

Chapter Six

Parenting Coordination in Practice

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A. WHAT IS PARENTING COORDINATION?

Parenting coordination is a post parenting plan dispute resolution process provided by mental health or legal professionals (family law lawyers or retired judges) to assist parents in chronic high-conflict coparenting¹ circumstances. The parenting coordinator (“PC”) assists the parents with the implementation of their previously agreed to and/or court-ordered parenting plan in a child-focused and expeditious manner to minimize parental conflict, thereby reducing risk to children. In some instances, when the children are very young, the PC will assist the parents to implement an interim or evolving parenting time schedule. Unlike closed mediation or mediation/arbitration, which are confidential processes, typically parenting coordination is “open” thereby permitting reporting to court where necessary.

Parenting Coordinators (“PCs”) do not conduct child custody and access assessments or therapy. The PC takes on a hybrid role of legal and mental health functions including parent education and coaching, assistance implementing, modifying and monitoring compliance of the parenting plan, conflict management, resolution and negotiation, case management and coordination, and as a last resort, when agreements cannot be reached, decision-making within a limited scope.

In most jurisdictions, the PC does not determine or arbitrate a change to the decision-making (legal custody) provisions for major child-related decisions, or make substantial changes to the parenting time (access),² or determine a relocation. However, in cases of joint legal custody when the parents are unable to agree on a major child-related issues (*e.g.*, school or daycare choice, major medical issue, counselling for a child), the PC may make the final decision. Financial matters are typically excluded from the PC’s role, though it is possible the parents will consent to identified matters, such as payment for extra-

¹ Coparenting occurs irrespective of the parenting time allocated to each parent. The term “high-conflict coparenting” is chosen intentionally to replace the more inflammatory and commonly utilized term “high-conflict people” or “high-conflict parents”.

² Typically, substantial changes to the schedule are defined as those that are permanent and would impact the quantum of child support. However, a structural change to the parenting time schedule, such as from a 5-5-2-2 to alternating weeks, may also be considered a significant change and not permissible.

curricular activities or resolving s. 7 interpretation disputes³ being included in the PC's mandate.

B. CANADIAN SCAN: LEGISLATION AND LEGAL FRAMEWORK

Parenting Coordination is practised widely in the United States (more than 30 jurisdictions), several Canadian provinces, and to a lesser extent in Europe and Asia, governed variously by statutes, legislation, local rules of the court or private consent orders.⁴

In Canada, interest in parenting coordination began in Ontario, led by the Association of Family and Conciliation Courts ("AFCC") members, and was quickly followed by a growing interest in British Columbia and Alberta, and more recently, Prince Edward Island. In addition, on a smaller scale a few mental health professionals in other provinces, such as Manitoba, are practising parenting coordination under the authority of their *Arbitration Act* and private consent orders. More recently, Quebec has implemented a parenting coordination pilot project. Given that family arbitrations are not permissible in Quebec, parenting coordination does not include a delegation of decision making to PC.⁵

1. Ontario

Since the 2006 amendments,⁶ to the *Arbitration Act*, family arbitrations in Ontario are now differentiated from all other types of arbitrations and must be conducted in accordance with the law of Ontario or another province in Canada. Consequently, faith-based arbitrations, while they may still occur, are no longer legally enforceable. In Ontario, any family arbitration, including that occurring in parenting coordination, is governed by Provincial and Federal Law, specifically, the *Arbitration Act, 1991*,⁷ the *Family Law Act*,⁸ the *Divorce Act*,⁹ the *Children's Law Reform Act*,¹⁰ and the *Family Statute Law Amendment Act, 2006*,¹¹ which amends the *Arbitration Act, 1991*, and the *Family Law Act*.

In Ontario, parenting coordination is a secondary arbitration (FLA s. 59.7(1), defined in s. 59.7(2) as, "a family arbitration that is conducted in accordance with a separation agreement, a court order or a family arbitration award that

³ *Federal Child Support Guidelines*, SOR/97-175, s. 7.

⁴ See Kirkland (2008) for more information on the status and practice of parenting coordination in the United States.

⁵ For more information on this initiative see Quigley & Cyr, 2016.

⁶ Ontario Regulation 134/07, Family Arbitration, *Arbitration Act, 1991*.

⁷ S.O. 1991, c.17.

⁸ R.S.O. 1990, c. F.3 ("FLA").

⁹ R.S.C. 1985, c. 3 (2nd Supp.).

¹⁰ R.S.O. 1990, c. C.12.

¹¹ S.O. 2006, c. 1.

provides for the arbitration of possible future disputes relating to the ongoing management or implementation of the agreement, order or award.”

In Ontario, unlike in British Columbia or Prince Edward Island, it is not permissible for a judge to delegate any decision-making process to a mediator, arbitrator or PC (see, for example, *I. (F.) v. P. (S.P.)*)¹²). Accordingly, a PC can be appointed by the court and have arbitral powers only if the parties consent to it and delegate the responsibility of decision making to a parenting coordinator.

The regulations to the 2006 amendments indicate that for any secondary arbitration, the arbitrator or PC must screen the parties for domestic violence and power imbalances, and subsequently provide a declaration of having done so.¹³ In addition, the regulations provide requirements for record-keeping and reporting to the Ministry of the Attorney General, anonymously, of any arbitral awards issued.

Since the amended legislation, parties who have consented to an arbitration can no longer waive their right of appeal to the court. There are two avenues to set aside an award. The first is to ask for a judicial review (s. 46, *Arbitration Act, 1991*) on the basis that the arbitrator did not treat the parties fairly or violated some other rule of “natural justice” (s. 19, *Arbitration Act, 1991*). When functioning in the arbitration role, natural justice requires the arbitrator to deal with the parties fairly, which includes giving each party an opportunity to be heard and present his or her case, making sure each knows the case of the other side so that they can make a full answer.

The second way to set aside an award is by way of an appeal (s. 45, *Arbitration Act, 1991*). The narrowest grounds for appeal, on a question of law with leave from the court (s. 45(1)), is the default, unless the parties choose to expand the grounds to include a question of law (without leave), a question of fact, or a question of mixed fact and law.

This change in the ability to waive the right of appeal has the effect of preventing any decisions made by the PC from being completely final, contrary to the objectives of parenting coordination for a timely process that brings finality to disputes. Still, parties recognize the PC’s limited scope of authority to arbitrate (unlike that in mediation/arbitration) and have a strong need and desire for finality to their disputes. Generally speaking, parents who have agreed to parenting coordination will live with the result and not seek to overturn it. In

¹² [2011] O.J. No. 5277, 2011 ONCJ 584, 2011 (Ont. C.J.). See also *Reid v. Catalano*, [2008] O.J. No. 912 (Ont. S.C.J.); *Hsiung v. Tsioutsoulas*, [2011] O.J. No. 4492, 2011 ONCJ 517 (Ont. C.J.); and *Moreira v. Garcia Dominguez*, [2012] O.J. No. 1100 at para. 152, 2012 ONCJ 128 (Ont. C.J.), where Justice Zuker stated: “There is no authority for a Justice to order a party to involuntarily submit to parental coordination, or to dispense with one’s consent to such an agreement *M.(C.A.) v. M.(D.)*, 2003 CarswellOnt 3606 (Ont. C.A.)”

¹³ See *Horowitz v. Nightingale*, [2017] O.J. No. 2353, 2017 ONSC 2168 (Ont. S.C.J. (Fam. Ct.)) where the parties’ agreement contained in an executed Minutes of Settlement to use a PC for future disputes was deemed unenforceable because there had been no domestic violence screening, no selection of appeal rights and no signed declaration by the arbitrator in accordance with the regulations. See also *Wainwright v. Wainwright*, [2012] O.J. No. 1975, 2012 ONSC 2686 (Ont. S.C.J.), where a Separation Agreement identifying arbitration as a future dispute resolution mechanism was set aside due to there having been no domestic violence screening.

many cases, the issue arbitrated, such as an attendance at a special event or temporary schedule change, will be over and done with by the time of any appeal. Still, a disappointed parent can seek to overturn a PC's decision within the framework of the appeal rights identified in the PC Agreement.

2. British Columbia

British Columbia's new *Family Law Act*¹⁴ came into force in March 2013 and replaces the *Family Relations Act*.¹⁵ The new Act includes provisions for parenting coordination (Part 2, Division 3)¹⁶ and authorizes the court to appoint a PC, with or without the parties' consent, stating parties are bound by the PC's determinations, subject to judicial review or an appeal. Case law ordering (e.g., *Shih v. Shih*, [2015] B.C.J. No. 2481, 2015 BCSC 2108 (B.C.S.C.), varied on other grounds [2017] B.C.J. No. 109, 2017 BCCA 37 (B.C.C.A.); *M. (R.) v. M. (N.)*, [2014] B.C.J. No. 2343, 2014 BCSC 1755 (B.C.S.C.); and *Silverman v. Silverman*, [2013] B.C.J. No. 684, 2013 BCSC 601 (B.C.S.C.)) and denying (e.g., *B. (K.V.) v. B. (O.B.)*, [2015] B.C.J. No. 202, 2015 BCSC 171 (B.C.S.C.) and *Fleetwood v. Percival*, [2014] B.C.J. No. 3123, 2014 BCCA 502 (B.C.C.A.)) the appointment of a PC is emerging.

3. Alberta

In Alberta, family arbitration is governed by the Alberta *Family Law Act*¹⁷ and the *Arbitration Act*.¹⁸ Further, Practice Note 7 (Alberta Rules of Court)¹⁹ permitting a "court directed parental conflict intervention" has been used for parenting coordination where the PC is permitted to make binding recommendations, with the court retaining ultimate jurisdiction. The authority of the PC and scope of mandate/authority is governed by a court order or written agreement of parties.²⁰

The PC is considered an Independent Parenting Expert ("IPE") under Practice Note 7 and provides a court-directed parental conflict intervention as part of case management (Parenting Coordination Order, Form FPN7-2). The court may delegate decision-making where both parties have consented to address "parenting responsibilities" and the parenting plan. Like family arbitration in Ontario, the

¹⁴ S.B.C. 2011, c. 25.

¹⁵ R.S.B.C. 1986, c. 128.

¹⁶ See ss. 14-19 for legislation pertaining to Parenting Coordination, online: http://www.bclaws.ca/civix/document/id/complete/statreg/11025_02.

¹⁷ S.A. 2003, c. F-4.5.

¹⁸ R.S.A. 2000, c. A-43.

¹⁹ Alta. Reg. 124/2010.

²⁰ Practice Note 7 may allow the appointment of a mental health professional as an "intervenor" (i.e., witness of the court) without consent of the parties. However, see for example, *T. (S.L.) v. T. (A.K.)*, [2007] A.J. No. 797, 2007 ABQB 446 (Alta. Q.B.), per Veit J., for a decision to the contrary.

PC's decision-making authority excludes: (i) a change in guardianship of child; (ii) allocation of parental responsibilities; (iii) giving parenting time/contact to person who does not have parenting time/contact with child; (iv) a substantial change to the parenting time/contact with child; or, (v) a relocation of child. The process is not confidential and the PC can report to the court.

4. Prince Edward Island

Recently, Bill No. 62, *An Act to Amend the Custody Jurisdiction and Enforcement Act*,²¹ proposed a government-based parenting coordination program, modeled after that established in British Columbia, with a few minor revisions. This law came into effect in 2017 under new s. 15.1 of the *Custody Jurisdiction and Enforcement Act*, though remains unproclaimed.²² Regulations are being drafted. Like practice in British Columbia, parenting coordination may be ordered against a party's consent. In addition to parenting coordination being offered privately through a roster, the government will be offering services, making this the first publically and much needed funded Parenting Coordination Program in Canada.

C. GUIDELINES AND PROFESSIONAL STANDARDS

The AFCC took a leadership role in developing guidelines for parenting coordination, first establishing a task force in 2001. In 2003, a paper on implementation issues was released and subsequently, Guidelines were published in 2005. The recommended professional qualifications, minimum training and needed experience may be found in these Guidelines available online: <http://www.afccnet.org>. The AFCC Parenting Coordination Taskforce is currently updating these Guidelines, with an anticipated release in the fall of 2019.

The American Psychological Association ("APA") has also developed guidelines for parenting coordination (2011, online: <http://www.apa.org>). British Columbia (2012, online: <http://bcparentingcoordinators.com>) and Prince Edward Island (2017, online: <https://www.princeedwardisland.ca/en/information/justice-and-public-safety/family-law>) have established their own Standards of Practice, required qualifications and training for accreditation.

More recently, in Ontario, the Family Dispute Resolution Institute of Ontario ("FDRIO") has established Standards of Practice (see <http://www.fdr.io>).

²¹ S.P.E.I. 2017, c. 62.

²² R.S.P.E.I. 1988, c. C-33.

D. TRAINING REQUIREMENTS

1. Ontario

Pursuant to the 2006 legislative changes, those conducting family arbitrations are required by law to have specified training approved by the Ministry of the Attorney General:²³

- (a) screening for domestic violence and power imbalances (at least 14 hours, taken in one week or less)
- (b) Ontario Family Law (30 hours, if not a member of the provincial Bar Association)
- (c) continuing education (10 hours over any two-year period, of which five hours must be on domestic violence and power imbalances)
- (d) 10 arbitrations over five years — if not, must re-take the above noted family law and two-day Domestic Violence screening course.

It is noteworthy that training in arbitration procedures is “strongly suggested” but not mandatory according to the regulations. However, it is required for certification by FDRIO.

In addition, a PC is ultimately accountable to his or her respective governing body, such as the College of Psychologists of Ontario, College of Physicians & Surgeons or the Ontario College of Social Workers and Social Service Workers or the Law Society of Upper Canada.

FRDIO is the first organization in Ontario to offer certification for a Specialist in Parenting Coordination designation (see Appendix VIII.4 for the FDRIO PC Designation Checklist; <http://www.fdr.io.ca>).

2. British Columbia

The *BC Parenting Coordinators Roster Society* was established in 2011 (<http://www.bcparentingcoordinators.com>) and has an application process for accreditation. The required qualifications for accreditation may be found in the regulations (Part 6, 105) listed in Appendix VIII.12 and posted on the roster website.

3. Alberta

The Alberta *Family Mediation Society* has created a designation and application process for *Registered Parenting Coordinator and Arbitrator* (“RPCA”). The qualifications, training and experience-related requirements, and the roster of PCs are available on their website (<http://www.afms.ca>). The qualifications and training requirements are available in Appendix VIII.13.

²³ See <http://www.attorneygeneral.jus.gov.on.ca> for more information. While there is no particular process for courses to become approved by the Ministry itself, trainers must be considered reputable providers and various elements of the required training are listed.

4. Prince Edward Island

To practice parenting coordination, a legal or mental health profession must obtain a certificate to practice from The *PEI Parenting Coordination Society*, recently established in 2017. Professional affiliation and training requirements are posted on the website (<https://www.princeedwardisland.ca/en/information/justice-and-public-safety/parenting-coordination-program>) and are listed in Appendix VIII.14.

E. OVERVIEW OF THE PROCESS

Parenting coordination involves several stages:

1. Initial Queries and Referral (self, lawyer, other professional, court).
2. Screening and Intake (for domestic violence, power imbalances and general suitability).
 - a. gathering information — assessment of sources of impasse, conflict analysis (*e.g.*, from parents, personal and professional collateral sources, children, lawyers, police, child protection agencies, documentation review).
3. Obtaining Informed Consent and Reviewing/Executing the Parenting Coordination Agreement (PC Agreement).
4. Consensus Building Phase — Conflict Management, Resolution, and Negotiation
 - a. parent education and coaching
 - b. implementing the parenting plan (clarifying ambiguities, minor modifications, and monitoring compliance)
 - c. case management and coordination.
5. Decision-Making/Arbitration Phase.

1. Initial Queries and Referrals

Initial queries and referrals for parenting coordination come from lawyers, parents, custody assessors, mental health professionals and the court. Typically, the practitioner fields many more queries than actual referrals that move to the next phase of intake and screening. Carefully thought-out protocols for managing initial queries and referrals are required and will vary depending on the person making the query or referral.

Particular attention must be paid to circumstances when counsel represents only one or neither parent. At this early stage, it is imperative for the PC to establish and maintain clear boundaries, which serve to preserve neutrality and mitigate perceived and actual biases, particularly given the high conflict dynamics. Initial direct calls or contacts with a parent individually should be brief and related to providing information about the process and referral protocol.

Though less prevalent than previously, frequently, callers do not fully understand what parenting coordination is and what it is not. Many use the term more colloquially, when what they appear to be seeking is a consultant or mediator to assist them to develop a parenting plan in the first instance. As noted previously, parenting coordination is a post-parenting service. At this early stage, the parenting coordinator is in an ideal position to provide information and referrals to other professionals when necessary. Providing information documents and/or a referral to the practitioner's own website is an efficient way to manage initial queries and referrals. When both parents are represented by counsel, an initial call with counsel will be conducted.

Checklist For Conference Call With Lawyers

- Identify existing relevant documents PC will review (*e.g.*, parenting plan, court orders, restraining order, assessment report, other reports).
- Are there allegations of abuse/violence? Have the parents been screened for abuse and violence? If so, by whom? Obtain details to obtain screening report. If not advise, you will do the screening.
- Have the lawyers reviewed PC Agreement? Questions?
- Clarify mandate and scope of authority of decision-making (see PC Agreement, Appendix V.3, section 4.1, subsection 4.1.1 to 4.1.16).
- Identify rights of judicial review and appeal.
- Select duration of Appointment (*e.g.*, 12 - 24 months).
- Review fees and retainer.
- Communication with lawyers, *ex parte* or not?
- Are there any specific issues the PC needs to be aware of coming into this family matter at this time?

See Appendix V.3 for a parenting coordination information document and Appendix V.4 for a sample PC Agreement, which thoroughly summarizes the objectives, roles and functions of the PC and the process during the different phases of the work.

2. Screening and Intake

As noted, regardless of jurisdiction and legal framework, all family arbitration cases must be screened for domestic violence and power imbalances. In addition, potential cases should be screened for suitability more generally, given there are some high conflict coparenting situations likely to be inappropriate for parenting coordination even when the results of the domestic violence and power imbalance screening do not preclude acceptance.

Though it can be articulated as a distinct phase of the work, screening is a process throughout, beginning with the very first query. In practice, screening and the more thorough intake process are typically a fluid and combined process. The PC, like all professionals, must check his or her biases, which can lead to distortions and misinterpretations. The "closed" confidential screening process involves hypothesis testing and looking for confirming and

disconfirming information as more and different information comes to light throughout the process.

Screening and intake will involve history taking (individual, family, marital and separation) and an assessment of the conflict and sources of divorce transition impasse. The source of impasse may occur on one or more of three levels: individual (personal vulnerability and previous trauma triggered by marital separation), interactional (interpersonal conflict present through relationship and contributing to separation and ability to truly disengage) and/or external/systemic (personal, friends, family, new partners or professional, such as mental health professionals, lawyers or other professionals, “negative advocates”). Each parent’s concerns about the child and the parents’ perceptions of how the child is involved in the parents’ conflicts is explored. While obtaining sufficient history and each parent’s narrative is important not only for the formulation of the case and for the parent to feel heard, the PC must explain and likely remind the parents that parenting coordination is a solution and a child-focused, forward-looking process.

Psychiatric illness and personality disorders are disproportionate in parents engaged in high conflict coparenting; estimates are in the range of about 60 per cent. These individuals will exhibit irregularities or dysfunction in how they think (perceive, interpret, attribute), manage emotions and behave interpersonally. More specifically, characteristics of those with personality disorders may include: inflexible and all-or-nothing thinking; hypersensitivity to criticism, poor insight and an inability to reflect on their own behaviour that may be contributing to the conflict; inability to identify and separate their own needs and interests from that of their child’s; difficulty accepting loss and unresolved grieving; unmanaged emotions and impulsive behaviour; other extreme behaviours; difficulty empathizing with others; externalization of responsibility on to others; self-sabotaging behaviour; disregard for authority; noncompliance with rules and orders; and, manipulative behaviour.

Thorough screening training is required to become a PC or family arbitrator. The PC will conduct the screening of each parent, which will involve some or all of following as relevant and appropriate:

- contact with counsel;
- review of intake questionnaires completed by the parents;
- use of formal or informal screening tools (see Chapter 2 for more information);
- review of relevant reports (*e.g.*, custody assessment, child welfare, educational, views and preferences, substance use, psychological testing);
- review of relevant documentation (*e.g.*, affidavits, court orders, police reports, criminal records, peace bonds, restraining orders, prior arbitration awards);
- individual meeting(s) with each parent;
- contact with relevant personal collateral sources (*e.g.*, new partners or stepparents, grandparents);

- contact with relevant professional collateral sources (*e.g.*, therapists, teachers, health care providers, *etc.*).

The following areas of inquiry are explored during the screening and throughout the process:

- nature and severity of intimate partner violence and power and control dynamics and imbalances;
- nature and severity of high conflict (including an analysis of the conflict and sources of impasse);
- the manner in which the children are specifically involved in the parental conflict;
- identifying each parent's parenting strengths and challenges;
- assessment of coparenting skills (*e.g.*, communication, cooperation);
- consideration of the children's emotional, social, academic and any other special needs;
- identification of the parents' objectives and needs;
- analysis of the current parenting plan, its strengths, deficiencies and developing agenda of items.

Although cases are often "screened in" by identifying safety procedures and protocols, it is likely that parenting coordination is not appropriate if some or all of the following are present:

- coercive controlling violence;
- incompetence due to severe untreated mental illness (*e.g.*, depression, psychosis, substance abuse)
- severe manifestations of a personality disorder (*e.g.*, paranoia, antisocial, borderline, narcissistic);
- ongoing child maltreatment concerns;
- insufficient financial resources (process causes hardship);
- chronic violations of parenting plan, court orders, previous PC agreements;
- parent literally unwilling to engage in the process;
- parent attempting to control the process;
- one or more complaints to governing bodies;
- previous unsuccessful parenting coordination services;
- criminal behaviour;
- parent has unrealistic expectations of the process and role of the PC (*e.g.*, demands PC does what is beyond mandate, uses process inappropriately such as to gather evidence, revisit previously made and investigated abuse allegations, continuous efforts to keep the conflict alive, incessant blaming of the other parent, efforts to punish the other parent).

A safe process for terminating must be implemented when it is necessary to screen out a referral. A review of the various screening models and protocols, including that for screening in and out are beyond the scope of this chapter (for more information on screening see Chapter 2 and see Appendix I.8 for the FDRIO Family Arbitration Screening Guidelines).

3. Obtaining Informed Consent and Reviewing and Executing the PC Agreement

Once the screening has occurred and a case has been accepted, and the parents have both consented, the PC Agreement must be executed. In Ontario, regulations indicate that any agreement covering secondary arbitration must be in writing, signed by the parents, include the PC's declaration that he or she has screened the parents for domestic abuse and power imbalances, and identified the appeal rights.

Uniform orders are available in jurisdictions with Parenting Coordination legislation, such as British Columbia and Prince Edward Island. Appendix V.4 contains a sample Parenting Coordination Agreement.

In Ontario, the parents must consent to Parenting Coordination, and accordingly, the informed consent must be obtained from both parents.

Obtaining independent legal advice ("ILA") before signing the PC Agreement is not required by law in the case of a secondary arbitration, such as parenting coordination, as presumably the parents had ILA when they finalized their parenting plan or separation agreement that identified parenting coordination as their dispute resolution mechanism. Notwithstanding, seasoned practitioners have noted the value of parents obtaining ILA before signing the PC Agreement, which is a lengthy and complex document. Given the best practice requirement for ILA, each parent will review the agreement with counsel, if they have one and then again with the PC during an orientation meeting.²⁴

Ideally, this meeting can be conducted with the parents together to lay the scaffolding for establishing an appropriate, business-like model of disengaged coparenting. Reviewing the PC Agreement with the parents together also saves time and costs and permits the parents to hear the PC at the same time. However, in some cases a joint meeting will not be possible or appropriate and the PC will meet with the parents separately to orient them to the process and obtain their informed consent.

As previously noted, it is imperative to set and maintain clear structures, protocols, policies and boundaries with parents from the get-go. The PC will review the PC Agreement and/or court order thoroughly, explaining the objectives, mandate and scope of authority, when and how children will be involved, the consensus building and decision-making phases, the limits to confidentiality, the fee terms and so on. This orientation meeting presents a good opportunity for the PC to begin to identify the parents' goals and aspirations for their children, which the parents are likely to agree about in at least some

²⁴ Years of experience has demonstrated that even with ILA, legal practice varies considerably regarding the extent to which lawyers review the PC Agreement with their clients. Also relevant is the extent to which the parents understand the complex agreement. Invariably, feedback obtained from clients indicates they appreciate and benefit from having their lawyers review the agreement in depth and then doing this once again with the PC.

respects, and to provide parent education on pertinent and relevant topics, discussed further on in this chapter.

As noted, when both parents are represented by counsel, the PC and counsel will have a meeting or telephone call to clarify the terms of the PC Agreement, some of which are negotiable. Items that require determination during the contracting phase are the:

- duration of appointment (Appendix V.4, s. 2.5, typically 12-24 months);
- areas of dispute included and excluded from the jurisdiction of the PC (Appendix V.4, s. 4.1);
- rights of judicial review and appeal (Appendix V.4, s. 10); and
- fees and retainer (Appendix V.4, s. 11).

Typically, parents will share the costs of the parenting coordination equally. However, in some situations it may be warranted for the parents to pay proportionate to income or some other benchmark. Notwithstanding, one parent

paying the fees in full, even with the provision of reallocating costs and cost awards, invariably leads to process obstacles, including the perception of bias. Further, while necessary to be sensitive to income discrepancies, each parent must have some “skin in the game” to maximize efficacy and change. Best practice requires that each parent pay something, even if nominal, for the service.

4. Consensus Building Process — Conflict Management, Resolution and Negotiation

Parenting coordination is specifically designed for the minority of separating or divorcing parents, estimated to be about 10 to 20 per cent, who remain unable to successfully disengage, and instead are immersed in chronic conflict. High conflict coparenting is characterized by high degrees of mistrust, control and dependency, escalated anger, poor communication, low cooperation, and ineffective or failed decision-making. In some cases, verbal abuse and intermittent physical aggression may occur. These parents have high relitigation rates. Often, other interventions and dispute resolution processes have failed. Frequently, many professionals have been involved with the family, including the police, child protection, and mental health agencies or professionals. Complaints to professional governing bodies are not uncommon.

During the consensus building phase, the PC may meet with the parents in joint sessions or individually depending on the circumstances and the extent to which the parents may be “triggered” and able to remain on the task at hand. A conference call with both parents may permit joint sessions while providing some needed distance, including emotional distance between the parents. Typically, agendas are shared in advance of any meetings and the PC will work through the agenda items based, alternating between each parent’s agenda, while taking into account any time-sensitive issues. The PC may obtain information from both personal and collateral sources of information and from the children.

These contacts may occur during the early data gathering stages of the work, or later in the process when addressing a dispute, such as a change in the child's school, enrolment in an extracurricular activity or a child receiving therapy.

In most cases, the work is intensive for the first three months or so and until the backlog of implementation conflicts are addressed and the parenting plan is "cleaned up" and augmented where necessary to mitigate future disputes. Once this step has been accomplished the case moves into a maintenance phase. This may involve a monthly or bi-monthly meeting to check in with the parents and stay ahead of potential disputes, or meetings may occur on an as needed basis when disputes arise. Parenting coordination is not a crisis service. It is far preferable to pre-empt conflicts by anticipating and addressing potential issues proactively and before these become a crisis on for example, the eve of an important holiday.

It is wise for the PC to limit the number of parenting coordination cases and for the commencement of files to be staggered given the intensive upfront work most families will require. Additionally, limiting the number of meetings per day and allowing time in between to complete notes, plan for the next meeting and complete any summary letter or written agreements is advised.

As noted, the PC provides three essential functions: (a) parent education and coaching; (b) implementing and monitoring the existing parenting plan through consensus building, conflict management, resolution and negotiation; and (c) decision-making.

(A) PARENT EDUCATION AND COACHING

Education, provided to the parents individually and/or during joint coparenting sessions, is a critical component of the process and provided throughout, particularly during the orientation and informed consent process, and the consensus building phase. The PC, functions as a "good parent" and "container", ideally assisting the combative and in many cases immature parents to refocus on the needs of the children, communicate better, or failing that to disengage. When cooperative parenting and communication are not possible, which will be the case in some instances, the PC will provide structure and protocols for the parents to implement a disengaged coparenting model. The PC models and teaches effective communication, problem solving, conflict resolution skills and patience, the latter not always an easy task.

Frequent topics, and the related social science literature and research, addressed during the process include: the short- and long-term negative impact of separation/divorce and parental conflict on children and adolescents and related risk and resiliency factors; the risks and benefits of different models of coparenting (conflictual, parallel and cooperative) and the rationale for the need for a disengaged model of coparenting and a detailed unambiguous parenting plan; understanding the many factors that contribute to parent-child contact problems and the continuum of parent-child contact problems; parenting styles (authoritative, authoritarian and permissive); factors that contribute to healthy

child adjustment, including low conflict and having a good relationship with both parents; adolescent brain development; and, the reliability of children's reports, *etc.*).

The PC may provide this education directly in individual and joint parent meetings, augmented by YouTube, other media, information handouts, recommended reading, homework assignments, and referrals to online and group parent education courses.²⁵

(B) IMPLEMENTING THE PARENTING PLAN (CLARIFYING AMBIGUITIES, MODIFYING, MONITORING COMPLIANCE)

We have learned, perhaps the hard way, that improvement in parent communication and cooperative coparenting may be an unrealistic goal for some parents engaged in high conflict coparenting. As noted, two related and essential tasks of the PC will be to assist the parents to implement their existing parenting plan while establishing a disengaged parallel coparenting model. Parallel coparenting is characterized by emotional disengagement, low conflict and low communication. While parallel coparenting is less optimal than cooperative coparenting, children can and do thrive in parallel parenting arrangements, especially when the parent in each home is available, nurturing and adequate. Parents are more likely to achieve cooperative coparenting from a place of distance or disengagement than from the thick of the conflict.

Coparents engaged in significant conflict tend to disagree and argue about day-to-day parenting issues, and these more frequently than the "major" child-related decisions (*i.e.*, identified by law as those relating to health/welfare, education and religion). While a custody designation may be necessary, for example, sole or joint custody, the title is likely insufficient given the preponderance of disputes over day-to-day parenting issues that are not within the scope of a custody (decision-making) determination. Examples of these day-to-day-decisions at the centre of high-conflict coparenting disputes are: extra-curricular activities and lessons; coparenting rules of engagement (and disengagement) and communication; what, when and how child-related information is shared; management of clothing and belongings between the two homes; vacation schedules; telephone access; location of and parental conduct during transitions (and who does the driving); and, temporary and minor adjustments to the parenting time schedule to name only some of these.

Consequently, it is well recognized that parents engaged in high-conflict coparenting require detailed and unambiguous parenting plans with clearly articulated protocols for parent communication and child-related information

²⁵ Resources include: www.justice.gc.ca (for parenting plans); <http://www.afccnet.org> (resources for parents); <https://www.highconflictinstitute.com> (includes online high conflict parent course); <https://www.irised.com>; <https://www.uptoparents.org>; <http://www.thecoparentingtoolkit.com>; <http://www.ourkidsnetwork.ca>; <http://www.healthyparent.com>; <http://www.divorce-education.com>; <https://www.onlineparentingprograms.com>; <http://www.williamjames.edu.com> (online high-conflict parenting course).

sharing. While such parenting plans are not a panacea for all high conflict coparenting cases, comprehensive parenting plans may be effective for some families to the extent that a detailed plan can assist the parents to minimize or encapsulate their conflict and thus, protect their children.

Though it would be far preferable for parents to have a sufficiently detailed parenting plan in the first instance, including minimizing costs during the parenting coordination, it is not uncommon for parents entering the parenting coordination process to have an inadequate and insufficiently detailed parenting plan.

Establishing necessary structures and protocols for parent communication and child-related information sharing (*e.g.*, frequency per week, permissible content, etiquette, response time, policies for emergencies), often by email, is imperative. Examples of acceptable etiquette include using respectful language,

including only child focused content, and forbidding name-calling, imputing motivation or opinions about the other parent's conduct. The PC often "polices" or monitors the emails to ensure compliance and to document when a parent violates the terms. The PC may coach parents individually on their emails to ensure these are compliant with the rules, and further, to assist the parent to better achieve instead of sabotage their goals.

One commonly used tool, is Bill Eddy's B.I.F.F. — Brief, Informative, Friendly and Firm. In addition, parents may choose to use the following in the subject line of each email: PR (please reply); FYI (for your information, no reply required); TS (time sensitive) and/or one subject per email with the subject clearly delineated in the subject line. Secure web-based communication tools, which have many functions and significant utility are frequently used, if not compulsory in parenting coordination.²⁶

During the intake, the PC conducts a critical analysis of the existing parenting plan to proactively identify any omissions, gaps and ambiguities to pre-empt future disputes from arising. By assessing the parental conflict and sources of divorce transition impasse, the PC comes to learn where the "sticking points" are in the parenting plan that are causing disputes and dysfunctional coparenting. This could be because a clause is ambiguous, conflicts with another clause, and/or owing to an omission of a needed term or protocol. Where necessary, protocols, structures and rules of engagement and disengagement are put in place to ameliorate any deficiencies in the parenting plan. See sample parenting plan (Appendix II.6).

A useful early intervention involves having the parents transpose the words of the usual and holiday parenting time schedule identified in their parenting plan into a shared electronic calendar (or a software program such as the ones previously mentioned). As this task is completed inevitable scheduling conflicts come to light permitting the potential dispute to be addressed and resolved well

²⁶ For example, a shared google calendar or <https://www.ourfamilywizard.com> or <http://www.twohandsapp.com>.

in advance thereby preventing the dispute from arising later and what is often on the eve of the holiday period. For example, the PC will assist parents when they are unable to sort out the inevitable temporary changes to the parenting time that may arise, such as when the paternal grandfather's 75th birthday falls on the mother's parenting time, or when the half- or step-sibling's christening or Bar Mitzvah falls on a day the child is not scheduled to be with that family. These scheduling conflicts often are not evident to the parents until the calendar exercise is completed.

In addition, existing clauses may require clarification or minor modifications to ensure smoother and less conflictual implementation of the parenting plan. For example, when does parenting time start and when does it end; that is, whose parenting time is it from the time the child is dropped off to school and until the end of school? Or, whose weekend is it after a parent has a two-week

vacation or there is a temporary change in the usual weekend schedule due to a long weekend? Other typical disputes the PC will encounter relate to the absence of protocols for: transitions between parents; rules of engagement if and when both parents are present at a school or extracurricular activity, attendance at parent-teacher meetings and school field trips; the movement of the children's clothing and belongings; cut-off dates and protocols for the parents choosing their summer vacation periods and the time requirements for the delivery of the travel consent letter; telephone contact between the child and the non-resident parent; and, parent communication and child-related information sharing.

Agreements reached during the consensus-building phase should be dated and documented in writing using specific and unambiguous language (address who will do what, when, where, how and how much), with attention paid to accountability and enforceability. These agreements should be signed and identified as addendums to the parenting plan. For agreements pertaining to events that are to occur into perpetuity, it is prudent to make the agreement into a consent award, which will assist with enforceability should an interpretation or compliance issue occur in the future.

A common concern raised by parents is the other parent's noncompliance with the parenting plan, court orders and the PC Agreement. Though the PC is limited in what he or she can do to address enforcement, which falls to the court, there are several measures the PC can implement to manage and hopefully prevent violations. Warnings to the offending parent can be given with increasing potency; delivered verbally to one parent or delivered verbally to one parent in the other parent's presence. Another tool the PC can use is a violation letter documenting a breach of the court order, parenting plan or PC Agreement. Further, the offending parent may be responsible for the fees associated with a determination of a violation. If a parent brings the matter back to the court, the violation letter may be provided as evidence. The PC may provide a progress report to the court or a final report should the process break down. As per the Parenting Coordination Agreement, the PC may

reallocate fees in the event one parent is deemed to be abusing the process. Finally, when a decision needs to be arbitrated, a costs award may be issued.

(C) CASE MANAGEMENT AND COORDINATION

Parents engaged in high-conflict coparenting often have and need multiple professionals, including the child's lawyer, therapists, educational consultants, child protection agencies and clergy. Case management and coordination of these professionals by the PC is critical when multiple professionals or agencies are involved with the family. The PC may be able to make decisions or be limited to making recommendations for a family member to obtain therapy or another intervention, such as psycho-educational or substance use assessment, anger management training, or a parent education group. In addition, the PC may be charged with monitoring substance use screenings or attendance at anger management therapy.

The PC acts as team leader, organizes the involvement of the professionals, and controls and manages flow of information between professionals. The PC will facilitate the execution of release of information consent forms and be responsible for initiating, organizing and scheduling team meeting as required.

Alignments between professionals and between parents and professionals are easily formed when working with high-conflict coparenting situations and parents with personality disorders, further contributing to impasse and parental conflict. Positive and sufficient communication between team members will mitigate professional alignments. Further, sufficient and efficient team functioning can help each professional more successfully achieve their respective objectives and mitigate the professional alignments.

The PC is not a therapist, however the PC often works closely with child, parent and family therapists concurrently involved. In cases involving resist-refuse dynamics or parent-child contact problems, the PC will monitor the family situation generally, the therapy order, assist to implement the existing parenting plan and address any ongoing parenting plan conflicts (*e.g.*, scheduling of holidays). This frees the therapist from becoming coopted as "mediator" by one or both parents and embroiled in these conflicts to resolve scheduling and other parenting plan disputes, thereby preserving their therapeutic relationship with the family members.

In addition, the PC may act as a buffer to the child's therapy and therapist to the extent that one or both parents intrude on that therapy by attempting to overshare one-sided information and garner the therapist as an ally. In such cases, the parents can be restricted from communicating with the child's therapist and instead, required to obtain information from the PC, who obtains regular updates from the child's therapist.

In some cases, when additional therapists are necessary but yet to be in place, the PC may have the authority to recommend or determine a new, qualified treatment team at the outset of the parenting coordination process. In other

situations, PC's may have the authority to make changes to address or correct an existing problematic therapy.

A therapist is prohibited from making determinations or even recommendations about parenting time given he or she has not conducted a comprehensive custody or access assessment. However, in parent-child contact problem situations, often the therapy is "open" allowing the therapist to provide updates and report to the PC, who may have the authority to monitor or even modify, within a limited scope, a step-up parenting time schedule that is commensurate with the progression of therapy.

5. Decision-Making/Arbitration Process

In Ontario and Alberta decisions made by a PC are referred to as awards, while in British Columbia and Prince Edward Island decisions are referred to as determinations. When the parents are unable to reach an agreement during the consensus-building phase, the PC may make a final binding decision, to the extent identified in the court order, parenting plan, separation agreement and/or the PC agreement. Any arbitrated decisions are subject to review by the court and the appeal rights identified in the PC Agreement.

As previously noted, and unlike mediation/arbitration, parenting coordination does not allow for the PC to arbitrate substantial and material changes to a parenting plan, such as a change in custody, parenting time schedules and/or a relocation. It is imperative the PC be sure the disputed issue is within his or her scope of authority. The PC must fully understand the ambit of his or her jurisdiction before embarking upon the task.

The PC thoroughly summarizes terms related to the decision-making process to the parents during the informed consent process and then again prior to any arbitration. When the PC determines an issue cannot be resolved in the consensus-building phase, he or she will clearly declare that the consensus-building process has ended and the decision-making process has begun. Ultimately, the PC will be the one to determine the procedures that apply to any particular arbitration, subsequent to engaging the input from the parents and where applicable, their lawyers.

To meet the requirements of the rules of natural justice (or procedural fairness), once in the arbitration process, the parents must be treated fairly and equally, have adequate notice of time and place of hearing either in person, by teleconference or in writing. The parents must clearly know the case to be met, be allowed to give evidence and cross-examine and be allowed to make submissions and respond to the other party's submissions. Unlike what may occur during the consensus-building phase, once in the decision-making phase, all communications the PC has with the parents about that particular dispute must be transparent; *ex parte* communications with one parent is impermissible. Counsel may or may not be involved. At his or her sole discretion, the PC is entitled to obtain information from personal and professional collateral sources subject to any obtained information being disclosed to the parents. The PC may

also choose to interview the children. In an effort to protect the children, disclosure of their input remains at the discretion of the PC and as permitted by the court order and PC Agreement.

In parenting coordination, arbitrations using written submissions and reply submissions are commonly used, while oral hearings with a reporter, examination and cross-examination occur less frequently. Summary arbitrations, preserving a fair and equal process, are permissible and consistent with the goals of finality and expeditious resolution of disputes for the sake of the children.

Contrary to what typically occurs in a mediation/arbitration, the parents' consent is required in advance for the PC to be able to use material obtained during the consensus-building phase from the parents, children and collateral sources, in an arbitration. Any information relied on is presented to the parents so that they have a chance to make submissions on the stated material in advance of any decision or award be rendered. The limited scope of decision-making, effectively excluding "major" issues, and the need for a cost-efficient, speedy and final resolution provide the rationale for these procedural variations.

More recently, different variations of two-person parenting coordination models have been introduced. For example, in one model the mental health professional works with the parents during the consensus-building process and the legal professional is reserved for any arbitration.²⁷

An award or determination must be in writing, include the place of the arbitration, be dated and signed by the PC. To minimize disputes arising over interpretation of an award, written decisions must be unambiguous, specific, attainable and measurable. The extent of reasons will vary depending on the nature of the issue and related circumstances.

Awards and determinations may be taken out as orders. Regrettably, the PC has no power to enforce an award; this right rests solely with the court. A parent seeking to enforce an award against the other recalcitrant parent, must bring a court application asking the court to execute its enforcement powers. The court enforces the award by making its own order, incorporating the PC's award. Noncompliance with this judicial order can lead on a subsequent motion to a finding of contempt with consequent significant penalties.

It is prudent for the PC to make as few decisions as possible given the negative impact this is likely to have on the PC's continuing relationship with at least one if not both parents throughout the duration of the term of service, which is typically 12 to 24 months.

F. CONCLUSION

Parenting coordination is designed to promote effective coparenting and the best interests of children, whose parents continue to be entrenched in high conflict and dysfunctional coparenting. A PC can assist parents to more successfully

²⁷ For more information on two-person models see Boyan and Termini (2017); Behrman (2016); and Brown, Behrman and Zimmerman (2017).

implement their parenting plans and a disengaged model of coparenting, resolve disputes in a timely manner, and monitor compliance.

Parenting coordination, though, is not a panacea for all high-conflict coparenting situations. Thorough screening for domestic violence and power imbalances and other obstacles associated with untreated mental illness, severe personality disorders and an effort to misuse and abuse the process must be conducted at the outset to differentiate families more likely to benefit from parenting coordination, including parents who are able to make the necessary changes to benefit from the process. If these cases cannot be identified at the outset, the PC may need to terminate during the term of service, or in other cases not agree to renew the contract.

We need more professionals who are willing to offer parenting coordination services. Working with high-conflict coparenting situations as a PC or in other dispute resolution or clinical capacities is challenging work. Specialized training, continuing education and peer consultation are needed. Practitioners are advised to implement strategies to reduce burn-out and promote self-care.

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