

# PARENTING COORDINATION: The program and the legislation

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# PC Work: By Definition

- A non-adversarial dispute resolution process either court ordered or by agreement of the parents
- Child focused enforcement/implementation of existing/new parenting arrangements by neutral third party

# PC Work: By Definition

- “Parenting Coordination is a conflict resolution process that blends the role of mediator, decision maker, monitor, assessor, educator, counsellor, and enforcer for families in high conflict divorces”
- Dr. AE Barsky Parenting Coordination: The Risks of a Hybrid Conflict Resolution Process

# PC Work: The Program

- Parents commit to renewable agreement of between 6 months and 2 years
- Focus of service is implementation of the parenting arrangements
- Involves the still somewhat controversial concept of blending mediation and arbitration

# PC Work: The Program

- Services include everything from coaching the parents about communication to making binding determinations on important parenting issues

# PC Work: The People

- Senior family lawyers, psychologists, clinical counsellors, mediators, family therapists and other health care professionals with a minimum of 10 years experience working in a family practice dealing with separation and divorce

# PC Work: The People

- Membership in a regulatory body such as the Law Society of BC, Family Mediation Canada, Mediate BC, the College of Psychologists, Registered Clinical Counsellors, or Registered Social workers.

# PC Work: The People

- Mandatory liability insurance
- Arbitration training
- Parenting coordination training
- Training in mediation
- Miscellaneous other child focused skills



# PC Work: The Law

- The New Family Law Act formalises the work of PCs in B.C.
- The new legislation addresses:
  - A definition of PC work as a “family dispute resolution” process
  - The circumstances pursuant to which a PC can act
  - The framework for consensus building and its limitation

# PC WORK: THE LAW

- The framework for making binding determinations
- Enforceability of PC determinations as orders of the court, and
- The circumstances in which a parent can apply for an order “to change or set aside the determination”.

- In section 1. of the Family Law Act “family dispute resolution” is defined as a process which includes resolution of disputes by “the services of a parenting coordinator under Division 3 of Part 2”.
- Division 3 encompasses sections 14-19 of the Act.

## The sections address:

- Details of the authority of the PC
- Term limits
- Information sharing
- “Consensus Building”
- “Determinations”
- The binding nature of determinations and enforceability as orders if filed with the court

- Section 19 is worth noting as it provides for applications to the court which:

“may change or set aside the determination if satisfied that the Parenting Coordinator:

(a) acted outside his or her authority, or

(b) made an error of law or of mixed law and fact.”

# PC WORK: THE PRECEDENTS

- Three circumstances in which precedents are relevant:
- Parenting Coordination Agreements
- Court orders appointing PCs
- Separation Agreements

# THE PC AGREEMENT

- The Parenting Coordination Agreement
- Some of the relevant provisions of our current agreement are as follows:
- Subject to this agreement, a *[further]* court order or any provisions to the contrary in the Authorizing Instrument, the Parenting Coordinator is appointed for a term of **X** months.

# THE PC AGREEMENT

- Neither Parent may unilaterally terminate the Parenting Coordinator's appointment. If the Parenting Coordinator was appointed by agreement and both Parents wish to terminate the appointment, the Parents may do so by jointly giving written notice to the Parenting Coordinator. If the Parenting Coordinator was appointed by a court order, then termination must be by a further court order.



# THE PC AGREEMENT

- In the course of his term of appointment, the Parenting Coordinator may:
  - coach the Parents about communication with each other and with the children;
  - refer the Parents to appropriate resources about parenting, communication techniques and/or dispute resolution;
  - consult with third parties including other parenting coordinators, counsellors and mental health professions and independent legal counsel;

# PC WORK:THE SERVICES

- SERVICES PERFORMED BY THE PARENTING COORDINATOR:
  - 
  - assist with the implementation, maintenance and monitoring of an agreement, order or written decision concerning children (the “Parenting Plan”);
  - settle anticipated or actual conflicts in children’s scheduling;

# PC WORK:THE SERVICES

- clarify and resolve different interpretations of or ambiguities in the Parenting Plan, and develop new provisions to address situations that were not anticipated;
- monitor children's adjustment to the Parenting Plan;
- facilitate children's relationship with each Parent;
- assist the Parents in communicating more effectively with one another;

# PC WORK:THE SERVICES

- facilitate the exchange of information about children and their routines;
- resolve disputes about the education of children, including in relation to a child's special needs;
- resolve disputes about the participation of children in extracurricular activities and special events;

# PC WORK: THE SERVICES

- resolve disputes about the temporary care of children by someone other than a Parent or a person who has contact under the Parenting Plan;
- resolve disputes about the routine medical, dental or other health care of children;
- resolve disputes about the discipline of children;

# PC WORK: THE SERVICES

- resolve disputes about the transportation or exchange of children between the Parents and assist in developing provisions for the transport of clothing, equipment, toys and personal possessions between the Parents' households;
- resolve disputes about the sharing of parenting time on holidays and special occasions;

# PC WORK: THE SERVICES

- Subject to paragraph 3.2, these other services
  - i.,
  - ii.,
  - iii. , and
- Subject to paragraph 3.2, any additional services which the Parents and the Parenting Coordinator agree in writing that the Parenting Coordinator will perform.

# DETERMINATION MAKING

- The Parenting Coordinator may make determinations to resolve an issue if:
- an agreement cannot be reached regarding the issue in question by consensus;
- a Parent chooses not to participate in the information gathering and consensus building process; or,
- time constraints make it impossible to reach an agreement through the information gathering and consensus building process.



# PC WORK: THE LIMITATIONS

- Except as may otherwise be provided in the Authorizing Instrument, the Parenting Coordinator will not:
  - make substantial changes to the Parenting Plan;
  - create or change an obligation to pay child support with respect to any of the children;
  - change the arrangements for guardianship set out in the Parenting Plan; or,
  - make determinations concerning the relocation of the children.

# GUARDIANSHIP PROVISIONS

- Parenting Coordination options for guardianship provisions in either of a separation agreement or court order:
  - “In the event that the parties cannot reach agreement with respect to any major decision with regard to the children, despite their best efforts, then they shall refer such dispute to the Parenting Coordinator for resolution;
  - Each party shall have the right under s.32 of the Family Relations Act to seek a review of any determination by the Parenting Coordinator which that party considers contrary to the best interests of the children;”

- With enactment of the FLA the language of this clause will change:
- “Each party shall have the right under s.19 of the Family Law Act to apply to the court to change or set aside a determination if satisfied that the Parenting Coordinator acted outside his or her authority or made an error of law or of mixed law and fact.”

# COURT ORDERED APPOINTMENT

- The court order should then include provisions for the appointment of the PC (either named or left to the parties):
- “Bob Smith is appointed as Parenting Coordinator for renewable periods of 12 months, such appointment to be substantially in terms of the draft PC Agreement attached hereto as Schedule A.”

- Where parties have not agreed on a specific individual the order should state:

“The parties shall retain a Parenting Coordinator agreeable to them for renewable periods of 12 months, such appointment to be substantially in terms of the draft PC agreement attached hereto as Schedule A with liberty to apply in the event the parties are unable to reach agreement on the terms of the appointment of the PC.”

- A separation agreement or court order should then go on to allocate a significant fund to secure the ongoing fees of the PC since non payment of fees is a challenge