

Family

Checklist of terms to include in the referral to parenting co-ordination

By Hilary Linton and Borzou Tabrizi



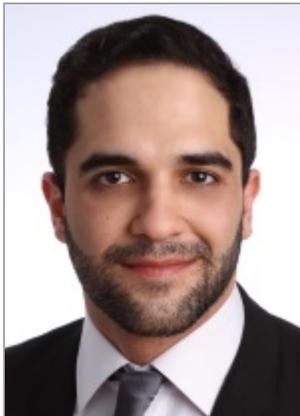
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(October 27, 2022, 2:43 PM EDT) -- In part one of this series, Lindsay Kertland and Hilary Linton describe some tips for family lawyers when advising their clients about the pros and cons of having a parenting co-ordinator (PC). Parenting co-ordination has much to offer parents looking to improve their co-parenting relationship.

But poorly defined parenting co-ordination clauses can be used by parents to continue or escalate conflict. This can lead to the PC resigning, the process becoming prohibitively costly or needless litigation, all defeating the very purpose behind counsel's recommendation.

Parenting co-ordination can, if the process is well-defined and designed, be effective, proportionate, affordable, manageable and successful in achieving its aim of reducing parental conflict.

With this in mind, we offer some terms for lawyers to consider when including PC clauses in their settlement documents.



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1. Use the definition of secondary arbitration in the *Family Law Act* to describe the PC's role: to "*interpret, manage, and assist in the implementation* of the following paragraphs of the Parenting Plan." State specifically that the PC shall provide secondary Arbitration in accordance with the *Arbitration Act*, Regulation 134/07 under the *Arbitration Act* and the *Family Law Act* s. 59.06-59.07.

2. Specify what the PC *does not have jurisdiction* to do. Typically this will be significant changes to the permanent schedule, changes in decision-making rights and relocation.

3. Identify whether the process is closed and confidential, or open. If open, provide detail about what that means, including who will pay the PC's rate if they are asked to prepare a report or testify, and any limits on what they can report about.

4. Specify a process and timeline by which the PC will be selected (if not named).

5. Confirm the term of the PC agreement, typically 24 months from the date the PC agreement is signed. (In some jurisdictions the clock starts ticking when a parent raises an issue.)

6. Specify the process by which the PC agreement may be renewed and whether independent legal advice is needed for a renewal. (independent legal advice is not required for a secondary arbitration agreement, but it is advised.)

7. Give the PC discretion to use a range of interventions, including parent education, coaching, mediation and arbitration. The PC should have authority to request all related court documents, assessments and other relevant reports, and speak with relevant third parties. Parties should be required to sign appropriate authorizations.

8. Give the PC discretion to interview the child or receive a non-evaluative Hear the Child Report.
9. Consider naming a back-up PC. We find this helpful for us and effective for our clients. It should not add to the cost of the process; in fact, if the PCs have different hourly rates, having a back-up PC allows the PC team to allocate resources cost-effectively for the parents and ensures that there is always someone with knowledge of the file available to help.
10. Acknowledge that the PC (and any back-up PC) may resign in their discretion at any time. If the parties cannot agree on a replacement, consider allowing the PC to designate a replacement after seeking the parents' input.
11. Acknowledge that, even if the parties have attached and signed a PC agreement, the PC has no jurisdiction until both parents have attended intake meetings, the PC has assessed their matter to be appropriate for parenting coordination and has signed the PC agreement and certificate.
12. Provide a timeline for each parent to schedule an attendance for a confidential intake and screening meeting with their PC (e.g., within 45 days of the signing of the parenting plan). Provide a remedy if one parent fails to do so.
13. Provide that the PC may require equal deposits from the parties on an initial and ongoing basis, and may apportion fees, costs and future deposits in their discretion.
14. Anticipate a mechanism by which the PC may issue binding awards after parents have reached settlements in the PC process, to avoid risk of litigation over settlement privilege issues. Provide a reasonable timeframe for the parents to secure independent legal advice on such agreements.
15. Some counsel prefer to append the PC agreement to the Minutes of Settlement. If this is done, ensure the minutes acknowledge that, even though the parties have received independent legal advice on the agreement and have signed it, it is not binding until they have each been screened by the PC, and the PC has signified that the matter is appropriate for this process by signing their certificate.)

Considering these clauses will allow counsel the opportunity to ensure they and their clients are on the same page regarding the PC process.

This is part two of a two-part series. Part one: Tips for family lawyers negotiating parenting co-ordination clauses.

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