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One Judge for One Family: Differentiated Case Management for Families in Continuing Conflict

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ONE JUDGE FOR ONE FAMILY: DIFFERENTIATED CASE MANAGEMENT FOR FAMILIES IN CONTINUING CONFLICT

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Abstract: *Understanding the differences between family cases and other types of litigation is essential for an appropriate response to family disputes. Judges have a role in family cases that markedly differs from the traditional judicial role. The authors argue that an effective and accessible family justice system requires pre-trial and post-trial case management by a single judge, an approach to family justice reflected in the slogan: "One judge for one family." Judges should have the necessary knowledge, skills, and training needed to resolve family disputes and to help effect changes in parental behaviours and attitudes, as well as the willingness to collaborate effectively with non-legal professionals. A*

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differentiated approach to the way each family case is managed is required, varying with the nature of the case, the nature and level of the conflict, and the stage of the litigation process. The paper includes consideration of Canadian approaches to judicial case management, including analysis of the small body of reported case law on the reasons for judicial managing and monitoring family cases before and after trial, and on recusal – when to stop case management.

I. INTRODUCTION

Traditional adversarial approaches used by the courts for civil litigation have not worked well for family law cases. Understanding the difference between family cases and other types of litigation is essential for an effective response to family disputes, as judges have a role in family cases that markedly differs from the traditional judicial role. If this distinctive role is understood, the traditional court process can be modified to make the family justice system more effective in terms of outcomes for children and their parents and more efficient in the use of public and private resources.

Significant and laudable steps have been taken in Canada to encourage the timely resolution of family disputes by the use of early judicial case conferences and settlement conferences. However, much less attention has been paid to families whose cases do not settle, but instead, continue unresolved through the litigation process in spite of the numerous judicial and extra judicial processes aimed at settlement. Though these ongoing cases are a relatively small portion of the total number of family cases filed, they take up a disproportionate amount of judicial time and resources.

Most cases settle with little or no judicial involvement. There are two types of cases, however, that require considerable judicial involvement to resolve and that would benefit greatly from case management. In some cases, the

parents are caught in deeply rooted negative behaviours and beliefs that are often very difficult to change. This can last for many months or years. One or both parents may also want to make significant use of the legal system, sometimes to resolve their disputes, but in other cases to harass or engage their former partners in an on-going relationship. In other cases, just as concerning, the parents are at serious risk of becoming caught up in such destructive behaviours and beliefs. We refer to these cases as ones where the families are in "continuing conflict."[1] It is clear that these cases of continuing, deep-rooted conflict are often harmful to children.[2]

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1 This approach is consistent with the social science research of (Joan B Kelly, "Parents with Enduring Child Disputes: Multiple Pathways to Enduring Disputes" (2003) 9(1) Journal of Family Studies 37 [Kelly 2003a]; Joan B Kelly, "Parents with Enduring Child Disputes: Focused Interventions with Parents in Enduring Disputes" (2003) 9(1) Journal of Family Studies 51 [Kelly 2003b]; Joan B Kelly, "Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research" (2000) 39(8) Journal American Academy Child & Adolescent Psychiatry 963 [Kelly 2000]) and McIntosh (Jennifer E McIntosh, "Enduring Conflict in Parental Separation: Pathways of Impact on Child Development" (2003) 9(3) Journal of Family Studies 63). They refer to families in entrenched or enduring conflict, or on the pathway to entrenched or enduring conflict. We argue that the social science literature tends to describe all families in litigation as "high conflict," when in fact, not all conflict is the same. Some inter-parental conflict may be destructive, while other conflict, in particular, that which occurs without the children's knowledge or that is resolved fairly quickly may have no long term effect or even positive effects; Rachel Birnbaum, Barbara Jo Fidler & Katherine Kavassalis, *Child Custody Assessments: A Resource Guide for Legal and Mental Health Professionals* (Toronto: Thomson Carswell, 2008). There is a need to distinguish families in continuing conflict (where there may be opportunities for resolution by a case management judge) from those high conflict families (more entrenched) that require case management to move the case to trial.

2 See Kelly 2003(a), Kelly 2003(b), Kelly 2000 and McIntosh, *supra* note 1. See also John Grych, "Interparental Conflict as a Risk Factor

Whatever can be done to either prevent the deeply rooted negative parental behaviours and beliefs, or ameliorate them, should be done. Social science literature tells us that early intervention is critical and recommends steps that can be taken to assist these families.[3] Judges can have a very important role to play in reducing conflict; they need to intervene early and develop an effective plan for the family in question. It is also clear that if courts do not intervene effectively, cases can end up being dealt with by several different judges, continuing for many months, or even years, without an appropriate resolution. Far from meeting the goals of the judicial process of resolving cases in a just, timely, child-focused and affordable way, having a number of judges deal with a case can have the opposite effect. The resulting delay is not only financially and emotionally exhausting for the parents, but the lack of an effective, timely resolution adversely affects the well-being of the children involved, and increases costs to parents and the justice system.

The central theme of this article is that an effective and accessible family justice system requires pre-trial and/or post-trial management by a single judge who deals with conferences and motions and both procedural and substantive issues. The trial should be held before a different judge, however.[4]

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for Child Maladjustment: Implications for the Development of Prevention Programs" (2005) 43(1) Fam Ct Rev 267.

3 Janet R Johnston & Vivienne Roseby, *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (New York: The Free Press, 1997).

4 It has been argued that another effective model for family cases would be to have one judge deal with all of the contested pre-trial applications in a case and the trial, so long as that judge does not conduct a settlement conference; Donna J Martinson, "One Case-One Specialized Judge: Why Courts Have an Obligation to Manage Alienation and Other High-Conflict Cases" (2010) 48(1) Fam Ct Rev

Internationally, this move to adopt case management is reflected in the slogan: "One judge for one family." The case management judge, as well as the trial judge, must have the necessary knowledge, skills, and training needed to resolve family disputes and help effect changes in parental behaviours and attitudes.

A differentiated approach to the way each family case is managed is required, varying with the nature of the case, the nature of and level of the conflict, and the stage of the litigation process. Ideally, sophisticated court screening systems involving judges and other professionals should be in place at the start of the process to assess and triage all family cases, resulting in case specific case management. In reality, such systems are not in place in Canada.

While unified family courts provide the best option for early assessment and case specific case management, they are not available in many places. Nevertheless, existing court procedures can and should be modified to provide the necessary institutional structure and support for such case management. Court procedures should provide that a single judge will be assigned to manage a family case at the start of the court process, based on any one of a number of factors including: the matters at issue, such as allegations of alienation or domestic violence, or alleged threats to safety or wellbeing; previous unsuccessful attempts at alternative dispute resolution; vituperative rhetoric in pleadings and affidavits; and disrespectful, blaming behaviours in court. Any other family case in which custody is a live issue, which has not settled after a judicial case conference, and that is scheduled for a contested interim motion (or at the latest, a second contested interim motion), should also be assigned to a single case management judge. In the absence of such court procedures, individual

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180. That approach is used in British Columbia, for the management of non-family cases that are managed by one judge.

judges can take steps to increase the use of case management generally, and make it effective for the specific family before the court.

We develop our central theme by considering a number of topics. Part II explores why family disputes are different from other types of cases. Part III considers various aspects of judicial case management: the traditional approach without case management and its challenges; the benefits of case management by one judge; differentiated case management, and why we need judges with the necessary knowledge, skills, and training in dealing with family cases. Part IV explores the Canadian approaches to judicial case management. We look at case management by one judge generally; analyze the small body of reported Canadian case law[5] that addresses issues related to reasons for judicial managing and monitoring cases involving families in continuing conflict before and after trial; and finally we discuss recusal – when to stop case management. Part V reviews the limited social science research relating to case management. We conclude, in Part VI, by exploring future directions for law reform and research concerning case management and providing some final thoughts on the need for effective case management.

II. WHY FAMILY DISPUTES ARE DIFFERENT

In most places in Canada, the family justice process has been grafted onto a court system that historically dealt with very different types of cases. Most litigation is retrospective, focused on ending a relationship on just terms. Family law

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[5] Judges have become increasingly knowledgeable about the social science research on the negative impact of conflict on children post separation. As a result, more judges are case managing disputes involving families in continuing conflict. However, there are few reported decisions that explain why or how judges should case manage.

cases are prospective - they focus on what arrangements will be best for the children and provide appropriately for the future economic needs of the parties. Family cases involve more than dispute resolution. The restructuring of the familial relationships is a central objective of the family justice process: changing parental attitudes and future behaviours is essential if the best outcome is to be achieved for their children. Achieving a final resolution of legal disputes is a central objective of much of the justice system, but in family cases there is often no finality. Legal issues may well continue to arise long after a trial or settlement; variation, review, and enforcement issues are major aspects of family justice.

Most parents who separate are able to agree, perhaps with the assistance of lawyers, mediators, or other professionals, but without significant judicial involvement, on a plan of care which meets the needs and interests of their children. There are, however, cases which will not settle quickly or easily. They usually involve complex family dynamics and significant continuing conflict. There are a variety of causes for the complexity and conflict, that often overlap and exacerbate each other: parental communication problems, a lack of problem solving skills, personality disorders of one or both parents (which can involve lack of insight into the parent's own behaviour, blaming the other parent, seeing oneself as a victim and a disregard for judicial authority and the law), mental health issues, substance abuse problems, and patterns of controlling and violent behaviour. These cases need the involvement of the judiciary to make plans or resolve disagreements.

III. JUDICIAL CASE MANAGEMENT

The Traditional Approach and Its Challenges

The traditional approach to family litigation does not involve case management by specialized judges. Rather, family cases

are heard by judges who have a wide case load and regularly deal with other types of cases, such as criminal and commercial matters. The parties choose when and how often they will come to court, and when a case comes to trial. If before trial one or both of the parties have an issue that they want decided by a judge, such as seeking an interim order, enforcement of an order or resolution of a dispute about a procedural matter, they file documents relevant to that specific dispute and the case comes before a "duty judge," who deals only with the specific claim before the court at the time. If there is more than one matter in dispute before trial – as commonly occurs in these cases with continuing conflict – each appearance is likely to be before a different judge.

These ongoing cases often end up dragging through the court system without real direction. This traditional approach to family cases can exacerbate the conflict, increase delay and expense, and contribute to the harm already caused to children who live in a family experiencing significant conflict. Not uncommonly there will be hearings and conferences before 5 or 10 different judges before trial. [6] If one party sees tactical, financial, or psychological advantage in prolonging the proceedings, it is likely to be many months or even years before a case comes to trial. Further, even after a trial, the cases involving families in continuing conflict often continue to come back before the courts for enforcement or variation applications.

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[6] See e.g. *Geremia v Harb*, 2008 CarswellOnt 2483, [2008] OJ 1716, 54 RFL (6th) 274 (SCJ) which involved eight different judges for a combined total of 25 court orders and more than 2000 pages of transcript over 8 years. The trial then involved 57 days of evidence. In the end, Quinn J, who conducted the trial and remained seized of the case through a number of post-trial motions, concluded that the "parties have gorged on court resources as if the legal system were their private banquet table," and ordered that neither party could commence further proceedings without first having obtained leave of the court.

Benefits of Case Management by One Judge

Governments, mental health professionals, lawyers, the courts, mediators, and social service agencies continue to struggle to provide more effective and efficient interventions for separating families generally and for high conflict families in particular.[7] An important part of family justice reform efforts is having litigation involving one family managed by one judge, who is skilled and knowledgeable in family matters, at least through all of the pre-adjudicative stages of the process. This call for one judge per case is a result, at least in part, of the significant problems that arise when several judges deal with a case involving one family. There can be:

- considerable and unnecessary delay;
- inconsistent approaches and results;
- added resource costs for the justice system and added expenses of both litigation and loss of income due to court appearances;

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[7] In the province of Ontario, where two of the authors reside, there has been considerable activity in terms of studies and reports about family justice. A number of professional organizations have collaborated to develop a plan for family justice reform. See Ontario Bar Association, Ontario Association of Family Mediation and the ADR Institute, *Home Court Advantage: Creating a Family Law Process That Works,* online: Ontario Bar Association <www.oba.org/En/homecourt/Main_EN/default.aspx>. The Attorney General of Ontario has endorsed the "Four Pillars" vision for family court reform, and significant steps have been made towards implementation. However, the current plans do not include an extension of case management.

- problems with one or both parents "trying out" behaviours that have already been kept in check by the previous judge(s);

- little or no monitoring of the number of applications, their nature or necessity, or the often inflammatory material that support them; and

- a lack of effective enforcement of the orders of another judge.

In addition, each time the case comes before the court, the new judge has to "get up to speed" on the case. Many times the case comes before the court with very little notice, framed as an "emergency," giving the new judge little or no time to prepare for dealing with this case. The parents can be understandably frustrated when a judge familiar with their case, who has shown interest in it, does not continue with them while they have to appear before a new judge whom they have never met. This is particularly frustrating for the parent who returns to court to enforce an order that has been breached by the other parent, an occurrence that is not uncommon in cases with continuing conflict. This multi-judge process can increase rather than reduce conflict in families.

In discussing the need for case management, we are advocating its use for "continuing conflict"[8] cases, rather than restricting it to "high conflict" families,[9] a term used in some

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8 *Supra* note 1.

9 The term "high conflict" separation was coined by Janet Johnston in the early 1990s to describe disputing separating parents involved in the court process who have been not able to resolve their post separation disputes due to high levels of acrimony, personality disorders of one or both spouses, poor communication and lack of cooperation. These cases require the assistance of multiple service providers (both mental health and legal) to resolve their custody and

social science literature and by some judges. As discussed above there has been a tendency in the discourse surrounding families with continuing conflict, including some of the jurisprudence, to label all these cases as involving "high conflict" cases. There is a danger in doing so as it does not identify the differences in the nature of and level of conflict, and the differing ways in which the conflict impacts upon the family, and in particular the children. While high conflict families invariably engage in continuing conflict, many cases where there is continuing conflict might not be characterized as having the intensity of conflict or degree of abuse or violence to be characterized as "high conflict". Without this differentiation, cases may be dealt with inappropriately in terms of interventions, expense, and outcomes for children, and in particular some cases of continuing conflict that require case management might not receive it.[10]

For more than a decade, those involved in law reform in a number of countries have recognized these concerns and advocated the value of having a single judge deal with a continuing (or high) conflict family. Specialized judges and case management have been key components of family law reform in a number of jurisdictions.[11] Continuing conflict

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access disputes. The social science and research literature has attempted to identify and provide a number of mental health interventions to assist these families (see Janet Johnston, Marjorie Gans Walters & Steven Friedlander, "Therapeutic Work with Alienated Children and Their Families" (2001) 39(3) Fam Ct Rev 316.

[10] See Rachel Birnbaum & Nicholas Bala, "Towards a Differentiation of "High Conflict" Families: An Analysis of Social Science and Canadian Case Law" (2010) 48(3) Fam Ct Rev 403 at 413 .

[11] See Barbara A Babb, "Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems" (2008) 46(2) Fam Ct Rev 230; Steve Baron, "The Scope of Family Court Intervention" (2003) 4 Journal of the Center for Families, Children

families require a judge who is knowledgeable in family law matters and a case management approach whereby families can be heard and disputed child-related matters resolved in a timely manner. Family problems are human relationship problems; the traditional judicial approach that sees the judge solely as a neutral and passive arbiter of an adversarial proceeding is often ineffective in meeting the needs of children and their parents. The role of family law judges is being redefined to include a role as conflict managers and dispute resolvers, rather than exclusively as fault-finders and neutral arbitrators,[12] and as having a role in trying to change parental behaviour and attitudes.[13]

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and the Courts 115; Gregory Firestone & Janet Weinstein, "In the Best Interests of Children: A Proposal to Transform the Adversarial System" (2004) 42(2) Fam Ct Rev 203; Nuno Garoupa, Natalia Jorgensen & Pablo Vazquez, "Assessing the Argument for Specialized Courts: Evidence from Family Courts in Spain" (2010) 24(1) Int'l JL Pol'y & Fam 54; Alfred A Mamo, Peter G Jaffe & Debbie G Chiodo, *Recapturing and Renewing the Vision of the Family Court* (Toronto: Ontario Ministry of the Attorney General, 2007); Ronald W Nelson, "Managing the High Conflict Cases: Parenting Co-ordinators and Case Management" (1999) 13(4) American Journal of Family Law 207.

12 Michael S King & Becky Batagol, "Enforcer, Manager or Leader? The Judicial Role in Family Violence Courts" (2010) 33 Fam Ct Review 406; Andrew Schepard, "The Evolving Judicial Role in Child Custody Disputes: From Fault Finder to Conflict Manager to Differential Case Management" (2000) 22 Ark L Rev 395.

13 There is similar value to having judicial continuity and a judicial role in changing behaviour for domestic violence cases in the criminal courts, as is the practice in some locales. An integrated domestic violence court pilot project has begun in Toronto in which judges with specialized knowledge about domestic violence will be in a position to try to change behaviours and attitudes. The pilot project is based on a "one family-one judge" approach used in several states in the United States. The family and criminal proceedings are not combined, but they appear before the single judge in sequence. If the

There are a number of benefits to having one judge manage a case involving one family. That judge can:

- take charge of the process and limit unnecessary proceedings;
- ensure that the parents are accountable for their behaviour, both in and out of the courtroom;
- inform the parents about what is in the children's best interests and set parameters with respect to their behaviour;

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case is not resolved, trials will be heard by other judges; thus, the legal integrity of each process is maintained :

> ... The cases are not combined but they do appear before the single judge in sequence. The appropriate law, standard of proof, rules of procedure and rules of evidence will apply in each case as they would in any court. All Crown policies will apply to the case as in any domestic violence court. Generally, both cases will be dealt with on the same day, sequentially. The judge will proceed through the process to plea and sentence in the criminal case and through the case management process to resolution in the family case. If a trial is required in either proceeding, it will be heard by a different judge.

(Justice Geraldine Waldman, "Managing the Domestic Violence Family Law Case" (Lecture delivered at the Toronto Integrated Domestic Violence Project, Quebec City, 17-19 November 2010). This is an important initiative that needs to be studied, and if successful, replicated. See Liberty Aldrich & Judy Harris Kluger, "New York's One Judge—One Family Response to Family Violence" (2010) 61 Juv & Fam Ct J 77.

- gain additional relevant information and a better understanding of the family dynamics;

- play a consistent and meaningful role in implementing the children's right to be heard (if they wish to be heard and are capable of articulating their own views), either by speaking to the children directly, or using other appropriate means;[14]

- determine what therapeutic, social service, or educational interventions may be effective, then persuading or directing the parents to participate, and monitoring their progress, and;

- where appropriate, facilitating settlement.

A secondary benefit is that judges and service providers learn more about their respective roles in this process.

The role of the judge as a case manager is, in part, the traditional judicial role of decision-maker, for example, resolving pre-trial disputes about a range of procedural and interim matters. In a family law case, however, the judge may also have a "therapeutic" or "behaviour changing" role.[15] The

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14 See, for example, *BJG v DLG,* 2010 YKSC 44.

15 It is helpful to recognize that the concept of "therapeutic jurisprudence" is central to many family cases, *not* in the sense that judges should be therapists, but in the sense that rather than focusing exclusively on the decisions made by judges, it is important to "study the effects of law and the legal system on the behavior, emotions," which is the definition of therapeutic jurisprudence in *Black's Law Dictionary,* 9th edition, 2009. The application of therapeutic jurisprudence principles was initially developed in the mental health law field and has recently been expanded to include other areas of law such as family law (see David B Wexler & Bruce J Winick, *Essays in Therapeutic Jurisprudence* (Durham, NC: Carolina Academic Press, 1991); Bruce J Winick & David B Wexler, eds,

judge is clearly not a "therapist" in the traditional sense of that term, but acting either alone or in conjunction with various service providers, the judge is attempting to change the attitudes and behaviours of the parents.

There must always be some flexibility in a case management by one judge system. If the assigned judge is permanently unavailable, the case will of course have to be reassigned. However, the fact that an assigned management judge is unavailable for a short time should not prevent that judge from remaining in charge of the case. For example, if the judge is temporarily assigned to a different judicial locale and a video or teleconference is not available or appropriate, or the judge is ill or on vacation, the case will be heard during that relatively short time period by a second judge. The assigned judge, though, should make sure that the second judge is informed about the circumstances of and history of the case; the second judge will return the case to the assigned judge, with a report about what happened.

Differentiated Case Management

Each case is different; not all cases require the same kind of management. We argue that an early, differentiated case management approach will result in better outcomes for children, and make the most effective use of limited judicial and other resources.

Conflict may arise or increase at different stages of separation and divorce cases, and there may be significant variation in the dimensions of, nature of, and levels of conflict in different cases. In some cases the judicial role should be to persuade or direct parents to engage with services provided by professionals outside the court system. In other cases, however,

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Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts (Durham, NC: Carolina Academic Press, 2003).

the primary judicial case management role may be to move a case towards an expeditious judicial resolution. For example, if there are allegations of sexual abuse, it may be valuable to have an early trial of this issue since so much will flow from this finding.

Judicial case management will also be very different at a pre-adjudication stage from the post-trial stage. Cases involving continuing conflict often end up coming back before the court after a "final" decision. Sometimes one parent applies to enforce the order of the court. Sometimes parents who view themselves as having lost at trial try to have the order changed without having any real basis to do so, claiming a change in circumstances. Using the traditional judicial approach will result in the same or even more serious adverse consequences for families than those that occur with this approach before adjudication. Post-adjudication management by the judge who made the trial decision can, for these reasons, be very important.

Other reasons for post-adjudicative management can include the decision maker's desire to monitor compliance with the order or the effects of the parenting plan put in place for the children. Knowing that they will appear before the same judge will make parents feel more accountable and hence increase compliance with court orders.

Judges with the Necessary Knowledge, Skills, and Training

Reaching decisions about what is in children's best interests is a complicated undertaking with high stakes. Judges dealing with family cases are called upon to recommend a settlement at a judicial case conference or a formal settlement conference, or to craft a decision after a hearing or trial, that will be effective and long lasting. They are often required to deal with difficult people, many of whom do not have lawyers. It is critical to a determination of a child's best interests that a judge has the

necessary knowledge, skills, and training in dealing with family breakdown. Judges must understand the complexities of family dynamics, including: the causes of and implications of family violence; other power imbalances within the family; and the causes of alienating parental conduct. They need to also know about the effects of these behaviours and attitudes on children and on parents, and their ability to parent effectively. As we have noted, multiple causes can underlie continuing conflict families, including personality disorders, other mental health issues, substance abuse, and patterns of controlling behaviour, and judges should be familiar with these underlying causes and their implications.

Judges need to be familiar with child development theory and must understand how a child can be adversely affected by conflict between the parents. They need to know about the significance of hearing from children, as well as the short and long term consequences of not hearing from them. Judges need to apply this knowledge to the particular family that the judge is dealing with to determine what is happening within this family, and what is required in the future to meet the best interests of the children; this identification of the real issues at stake is critical. In dealing with continuing conflict families, the judge is in a position to encourage early interventions by other professionals. Encouraging the wrong kind of intervention for a family or recommending or making a decision about what should happen that is not appropriate for the family may have significant adverse consequences, especially for the children.

Judges should have effective communication and management skills as well as other dispute resolution skills. While attempting to facilitate a settlement is always important, the judge also needs to know when a decision is required, and must be able to provide a decision in a timely way. The decision must be understood by the parents and children, and rendered in a way that will facilitate compliance with the

decision. Being able to identify the continuing conflict cases, determine the nature of the problems and devise the necessary solutions is not intuitive. Nor is the knowledge and expertise required learned from ordinary family living experience. Making wrong choices can be harmful to children.[16] Judicial education, training, and experience in dealing with family cases are essential if these cases are to be dealt with effectively and efficiently.

IV. THE CANADIAN APPROACH TO JUDICIAL CASE MANAGEMENT

Case Management by One Judge

There is growing recognition of the problematic nature of the traditional approach to family cases, and in every jurisdiction in Canada there is legislation, rules of court or court practice either explicitly or implicitly allowing for continuing case management by one judge**.** For example, Ontario has case management rules that apply to both trial courts, which permit case management by one judge.[17] In British Columbia, the *Supreme Court Act*[18] specifically requires a single judge to deal with all aspects of a case, including all proceedings subsequent to the hearing or trial if "practicable and convenient."

In practice, case management by one judge, or a variation of it, is being used in family courts in various places in Canada. For example, in the Superior Court in Toronto, currently there is a "two track" case management model, with

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16 Martinson*, supra* note 4 at 187-188.

17 See e.g. Ontario *Family Law Rules,* O Reg 114/99 as amended, Rules 39-41; and *Supreme Court Act*, RSBC 1996, c 443, s 14; *Supreme Court Family Rules*, BC Reg 169/2009, as amended, Rule 22-1(8).

18 RSBC 1996, c 443, s 14; see also the *Supreme Court Family Rules*, BC Reg 169/2009, as amended, Rule 22-1(8).

one judge dealing with all the conferences in a high conflict case, attempting to promote settlement and hearing "without prejudice" comments from the parties and their counsel, and the other dealing with contested motions based on admissible evidence and submissions. In Ottawa, a Unified Family Court location, there are Family Law Case Managers, called "Masters," carrying out some judicial case management functions; this model has apparently been successful in reducing delay and making better use of scarce judicial resources.[19] There is clearly a need for more study of the costs and benefits of different models of judicial case management of family cases.

Others are looking at ways to reform the existing process. For example, in July 2010, the government of British Columbia released a discussion paper, *White Paper on Family Relations Act Reform: Proposals for a New Family Law Act*[20] ("*White Paper*") recommending that:

> [j]udges be provided with more tools to both encourage settlement and promote the efficient and effective use of public and private resources. The Supreme Court Family Rules … have already given judges some additional case management tools. It is proposed that the new

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19 County of Carleton Law Association, Evaluation Subcommittee of the Family Law Bench and Bar Committee, *Evaluation of the Ottawa Family Case Manager Project: Year Two,* online: County of Carleton Law Association <http://www.ccla-abcc.ca/en/practice-resources/family/>.

20 British Columbia, Ministry of the Attorney-General, Justice Services Branch, Civil Policy and Legislation Office, *White Paper on Family Relations Act Reform: Proposals for a New Family Law Act*, (Vancouver: Ministry of the Attorney-General, 2010), online: <http://www.ag.gov.bc.ca/legislation/pdf/Family-Law-WhitePaper.pdf>.

> legislation will provide judges with increased authority to use a greater range of tools to manage disputes, expedite the litigation process, and enhance the enforceability of orders. The Ministry was also mindful of the need to ensure Provincial Court judges whose authority to act arises from the legislation, also have access to a range of case management tools.[21]

The consultation process that resulted in the *White Paper* recognized the need to give judges better 'tools' to manage family cases effectively, including preventing and responding to breaches of agreements or orders, and the need to address the problem of non-disclosure. It was widely recognized that case management is a tool to better manage, monitor, and enforce judicial decision-making, and a necessary part of law reform, and it is to be hoped that *White Paper* will provide guidance for reform in British Columbia and other jurisdictions in Canada.

At the same time, in many locales, especially those without a specialized family court, there is continued reluctance to adopt this approach. Some view it as constraining administrative flexibility in assigning judges to different locales and cases. It also requires a modification of the traditional judicial role, a change that is not universally popular.

Though the necessary legal framework for case management exists, the support of senior administrative judges is crucial to its successful implementation. In practice, decisions about *whether* and *how much* continuous judicial case management occurs in an area are usually made by the Chief Judge/Justice or Associate Chief Judge/Justice of each level of court in each jurisdiction, or by local administrative

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21 *Ibid* at 131.

judges. In Ontario, for example, there is more case management in the Ontario Court of Justice than in the Ontario Superior Court, even though proceedings in both courts are governed by the same rules. The differences are partially due to differences in jurisdiction and structure of courts, but the attitude of senior administrative judges also plays an important role.

Individual judges can make a difference, even when the institutional support is not present. Canadian judges can, and some do, choose to become seized of and manage family cases that they have had assigned to them on one occasion if there seems to be a significant likelihood of continuing conflict. These judges should be commended. However, in many locales, if a judge decides to do this, that judge has to deal with the case over and above the judge's regular judicial work load, often before or after regular court hours, and frequently with litigants who are unrepresented. The cases are emotionally draining and too often the judge who decides to become seized of a case takes on an extra workload. Thus, in some courts there are disincentives for a judge to take charge of a case involving continuing conflict. By fitting cases in around regularly scheduled cases, this approach also relegates these parents and children to a lesser place in the judicial process.

While there are places in Canada with unified family courts with specialist judges, in many courts generalist judges still deal with family cases. While some of these generalist judges take a real interest in family cases and either have or acquire the necessary skill and knowledge, others do not, and seem resistant to undertaking the unique role required by judges in family law cases. Although there are many judges in Canada who do an excellent job of dealing with family cases, not all jurisdictions recognize that judging in family cases requires knowledge, skills, and training.[22]

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[22] This point was made over and over again in the Report on Australia's

Canadian Case Management Jurisprudence

In this section we review the leading cases in the small body of Canadian jurisprudence that directly address the question of when and why judges have become seized with a family case before and post-trial.[23] Judges have taken charge of cases for a variety of reasons. We start by looking as the general principles that have developed. We then focus on how these principles have been applied in practice, both at the pre-trial and post-trial stages. Finally, we consider lessons learned from the jurisprudence.

Magellan Project; Daryl J Higgins, *Cooperation and Coordination: An Evaluation of the Family Court of Australia's Magellan Case-Management Model* (Canberra: Family Court of Australia, 2007), online: Australian Institute of Family Studies <http://www.aifs.gov.au/institute/pubs/magellan/>. As reported in the *Magellan Project* by stakeholders what is needed for high conflict family cases involving allegations of abuse is: "(a) timely judgments: "*Getting a final judgment at the end—in a timely fashion—is nice."* (b) making decisions: *"Being prepared to make a decision and saying: That is the last involvement of the Court with this family ...* (c) focusing on the critical issues and 'getting to the point': *"Whether they are self-represented or represented, a proactive judge will really quiz them as to what information or evidence they will file in Court, and how this will help me make a decision".*

A notable public statement by a judge in support of judicial specialization by "dedicated family law judges" was made by Ontario Court of Appeal Justice Gloria Epstein. Interview of Ontario Court of Appeal Justice Gloria Epstein (2 March 2011) on *The Agenda*, TVO, online: <http://www.tvo.org/TVO/WebObjects/TVO.woa?videoid?812703568001> (about 10 minutes into the interview).

[23] The authors suggest that when judges write their decisions and include their reasons for case management, researchers can learn more about what works and what does not work for some high conflict families as well as being able to provide longitudinal follow up on these cases.

Case Management by One Judge – General Principles

In a 2009 decision, the British Columbia Supreme Court commented on the challenges presented by cases involving families in continuing conflict, the harm that can be caused to children, the benefits of case management by one judge, and the need for institutional change, in *A.A. v. S.N.A.*[24] a case involving extreme alienation. Martinson J. noted that it is common for cases involving continuing conflict to come before the court numerous times and to have the applications heard by many different judges, and observed that this is not in the best interests of children as, "… the stakes are particularly high; children can be seriously harmed by the ongoing acrimony and lack of a timely resolution."[25]

She concluded that having one judge take charge of the case has many benefits: the judge will be familiar with the case so the parents do not have to repeatedly explain their situation; it avoids judge shopping; and it saves legal and other costs. She emphasized that in some cases the problems do not end with the trial, and it is common to have one parent or both repeatedly coming back to court. Reasons for doing so include: rearguing issues already decided at the trial (often in the guise of a variation application); alleged breaches of the court orders; and alleged significant access problems. The Court pointed out that if unchecked, these problems can go on for months or even years, and concluded that the trial judge, who knows the situation, should deal with these post-trial matters.

Martinson J. also supported an institutional response to the need for case management by one judge, stating that the ad hoc approach of leaving it up to individual judges to decide if

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24 2009 BCSC 387 [*AA v SNA*].

25 *Ibid* at para 79.

they will or will not take charge of a case is not effective as it "does not give these important cases, and the children involved in them, the attention they deserve."[26]

Similarly, Forgeron J. of the Nova Scotia Supreme Court, Family Division, in *Baker-Warren v. Denault* (2009),[27] agreed with the approach taken in British Columbia in *A.A. v. S.N.A.*, stating that an institutional approach to these cases should be adopted, that such cases should be identified early, and that "[o]ne judge should ordinarily be assigned to the case to ensure effective case management and timely resolution."[28]

Recently, the Ontario Court of Justice discussed the value of that court's case conferencing system. The primary objective of conferencing is to deal with cases justly and expeditiously; there is a focus on early dispute resolution to assist the parties in exploring, settling, or at least narrowing, the issues. In *J.C. v. A.K.* (2010),[29] Murray J. emphasized that dealing with cases justly includes being fair to all parties and ensuring a process that saves expenses and delay. Judges have a duty to work with parties to achieve those objectives. If more than one case conference is required the objectives are best achieved if the same judge hears each conference. Parties also

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26 *Ibid* at para 81. See also the British Columbia Supreme Court's earlier decision in *PCB v MMB*, 2003 BCSC 645 at para 18, where the Court, per Preston J., said that judges seize themselves of cases "because of a concern that justice may not be done in the proceeding unless a consistent course of action is followed based upon judgments of credibility or character only open to the judge who heard the witnesses testify." The Court also said, at para 19, that if a judge makes a declaratory judgment seizing himself or herself with a case, counsel cannot appear before another judge by consent.

27 2009 NSSC 59.

28 *Ibid* at para 10.

29 2010 ONCJ 455 [*JC v AK*].

have duties which include being prepared for the conference. Costs are an appropriate remedy if a party fails in that duty.

In *D.J.G. v. D.L.G.* (2010),[30] the Yukon Supreme Court discussed reasons why the judge who makes a final order should remained seized of future applications. Martinson J. noted that it was appropriate to ensure that there was a timely resolution of any variation application, pointing out that the children need to have the ongoing conflict between their parents stop and need some certainly about their future. Having one judge deal with any future application to enforce or vary the order helps to achieve those objectives. She also said that she, as the judge who made the final order was aware of relevant information about the parents and the child, knew what orders were made and why, and knew the evidence upon which they were based.

How Judicial Case Management Works in Practice - Pre-Trial Case Management by One Judge

In *J.C. v. A.K.*,[31] referred to above, the Ontario Court of Justice, a court which commonly uses case management, dealt with a case where a number of settlement conferences were held with the case conference judge. The mother had counsel, but the father did not. The father took a particular position with respect to settlement of custody at the first conference, indicating that details still had to be worked out, sought an adjournment of the second conference as he was not prepared, and then substantially changed his position on settlement at the third conference. The mother's counsel expressed frustration with the delay and expense resulting from the father's actions, and asked for immediate costs for attendance at the three settlement conferences. Murray J. declined to find that the father had

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30 2010 YKSC 81.

31 *Supra* note 29, Murray J.

acted in "bad faith" and concluded that he breached his duty to be prepared; this caused delay and additional costs to the mother. She concluded that costs should be assessed against him as a result. By dealing with all three conferences, the judge was in a position to ensure that the case management objectives relating to saving time and expense and ensuring a just process to both the mother and the father were met.

The Nova Scotia Supreme Court Family Division case of *T.(M.) v. G.(M.)* (2010)[32] provides a good example of how a judge can manage a case by educating parents about appropriate behaviour and attitudes and the adverse consequences of inappropriate behaviour and attitudes. It also shows how a judge, at the pre-trial stage, can monitor whether court orders, in this case orders for parental counselling, are being followed. This case involved an interim access dispute over the parenting plan for a seven-month-old child. There were a number of parenting problems, and the judge, Forgeron J., directed that each parent was to attend individual counselling to help each of them understand how parental conflict impacts children and to work on improving their communication. She directed that each counsellor was to be made aware of the contents of the court's decision, and each counsellor was to file a report with the court confirming that counselling was occurring. As so often happens in these decisions, the judge concluded with an exhortation to both parties to focus on their young child's needs:

> As indicated at the conclusion of the interim hearing, R. is the blessing which stemmed from your dysfunctional relationship. Love, consistency, and stability are required to ensure that R. develops to her fullest potential. If you continue with negative and conflictual interactions, you will compromise R.'s health

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32 2010 CarswellNS 142, 2010 NSSC 89 (NSSC).

> and emotional stability. You will rob her of the right to have positive relationships with the two people who love her the most in the world - her mother and father. I believe that neither of you want that to happen. I believe that each of you is motivated to ensure that it does not happen. I believe that each of you has the capacity to overcome past problems because of your love for R. I encourage you to be self-reflective, and to analyse the consequences which flow from your decisions and the impact such decisions will have on R.'s healthy development.[33]

A decision of the Alberta Queen's Bench, *S. (T.) v. T. (A.V.)* (2008),[34] illustrates how case management can give a judge a good sense of family dynamics and an ability to assess change over time. Proceedings began when the child was less than a year old, and one judge, Moen J., was soon assigned to manage the case, which had already been before the courts for over three years with many appearances and applications. When the child was three years of age, after a three day hearing, the assigned judge made an order for joint custody. The mother made allegations of sexual abuse against the father and then moved three hours away, thwarting his relationship with his daughter. A psychological assessment was ordered, but the mother did not co-operate with the assessor, resulting in a report of only the father's psychological functioning. Moen J. made an order for a second mental health professional to interview both parents and the child, and report on her observations and make recommendations. When the child was four years old, the case came again before the assigned judge. After a further three day hearing she concluded that the abuse allegations were unfounded and changed her joint custody

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33 *Ibid* at para 32.

34 ABQB 185, 53 RFL (6th) 368, 438 AR 113, Moen J.

order to sole custody to the father, with access to the mother. Moen J. was of the view that the father would be the best parent to allow the child to have a meaningful relationship with both parents. She directed that she was to remain seized of the case until the child was finished kindergarten school and would case manage any further parenting difficulties that arose between the child and her mother.

In *McDermott v. McDermott* (2010),[35] the British Columbia Supreme Court was dealing with a custody case in which there were allegations of alienation. Walker J. spoke about the importance of case management in such cases. He took steps to make the pre-trial process more effective by taking charge of all pre-trial conferencing.

Post Adjudication Management by One Judge - Stability, Variation, and Enforcement

In the British Columbia cases of *P.C. B. v M.M. B.* (2003),[36] a judge, Dillon J., seized herself of the case for a period of three years after a trial so as to provide a period of stability in a case she described as extremely litigious. In another British Columbia case, *Bains v. Bains* (2009),[37] the judge, Bruce J., after a trial, remained seized of the case to ensure continuity. She concluded that it was appropriate that she "remain seized of any application by either party to vary custody, access or guardianship as defined by this order."[38]

The Ontario Superior Court decision in *Zolaturiuk v. Johansen* (2009)[39] illustrates the value of management by one

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35 2010 BCSC 531.

36 2003 BCSC 645.

37 2009 BCSC 1666.

38 *Ibid* at para 159.

39 [2009] OJ 1420 (Sup Ct J), Pazaratz J.

judge at the variation stage. In 2005, a few days into a trial, the parents reached an agreement about custody and access, based on the assessment of a social worker from the Office of the Children's Lawyer. A year later, in 2006, the mother applied to vary the order with respect to access and child support (asking for financial disclosure). Her application was not heard until 2009, during which time a second assessment was prepared, recommending only minor changes. At that point, the judge who heard the variation applications, Pazaratz J., decided that he was sufficiently familiar with the circumstances of the file to "remain seized of this matter until the current motion is completed."[40]

He was concerned with having the parents continually returning to court on further applications before judges who were unfamiliar with the case; he believed that he knew this family sufficiently by that time and he should be the one to monitor and manage the case, observing, "[i]t is in the interests of the parties - and the child - that we address and resolve as many issues as possible, to lessen the scope of the ongoing conflict."[41] While we applaud the decision of the judge for to take charge of the case in 2009, we note that if a judge had been assigned to manage the case in 2006, it likely would not have taken three years, during which time the child's position was uncertain and conflict continued, until the variation application was heard.

In *D.J.G. v. D.L.G.* (2010),[42] a decision of the Yukon Supreme Court, referred to above, the judge, Martinson J., made a custody order varying an original custody order, and seized herself of all future applications to vary or enforce the new custody order. She had ordered "week-about" residency,

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40 *Ibid* at para 58.

41 *Ibid* at para 62.

42 2010 YKSC 81, Martinson J.

rejecting the father's application for sole custody, and keeping in place an arrangement previously agreed upon by the parents. She concluded that the father did not have a genuine desire to change the custody arrangement in a way that was in the child's best interests. Rather, he was following through on the threats he previously made to make a claim for custody if the mother pursued her claim to increase the child support being paid. Shortly thereafter, the mother brought an emergency application to enforce the order and for a finding of contempt, as the father had unilaterally decided to keep the child with him, saying that this was what the boy wanted. At the contempt hearing, the father indicated that he intended to bring an application to vary the previous order, based on the boy's stated preferences. The judge seized herself of any further applications made in the case on the basis that this child needed the conflict to stop and he needed some certainty about his future. She felt that she, as the judge who made the original order, was in the best position to do this.

Post Adjudication Management by One Judge - Monitoring Progress and Influencing Behaviour

A.A. v. S.N.A.,[43] referred to above, is a case of severe alienation where a judge decided to remain seized to promote the interests of the child and to prevent the mother's alienating conduct from further harming the child. Initially, custody of the girl had been awarded to the mother, even though it was found that she had engaged in extreme alienating behaviour. The British Columbia Court of Appeal reversed that decision and granted custody to the father, with virtually no access to the mother. Over the next two years, the case was before the court on numerous occasions, before five different judges, with the

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[43] *Supra* note 24; see also *AA v SNA*, 2007 BCCA 364, 2007 CarswellBC 1592 (WL Can), additional reasons 2007 BCCA 363, 2007 CarswellBC 1591, rev'g 2007 BCSC 594, 2007 CarswellBC 900.

mother seeking more access. Some twenty months after the Court of Appeal decision, one judge was dealing with one such application. She further restricted the mother's contact with the child and ruled that at least until the child reached age of 14 years (another 3 years), she was to remain seized with the case.

The Ontario case of *Zanewycz v. Manryk* (2010)[44] is a high conflict alienation case in which the trial judge took effective steps to direct and monitor the parents' behaviour, and particularly that of the father, after the trial. After a 19-day trial, the judge, Warkentin J., concluded that the father consistently portrayed the mother in a negative light to the children, while the mother did not denigrate the father. The judge awarded sole custody of the children to the mother with access to the father, and permitted the mother to move with the children. The judge suggested that the father undertake counselling. She made orders as to what the children should and should not be told about the court's decision and the reasons for it, emphasizing the seriousness of any breaches of these orders. The judge also ordered that the father not undermine the children's relationship with their mother.

Shortly after the orders were made, the mother applied to have all access by the father terminated, alleging that he had breached the court orders by sharing information about the proceedings with the children and continuing to make unfounded allegations of abuse against the mother. Warkentin J. accepted the mother's claims, and temporarily suspended access until the father could provide a suitable parenting plan, which must initially involve supervised access. She rejected the plan he ultimately proposed and continued the suspension of access, concluding that the father's proposed parenting plan demonstrated his continuing lack of insight into the children's needs.[45]

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44 [2010] OJ No 833, (Ont Sup Ct).

45 *Ibid*.

In another recent Ontario case, *Andrade v. El Kadri* (2009),[46] the trial judge, V.J. MacKinnon J., also took steps to ensure compliance with court orders and to direct a parent's behaviour after trial. After the separation, the father in the case had only limited contacted with the young child who was the subject of the litigation. The mother was requesting that all access be terminated, citing the father's attempts at alienating the older children from his previous marriage as raising concerns that he would do the same thing with the young child of this relationship. There were three separate investigations and reports by a social worker appointed by the Office of the Children's Lawyer, including investigation of the father's relationship with children from the previous marriage. After a four day trial, the judge concluded that the father was not supportive of the child's relationship with the mother. MacKinnon J. ordered only supervised visits at a visitation center, requiring the father to have counselling as a condition of this access. The judge ordered that she was to remain seized of the case to ensure that the father complied with the terms of the order. The judge wanted to make sure that the father demonstrated that he had completed a course of counselling, suggesting that if his parenting was appropriate, he could eventually move from supervised access to unsupervised access.

The Ontario case of *Filaber v. Filaber* (2008)[47] illustrates that the decision of the trial judge to remain seized with a case involving continuing conflict will not always be successful in monitoring parental behaviour or even ensuring judicial continuity when there are other judicial proceedings relating to the same family. About a year after separation a judge awarded the mother interim custody of the three children,

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46 2009 CarswellOnt 3327, [2009] OJ 2423 (Ont Sup Ct), MacKinnon J.

47 2008 CarswellOnt 654, [2008] OJ No 4449 (Ont Sup Ct).

with access to the father. The matter did not proceed to trial at that time; seven years later, the oldest boy moved in with his father and litigation began concerning custody of the two younger boys. Each parent made allegations of parental alienation against the other. The trial judge concluded that the father was alienating the boys from the mother and awarded custody to her, restricting contact by the father, and permitting the mother to take the children to counselling in the United States or Canada to address the alienation. Van Melle J. ordered that she was to remain seized of the case to monitor compliance with her order. The father continued to undermine the mother's relationship with the children and child protection proceedings were commenced in another level of court before a different judge.[48] An integrated approach to cases involving the same family, ideally in a Unified Family Court, would assist in minimizing conflicting orders and monitoring compliance in circumstances such as this.

The British Columbia decision in *G.(K) v. S.(S)* (2006)[49] illustrates the value of a judge being involved with a case over a period of years to obtain an understanding of the ongoing family dynamics. The parents had two children. Initially there was a joint custody order, later changed to the father having sole custody with defined access to the mother. The mother alleged that the father was alienating her from the children, but the evidence showed that she was attempting to undermine the children's relationship with their father, including making unfounded allegations to the police of abuse

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48 *Children's Aid Society of the Region of Peel v KJF*, [2009] OJ No 3213, 2009 ONCJ 198, Clarke J.

49 *G(K) v S(S)*, 2006 CarswellBC 1807 (BC Prov Ct) [*G(K) v S(S)*]. See also *Metzger v Taylor*, [2007] AJ No 910, 2007 ABQB 513, which involves alienation allegations. While the judge did not consider himself 'seized' of the case after trial, he did advise both parents that they could contact him if further access difficulties arose as he was aware of the decade-old allegations made by each parent.

of the children by him. The maternal grandmother was telling the children that when they were with their father, they lived with a "fake" family. After his third hearing with the family in two years, Barnett P.C.J. concluded that the joint custody regime that he imposed initially "had failed"[50] and he ordered that the mother should have no access.

All of the cases in which judges decided to become seized after trial involved some form of alienating or destructive parental behaviour (e.g., a parent denigrating the other parent, unfounded abuse allegations, unjustified resistance to visitation) that required a firm judicial response, including termination of contact with a severely alienating parent.[51] It is particularly important that trial judges seize themselves of these cases to monitor the ongoing family dynamics, including ongoing conflict, and to address any ongoing negative consequences to the children.

In a number of recent decisions, judges have not only concluded that they will remain seized of a case involving continuing conflict after trial, but have established a process for reporting to the court. For example, in the British Columbia

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50 *G(K) v S(S)*, *supra* note 49.

51 See Barbara Jo Fidler & Nicholas Bala, "Children Resisting Post Separation Contact with a Parent: Concepts, Controversies, and Conundrums" (2010) 48(1) Fam Ct Rev 10; Barbara Jo Fiddler et al, *Challenging Issues in Child Custody Disputes: A Resource Guide for Legal and Mental Health Professionals* (Toronto: Carswell, 2008); Joan Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39 Fam Ct Rev 249; Richard A Warshak "Current Controversies Regarding Parental Alienation Syndrome" (2001) 28 American Journal of Family Therapy 229; Richard A Warshak, "Family Bridges: Using Insights From Social Science to Reconnect Parents and Alienated Children" 2010 48(1) Fam Ct Rev 48.

case of *P.P.W. v. R.S.L.B.* (2010),[52] the Court appointed a parent coordinator who was required to report to the Court. The mother alleged that the father was sexually abusing their young daughter. Williams J. found that the allegations were unfounded, concluded that the mother had serious mental health issues, and awarded custody to the father with supervised access to the mother. He made specific and detailed treatment directions for the mother and said that if the mother's treatment was successful, she could move to an equal parenting regime. The judge emphasized the importance of the parents co-operating, and appointed a parenting co-ordinator to work with them, whose mandate included the obligation "to report to the Court as may be necessary."[53] Williams J. remained seized of the case, and decided that he would conduct a review hearing in six months.

In the Alberta case of *R.M.S. v. E.J.M.* (2010),[54] Moen J. decided that she was to remain seized of the matter after trial while having the child welfare authorities continue to monitor the child's welfare. The child was 7 years of age at the time of the parties' separation, and initially resided with the mother, but was soon apprehended by child welfare authorities due to concerns about the possibility of physical abuse and neglect. The agency had a supervision order made under child welfare legislation, and arranged for the girl to reside with her father. After a short period of time, she went to live with her paternal grandmother, where the father continued to visit with her. A few months later the mother made an application for primary residential care of the child in the Court of Queen's Bench, and the father made a cross application to have the girl live with him and his new partner . Moen J. had concerns about the plans of both parents, concluding that the grandmother was the "only

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52 2010 BCSC 58, [2010] BCJ No 70.

53 *Ibid* at para 178.

54 [2010] AJ No 773 at paras 67-69, 2010 ABQB 457.

stable person" in the child's life. She ordered that the father was to have "residential care" (i.e., legal custody) of the child, on condition that he would continue to reside with the grandmother. If the father moved from the grandmother's home, there was to be an immediate review by the judge. The judge also ordered that she was to remain seized of the case, and indicated that she would conduct a review hearing in 12 months time. The judge further indicated that at the time of that review hearing, she expected a report from Child Welfare Services about how well the child was doing during visits with her mother.

Lessons Learned from the Jurisprudence

Lessons about differentiated case management can be gleaned from the cases discussed in this paper. These cases illustrate that case management may have different purposes at different points in the litigation process—to promote settlement, bring structure and control over the litigation process, ensure that necessary information for further decision making is obtained, or to monitor the parenting plan to ensure compliance with court orders. Once the issues in dispute are identified and the nature of and level of the conflict is assessed, the judge is in a better position to schedule the "next steps" in the process. Not all the cases discussed involved safety or children refusing to visit a parent. Children's interests are usually best met when there is "one judge for one family" who is involved in continuing conflict as well as high conflict separations.

Recusal: How to Case Manage & When to Stop

One of the common features of case management is that one of the parties becomes frustrated with the judge, and starts to claim that the judge is "biased", sometimes resulting in a motion for recusal. While it might be tempting for a judge feeling frustration in dealing with individuals involved in continuing conflict families to accede to such a request, judges

should not be quick to withdraw from these cases. The law is clear that on such a motion, a party seeking recusal on the ground of actual bias, or more commonly reasonably apprehended bias, faces a "high threshold". The test for recusal is "purposefully difficult to satisfy" as there is a presumption that judges will carry out their oath of office.[55] The fact that one party (or counsel) considers a judge "biased" is not a reason for recusal. Indeed, a personality disordered litigant is likely to perceive a judge who has made a ruling against that party as biased, but this is certainly not a reason for the judge to stop managing the case or trying to influence that person's attitudes and behaviours.

Case management judges are expected to make use of their knowledge of the background and position of the parties in making decisions: they may well be "intimately familiar" with the parties and have made prior rulings in their case. It is clear that the fact that a judge has previously made adverse rulings against a party, including adverse rulings about credibility, is not a reason for recusal, as long as the judge approaches each new application with "impartiality" and without a preconceived view of the credibility of the parties. For example, in his decision in *Marshall v. Marshall* (2008), LeBlanc J. observed:[56]

> Speaking from a legal and ethical point of view, judges must be, and always should appear to be, impartial with regard to their decision-making and ultimate judgment. Impartiality goes to the heart of the integrity of our court system. Therefore, it is imperative that any allegation of

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55 *Roman Catholic Diocese of Calgary v Canada (Attorney General),* [2010] AJ 726 (CA) at para 6.

56 *Marshall v Marshall*, 2008 NLUFC 13 at paras 9-14, [2008] NJ 178, LeBlanc J. Leave to appeal was granted, but not pursued: [2009] NJ 39 (CA).

bias or reasonable apprehension of bias be carefully considered based upon the specific facts and circumstances of the case. Having said this, it is also clear that the test for proof of bias or apprehended bias has been described as requiring a high threshold with there being a need to produce cogent evidence. This is required due primarily to the presumption of impartiality related to judicial decision-makers. A real probability of bias must be demonstrated …

Th[e] definition of bias is … explained by the comments in *Middelkamp v. Fraser Valley Real Estate Board* (1993), 83 B.C.L.R. (2d) 257 (B.C. C.A.) where it was held that:

> ... bias does not mean that the judge is less than unfailingly polite or less than unfailingly considerate. Bias means a partiality to one side of the cause or the other. *It does not mean an opinion as to the case founded on the evidence*, nor does it mean a partiality of preference or even a displayed special respect for one counsel or another, nor does it mean an obvious lack of respect for another counsel, if that counsel displays in the judge's mind a lack of professionalism. [Emphasis of Leblanc J.]

…

It is also clear from the cases that a prior adverse finding of fact and/or credibility does not necessarily give rise to a reasonable apprehension of bias of itself when the judge is

> required to deal with the parties on a later occasion.

LeBlanc J. also commented on the nature of family law cases and the value of judicial continuity in dealing with them, despite the fact that there will likely be prior findings of credibility:[57]

> Finally, in the family law context, continuity with regard to judicial decision-makers has been recognized as being beneficial in custody and access proceedings where the best interests of children is the paramount consideration. Unlike other judicial proceedings where usually only the parties' interests are at stake, in child custody and access matters a third usually silent interest must be primarily considered. Judges who hear evidence form opinions and make judgments based upon the evidence presented at that time. Therefore, it has been held that subsequent applications for variation are often times best heard and decided by the judge who first made an order in the matter. (See, for example, *Re J.(G.J.W.)* (2002), 332 A.R. 194 (Alta. Prov. Ct.); *Roy c. Cyr*, [1996] N.B.J. No. 25 (N.B. C.A.)) … .
>
> On perhaps too many occasions, we as judges accede to a party's request for recusal based upon prior involvement related to making fact and credibility findings for the parties… such may well not be a totally appropriate basis to decide not to hear further proceedings involving the parties. Judges recuse themselves in such situations in order to ensure that the parties

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57 *Ibid* at para 39.

> themselves perceive that a decision to be made is above any question of bias. However, in cases such as this one, the willingness to step aside in order to avoid any such concern, misguided or not, is not so easy to make based upon the primary focus in these matters being the best interest of the child….
>
> Again, family law cases are somewhat unique in the court process. Not only is a judge asked to determine an issue at one point in time in a parenting case, he or she must also attempt to reach a decision that will have long term effects with regard to the best interests of the child. This, on occasion, means advising a parent or both parents why changes of attitude or behavior may be necessary …

In the Ontario decision in *Percival v. Percival* (2000), Kiteley J. refused a motion for recusal on an application for interim support in a case where she had already met with the parties and expressed her tentative views about a possible resolution of the matter at a case conference. She began by explaining the general value of the judicial continuity expected under the case management rules then in effect in Toronto, and concluded that judicial continuity did not create a "reasonable apprehension of bias":[58]

> The Notice to Profession … issued by Regional Senior Justice Lang [informed] … litigants and counsel … that a case conference must precede a motion except in the case of emergency. The purposes of a case conference were identified as the following: try to resolve interim issues by

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[58] *Percival v Percival* (2000), 7 RFL (5th) 400 at paras 9-11 (Ont Sup Ct), Kiteley J.

> agreement; organize the case including the setting of timetables, where advisable; and deal with any other procedural issues the parties may raise. It was anticipated that once a judge presided over a case conference that s/he would attempt to carry on with the action as the case management judge. Toward that end, the confirmation form was changed to encourage counsel to include the name of the judge who had been assigned to the matter.
>
> Presiding over a case conference does not disqualify a judge from hearing any motions. If that were the case, the case management system would never be functional. There are circumstances in which a judge might take the initiative to disqualify him/herself; or indeed might recuse him/herself at the request of either counsel. But that is contemplated as an exceptional situation. This case is an example where consistency is important. There have been 15 attendances involving four judges. To introduce another judge for purposes of hearing the motion for interim relief would be inconsistent with the goal of moving matters forward in an expeditious manner, particularly where, as here, there have been persistent issues involving financial disclosure on the part of both spouses.

Kiteley J. then considered the specific effect of the specific case management rules then in effect in Toronto:[59]

> The *Toronto Family Case Management Rules* [then in effect] operate in conjunction with the

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[59] *Ibid* at para 13.

> Notice to Profession. Rule 3.01(0.2)(1) makes it clear that once a case management judge is assigned, s/he shall 'deal with all matters that arise in the proceeding before the hearing, including all motions, case conferences and settlement conferences' …
>
> The thrust of the *Toronto Family Case Management Rules* is that the same judge will oversee all interlocutory steps. As provided in Rule 3.01(8), the case management judge shall not preside at the trial. But short of the trial, it is the duty of the case management judge to explore resolution. Between the Notice to Profession and the Toronto Family Case Management Rules, it is clearly anticipated that the case management judge will express an opinion in furtherance of resolution. That fact alone does not disqualify the judge because it is intended that the case management judge will make a recommendation but failing resolution, the case management judge will make orders for interim relief.

Kiteley J. rejected the argument that she had prejudged the matters at issue, observing that the evidence on the motion was different from the untested information provided at the case conference:[60]

> Counsel has reported concerns raised by her client about the fairness of the process given that I made recommendations at the case conference. The recommendation which I made [then]… was on the basis of financial statements of the husband and of the wife which were challenged

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60 *Ibid* at para 14.

> by opposing counsel as being inadequate or incomplete and in the context of a motion for interim support which would be forthcoming immediately if support were not resolved. As a result of this motion having been brought by the wife, the financial statements of the husband and of the wife have now been more comprehensively completed by both spouses. More detail has been supplied with respect to income and expenses. The court now has a more complete record. Any recommendation which I made based on the earlier documentation has no impact on the outcome of this motion ...

In a 2008 Ontario decision, *Belittchenko v. Belittchenko,* a party seeking recusal argued that the judge had used "strident words" at a case conference when describing the "litigation behaviour" of that party and "prejudged the credibility" of that party. In rejecting the motion, Backhouse J. observed:[61]

> In cases in the Family Courts of the Superior Court designated in Rule 1 of the *Family Law Rules*, a case management judge is automatically assigned. Pursuant to Rule 39(9), the case management judge shall hear motions in the case, when available. While a case management judge is not automatically assigned in Toronto, nevertheless, where a judge who has heard prior motions is available to hear subsequent motions, an effort is made to assign that judge. In the case of highly litigious and acrimonious proceedings,

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[61] *Belittchenko v Belittchenko*, 2008 CarswellOnt 5216 at paras 9-11 (Ont Sup Ct), Backhouse J.

> it is particularly desirable that a judge who is familiar with the matter hear it. In addition, the court must be able to control its own scheduling without it being alleged that this raises a reasonable apprehension of bias.
>
> Regrettably, there have been approximately 50 orders made in this matter involving at least 20 judges of the Ontario Court of Justice, Superior Court, Divisional Court and Ontario Court of Appeal. Although the parents submit that no judges other than me have made credibility findings against them, this is inaccurate. It also ignores that most of the findings that I have made have been scrutinized on appeal and have not been criticized as 'strident' or otherwise censured.
>
> The reality is that regardless of the judge hearing these motions, findings of the Court in previous proceedings between the same parties are part of the record. These findings cannot be challenged collaterally.

Precedents suggest that there are a number of circumstances involving family case management and similar situations which should **not** be the basis for recusal, including:

- The fact that on prior occasions the judge made comments to an alienating parent about his/her conduct that were "very direct and pointed," as long as they were "respectful and fair."[62]

- The fact that on a number of prior occasions a judge who was seized of a matter made findings of "bad

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62 *Supra* note 56 at paras 9-14.

faith" against a party to a family law case.[63]

- The fact that one party has made a complaint to the Judicial Council about the judge.[64]

- The fact that a previous decision involving the same parties was reversed by an appeal court.[65]

In some situations involving case management, however, recusal may be appropriate, including:

- If (as is common) guidelines specify that a judge who has conducted a pre-trial settlement conference should not preside at trial, the judge must not preside at trial in the matter, even if the judge has no recollection of the prior conference meeting. If a party does not raise this matter until part way through the trial, there should be a mistrial and recusal.[66]

- If the judge has commented on a motion for security of costs for a variation application that "there is good reason to believe that the case is a waste of time,"[67] the judge should not sit on the application.

- If the judge has had a "confidential meeting" with a child to explain a prior decision in a custody or access

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63 *DB v IM,* [1999] QJ 4519 (Sup Ct Qc).

64 *Broda v Broda,* [2000] AJ 1542 (QB), Veit J.

65 *DMM v TBM,* 2010 YKSC 68, Gower J.

66 *TPB v Alberta (Director of Child Welfare)*, 2005CarswellAlta 2728 (QB), Phillips J; see also *White v White*, 2003 ABCA 358, 1 RFL (6th) 416.

67 *Carroll v Carroll,* 2001 CarswellOnt 4402 (OCJ), Bishop J.

case.[68]

Even when a motion for recusal does not succeed (or is not made), there are situations in which it may be preferable for a judge to withdraw from continuing involvement with a continuing conflict case. In some cases, it may become apparent that one party is so totally antagonistic or angry with the judge, that the judge may determine that a "fresh face" may be better able to achieve a settlement or compliance with court orders.

In one continuing conflict Quebec case under case management by one judge for a few years, a party sought recusal (which was refused) and then appealed both the restrictive access order made by the judge and the recusal decision. The Quebec Court of Appeal dismissed the appeal on the recusal motion, but the party alleging bias had some success on the merits of the appeal, gaining wider access rights.[69] The appeal court, without giving reasons, "suggested" that another judge should deal with any future applications. Given the nature of the case and the perception of the party alleging bias and legal error, this seems like a suggestion that should be followed.

If a judge has decided that recusal is appropriate with respect to one party or aspect of a case, it will generally be preferable to totally withdraw from the case and not attempt to remain seized with or case manage only part of the case.[70]

If a judge decides that recusal is appropriate, that judge should take whatever steps are necessary steps to ensure that

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68 *Supra* note 56.

69 See *Droit de la famille – 10194*, 2010 QCCA 166, 2010 CarswellQue 547.

70 *Supra* note 56.

the case continues to be managed by one judge. The new judge must be well informed about the case.

V. JUDICIAL "TRIAGE" AND INTERNATIONAL EXPERIENCE WITH FAMILY CASE MANAGEMENT

Traditionally there has been a "tiered" service approach to family justice: first provide services like parenting information and access to legal information and hope this will facilitate settlement with little or no professional intervention; then, try mediation with a mediator and perhaps involve a judge in trying to settle the case; if that fails to settle the case, involve a lawyer for the child or an assessor; and finally, if all else has failed to resolve the case, schedule a trial. There is now a growing international recognition of the value of having a "triage model" of family justice, rather than the more traditional "tiered approach," with cases being assessed early, so as to identify the level of conflict and the matters in dispute; the case is then referred to the most appropriate service that is likely to lead to resolution. The triage approach makes better use of scarce resources, allows for a faster resolution and avoids involving a family in potentially intrusive and expensive processes that are not likely to result in a resolution.[71]

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[71] See Steve Baron, Sandra Clark & Lilly Grenz, "The First 5 Santa Clara County Family Court Service Initiative" in Cori K Erickson, ed, *Innovations in Court Services* (Madison, WI: Association of Family and Conciliation Courts, 2010); Jordan L Santeramo, "Early Neutral Evaluation in Divorce Cases" (2004) 42(2) Fam Ct Rev 321; Peter Salem, "The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation" (2009) 47(3) Fam Ct Rev 371; Peter Salem, Debra Kulak & Robin M Deutsch, "Triaging Family Court Services: The Connecticut Judicial Branch's Family Civil Intake Screen" (2007) 27(4) Pace L Rev 101; Dan VanderSluis, Carole McKnight & Tony Francis, "Triaging Court Services: Testing Assessment in BC" (Lecture delivered at the Association of Family and Conciliation Courts Annual Conference, Vancouver, 28 May 2009, [unpublished].

In one of the few research studies that involved a control group to assess the effects of case management in family law cases, Higgins (2007)[72] reported on the Australian *Magellan Project,* which was established to deal with custody and access cases with allegations of child sexual abuse at selected sites. The *Magellan Project* utilized a case management team that included a judge and a family consultant (social worker) who dealt with a case as soon as it was identified until it is was finished, with access to significant coordinated community resources in the early stages. The outcomes were compared to a matched group of cases in other centers that were handled in a more traditional way. The managed cases had significantly fewer court appearances and were resolved significantly faster (10.8 months versus 15.4 months). Of course, the Higgins study is not a "perfect test" of case management, as there were also resource differences between the different sites. However, a number of lawyers and other justice system professionals who were interviewed for the research specifically commented on the value of case management and judicial continuity. Lawyers commented:

> Litigants cope better … because it is managed by the one Judge. Litigants tend to be far more settled throughout. They know one person is in charge. There is a much higher level of litigant satisfaction. They think they are being specially treated – in a better fashion, and quicker than others …
>
> I think if the case is managed well by the Judge, it can reduce the time. You get to the point quickly, because everybody is focused. We're not dealing with ambit claims. We're focussed on what the real issues are. If it is not managed

72 *Supra* note 22.

> well, it can be a waste of time, money and effort.[73]

In Western Australia, the *Columbus Pilot Project* developed a variation of the case management that *Project Magellan* used for cases involving allegations of sexual abuse, to include cases with domestic violence, substance abuse or parental mental health concerns. A central feature of the *Columbus Pilot* is the use of an interdisciplinary case management team, with a designated judicial officer and counsellor jointly managing family cases. In an evaluation of this approach, judges and lawyers reported appreciation of the value of "social science" input into the legal process while using case management.[74] This approach was later further adapted into the Case Assessment Conference approach that uses risk screening, assessment, and case management. This approach to case management involves an added time commitment by the counsellor and judicial officer team, but researchers found that as a result of this type of case management there was:[75]

> (1) a 20% reduction in the time that an average case was in the system;

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73 *Ibid* at 126-127.

74 Paul T Murphy & Lisbeth T Pike, "Child-Related Proceedings in the Family Court of Western Australia" in Cori R Erickson, ed, *Innovations in Court Services* (Madison, WI: Association of Family and Conciliation Courts, 2010).

75 Paul T Murphy & Lisbeth T Pike, "Columbus Pilot Evaluation: Report of Stage II—Cost/Outcome Analysis and Stakeholder Feedback, Report Prepared by the University of Western Australia School of Social and Cultural Studies and Edith Cowan University, School of Psychology, Perth, WA, for the Family Court of Western Australia, 2010.

(2) a 30% reduction in the number of court appearances; and

(3) a 50% increase in settlement at an early stage.

Another type of differentiated case management has been used in Australia for several years and more recently in New Zealand—the "less adversarial trial process."[76] In this process, a judge becomes seized of a case identified as having a higher level of conflict at an early stage, and takes a more active role in directing the process than a traditional judicial role. The judge is more involved in questioning the parents, directing involvement of support services and indicating to the parties what type of evidence should be introduced. Altobelli J. describes the positive benefits for children and families involved in the less adversarial process.[77] The first step in the less adversarial trial process ("LAT") is an assessment of the needs of the family as early as possible.[78] The LAT is intended to focus the parents on the needs of their children.[79] As its

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76 *Family Law Act 1975*, part VII.

77 Tom Altobelli, "Less Adversarial Trial Processes—Their Role in Cases Where a Child Has Rejected a Parent" (Paper delivered at the Association of Family and Conciliation Courts Annual Conference, 2-5 June 2010), [unpublished].

78 A screening tool is being developed by Jennifer E McIntosh that explores different domains in the family dispute.

79 Jennifer E McIntosh and her colleagues have been researching this process and report many positive benefits for children post separation. See Jennifer E McIntosh, *Final Report to the Family Court of Australia: The Children's Cases Pilot* (Victoria, AU: Family Transitions, 2006), online: <"http://www.familycourt.gov.au/wps/wcm/resources/file/ebdacf4ac5ed402/McIntosh_CCP_pilot_final.pdf >.

McIntosh concludes, at 39: "In closing, it might be said that, through the eyes of the parents who participated in this study, the core impacts of the Children's Cases Pilot process centered around the creation of

name implies, the LAT process is also intended to be less adversarial. The judicial officer has broader statutory powers to control the litigation and how it moves through the court system, and can make orders for referrals to non-judicial resources. In the LAT, the judge focuses on the needs of the particular family before the court, and can triage the case, by directing a full investigation by a mental health consultant, referring the cases for mediation or having a hearing to give directions to the parties about what steps need to be taken before the matter can proceed to trial.[80] Empirical research has been ongoing in examining how parents are experiencing the different court approaches (traditional litigation versus LAT); preliminary results are positive.[81]

VI. WHERE DO WE GO FROM HERE?

Institutional Change

We have argued that an effective family justice system requires a process in which cases involving families in continuing conflict are managed by one judge with the necessary knowledge and skills, and access to training. Judges with this type of caseload can and must acquire the interdisciplinary, financial and family relations knowledge to deal most

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'no further harm' to their co-parenting relationship, nor to their children's adjustment. Importantly, they report lower conflict and acrimony with their former partner post court. In many cases, it is a process that seems to have allowed a degree of recovery from the psychological hostility felt for their child's other parent."

80 *Family Law Act 1975*, s 69ZQ(1).

81 See McIntosh, *supra* note 79; Rosemary Hunter, "Adversarial Mythologies: Policy Assumptions and Research Evidence in Family Law" (2003) 30(1) JL & Soc'y 156; Jennifer E McIntosh, Diana Bryant & Kristen Murray, "Evidence of a Different Nature: The Child Responsive and Less Adversarial Initiatives of the Family Court in Australia" (2008) 46(1) Family Court Review 125.

effectively with these cases. They also need to have access to services such as family court counsellors, mediators, parenting coordinators, mental health professionals, and children's lawyers, attached to the court and easily accessible, to facilitate change in the behaviours and attitudes of parents who are not acting in their children's best interests and to provide meaningful and early triage. Family court judges also need to have the time to deal with the cases properly.

Court structures now in place must be reorganized so that all families requiring such case management will have access to that management in a systematic way, as part of the regular case assignment and scheduling processes of the court. Courts as institutions must find a way to ensure that all families have access to a judge who has the knowledge, skill, time, and resources to give them the service to which they are entitled. Leaving decisions about whether a case will be managed by one judge to individual judges, who take on this work in addition to their other caseload, is often ineffective and contrary to the best interests of children. While individual judges deserve credit for seizing themselves of some cases, an ad hoc, "hit and miss" approach is not a solution.

A unified family court, one which deals only with family cases and handles all family cases within a jurisdiction, is, in our opinion, the most effective way to accomplish the desired result. While some provinces in Canada have unified family courts, others do not. In some provinces, only some of the courts are unified courts. Expanding those courts to all jurisdictions must be the long term policy goal.

In the meantime, we recommend that courts create informal family law divisions within the existing court structures, in which judges deal exclusively with family law cases for a minimum of one year. The reasons for doing this include:

- assisting in judicial continuity, with all the benefits we have described;

- helping to provide experience and develop expertise in family law;

- making case management part of the regular court schedule, not an add-on to it;

- achieving a more consistent approach among judges dealing with family law cases; and

- providing more opportunities to develop institutional procedures and practices for identifying cases early and dealing with them effectively.

The reasons advanced against an informal family law division often include:

- the lack of flexibility provided to court administrators in the assignment of judges for all cases;

- the preferences of some judges not to specialize at all, but rather to be assigned a variety of types of cases;

- similarly, the preferences of some court administrators who feel that courts with generalist judges work most efficiently and effectively;

- a danger of judges burning out because of the nature and intensity of family law disputes;

- a concern that "divisions" only works in the largest centres, leaving out those who reside in medium sized and smaller centres; and

- the view that it is possible to schedule case management by one judge within the regular court scheduling system without having a separate informal division.

We, respectfully, find the arguments in favour of creating informal divisions more persuasive. We have emphasized the harm that can be caused, particularly to children, when family cases are not effectively managed. The focus must be on the just, timely, and affordable resolution of disputes relating to families in continuing conflict, not on other factors such as administrative flexibility or on the preferences judges might have about the kind of work they do, or how they do it.[82] The fact that family divisions work best in larger centres does not mean that they should not be extended throughout the country. Creative solutions can be found to extend the benefits to all families in continuing conflict, and to ensure that all judges dealing with these cases have the opportunity to gain extensive experience in dealing with family law cases.

Judicial involvement, with the support of judicial leaders, is very important to the achievement of the goals we have identified. However, it is not only courts that must be involved. The resources needed, including the appointment of more judges, must come from governments. Lawyers, other professionals, and the general public, including users of the courts, must engage in the discussions and take the actions necessary to achieve these goals.

For the immediate future, however, in many courts it will fall to individual judges, hopefully with the support of judges with an administrative responsibility, to try to identify and deal with cases that require continuity of judicial involvement.

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82 Martinson, *supra* note 4.

Research

Only through long-term follow-up with children and families will we understand more about how to identify the different types and levels of conflict when relationships break down between separated or divorced parents and how to most effectively assist in dealing with them. Research should include use of control groups comparing outcomes in locales where there is no systemic case management with places where there is a case management system. Further study of different models of case management providing for judicial continuity, such as those found in Ottawa and Toronto, described earlier, would also assist. Research and evaluation should also be built into case management systems developed by courts to better understand what is working on behalf of children, and what is not.

In the absence of empirical research on the effects of case management in family disputes, it would be extremely valuable for more judges to write about their decision-making related to issues of case management, for the benefit of litigants, their colleagues, policymakers, and researchers.

Final Thoughts on the Need for Effective Case Management

We have emphasized the importance of institutionalized case management by one specialized judge for the effective outcomes of individual cases. We have observed that ineffective handling of the cases of these families can lead to inappropriate resolutions and can contribute to harm to children. Further, effective case management will result in resource savings for both the justice system and litigants: we can no longer afford the old way of dealing with family law cases**.** Family law issues are often in the public eye, and Canadians are profoundly affected by the handling of these

cases. The way these cases are dealt with shapes the way the public views the fairness of our judicial processes. Making the changes we suggest will help to instil more public confidence in our legal system and the way it responds to families in conflict.