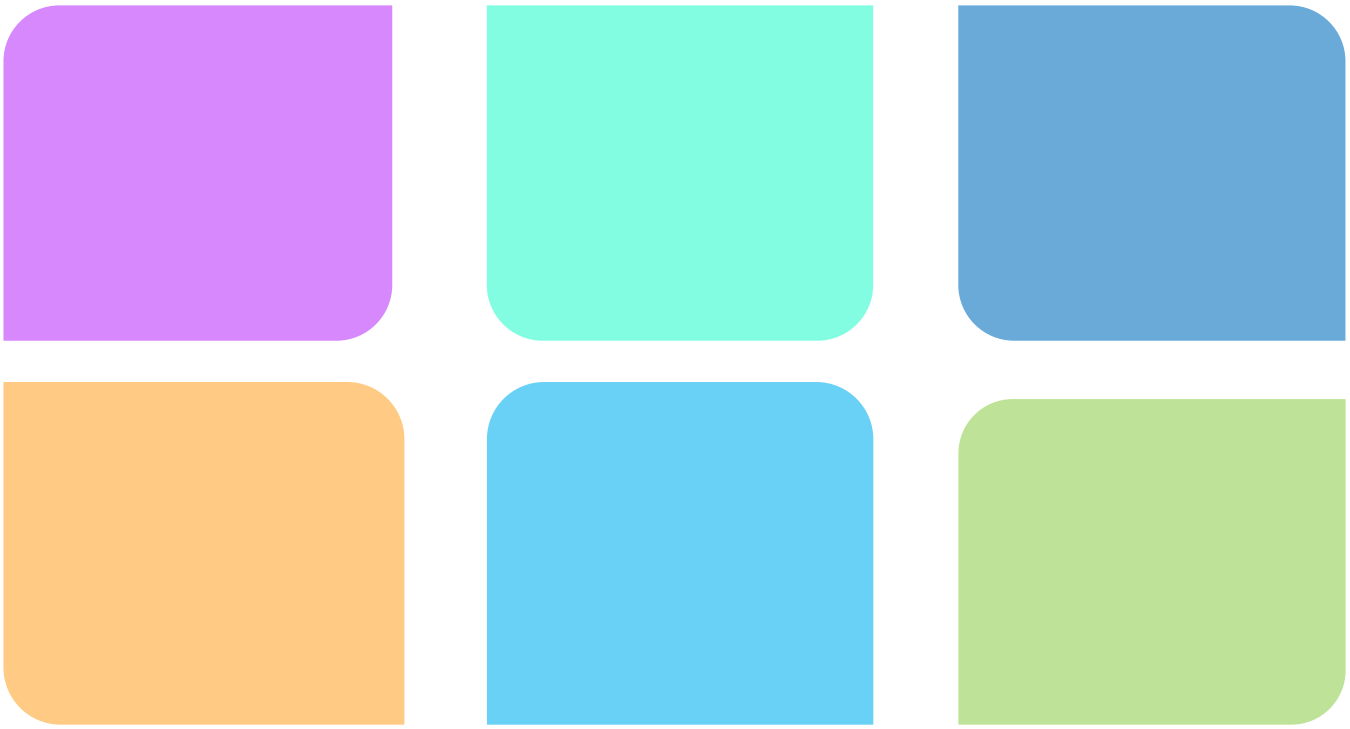
# INNOVATION IN ADJUDICATION:

## Effective Decision Making in Family Law



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March 3rd, 2023

DEAN'S FORUM
ON ACCESS TO JUSTICE AND DISPUTE RESOLUTION

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# EXECUTIVE SUMMARY

How can innovation within legal adjudication produce holistic, expedient, and cost-efficient outcomes for families in Saskatchewan? This is the focus of our project. While there are legal triage and dispute resolution services that pave the way for parties to make their own decisions, these services do not result in resolutions for all families. Neutral third-party decision makers still have an essential role to play in the family law system.

Through research and consultation, we identified the following six categories of innovation within family law adjudication:

1. The Inquisitorial Model
2. The "One Family, One Judge" Model
3. Indigenous Adjudicative Models & Social Context Considerations
4. The Mediation-Arbitration Hybrid Model
5. The Parenting Coordination Model
6. The Family Law Tribunal Model

Our research and consultation process highlighted several guiding principles that facilitate optimal family law outcomes, regardless of the details of the adjudicative approach. We invite stakeholders to consider how principles such as expedience, cost-efficiency, and the holistic nature of the decision are incorporated into decision making through the innovations we present.

Expedience involves considerations of whether the proposed approach facilitates decision-making in a time-sensitive manner, whether it is flexible enough to be proportionate to the issue in dispute, and whether it creates additional barriers that complicate and lengthen the decision-making process.

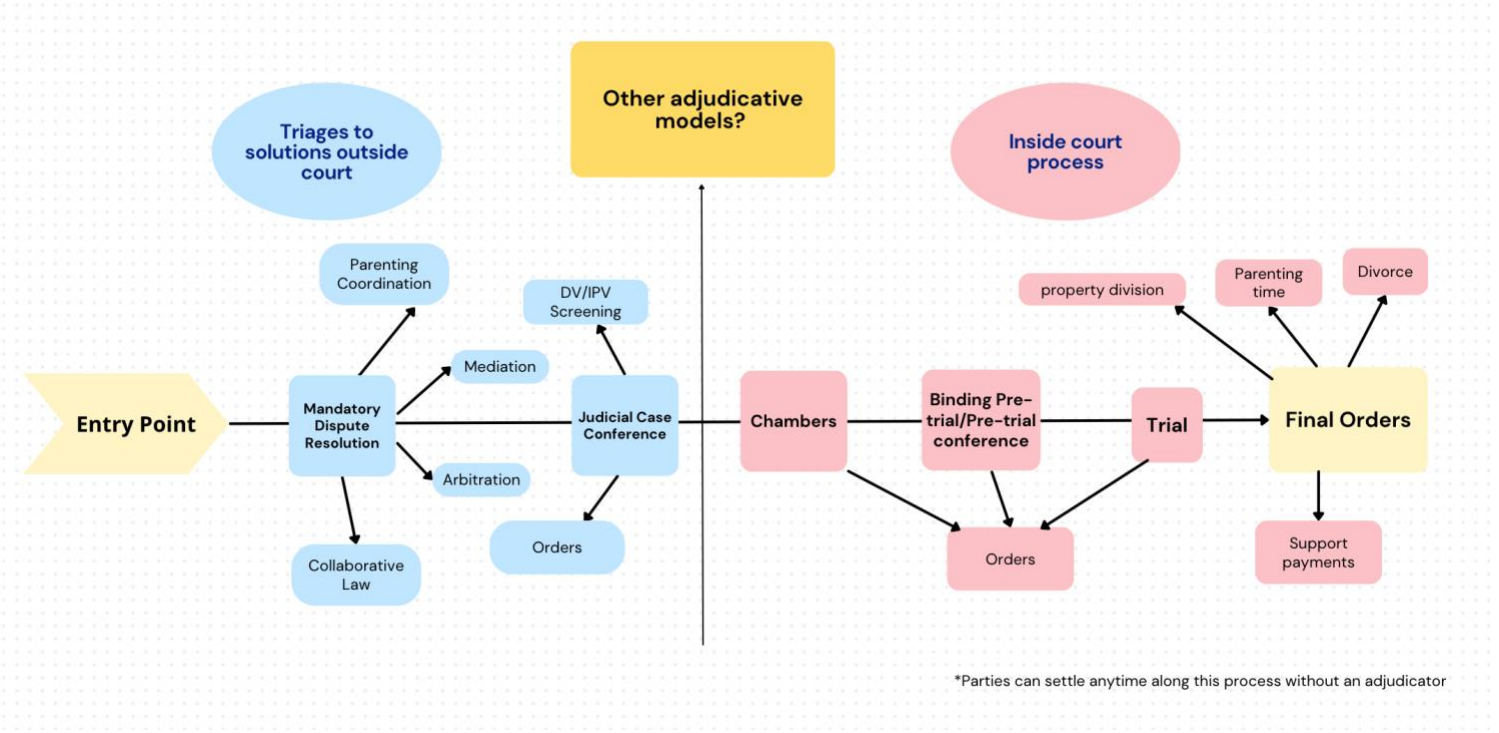
Cost-efficiency involves considerations of whether families accessing the proposed adjudicative model save money by engaging in a process that works in a more efficient way. The cost of adjudication will vary depending on the rates of service providers and whether there are funding opportunities available, but it is worthwhile to consider this principle throughout.

The holistic nature of the decision involves acknowledging that optimal and sustainable legal resolutions are attuned to the whole social context of a family. Holistic decision-making accounts for the needs of minority and marginalized groups, such as Indigenous peoples and newcomers to Saskatchewan, as well as the needs of self-represented litigants and victims of domestic violence. Holistic decision-making may be facilitated through an adjudicative model that incorporates a multidisciplinary, collaborative approach with interdisciplinary information gathering.

# INTRODUCTION

Innovation in adjudication should be embraced as a worthwhile pursuit for families who have not been able to manage their own dispute resolution and who must seek the support of a third-party decision maker. The focus of our project is on the potential for adjudication to produce increasingly holistic, expedient, and cost-efficient outcomes for Saskatchewan families through innovative models and considerations.

**Figure 1:** The Current Family Law System & Our Research Question




The issue of access to justice is not new, with legal scholars and practitioners across Canada making efforts toward a more equitable and just system for decades. More particularly, our project is part of a much larger movement that has included the creation of a Unified Family Court in 1974,[1] the publications of the Cromwell Report[2] and the CBA Reaching Equal Justice Report,[3] as well as multiple Dean's Forum policy discussion papers in 2016, 2020, and 2021 within the family law context.[4] Most recently, the implementation of a new judicial case conference ("JCC") process, including the use of Family Law Screening Officers, demonstrates the Saskatchewan legal communities' significant commitment to innovate within the existing family law framework.[5]

Decision makers in current family law adjudicative models include judges, arbitrators, and parenting coordinators in Saskatchewan. These key roles have varying degrees of designated authority, allowing them to make decisions on behalf of parties in family law disputes. Other participants, including lawyers, can help facilitate change through continuous education on trauma-informed practice. Lawyers also have the competency to know when adjudicative models are necessary and when referral to other options for dispute resolution would better facilitate a family's wellbeing and success.

As family and kinship structures evolve, the needs of citizens in the family law context have become increasingly complex and necessitate innovative solutions. Adjudicative models should be flexible enough to help reconcile some of these systemic problems for people involved in the family justice system. For instance, decision makers have a difficult task in balancing children's desires to be heard in family court proceedings with valid concerns about the lifelong implications that interactions with the family justice system may have on children's wellbeing and brain development.[6] Additionally, Saskatchewan's high levels of domestic violence warrant special attention when considering the efficacy of legal outcomes on families.[7] Minority and marginalized groups may require additional assistance to cross barriers, including the language, economic, technological, cultural and psychological barriers unique to certain parties and which contribute to the efficacy of their legal outcomes. Further, the family law system is particularly difficult to navigate for self-represented litigants, who are an increasing demographic in light of current access to justice issues.[8]

***Invitation:*** *Consider how the adjudicative approaches we propose improve access to justice and legal outcomes for these groups.* →

Our project focuses on six innovations within adjudication: (1) the inquisitorial model; (2) the "one family, one judge" model; (3) Indigenous adjudicative models and considerations; (4) the mediation-arbitration hybrid model; (5) the parenting coordination model; and (5) the family law tribunal. These innovations can be delineated into three categories:

1. Innovations within the existing family law in-court system, such as a more inquisitorial process and a "one family, one judge" model.
2. Innovations for improving out-of-court decision making, such as an arbitration model, the parenting coordination model, and making space for Indigenous adjudicative models and learning from them.
3. An overhaul to the family law system through the creation of a family law tribunal that incorporates various alternative dispute resolution and adjudication innovations.

Within these categories, we consider jurisdictions who have implemented proposed models, relevant research for best practices, and recommendations for how to improve existing processes in decision-making.

## ADJUDICATIVE MODELS FOR CONSIDERATON

Our research primarily focused on various adjudicative models from within Canada and other jurisdictions. However, our project has also been inspired by consultations with thirteen stakeholders in the legal community, including lawyers, judges, family law professors, and a policy maker from outside Saskatchewan. We are grateful to consultees for providing their expertise and creative input. Their reflections are interwoven in the discussion about adjudicative models that follows.

### 1. The Inquisitorial Model

In the traditional adversarial model under which Canadian courts operate, judges in family law are tasked with making decisions based on admissible evidence presented by opposing parties. This evidence is most often admitted in the form of sworn affidavits. Several Saskatchewan stakeholders spoke about the harms associated with affidavits. Specifically, it is difficult for parties to move forward with productive relationships after seeing hurtful accounts of deeply personal matters. There are also increased concerns regarding swearing children's affidavits, as it necessarily involves the children in the litigation and may force them to take a position that aligns them with a particular parent.[9]

The effectiveness of the decision and its outcome is impacted by how evidence is obtained and whether it gives a full, holistic picture of the dispute within the entire family dynamic. The adversarial system is premised on the idea that parties are equal in front of the impartial judge.[10] In the family law context, there are often power imbalances that affect the process of seeking truth. Rather than relying completely on evidence that opposing parties present, the inquisitorial model involves judges taking an active role in acquiring additional information through investigating the facts of the case by asking questions.

***Invitation:*** *Consider the impact of the inquisitorial model on self-represented litigants and holistic information gathering?*

While the adversarial and inquisitorial systems may seem incompatible in form, some academics have looked at how converging these legal traditions can improve access to justice.[11] For instance, a traditionally adversarial system could borrow from the inquisitorial system by empowering judges to "request the production of documents and to ask questions whenever he or she is unsatisfied with the quality or comprehensiveness of the questions propounded by counsel."[12] From consultations with some stakeholders in Saskatchewan, we understand that JCC's, binding pre-trials, and pre-trial conferences may already employ a more inquisitorial approach, that will vary in degree depending on the comfort level of the particular judge. Australia's consent-based "less adversarial child-related trials" is an example of how one jurisdiction successfully converged adversarial and inquisitorial models through legislative reform. For the key features of the model, see below.[13]

## Key Features of Australia's "Less Adversarial" Child-Related Trials

- **The judge identifies issues and relevant facts through the use of questionnaires, children's and parent's issue assessments, and by directly speaking with parties.**[14] No party can file or serve any document without obtaining leave from the judge, and affidavits are only filed if the judge deems it appropriate.[15]

- **Family consultants are present at the trial to provide social science expertise.** They are qualified social workers or psychologists who are experienced in working with families. They can also facilitate referrals to community-based organizations.[16]

- The court **takes a "protective stance" towards children and does not usually call them to give evidence in parenting proceedings**. Their voice may be heard, on the first day of the trial, through oral evidence and reports prepared by family consultants, the appointment of an independent children's lawyer, through evidence given by expert witnesses representing the child, and through judicial interviewing.[17]

- The trial is discontinuous and flexible; including intermittent events in which issues are defined and decisions are made. **A judge may make a finding of fact or make an order at any time after the commencement of the trial, and it does not disqualify that judge from continuing on with the trial on other issues at different times.**[18]

## 2. The "One Family, One Judge" Model

A Saskatchewan family experiencing continuing conflict may appear before multiple judges over the course of their dispute. The multiple judge model presents challenges when evaluating the consistency and efficacy of decision making. One stakeholder highlighted the inefficiency of multiple judges reading complex files and documentary evidence, which can span hundreds of pages, every time a high-conflict family returns to court.

There is the option for a judge to seize themselves to a family's case in Saskatchewan, but this is generally underutilized. More consultation and research is needed on why this is the case. While there are concerns that this model could cause delays for families waiting for "their" specific judge to hear their matter,[19] benefits to the "one family, one judge" model include the following:

- diligent case management;
- monitoring the actions of parents over time and ensuring consistency in sanctions for breaching orders; and
- becoming increasingly aware of family dynamics and patterns to make the most informed decisions possible.[20]

There is a spectrum of what the "one family, one judge" model can entail. The range includes "one judge for a private family law case, to one judge for all related civil cases, to one judge for all related civil and criminal cases."[21] When it comes to family violence, it is easy to see how legal proceedings across criminal and family law become intertwined, and judges may lack the full picture to make a holistic decision under the current multiple judge model. One solution to this problem, already implemented in Ontario, is the creation of an Integrated Domestic Violence Court ("IDV Court") in which a "single judge deals with both the criminal and family proceedings in cases where there is an issue of domestic violence post separation."[22] Consideration of this model is worthwhile in Saskatchewan since a therapeutic Domestic Violence Court already operates within the province.

Jurisdiction is often raised as a concern of integrated courts.[23] A project in New Brunswick focusing on the feasibility of such a model identified how "full integration was not possible" in Toronto's IDV Court due to the fact that IDV courts "operat[ing] at the provincial court level do not have jurisdiction over the most serious [domestic violence and family violence] crimes and lack complete jurisdiction over family law and marital property matters."[24] While there are jurisdictional limitations, researchers have also found that "victims and offenders

spoke positively about their experience in the IDV [Court] in terms of process and the impact on their lives and their children's lives."[25] For the key features of Toronto's IDV Court, see below.

### Key Features of Toronto's "Integrated Domestic Violence Court"

- Ontario's IDV Court **allows for a family to appear before a single judge for a domestic violence criminal charge as well as for family matters relating to decision-making responsibility and parenting time, child support, spousal support, and restraining orders** (explicitly excluding matters relating to divorce, family property, and child protection).[26]
- **All appropriate cases are automatically scheduled in the IDV Court.** The Court began on a consent basis, but upon a slow start, automatic streaming was implemented.[27]
- In family cases, the IDV Court can conduct case conferences, make temporary orders, and make final orders if both sides agree. In criminal cases, the court can hear applications to change bail conditions, have meetings before trial, and accept guilty pleas.[28]
- **The IDV Court has three support workers: a community resource coordinator, a worker from the victim witness assistance program for the alleged victim, and a family support worker.**[29]

While IDV courts offer a targeted solution towards family violence under a one judge model, a generalized "one family, one judge" model for all family matters has been implemented in various jurisdictions in the United States. The state of Kentucky began a "one family, one judge, one court" approach in 1991, which is still running today and is considered a model to aspire to nationwide in the United States.[30] Florida created an innovative "Coordinated Management Model" in 2001, which facilitated "all of a family's cases to be heard by either a single judge or by multiple judges who will coordinate their efforts with one another and through a team of case managers."[31]

Judges working within the Florida model express many benefits, such as parties not having to explain the intricacies of their legal issues multiple times with each new judge, and therefore, appearing "more willing to share information with the court."[32] This model is one of the most comprehensive as it allows for a single judge to hear all family matters, but is flexible enough to offer coordination on related criminal proceedings, despite the jurisdictional

challenges that exist. For more information on how Florida's "Coordinated Management Model" works in practice, see the key features of the model below.

### Key Features of Florida's "Coordinated Management Model"

- Florida's *Rules of Judicial Administration* require the filing of a "Notice of Related Cases, Family Law Form" to ensure that all parties, attorneys, and judges are aware of related proceedings. There are then rules that provide that "all related family cases must be handled before one judge unless impractical" and allow for the court to "order joint hearings or trials in related family cases."[33]

- Concurrent criminal cases are one instance where it is "impractical" for one judge to handle all related family cases. This is when the "One Judge, One Team" approach is employed to facilitate coordination, since "criminal cases are not subject to [Unified Family Court] jurisdiction."[34]

- The "One Judge, One Team" approach allows judges to "confer for the purpose of case management and coordination, and either the court or the party that filed the notice of related cases may organize a case management conference."[35]

## 3. Indigenous Adjudicative Models & Social Context Considerations

Indigenous approaches to justice are vast and rooted in natural law, encompassing the individual, the family, the land, the community, and the nation.[36] One report out of British Columbia outlines how family law can be decolonized by making space for considerations of social context in decision making.[37] To do so, decision makers must be attuned to the ways in which social context effects "why parties might be likely to act in a certain way, given their social background and history." The report outlines how in family law cases, "evidence about social context may be available through extended family members or members of Indigenous communities" and may include "recognizing Indigenous Elders as experts and knowledge keepers" whose evidence is given equal weight as other experts in family courts.[38]

In terms of weighing this evidence in making a decision, the report is cautionary about how social context has been historically used to "gauge the person's risk" and may result in personal trauma being used *against* a parent "as a basis for denying Indigenous parents time with their children."[39] This is where education becomes crucial in developing a collective recognition within the legal community that the "resilience [that] Indigenous parents exhibit in surviving trauma" should be met by providing resources and support in decision making, rather than further harming Indigenous kinship structures.[40]

***Invitation:*** *Consider how social context evidence is best admitted procedurally to reduce this harm and facilitate holistic decisions.*

The self-determination of Indigenous nations and communities should be respected and upheld by creating space for Indigenous people to practice their own adjudicative models within the existing colonial family law system and legislation. The Rise Women's Legal Centre recognizes that allowing "Indigenous people the opportunity to explore alternatives may require increased time and flexibility from a system that is known for strict adherence to timelines and protocols."[41] See below for the Siksika Askapiimohkiikcs model, which combines mediation, arbitration, the creation of a tribunal, and the knowledge of Elders to facilitate decision making.

## Key Features of the Siksika Aiskapiimohkiikcs Arbitration Model

- The Siksika Askapiimohkiikcs arbitration model **consists of two steps. The mediation step, called Aiipohtsiniimsta, involves parties who "are willing to come to the table to work out their issue" with the help of a mediator and an Elder**.[42]
- **If Aiipohtsiniimsta does not work,** the parties can go to the ***Aiskapimohkiiks Appeal Tribunal*** **to have a trained community member and an Elder decide on behalf of the parties.** The parties must both sign a waiver that consents to the Tribunal making a decision that is final and binding.[43]
- In the family law context, the model applies to matters that were referred for mediation by the Provincial Court of Alberta Family Division, as well as to general disputes arising from personal, family, and community relationships.[44]
- The word **"Askapiimohkiikcs"** means **"to advise and to have discipline and balance; to follow the right path to justice."**[45]

## 4. Mediation-Arbitration Hybrid Model

A mediation-arbitration hybrid model attempts to blend the benefits of mediation with the finality of decision making from an arbitrator. There are two ways that this model can be facilitated: either by hiring a mediator and arbitrator who is the same person, or by hiring two separate people to fulfil the mediator and arbitrator roles in an agreement committing to the process.[46] The mediation stage helps narrow down the scope of the dispute, deescalate tensions, and encourage an agreement, while an arbitrator will immediately proceed with a binding decision if the mediation does not result in a full settlement.

Several stakeholders raised the concern that parties cannot be fully candid during the mediation when the mediator and arbitrator are the same person, because the arbitrator will ultimately decide based on the without-prejudice evidence that was presented in mediation. However, when the arbitrator is a different person who has not been involved in the mediation process, important considerations may be lost that could contribute to a more holistic decision. It is also difficult to repeatedly present potentially traumatic evidence to multiple people. One solution, offered during our consultation with a practicing lawyer currently utilizing this model, is to include a "comfort clause" in the mediation-arbitration agreement that allows a different person to fulfil the arbitrator role on an as-needed basis, grounded in the comfort level of the parties.

> ***Invitation:*** *Consider whether maintaining the full impartiality of the decision maker ultimately produces holistic decisions that account for the entire social context and family dynamic.*

Currently, Saskatchewan family litigants must opt-in to a mediation-arbitration process. The cost is relatively high due to the need to privately hire a mediator and an arbitrator (or one person to fulfil both functions), although it can produce expedient results and reduce legal fees in the long term. Based on our consultations, the mediation-arbitration hybrid model is still new and underutilized in Saskatchewan.

Many stakeholders agreed that expediency is the most important principle for decision making in the family law context. In the current system, mediation that does not result in an agreement is typically either scheduled to go to court or to arbitration at a later date. A mediation-arbitration hybrid model is expedient in that a binding decision can be made on the same day that mediation occurs. One stakeholder spoke about how the process is flexible in that once a binding decision is made on one issue, the parties can immediately go back to mediation and make further agreements. If there are any outstanding issues, the flexibility to seamlessly

shift between mediator and arbitrator roles while remaining completely informed on the family's dynamic is valuable in coming to holistic decisions. For recommendations on the implementation of the mediation-arbitration hybrid model, see below.

### Recommendations for Implementation of the Mediation-Arbitration Hybrid Model

- To address parties' concerns about not being fully candid when a mediator may eventually switch into an arbitrator role, **the "opt-out" model, originating in Australia, designates a second person to step in as an arbitrator when the opt-out is triggered.** The opt-out can be triggered by any of the parties or by the mediator/arbitrator under the apprehension of bias.[47] The "comfort clause," mentioned above and already used in Saskatchewan by one stakeholder, has the same effect.

- The mediation-arbitration hybrid model can be a **non-linear process**. If issues during the initial mediation can be solved quickly by an arbitrator, the parties can go back to the mediation to negotiate the rest of the issues.

- If the mediator and the arbitrator are different people, **there could be a setting where lawyers, the mediator, and the arbitrator would work together to ensure that important information and details are readily shared**, and the arbitrator is quickly familiarized with the context.

## 5. Parenting Coordination Model

Parenting coordinators are neutral third parties that can make binding decisions on minor changes in relation to parenting children.[48] A typical parenting coordination agreement in Canada allows the parenting coordinator to mediate disputes and, if a resolution cannot be reached, to arbitrate disputes.[49] The decision made by a parenting coordinator is based upon holistic information gathering from the child, the family, doctors, teachers, counsellors, and others in the community. Their authority to make decisions is limited in scope to the following matters:

- minor changes to parenting plans (vacations and holidays);
- children's participation in activities;
- how children's clothing and personal belongings are shared between homes;

- the temporary care of the child by someone other than the parents;
- the discipline of a child; and
- the transportation and exchange of children between parents.[50]

In Saskatchewan, parenting coordinators can be lawyers or mental health professionals.[51] To become a parenting coordinator, a person must complete 40 hours of training, have at least five years of family-related practice, and complete fourteen hours of family violence training. If a prospective parenting coordinator is not a member of the Law Society of Saskatchewan, he or she must have at least fourteen hours of family law training and professional liability insurance that provides coverage for practicing as a parenting coordinator.[52] Many stakeholders in Saskatchewan raised the concern that expanding the adjudicative authority of parenting coordinators to additional family law matters would not be appropriate, as parenting coordinators do not necessarily require a Juris Doctor.

In Saskatchewan, judges can make parenting coordination orders if one of the parties makes an application.[53] Currently, judges can identify parents who are bringing minor parenting issues into the court system at the JCC and can bring the family's attention to the option of parenting coordination. However, research cautions that parenting coordination may not be appropriate in cases involving intimate partner violence, as perpetrators may misuse the role of a parenting coordinator and continue to "exhibit patterns of violence, threat, intimidation, and coercive control over their coparent."[54] The British Columbia statute requires that a judge assess possible family violence, the safety of the parties, and the parties abilities to negotiate a fair agreement before ordering parenting coordination.[55] There is no equivalent provision in the Saskatchewan legislation.

> ***Invitation:*** *Should Saskatchewan have specialized screening and parenting coordination procedures in place for intimate partner violence?*

The hourly rate can be the same as lawyer fees and the agreement generally lasts for about two years, making parenting coordination costly for many Saskatchewan parents to access. The goal of parenting coordination, however, is to teach parents how to constructively work together in making child-related decisions. Therefore, the need for parenting coordinators should decrease as the parents improve their communication skills. While it is very unlikely that a parenting coordinator's decision will be set aside by a court, the court does have the authority to review the decision on a standard of reasonableness.[56] For key features of the success of the parenting coordination model in the United States, see below.

## Key Features of the Success of the Parenting Coordination Model in the United States

- Florida, Louisiana, North Carolina, North Dakota, and Oklahoma **require that the court find at least one party has the ability to pay for parenting coordination before making the order.**

- Vermont has developed a unique **hybrid consent rule** in appointing parenting coordinators. The Court can make an "Order of Referral" to an "Intake and Informational Meeting." If an agreement to continue with parenting coordination services is reached in the meeting, a proposed order of appointment is then submitted to the court by the parenting coordinator.

- Most statutes and rules contain **specific caveats regarding parenting coordination where there has been domestic violence.** Ohio and Indiana **allow victims to have a support person at the parenting coordination sessions and require the parenting coordinator to have a procedure in place to terminate sessions if there are continued threats of abuse, coercion between the parties, or domestic violence**.[57]

- A longitudinal study in Arizona found **a decrease of 56% in the number of documents entered in the files** in two years since commencing parenting coordination. **The number of hearings dropped by 83%.**[58]

- A 2011 survey found interventions that parenting coordinators frequently used with their clients were very similar, regardless of whether they had a mental health or legal background.[59]

### 6. The Family Law Tribunal Model

Perhaps the most innovative solution to family adjudication is to rebuild the entire system through the establishment of a family law tribunal. Canadian governments "have increasingly delegated the resolution of varying classes of legal issues to administrative tribunals," which are "quasi-judicial in nature and may be vested with the power to conclusively determine legal disputes."[60] Tribunals have more freedom to develop their own dispute resolution methods, their policies and processes, and relaxed rules of evidence.[61]

Stakeholders emphasized that tribunal innovations should not be courts by a different name. Several suggested that it may be appropriate to start with a tribunal focused on only one area of family law disputes. Patricia Robinson's thesis reinforces this idea for a targeted approach. She puts forward an argument for tribunal adjudication in family law particularly where there is a best interest of the child analysis in decision-making and parenting time cases.[62] She maintains that "within a holistic tribunal "settlement system," multi-disciplinary mediators and adjudicators could share decision-making responsibility, nurture tribunal expertise and develop transparent decision-making guidelines, while adjudication could be relegated to a secondary, inquisitorial component."[63]

John-Paul Boyd, K.C., the executive director of the former Canadian Research Institute for Law and the Family at the University of Calgary, also suggested the launch of a family law tribunal pilot project in smaller centres such as Lethbridge, Barrie, or Kelowna.[64] Boyd's proposed core guiding principle is that "all services, processes and resolution assistance provided by the tribunal would be proportionate to the complexity and importance of the matters at issue for each family."[65] For the key features of Boyd's proposed family law tribunal as well as an illustrative graph of the tribunal's functions, see below.

***Invitation:*** *Consider how the principle of keeping legal processes proportionate to the complexity and importance of the issue in dispute could be incorporated into existing adjudication procedures.*

## Key Features of Boyd's Proposed Family Law Tribunal

- The tribunal, or agency, consists of **three departments: a decision-making tribunal, a separate investigative commission, and a family support centre.** The first two departments would be organized similar to human rights tribunals and commissions, and the latter would exist to provide support to families undergoing the process of restructuring.[66]

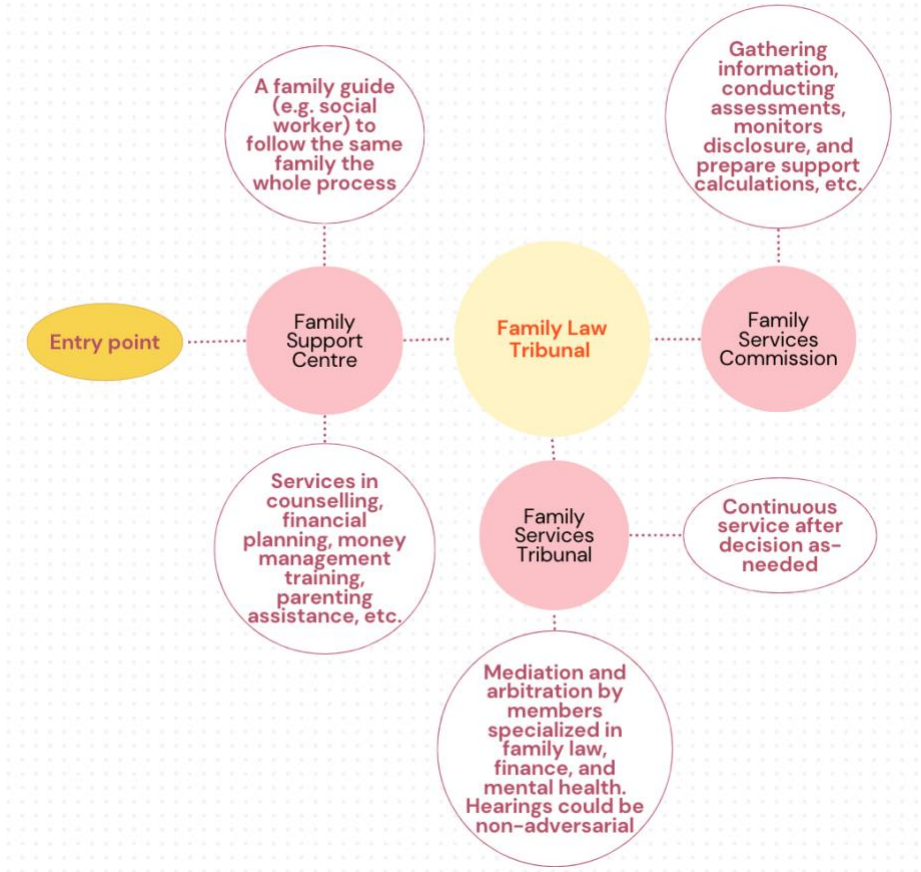
- Families would enter the tribunal through the support centre, which would assign them **a family guide to help them navigate the entire process and refer them to relevant services** (counselling, financial planning, money management training, parenting assistance, parenting after separation programming, negotiation support).[67]

- The investigative commission would assist the family and tribunal in gathering information, conducting assessments, making inquiries around income, and making recommendations regarding parenting agreements.[68]

- The tribunal would provide mediation services, as well as arbitration in the event mediation fails or is inappropriate. Members of the tribunal would be experienced family law lawyers and retired judges with an interest in family law disputes but might also include financial experts and mental health professionals.[69]

- Services would continue even after the initial determination of the dispute on an as-needed basis to address issues that may arise as the family situation continues to evolve.

Figure 2: Structure of Boyd's Proposed Family Law Tribunal



## MEASURING SUCCESS

Stakeholders could consider drawing from the A2J Triple Aim Measurement Framework to evaluate how proposed adjudicative innovations are working.[70] The A2J Triple Aim includes three interrelated elements in measuring success: improved population access to justice, improved use experience of access to justice, and improved costs.

Each proposed adjudicative model has strengths and weaknesses and may be tailored to address the needs of specific groups. For example, some are designed for families with domestic violence issues and others are adjusted more for self-represented litigants or people coming from different cultural backgrounds. Therefore, different demographics may have varying levels of success with the adjudicative approach depending on their unique needs. Lawyers, arbitrators, and judges will cast different perspectives and draw upon different data, including their experience or even personal values, in their evaluation.

## CONCLUSION

After researching adjudicative models and consulting stakeholders, it became clear that several principles guide good decision making in family law: expediency, cost-efficiency, and the holistic nature of the decision. In Saskatchewan, adjudicative authority is currently vested in judges, arbitrators, and parenting coordinators in Saskatchewan, who operate within systems and regulations that should strive to incorporate these principles. Recognizing that legal decision making has its own limitations, it is also worthwhile to continue investigating cross-disciplinary services that could be incorporated into and facilitate decision making processes.

The Saskatchewan legal community is willing and capable of adapting to the needs of citizens attempting to resolve complex family disputes. The great strides in alternative dispute resolution within the province have proven this commitment to access to justice. Sometimes families require an adjudicated decision to reach a resolution. The past and current efforts of Saskatchewan stakeholders to introduce family justice system reform welcomes reflection: What are the processes and underlying principles that could create the best possible outcomes for families who have exhausted non-adjudicative dispute resolution avenues available to them? We invite Saskatchewan stakeholders to join us in considering the key processes and underlying principles that can continuously improve our existing adjudicative family models, while imagining the possibilities and potential for new Saskatchewan models that will serve families in more effective ways.

# APPENDICES

## Appendix A: Pre-Consultation Information Sheet

**Dean's Forum on Access to Justice and Dispute Resolution**
**TOPIC: Adjudicative Models in Family Law**

| Defining "Adjudicative Model" |
|---|
| For the purposes of our research topic and this interview, adjudicative models are defined as legal processes to resolve a dispute whereby parties make their arguments, following which a binding decision is issued by a neutral third party decisionmaker. We will be focusing our attention on adjudicative models in the family law context. |

**Models for Consideration**

| Inquisitorial and Abridged Hearing Processes |
|---|
| An inquisitorial model involves hearings and trials that are managed by the presiding judge acting as inquisitor rather than the traditional role as passive auditor of evidence. The judge addresses the applicants and asks questions that the judge deems necessary to fully understand the applicant's take on the relevant history of the relationship and the facts of the application. The judge questions the applicants to obtain the relevant evidence, rather than relying solely on affidavits and evidence that the parties formally submit. The process of enquiry is more of a flexible conversation between both parties and the judge, and there are no lawyers present. If sufficient evidence has been provided, the judge delivers an oral judgement from the bench which is transcribed by the court clerk.<br><br>Abridged models involve both parties having legal counsel. A case management meeting will be fixed, in which the judge will begin at the outset by confirming the claims advanced and that adequate disclosure has been made. Once preliminary matters are dealt with, the judge turns to counsel for time estimates and means of reducing the length of time that the trial will take. The judge can put limits on the number of days for parties to present their case, the number of witnesses each party calls, number or type of documents that will be entered into evidence, require that closing arguments be in writing, among other methods. |

| Mediation-Arbitration Hybrid Model |
|---|
| A mediation-arbitration hybrid model attempts to blend the approach of mediation with the efficiency and finality of decision making from an arbitrator. The model consists of the following two stages:<br>1. The med-arbitrator strives to facilitate an agreement between the parties using strategies and philosophies of mediation. |

2. If the parties do not resolve their dispute, the med-arbitrator will switch roles and conduct an adjudicative hearing to determine any outstanding issues.

| Family Law Tribunals |
| --- |
| Building off the above, a holistic family tribunal settlement model could be developed in which mediators and adjudicators could share decision-making responsibility and develop transparency and consistency in the decision-making process. A family law tribunal would provide a formal process but could incorporate inquisitorial elements in the fact-finding and disclosure stage of the process. Subject to the family law tribunal's enabling legislation, they can develop their own policies and processes relating to the rules of evidence and dispute resolution methods in a unified way. |

| Expanded Roles of Child Parenting Coordinators |
| --- |
| A parenting coordinator helps parties communicate with one another and facilitates agreement on parenting issues. If parents cannot come to an agreement, parenting coordinators can decide for the parents based on information that they receive from the family, doctors, teachers, counsellors, and others. Currently, they can make decisions relating to minor changes to parenting access plans (such as vacations or holidays), children's participation in activities, how children's clothing and personal belonging are shared between homes, the temporary care of the child by someone other than the parents, the discipline of a child, and the transportation and exchange of children between parents. They cannot make major decisions relating to matters of custody or access. One possible model is to expand the role of child parenting coordinators to other areas of family law that do not necessarily revolve around children. Family coordinators, a more general coordination role, could work with parties throughout the duration of their disputes and make decisions for them when the parties do not agree, even on matters outside of their children. |

| Indigenous Adjudicative Model – Eagle Woman Tribunal |
| --- |
| Cowessess First Nation has launched the Eagle Woman Tribunal, which is an internal quasi-judicial system that reviews and adjudicates decisions relating to child welfare and other matters. The board members receive training in mediation, evidence, decision making, board governance, and a thorough understanding of the applicable legislation. The Eagle Woman Terms of Reference and Procedures Manual guides the processes and procedures for handling each case. The Tribunal Officer prepares each case and all of the necessary evidence so that the matter can be heard by the Tribunal. |

## Appendix B: Consultation Questions

**QUESTION LIST**

**Dean's Forum on Access to Justice and Dispute Resolution**

**TOPIC: Adjudicative Models in Family Law**

| Questions relating to an inquisitorial model |
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- Inquisitorial models involve a more flexible approach to fact-finding, disclosure, and evidence. How do you think judges can be accurately informed about the relevant background information and context of the parties in a family matter?
    - What might that process look like and sound like?
- When children are involved in a family matter, what might a judge need to know about the child and the family dynamic in order to make a good decision? What role, if any, might children and youth play in an inquisitorial process?

**Questions relating to abridged hearing processes**

- Building off the new Judicial Case Conference model, can you think of the advantages and disadvantages of a judge facilitating an abridged hearing after speaking with parties during the JCC?
- What do less complex family law disputes look like? What court processes could be pared away when the dispute is less complex?

**Question relating to a mediation-arbitration hybrid model**

- Now that attempting dispute resolution is mandated before continuing with court proceedings in the family law context, would a hybrid mediation-arbitration model be conducive to good decision making?
    - What are some of the benefits and drawbacks of this process?
    - What protections may need to be in place for parties entering this process?

**Questions relating to parenting coordinators**

- In building off and reimagining the parenting coordinator role, what are your views on increasing decision-making authority to a wider range of family law issues?
- Parenting coordination is currently under-used in Saskatchewan as compared to other provinces. Why do you think this might be?

**Questions relating to creation of a family law tribunal**

- A family law tribunal can look many different ways depending on its enabling legislation. Knowing this, if a tribunal were to be created, what would you like to see in terms of processes in order to come to the best legal outcomes for families?

- Would you like to see a family law tribunal borrow principles and processes from other tribunals, like human rights and labour?
- Could you speak on the scope of a family law tribunal, such as whether a tribunal is more conducive to certain family law matters rather than others?

**Questions relating to cultural relevance of adjudicative models**

- What are your perspectives on reaching a family law resolution that has been particularly attuned to cultural sensitivity and relevance?
  - What would a culturally sensitive decision-making process look like?
  - What qualities or principles can the decision maker employ?

**General question**

- If you could design a family law system from scratch, what would it look like?
  - It may be helpful to think of how disputes move through the system from early dispute resolution services to parties ultimately needing a neutral decision maker.
- What do you think are the most important principles to retain in an adjudicated family resolution model? I.e., expediency, time commitment, efficacy of outcomes, simplicity, etc.

## Appendix C: Annotated Bibliography Table

The following research was completed by Kelsey Leik & Amy Miller, Law Reform Interns at the College of Law, University of Saskatchewan. Much of the research in the table is reproduced directly from the websites or resources listed. We hope the table will be of assistance to Saskatchewan stakeholders for years to come!

| **Administrative Models** | |
|---|---|
| **Initiative** | An administrative model of family dispute resolution |
| **Citation** | John-Paul Boyd, "An Administrative Model of Family Law Dispute Resolution" (9 January 2023), online (blog): *Slaw (Canada's Online Legal Magazine*). |
| **Hyperlink** | http://www.slaw.ca/2018/03/09/an-administrative-model-of-family-law-dispute-resolution/ |

| | |
|---|---|
| **Source Type** | This is a practitioner-derived model, although there is an academic angle as well. The author is a family law arbitrator, mediator, and parenting coordinator, although he was also executive director of the Canadian Research Institute for Law and the Family at the University of Calgary, prior to which he practiced family law for fourteen years. |
| **Description** | • Author argues that the current system is the worst possible way of resolving most family law disputes, aside from those that are truly intractable and/or involve threats to persons or property. Instead, he believes that a pilot project should be established to create an "administrative family services agency" (described below), which would reduce court time and better assist self-represented litigants, among other things.<br>• Agency would have three departments: a decision-making tribunal, a separate investigative commission, and a family support centre. The first two departments would be organized similar to human rights tribunals and commissions, and the latter would exist to provide support to families undergoing the process of restructuring.<br>o Families would enter the agency through the support centre, which would assign them a family guide to help them navigate the process. It would provide services like counselling, financial planning, parenting assistance, etc., and liaise with the other departments as needed.<br>o The commission would assist the family and tribunal in gathering information, conducting assessments, making inquiries around income, and gathering information and making recommendations re: parenting agreements.<br>o The tribunal would provide mediation services, as well as dispute resolution by arbitration in the event mediation fails or is inappropriate. Members of the tribunal would be experienced family law lawyers and retired judges with an interest in family law disputes, but might also include financial experts and mental health professionals. Arbitration hearings would be conducted on a "non-adversarial inquisitorial basis" for people without legal representation; otherwise, hearings would proceed in a court-like manner.<br>o Services would continue even after the initial determination of the dispute on an as-needed basis to address issues that may arise as the family situation continues to evolve.<br>• Article also addresses some of the practical requirements of this kind of tribunal, including: 1) what governing legislation for the tribunal might look like, 2) who decision-makers should be, 3) other professionals that will be needed (like financial and mental health professionals), and 4) associated costs. |
| **Other** | • Author outlines some potential stumbling blocks, including resistance from the bar and the bench, and the Constitutional issues arising from the Divorce Act and s. 96 of the Constitution Act (which means that married spouses would be able to opt out of these services if they are created provincially). He suggests appropriate amendments to the Divorce Act to remedy this, but how realistic those amendments are remains unclear.<br>• There is nothing mentioned in this article about how this might work in the context of domestic violence, which is worth thinking about. |

| Parenting Coordination Models | |
|---|---|
| **Initiative** | The South African model of parenting coordination |
| **Citation** | Madelene De Jong, "Towards a More Uniform Approach to Parenting Coordination in South Africa" 25 Potchefstroom Electronic Law Journal 1. |
| **Hyperlink** | https://doi.org/10.17159/1727-3781/2022/v25i0a12776 |
| **Source Type** | Academic article |
| **Description** | • Author takes a critical look at the past decade of parenting coordination in South Africa, identifying both where it is has succeeded, but also, more critically, where it stands to be improved. She notes that there remain important underlying theoretical questions about a great number of aspects of this kind of model.<br>• In the South African context, parenting coordinators are mental health or legal-trained professionals with experience in mediation that first attempt to facilitate resolution of parenting disputes by agreement, but who also retain the power to make directives that are binding on the parties until a competent court directs – or the parties agree – otherwise (at 3).<br>• While this approach has been received with positivity, author notes that there is still uncertainty and a lack of uniformity regarding various aspects that must be addressed (at 4). She considers a number of guiding documents, including South Africa's *Guidelines on the Practice of Parenting Coordination*, the South African Law Reform Commission's draft *Family Dispute Resolution Bill, 2020* and various court decisions dealing with parenting coordination in South Africa to identify areas of uncertainty and determine how best to fix them, including:<br>○ When and under what circumstances a parenting coordinator should be appointed<br>○ If the court can appoint a parenting coordinator for parents in the absence of consent of both parents<br>○ Which issues could be dealt with by a parenting coordinator<br>○ If a parenting coordinator can oversee both the development and the implementation of a parenting plan<br>○ Who should be appointed as a parenting coordinator<br>○ What approach should be followed in the parenting coordination process<br>○ If children should be involved in the parenting coordination process<br>○ If parenting coordination is really a nonconfidential process<br>○ What the relationship is between the parenting coordinator and the court, as well as between the parenting coordinator and the parties' legal representatives<br>• Concludes that this approach is new, so it is to be expected that improvements will continue to be needed to ensure the best possible support for families in this process. Critical to providing the best possible outcome is collaborating to create a uniform national approach to parenting coordination. |
| **Other** | N/A |

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|---|---|
| **Initiative** | Parenting coordination model (the theory/nature of the process) |
| **Citation** | Christine A Coates, "The Parenting Coordinator as Peacemaker and Peacebuilder" (2015) 53:3 Family Court Rev 398. |
| **Hyperlink** | https://doi-org.cyber.usask.ca/10.1111/fcre.12161 |
| **Source Type** | Academic article |
| **Description** | • Author identifies the dual role of parenting coordinators as both peacemakers and peacebuilders. In regards to the latter, she borrows the UN definition of peacebuilding as taking action to "identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict." In the parenting coordination context, that looks like creating processes and structures in the co-parenting relationship that will maximize the opportunity for the growth of rational and peaceful communication and interaction, or at least reduce angry, vengeful behavior between the parties (at 400-401).<br>• First suggestion for peacebuilding is using "enlightened self-interest" to help the parties identify where their own unproductive behavior might be getting in the way of getting their own needs met. In doing so, the parenting coordinator can work to build longer-lasting peace between parents and within each parent going forward, instead of simply resolving current disagreements (at 400).<br>• Additionally, promotes the use of meditation and mindfulness for both litigants and professionals within the family court system, as they allow people to develop equipoise: a "mode of processing information and emotions that disrupts habituated and unhelpful interactions between persons and instead encourages thoughtful engagement with emotions, resulting in reduced adversarialness and constructive problem solving" (at 400).<br>• Further suggests the "somewhat radical strategy" of parenting coordinators discussing current brain science with parents as part of the education that is routinely provided in this role. For example, discussing the brain's plasticity (its ability to change itself, particularly through mindfulness techniques) can encourage clients to use these techniques to reduce stress and improve well-being (at 401).<br>• Finally, author advocates for what she calls a "problem-solving court" (like drug treatment court or domestic violence court) in the family law context. This court would involve a collaborative, interdisciplinary approach where the judge plays a leading role in supporting, legitimizing, and overseeing the work of the parenting coordinator. |
| **Other** | • I am intrigued by the idea of introducing mindfulness and other neuroscientific concepts into the parenting coordination role. I am not sure to what extent concepts like this have been tried before, but the idea of integrating forward-thinking, scientific approaches into this area of the law seems promising. |
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| **Initiative** | Parenting coordination models (implementation issues) |

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|---|---|
| **Citation** | AFCC Task Force on Parenting Coordination, "Parenting Coordination: Implementation Issues: April 30, 2003" (2003) 41 Family Court Rev 533. |
| **Hyperlink** | https://heinonline.org/HOL/P?h=hein.journals/fmlcr41&i=517 OR cyber.usask.ca/login?url=https://heinonline.org/HOL/P?h=hein.journals/fmlcr41&i=517 |
| **Source Type** | Academic article |
| **Description** | • The Association of Family and Conciliation Courts (AFCC) Task Force provides a literature review of the parenting coordinator model ("PC model"), discusses its implementation in the United States (centred around Arizona, California, Colorado, Georgia, Massachusetts, Oklahoma, Oregon, Vermont, Hawaii, Idaho, New Mexico, North Carolina, Ohio), lays out issues that are "inherent in the role", and presents how these issues have been resolved in different states.<br>• PC model (in which the coordinator monitors compliance with parental court orders, serves as a neutral decision maker, or fills a variety of other roles depending on the jurisdiction) is recommended "to help families structure, implement, and monitor viable parenting plans and to reduce re-litigation rates where high conflict threatens the family adjustment process" compared to traditional family law litigation (at 533).<br>• Intention of the Association of Family and Conciliation Courts (AFCC) Task Force is to provide a guide to determine the feasibility of the PC model in other jurisdictions.<br>• Issues explored include (listed on page 536):<br>  ○ Statutory authority<br>  ○ Appointment of the parenting coordinator<br>  ○ Timing of the parenting coordination intervention and jurisdictional issues<br>  ○ Term of appointment, removal, and resignation<br>  ○ Areas of parenting coordinator decision making authority<br>  ○ Confidentiality and ex parte communications<br>  ○ Access to non-parties, children, and privileged information<br>  ○ Referral for third-party services<br>  ○ Special considerations for families with allegations of domestic violence<br>  ○ Parenting coordinator proceedings<br>  ○ Parenting coordinator compensation<br>  ○ Parenting coordinator qualifications and training<br>  ○ Submission/objection to parenting coordinator recommendations/reports<br>  ○ Judicial review of parenting coordinator decisions<br>  ○ Immunity<br>  ○ Risk management<br>  ○ Further research needed |
| **Other** | • This article, while 20 years old, provides insight into what does and does not work for implementing and maintaining a parenting model in the United States; Canadian systems would likely run into many of the same issues due to shared North American ideals around family law. |
| | |
| **Initiative** | Parenting coordination models (sources and scope) |

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|---|---|
| **Citation** | Milfred D Dale, Hon Dolores Bomrad & Alexander Jones, "Parenting Coordination Law in the US and Canada: A Review of the Sources and Scope of the PC's Authority" (2020) 58:3 Family Court Rev 673. |
| **Hyperlink** | https://doi.org/10.1111/fcre.12507 OR https://primo-pmtna02.hosted.exlibrisgroup.com/permalink/f/fbi72i/TN_cdi_wiley_primary_10_1111_fcre_12507_FCRE12507 |
| **Source Type** | Academic article |
| **Description** | • Dales, Bomrad, and Jones explore the legal basis of parenting coordination models in the United States (now used in some capacity in all fifty states) and Canada (primarily BC, PEI, Alberta, Ontario) and the scope of parenting coordinators' (PC) authority.<br>• Authors recognize that the parenting coordination framework differs widely between jurisdictions (e.g., some PCs are akin to mediators, others have more complicated roles) and summarize these features in plain language.<br>• Statutes, rules, and case law that expose controversies and "psycholegal flashpoints" in this type of model are reviewed in detail:<br>  ○ Table 1 under Section 6 ("Existing Parenting Coordination Statutes and State-Wide Rules") is a great resource that lists, and provides commentary on, American and Canadian statutes/rules governing parenting coordinator appointments.<br>  ○ Table 2 under Section 6 ("Existing Parenting Coordination Statutes and State-Wide Rules") similarly lists American and Canadian statutes/rules relevant to the authority, scope, and duties of parenting coordinators.<br>• Authors' suggestions for developing and improving legal parenting coordination frameworks include but are not limited to:<br>  ○ Establishing a coherent standard of review for PC decisions, as many statutes are silent on this matter.<br>  ○ Ensuring courts retain ultimate decision-making and case-management authority over these types of files (to preserve parties' due process rights, including the right to review/appeal; PCs can and should have minor decision making abilities). |
| **Other** | • This source reviews the AFCC's updated (2019) Guidelines for Parenting Coordination, which serves as a good update on the article directly above this entry. Suggestions for reform may serve as a good starting point for developing or improving PC-focused adjudicative models in Canada/Saskatchewan. |
| | |
| **Initiative** | Parenting coordination models (Canadian context) |
| **Citation** | Lorne D Bertrand & John-Paul E Boyd, "The Development of Parent Coordination and an Examination of Policies and Practices in Ontario, British Columbia, and Alberta" (2017), online: *CanLIIDocs* <canlii.ca/t/285q>. |
| **Hyperlink** | https://www.canlii.org/en/commentary/doc/2017CanLIIDocs274#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA OR see above link. |

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| **Source Type** | Academic article |
| **Description** | • This Canadian Research Institute for Law and the Family report (1) explains the development of parenting coordination models and (2) reviews parenting coordination policies and practices in Ontario, British Columbia, and Alberta.<br>• Highlights the importance of a parenting coordinator to "reduce or manage post-relationship conflict", which not only benefits parents/children but also improves the efficiency/effectiveness of the justice system.<br>• Provides historical summary of this model, which is credited as being developed in the United States in the 1980s.<br>• Summarizes studies that seek to define the effectiveness of the PC model ("2.4 The Effectiveness of Parenting Coordination").<br>• Summarizes parenting coordination practices/law in Canada ("3.0 Parenting Coordination in Canada"), specifically in Ontario, BC, and Alberta. For example:<br>  ○ Ontario – Parties partake in initial mediation à referred to PC when they can't come to a decision à PC can arbitrate a binding decision à PC is intended to assist with more minor, day-to-day parenting decisions (cannot decide major decisions like custody and access) à no legislation or court direction for PC authority, but parenting coordination must be entered voluntarily by the parties (cannot be ordered by court)<br>• Authors conclude that, based on evidence from the US, parenting coordination is "quite effective in achieving its intended goals" and endorse BC/Ontario's systems (Alberta lacks formal the formal structure utilized by these two provinces).<br>• Areas for further research to determine the widespread feasibility of this model are presented on pages 34 and 35. |
| **Other** | • Discussion of Alberta's system could be of interest to developing a parenting coordination model in Saskatchewan (due to proximity, similarity in other areas of law, etc.). |
| **Expanding Arbitration Models + Cross-Disciplinary Considerations** | |
| **Initiative** | Australian Law Reform Commission comprehensive family law system review (includes arbitration and multi-disciplinary considerations) |
| **Citation** | Australia, Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System: Final Report* (Brisbane: 2019), online: <apo.org.au/node/229971>. |
| **Hyperlink** | https://apo.org.au/node/229971 |
| **Source Type** | Law Reform Commission report (Australia) |
| **Description** | • In 2017, the Australian Law Reform Commission began the first comprehensive review of Australia's *Family Law Act 1975* (Cth) since the Act's inception in 1976.<br>• The Commission's scope included Australia's entire family law system and it considered topics such as surrogacy, family violence, access to justice, child protection and support, and interdisciplinary considerations (e.g., social support services). |

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| | • This report summarizes the Commissions inquiry and presents several suggestions for improving family law processes (recommendations start on page 15). Recommendations regarding adjudication of family law matters include:<br>  ○ Increasing the scope of matters that may be arbitrated outside a courtroom (with or without referral from a court).<br>  ○ Expanding social support services so that case workers can assist in managing clients who are engaged with the family law system.<br>• Purported outcomes of implementing the Commission's recommendations are listed on page 25. |
| **Other** | • This report provides a thorough overview of a family law system in another common law jurisdiction. Could be useful for drawing parallels between Canadian and Australian law to identify whether the Commission's recommendations would be appropriate in revamping our adjudicative family law models. |
| | |
| **Initiative** | Arbitration (British Columbia centric) |
| **Citation** | John-Paul E Boyd, "Arbitration of Family Law Disputes in British Columbia" (2017), online: *Canadian Research Institute for Law and the Family* <see link below>. |
| **Hyperlink** | https://static1.squarespace.com/static/5b6db734b1059890c89e8172/t/5ba54f599140b7c36947925c/1537560411750/Boyd+-+Arbitration+-+CFLQ+-+FINAL.pdf |
| **Source Type** | Online report (Canadian Research Institute for Law and the Family) |
| **Description** | • Boyd discusses the lack of family law arbitration in British Columbia before the *Family Law Act* (SBC 2011 c 25) came into force in 2013.<br>• The Act emphasized resolving family law cases outside of course (see division entitled "Resolution Out of Court Preferred") and has since been amended to make "specific provision for the arbitration of family law disputes." Boyd discusses this legislation in great detail and identifies limitations of family law arbitrators.<br>• The report is intended to "serve as a handbook for the arbitration of family law disputes while the practice is in its infancy in the province".<br>• In BC, "family dispute resolution professionals" (e.g., lawyers, arbitrators, and parenting coordinators) are empowered to resolve family disputes outside of the courtroom, but this process is not delineated in the legislation (which can cause confusion and frustration for all parties involved).<br>• Recommendations (pages 34 and 35) to improve arbitration include:<br>  ○ More flexible, scalable arbitration procedures for arbitrating family law disputes so that parties have access to "just, speedy and inexpensive" results for their disputes in a way that minimizes conflict (compared to courts).<br>  ○ Establishing an organization tasked with creating "best practices" for lawyers, psychologists, and social workers acting as arbitrators. |
| **Other** | • This report focuses on improvements to traditional arbitration, rather than implementing completely or partially novel adjudicated models, and is specific to the jurisdiction of BC. However, the straightforward recommendations at the end of the document could serve as realistic improvements to Saskatchewan's framework (legal or educational) or jumping off points for further research. |

| Restorative Justice Models | |
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| **Initiative** | Restorative justice in family law through use of the "circle process" |
| **Citation** | Susan Swaim Daicoff, "Families in Circle Process: Restorative Justice in Family Law" (2015) 53:3 Family Court Rev 427. |
| **Hyperlink** | https://doi-org.cyber.usask.ca/10.1111/fcre.12164 |
| **Source Type** | Academic article |
| **Description** | • Daicoff explores using a "circle process" in family law to promote healing between parties and within the legal profession itself.<br>• This model values the idea that "all humankind is interconnected" and collaboration (extended family, friends, community members, and legal counsel can be included, and group decision making is facilitated).<br>• The article acknowledges that the "full community" aspect of this model may be inappropriate in certain situations (e.g., domestic violence cases) depending on the needs and comfortability of the parties. The model can, fortunately, be modified to include only the parties and the circle keeper.<br>• The process can include multiple steps: preparation (moderated by the facilitator), problem-solving circles (to assign a binding outcome), and follow-up circles (to monitor compliance with the binding outcome).<br>• Daicoff notes that this model is enticing for the family law context because it allows external parties to provide input in generating and selecting solutions, as well as support the family in following the end agreement. The process promotes "mutual respect, equality, dignity, voice, tolerance of differences, community, collaboration, and interconnectedness" to foster good relationships and communication.<br>• The circle participants enforce accountability (not a judge or similar figure); this "self-policing" within the community is presented as a means to reduce post-dispute litigation. |
| **Other** | • Daicoff notes that families should be carefully selected to participate in this model (e.g., be mindful of domestic violence and significant mental illness barriers) and all participation should be completely voluntary. Therefore, it may serve as a useful supplemental process but is unlikely to replace existing adjudicative family law systems entirely. |
| **Physical Spaces for New Adjudicative Models** | |
| **Initiative** | Considering alternative models for family courthouse spaces |
| **Citation** | Patrícia Branco, "Considering a Different Model for the Family and Children Courthouse Building. Reflections on the Portuguese Experience" (2018) 8:3 Oñati Socio-Legal Series 400. |
| **Hyperlink** | https://doi.org/10.35295/osls.iisl/0000-0000-0000-0940 |
| **Source Type** | Academic article |

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| **Description** | • Proceeds from the idea that courthouse buildings "do not usually play a significant role in most socio-legal research on law-and-courts" and where they have been considered, we take for granted the need for a ritualized adjudicative process within a certain kind of building, usually a pompous/prominent one (abstract)<br>• Argues that to be effective, jurisdiction has to be inscribed in space, geographically and architecturally, and that courthouse architecture has assigned legal discourse to a proper space that creates a "structure, a context, a special and symbolic place" where adjudication can occur uninterrupted by daily life (at 403). Author states that the "built environment" of the judiciary is important to explore, particularly in the family law context, as it "reveals the social practices, the values and governing principles that maintain the judiciary" (at 404).<br>• Author surveyed a number of legal system participants (including prosecutors, judges, and system users) in Portugal, where family law proceedings occur in a "specialized court" within a regular courthouse building. Generally, their view of the adequacy of the current buildings was negative: the courtroom layout was too rigid, they required different kinds of hearing rooms, and a specialized building would be beneficial for this specialized court (at 409).<br>• Author notes that it has been argued that courthouse design plays a prominent role in "controlling the movement and behavior of those involved in trials and hearings" in ways that can impact their ability to participate in it (at 409). This is observed by both professionals and system users, who identify the inadequacy of courtrooms for holding family hearings and case conferences and seem to share the sentiment that they should be adapted to seem less "scary" or "criminal" in the family context (at 409-410). Thus, it is suggested that there should be a specialized courthouse for this specialized court, one designed to "ease the emotive nature of the conflicts and foster the resolution of the disputes through an agreement" (at 412).<br>• However, she also noted a tension between concern for participants' comfort and the due process of law, first in the effectiveness of outcome (the traditional courtroom structure providing a solemnity that reflected the authoritative nature of the law) (at 410), and in the safety of the participants (where a more intimate, less professional space may lead to an unsafe physical proximity between people in conflict, particularly where domestic violence is a concern) (at 412).<br>• Article concludes that thinking about the future of family justice raises a number of questions about how procedure ought to look and what values it ought to promote, and that this also requires thinking about courthouse spaces. It is important to assess whether court design has the capacity to embody new conceptions of public space and judicial power capable of "responding to the new social contexts in which courthouses operate, and therefore promote an effective access to justice" (at 415). |
| **Other** | • Though this is not exactly on the topic of alternative adjudicative models, it could be helpful if what we are considering is a redesign of the current system. While the author deals with traditional courthouse spaces (and therefore traditional adjudicative models), the consideration of alternative models could also consider alternative spaces. I know it's not necessarily a given that alternative adjudication would happen in a courthouse, but if we are redesigning the system, why not think very intentionally about the space in which this *will* occur? |

[1] See Amy Jo Ehman, "The Evolution of the Provincial Court of Saskatchewan" (2018) at 61, online (pdf): Saskatchewan Provincial Court Judges Association <https://sasklawcourts.ca/wp-content/uploads/2021/01/Evolution-of-the-Provincial-Court-of-Saskatchewan.pdf>.
[2] See Canada, Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change*, (Ottawa: 2013), online (pdf): <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>.
[3] See The Canadian Bar Association, "Reaching Equal Justice Report: An Invitation to Envision and Act" (November 2013), online (pdf): <http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf>.
[4] See Julia Quigley, Graham Sharp & Janelle Souter, "Action to Justice: Addressing Access to Justice in the Saskatchewan Court of Queen's Bench" (2016), online (pdf): *Dean's Forum on Dispute Resolution and Access to Justice* <https://law.usask.ca/documents/research/deans-forum/13_SuperiorCourtandCourtProcesses_PolicyDiscusionPaper_2016DeansForum.pdf>; Melissa Nelson, Jenine Urquhart & Miranda Wardman, "Next Steps in Exploring Family Justice in Saskatchewan" (2020), online (pdf): *Dean's Forum on Dispute Resolution and Access to Justice* <https://law.usask.ca/documents/research/deans-forum/familyjustice-deansforumpolicydiscussionpaper_2020.pdf>; Rory Erickson, Shelby Fitzgerald & Pam Watson, "Reimagining Family Justice in Saskatchewan 2.0" (2021), online (pdf): *Dean's Forum on Dispute Resolution and Access to Justice* <https://law.usask.ca/documents/research/deans-forum/reimaginingfamilyjustice2.0_policydiscussionpaper_march2021.pdf>.
[5] See Government of Saskatchewan, "Family Law Screening Officers to Strengthen Response to Family Violence and Improve Access to Justice" (October 18, 2022), online: <https://www.saskatchewan.ca/government/news-and-media/2022/october/18/family-law-screening-officers-to-strengthen-saskatchewans-response-to-family-violence-and-improve-ac>.
[66] See The Alberta Family Wellness Initiative, "ACEs: Adverse Childhood Experiences" <https://www.albertafamilywellness.org/what-we-know/aces/>.
[7] See Kendall Latimer, "Sask. has the Worst Intimate Partner Violence Rate of Any Province. Here's What Advocates Say Needs to Happen" (December 8, 2021), online: *CBC News* <https://www.cbc.ca/news/canada/saskatchewan/sask-intimate-partner-homicide-deadly-relationships-1.6275128>.
[8] See Charlotte Sullivan & Julie Macfarlane, "Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2019-2021" (October 2021) at 11, online (pdf): *National Self Represented Litigants Project, University of Windsor Faculty of Law* <https://scholar.uwindsor.ca/cgi/viewcontent.cgi?article=1010&context=lawnsrlppubs>.
[9] See John-Paul E. Boyd, "Thoughts on the Drawing of Children's Affidavits" (November 15, 2019), online: *The Canadian Bar Association* <https://www.cba.org/Sections/Family-Law/Articles/2019/Drawing-of-Childress-Affidavits>.
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