

# BRAIN SCIENCE AND THE LAW: A TRAUMA-INFORMED APPROACH TO FAMILY JUSTICE REFORM

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# INTRODUCTION

- Research in Neuroscience and Child Development suggest that early life experiences have future developmental implications
- This is important for not only health policy makers, but also law reform
- Bill C-78 considered the lasting effects of family violence on a developing brain when implementing changes to the *Divorce Act*



# WHAT IS “BRAIN STORY”?

- “Brain Story” is an Alberta Family Wellness Initiative, which seeks to educate both public and professional organizations on child brain development and its relationship with lifelong health outcomes
- “Brain Story Certification” consists of modules which cover a more in-depth exploration of brain development and the consequences on adult wellbeing
- More information on the course and to enroll in the free online Brain Story Certification can be found at: <https://www.albertafamilywellness.org/>



# NEURODEVELOPMENT IN CHILDREN

- “Serve and Return”
  - positive child-caregiver interactions
  - back and forth exchanges which help the child learn how to deal with their emotions and stress
  - may alter gene expression which can create long lasting effects on the brain and the resulting behaviour
- Executive function
  - mental processes involved in our ability to pay attention, working memory, and self-control
  - encouraged by adult caregivers by modelling social behaviour, social connections, helping solve problems, and creative play
  - developing these skills are imperative in maintaining good mental health, emotion regulation, impulse control, and mental flexibility



# ADVERSE CHILDHOOD EXPERIENCES

- Adverse childhood experiences (ACEs) are negative and stressful events which can contribute to lifelong health risks
- These events are often categorized as falling within either abuse, neglect, or household dysfunction
  - a family member's incarceration
  - mental illness
  - addiction or violence
- Creates a bidirectional cycle where the risk factors for childhood adversity can lead to intergenerational adversity



# TOXIC STRESS

- A result of long-lasting threats paired with the absence of a supportive caregiver to buffer the stress by making them feel safe and aid in developing coping skills
- It produces high levels of stress hormones which interfere with healthy brain development
- The longer the child is exposed to this toxic stress the more likely they will go on to endure a lifetime of health issues such as addiction and mental illness
- Allostatic load
  - The body's attempt at balancing the repeated high levels of stress over time
  - A high allostatic load engages response systems in the body which are not designed to be turned on constantly
  - This can become toxic to neurons and cause them to shrink so that they no longer function properly



# FAMILY VIOLENCE AND HOMELESSNESS

- Family violence is a higher reported experience among those who are homeless
- Among homeless youth, abuse, family dysfunction are commonly found
- Often individuals who experience homelessness, mental illness, or addiction find themselves involved in the legal system



# The Missouri Model

The four stages that an organization faces on its journey to understanding and addressing trauma:

DEVELOPMENTAL STAGE	KEY TASKS	ORGANIZATIONAL PROCESSES	INDICATORS
<b>Trauma-Aware</b>	Awareness and attitudes	<ul style="list-style-type: none"> <li>■ Awareness training</li> <li>■ Leadership support</li> <li>■ Organization considers implications of change</li> </ul>	<ul style="list-style-type: none"> <li>■ Staff can define trauma</li> <li>■ Staff understand impact of trauma</li> <li>■ Trauma discussed in informal conversations</li> </ul>
<b>Trauma-Sensitive</b>	Knowledge, application, skill development	<ul style="list-style-type: none"> <li>■ Exploration of trauma-informed values</li> <li>■ Organizational self-assessment</li> <li>■ Determination of readiness for change</li> <li>■ Change team formed</li> <li>■ Examination of role of clients in organization</li> <li>■ Review of trauma screening and treatment options</li> </ul>	<ul style="list-style-type: none"> <li>■ Trauma cited in mission statement</li> <li>■ Trauma training for all staff</li> <li>■ Information on trauma available and visible to staff and clients</li> <li>■ Staff develop and deepen trauma skills</li> <li>■ Management responds to secondary trauma in staff</li> </ul>
<b>Trauma-Responsive</b>	Change and integration	<ul style="list-style-type: none"> <li>■ Planning and action for change</li> <li>■ Environmental review and modification</li> <li>■ Review of all policies and procedures</li> <li>■ Development of trauma-informed staff supports</li> <li>■ Development of new programs and services</li> </ul>	<ul style="list-style-type: none"> <li>■ Staff practices reflect new knowledge</li> <li>■ Language reflects values</li> <li>■ Policies in place to address staff trauma</li> <li>■ Process in place to identify and respond to trauma</li> <li>■ Clients play meaningful roles in organization</li> </ul>
<b>Trauma-Informed</b>	Leadership and sustainability	<ul style="list-style-type: none"> <li>■ Measuring impact on clients and staff</li> <li>■ Revision of policies and procedures</li> <li>■ Engagement of larger community</li> <li>■ Development of decision structures that integrate information on trauma</li> <li>■ Advocacy among payers and policymakers</li> </ul>	<ul style="list-style-type: none"> <li>■ New leaders hired for commitment to trauma</li> <li>■ All staff skilled in trauma-informed practices</li> <li>■ All aspects of organization reflect trauma-informed values</li> <li>■ Process in place to review fidelity over time</li> <li>■ External agencies and community members request assistance</li> </ul>

Patsy Carter & Andrea Blanch, "A Trauma Lens for Systems Change" (2019) Stanford Social Innovation Review 49.

# TRAUMA-INFORMED SYSTEMS CHANGE

- A systems change approach to a trauma-informed legal system can reduce long-term consequences of trauma for both the individual and society and specifically in law, increase client satisfaction and positive client outcomes



# WHAT CAN BE DONE IN THE LEGAL CONTEXT?

- Children who have experienced the incarceration of one or both parents have typically been exposed to significantly more risk factors such as poverty, abuse and neglect
- Children who have parents involved in a high conflict divorce report experiencing more traumatic impact from the divorce and lower post-divorce adjustment
- Carrying into adulthood, rates of criminal justice involvement are higher among individuals who have had several ACEs



# WHAT CAN BE DONE IN THE LEGAL CONTEXT?

- All programs that are implemented should be in accordance to the United Nations Convention on the Rights of the Child (UNCRC)
- In the *Alternative Report to the UN Committee on the Rights of the Child* recommendations to advance children's rights in Canada included education of judges and lawyers, maintaining the best interests of the child, and child participation and representation
- Preventing the bidirectional model of ACEs is a duty that falls on all sectors involved in the risks associated with them. This includes providing support to parents and implementing systems which understand the intergenerational consequences of adversity and toxic stress to ensure that these systems do not further traumatize them



# WHAT CAN BE DONE IN THE LEGAL CONTEXT?

- Trauma informed services
  - Recognizing and responding appropriately to the impact of stressful situations on children, their caregivers and others who are impacted by the system could create systemic change in this area that needs attention
- Assessing how programs are working in the community
  - Professional development
- Screening tools can be used to ensure that the client and the children involved receive the appropriate support, and a fair process
  - Bill C-78



# Zoom: Transform the Family Justice System

STRATEGY Objectives

*A family well-being **paradigm, shift** based on brain science*

Increase **justice sector awareness** of the relevance of brain science

Promote a **holistic perspective** on family justice issues

Increase **public awareness**, of the impact of toxic stress and resilience.

Normalize **integrated, cross-sector approaches** to policy and action

**Transform the family justice system by focusing on achieving family well-being**

*Justice policy and programs to reduce adversity, enhance resilience & support families.*

**Align** family justice **policies and programs** with the family well-being goal

**Reduce** safely the use of **adversarial processes**

Coordinate and develop policies and programs to **increase family capacity**

Coordinate and develop policies and programs to **support family members**

**Integrate** justice and community services for families.

*Innovations (through experiment, evaluation and scaling) to achieve family well-being*

Innovate ways that safely **reduce adversarial** family legal **processes**

Innovate and coordinate approaches that **assess** family capacity and risks

Innovate ways that empower families to improve **conflict skills** and **reduce harms**

Innovate ways to enhance **children's resilience**

Innovate and coordinate **accessible cross-sector supports** for families

Innovate justice system integration with **community-level** services for families

ASSET & CAPACITY DEVELOPMENT Objectives

Increase the Role of Indigenous Communities in Family Justice Transformation



TBD

TBD



# AVOIDING A COLONIAL APPROACH

- There should be careful consideration of how past trauma, and continual barriers to justice that Indigenous people face should be addressed when looking into law reform, especially in the area of family law
- Research in this area fails to fully capture the unique adversity that Indigenous people experience, and the coping strategies which most benefit them on their path to resiliency
- Without acknowledging that family wellness and a child's best interests are often viewed through a colonial lens, this factor can become problematic in family law courts



# AVOIDING A COLONIAL APPROACH

- Providing opportunities for Indigenous communities to develop their own strategies which suit their needs may serve as a beneficial approach
  - problem solving courts
  - Indigenous Therapeutic Jurisprudence,
  - community healing through restorative justice
- The Alaska Tribal Child Welfare Compact, has the intention of preserving Native culture by allowing Alaskan tribes to oversee their own child welfare issues where social workers from outside their communities would normally intervene and often would remove the children from their communities
- When researching ways to transform the family justice system in Canada, there must be emphasis placed on the need for caution when using a colonial idea of what family wellness is about



# ADDITIONAL RESOURCES

- <https://www.albertafamilywellness.org/>
- <http://www.traumainformedlaw.org/resources>
- <https://www.akresilience.org/trauma>
- <https://childrenfirstcanada.org/childrens-charter-english>
- Patsy Carter & Andrea Blanch, “A Trauma Lens for Systems Change” (2019) Stanford Social Innovation Review 49.