the family justice system in a way that is responsive to the needs of families? A small group of us in British Columbia have been collectively grappling with what we can do to leverage the uncertainty created by a time of great change. In the family law context in British Columbia, this change is highly visible in a number of ways. In March, 2013, a new *Family Law Act* came into effect in our province. This new statute was drafted to normalize and frame a preference for out of court settlement of family matters¹. A month later, the report of the Family Justice Working Group of the National Action Committee on Access to Justice in Civil and Family Matters released its report: *Meaningful Change for Family Justice: Beyond Wise Words*². A recent study by Dr. Julie Macfarlane into self-represented litigants (“SLRs”) found that 53% of SLRs began by retaining lawyers and then either ran out of money or grew frustrated with what they saw as lack of value and were left trying to complete court actions on their own.³ In 2011, 40.3% of BC Superior Court family law trials had at least one party self-represented, and this appears to have increased in the last three years. We are in a crisis created by the public’s inability to access the courts in the way they were designed to be accessed (with counsel), the failure of lawyers to adequately meet the needs of families in a timely and cost-effective manner, and the continuing dilemma of lawyers proceeding as though matters will go to trial even though most cases settle. Despite the availability of mediation and Collaborative Practice, this crisis is not diminishing.

Our small, informal group agreed that reports with recommendations routinely suffered from an implementation gap. Bright, dedicated, people volunteered countless hours, reported and made recommendations, and often the reports gathered dust or were only partially implemented. In British Columbia, we have had sixteen such reports since 1992. As the NAC Family Justice Working Group Report noted:

¹ The Family Law Act can be found on line at <https://www.canlii.org/en/bc/laws/stat/sbc-2011-c-25/latest/sbc-2011-c-25.html>

² The National Action Committee Access to Civil and Family Justice Report (October, 2013) and the Family Working Group Report: *Meaningful Change for Family Justice Beyond Wise Words* (April 2013) can be found at: <http://www.cfcj-fcjc.org/action-committee>

³The website for the National Self-Represented Litigants Project, as well as the report, can be found at <http://representingyourselfcanada.com/>

“The implementation gap is also a function of the culture of the justice system and its incomplete embrace of non-adversarial or consensual dispute resolution processes. While progress has been made on this front, the potential of non-adversarial programs and consensual processes in family law has not yet been fully realized. Accordingly, we see further culture change as one of the more important options for enhanced access to family justice.”⁴

We agreed that doing as opposed to recommending is crucial for change to happen. We noticed, in looking at changes to the family justice system, task forces invariably invited the same players to the table – lawyers, judges, and those working within the courts or government legal services. Except in a token way, most task forces have not included the large, diverse, interdisciplinary group of professionals and service providers that work with families as they are transitioning through divorce. We realized that we do not even know who all the service providers are, or the different needs of different populations and ethnic groups. We began to explore different ways of tackling complex problems. In the process, I have learned a great deal about change and about working with complex problems.

Complex Problems

Complexity science divides problems into three significantly different types: simple, complicated, and complex.⁵ An example of a simple problem is baking a dozen blueberry muffins. Given a recipe, ingredients, utensils, and an oven, anyone can follow the recipe, over and over, and produce a dozen blueberry muffins. A more complicated problem (sometimes referred to as a “technical problem”) is getting a rocket to the moon. This involves combining expertise, training, materials and sophisticated, planned interactions between parts of teams. Once all these variables are mastered and brought together in the same way, given the requisite expertise, materials, and skills, a rocket can be built that can reach the moon, and the process can be repeated. Complex problems invariably involve relationships. A common description of a complex problem is raising a child. Dr. Spock attempted to distill the complexity of raising a child to a simple problem. As we know, parenting is complex. You cannot follow a set of rules or protocols and be guaranteed a similar result. There is always uncertainty of outcome because relationships are involved.

Collaborative Practitioners know that we have delved deeply into the foray of complex problems. Yet our justice system assumes we can treat the problems that arise at the end of a marriage or divorce as a complicated problem. If one is adept at the rules, the

⁴ Report of the National Action Committee Family Justice Working Group, pg. 3

⁵ Westley, Zimmerman and Patton, *Getting to Maybe*, pages 7-10

procedures, when to call in experts and which experts to call in, how to prepare a witness for examination and cross examination, and well versed in the applicable statutes and case law, one should be able to predict the outcome. However, we know that outcomes in family trials can't be predicted. Despite the ability to control many of the variables, the determining variables involve relationships; a judge and how all the other people interact in the court. These relationships lift litigation into the realm of a complex problem. Collaborative Practice depends on skills and expertise but is deeply informed by relationships. This includes the relationships between the individuals around the table, and sometimes includes the relationships with those that aren't around the table.

It is common to address complex problems as though they are complicated problems, using technical or planning methods. Yet because of the nature of the relationships between the agents in complex problems, planning methods don't work. This is because complex social challenges have three characteristics that make them distinct from complicated or technical problems. Complex social challenges are emergent. These social challenges are subject to a constant flow of information between different parts of the system which requires people to constantly adapt their behaviours. As individuals adapt their behaviours, these interactions give rise to new information and a new emergent phenomenon. This makes straight-line thinking impossible for resolving complex social problems.

In this small group, we gathered together to discuss: "if the time is now for initiating deep change, what do we do? How do we start?" Changing the system that interacts with families transitioning at the end of a marriage is clearly a complex problem. We became aware of the theory of emergence, important to both systems thinking and complexity science, and finally we began to learn about social labs.

Emergence

We know that our brains are wired for certainty. Our brains seek what they know, and seek to create patterns in our attempt to create order. Order is reassuring. Order helps settle us. In looking for what we know, we can easily miss what is emerging. Yet it is paying attention to what is emerging, different as this may be, that may best help us to discern what our next steps are in a way that harnesses the energy and power of the system. Gaining comfort with emergent thinking allows us to relax into the present, to be creative, to be innovative. We will either fail or succeed, and each has its own incredible value. We are used to being able to articulate the value of success, to measure it, to grade it. Although we pay lip service to learning from our failures, it is success that we aim for, and often in aiming for success we limit our reach. Our ability to truly learn from our failures helps steer us into the path of innovation. This requires analysing our failures, poking at them, critiquing and discussing them. Can we tweak, make a radical course change, or should we completely start over again? Our need for certainty endangers innovation.

Success is easy in a stable, predictable system. Here intention is at home. Intention serves well where the path is known. The assumption behind the development of strategic plans is that the system is stable and we can create a path to our goal. This is often the assumption behind task force reports. I am a person who dearly loves the maxim: “plan your work and work your plan.” Intention has been my friend for decades. Yet in a time of rapid change, in a time when the old systems can no longer hold, intention must change the object of its desire, the manner in which it holds the future.

Watching for emergent phenomenon, stopping to reflect, and then changing course if necessary, seems counter-intuitive to those of us who have been trained to work in a very linear model. Emergent is not linear. Emergence is a regular phenomenon in complex systems, and is the force in the natural order of things that is the real source of transformation. Emergence is the way water moves out in rings when a large drop of rain hits the surface of still water. This is completely different from the parts of water, the hydrogen and oxygen molecules, and different again from what happens when wind and rain hit surface water together. Watching a flock of birds, we see emergence in action. Together, birds keep a precise distance away from and stay aligned with their nearest neighbours, and a pattern emerges that is completely different than birds flying around an aviary. Systems self-organize. The whole is different than the parts. Looking at emergence through the lens of complexity science, we see that emergence is unpredictable since it arises from the interactions between elements. This places emergence outside any one agent’s control. SRLs are an emergent phenomenon. The justice system did not plan for SRLs; they have emerged from the interaction between the different elements of the system.

There is a natural tension between intentionality and complexity. Our challenge, in working with complex problems, is how to be deliberate and intentional in defining and holding our purpose and our strategy, while at the same time being exquisitely aware of those things that seem to emerge without our control, without our intention. Once aware of the emerging phenomenon, how do we adapt in a manner that is guided by our purpose and our strategic intention? How do we create and hold our intention for change, without being bound by a linear plan?

The Social Lab Approach⁶

A social lab is not a report-writing activity, but an on-going platform where those from across the broader system come together not just to talk, learn from each other, and build a shared understanding, but to try things out, evaluate, build momentum, agreement, and coalitions. This intentional, diverse, group is referred to as a convening group. A social lab is a platform for innovative work on intractable problems.

⁶See *The Social Labs Revolution: A New Approach for Solving our Most Complex Challenges* by Zaid Hassan, as well as www.social-labs.org

The family justice system has deep incentives for maintaining the status quo. For many of the most powerful members of this system the status quo works just fine; it is financially lucrative, offers prestige, a group of like-minded professional colleagues, and deeply entrenched, shared values. The fact that the family justice system does not work for users is often defined not as a systemic problem, but as a problem of inadequate resources, or of difficult, complicated, procedures. Developing a coalition of players for a social lab involves broadly defining the system. With a broad definition of the system, we can then draw people together with diverse backgrounds, not just those working in the system, but also users of the system and those working in multiple ways with users of the system. A social lab is a multi-stakeholder platform that allows us to work on complex social problems in a way that eliminates the gap between thinking about the social problem and acting on it. The platform for a social lab can operate so long as the problematic situation persists. It can be dissolved when the problem is resolved. This often takes three to five years, and a highly successful social lab, the Sustainable Food Lab, has been in progress for ten years⁷.

A social lab has three key elements: it is systemic, participatory and experimental. Being **systemic** it addresses structural causes, not just symptoms or effects. Designed for complex problems, social labs don't work in a fragmented way, but bring coordination and analysis across sectors and users. **Participatory** refers to involving a diverse group of participants from across the system. This does not mean just experts or authorities, but includes users, different service providers, and key participants in the system, including those deeply entrenched and reliant on the status quo. **Experimental** refers to the projects themselves, which are iterative prototypes. Prototypes are designed to be nimble and petite. Different from pilot projects (which usually have the intention of trying something out with the hope that the project can then be replicated on a larger scale), prototypes strive to be innovative and recognize that failure is acceptable. Prototypes are designed to be iterative and are kept small and discrete in the first instance. A prototype can be discarded if it doesn't work, or can be re-worked and a new prototype launched. The evaluation of prototypes is a key component of the lab. The evaluation needs to be robust and at the same time supportive of innovation. Developmental evaluation, which makes learning a primary focus and a meaningful outcome, is the necessary model of evaluation used for social labs. Developmental evaluation recognizes the systemic and emergent qualities of social innovation projects and encourages reflection to support learning. A social lab approach can thus become a strategy for change.

⁷The mission of the sustainable food lab is to accelerate the shift of sustainable food from niche to mainstream. See www.sustainablefoodlab.org

First Steps in Creating a Social Lab

Our group obtained funding from the BC Law Foundation/Legal Services Society Research Fund in order to convene a two day workshop to delve more deeply into whether or not a social lab approach might work for change in the family justice system. We had about fifteen people at the workshop, facilitated by Adam Kahane and Monica Pohlmann⁸. Many who attended were from various sectors working in the justice system, including those working within the courts, within government, and a number of lawyers passionate about change. We also tried to diversify this initial group and had members from outside the justice system, including a young man working with immigrant youth, a doctor working with an at risk population, a psychologist, a management consultant, women working within social service agencies, a credit counsellor and a first nations educator. These other members made us more conscious about our use of language and how easily we fall into jargon and assumptions, and helped us broaden our vision. They also helped us expand our thinking about who the system's stakeholders are.

At the end of the two days, we had identified our purpose, strategy, values and stakeholders. As simple as our purpose sentence is, building consensus around this was not easy, and it will likely be further refined.

Purpose: To improve the journey of children and families throughout BC experiencing transition, such as separation and divorce, resulting in an increase in resilience and well-being.

Strategy: Based on the following values, convene a diverse group to develop, implement and evaluate innovative initiatives. Our **values** include: safe, collaborative, participatory, affordable, equitable access, understandable, timely, family-centred, integrated inter-sector services, effective, empowerment, early services, and proportional.

We identified our **stakeholders** as: families and children, government, business community and corporations, courts, political sector, lawyers, aboriginal community, multicultural organizations, support network/front line services, LGBT community, violence against women sector, financial counselling providers, non-government funders, police, schools and educational institutions and faith groups.

⁸Adam Kahane is the chairman of Reos Partners, a social enterprise that helps address complex social problems: www.reospartners.com

Embracing the social lab approach, we have convened a steering committee and are working towards our next steps. We have learned that it is crucial to get the first initiatives up and running soon, and find initial funding for infrastructure and for the first initiatives. We will need to retain a small support staff, and to develop our diverse, convened group of about forty people. As well, we will need to develop connections with other reform initiatives. We are cognizant of the fact that this will not be a “quick fix” and expect the social lab will need to be in place for three to five years, so we are particularly anxious to bring a more youthful demographic into our convening group.

Social labs provide a new way of working towards change. They are being used to address a diversity of complex problems around the world. Since they can work on any scale, they can be applied to both small and large complex problems. The combination of thinking, acting, and reflecting, is refreshing and promising. As Collaborative Practitioners, we have many opportunities to observe emergent phenomenon in our work, in how we organize in our practice groups, and in how we refine and modify the way that we work. When Peggy Thompson, working in her counseling practice with divorcing couples, met Pauline Tesler and the early collaborative lawyers in northern California, interdisciplinary Collaborative Practice emerged and a new system began to self-organize. Social labs give us an opportunity to be intentional in our purpose and, at the same time, innovative with what emerges. In these busy times, it is easy for us to forego opportunities for reflection. Just as making time for reflection is a key component of our work as Collaborative Practitioners, it is also key to creating the change we desire. With intention, reflection, and the platform of a social lab, we can work systemically to create change.