

Windsor Yearbook of Access to Justice Recueil annuel de Windsor d'accès à la justice



THE STORY OF THE BC FAMILY JUSTICE INNOVATION LAB

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Volume 34, Number 1, 2017

Special Issue - Innovation and Access to Justice: Addressing the Challenge of a Diverse Justice Ecosystem

URI: <https://id.erudit.org/iderudit/1043014ar>

DOI: <https://doi.org/10.22329/wyaj.v34i1.4996>

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Publisher(s)

Faculty of Law, University of Windsor

ISSN

2561-5017 (digital)

[Explore this journal](#)

Cite this article

Morley, J. & Boyle, K. (2017). THE STORY OF THE BC FAMILY JUSTICE INNOVATION LAB. *Windsor Yearbook of Access to Justice / Recueil annuel de Windsor d'accès à la justice*, 34(1), 1-27.
<https://doi.org/10.22329/wyaj.v34i1.4996>

Article abstract

Many in the justice system know that fundamental change is needed but few know the best way to do it. Previous attempts using strategic planning approaches have not achieved meaningful change. Something different is needed. The BC Family Justice Innovation Lab (the Lab) is experimenting with a different approach drawing on complexity science, the experience of other jurisdictions and disciplines and incorporating human-centred design as a way of focusing on the well-being of families going through the transition of separation and divorce. This article is the story of the first few years of the Lab's life. It has been a fascinating and challenging path so far, and it remains to be seen whether it will ultimately succeed. The story is offered so that others with similar ambitions can learn from the Lab's experience – its successes and its failures. It is the nature and strength of stories that the reader will take from them what they will. For the authors, one overriding theme that emerges from this story is that transforming a complex social system, such as the family justice system in British Columbia, requires embracing the complexity of paradox and refusing to be defeated by the tension of opposites and a multitude of wicked, unanswerable questions.

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THE STORY OF THE BC FAMILY JUSTICE INNOVATION LAB

Jane Morley
Kari D. Boyle*

Many in the justice system know that fundamental change is needed but few know the best way to do it. Previous attempts using strategic planning approaches have not achieved meaningful change. Something different is needed. The BC Family Justice Innovation Lab (the Lab) is experimenting with a different approach drawing on complexity science, the experience of other jurisdictions and disciplines and incorporating human-centred design as a way of focusing on the well-being of families going through the transition of separation and divorce. This article is the story of the first few years of the Lab's life. It has been a fascinating and challenging path so far, and it remains to be seen whether it will ultimately succeed. The story is offered so that others with similar ambitions can learn from the Lab's experience – its successes and its failures. It is the nature and strength of stories that the reader will take from them what they will. For the authors, one overriding theme that emerges from this story is that transforming a complex social system, such as the family justice system in British Columbia, requires embracing the complexity of paradox and refusing to be defeated by the tension of opposites and a multitude of wicked, unanswerable questions.

Bon nombre d'intervenants du système de justice savent qu'un changement fondamental s'impose, mais peu connaissent la meilleure façon de le réaliser. Dans le passé, l'utilisation d'approches de planification stratégique n'a pas donné les résultats escomptés. Une approche différente est nécessaire. S'inspirant de l'expérience vécue dans d'autres ressorts et d'autres disciplines, le BC Family Justice Innovation Lab (le Lab)

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Kari D Boyle, enjoys using her legal, mediation and leadership experience to collaborate with others to improve BC citizens' access to justice, with a current focus on how the justice system supports families experiencing separation or divorce. Her career began (too many years ago to mention) practicing corporate commercial litigation with Edwards, Kenny & Bray in Vancouver, moved to an inhouse management position (ICBC) specializing in legal services management, led mediation research projects with the UBC Program on Dispute Resolution and participated in many justice reform initiatives. From 2006 – 2015, Kari served as Mediate BC Society's Executive Director and then spent one year as Director of Strategic Initiatives. She recently completed her term as the Project Manager for Mediate BC's "Family Unbundled Legal Services Project", and is currently Coordinator of the BC Family Justice Innovation Lab, a member of the BC Access to Justice Leadership group, and a Board member of the Courthouse Library Society of BC.

expérimente actuellement une approche différente fondée sur la science de la complexité, et s'efforce d'intégrer une conception axée sur la personne afin de mettre de l'avant le bien-être des familles éprouvées par une séparation ou un divorce. Dans cet article, les auteures relatent les premières années d'existence du Lab. Le chemin parcouru jusqu'à maintenant est fascinant et met en lumière des objectifs ambitieux, mais il reste à savoir s'il mènera en définitive au succès. L'histoire est racontée pour que d'autres intervenants qui ont des ambitions semblables puissent s'inspirer de l'expérience et des succès du Lab et tirer des leçons de ses échecs. En raison de la nature et de la force de ces récits, l'intervenant pourra s'en inspirer pour faire ses propres expériences. De l'avis des auteures, la lecture de ces récits permet de comprendre que, pour transformer un système social aussi complexe que celui de la justice familiale de la Colombie-Britannique, il est impératif de tenir compte des différents enjeux paradoxaux et de refuser de baisser les bras, malgré les tensions créées par les vifs débats et par l'avalanche de questions épineuses auxquelles il est impossible de répondre.

I. INTRODUCTION

What follows is the story of the BC Family Justice Innovation Lab [the Lab].¹ It is a continuing story – a story about an effort to change British Columbia's family justice system so that it enhances, rather than detracts from, the well-being of families going through the transition of separation and divorce. The group of individuals involved in the Lab is not the first or only group within the justice system that has tried, and is currently trying, to improve the family justice system. What distinguishes this group from others is the path they have taken – a path that embraces complexity, outside perspectives, experimentation, partnership with users, and ways of bringing about change that are counter to the prevailing justice system culture. It has not been an easy path, and it remains to be seen whether it will ultimately succeed. The story is offered so that others with similar ambitions can learn from the Lab's experience – its successes and its failures.

It is the nature and strength of stories that the reader will take from them what they will. For the authors, the overriding theme that emerges from this story is that transforming a complex social system, such as the family justice system in British Columbia, requires embracing the dynamic tension of paradox. Embracing paradox is challenging, particularly in complex environments. There are no easy answers – often just wicked, unanswerable questions. Capturing the connection between paradox and complexity, Anthony Howard in “Paradexity: The Convergence of Paradox and Complexity” coined the phrase “paradexity.” He wrote:

Paradexity creates a fog which is hard to navigate, and contributes to feeling that we have lost control as we struggle to manage, make sense of, and live with these forces. It causes a sense of confusion, and never quite being “there” – wherever there may be.

Harnessing paradexity involves not just tolerating ambiguity and managing complexity. It means transcending paradox and embracing complexity as they converge and unsettle

¹ BC Family Justice Innovation Lab, online: <www.bcfamilyinnovationlab.ca>.

us. It requires a new level of human maturity. It recognizes that we need to shift from stark choices to integration, collaboration and co-creation fostered by effective conversation.²

The story of the Lab chronicles the discovery by a group of legal professionals of a wide variety of theories, frameworks, and concepts, most of which came from other sectors and disciplines. The authors are not academics and are not offering in this article a definitive explanation of these theories or analysis of how they relate to each other. They are practitioners who have explored theoretical frameworks and methodologies with an eye to how they might be applied in the context of transforming the BC family justice system.

The careers of both authors have centred on the BC justice system in various roles, including as lawyers and mediators. They have also had experience in the field of public policy, not just in the justice system. For many years, both have had a great deal of involvement in the BC justice not-for-profit world in various organizations. Both have been married and have children; one has been through a difficult divorce. They have reached a time in their lives when their desire to make a difference has grown – hopefully, it is a time of wisdom, though they readily admit they have lots to learn and look forward to. Both have been engaged with the Lab since its inception, and they plan to continue their engagement with it to see what the next chapter will bring.

II. THE STORY

A. The Initial Dilemma

The story of the Lab begins in the fall of 2013 when a small group of reform-minded justice system leaders [the Lab group] gathered in a meeting room in the Gastown area of Vancouver.³ They were all lawyers, and all had been involved for years in trying to make the BC family justice system work better for families. The Lab group was disturbed by the persistent gap, which had existed for decades in British Columbia, between the well-thought-out recommendations of many excellent family justice reports and actual positive change in the lived experience of families and children going through the family justice system.

In October 2013, the Action Committee on Access to Justice in Civil and Family Matters [Action Committee]⁴, chaired by Supreme Court of Canada Justice Thomas Cromwell, published its report, *Access to Civil and Family Justice: A Roadmap for Change*.⁵ In the foreword to the report, the Chief Justice of

² Anthony Howard, “Paradexity: The Convergence of Paradox and Complexity” (2010) 29:3 Journal of Management Development, online: <<http://confideregroupp.com/wordpress/wp-content/uploads/2010/05/201004-JMD-Paradexity.pdf>>.

³ From when the idea of a lab was first raised to when this article was written, a small group has been engaged in moving the idea along. The membership of that group has changed over time. To avoid confusion, the article consistently refers to this changing group as the “Lab group.” The authors have been part of that group throughout.

⁴ Action Committee on Access to Justice in Civil and Family Matters, “Action Committee,” online: <www.cfcj-fcjc.org/action-committee>.

⁵ Action Committee on Access to Justice in Civil and Family Matters, “Access to Civil and Family Justice: A Roadmap for Change” (October 2013), online: <www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf> [“A Roadmap for Change”].

Canada acknowledged that we were "increasingly failing in our responsibility to provide a justice system that was accessible, responsive and citizen-focused." The report identified the "implementation gap" between the recommendations in the reports and what actually happened. "Take action" was included in the six guiding principles for change.⁶ The Lab group asked itself: why was action that would make the justice system better for families going to happen as a result of the Action Committee's report, when it had not happened in the past?

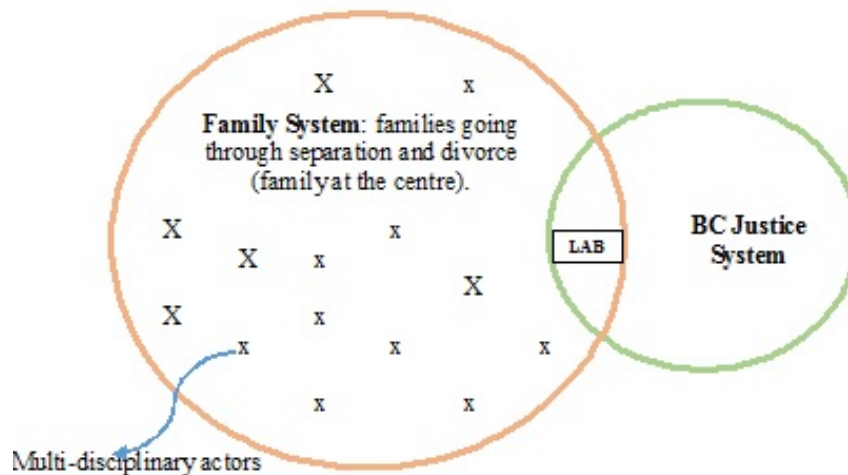
B. The "System"

It was at that early meeting in Gastown that the Lab group had its first collective "ah-ha" moment. The goal of the group, though not yet fully defined, was to bring about change at a systemic level. The assumption in the room was that the system that needed changing was the "justice system." While the group defined that system as being much broader than the court system, the focus was on the services provided to families when they had legal problems. Then one of the participants pointed out that the group was looking at things from the wrong perspective. By defining the problem as fixing the "justice system," the group was focusing on a system designed to resolve "legal" issues. Yet, for families, separation and divorce are not legal problems with some social aspects; they are social problems with some legal aspects. If families are really put at the centre of the system, the definition of the "system" changes.

Defining the "system" has been an iterative, and sometimes challenging, process for the Lab group. Defining it too narrowly risks narrow thinking; defining it too broadly risks creating a scope for the Lab that is beyond the area of influence and knowledge of its initiators. In writing this article, the authors struggled again with this dilemma and experienced another moment of insight. It is not an either/or proposition. The domain of the Lab is in the space where the families' system and the BC justice system overlap and interact with each other. Figure 1 attempts to provide a simple visual of this concept.

⁶ *Ibid* at 8. Other evidence of how the system is "broken" is the increasing number of self-represented litigants in Canadian courts. Julie Macfarlane has done considerable work to shine a spotlight on this issue including her seminal report in 2013. Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants" Final Report, May 2013. National Self-Represented Litigants Project, online: <https://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf>.

Figure 1: Relationship between the Family System, the BC Justice System and the Lab



This diagram is intentionally oversimplified since there are other embedded or overlapping systems that could be added (health care system, education system, and so on). The family is at the centre of the entire “family system” (the journey families make through separation and divorce), including that portion that overlaps with the justice system. The Lab occupies space in the overlapping area. It is part of the justice system and, at the same time, aware of its role in relation to the separating family’s system, influencing and being influenced by both.

The overlapping zone is where the family’s journey intersects with the justice system in order to deal with their legal issues. In most cases (such as when families resolve their own legal issues and, if married, file an uncontested divorce), this intersection is brief and may not involve the court system or the legal profession. What is not known is how many families would benefit from interaction with the justice system (by getting legal advice, for example) but, for various reasons, go through separation without any interaction with it.⁷ The area of overlap is shown to be relatively large. While the legal needs studies indicate that only 4 percent of families experience “relationship breakdown” at any one time, separation and divorce are often long processes for families, with even longer-term impact.⁸ During the journey, families often encounter many different people and organizations from multiple disciplines (including therapists, mental health professionals, health care professionals, educators, community agencies, faith leaders, financial advisors, bankers, the police, government staff, court staff, and lawyers).

⁷ Macfarlane, *supra* note 6; Law Society of British Columbia, “Ipsos Reid Survey Executive Summary” (September 2009), online: <www.lawsociety.bc.ca/docs/publications/survey/legalservices_2009.pdf>.

⁸ Trevor CW Farrow et al, “Everyday Legal Problems and the Cost of Justice in Canada: Overview Report” (2016), Canadian Forum on Civil Justice, online: <www.cfcjfcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>.

C. Complexity and its Implications

Around the time that the Lab group first got together in Gastown, Adam Kahane had come to Vancouver to speak about his latest book, *Transformative Scenario Planning: Working Together to Change the Future*⁹ and his experiences in tackling complex social problems.¹⁰ Some in the Lab group, who had heard him speak, raised the idea of applying his ideas to the family justice system in British Columbia. If transformative scenario planning could help South Africa work through its seemingly intractable problems immediately following Nelson Mandela's release from prison, then maybe it could help address the persistent problem of a family justice system in British Columbia that was failing families.

British Columbia's family justice system certainly seemed to the group to qualify as a complex social problem. It manifested the three types of complexity identified by Kahane: dynamic (multiple interacting causes and cause and effect far apart in space and time); generative (its future is unfamiliar and unpredictable); and social (the actors involved in the system look at things differently and work in silos).¹¹ Michael Quinn Patton, co-author of *Getting to Maybe; How the World Is Changed*,¹² differentiates complex challenges from simple and complicated ones.¹³ Simple challenges (like baking a cake) are met by using recipes, and complicated problems (like sending a rocket to the moon) by applying expertise. However, complex challenges (like bringing up a child) require more emerging, less linear solutions. Patton summarizes the characteristics of complexity as being non-linear, emergent, dynamic, and "getting to maybe" – uncertain, unpredictable, and uncontrollable.

A second "ah-ha" moment for the Lab group was that those wanting justice reform had been treating the access to justice problem as a complicated problem – one that could be solved through the application of expertise. This method generated report after report from justice system "experts" about what others in the system should do to set things right. As Kahane pointed out to the group's amusement in a subsequent telephone conference, why would anyone think that a report telling other people and organizations what to do would ever result in transformative change? Expertise can help, but it is not sufficient to bring about change in complex social circumstances.

Bringing in the complexity lens was enlightening, but it was also somewhat overwhelming. The recommended methods for addressing complex social challenges were counter-intuitive to a group of lawyers with the lawyer-like propensity to go as quickly as possible to solutions. Lawyers are trained to tackle legal problems by applying logic and precedent to obtain certainty, predictability, and control.¹⁴ The group struggled with what it meant for solutions to "emerge." Even the mediators in the group (and,

⁹ Adam Kahane, *Transformative Scenario Planning: Working Together to Change the Future* (San Francisco: Berrett-Koehler Publishers, 2012) [Kahane, *Transformative Scenario Planning*].

¹⁰ Adam Kahane, *Solving Tough Problems: An Open Way of Talking, Listening and Creating New Realities* San Francisco, Berrett-Hoehler Publishers, Inc., 2004, 2007) [Kahane, *Solving Tough Problems*]; Adam Kahane, *Power and Love: A Theory and Practice of Social Change* San Francisco, Berrett-Hoehler Publishers, Inc., 2010). Kahane, *Transformative Scenario Planning*, *supra* note 9.

¹¹ Kahane, *Solving Tough Problems*, *supra* note 10 at 31.

¹² Frances Westley, Brenda Zimmerman, and Michael Quinn Patton, *Getting to Maybe: How the World Is Changed* (Toronto: Vintage Canada, 2007). The name of the book captures the reality of ambiguity of the situation while acknowledging that progress can be made.

¹³ Michael Quinn Patton, "Developmental Evaluation with Michael Quinn Patton," (PowerPoint presentation, Canadian Evaluation Services (CES) Annual Conference, June 1, 2009).

¹⁴ Legal training traditionally focuses on the review of past court decisions, identifying principles and applying those principles to the current problem.

not coincidentally, most of the group were mediators as well as lawyers) had been trained on approaches to mediation, the goal of which was to obtain certainty by reaching agreements logically built on identified individual interests. Pursuing a strategy that did not offer certainty and required a lot more than logic was foreign and uncomfortable to them. It would take some getting used to.

Understanding the implications of complexity explained what would not work (the sole application of expertise to the problem), but determining a workable alternative methodology for changing the family justice system proved to be a bigger challenge for the Lab group – a challenge that remains ongoing. It was one thing to understand the difference between complex and complicated social problems, and the implications of that difference, and quite another to understand and apply a methodology for addressing social complexity that would be effective in the context of a justice system entrenched in problem solving by using precedent, logic, and expertise.

D. The Social Lab Alternative

After a couple of initial meetings, the Lab group decided that a useful next step would be to seek advice from Kahane about how to move forward. On 31 January 2014, a somewhat expanded group had a two-hour conference call with Kahane, funded by Mediate BC. Kahane listened intently as the group members explained British Columbia's access-to-justice problem and their implementation gap analysis. After asking probing questions, Kahane recommended exploring the social lab model,¹⁵ with its focus on doing, not just talking. On 28 April 2014, three of the group attended a Vancouver workshop led by Zaid Hassan to explore the social lab model.¹⁶ Kahane arranged for Hassan and another colleague, Monica Pohlmann, to meet with the Lab group members on the night before the workshop and explore the suitability of the social lab approach as a way to address British Columbia's family justice system's dilemma.

At the workshop, Hassan presented the social lab alternative as a contrast to what he referred to as the "business as usual" [BAU] responses to complex social challenges. His assertion that "at the heart of all BAU responses sit experts" reinforced the Lab group's insight about the justice reformers' overreliance on experts.¹⁷ Hassan also criticized conventional "strategic planning" for not taking into account the political realities of decision making and for assuming that pre-determined courses of action will have anticipated consequences in a complex social environment. A core social lab concept is that the best ideas for effective change action emerge from dialogue among a group of diverse system actors.

While Hassan was dismissive of conventional strategic planning, he identified clarity of "strategic direction" as one of the three essential preconditions of a successful social lab. (The other two were resources and people; over time, and not surprisingly, resources proved to be the major obstacle to delivering a BC family social lab on the scale that Hassan envisioned.) In a small group exercise, the Lab group attending the workshop were asked to define a potential strategic direction for their prospective Lab. The statement they came up with was: "[D]eveloping prototypes for delivering legal services that have families in the middle." While the conception of the nature of the BC family justice Lab has changed since April 2014, prototyping and "families in the middle" remain key components of the Lab strategy.

¹⁵ The social lab model had recently been developed by Reos Partners, online: <<http://reospartners.com>>, an international group focused on the art and science of systemic change, of which Kahane was a member.

¹⁶ Zaid Hassan, *The Social Labs Revolution: A New Approach to Solving Our Most Complex Challenges* (San Francisco: Berret-Koehler Publishers, 2014).

¹⁷ *Ibid* at 31.

As Kahane predicted, the action focus of the social lab approach was attractive to the Lab group. In his book, Hassan identifies three imperatives in his “theory of systemic action”:

- constitute a diverse team;
- design an iterative process; and
- actively create systemic process.¹⁸

At the April workshop, he boiled this down to the need to be participatory, experimental, and systemic. The Lab in its various iterations to date has held to those three elements, though the nuances of what they mean in the Lab context have deepened and changed over time. Those involved in Hassan’s workshop and the meeting the night before came away convinced that the social lab approach was worth serious consideration.

E. Expanding the Table and Launching the Lab

Convening a diverse team had been identified as a first step in the social lab model. From past experience, the Lab group intuitively knew that it needed to convene more than the “usual suspects.”¹⁹ If the “system” is defined from the perspective of the families,²⁰ then the list of system actors expands significantly. Bringing together people from across the families’ system would mean involving health professionals, educators, financial people, therapists, social workers, community organizations, and the police. The list goes on, and it is a long one.

The Lab group realized that to generate creative systemic solutions, it needed to include in the dialogue people from other disciplines. On 1 and 2 June 2014, it took a step in that direction. About twenty people were convened for an event, funded by the BC Legal Services Society and the Law Foundation Research Fund and facilitated by Kahane and Pohlmann. Its purpose was to explore the social lab as a way to take action in bridging the implementation gap. In retrospect, this event turned out to be the launch of the Lab.

In addition to including some key players within the justice system, the convened group included the chief executive officer of the Vancouver YWCA and its director of housing, a psychologist and professor at Simon Fraser University who had authored many child custody reports for the court, a management consultant involved in justice reform as a public representative, the Vancouver Foundation’s project coordinator of immigrant and refugee youth engagement, a paediatrician involved in a Downtown Eastside cross-sector initiative, the director of community services for the Tsawwassen First Nation, and the director of education and community awareness of a credit counselling organization.

Out of the rich conversations that took place during those two days, there emerged a firm commitment to a social lab strategy for addressing the complex problem of British Columbia’s family justice system. The form of the social lab would be “held lightly”; however, its essence would be:

- systemic: looking at the broader system and focusing on underlying causes and effects, not symptoms;

¹⁸ *Ibid* at 111–23.

¹⁹ The phrase “the usual suspects” is used to mean judges, lawyers, legal academics, and government justice policy people. They are the usual participants at gatherings to discuss justice reform.

²⁰ See section B above on the “system.”

- participatory: involving individuals and organizations from across the system (broadly defined), including individuals or organizations able to reflect the perspectives of children and families; and
- experimental: trying out collaborative, innovative initiatives with province-wide potential and evaluating them in relation to the purpose of improving the divorce and separation experience for BC children and families and building on successes and learning from failures.

The convened group defined the Lab's purpose²¹ and identified its core values.²² The three necessary components of a social lab strategy were identified as: a steering committee, a secretariat, and some initiatives. In a post-meeting debriefing with Kahane, angst was expressed around how to generate the resources needed to pursue this strategy. Kahane encouraged the group to recognize its existing resources and pointed out that action on the strategy had begun at the 1 and 2 June meeting. In mid-June, the Lab group retroactively declared that the Lab, version 1.0, had been launched.

The June meeting was important for many reasons, not least the diversity in the room. The attendees from within the justice system commented on how refreshing it was to have "outsiders" involved in the justice reform dialogue. Those "outsiders" brought a different knowledge and experience to the conversation, asked powerful questions, and made observations that would not have occurred to the justice system "insiders." In doing so, they helped shift the focus away from the justice system towards its impact on the families connecting to it.²³ Families going through separation and divorce can also help justice system "insiders" better understand the system. Bringing families into diagnosing the problems and designing justice system solutions also makes sense if one understands families to be at the centre of the family justice system. Viewed from this perspective, they are no longer "outside" entities that the system does things to or for. The individuals and families become system actors interacting with other system actors to make change.

For the Lab group, the June 2014 "launch" of the Lab felt like just the beginning of its expansion. While limited resources have so far made it impossible to reconvene such a diverse group, the Lab

²¹ The Lab's purpose was defined at the June meeting: "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."

²² The Lab's principles were identified by the convened group: "safe, collaborative, participative, affordable, equitable access, understandable, timely, family-centred, integrated, effective, empowered, early, proportional."

²³ Later in the Lab's story, the Lab group was introduced to a video from the 1968 Apollo 8 mission that brought home the importance of an outside perspective. When the spaceship circled the moon, the astronauts were focusing entirely on what could be learned from the moon. Then one of them, Edgar Mitchell, began to take photographs, not of the Moon, but of the Earth. These photographs were unexpected and the first time that most people had ever seen of their home from space. The camera was turned to allow them to see all mankind on a beautiful and fragile planet floating in the universe. To many, it was a profound and life-changing event. "The Overview Effect" (9 December 2012), online: <www.youtube.com/watch?v=CHMIfOecrlo>. This truth was also brought home in May 2016 by Lisa Foster, Director of the Office for Access to Justice, in a speech to the American Bar Association, online: <www.justice.gov/opa/speech/director-lisa-foster-office-access-justice-delivers-remarks-aba-s-2016-national-meeting>. Using the analogy of the cell phone camera, she said that justice system insiders are familiar with taking "selfies," designing the legal profession and the courts to suit the needs of the judges, lawyers, and court staff. She suggested that, instead, the justice system should be pushing the button to turn the camera around and see those who need access to justice – the people for whom the system should be designed.

continues to recognize the importance of engaging with those who come from other disciplines and work in other systems and with families. How to effectively engage with families has become a major focus of the Lab that will be discussed in a later section of this article.

F. Adapting to Reality and Funding

The BC Family Justice Social Lab was launched, and the Steering Committee was appointed by the group convened in June, and there were many champions of the Lab idea generated by the experience of the June 2014 meeting. Without funds for a secretariat, hiring staff to perform an executive director role was not possible, but members of the Lab group volunteered to collectively perform that role, supported administratively by the BC Courthouse Libraries and Mediate BC.

Over the Lab's first year, it became clear that much foundational work had to be done if the Lab was going to be successful in achieving its ambitious purpose. Lack of financial resources had been identified from the beginning as a key missing pre-condition for a successful social lab. It continued to be a barrier for progress on the scale hoped for, and so seeking funding became one of the Lab's priorities. The Law Foundation of British Columbia is the usual source of funding for BC justice system projects. It understandably is looking to fund projects that will likely directly serve British Columbians. It was too early in the life of the Lab to offer that kind of assurance. The Lab group decided that it might have greater success if it sought funding from other sources.

The Lab's first success on the funding front came in early May 2015, when the J.W. McConnell Family Foundation (Innoweave) awarded the Lab a three-year grant to support its developmental evaluation efforts and to fund the retention of Mark Cabaj, a leading Canadian expert on, and practitioner of, developmental evaluation, as a developmental evaluation coach. Cabaj's contribution has gone well beyond evaluating coaching. His creative thinking and wide knowledge of social change theory and practice continues to assist the Lab in honing its purpose, its theory of change, and its practical focus and has led to a modified concept of the Lab, as explained below.

In May 2015, the Lab submitted a letter of intent to the Vancouver Foundation's Field of Interest Grants program, and, in July, it was told that it made the cut and could make a full application. In September, the news that the Vancouver Foundation had granted \$40,000 per year for three years for the Lab was both a morale booster and a practical boon to the Lab. The icing on the cake was when, without the Lab even submitting an application, a group of philanthropic women ("Giving Well") extended, through the Vancouver Foundation, a separate grant of \$8,000.²⁴ These important grants highlighted opportunities for a more diversified pool of funding sources for justice initiatives and has connected the Lab to other networks, which has been important in the Lab's ongoing drive to bring others to the table to address family justice reform.

The original application to the Vancouver Foundation sought money to fund some staff support while still recognizing a significant pro bono contribution from the Lab group and others. Since then, the team has proposed that a portion of this money be devoted to a partnership with a local firm specializing in human-centred design, as explained in more detail below. Happily, the Lab has been able to attract significant funds to support its efforts. However, for the moment, most of the "secretariat" work of the Lab continues to be accomplished by committed volunteers. Fortunately, volunteers have been

²⁴ Part of that money has been used to create a website and blog for the Lab. BC Family Justice Innovation Lab, *supra* note 1.

forthcoming, motivated by the excitement of learning new approaches to change and the promise of making a real difference for families engaging with the family justice system. One of the authors agreed to become the Lab's coordinator and is receiving a small monthly stipend from the Vancouver Foundation funding. Some members of the Lab group have remained intensely involved; others, though still supportive of the Lab, have been unable to continue to commit time to it. The membership of the Lab group has changed as new members have been added, including younger members of the profession, a designer working within the Ministry of Justice, an experienced social worker, and an experienced psychologist.

Finding the necessary time to develop a practical strategy of engagement with those both inside and outside the justice system has proven problematic. The Steering Committee met by phone a few times, but as the "social lab" model, which envisions a large, cross-system convening, was modified (in part because of the lack of financial resources), the role of the Steering Committee became less clear. Participation by justice system "insiders" and "outsiders" remains an important goal of the Lab, although it will likely be implemented in a different form than what was originally envisioned. While holding onto its ambitious goal, the Lab's current reality is that it will need to use its resources wisely and strategically and grow as resources are available.

G. Lab Initiatives and Learning

Having some initiatives under the Lab umbrella was identified at the June 2014 Lab launch meeting as part of the necessary strategy to move forward. Over the fall of 2014, three existing initiatives were "adopted" by the Lab:

1. Northern Navigator project: a provincial court judge may, under the *BC Family Law Act*, order a family to meet with a navigator who will conduct a detailed intake, provide to the parties information, resources, and referrals to community and legal services, and provide to the court a report to assist the court in considering whether to order the family to engage in mediation, either at a distance with a family justice counsellor or with a private mediator paid for by the parties on a sliding scale;²⁵
2. BC Collaborative Roster Society Pro Bono Project: interdisciplinary collaborative practice services are provided to families who meet financial qualifications; and
3. Mediate BC Sliding Scale Project: mediation services are offered on a sliding scale to families who are not eligible for legal aid.²⁶

A fourth initiative was added in January 2016. Mediate BC's Family Unbundled Legal Services Project was inspired by the Law Society of British Columbia and funded by the Law Foundation of British Columbia. A lawyer provides unbundled legal services when they are retained for a limited purpose (for example, to help draft an affidavit) and are not providing counsel for the entire matter from start to finish. Many people want the help of a lawyer and have some money to devote to legal services but simply cannot

²⁵ This initiative is available in Dawson Creek, Fort St John, and Chetwynd, British Columbia. A notice to the profession enabling the initiative was issued by the Court effective 1 June 2016.

²⁶ Funding for this initiative will end on 31 March 2017.

afford the full representation model. The project aims to encourage more BC family lawyers to offer unbundled legal services to families, particularly those using mediation to address their issues arising from separation and divorce. The Lab is supporting this initiative by creating a theory of change and enabling the developmental evaluation plan.²⁷

These four initiatives would likely have happened in some form without the Lab. However, the leadership of each was willing, even enthusiastic, to be a “Lab initiative” because, among other reasons, it offered the opportunity to:

- have a more widespread impact than the initiative could possibly have on its own;
- participate in a visionary approach to change in the family justice system; and
- learn how to apply developmental evaluation.

The initiatives have been important to the Lab as a way to practise experimentation, to focus on learning by doing, and to reflect on the Lab’s role in relation to future initiatives. They have already generated lessons that will be helpful in future innovative initiatives in the family justice system. The Lab’s 2016 action plan included a commitment to develop two or more new Lab initiatives. The way those initiatives will be developed will be quite different than the “adoption” of the existing initiatives method of Lab 1.0 and will build on what the Lab group has learned from Lab 1.0.

H. Developmental Evaluation

Any real Lab has to conduct experiments. Lab 1.0 had some initiatives to work with, but none of the Lab group was experienced in conducting social “experiments” involving rapid prototyping.²⁸ The traditional justice reform approach with which they were familiar involved “pilot projects,” with clear plans and expectations defined at the beginning and evaluations conducted at the end to determine whether the pilot had succeeded or failed in meeting those expectations. This was not the rapid prototyping for which Kahane and Hassam were advocating. The Lab group knew it needed to learn how to prototype and reasoned that evaluating a developing prototype must be a crucial piece of the prototyping process. They knew that conventional evaluation approaches used for new programs in the justice system were too rigid and happened too late in the process for this purpose. How could the Lab evaluate initiatives in a way that would lead to significant and necessary modifications along the way?

In November 2014, just about the time the Lab group was starting to ask these questions, Innoweave held a day-long workshop in Vancouver on developmental evaluation. Three Lab group members attended, together with Alison Brewin, a local developmental evaluator and lawyer who works in the not-for-profit sector of the justice system. Those who attended the workshop learned that developmental evaluation is not necessarily the best approach for all purposes. However, it is the only way to go in the context of complexity and rapid prototyping. It is not a new evaluation technique or tool but, rather, a

²⁷ At the time of writing, the initiative has launched the Unbundling Toolkit for Lawyers, “Be Part of the Solution,” online: <www.courthouselibrary.ca/practice/familylaw/unbundling/> as well as a BC Family Unbundling Roster, online: <<https://sites.google.com/view/bfur/>> and continues to invite lawyers to sign up.

²⁸ The rapid, iterative prototyping process envisioned in the social lab model required trying out an idea for action (a prototype), evaluating the experience, modifying the prototype, and then trying, evaluating, and modifying it again until a robust and scalable prototype emerged.

different mindset or approach to evaluation. It uses the various tools employed by more traditional evaluation methods.

While the skepticism about traditional planning strategy was reinforced, it was made clear that having a theory of change (working hypothesis) is crucial for developmental evaluation. It provides the framework for the evaluation questions. It has the added benefit of forcing those working on the innovation to reflect on their assumptions. The success of developmental evaluation depends on the innovators being ready to engage in reflection and in the tough examination of assumptions and dialogue about what is happening in an initiative. Developmental evaluation embraces the idea of learning from mistakes and weak performance. The developmental evaluator becomes part of the team and does not make objective judgments but, instead, reveals issues, tracks developments, and facilitates the group in interpreting the facts and making judgments about the next stages of development.

In February 2015, the Lab hosted a two-day workshop, again funded by the BC Legal Services Society and the Law Foundation Research Fund, and this time it was facilitated by Mark Cabaj. Consistent with the Lab's attempt to convene a diverse group and to expose influential system actors to the different mindset of the Lab, the participants included (in addition to the Lab group) representatives from funders, government (Ministry of Justice and other ministries), and non-profit organizations (within and outside the justice system.) The first day was a whirlwind and provided a fascinating survey of key concepts, and the second day focused on how these concepts might apply to the Lab's design.

On the first day, workshop participants learned that developmental evaluation was invented to help innovators think better and is still emerging as a way to address complex problems. They were introduced to the idea of prototypes being on a continuum: probe; prototype; pilot; program; policy.²⁹ On the second day, participants explored the issue of risk aversion in the justice system and in government and how it might be possible to make Lab experiments "safe to fail" by limiting the scope of the initiative in its early stages, while simultaneously exploring the systemic question – how can the prototype be scaled up or across the system? Rapid prototyping and developmental evaluation allow for the identification of "min specs" (minimum specifications of the prototype), which will make it scalable and adaptable in local contexts.

Many of the assembled group were used to the idea that following "best practice" from elsewhere was a solid way to introduce change. So when Cabaj labelled best practice as "anti-innovation" at the workshop, it was something of a jolt. Best practice is determined by past evidence of effectiveness, whereas, by definition, innovation is ahead of the evidence curve. It is not possible to show that an innovative idea will work before it is implemented. What developmental evaluation does is provide evidence along the way. The experimental approach is at its most effective when, based on evidence suggesting that an idea is not working, the idea is jettisoned and a new idea is tried.

The Lab group came away from the workshop convinced that developmental evaluation was core to the Lab's work and comforted as lawyers that they were not being asked to let go of their belief in the

²⁹ For a helpful definition of these terms, see Chris Corrigan, "Probes, Prototypes, and Pilot Projects" (5 October 2015), online: <www.chriscorrigan.com/parkinglot/probes-prototypes-and-pilot-projects/>. Participating members of the Lab group began to recognize that the Lab's early initiatives probably were not prototypes, but more like pilots, in that they were not set up for rapid iterations but remained more or less the same from beginning to end. Real prototyping involves developing a hypothesis about what works, then jumping in and trying it out to discover what works and what does not. As Mark Cabaj put it, "it involves adapting like crazy."

importance of evidence. As a result of what they learned, the Lab group adopted a strategy of starting small. While the Lab continues to nurture the existing initiatives under its umbrella, the second iteration of the Lab will work with prototyping from the beginning, rather than taking on already existing ideas that are more like pilots than prototypes. Since the Cabaj workshop, the Lab group has learned more about developmental evaluation by supporting its use in the initiatives and seeing it practised in that context. One of the pieces of work on the Lab's agenda is developing, with the help of Cabaj, is an inquiry framework that guides the assessment of each initiative, enabling cross-initiative learning.

The developmental evaluation approach has also been applied to the Lab itself. The Lab group has had periodic sessions with Cabaj to explore the Lab's theory of change in the context of our experience to date. This exploration has led to changes in the Lab's work since experience has led to better understanding what is at the core of what the Lab is trying to do and what is doable. Developmental evaluation makes sense with the Lab because it is itself an experiment – a work in progress.

I. The Lab's Theory of Change

As a result of the emphasis placed in the social lab model on clarity of purpose and strategic direction, and in developmental evaluation on the theory of change, the Lab group has worked hard at different points in their journey at reflecting on, and defining, the Lab's purpose and theory of change. At the Lab's June 2014 inaugural meeting, the natural inclination of those who worked in the justice system was to define the Lab's purpose in terms of improving the system. Others in the room helped the group to make the shift to a focus on children and families and introduced the concept of resilience as an important part of well-being. The outcome of the discussion was the following description of the Lab's 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.

At the November 2014 Developmental Evaluation Workshop, the Lab group participants were asked to define the Lab's theory of change by filling in the missing words in the sentence: "By doing X, we will change Y." Armed with the purpose of the Lab agreed to at the June meeting, they thought that this task would be easy. As it turned out, it was a struggle that took them most of the day to work through. The group went around in circles about whether the Lab's theory of change should focus on changing the justice system or changing the experience of families. If the former, the Lab would be falling back into the old trap of failing to recognize that the legal issues the justice system deals with are only one aspect of the multiple social issues faced by families going through separation and divorce. If the latter, the Lab would be defining its scope too widely to have any real impact, given that, for the most part, the knowledge, experience, and potential influence of Lab group members were of, with, and in the justice system. In reporting back to the larger group, the Lab participants revealed their angst over finding the right words to get beyond this dilemma. The other workshop participants cheered when the Lab group finally settled on:

The justice system will support resilience and well-being in families going through transition, such as separation and divorce, when it experiments, with others outside the justice system, to develop, implement and evaluate innovative initiatives.

It was the developmental evaluator colleague who got the Lab group members past their circular debate. She did what a good developmental evaluator does: she held a mirror up to their faces and pointed out that they were insiders – insiders with a passion for change. She helped them see that the Lab, as it had developed, was about taking leadership from within, and a core strength of the Lab initiative was that the initiators of the Lab were respected insiders. This was not to take away from the other learning that outside perspectives (including the perspective of users of the system) needed to be an important part of the mix if the Lab was to be successful. It was not an “either/or” proposition.

Later, at the February 2015 workshop, Cabaj emphasized that, while innovation requires being open to the possibility of being wrong, it also requires clarity of intent. Clarity of intent comes from developing a theory of change that is:

- coherent – does it hold together;
- plausible – does it make sense that doing these things would lead to this outcome;
- feasible – does the Lab have the capacity to do it; and
- measurable – can the Lab evaluate whether the theory of change is right or not?

When Cabaj started working with the Lab group in 2015, he helped them to turn their defined purpose into a working theory of change. In doing so, he explained the difference between “logic models” and “theories of change” and recommended that the Lab group construct a theory of change for each of the Lab initiatives as well as for the Lab itself.³⁰ Of the multiple types of theories of change that the Lab could use, he recommended starting with an approach, involving the use of an “outcome chain” showing a sequence (often multi-stranded) of results leading to ultimate outcomes and impacts.³¹

In late 2015, a sub-group was formed to dig more deeply into the concepts of “well-being” and “resilience” that were part of the Lab’s purpose. The group identified that, in the context of separation and divorce, the two most significant factors detracting from resilience were inter-parental conflict and poverty. In early 2016, as a result of the work of the sub-group and a better understanding of the value of a theory of change for clarifying the Lab’s work, the Lab group adopted the following, which distinguishes between the “what” (the long-term goal) and the “how” (the preconditions to bring about the long-term goal):

Long-term Goal: To improve the journey and well-being of families throughout BC experiencing family transition, such as separation and divorce.

Definitions:

Well-being: the mental, physical, and spiritual health and resilience of families;

Resilience: the ability to respond successfully to the challenges of family transitions including separation and divorce;

³⁰ Important references included the Centre for Theory of Change, online: <www.theoryofchange.org>.

³¹ This approach was used in Theory of Change, “Guided Example: Project Superwomen” (2003), online: <www.theoryofchange.org/wp-content/uploads/toco_library/pdf/Superwomen_Example.pdf>. Other types of theories of change include driver diagrams, realist matrices, and relational diagrams.

Pre-conditions to bring about the long-term goal (the “how”): The BC family justice system will support the well-being of families experiencing transitions such as separation and divorce when individuals and organizations, both inside and outside of the system, experiment together to develop prototypes that respond to the needs of the users of the system and can be scaled for use system-wide.

Making the distinction between the “what” and the “how” helped to resolve the ongoing tension between being too narrowly focused on the justice system and having a realistically limited domain for the group’s work. The Lab Group also identified a list of aspirational values, principles, and practices that had emerged as being central to the Lab’s work.³²

J. From Social Lab to Innovation Lab

In early September 2014, when the Lab group was in the height of its enthusiasm for the social lab approach, the authors met with Sarah Schulman of Inwithforward,³³ who describes herself as a “designer” focusing on “social services, neighbourhood networks and public policies that measurably shift outcomes with and for the most marginalized folks.”³⁴ She uses deep ethnographic research to do intense on-the-ground work, including living with people for months. Her approach spoke to one of the concerns the Lab group was struggling with: how do families fit into the social lab model? Hearing about it spurred the Lab group to do more critical thinking about the social lab model and raised the potential benefits of a “design” approach.

At the Developmental Evaluation Workshop in February 2015, Cabaj explained that there were at least three different types of labs:

1. The Social Lab with its preference for creating spaces for diverse people to come together to explore root causes of complex problems and engage in deep dialogue in which diverse perspectives are shared, creative ideas generated, and participants inspired to take transforming action. A disadvantage of this approach is that it demands considerable time, commitment, and resources, without assurance of effective results.

³² We will:

- provide a supportive space for innovation in the family justice system;
- learn about and practice new approaches to systemic change and adapt and combine them in a way that makes sense to us in the context of British Columbia’s family justice system;
- remember to embrace “failure” as a key learning opportunity;
- recognize that we cannot plan everything; rather, the process is evolutionary;
- acknowledge that learning takes time and that we cannot do it alone;
- build partnerships through convening, engaging, communicating, and advocating;
- support the prototypes and initiatives with expertise, guidance, and tools;
- facilitate a smooth “hand over” of tested prototypes to partners and collaborators for implementation and scaling; and
- use developmental evaluation to allow continuous learning and improvement and to distill and share lessons between the initiatives.

³³ Sarah Schulman, online: <<https://inwithforward.com/persons/dr-sarah-schulman/>>.

³⁴ Inwithforward, “Our Approach,” online: <<http://inwithforward.com/methods>>.

2. The Change Lab with its preference for planning techniques (such as systems mapping) that are rooted in complexity theory. It takes planning to another level by recognizing the complexity of the system within which the planning is being done. (Cabaj referred to this kind of lab as being “planning on steroids.”) It works at the 3,000-foot birds-eye view level, and a disadvantage is that it is somewhat abstract and overwhelming, especially for those who are more concrete and wanting to see “action.”
3. The Design Lab with its preference for client-centric approaches, based on design-thinking techniques used in the product world. It works at the service delivery level, taking the worm’s eye view, and its disadvantage is that it can get so caught up with the user interaction that it ignores the broader system.

The revelation that there were varying types of labs started the Lab group down a road of exploring these types and identifying the pieces that fit best with the Lab’s unique context. Instead of finding a model and adopting it holus-bolus, the Lab group began to have the confidence to realize that it was developing a unique “made-in-BC” lab.³⁵

In mid-2015, during one of its reflection sessions that are part of the Lab’s developmental evaluation process, the Lab group recognized that it had become less of a “social lab” and more of an aspiring “design lab.” In part, this was because it did not have the resources to pursue the full social lab model but also because of its increasing emphasis on finding ways to bring the user’s perspective into the justice system reform movement in British Columbia. To reflect this shift away from the social lab model, the Lab group decided to change the name of the BC Family Justice Social Lab to the BC Family Justice Innovation Lab. Despite the change in name, the Lab continues to hold on to the three aspects of a social lab – systemic, participative, and experimental. Taking into account the identified weakness of design labs as not being sufficiently systemic, the Lab group has recognized the value of adopting a hybrid design and systemic approach.

In September 2015, the authors presented at a Conference on Innovation and Access to Justice in Montreal that brought together people from across the country interested in access to justice and innovation. The presentation, “Experimenting and Learning: BC’s Family Justice Innovation Lab” was well attended and inspired lively discussion. For the authors, telling the story and the way it was received was confirmation that a “made-in-BC” lab had indeed been created and was worthy of notice. For the authors, attending the conference was an opportunity to learn from other Canadian justice labs and innovators. These connections continue to be a source of inspiration and learning for the Lab group, who have watched with interest the work of the Winkler Institute’s Family Justice and Mental Health Social

³⁵ Along the way the Lab has been inspired by a long list of people urging the legal system to change and to employ design techniques. These include Richard Susskind, Gillian K Hadfield, and Margaret Hagan. We are grateful for their outstanding work.

Lab,³⁶ the Alberta Reforming the Family Justice System lab,³⁷ the Ryerson Legal Innovation Zone,³⁸ and the Energy Futures Lab.³⁹

K. Empathy, Engaging Families, and Human-Centred Design

Many reform-minded people within the justice system have acknowledged the importance of looking at the justice system from the perspective of those who need to use it. For example, Access to Justice BC⁴⁰ (British Columbia's response to the Action Committee's call for action) in its framework for action has committed to engaging the user's perspective and recognizing users of the system as partners in improving it. However, the justice system has little experience in putting the user at the centre or with engaging users in its reform efforts, and it does not know how to do that effectively. Rectifying this situation has become one of the central objectives of the Lab.

In the summer of 2015, in order to learn more about human-centred design, the authors took an online course offered by IDEO through Acumen: "Design Kit: The Human-Centred Design Course."⁴¹ They also looked to where this approach might have been practised in systems with some similarity to the BC justice system. It quickly became apparent that other systems were already embracing and practising design-thinking approaches that directly involved the public. In the health care system, for example, significant work has been done over the past decade through "patient experience advisors" (Kingston General Hospital, Canada⁴²) and patient and family-centred care approaches.⁴³

Meanwhile, the Winkler Institute for Dispute Resolution (part of Osgoode Hall Law School, York University) is moving ahead with its Family Justice and Mental Health Social Lab, which aims to improve the experience of litigants with mental health challenges in the family justice system using design-thinking approaches.⁴⁴ The institute's website describes "design thinking" as follows:

Design thinking, originally employed in the world of industrial and product design, has seen widespread adoption in recent years by companies, governments, and

³⁶ Winkler Institute for Dispute Resolution, online: <<https://winklerinstitute.ca/projects/family-justice-mental-health-social-lab/>>.

³⁷ Reforming the Family Justice System, online: <www.rfjs.ca/>.

³⁸ Legal Innovation Zone, online: <http://www.legalinnovationzone.ca/>.

³⁹ Energy Futures Lab, online: <<http://energyfutureslab.com/>>.

⁴⁰ Access to Justice BC is another significant development in family justice reform in British Columbia that has been developing in parallel with the Lab. It is a collective impact initiative, led by the Chief Justice of British Columbia, which has convened a diverse group that includes the leaders of the key justice system stakeholders and leaders from other sectors and organizations that bring the perspectives of users to the table. It seeks to facilitate collaborative innovation among the participating organizations and to bring about transformative change to the family and civil justice system in British Columbia. Its framework for action includes adoption of an "improvement approach" that is user-centred, multi-disciplinary, and experimental. Some members of the Lab group are also actively involved in Access to Justice BC.

⁴¹ Acumen, "Design Kit: The Course for Human-Centered Design" (2014), online: <<https://novoed.com/hcd-acumen>>.

⁴² Kingston General Hospital, "Engaging with Patients," online: <www.kgh.on.ca/patients-families-and-visitors/engaging-patients>.

⁴³ Institute for Patient- and Family-Centered Care, online: <www.ipfcc.org/>.

⁴⁴ Winkler Institute for Dispute Resolution, "Family Justice and Mental Health Social Lab" online: <<https://winklerinstitute.ca/projects/family-justice-mental-health-social-lab/>>.

organizations looking to create innovative solutions to complex problems. Design thinking consistently generates creative products, services, and experiences that people want to buy or use. It does this by guiding creators through a structured process that has the user at its centre. In brief, the design thinking process involves (1) beginning with empathy in order to fully understand the users of the service and the service ecosystem (2) defining the problem collectively and from a user perspective (3) brainstorming a multitude of potential solutions (4) choosing the best solutions to prototype (5) testing the prototypes (6) and repeating steps 4 and 5 until the product or service is ready to implement.⁴⁵

In early October 2015, the authors had an opportunity to meet with Nicole Aylwin, then assistant director of the Winkler Institute (and now Academic Co-Director), to discuss their unique approach. She emphasized the importance of beginning with a clear understanding of the needs of the people to be served and to use tools to increase empathy for those people.⁴⁶ It made sense to the Lab group that empathy is a key piece currently missing from most “business-as-usual” justice reform efforts.⁴⁷ This conversation contributed to their commitment to find a way to incorporate design thinking into the Lab. Local research then led to the discovery that the BC government had extensive experience with “user experience” and “service design” methodologies. It was a particularly pleasant surprise to find that a group actually existed within the BC Ministry of Justice dedicated to these innovative processes. A new and very promising collaboration between the Lab and that group has developed, and the director of court innovation in the Court Services Branch has become a member of the Lab group.

L. Adaptive Leadership and the Role of the Lab within the Justice System

The design approach is strong on the experimental element identified as one of the three elements central to the Lab’s theory of how to bring about change in British Columbia’s family justice system (the other two being participatory and systemic). In terms of being participatory, it helps resolve the concern that the social lab model did not sufficiently include the families who were the “users” of the system. However, as the Lab group learned more about this approach, they recognized that its weakness lay in its being insufficiently systemic. As the group mulled over this drawback to the design approach, the Lab group found some answers in an article by Maya Bernstein and Marty Linsky, “Leading Change through Adaptive Design.”⁴⁸ The authors of this article describe a hybrid approach to innovation called “adaptive design.” Like the human-centred design approach, it is experimental and innovative, involves an iterative

⁴⁵ *Ibid.*

⁴⁶ The Winkler Institute for Dispute Resolution’s blog post by Paul Blizzard on 23 March 2016 is helpful. Winkler Institute for Dispute Resolution, “User Experience (Ux) Design and Empathy” 23 March 2016, online: <<http://winkler-institute.ca/user-experience-ux-design-and-empathy/>>.

⁴⁷ The justice system is not unique in this regard. Dr Brian Goldman (well known for his hosting of the Canadian Broadcasting Corporation’s radio program “White Coat, Black Arts,” refers to an “empathy gap” in North American health care culture and advocates for increased empathy in patient-centred care. “Dr. Brian Goldman in the IMAGINE Project: The Empathy Gap and Problems in Healthcare” (20 February 2015), online: <www.youtube.com/watch?v=8vodTJ-46DA>.

⁴⁸ Maya Bernstein, “Leading through Adaptive Design” (Winter 2016) Stanford Social Innovation Review Winter 2016, page 48 online: <http://ssir.org/articles/entry/leading_change_through_adaptive_design>.

process, and engages users in the design process. However, it is also analytical and strategic. It assumes the involvement of people within an organization or system taking on an “adaptive leadership” role that is disruptive in that it seeks to overcome the natural inclination of those within a system to resist change.

The first time the Lab group heard the term “adaptive leadership” was at the Developmental Evaluation Workshop in November 2014. The facilitator named it as one of the criteria for an organization to successfully use developmental evaluation. It was at that workshop that some members of the Lab group recognized that their leadership within the justice system was a key element of the Lab. They understood themselves to be “adaptive leaders.”⁴⁹ One of the participants from another organization⁵⁰ referred the group to a very interesting article that became seminal for the Lab, John P. Kotter’s “Accelerate!: How the Most Innovative Companies Capitalize on Today’s Rapid-Fire Strategic Challenges and Still Make Their Numbers.”⁵¹ This article crystalized for the Lab group the idea that its adaptive leadership role meant balancing two opposite forces – the push to reach outside the justice system to see the justice system differently and the pull to keep connected with the power within the system to influence change from within.

The “Accelerate” article gives advice to hierarchical private sector companies that typically do not have an adaptive leadership or culture and are facing turbulence and disruption that they must address if they are to thrive or even survive. The description of these companies reminded the Lab group of the family justice system in British Columbia. It was not thriving, and its survival as an accepted social institution to deal with legal issues arising from separation and divorce could be at risk. The article recommends that the organization run two parallel operations: the operating system (the traditional hierarchies and processes that together handle the operational needs of the system) and a fluid, network-like structure that continually formulates and implements strategy with greater agility, speed, and creativity than the existing one. The second operating system (the “strategy network”) is mostly run by an army (or network) of volunteers, who can only be mobilized by a desire to work with others for a shared purpose. The strategy network gets its energy from having both its heart and its head engaged. The Lab had already experienced the energy that talk of the social lab generated with people both inside and outside the justice system. It needed (and still needs) to figure out how to tap this energy.

The article asserts that at the core of a successful hierarchy is competent management, but a strategy network needs a lot of leadership – adaptive leadership: “The game is all about vision, opportunity, agility, inspired action, and celebration – not project management, budget reviews, reporting relationships, compensation and accountability to plan.”⁵² After reading the “Accelerate” article, some of the Lab group

⁴⁹ Another article that the authors identified with is by Debra E Meyerson & Maureen A Scully, “Tempered Radicalism and the Politics of Ambivalence and Change” (1995) 6:5 *Organization Science* 585.

⁵⁰ The participant who drew attention to this article was Colin Stansfield, the executive director of the Potluck Café, a social enterprise non-profit that creates jobs and provides healthy food for people in Vancouver’s Downtown Eastside. Interestingly, his father had been the Chief Judge of the BC Provincial Court and a strong advocate for justice reform. Colin had heard talk of the trials and tribulations of trying to change the justice system at his childhood dinner table. He was impressed that people in the justice system were actually doing a social lab. The attending Lab group members were delighted to meet him and have continued to connect with, and learn from, him.

⁵¹ John P Kotter, “Accelerate!: How the Most Innovative Companies Capitalize on Today’s Rapid-Fire Strategic Challenges and Still Make Their Numbers” (2012) Nov *Harvard Business Review* 45, online: <<https://hbr.org/2012/11/accelerate>>.

⁵² *Ibid.*

members began to think of the justice system as one big, complex organization (even though it is made up of many organizations that are acutely aware of their distinctive and independent mandates). It also brought home to them that it was their organization and not something “out there” that needed to be fixed. It helped them understand why they were drawn both to connect with the rest of the justice system leadership that exercises the authority to run the system and to separate the Lab somewhat from that group so the innovative energy could grow.

Networking within the BC justice system is important if the innovations generated by the Lab’s activities are to be accepted and implemented in the justice system. To some extent, this engagement/networking activity involves finding like-minded people within the system and partnering with them. An example is the relationship that the Lab developed with the service design group within the Ministry of Justice, whose experience and perspective have been instructive and will no doubt continue to be so. The Lab’s justice system networking capacity is also enhanced by the involvement of members of its core group and advisors in the reform activities of other key stakeholders in the justice system, particularly Access to Justice BC.⁵³

One of the eight accelerators identified in the “Accelerate” article is to “build and maintain a guiding coalition.” The initial vision of the social lab was that it would create that guiding coalition as part of the Lab process. The participants at the Lab launch in June 2014 might have been the first iteration of that guiding group. Lack of resources has so far been an obstacle to developing that concept. Perhaps it will still happen within the Lab context, or perhaps Access to Justice BC will evolve into that guiding coalition. Perhaps, the Lab will have a role in increasing Access to Justice BC’s capacity to support collaborative and innovative initiatives among the justice system stakeholders, particularly in taking a user-centred approach. Conversely, Access to Justice BC could provide a forum to which the Lab can “hand over” tested and refined prototypes for Access to Justice BC’s participating members to scale up and out. Whether any of this will happen remains to be seen, but interconnecting membership of the two reform initiatives makes it a possibility.

The concept of adaptive leadership is rooted in biological theories about how organic entities adapt to changing environments and, in turn, impact their environment. On a simpler level, adaptive leadership is leadership within an organization that helps move an organization through change so that it can respond effectively to the outside challenges that threaten its core. Adaptive leaders do this by being both aware of the organization’s external environment and knowledgeable of its internal core. Adaptive leaders are also skilled at working in the milieu of the fluid inter-relationships between the internal and the external. The awareness of the external environment, inside knowledge, and keen relationship skills are all necessary in adaptive leaders if the organization is to survive and thrive in a changing and complex environment.

The notion that some of the leaders in an organization need to be disruptive for change to happen was introduced to the Lab group in a conversation in the spring of 2014 with Al Etmanski, author of *Impact: Six Patterns to Spread Your Social Innovation*.⁵⁴ Etmanski distinguishes among three different kinds of change agents within a system or organization, all of which are necessary to effect fundamental change within the system: disruptive innovators, bridging innovators, and receptive innovators. The Lab group members see themselves as both disruptive and bridging innovators.

⁵³ For a description of Access to Justice BC, see note 41 above.

⁵⁴ Al Etmanski, *Impact: Six Patterns to Spread Your Social Innovation* (Ashland, MA: Orwell Cove, 2015).

M. Context, Self-Interest, and Culture

The Lab group has come to understand that adaptive leadership requires more than introducing a mechanism (for example, a human-centred design methodology) to the organization or system. It also requires an understanding of the organization or system's context and culture. At the February 2015 Developmental Evaluation Workshop, Cabaj introduced the assembled group to an equation that captured and influenced the fundamental thinking underlying the Lab initiative: *Mechanism + Context = Outcome*. The desired outcome of the Lab was improvement of the well-being of families going through separation and divorce. A part of the Lab's emerging purpose has been to learn about, and introduce into the justice system, new approaches (mechanisms) to bring about change in the system. However, this equation reflects the reality that no matter how good the change approach is that the Lab comes up with, it will not be successful without understanding and taking into account the context within which the change initiative is seeking to have impact.

The "Mechanism + Context = Outcome" equation graphically explained to the Lab group the benefit of involving justice system insiders in innovation initiatives because they have a deeper knowledge of the context than those who are not working in the system. The importance of balancing this insider knowledge with an outside/in perspective has been discussed above. Furthermore, it can be a challenge for those most deeply embedded in the system to engage in the reflection necessary for them to fully understand their own system. In part, this is because the system works well for those who are powerful and control the system, and there is little motivation for them to engage in the necessary reflection.

This point was made in a telephone conversation between the expanded Lab group and Kahane in February 2014 as part of an interesting discussion about the challenges that exist in the justice system to make change happen. Kahane pointed out that many system change initiatives have failed because of a failure to take into account the self-interest that actors within the system have in maintaining the status quo. His advice was never to ignore self-interest and incentives and to realize that recognizing self-interest and introducing the right incentives requires sophisticated understanding of the power relationships and self-interest of those with power in the system.

Self-interest often causes conflict, and a member of the group pointed out that the justice reform efforts did not often appear to result in overt conflict among justice system actors. There are exceptions to this statement, but Canadians are culturally polite, and lawyers, even though they work in the field of conflict, are often conflict avoiders personally. Respectfully and assertively taking different sides in the context of representing a client in an adversarial process is one thing; engaging in emotional conflict over fundamentally moral issues like whether and how the justice system should be changed is quite another. Kahane responded to this point along the following lines. Even though contention is not openly expressed about the need for, or the proposed form of, systemic change in the justice system, the opposition might well be buried beneath the surface. If it is, it can be counted upon to manifest itself in the exercise of power to undermine the proposed change when an effort is made to implement it. If report recommendations to improve the family justice system are routinely not being implemented, perhaps the reformers have not excavated deeply enough to identify the deadlocks in the system and strategize to unlock them.

Later in their journey, the Lab group came to understand that this analytical excavation and strategizing is the stuff of adaptive leadership. At the time of the telephone call with Kahane, they were spurred on by his challenge to reflect on the justice system context and what lay beneath the surface. They did some

collective reflecting in the spring of 2014 about buried interests and conflicts that may not have been previously taken into account in attempts to reform the BC family justice system. The thinking that was done at that time about context continues to inform the Lab group as it strategizes about how to influence the actors in the justice system to support innovation and about how to plan for the inevitable push back when innovation is introduced within the justice system. The Lab group noted the following possible factors that militate against change in the family justice system:

- Focus on the rule of law: the justice system holds the rule of law to be sacred, and adherence to the rule of law is used to justify resistance to change. It leads to raising “process fairness” above “outcomes fairness” and elevating legal issues to greater importance than relationships, health, emotional well-being, and other non-legal issues. It also leads to justification of a top-down imposition of what is the “right” outcome for those restructuring their family relationships after separation.
- Rule-based culture: the culture of the justice system traditionally tends to be rules based rather than relationship based and rooted in a conviction that order in society depends on people obeying the rules and sticking to contracts. For families going through the transition that flows from separation, maintaining healthy relationships is likely to be more crucial than adherence to rules.
- Self-interest and incentives: while there is apparent agreement on the need for change in the justice system, the system works fine for many of its most powerful players. The system “insiders” have a vested interest in maintaining a rules-based approach because they are paid for knowing the rules. The incentives within the system are perverse in that inefficiencies (often caused and justified by adherence to process rules) are costly to the users and produce increased income for the system “insiders.”
- Superficial “collaboration”: the repeating theme in justice reform reports of the need to collaborate means no one speaks against collaboration or admits to not collaborating. This masks the reality that many still believe that their efforts are better directed at increasing their organization’s power to realize its own particular vision. This leads to acts of competition at odds with words of collaboration.
- Lawyers’ self-image as crusaders: the long-standing self-image of lawyers is that they are defending what is right, sometimes single-handedly, against all odds. In family litigation, this leads to framing the other side as the villain to be fought with whatever means are at hand and the client as the victim to be protected. While divorce is technically “no fault,” blaming language is still used in the legal system. Power is seen as imbalanced and, thus, as requiring redress through the exercise of a countervailing power, to be provided by the lawyer and the legal system.
- Values and beliefs: the following values are at the core of the family justice system:
 - rationality as superior to emotionality;
 - adversarialism as the best way to uncover the truth and what is right;
 - deference to tradition and adherence to the status quo; and
 - acceptance of multiple hierarchies (lawyer/client, judge/lawyer, upper court/lower court).

- There is a fundamental belief within the justice system that the professionals who work within it are the experts and know best what is good for the public.⁵⁵

Through one of its initiatives, the Northern Navigator, the Lab has had first-hand experience with the importance of strategizing with these underlying conflicts and beliefs in mind. That initiative was put on hold for months, in large part because of the forceful negative reaction of elements of the Bar when it started. One of the lessons from that experience is not to underestimate the power of the pushback when something new is tried. The dilemma remains to be grappled with that no change will ever happen if risks are not taken or that nothing is done until everyone is on side and all answers to criticism developed. At the same time, ignoring or being insufficiently prepared for the countervailing forces to innovation leads to failure in implementing the innovation. Conclusions that the Lab group has come to in reflecting on this dilemma include:

- Start small: starting small not only allows for more experimentation to get it right, but small initiatives are also less threatening to those within the system who resist change, whether they are motivated by fear for their self-interest or by loftier notions of the protection of the “rule of law.”
- Engage justice system actors early on in the process: those engaged in developing an innovation will become champions within the justice system for the innovation and important system allies for innovators when the inevitable reaction to change manifests itself.
- Engage the empathy of justice system actors because empathy is often the only way that people shift their entrenched beliefs and overcome their instinctive protection of their own self-interest.

The values and beliefs of those who work within the justice system determine the system’s culture and affect the assumptions and behaviours that make the justice system what it is. Thomas Church made the following comment about culture:

Perhaps the most intriguing aspect of culture as a concept is that it points us to phenomena that are below the surface, that are powerful in their impact but invisible and to a considerable degree unconscious ... In another sense, culture is to a group what personality or character is to an individual. We can see the behavior that results, but we often cannot see the forces underneath that cause certain kinds of behavior. Yet, just as our personality and character guide and constrain our behavior, so does culture guide and constrain the behavior of members of a group through the shared norms that are held in that group.⁵⁶

⁵⁵ Dr Julie Macfarlane, Faculty of Law, University of Windsor (National Self-represented Litigants Project slide presentation, BC Family Justice Summit, May 2014).

⁵⁶ Thomas Church, Jr et al, *Justice Delayed: The Pace of Litigation in Urban Trial Courts*, Executive Summary (Williamsburg, VA: National Center for State Courts, 1978) at 192, quoted in Brittany Kaufman, “Change the Culture, Change the System: A Top 10,” online: <<http://iaals.du.edu/sites/default/files/documents/publi->

The Action Committee's November 2014 report, *Roadmap for Change*, identifies a culture shift as urgently needed "to move away from old patterns and old approaches."⁵⁷ The authors agree with this conclusion while, at the same time, recognizing that culture shifts are not easily achieved. The dictum "culture eats strategy for breakfast" is an assumed truth for the Lab.

While the family justice system culture must be changed for the Lab's goal to be achieved, the authors do not believe that culture change will happen as a result of a "culture change plan." Culture changes only when people change their mindset, which happens not as a result of exhortation but, rather, through the experience of behaving differently. That is one reason why participation remains a key strategy for the Lab. The purpose of the Lab is not just to talk about doing change differently but, instead, to actually practise a different way of approaching change. Practising change differently has proven to be a challenge, in part because of how foreign different approaches are to people who have spent their careers working in the justice system. However, the Lab group is determined to try. The human-centred design approach that the Lab has embraced has value in bringing about a culture shift because it is rooted in empathy. By increasingly involving justice system actors in an empathetic, experimental process, the Lab group is convinced that mindsets – values and beliefs – will shift.

N. Systems Design

While the Lab has decided to become adept at the human-centred design approach to experimental innovation, it has gravitated to a hybrid model that integrates design and systems thinking. This hybrid approach is called "systemic design." Alex J. Ryan, in his article "A Framework for Systemic Design," explores the wisdom of this hybrid approach as a way of dealing with complex, messy, intersecting, and adaptive systems.⁵⁸ A systemic design approach both empathizes with those who use the justice system (both the recipients and providers of services) and works, along with them, to construct a broader context within which to place the challenges and strategize for change.

Ryan explains that a key concept of the systemic part of the hybrid is interdependence or webs of reciprocal influence between parts of a greater whole and their environment. The systems thinker emphasizes the importance of analyzing in context (rather than analyzing parts in isolation) and of synthesizing information across disciplines, scales, and perspectives.⁵⁹ Integrating this systems thinking with the design approach adds a requirement to dive more deeply into understanding and "seeing" the system, and the root causes of the problems, before moving into the diagnosis stage of the design process.

An example of this approach is the "slow elevator."⁶⁰ Tenants of an office building complain to the owner about the elevator. It is old and slow, and they have to wait a lot. Several tenants are threatening to break their leases if the problem is not fixed. Most people jump immediately to solutions to make the elevator faster (assuming that the problem is that the elevator is too slow). Talking more deeply with the users, however, reveals that they just find the wait annoying. Reframing the problem as an "annoying

cations/nacm_top_10_kauffman_article.pdf>.

⁵⁷ "Roadmap for Change," *supra* note 5 at 5.

⁵⁸ Alex J Ryan, "A Framework for Systemic Design" (2014) 7:4 Form Academic, online: <<https://journals.hi-oa.no/index.php/formakademisk/article/view/787>>.

⁵⁹ *Ibid* at 2–3.

⁶⁰ Thomas Wedell-Wedellsborg, "Are You Solving The Right Problems?" (2017) Jan – Feb Harvard Business Review, online: <<https://hbr.org/2017/01/are-you-solving-the-right-problems>>. The need to carefully identify and reframe the problem before jumping to solutions highlights the need to begin by engaging with users.

wait” opens up a new set of options. The owner puts up mirrors next to the elevator, and complaints are reduced.

Another key point made in Ryan’s article is that systemic design involves working together to act, reflect, and learn by doing. He describes the characteristics of a systemic design mindset as inquiring, open, integrative, collaborative, and centred. Adopting this mindset usually requires a shift in thinking of the individuals involved in designing innovations. Without this shift, the innovations will result in incremental, rather than transformational, change.⁶¹ This is the culture shift that the justice system requires in its approach to justice reform.

O. The Birth of Lab, Version 2.0 – 2016–17

Looking back over the first two years of the Lab’s existence, it is apparent that much work has been done on laying a strong foundation for the birth of Lab, version 2.0. The Lab group will continue to learn from its own experience and from the experience of others conducting labs in different contexts and, as a result, will undoubtedly make changes to the Lab in the future. However, it enters its third year comfortable with a version 2.0 that will use a human-centred design approach to its experimentation, while, at the same time, analyzing the context within which it works and strategizing about how the Lab can increase the family justice system’s capacity to support the well-being of children and families going through separation and divorce.

On 22 December 2015, the Lab group launched its Action Plan for Lab 2.0. On that day, a meeting was held with the Lab’s developmental evaluator, Mark Cabaj, to reflect on what it had learned to date. The group identified five paradoxical tensions that had featured in the first two years of its existence:

1. the process-product tension: a focus on good thinking, process, and engagement and a need for action, product, and results;
2. the clarity-emergence tension: the importance of having some clarity on what will be done and how and the need to allow things to emerge;
3. the long-term–short-term tension: the need to focus on longer-term, transformative results and the pressure for short-term wins;
4. the capacity expansion–limitation tension: the desire of the Lab team to expand its capacity to provide all of the Lab supports from within and the reality that the group does not (yet) have all of the capacities required to add “crazy value” to the family justice system; and
5. the system–family engagement tension: the importance of engaging justice system actors and the need to meaningfully engage the families going through separation and divorce.

The Lab’s response to these tensions is to undertake a one-year, possibly two-year, action plan to develop a manageable portfolio of initiatives to develop, test, and upgrade the Lab’s human-centred design approach. The goals of the campaign are to:

⁶¹ *Ibid.*

- generate two to four viable prototypes, suitable for scaling up, that will improve the well-being of children and families going through separation and divorce;
- learn about the “systemic design” process and how to apply design methodologies and methods to BC family justice system reform; and
- create the conditions for a more sophisticated Lab, version 3.0.

The Lab spent considerable time during 2016 honing its capacity to follow the developmental evaluation principle of gathering and reflecting on learning from actual experience. The Northern Navigator initiative encountered challenges during its launch, and the subsequent journey provided an excellent opportunity for reflection. The Lab gathered a group of key stakeholders in September 2016 to make sense of the experience and to identify important lessons to that date. This learning will be recorded and shared with other initiatives (both under the Lab’s umbrella and elsewhere) to assist in improving the reform process.

Recognizing the need to develop capacity in design methodologies, the decision was taken to apply a portion of the Vancouver Foundation grant to retaining Open Road Communications to help create and facilitate a series of design workshops during 2016–17.⁶² Open Road is a British Columbia-based firm with significant expertise in services design, both within and outside of the government. It has already worked collaboratively with the Ministry of Justice and Attorney General’s office of Court Innovation on some design initiatives. In order to make the 2016–17 action plan design workshops “doable” within a reasonable time and with limited resources, Open Road recommended that the Lab group identify a temporarily narrowed long-term goal for its initial human-centred design process experience. The most recent version is “to support the well-being of youth who experienced their parents’ separation and divorce.”

The first narrative workshop with young people was held on 22 January 2017, and analysis of the important input is continuing at the date of writing. The value of starting the design process by hearing stories from the young people themselves in their own words has already created value. They are able to engage the empathy of the Lab group and articulate lived experience that will be invaluable as the process continues. While it will be challenging, the Lab group is convinced that it is through such engagement that progress can be made and the capacity of the system to effect change expanded. The experience, the lessons learned, and the prototypes that emerge for improving the well-being of family members going through separation and divorce will be the subject of the next chapter of the Lab’s story.

III. CONCLUSION

Before telling the Lab story, the authors declared that for them the theme was the importance of embracing the complexity of paradox and not being defeated by the tension of opposites. One final paradox to highlight is that no one individual or organization can transform a complex social system and that only individuals can transform complex social systems.⁶³ While transforming the BC family justice system so that it serves families is a daunting task, concluding that it is impossible is not an option. Strategic use of a Lab approach offers the hope of “getting to maybe.”

⁶² Open Road, online: <www.openroad.ca/>.

⁶³ Margaret Mead has often been credited with the following inspirational comment: “Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”