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Family

Exploring common misconceptions about parenting coordination | AJ Jakubowska

By **AJ Jakubowska**

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(September 12, 2022, 11:49 AM EDT) -- As someone who is about to undergo parenting coordinator (PC) training, and who has been sold on this modality of dispute resolution for years, I read with considerable interest the recent two-part series from Hilary Linton and Borzou Tabrizi. As expected, they presented their points in erudite and well-researched terms. This piece aims to address some of them in a more basic, practical and perhaps simplistic way. My family law mentees often ask for practical tools to help them tackle the challenges of their daily bread and butter. Many of the pieces I write for this esteemed publication are generated with them in mind.

I agree with my colleagues that parenting coordination offers an important and viable method of addressing parenting-related disputes for high-conflict parents. And yet, many family law lawyers continue to misunderstand the work of a PC, how the PC process fits into the dispute resolution mechanism between parents, and the authority of a PC (i.e., what a PC can and cannot do).

Here are the highlights of common misconceptions I have encountered over the last several years:

1. "*Now that the parties have separated, let's send them to a PC to work out the children's issues*" — I still hear this and surprisingly often. Parenting coordination is a term of art and the process is defined by fairly stringent rules. As described in the Association of Family and Conciliation Courts' (AFCC) "Guidelines for Parenting Coordination:" "Parenting coordination is a hybrid legal-mental health role that combines assessment, education, case management, conflict management, dispute resolution and, at times, decision-making functions."" Parenting coordination" is not interchangeable with "mediation/arbitration" for the development of a parenting plan or simply "mediation." Parenting coordination is also not co-parent counselling.

While in their work, a PC is likely to wear both mediator and arbitrator hats, the role is both broader and narrower. It is the former because it also encompasses all the other aspects of AFCC's definition. It is the latter because there are issues a PC cannot tackle. More about that below.

As Linton and Tabrizi aptly point out (paraphrasing), the involvement of a PC can only be triggered post-agreement with a pre-existing plan related to the children. That can be a separation agreement, a parenting plan, court order or arbitration award. It may, in fact, be an interim arrangement. A PC works with parents to interpret ambiguities in the plan and/or help implement an existing plan. A PC does not create such a plan from scratch. I make this basic point because while it may be obvious to some of you, it still eludes many. While I wholeheartedly support the idea of sending parents to an appropriate professional to mediate a comprehensive parenting plan, early and often, a PC cannot be the person to assist them.

In their article, my colleagues cited *Ali v. Obas* 2021 ONSC 3412. I urge you to review the case if you are interested in seeing practical problems arising from these issues.

2. "*Material change in circumstances down the road? Let's include a provision in the separation*

agreement that they will go to a PC to deal with that" — This misconception can have some unanticipated results, none I can think of being positive. Essential to assessing the utility of a PC in a given case is a fundamental understanding of his or her role and mandate. What areas of parenting will the PC, or better put, can the PC deal with down the road? Any parenting issue affected by a material change in circumstances? Not so.

As already said, a PC enforces and interprets an existing parenting arrangement by an arbitral decision, if necessary, but that does not mean all aspects of a parenting arrangement. The power to change decision-making authority or parenting time, for example, is not a part of the PC's mandate. It cannot be even if the PC is appointed by the court. This is because the court cannot delegate its decision-making authority in these areas.

If your client wants to leave open in a separation agreement the possibility of a change down the road to either decision-making or parenting time, based on unanticipated future changes, parenting coordination cannot be the designated process.

3. "*The PC will **recommend** the right arrangements*" — Assuming you have addressed the issues raised in 1. and 2., is the PC actually empowered either by court order or a consent Professional Services Contract to give recommendations? If the parents are engaged with a mental health professional, he or she may be unable to formally opine on quasi-legal issues without having conducted a more fulsome assessment.

It is vitally important that parents and their lawyers turn their minds to the terms of the PC's engagement, to the scope of their decision-making and to their responsibilities, before the contract is signed. The clearer the language and corresponding expectations, the less possibility of friction down the road. After all, the majority of cases calling for a PC involve high-conflict parenting disputes.

For us family law professionals, lessons from the pandemic should include reinforcing the idea that courts cannot and should not be the sole destination for parents in conflict over their children. Modern family law must involve an ongoing search for creative, alternative, multidisciplined and inclusive approaches to dispute resolution, parenting coordination included. I thank my colleagues for their piece.

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