

Early Dispute Resolution in Family Law Disputes

Report

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Purpose

The purpose of this online survey was to gather feedback about family law processes from members of the Saskatchewan public who *have* and *have not* participated in a family law process. The results will be used to inform the Saskatchewan Ministry of Justice in future family justice system reform in Saskatchewan, including potential legislation that the Saskatchewan Ministry of Justice is considering introducing. The potential legislation could require people in applicable family law proceedings to make efforts to resolve issues through a mandatory appropriate dispute resolution process either before filing court documents, or immediately after.

Methodology

The intent of the survey recruitment strategy was to recruit residents of Saskatchewan who *have* and *have not* participated in a family law process. Quotas were implemented to ensure an equal number of respondents were recruited to each of these groups. Survey respondents were recruited through the online panel vendor, EKOS. EKOS recruits its panel participants exclusively through random digit dialing. Participants complete surveys on a voluntary basis and are not remunerated. The survey was programmed on the Voxco online survey platform. Initial invitation were distributed to potential respondents on August 16, 2017. The survey closed on August 29, 2017, after 143 Saskatchewan residents (71 who had a family law experience, 72 who did not have a family law experience) had completed the survey.

The online survey is presented in Appendix A. Information about the Social Sciences Research Laboratories, University of Saskatchewan, is located in Appendix B.

Findings

Demographics

Of the 143 Saskatchewan residents who completed the online survey, 76 (53.1%) identified as female and 67 (46.9%) identified as male. Respondents ranged in age from 29 to 93 ($M = 59.04$; $SD = 14.36$). More than a third of the sample (39.9%; $n = 57$) reported being retired, while much of the remaining respondents reported working full time (28.0%; $n = 40$), part time (14.0%; $n = 20$), or being self-employed (15.4%; $n = 22$). Household incomes levels of the sample were distributed fairly evenly across the spectrum of options. For more details on the demographic variables of the sample, see Table 1.

	All participants <i>n</i> (%)	Has Family Law Experience <i>n</i> (%)	No Family Law Experience <i>n</i> (%)
Gender			
Male	67 (46.9)	37 (52.1)	30 (41.7)
Female	76 (53.1)	34 (47.9)	42 (58.3)
Employment Status			
Self-employed	22 (15.4)	9 (12.7)	13 (18.1)
Working for pay full-time	40 (28.0)	19 (26.8)	21 (29.2)
Working for pay part-time	20 (14.0)	9 (12.7)	11 (15.3)
Student	1 (0.7)	1 (1.4)	—
Caring for children or family	4 (2.8)	1 (1.4)	3 (4.2)
Retired	57 (39.9)	31 (43.7)	26 (36.1)
Unemployed	3 (2.1)	2 (2.8)	1 (1.4)
Disabled	4 (2.8)	2 (2.8)	2 (2.8)
Other	4 (2.8)	2 (2.8)	2 (2.8)
Household Income			
Less than \$25,000	14 (9.8)	5 (7.0)	9 (12.5)
\$25,000 to less than \$50,000	30 (21.0)	17 (23.9)	13 (18.1)
\$50,000 to less than \$75,000	33 (23.1)	16 (23.9)	17 (23.6)
\$75,000 to less than \$100,000	30 (21.0)	15 (21.1)	15 (20.8)
\$100,000 to less than \$150,000	12 (8.4)	7 (9.9)	5 (6.9)
More than \$150,000	23 (16.1)	11 (15.5)	12 (16.7)

Table 1 – Demographics of survey participants.

Family Law Experience: Dispute Resolution Process

Among the sample reporting having a family law experience ($n = 71$), more than half (57.7%; $n = 41$) reported participating in a dispute resolution process related to a family matter in Saskatchewan. When asked to list three words to describe their experience of the dispute resolution process, the majority of respondents (68.3%; $n = 28$) used negatively-valenced words. Some of these described negative affect such as “sad”, “disgusted”, “anger”, and “tension”. Other negatively-valenced words that were provided related directly to the dispute resolution process. These included: “expensive”, “frustrating”, “agonizing”, “stressful”, “unproductive”, “slow”, and “intimidating”. Again, positively-valanced words (31.7%; $n = 13$) could be divided into those that related to the respondents’ affect (i.e., “gratitude”, “satisfied”, and “self-discovery”) and those that related to the process (i.e., “professional”, “essential”, “insightful”, “non-confrontational”, “civilized”, and “cost-saving”). See Appendix C for a visual depiction of these themes.

Family Law Experience: Court Process

The other type of family law experience that was assessed was the court process. Most of the survey respondents who reported having family law experience had participated in a court process related to a family matter in Saskatchewan (85.9%; $n = 61$). Similarly to the dispute resolution process, respondents were asked to list three words describing their experience with the family court process. The majority of

the individuals (80.3%; $n = 49$), used negatively-valenced words describing their affect in relation to the process (i.e., “anxious”, “sad/heart breaking”, “disgusted”, “frightening”, “depressing” and “anger”) or describing the process (e.g., “intimidating/upsetting/confrontational”, “disassociated/out of control”, “archaic/nonproductive/inefficient”, “lengthy”, “costly”, “confusing/stressful/frustrating”, and “biased/unfair”) A smaller subset (26.2%; $n = 16$) used positively-valenced words to describe the family court process. These included “efficient/speedy”, “informative”, “respectful”, relief”, “formal-required”, “administrative”, “quick”, and fair/thorough”. In contrast to the words generated for the dispute resolution process, no positive affect words were provided in regards to the family court process. See Appendix D for a visual depiction of these themes.

Mandatory Dispute Resolution Process

All respondents were asked to what extent they would support or oppose making it mandatory in most cases to attempt to resolve family issues through a dispute resolution process before starting a legal action in court. When considering the selections of all respondents, a large majority of the sample (86.0%; $n = 123$) indicated that they strongly support a mandatory dispute resolution process. Only 4.2% ($n = 6$) of the sample opposed the implementation of a mandatory dispute resolution process. A *t*-test was conducted to determine if support or opposition for mandatory dispute resolution processes differed depending on whether or not the respondent had a family law experience. The analysis revealed no difference between the two groups, $t(141) = .842$, $p = .401$. Figure 1 provides a breakdown of responses across the two groups (i.e., those who have and those who have not participated in a family law process).

Respondents were asked one of three possible follow-up questions as to why they support, oppose, or neither support nor oppose a mandatory dispute resolution process. Those who indicated they support the implementation of a mandatory dispute resolution process were offered possible options when following up about their selection. These options included: “To avoid or reduce the cost of litigation”, “I believe it would result in a better outcome”, “It sounds less stressful”, and “Other, please specify”. Of the 123 respondents who indicated “strongly support” or “somewhat support”, 81 (65.9%) selected “to avoid or reduce the cost of litigation”, 85 (69.1%) selected “I believe it would result in a better outcome”, 47 (38.2%) chose “It sounds less stressful”, and 21 (17.1%) individuals specified another reason. Respondents who selected “other” noted potential benefits that included a reduced burden on the judicial system, emotional de-escalation, open communication, reduced family conflict, and the salvation of family ties. A mandatory dispute resolution process may also serve to discourage people from using the court process as a punitive measure and could result in unbiased legal opinions. See Figure 2 for a detailed breakdown of responses among those who support a mandatory dispute resolution process, including separate endorsement rates for those who have and have not participated in a family law process. Chi-squared tests revealed no differences across groups for endorsement of the items, $p > .05$.

When asked to provide reasons why they oppose making the dispute resolution mandatory before engaging the family court process, respondents cited the additional costs, the slowness of the process, and

the “thinly stretched” resources of the justice system. Fear that the process would be ineffective was also expressed.

To what extent do you support or oppose making it mandatory in most cases to attempt to resolve family issues through a dispute resolution process before starting a legal action in court?

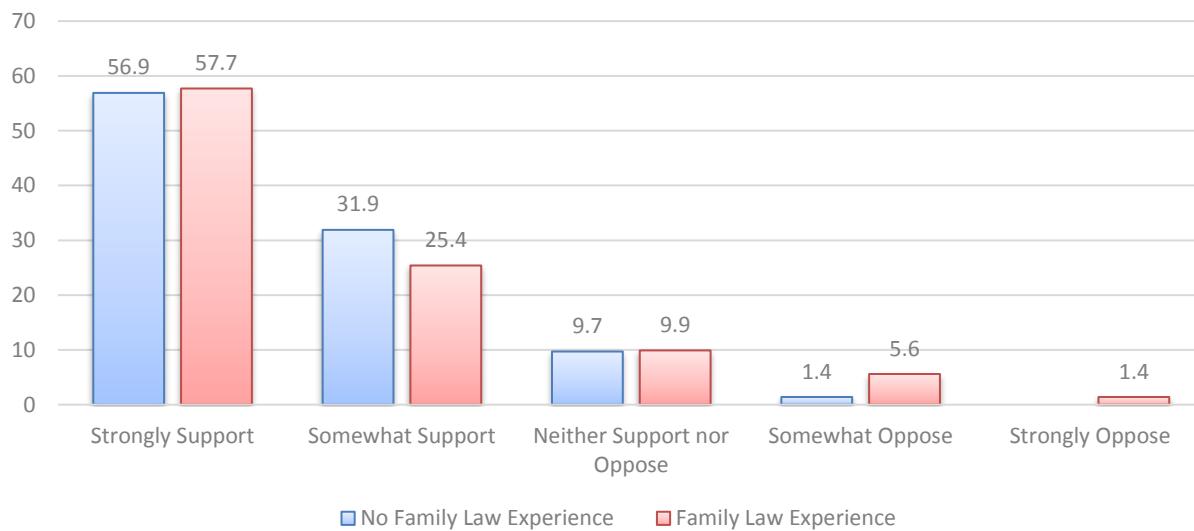


Figure 1 – Support or opposition toward a mandatory dispute resolution process (in percentage).

Why do you support making it mandatory in most cases to attempt to resolve family issues through a dispute resolution process before starting a legal action?

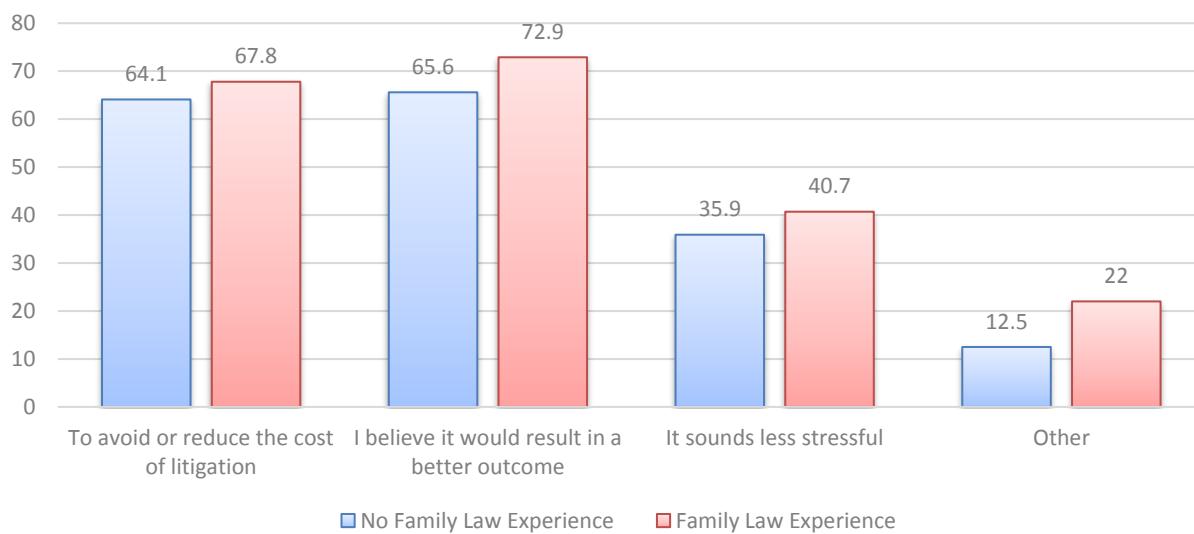


Figure 2 – Reasons for supporting a mandatory dispute resolution process (in percentage).

Solving Family Disputes

Respondents were asked what types of processes should be included as an option to meet a mandatory requirement for dispute resolution for a family law matter. Respondents were provided with eight options and the opportunity to enter an “other” response. Respondents could select as many options they thought applicable. Counselling was the most endorsed response (79.0%; $n = 113$), followed closely by Negotiation between Parties (72.7%; $n = 104$). Collaborative Law Services (32.9%; $n = 47$) and Government Mediation (31.5%; $n = 45$) received the lowest endorsement rates. However, when chi-squared analyses were performed to determine if selections were related to whether respondents had a previous family law experience or not, a significant relationship was found for the selection of Collaborative Law Services, $\chi^2(1) = 9.52$, $p = .002$. An examination of the endorsement rates suggest that those who have experience with a family law process are more likely to believe that Collaborative Law Services should be included as an option to meet a mandatory requirement for dispute resolution for a family law matter. Figure 3 presents a detailed depiction of respondents’ selections by group.

What types of processes should be included as an option to meet a mandatory requirement for dispute resolution for a family matter?

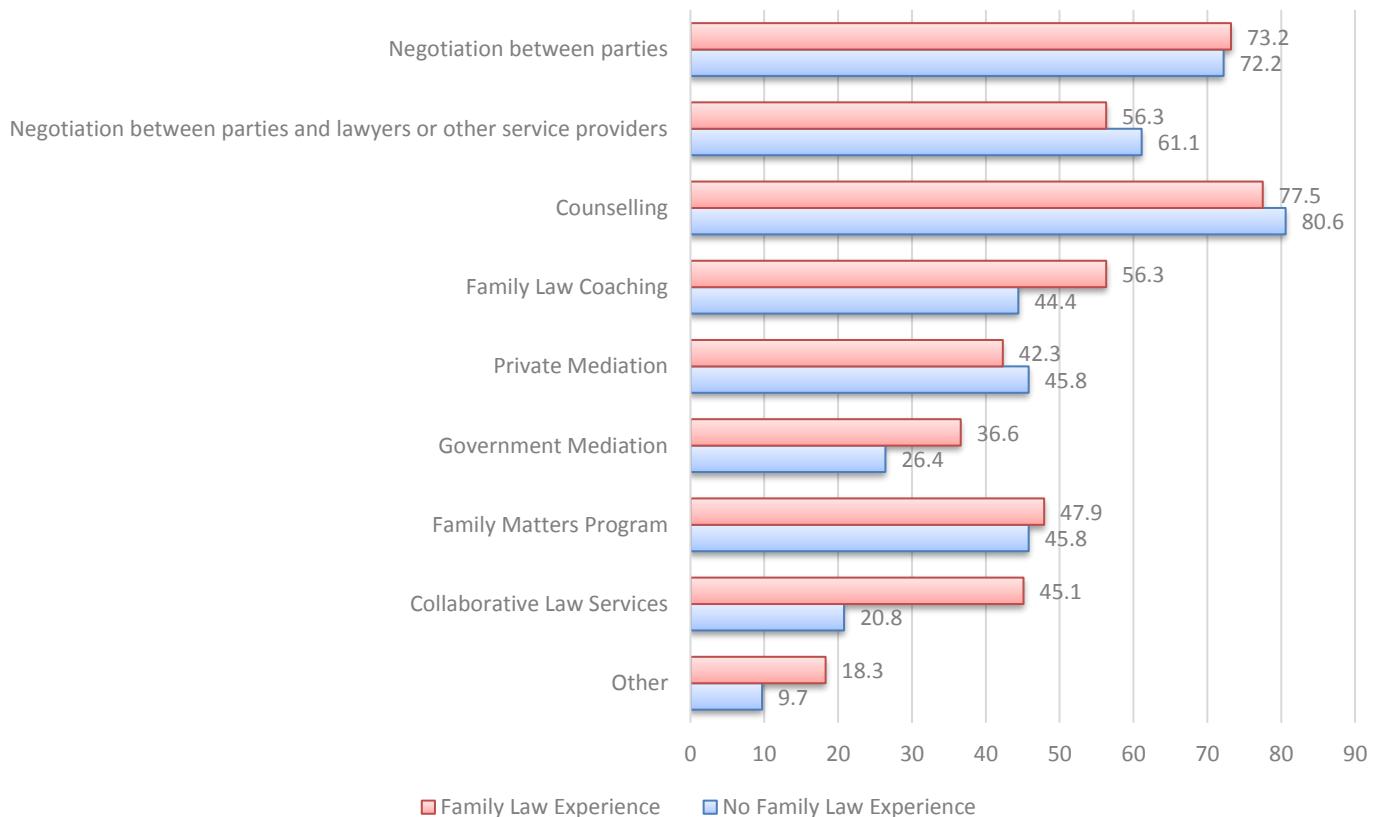


Figure 3 – Endorsement of processes that should be included as a requirement for dispute resolution (in percentage).

Some respondents used the “other, please specify” option to suggest that counselling would be especially useful for custody assessments and home visits (this would include background checks, drug and alcohol screening, and criminal record check), as well as in dealing with family dysfunction. One individual noted that removing mandatory requirements would be helpful. Two individuals noted that, for some cases, resolution through mediation is not likely. Lastly, some of the respondents who selected “other” professed that they were not aware of some of the options provided (e.g., Collaborative Law Services, Family Matters Program). As such, caution should be exercised when interpreting these results as it is possible that those who were not aware of these services/programs would endorse them if given more information.

Lastly, respondents who had a previous family law experience were asked, based on their own experience, what works best to solve family law disputes. Many respondents made reference to help from outside arbitration. They noted that an external mediator helped keep discussions on topic, allowed parties to make decisions more objectively, and facilitated the overall process. Being able to have discussions with the assistance of a neutral mediator increased the perceived fairness of the process, encouraged objective decision-making, and facilitated a balanced approach. Several individuals also noted the importance of compromise, which leads to greater fairness, open dialogue, more follow-up, patience, and overall commitment to work together. However, one individual noted that compromise not achievable in cases involving domestic violence and cautioned against such an approach for those cases. Other individuals cited communication, honesty about one’s intentions, education about the process, and counselling as beneficial to solving family law disputes. Three individuals noted a strong preference for a lawyer instead of mediation. These individuals cited the necessity of a lawyer in special cases such as custody battles or where substance abuse and interpersonal violence are an issue. Conversely, three individuals cautioned against hiring a lawyer, as court processes tends to be lengthy and expensive.

Conclusions

The survey results revealed fairly negative associations with both the dispute resolution process and the court process as they relate to family law. Words that were generated in association with these processes often related to personal affect and the process itself. Notably, no positive affect words were generated in relation to the court process, while some positive affect-related words were provided for the dispute resolution process.

The results also demonstrated widespread support for the implementation of a mandatory dispute resolution process in an attempt to resolve family issues before starting a legal action in court. This support was prevalent among respondents who had a previous family law experience and those who did not. The most commonly cited reasons for supporting this mandatory requirement was that it would

reduce litigation costs and would result in better outcomes. Many respondents also believed it would be a less stressful process.

When considering what processes could be included as a mandatory requirement in dispute resolution, most respondents endorsed counselling and negotiation between parties (with or without a lawyer or other service providers). Respondents who have had a family law experience were more likely to endorse Collaborative Law Services; however, some respondents noted that they did not recognize some of the options for this question, likely resulting in a lack of endorsement. The difference between groups may reflect greater awareness of family law-related services among those who have experience with family law processes. Respondents with a family law experience echoed their support of mediation outside of the court process in their open-ended responses.

Appendix A – Online Survey

- 1) In what province or territory do you currently reside?
 - a) Newfoundland and Labrador
 - b) Prince Edward Island
 - c) Nova Scotia
 - d) New Brunswick
 - e) Quebec
 - f) Ontario
 - g) Manitoba
 - h) Saskatchewan
 - i) Alberta
 - j) British Columbia
 - k) Yukon
 - l) Northwest Territories
 - m) Nunavut

- 2) Have you participated in a dispute resolution process¹ related to a family matter in Saskatchewan?
 - a) Yes
 - b) No

- 3) [If Yes] Please list up to three words describing your experience of the dispute resolution process.
 - a) _____
 - b) _____
 - c) _____

- 4) Have you participated in a court process² related to a family matter in Saskatchewan?
 - a) Yes
 - b) No

- 5) [If Yes] Please list up to three words describing your experience of the family court process.
 - a) _____
 - b) _____

¹ Dispute resolution process means negotiation between parties; negotiation between parties and lawyers or other service providers; family law coaching; private mediation; Family Matters Program; collaborative law services; or Government mediation.

² Court process means going to court and resolving matters through a court action.

- c) _____
- 6) To what extent do you support or oppose making it mandatory in most cases³ to attempt to resolve family issues through a dispute resolution process⁴ before starting a legal action?
- a) Strongly Support
 - b) Somewhat Support
 - c) Neither Support nor Oppose
 - d) Somewhat Oppose
 - e) Strongly Oppose
- 7) [If Support] Why do you support making it mandatory in most cases to attempt to resolve family issues through a dispute resolution process before starting a legal action?
- a) To avoid or reduce the cost of litigation
 - b) I believe it would result in a better outcome
 - c) It sounds stressful
 - d) Other, please specify: _____
- 8) [If Neither Support nor Oppose] Please offer any comments to clarify your answer.
- 9) [If Oppose] Why do you oppose making it mandatory in most cases to attempt to resolve family issues through a dispute resolution process before starting a legal action?
- 10) [If Yes for #2 or #4] Based on your own experience, what works best to solve family law disputes?
- 11) What types of processes should be included as an option to meet a mandatory requirement for dispute resolution for a family law matter? (check all that apply)
- a) Negotiation between parties
 - b) Negotiation between parties and lawyers or other service providers
 - c) Counselling
 - d) Family Law Coaching
 - e) Private Mediation
 - f) Government Mediation
 - g) Family Matters Program
 - h) Collaborative Law Services
 - i) Other, please specify: _____

³ Some exceptions to the requirement are being considered.

⁴ Dispute resolution process means negotiation between parties; negotiation between parties and lawyers or other service providers; family law coaching; private mediation; Family Matters Program; collaborative law services; or Government Mediation.

12) What is your gender?

- a) Male
- b) Female
- c) Other

13) How old are you?

14) Which of the following best describes your employment status?

- a) Self-employed
- b) Working for pay full time (includes on paid leave)
- c) Work for pay part time (includes on paid leave)
- d) Student
- e) Caring for children or other family members full time
- f) Retired
- g) Unemployed/looking for work
- h) Disabled
- i) Other

15) What was your annual household income before taxes in 2016?

- a) Less than \$25,000
- b) \$25,000 to less than \$50,000
- c) \$50,000 to less than \$75,000
- d) \$75,000 to less than \$100,000
- e) \$100,000 to less than \$150,000
- f) More than \$100,000

16) What are the first three digits of your postal code?

Appendix B – About the Social Sciences Research Laboratories

Founded in 2011, the Social Sciences Research Laboratories (SSRL) represents a major investment in social science research infrastructure and research supports at the University of Saskatchewan, and across Canada. Comprised of eight complementary and interrelated research laboratories (*Community-Based Observation Laboratory; Experimental Decision Laboratory; EEG Hyperscanning Laboratory; Qualitative Research Laboratory; The Spatial Laboratory; Survey and Group Analysis Laboratory; Social Network Laboratory; and Video Therapy Analysis Laboratory*), the SSRL has three objectives:

1. To provide researchers access to shared research infrastructure and technical and administrative support.
2. To enable hands-on research training opportunities for undergraduate and graduate students in the social sciences.
3. To enable and support investigator-driven and community-engaged research.

Uniquely developed as a ‘public utility,’ the SSRL provides access to specialized research infrastructure (computers, equipment and software) and research space (specific and multi-purpose research space that facilitates mixed-methods research). Additionally, the SSRL provides access to research supports in the form of methodologists/specialists (SSRL operations staff) with backgrounds and training in specific social science research methodologies (e.g., quantitative/survey research; qualitative research; experimental research; mapping, GIS and spatial analyses). The SSRL and its component laboratories are available on a fee-for-service model to faculty, staff and students at the University of Saskatchewan, other academic institutions, and community partners outside of the university setting.

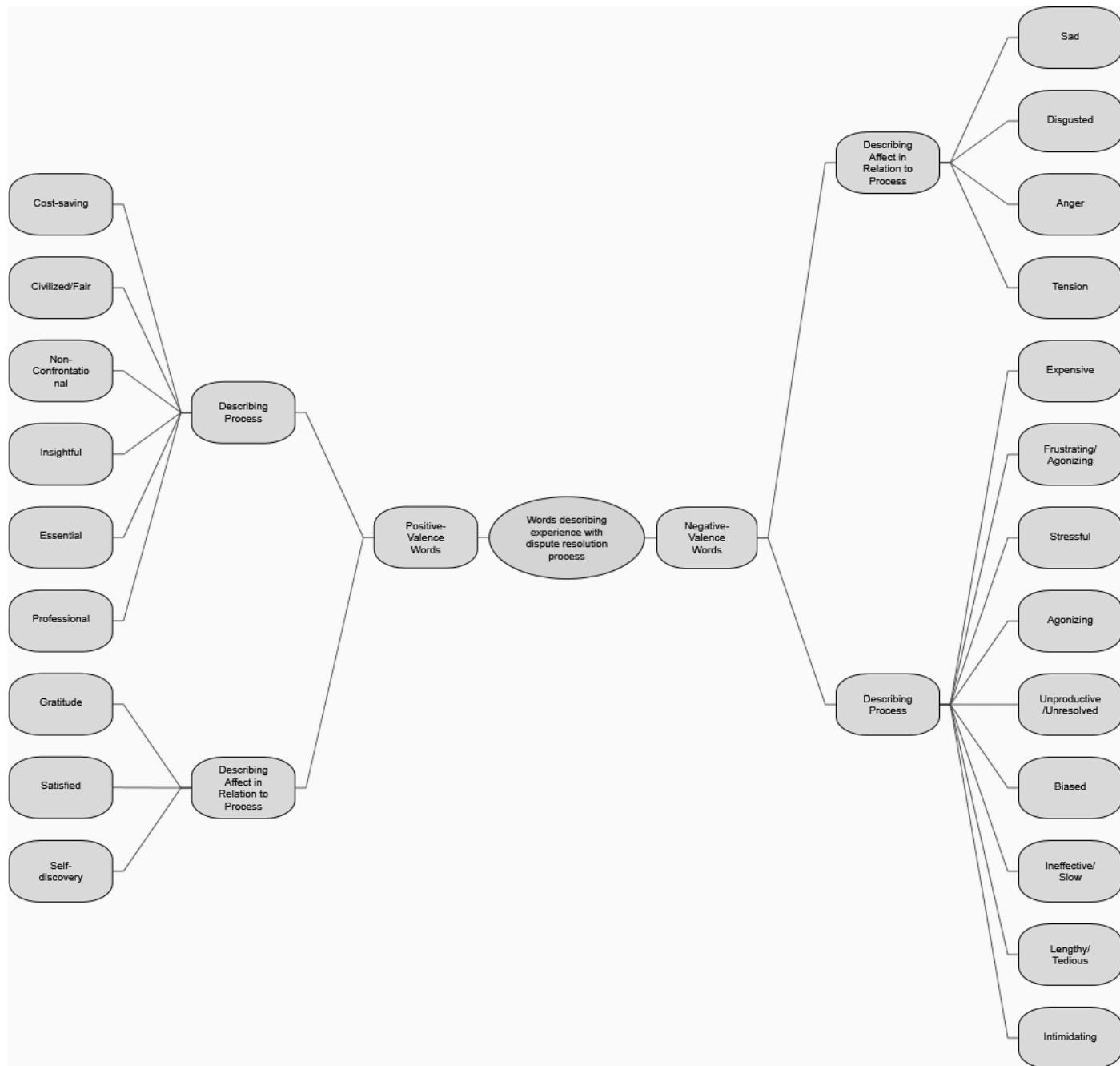
As a unit, the SSRL benefits from what is described as a ‘collective capacity,’ i.e., shared infrastructure, shared space and shared operational and administrative support provided across seven diverse, yet related research laboratories. The benefits of this collective capacity are substantial, allowing for shared theoretical and methodological explorations through mixed-methods research; facilitating community-engaged scholarship with individuals and organizations outside of the University of Saskatchewan; and providing student opportunities for experiential learning through practical, hands-on research and employment opportunities.

For more information, visit our webpage: ssrl.usask.ca

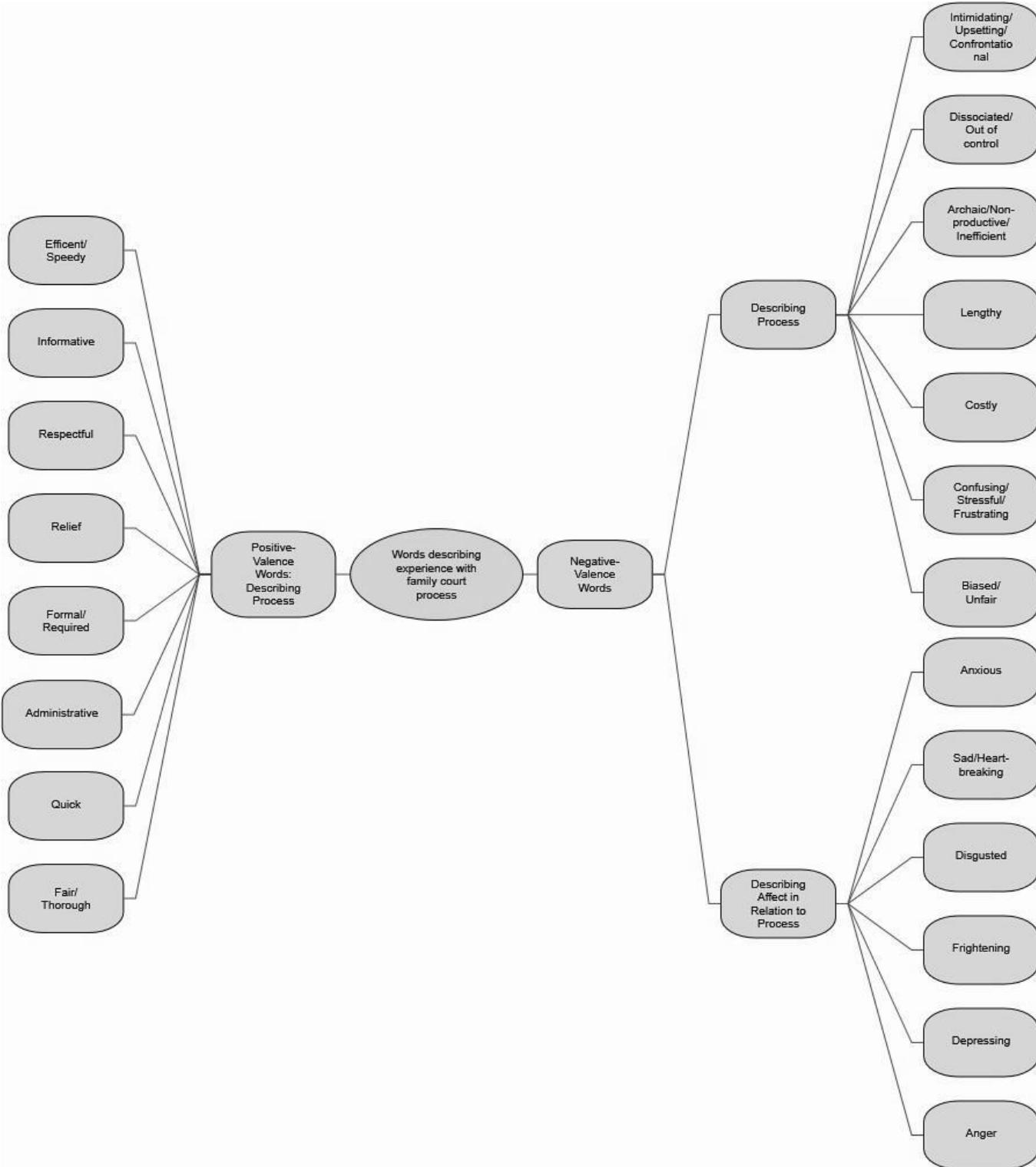
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Appendix C – Words describing the experience of the dispute resolution process



Appendix D – Words describing the experience of the court process



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