

**Family**

## Scope of authority and jurisdiction of a parenting co-ordinator | AJ Jakubowska

By **AJ Jakubowska**

AJ Jakubowska

(June 23, 2023, 1:58 PM EDT) -- This is part two in my three-part series on parenting coordination. The focus of this piece is the parenting coordinator's (PC) scope of authority in general, as well as his or her jurisdiction in the decision-making phase of the process. You may find the information useful if you are contemplating potential future use of a PC by your client and the other parent and drafting a "primary" document providing for a PC.

Understanding what PCs can and cannot take on, both as mediators and arbitrators, is also important if you are assessing parenting coordination as an option for your client even if the primary document makes no mention of it.

Any consideration of parenting coordination must factor in the foundational principle that pursuant to s. 59.7(1) of the Family Law Act, the decision-making phase of the process is a "secondary arbitration." This means that a PC works with a document, already in place, setting out parenting terms — a parenting plan or separation agreement, a court order or an arbitration award.

At the risk of repeating myself, parents do not work with a PC to come up with initial terms of a parenting plan. Parents can do that with a family mediator but not with a PC. A PC's scope of authority can be quite broad, and here I am talking about something other than jurisdiction in the decision-making phase.

I am referring to the breadth of the PC's discretion to use various tools to assist the co-parents in conflict. In the words of Dr. Barbara Jo Fidler, "... a PC acts as a team leader" and their role is akin to that of a case manager. PCs typically help with the implementation of existing parenting plans, interpret any ambiguities in such plans and negotiate minor modifications, and co-ordinate the involvement of third-party professionals with the parents and the children — for example, therapists, child protection agencies or lawyers for the children.

Education is a key component of the consensus-building phase. PCs typically work with co-parents to improve their communication with the help of protocols and etiquette rules — what can or must be shared between co-parents, by what means and how often. Parents may also benefit from better understanding the impact of their disputes on their children, including, based on the children's stages of development, the short- and long-term effects of toxic stress, and the importance of buffering relationships. In some cases, disengagement is the goal so the co-parents can parent with minimal interaction.

The tools in the PC's hands are broad, and I have listed but a few examples. Overall, the work of the PC focuses on minimizing parental conflict so that children are not at risk.

In the decision-making phase, the PC (as arbitrator) generally has jurisdiction to address the same subjects he or she can address as consensus builder. Importantly, a PC cannot arbitrate changes in decision-making responsibility or substantial changes in the co-parents' parenting time, as provided

for in the primary document. I used the word “generally” in the preceding sentence very deliberately because co-parents and the PC must agree to both the PC’s scope of authority and jurisdictions in advance of the process commencing, in the PC agreement. Often, the list of topics is very detailed, and it is vitally important that counsel turn their mind to this very important issue when considering the PC process.

The primary document may also make reference to areas the PC may take on. In other words, family law counsel should think about what the PC will actually be empowered to do at two points: at the time of the primary document, if the PC process is to be included among the terms, and at the time the PC is being engaged.

Parenting coordination involves a substantial commitment of time and money on the part of the co-parents. The importance of clearly setting out what the PC is empowered to do cannot be overstated. As they say, the devil is in the details.

There are grey areas when it comes to a PC’s jurisdiction as an arbitrator. I have discussed these with a couple of experienced PCs and their responses differ. For example, if the primary parenting plan provides for a phase-in of parenting time, and one of the co-parents resists, can the PC make an award on this issue? What if the parenting plan includes a 2-2-3 schedule, and one of the parents asks for a week-about? If arbitrated by the PC, would this amount to a substantial and material change in parenting time? I invite comments on my queries.

In the next installment, I spend more time on the PC agreement.

This is part two of a series; part one: Parenting coordination: Proceed, but with care.

*AJ Jakubowska is a family law lawyer, mediator and parenting coordinator. She practises in Newmarket, Ont.*

*The opinions expressed are those of the author and do not reflect the views of the author’s firm, its clients, Law360 Canada, LexisNexis Canada, or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

*Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Yvette Trancoso at [Yvette.Trancoso-barrett@lexisnexis.ca](mailto:Yvette.Trancoso-barrett@lexisnexis.ca) or call 905-415-5811.*