

TEN YEARS LATER: PARENTING COORDINATION IN BRITISH COLUMBIA

By R. Craig Neville

It could be nine or eleven years, but I wanted to write about the current state of parenting coordination in B.C. and ten years makes it sound more like a milestone. On the other hand, now that I think about it, it feels more like we have been doing this work forever. Here is a quick primer for those of you who may be hearing for the first time about this innovative ADR tool.

In an earlier paper I wrote on the topic,¹ I quoted from one of the professionals who has never been a particular fan of parenting coordination. Dr. Allan E. Barsky, in an article published in *Negotiation Journal* entitled “Parenting Coordination: The Risks of a Hybrid Conflict Resolution Process”, noted:

parenting coordination is a conflict resolution process that blends the roles of mediator, decision maker, monitor, assessor, educator, counselor, and enforcer for families involved in high-conflict divorces.²

Essentially, using mediation and arbitration skills (which parenting coordinators refer to as “consensus building” and “determination making” respectively), we manage the implementation of parenting plans for parents who have separated and “settled” their parenting issues. The word “settled” is in quotation marks because we are most often involved with parents where conflict remains high, so little is ever fully “settled”.

We enter into one- or two-year contracts with parents who mutually agree on the services we will provide and identify where we can make binding decisions respecting their parenting. We can address most parenting issues that come up over time but pursuant to the Family Law Act Regulation (the “Regulation”) we cannot, even if the parents agree, make decisions on issues regarding:

- (i) a change to the guardianship of a child;
- (ii) a change to the allocation of parental responsibilities;
- (iii) giving parenting time or contact with a child to a person who does not have parenting time or contact with the child;

- (iv) a substantial change to the parenting time or contact with a child;
or
- (v) the relocation of a child.³

Not surprisingly, given that innovation in family law has often drifted north, the model for parenting coordination that we use in British Columbia has its origins in California, in response to the growing sense that solutions to many ongoing parenting issues did not require the full engagement of the court. “Special masters” were court-appointed professionals who provided input and recommendations to the court on parenting issues before such issues became full-blown applications (otherwise known as financial disasters).

What makes B.C. somewhat unique is our adoption of the arbitration component of parenting coordination, which keeps the parties out of court on all issues within our jurisdiction as parenting coordinators. The only exceptions to this are applications under s. 19 of the *Family Law Act*⁴ (“FLA”) for review of decisions made by parenting coordinators.

In 2008, Dr. Joan Kelly, a Californian of Wallerstein & Kelly fame, was invited to Vancouver to provide training to enable us to change the way parenting disputes are resolved in B.C. Out of that training, an entirely new form of ADR was introduced to B.C. That training also gave birth to the B.C. Parenting Coordination Roster Society, created by a group of family lawyers and mental health professionals. We designated ourselves as founding members, nominated ourselves to the board of directors and headed out into the community to create awareness of the service.

I had expected reluctance from the bar to engage in parenting coordination, but family lawyers—particularly those finishing lengthy, acrimonious custody trials—were only too happy to turn their still-angry clients over to parenting coordinators to deal with the fallout. Having begun with a founding group of about ten, the roster of trained parenting coordinators slowly began to grow and the work became more available as family lawyers figured out the program.

Appointments of a parenting coordinator could be made only by agreement in the early days, although some judges threw caution to the wind and ordered our appointments in any event.

Life changed with the *FLA*’s introduction in March 2013. The provisions of the *FLA* capture the essence of the program and, perhaps more importantly, both the *FLA* and the Regulation contain appropriate limitations on our jurisdiction. The review provisions of s. 19 provide the court with the assurance that there is ultimately a fairly broad mandate to review decisions of parenting coordinators. The *FLA* provides for review on the basis

of an error of law or mixed fact and law, or where the parenting coordinator has acted outside his or her authority.⁵

There are now about 35 parenting coordinators in B.C., their ranks including both family lawyers and mental health professionals. They have more training required of them than is required of any other group of ADR professionals in the province. That is as it should be, given the deference shown to our responsibilities by lawyers and the courts.

The Law Society requires the following training for family lawyers who wish to work as parenting coordinators:

- a total of at least ten years engaged in the full-time practice of law or the equivalent in part-time practice or as a judge or master;
- sufficient knowledge, skills and experience relevant to family law to carry out the parenting coordination function in a fair and competent matter;
- 40 hours of training in how to conduct an arbitration;
- 80 hours of approved mediation skills training;
- 40 hours of approved parenting coordination training; and
- 14 hours of approved training in family violence.⁶

Parenting coordinators who are not family lawyers are required to have the following training:

- he or she meets the training requirements of, and is eligible for membership in, the Mediate BC Family Roster or Family Mediation Canada;
- he or she has at least ten years of experience in family-related practice;
- he or she has completed at least 40 hours of training in parenting coordination;
- he or she has completed at least 21 hours of family law training;
- he or she has completed at least 14 hours of family violence training;
- each year he or she completes at least ten hours of continuing professional development applicable to family dispute resolution practice, at least seven hours of which must be in the form of a course provided by the Justice Institute of British Columbia, by the Continuing Legal Education Society of British Columbia or by any other training provider that is recognized as providing high-quality training in that field; and

- he or she maintains professional liability insurance that provides coverage for his or her practice as a parenting coordinator.⁷

We started this work in about 2008 believing not only that we could solve parenting issues and improve the quality of communication between parents, but also that we could probably “cure” their personality disorders as well. As it turns out, we were a bit too ambitious. Enthusiasm is no substitute for knowing your limitations when it comes to achievable outcomes. Ten per cent of the population is said to have a personality disorder (histrionic, narcissistic, antisocial, paranoid, borderline) and there is a sizeable portion of our caseload in which a parent seems to have many of the indicia of such personality disorders.

So in the early years of our work as parenting coordinators we found ourselves attempting to fundamentally change parents’ approach to resolving conflict when that was not necessarily realistic given their situations and their capacities, both emotional and financial.

On the financial piece, because we believed we could solve every problem, we incurred what in retrospect were high fees in some cases, not because we did not do the work, but because it was a quixotic journey at best and the outcomes did not match the costs incurred by the parents. We encouraged (and sometimes required) parents to retain child specialists and parenting coaches to address intractable parenting challenges. I genuinely believe if we had thought a plumber would help, we would have considered retaining one. It dawned on us early on that some parents enjoy the conflict, encourage unhealthy engagement and do not want it to end! They would, however, prefer not to pay.

So, in the early days, significant fees were sometimes incurred with modest results, and those cases really got more exposure than they deserved. Many legal professionals came to judge the program by those early missteps, believing the program to be too expensive. This has been a challenging misconception to overcome. One of our parenting coordination mentors in this work, Dr. Matthew Sullivan, one of America’s leading psychologists, did some critical continuing education with us in 2011 and 2012 and helped us refocus on what is achievable and what reasonable expectations look like when working with high-conflict families. Setting boundaries on our own availability was helpful, as was becoming very clear with parents about what we can reasonably achieve in the parenting coordinator process.

A further financial factor is the state of the parenting plan when parents retain us. If there is a parenting plan that is 20 or 30 pages long and covers everything from pickup times and locations to how professional development days at school are divided, there may be few gaps in the parenting

plan and limited need for our services on a day-to-day basis. On the other hand, many parenting plans are skeletal and do not go beyond a general description of “week-on-and-week-off parenting with equal sharing of the summer vacation, spring break and Christmas”. The more ambiguous the parenting plan, the more we are called upon to fill those gaps with mediated agreements or binding decisions when the parents cannot agree. That involves significant cost, costs which were not incurred earlier on when the original settlement was completed or court order made.

So, as with much of our work as lawyers, all is seldom as it seems to the casual observer. Simply hearing about the costs of any matrimonial file without the knowledge of what was actually involved can be quite unhelpful in assessing the merits of what has been accomplished.

Another paper I prepared in 2012 for a CLE, “Parenting Coordination: The Program, the Precedents, and the *Family Law Act*”,⁸ focused in part on aspects of my own work which had probably increased the costs for parents:

In reviewing my own practice over the last three years I think a number of comments could be made that are relevant to (the cost) issue:

1. I have underestimated the tenacity of parents who are prepared to keep fighting when they are repeatedly told they are not going to get what they want on a particular issue.
2. I have had “developmental challenges” organizing my practice in a way which enables me to focus on one issue at a time when parents, not surprisingly, are giving me a stream of consciousness which may involve four or five discrete issues, each worthy of consideration.
3. I have not limited my accessibility which tends to increase the desire of parents to continue to communicate and incur additional expense.
4. I have needed to more clearly set out expectations of parents in terms of my expectations of them.
5. I have needed to create clearer boundaries around how the parents communicate with each other.
6. I have had to continue to restate the obvious about my focus being on the well-being of their children.
7. I have had to model basic communication skills for parents who, at least as between themselves, have had those skills atrophy from lack of use.
8. I have had to come to terms with the fact that often one or both of the parents on a parenting coordinator file have versions of events that are not only incompatible with each other but may be incompatible with what their kids have experienced and shared with me. (Yes that means three versions of the same event.)
9. I have had parents who each want me to read *different* portions of the s. 15 report but not all of it.

10. I have spent too long trying to build consensus.
11. I have spent too long writing determinations.
12. I have spent a lot of time listening to stories about the injustices of the trial process, the work of their counsel, etc.

Against these developmental issues in my practice are the litigation options which are still going to be available to parents. Parenting coordinator work might be described as the worst family management tool available ... except for all the rest. That is a bit of hyperbole but the point is that the court system, particularly after trial or settlement, is a blunt instrument to continue to have to utilize, for a number of reasons which are obvious to everyone practising family law.

The costs associated with parenting coordinator work cannot be compared to litigation options or even mediation or arbitration, for a number of reasons which I would describe as follows:

1. Most determinations which get made by parenting coordinators are now made in a very timely fashion compared to applications to the court with notice or even abridged notice.
2. Parenting coordinators develop an understanding of the dynamics of the families with which they work and have, over time, some of the relevant history that abridges the time required to make determinations.
3. A negotiated settlement is attempted in every dispute that comes before a parenting coordinator so there is not a choice required to be made by parents about whether to litigate or negotiate each issue. If it cannot be settled *then* the determination can quickly be made and time is not wasted. The parties know that they have been unable to resolve the issue between themselves.
4. Justice delayed is justice denied. How often have we seen requests for vacations with children simply abandoned when one party will not cooperate and the cost of going to court is too high or there simply is not enough time to have the court get involved. Those kinds of disputes are almost always resolved in a timely fashion by parenting coordinators without the kind of expense involved in a court application.
5. Points such as #4 lead to a less tangible benefit of parenting coordinator work and rest in being able to provide some empowerment to overcome financial power imbalances or control by a parent having primary day-to-day care. It is not possible to [overestimate] the longer-term emotional benefits to parents who know they can access a parenting coordinator in a timely fashion to resolve parenting disputes.
6. The more effectively parenting coordinators can be engaged by parents, the more salutary will be the impact on the healthy development of children in these high-conflict parenting situations. That is because if the parents are feeling there are avenues for expeditious resolution of day-to-day issues, there is going to be less of the historical blaming of the other parent for missed opportunities, whatever

they may be. We will not eliminate them, but they can be dramatically reduced.

7. Parenting coordinators have the capacity to address those frequent parenting problems which are a big deal to the parents. But for the courts? ... not so much. Pickups and drop offs, hockey equipment, school photos, recreational activities, birthday parties on the other parent's time, play dates, fluoride use, non-emergency medical care, and on and on. The court cannot possibly deal with these issues, nor should it. The greater concern is that the issues do not get resolved at all and fester with the half-life of uranium for one parent, or both, until they explode over some really inane issue.

Those are just some examples of reasons why there is not a good comparison between the cost of litigating post-trial parenting issues versus working with parenting coordinators. At its best, with parents who are not high conflict, it represents an accessible, expedient way to have decisions made by someone who has some longer-term knowledge of the family and its issues. With high-conflict families, particularly those in which one or both of the parents may evince characteristics of people with personality disorders, it has the potential to be expensive and time-consuming if not properly managed by parenting coordinators. That scenario still provides considerable advantages over having these parents forced to seek justice through a complex court system at considerable expense to them and to others.

All of that may sound encouraging about the future, but one of the issues for parenting coordinators has been the lack of research on our effectiveness, apart from anecdotal examples of the overall benefits of parenting coordination in our jurisdiction or any other. A paper published in the January 2018 edition of *Family Court Review*, the journal of the Association of Family and Conciliation Courts, offers some modest progress on this issue.

The paper, entitled "Critical Review of Research Evidence of Parenting Coordination's Effectiveness",⁹ refers to a number of studies involving small numbers of participants and less-than-rigorous research standards. One study was somewhat amusing. The authors write:

Regarding their experience with their parenting coordinator they were either very satisfied or very dissatisfied and were either very likely or very unlikely to recommend parenting coordination to others. Two other themes included attributing a lack of success to the other parent and not feeling heard or validated.¹⁰

That is not dissimilar to my experience with my own clients! It is not unusual for such divergent views to exist where significant decisions are made that one parent likes and the other does not.

On parenting coordination generally, the authors suggest that the studies show that parenting coordination is "perceived as an effective tool in helping high-conflict co-parents. This positive perception of parenting coordina-

tion is held not only by [parenting coordinators] but by attorneys and judges as well".¹¹

A 2009 study by Henry, Fieldstone and Bohac,¹² also outlined in the article, concluded that parenting coordination is effective in reducing the number of motions before the court filed by high-conflict families. The study compared two periods (2005–2006 and 2006–2007) of court filings. In summarizing this study, the authors write:

The findings indicate a reduction of approximately 75% in child-related court filings and a 40% reduction with regard to other motions, resulting in a 50% reduction in all motions filed. Over 60% of the co-parenting pairs filed fewer motions within the first year of receiving parenting coordination services. Furthermore, the results indicate that parenting coordination is most effective in decreasing motions filed in cases with 2 to 6 years of prolonged litigation.

There is little doubt that over time the savings in court time and costs, the easy access to a parenting coordinator, prompt resolution of disputes and use of a decision maker who knows the family will prove to be a worthwhile package of benefits for separating families. The onus is on us as lawyers, mental health professionals and parenting coordinators to get that message out.

ENDNOTES

1. R Craig Neville, "Ten Parenting Coordination Ideas You May Find Helpful" from the course "Psychology of Relationship Breakdown" (Vancouver, BC: Continuing Legal Education Society of British Columbia, May 2012) at 6.1.3.
2. Allan E Barsky, "Parenting Coordination: The Risks of a Hybrid Conflict Resolution Process" (2011) 27:1 *Negotiation Journal* 7 at 7.
3. BC Reg 347/2012, s 6(4)(b) [Regulation].
4. SBC 2011, c 25 [FLA].
5. *Ibid*, s 19(1).
6. Law Society of British Columbia, "Family Law Alternate Dispute Resolution Accreditation", online: <www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-practice/areas-of-practice/family-law-alternate-dispute-resolution-accreditation/>.
7. Regulation, *supra* note 3, s 6(b)(ii).
8. From the course "Family Law Act: Gearing Up Your Practice" (September 2012).
9. Robin M Deutsch, Garbiela Misca & Chioma Ajoku, "Critical Review of Research Evidence of Parenting Coordination's Effectiveness" (2018) 56:1 *Family Court Review* 119.
10. *Ibid* at 129.
11. *Ibid* at 130.
12. Wilma J Henry, Linda Fieldstone & Kelly Bohac, "Parenting Coordination and Court Relitigation: A Case Study" (2009) 47:4 *Family Court Review* 682.