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Family

Parenting co-ordination: The dialogue continues | AJ Jakubowska

By **AJ Jakubowska**

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(November 7, 2023, 1:23 PM EST) -- As always, I read with interest Hilary Linton's contribution on the important topic of parenting co-ordination, here.

Indeed, this unique modality of family dispute resolution, even though not included in the definition of this term in s. 2(1) of the *Divorce Act*, should find increasing use among family law lawyers for parents who already have parenting plans but who experience repeated and protracted post-plan conflict.

It is my perception that parenting co-ordination is still not well understood among members of the bar. This is not a criticism: I openly admit that early in my practice, like many today, I thought a parenting-co-ordinator (PC) assisted with negotiating parenting arrangements. Family Dispute Resolution (FDR) is not a frequent topic of CPD programs, and it should be.

I would go as far as suggesting that in our field of practice in 2023, FDR training is essential, including because our legislation now expects us, practitioners, to talk actively about it with our clients. FDR is, in my view, no less important than EDI and professionalism. Perhaps it is time to make such training mandatory, on a biennial basis, for example.

I raise a few more points about parenting co-ordination, as a companion to Hilary's informative piece.

I agree with Hilary's view that a court cannot order parenting co-ordination absent consent of the parties, if that process is to involve the PC putting on their arbitrator hat. The recent decision of Justice Deborah Chappel cited by Hilary confirms that, and there are several other cases specifically addressing this very point (*S.V.G. v. V.G.* 2023 ONSC 3206). The question actively discussed among parenting co-ordinators and family law lawyers is whether a court can invoke its *parens patrie* jurisdiction to order the involvement of a PC (with arbitral powers), or do so specifically under s. 16.1(5) of the *Divorce Act* or Rule 2(5) of the *Family Law Rules*. There are some cases involving the use of such jurisdiction (e.g.: *Townsend v. Marti* [2023] O.J. No. 4153) but the prevailing position, no question, is that a court cannot order classic parenting co-ordination absent consent of the parties.

With this principle in mind, what do we do with a recommendation in a s. 30 CLRA assessment report that parents use a parenting co-ordinator to address their ongoing disputes, and to manage the everyday implementation and interpretation of their parenting plan? Assume a case where the trial judge adopts the expert recommendations of the assessor based on the child's best interests. What is the fate of the term of those recommendations relating to the appointment of the PC, if the parties do not agree on it? That piece may, in fact, be essential to protecting the child's best interests in the post-trial landscape by giving the parties a sophisticated mechanism for managing their day-to-day co-parenting disputes, with an educational component along the way. The assessor's recommendation of a PC is likely based on his or her understanding of these particular parents' conflict dynamic and the sources of their conflict. If the goal is to address the child's best interests in a holistic way and with the future in mind, an assessor's recommendation of a PC should not be

dismissed lightly.

The model of parenting co-ordination without the decision-making component is an option if we accept the idea that a court cannot surrender to anyone else its decision-making jurisdiction. This new creature would involve extending the classic first phase of the traditional process, namely, consensus-building and education, from start to finish, but doing away altogether the decision-making phase. I say "new creature" but it has been ordered before. In *McCall v. Res* [2013] O.J. No. 2187, Justice Robert J. Spence ordered the appointment of a PC without arbitral powers, against the objections of the father. He kept the process open, so the PC could report to the court about the reasonableness of the parties along the way. In *Katz v. Katz* [2010] O.J. No. 6079, Justice Jayne E. Hughes took a similar approach and here, the PC's appointment was recommended by a very experienced assessor. Both parents objected to it. Her Honour's comments on why these parents needed a PC is worth citing here:

> 14 The evidence in this case has demonstrated to me that these children have a dire need for an experienced professional to quarterback the implementation of the parenting plan, including the actual timetable and to deal with the strategic manoeuvring and the power plays being engaged in by both their parents.

What might this new modality be called? Consensus-focused parenting co-ordination? Mediative parenting co-ordination? If the focus of this modality is mediation and no arbitral powers are involved, it would fit squarely within the definition of "family dispute resolution" in the *Divorce Act.* The mediative PC's mandate would also extend beyond the scope permitted for the classic PC; i.e., he/she could mediate changes to decision-making responsibility and parenting time, if the parties agreed.

I foresee one potential problem with convincing parents with a history of disputes to adopt this new version of the PC process. One of the selling features of the classic PC model is the very arbitral powers the mediative model would not include. In other words, many parents are attracted to the idea that in areas of agreed-to jurisdiction, the PC would make decisions for them without the need for the court's involvement.

Such decisions would be delivered cost-effectively, promptly and often based on a less formal process. Parenting co-ordination calls for a significant and long-term financial commitment on the part of the parents, and where funds are an issue, parents may simply opt for court when faced with the choice. Still, it would be open to a family court judge to order the mediative PC model in cases where the combination of education and the skill of a mediator have the prospect to resolving at least some of the disputes on consent.

AJ Jakubowska is a family law lawyer, mediator and parenting co-ordinator. She practises in Newmarket, Ont.