Appendix 2– Summary of Research

General Evaluation Research

The following summarizes evaluation research on programs and services that form an integral part of the approach taken in the Provincial Court Family Rules Reform Project.

The existing Rule 5 provides that, in registries designated under that Rule, a party must meet with a family justice counsellor (**FJC**) before they are set down for a first appearance before the court. An evaluation of Rule 5 in 2002 indicated that the court diversion that occurred at Rule 5 sites was approximately 70% greater than at comparison sites.[54] Similarly, at Rule 5 sites, rates of court appearances per application decreased by 41% after the Rule was implemented.

In a 2008 longitudinal study of Family Justice Services 77% percent of the respondents who had an agreement said their agreements were developed solely or partially with the assistance of an FJC. [55] The highest rated outcome of dispute resolution in all phases of the evaluation was that participants' involvement had increased the awareness of options for addressing family disputes.

An evaluation of the Vancouver Justice Access Centre (**JAC**) services was completed in 2014 and included a court use study component .[56] 67% of clients who used JAC services did not file applications in court in the 2-3 years after they accessed JAC services. The evaluation also demonstrated high satisfaction rates from clients.

In a recent internal 2015 Rule 5 client survey 88% of respondents agreed that they felt better informed after their Rule 5 appointments, and 90% agreed that the FJCs had helped them understand legal and court processes.[57] Of the clients who identified they were advised their dispute was suitable for mediation, 78.9% indicated they were interested in trying mediation. However, only 61.1% also

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[54] British Columbia Ministry of Attorney General, Justice Services Branch, "Evaluation of the Family Justice Registry (Rule 5) Pilot Project: Summary" (2002) at 9. Accessed at: https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/mediation/research-publications/family-justice-registry-pilot-project-summary.pdf.

[55] Focus Consultants, "Dispute Resolution Longitudinal Study: Phase 3, Final Report" (2008) at 77, x, 113-114. Accessed at: https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-services-branch/fjsd/longitudinal-final-report.pdf

[56] British Columbia Ministry of Attorney General, Justice Services Branch, Family Justice Services Division, "Vancouver Justice Access Centre Evaluation Report: Summary of Evaluation Activities and Results" (2014) at 13. Accessed at: https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-services-branch/fjsd/vjac-evaluation-report.pdf (Family Justice Services Division provides services through Family Justice Centres and Justice Access Centres throughout BC, as well as virtually through technology. The Justice Access Centres are based on a hub model where civil and family justice service providers are co-located to provide a fulsome service experience for citizens. JACs are located in Nanaimo, Vancouver and Victoria, with one opening in Surrey in 2018 and in Abbotsford in 2020).

[57] Colleen Getz (ca walker and associates), "Triage in Family Court: Evaluation of the Rule 5 Program in Family Justice Services, Interim Report" (2016) at A2 and A6.

identified trying mediation as a next step and even fewer proceeded to a mediation session. A substantial factor in the participants continual reliance on the court appears to have been their perceptions of the other parties' lack of interest in mediation. This evidence supports the idea that only requiring assessment does not optimize the use of out of court resolution. Respondents felt their children were better off because the parent was involved in dispute resolution. Respondents identified the reduction of conflict between the parents as being the most important benefit of dispute resolution. Over 80% of the respondents said it was likely or very likely they would participate in dispute resolution again, if the circumstances warranted it.

PAS Evaluation Research

The evaluations of the parenting education program provided in BC through the Family Justice Services Division support the research described above. An evaluation of the mandatory in-person PAS program was completed in October 2000.[58] Overall, the results suggest that positive changes occur when litigants with a family law matter attend PAS. Those changes include a reduced number of cases in family court, and an improved flow of those cases where attending PAS is a requirement, as well as increased awareness of the full range of dispute resolution options available to parties. Importantly, participants develop increased knowledge of how the separation process works and how their dispute resolution choices affect their children.

With the development of online PAS, the Ministry of Attorney General is considering whether parenting education requirements can be expanded. The results of an April 2016 evaluation of the effectiveness of online PAS showed the online program to have similar outcomes to the in-person PAS program, with both resulting in about 10% of participants being diverted from court as a result of taking the course.[59]

Research, Reports and Models in Other Jurisdictions

In May 2014, the Attorney General and Minister of Justice of British Columbia convened a Justice Summit, focusing on ways in which to improve the family law system in BC, particularly in the context of issues arising for families regarding separation and divorce.[60] One of the recommendations was that mediation should be mandatory before filing with court, with appropriate exemptions available, such as in situations at risk of family violence. Other recommendations were early focus on de-escalation, early and continuous case management, replacing first appearances with early triage and need assessments, using language that provided a less adversarial tone, and providing family justice information from a

[58] British Columbia Ministry of Attorney General, Policy, Planning & Legislation Branch, "Mandatory Parenting After Separation Pilot: Final Evaluation Report" (2000). Accessed at: http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/376431/parenting_after_separation.pdf.
[59] Catherine Tait Consulting, "Evaluation of Online Parenting After Separation" (2016 at 50). Accessed at: https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-services-branch/fjsd/opas-report-phase2.pdf.
[60] British Columbia Justice Summit, "Report of Proceedings", *supra* note 32 at 3.

single authoritative source. The Summit further identified that there was a need to simplify the system to assist self-represented litigants, through methods such as de-formalizing the forms, rules, and language of family law to create a process that is built for the users.[61]

Emotional, Psychological and Financial Elements

In addition to the work summarized by the National Action Committee, a large body of other reports and research was reviewed. In particular, the WG made note of the research that has been done regarding the clustering of legal and non-legal issues that tend to arise with regard to family law matters.

Family matters are often characterized by significant financial, interpersonal and psychological stress, which can consume a disproportionate amount of time and resources for families, resulting in adverse effects in other aspects of their lives.[62] Further, if these issues are left unresolved, they tend to be exacerbated and trigger other problems, resulting in complex clusters of interrelated legal, social, and personal issues.

These emotional, personal, and interpersonal issues can operate to further complicate the legal problems, creating a situation which is at risk of escalation of conflict. Even in families that do not have a history of violence, separation is a high-risk time for violence to occur.[63] In families that have experienced violence in the past, separation can trigger an escalation in violence, sometimes with tragic, fatal results.

Since the 1990's, a growing body of empirical research from health, neuroscience, and social science literature concerning Adverse Childhood Experiences (**ACEs**), demonstrates the depth of the problem facing children and adults today and for future generations.

The first, foundational study that began the work to classify ACEs and their impacts in the USA, identified risk factors as including "growing up in a household with someone who is depressed, mentally ill, a substance abuser or has been incarcerated in the criminal justice system; exposure to child maltreatment or domestic violence and losing a parent through divorce, separation or death."[64] Researchers point out there are a number of protective factors that minimize the impact of these

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[61] FJWG, *supra* note 1 at 16.

[62] FJWG, *supra* note 1 at 14-15.

[63] Government of Western Australia, Department for Child Protection, "Family and Domestic Violence Background Paper" (2012) at 3. Accessed at: https://www.humanrights.gov.au/sites/default/files/34.1%20Family%20and%20Domestic%20Violence%20Background%20Paper%202012.pdf

[64] Mark Bellis, Lowey, H., Leckenby, N., Hughes, K., and Harrison, D., "Adverse Childhood Experiences: Retrospective Study to Determine their Impact on Adult Health Behaviours and Health Outcomes in a UK Population" (2013) at 81. *Journal of Public Health* 36:1, 81–91. Accessed at: https://pdfs.semanticscholar.org/f857/d575d4a020357f089e48f38bfd3d89689f1b.pdf.

experiences on children, including: supports for families in times of need, parental resilience and positive parenting skills.[65]

Other research on brain development confirms what has been observed in the family justice system for years: that toxic stress from family disputes is damaging to children. The Alberta Family Wellness Initiative indicates that fighting between parents harms the development of children's brains, changes the endocrine system, and even alters the DNA of the child.[66] This harm can continue throughout the child's development, subsequently impacting physical and mental health throughout the remainder of their life. It is for these reasons that separation and divorce are considered adverse childhood experiences that can have long term health outcomes for children.

The WG reviewed information from several jurisdictions on various models that have been introduced in the separation process, and the lessons learned from the operation of these models. The information is threaded throughout this paper. The following reflects some key findings that informed the model recommended by the WG.

Assessment and Consensual Dispute Resolution

Assessments

In Alberta, intake appointments are required for families filing applications for certain family law matters in Edmonton and Calgary. In Calgary, if a party is self-represented they must attend an intake appointment before filing almost any application in a family law proceeding. At the intake appointment, a member of the Family Justice Services Division staff conducts safety screening, discusses options for resolving child-related disputes, helps to negotiate agreement and resolve disputes, and assists with preparing court applications and arranging court dates. In other locations, the service is available on a voluntary basis or upon court order. In an evaluation that reviewed the effectiveness of intake appointments, participants who had used intake appointments reported that they better understood court procedures and options, while they also appreciated assistance with applications.[67]

The United Kingdom has had mandatory Mediation Information and Assessment Meetings (MIAMs) in place since 2011.

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[65] Pam Jarvis, *supra* note 18 at 7.

[66] The Alberta Family Wellness Initiative (AFWI) is funded by the private Palix Foundation. The AFWI website has a wealth of information and resources, including a 30-hour online certification on brain science: http://www.albertafamilywellness.org. The RFJS and the AFWI share a desire to achieve positive outcomes for Alberta families, and have entered into a joint action plan to support each other's work. For an introductory video on the impact of toxic stress on brain development, see "How Brains are Built": http://www.albertafamilywellness.org/resources/video/how-brains-are-built-core-story-of-brain-development

[67] Leslie McRae, Simpson, S., Paetsch, J., Bertrand, L., Pearson, S., Hornick, J. (Canadian Research Institute for Law and the Family), "An Evaluation of Alberta's Family Law Act" (2009) at 96. Accessed at http://www.crilf.ca/Documents/Evaluation%20of%20Alberta%20Family%20Law%20Act%20-%20May%202009.pdf.

Practice Direction 3a – Family Mediation Information and Assessment Meetings sets out the rationale as to why parties seeking orders related to support or parenting arrangements are required to attend a MIAM before making an application to court. It explains that "the adversarial court process is not always best suited to the resolution of family disputes. Such disputes are often best resolved through discussion and agreement, where they can be managed safely and appropriately".[68] The MIAM provides parties with information about the benefits of mediation and other forms of dispute resolution, as well as referring parties to other services and online materials. MIAMs were introduced with the intention of diverting families from court, but they have not had the anticipated impact.[69] A significant issue is that up to 60% of families are ignoring the requirement to attend a MIAM. Of those that do attend, about 37% do not go on to participate in mediation, even though it is funded when at least one party is eligible for legal aid.[70] Several factors were suggested as contributing to the MIAM's failure to succeed: the courts are not using their powers to require people to attend the MIAM; the percentage of unrepresented parties is growing and they are unaware of the requirement; and the publicity around MIAMs and mediation needs to increase to normalize these processes and help families feel comfortable using them. The UK's experience suggests that information and assessment alone do not divert people from court.

In contrast to the UK's model of compulsory information and assessment, Australia has required parties to attend mediation before making an application to family court since 2006, with exemptions available for cases involving family violence. Initially there were concerns that screening practices were inconsistent, focused primarily on physical violence, and did not always identify violence and abuse. In 2008, regulations were enacted to require family dispute resolution practitioners to be satisfied that an assessment had been conducted and the matter was appropriate for mediation before it began.[71] A Fact Sheet explains that "as well as ensuring a matter is appropriate for FDR, screening and assessment assists family members to have their needs identified and, where safety concerns are identified, ensure that appropriate actions can be taken to protect those who are affected."[72] The government commissioned the development of a Screening and Assessment Framework to provide guidance to mediators in the Family Relationship Centres, and the Family Relationship Advice line.[73]

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[68] *Practice Direction 3a – Family Mediation Information and Assessment Meetings (Miams)* at paras.8-10. Accessed at https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_03a.
[69] Andrew Moore and Brookes, S., "MIAMs: A Worthy Idea, Failing in Delivery" (2017). Accessed at http://www.familylawweek.co.uk/site.aspx?i=ed182325.
[70] *Ibid*.
[71] *Australia Family Law (Family Dispute Resolution Practitioners) Regulations 2008*. Accessed at https://www.legislation.gov.au/Series/F2008L03470.
[72] Australian Government, "Screening and Assessment For Family Dispute Resolution" (2018) at 1. Accessed at https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Documents/Fact-sheet-on-screening-and-assessment.PDF.
[73] Australian Government Attorney General's Department, "Screening and Assessment in the Family Relationship Centres and the Family Relationship Advice Line: Practice Framework and Guidelines Framework" (2006). Accessed at https://www.dss.gov.au/sites/default/files/documents/screening_assessment_practice_framework.pdf.

One report from Australia highlighted that screening is "a process rather than an event" and should be part of the ongoing work with a family rather than solely an initial step in the process.[74] Similarly, the development of a screening and assessment tool should be continually refined to reflect changing best practices and be tested within the specific context in which the tool is being used.[75]

One of the criticisms against family justice models which focus on mandatory mediation without building in a comprehensive and effective assessment process, is that it is inefficient to simply direct parties to mediation without assessing their needs and the likelihood that particular services will meet those needs.[76] While one of the functions of the proposed assessment is to consider whether the parties are appropriate for mediation, collaborative law, or another dispute resolution process, its focus is on providing information to the parties, helping them to identify all of their legal and non-legal needs related to the family law matter, and then connecting the family with resources and services that will address those needs. The UK's experience highlights the need to ensure that the importance of the assessment is communicated, as well as the need for the family justice system to enforce the requirement to attend the assessment.

Public legal information about the assessment needs to be highly visible and easily understood so parties can readily understand how to schedule an assessment, what to expect, and the consequences that will arise from failure to attend.

Since 2014, parties seeking family law orders in New Zealand have been required to try mediation before filing a court application. In their model, the pre-court requirements are more loosely annexed to the court, with assessment and mediation services being provided by approved FDR suppliers for a fee. Parties seeking to resolve a family dispute find their way to the supplier through a lawyer, court staff, government website, or community agency. The responding parties are told they are to attend mediation when they are contacted either by an FDR supplier or the initiating party. An evaluation of the FDR service found that some responding parents feel caught off-guard, or considered the request to be coming "out of the blue".[77]

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[74] Australian Law Reform Commission, "Family Violence – A National Legal Response" (2010) at 21.63-64. Accessed at https://www.alrc.gov.au/publications/21.%20Family%20Dispute%20Resolution/screening-and-risk-assessment-practices.

[75] *Ibid.*

[76] Peter Salem, "The Emergence of Triage in Family Court Services: The Beginnings of the End for Mandatory Mediation?" (2009) at 372. *Family Court Review* 47:3, 371-388. Accessed at https://law.marquette.edu/assets/news-and-events/courtadr/salem-triage.pdf.

[77] New Zealand Ministry of Justice, Research and Evaluation Team, "Evaluation of Family Dispute Resolution Service and Mandatory Self-Representation" (2015) at 14. Accessed at http://www.justice.govt.nz/assets/Documents/Publications/Evaluation-of-Family-Dispute-Resolution-Service-and-Manadatory-Self-representation.pdf.

An experienced mediator and family lawyer in New Zealand suggested that the direction to attend a family mediation would be more compelling to the responding party if it had the appearance of coming from the court (e.g. under the letterhead of the court or using a court form) rather than a letter or phone call from the initiating party or the mediator.[78] The experience of New Zealand suggests a notice using a prescribed court form could be the most effective way to let the other party know that there is a dispute that needs to be resolved and that their attendance at a mediation is required.[79]

In Julie Macfarlane's research on self-represented litigants in Canada, parties representing themselves were asked whether they had either considered or been offered a chance to mediate. Many of the respondents said they did not know about mediation or that it had not been offered to them. Of those who were aware of and interested in mediation, the most frequent reason given for not attempting it, was because the other side refused to participate.[80] Mandatory participation addresses these issues by ensuring everyone is informed about CDR processes and is required to participate in at least one session. While this requirement does not guarantee everyone will make a genuine effort during the session, it does increase the opportunity for parties to reach agreement.

The Cost of Justice Report surveyed lawyers regarding what types of dispute resolution they believed resulted in the most long-lasting resolution of family disputes. The results showed respondents "were considerably more likely to report that mediation (78.3%) and collaboration (71.1%) resulted in longer lasting resolutions than litigation (22.3%) and arbitration (16.9%)".[81]

The NAC report describes necessary and appropriate safeguards in a compulsory CDR scheme to include recognizing a broad definition of family violence, requiring screening for violence in order to determine whether all family members would be safe if CDR were to proceed; ongoing monitoring for signs of violence and power imbalance throughout the CDR process; and ensuring judges, lawyers, mediators and other neutral parties involved in a CDR process are educated about family violence.[82]

Requiring CDR

There are relatively few jurisdictions that require most parties to participate in CDR before filing an application in family court. Australia is one of the jurisdictions that Canada often looks to, as there are similarities between the countries and their family justice systems, and they have had 12 years of experience with their family law reforms. New Zealand implemented a model similar to Australia in

[78] Skype conversation with Nigel Dunlop, Mediator and Family Lawyer in Auckland New Zealand, March 30, 2015.
[79] New Zealand Ministry of Justice, "Te Korowai Ture ā-Whānau: The Final Report of the Independent Panel Examining the 2014 Family Justice Reforms" (2019). Accessed at https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf.
[80] Julie Macfarlane, *supra* note 4, at 73-74.
[81] Canadian Research Institute for Law and the Family, "An Evaluation of the Cost of Family Law Disputes: Measuring the Cost Implications of Various Dispute Resolution Methods" (2018) at 29. Accessed at http://www.crilf.ca/Documents/Cost_of_Dispute_Resolution_-_Mar_2018.pdf.
[82] FJWG, *supra* note 1 at 36.

2014, and there are a number of American states that also have mandatory mediation schemes. No Canadian province or territory currently requires parties to participate in CDR before filing an application in court. However, there are a few recent examples from other provinces where parties may be required to participate in CDR after making an application. For instance, Nova Scotia introduced new family court rules in May 2017 which enable a family court officer who has reviewed an application for parenting arrangements or support to: 1) require parties to attend a court-based assisted dispute resolution meeting to clarify their positions and facilitate negotiations; or 2) refer parties to mediation.[83] New Trial Division Family Rules were also released in 2017 in Newfoundland and Labrador. Under the new Rules, upon an application to Court for child support, custody or access, the application will be forwarded to Family Justice Services for services including parent education sessions, dispute resolution and counselling. The parties must attend an intake and information session, followed by any scheduled mediation or counselling sessions prior to scheduling a case management hearing or other appearance, unless exempted.[84]

In Manitoba, *The Family Dispute Resolution (Pilot Project) Act,* assented to in June 2019, will require most parties to participate in CDR before engaging the court.[85] This pilot project will create a new dispute resolution process for resolving family disputes outside of the traditional court system. Under the pilot project, dispute resolution proceedings will have two phases. The first phase is the facilitated resolution phase, where a resolution officer works with the parties to a dispute to help them reach a mutually satisfactory agreement. If the dispute cannot be resolved in this first phase, in the second phase an adjudicator will hold a hearing and make a recommended order. The pilot project will be mandatory for most family disputes under provincial legislation, with limited exceptions including court proceedings commenced prior to the launch of the pilot project, if a party resides outside of Manitoba, or where an existing order prevents the parties from communicating with each other due to domestic violence. The three-year pilot project is anticipated to launch in early 2020.

Saskatchewan has passed legislation in 2018 that, once the regulations are enacted, will require parties to participate in family dispute resolution and file a certificate to that effect prior to proceeding to court. Family dispute resolution can consist of the services of a family mediator, a family arbitrator, a parenting coordinator, any other collaborative law services, or any other process or services to be stipulated in the regulations. A party who does not participate in family dispute resolution will be prohibited from continuing the proceeding or filing with the court any other application for relief.

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[83] *Family Court Rules,* NA Reg 20/93 at rules 6.05 and 6.14. Accessed at https://www.novascotia.ca/just/regulations/regs/fcrules.htm#TOC2_36.

[84] *Supreme Court Family Rules*, NLR 11/17, at F22. Accessed at https://www.assembly.nl.ca/legislation/sr/annualregs/2017/nr170011.pdf; *Provincial Court Family Rules, 2007*, NLR 28/07 at Rule 19, accessed at: https://www.assembly.nl.ca/Legislation/sr/regulations/rc070028.htm.

[85] Manitoba Government, *The Family Law Modernization Act* - Explanatory Note (2019). Accessed at: https://web2.gov.mb.ca/laws/statutes/2019/c00819e.php

The court may also strike out the party's pleadings or documents, prevent the party from making further submissions, order the party to participate in family dispute resolution, or order any costs or other relief. A party may be exempted from the otherwise required participation in family dispute resolution if there is a restraining order between the parties, a child has been kidnapped by one of the parties, there is a history of violence, one party provides proof that they attempted to engage the other, or there are extraordinary circumstances in the opinion of the person granting the exemption.[86]

In North Dakota, a family law mediation pilot was incorporated into the North Dakota Supreme Court Rules in January 2014 to require parties throughout the state to participate in family mediation if their case involves parental rights and responsibilities, relocation or grandparent visitation. An independent evaluation of the pilot program found it to be successful, with participants reporting 80% to 90% satisfaction. Of the cases mediated, parties fully resolved 51% of parenting time disputes and reached a partial resolution in an additional 24% of the cases. Agreement rates for non-parenting time issues were between 70% to 84%, depending on whether the mediation occurred in an initial divorce proceeding or a post judgment modification.

The evaluation also found the mandatory mediation program reduced the average time required for the courts to resolve contested parenting time cases by roughly 35% and reduced the percentage of those cases that are returning to court by roughly 60%.[87]

Before significant reforms in 2006, Australia experienced relatively low uptake in voluntary mediation services, even when services were fully-funded or subsidised. Large numbers of families bypassed the services and were funnelled into family courts at an early stage in their dispute, only to be subsequently ordered in some cases to attend mediation at a later stage. Compulsory family dispute resolution has been a central piece in Australia's family law since their reforms. It is now a legal requirement to attempt family dispute resolution before a matter involving children may be filed in the family court, unless an exception applies. The intention of this process goes beyond encouragement of the use of out-of-court processes; it is to ensure that disputes over children are kept out of court unless there is a good reason to hear them in court.[88]

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[86] *Saskatchewan Bill 98 – The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017*. Accessed at http://www.publications.gov.sk.ca/details.cfm?p=88811.

[87] Greacen Associates, LLC, "North Dakota Supreme Court Family Mediation Pilot Project Evaluation Draft Final Report" (2012) at 1-2. Accessed at https://leg.mt.gov/content/Committees/Interim/2013-2014/Law-and-Justice/Meetings/February-2014/Exhibits/sj22-mclaughlin-nd-mediation-pilot-report.pdf.

[88] Sue Pidgeon, "From Policy to Implementation – How Family Relationship Centres became a Reality" (2013). *Family Court Review* 51:2, 224-233.

Since the 2006 introduction of these reforms, there has been a substantial reduction in applications for final court orders in cases involving children.[89] A 2012 report indicated a 32% reduction in filings with the Family Court of Australia over five years.[90] Further, parents responded more favourably towards FDR than court processes, with 70-75% of users indicating that the process worked for them, while only 45-55% indicated that the court process worked for them.[91] A majority of those who were able to reach an agreement through FDR believe that the agreement works for them, with an even higher proportion reporting that the agreement works for their children.[92]

Research conducted in New Zealand following up on their 2014 amendments has suggested that the outcomes for parties who have used FDR have been positive.[93] The research has indicated that FDR can be a quick, affordable and effective process. Since 2014, resolution rates have been consistently high, with an average of about 84% of completed mediations resolving some or all issues brought to mediation. However, the research has indicated that some issues in the implementation of FDR requirements exist. Comparatively few people opted for FDR and exemptions are high. In 2017/18, only 1,842 mediations were completed, in comparison to 8,481 cases being resolved through the Courts.

The research indicated that the central issues related to lack of engagement of FDR related to a lack of understanding by parties about FDR, that New Zealand's model required some users to pay, a lack of support from Family Justice Professionals and overall lack of promotion of FDR. These factors have led citizens to be unaware of FDR, how it worked, and how they could benefit from use of it.

Information Based Programs (Parenting After Separation)

Relying on research and evaluation that has demonstrated that early information encourages settlement behaviour and expedites resolution of family law disputes, most jurisdictions across Canada require parties to participate in information-based programs or services early in the process. These programs are typically structured as mandatory information sessions held in person or online, and educate parties about the effects of conflict on children and alternatives to litigation. Parties are required to complete these programs prior to any court appearances, in anticipation that many families will choose CDR if given proper information about the availability and benefits of such programs. [94]

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[89] Lawrie Moloney, "From Helping Court to Community-Services: The 30-Year Evolution of Australia's Family Relationship Centres" (2013) at 220. *Family Court Review* 51:2, 214-223.
[90] Patrick Parkinson, "The Idea of Family Relationship Centres in Australia" (2013), at 208. *Family Court Review* 51:2, 195-213.
[91] *Evaluation of the 2006 Family Law Reforms*, *supra* note 41 at 82.
[92] *Ibid* at 98.
[93] *Te Korowai Ture ā-Whānau: The Final Report of the Independent Panel Examining the 2014 Family Justice Reforms*, *supra* note 79 at 67.
[94] Erin Shaw, "Family Justice Reform: A Review of Reports and Initiatives" (2012) at 27-28. Accessed at https://www.cfcj-fcjc.org/sites/default/files/docs/2013/Family%20Justice%20Reform%20Review%20-%20April%2015%20Final.pdf. Also: FJWG, *supra* note 1 at 39-40.

The only provinces that do not require attendance at a mandatory information program are New Brunswick and Prince Edward Island.[95]

Early intervention programs for families experiencing separation and divorce have numerous positive outcomes, including: increased parental cooperation, restoration of parental alliance, improved well-being of the children, as well as positive impacts on the parties' subsequent participation in mediation and court proceedings.[96] There is ample literature which supports the effectiveness of brief intervention programs (like PAS) in reducing children's exposure to interparental conflict, reducing triangulation of children (e.g. putting children in the middle of the conflict), improving the quality of parent-child relationships and co-parenting skills such as communication and problem-solving skills, increasing the encouragement of children's relationship and contact with the non-residential parent, and improving parental understanding of children's responses to separation.[97]

There is further research that suggests attending parenting education programs positively impacts the parties' subsequent participation in mediation and court proceedings. Parents who attend such programs may be better prepared for mediation, more child-focused, demonstrate more effective communication skills, and are more likely to negotiate a shared parenting plan. Some studies found parents who attended a program reached parenting agreements faster and had fewer subsequent court appearances.[98] This likely reflects the fact that these programs often incorporate skills training which improve parent-child relationships and reduce parental conflict by enhancing communication skills and building effective conflict resolution and problem-solving skills.

Case Management

Following on the NAC recommendations around introducing case management into family law processes, the WG reviewed models operating in other jurisdictions. Some Canadian provinces have been using case management processes for several years. These typically began as pilot projects in larger judicial centres and were subsequently extended. For example, the Alberta Provincial Court has a Caseflow Program that has been in place in Calgary and Edmonton since 2005, which requires self-represented parties with family matters to attend a Caseflow conference with a Caseflow coordinator prior to a court hearing. The Caseflow coordinator explores available options with the parties and reviews court documents. If issues are resolved, the coordinator may arrange for a consent order, while if the issues remain unresolved, the coordinator may refer the parties to mediation, an intake

[95] New Brunswick has an optional PAS course, free to access, called "For the Sake of the Children" (http://www.legal-info-legale.nb.ca/en/for_sake_of_children). PEI also offers an optional, free to access PAS course, called "Positive Parenting from Two Homes" (https://www.princeedwardisland.ca/en/information/justice-and-public-safety/positive-parenting-two-homes-program).
[96] *Parenting After Separation*, *supra* note 46 at 18.
[97] *Ibid* at 18.
[98] Brenda Bacon, "Evaluation of Saskatchewan Justice Parenting After Separation/Divorce Program: Final Report", (2004) at 18-23. Accessed at http://publications.gov.sk.ca/documents/9/13854-ParentEdEval.pdf.

counsellor or will help the parties to consider other non-adversarial options. If the parties' next step is a court hearing, attendance at the conference helps to ensure that they are informed, and the case is ready to proceed.[99]

Manitoba's case management approach has operated somewhat differently. A case-management program operating in Winnipeg since 1995 has allowed a single judge to monitor and manage the progress of the family law case as it moves through the system, using a series of case management conferences. The goal of the program was to "include the consensual resolution of the matter if possible but also include the reduction in unnecessary delays, reducing the costs of those involved and encouraging the parties to participate in finding mutually satisfactory solutions."[100] Parties in this program are required to complete case management information statements and the judge can make consent orders, give directions, order costs and set the proceeding down for hearing or trial. However, under *The Family Dispute Resolution (Pilot Project) Act,* this case management approach will be replaced with a facilitated resolution phase, conducted by a resolution officer who will work with parties in attempt to define issues, explore solutions and reach agreement on issues of the dispute.[101] If the resolution phase is unsuccessful, an adjudicator is designated for the parties to conduct a hearing and recommend an order.

Although early evaluations of the Alberta and Manitoba programs reported successes[102], both provinces have committed to significant family law reform in an attempt to counteract growing court delay, and improve wellness and outcomes for families who are involved in these processes.[103] [104]

Ontario also uses judge-led case conferences to explore the most effective way to resolve matters and formulate next steps. However, what is particularly interesting is the Family Case Manager Pilot that has been operating in Ottawa since 2007. The Pilot was created to address concerns such as unacceptably

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[99] See description of the Caseflow Conference Program at Alberta Government, "What is a Caseflow Conference?" (n.d.). Accessed at https://open.alberta.ca/publications/caseflow-conference-program .

[100] Manitoba Justice. "Case Management of Family Matters: Resolving Family Matters in a Co-operative Way" (n.d.). Accessed at http://www.gov.mb.ca/justice/family/law/casemanagement.html.

[101] *The Family Law Modernization Act – Explanatory Note*, *supra* note 85.

[102] A 2004 Family Division Case Management Evaluation reported success, but recommended limiting its application to prescribed categories of family law cases; see overview at Canadian Forum on Civil Justice, "Inventory of Reforms: Manitoba Case Management of Family Matters (Rule 70)" (n.d.). Accessed at https://www.cfcj-fcjc.org/inventory-of-reforms/manitoba-case-management-of-family-matters-rule-70.

[103] Manitoba Government, "Manitoba Commits to Significant Family Law Reform with a Focus on Wellness for Families" (news release dated October 18, 2017). Accessed at https://news.gov.mb.ca/news/index.html?item=42333.

[104] Since 2015, the Alberta Law Society, court and government have been collaboration in the Reforming Family Justice System Initiative. See a description of the initiative online at Canadian Bar Association, Alberta Branch, "Reforming the Family Justice System" (n.d.). Accessed at https://www.cba-alberta.org/getattachment/Publications-Resources/Resources/Agenda-For-Justice/Reforming-Family-Justice-System-initiative/agenda-for-justice_family-justice_jul27-17.pdf.

long wait times for conference and trial dates; insufficient judicial resources; absence of a true case management system; and lack of early judicial intervention as contemplated by the Family Law Rules.

Rule 42 of the Ontario *Family Law Rules* appoints Family Case Managers who have jurisdiction to resolve procedural issues in the Family Court.[105] Appointments are made by the Lieutenant Governor in Council on the recommendation of the Attorney General. Appointees are lawyers and are required to have been members of the bar for a period of at least ten years. Family Case Managers are able to perform many of the procedural steps necessary in family law cases, and have the jurisdiction to hear procedural motions (substituted service, removing counsel from the record, amending pleadings, amending the continuing record, extension of time, setting aside dismissals, leave to bring motion without a case conference, disclosure, and access of records) and some substantive motions (including ex parte motions for interim custody and access). Case managers may also conduct case conferences, settlement conferences, and trial management conferences instead of a judge. An evaluation of the pilot project in 2009 concluded that wait times for Case Conferences, Motions, Settlement Conferences and Trials have been significantly reduced, existing judicial resources are being used more efficiently, and there is increased accessibility to judges for matters beyond the authority of the Family Case Manager.[106]

The Ottawa Family Case Manager Pilot was heavily relied on when New Brunswick developed their own case management model, governed by Rule 81 of New Brunswick's Rules of Court.[107] The New Brunswick model started in St. John in 2010. Very recently, the model was modified and expanded to three additional communities. Hearing officers have been hired for each of the communities and part of their role will be to function as Family Case Management Masters. As Family Case Management Masters, they will be responsible for: conducting case conference hearings, making interim orders related to custody, access and/or support matters under the *Family Services Act*[108] and the *Divorce Act*[109]; assisting parties in clarifying their claims, positions and interests; offering non-binding opinions of potential outcomes based on the facts of the case; preparing and issuing pre-trial disclosure directions and orders pursuant to the Rules of Court; and conducting administrative enforcement hearings under the *Support Enforcement Act.*[110] Hearing officers are required to be lawyers in good standing with the Law Society of New Brunswick with a minimum of 10 years related progressive experience. They are

[105] *Ontario Family Law Rules, supra* note 43.
[106] Within 2 years of introducing the pilot, wait times for conferences for motions went from 10 down to 4 weeks, wait times for conferences went from 11-21 weeks down to 4 weeks and wait times for trials went from 13 months down to 6 months. See Family Bench and Bar Committee in Ottawa, Evaluation Sub-committee, "Evaluation of the Ottawa Family Case Manager Pilot Project – Year Two" (2009) at 6. Accessed at https://cdn.ymaws.com/www.ccla-abcc.ca/resource/resmgr/pp-family/evaluation_year_two.pdf.
[107] *Rules of Court,* NB Reg 82-73 at Rule 81. Accessed at http://laws.gnb.ca/en/ShowPdf/cr/Rule-81.pdf.
[108] *Family Services Act,* SNB 1983, c 16, s 1. Accessed at http://laws.gnb.ca/en/showdoc/cs/F-2.2.
[109] *Divorce Act*, RSC 1985, c 3 (2nd Supp). Accessed at https://laws-lois.justice.gc.ca/eng/acts/d-3.4/.
[110] *Support Enforcement Act*, SNB 2005, CS-15.5. Accessed at https://www.gnb.ca/legis/bill/bill55/2/Bill-48-e.htm.

also required to have a good working knowledge of family law, a broad knowledge of the Rules of Court and familiarity with intimate partner violence protocols.[111]

In most cases, provinces have implemented case management processes to deal generally with what has been described as "the family court in crisis", specifically regarding backlog and delay in scheduling court proceedings. Some of the pilots have reported early positive results. However, as time went on, delays and backlog returned for a variety of reasons, including the rapid increase in unrepresented parties. In New Brunswick, there has been challenges in keeping the Case Management Master role staffed on a long-term basis.

In each of the examples, when case management processes are conducted by someone other than a judge, there are significant training and experience requirements in place. The Ottawa and New Brunswick examples each require the case managers to be lawyers with 10 years' experience and knowledge of family law and the Rules of Court.

[111] New Brunswick Government, "New Hearing Officers Hired" (news release dated May 1, 2018). Accessed at https://www2.gnb.ca/content/gnb/en/news/news_release.2018.05.0484.html.