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Family

Quick guide to parenting co-ordination in Ontario courts

By **Hilary Linton**

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(November 2, 2023, 11:49 AM EDT) -- Parenting co-ordination (PC) in Ontario is a creature of private contract, governed only by the *Arbitration Act* and the *Family Law Act*. While other jurisdictions around the world have established parenting co-ordination as a court-adjoined process, Ontario has not done so.

Yet parenting co-ordinators can be of great assistance to the court.

This summary addresses some important court-related aspects of the process.

1. Parenting co-ordination is a voluntary, post-parenting plan dispute resolution process. Under the *Divorce Act*'s dispute resolution provisions (s. 16.1(6)), judges can only order parenting co-ordination provided there is no adjudicative element involved (*S.V.G. v. V.G.*, 2023 ONSC 3206).

In other words, courts can order "parenting co-ordination" services that provide all the coaching, informational and mediation aspects of the service but not the arbitration aspect.

It can be debated whether, in Ontario, a process that does not include arbitration can be defined as "parenting co-ordination," but the important point is that judges cannot order parties into any form of private adjudication unless on consent and full compliance with the regulation that governs family arbitration.

2. Is it open or closed? This is one of the more confusing aspects of parenting co-ordination in Ontario. In many or even most other jurisdictions, parenting co-ordination is by default an open process, one that contemplates some form of report back to the court.

In Ontario, the parties can choose either open or closed (confidential) parenting co-ordination in their PC agreement. If the former, full details of the nature and extent of the "openness" should be negotiated between counsel. If closed, parties must understand that there will be no report or information from the PC process used in court.

3. In any process of private adjudication, both parties must be separately screened for power imbalances and IPV before they can be compelled to participate in the process, even if they agree to it in Minutes of Settlement (See *Monteiro v. Monteiro*, 2022 ONSC 2642).

Language in the Minutes of Settlement or Consent appointing a parenting co-ordinator should therefore require the parties to contact the designated PC within a stipulated time to schedule their intake and screening meetings. Only after the parenting coordinator has determined the matter to be suitable should the PC agreement be executed. (This applies to all forms of private adjudication including mediation-arbitration and arbitration).

Unless both parties are screened before they sign the PC agreement, the court should not compel them to participate in parenting co-ordination.

4. ILA (independent legal advice) for parenting co-ordination is not required by the regulation under the *Arbitration Act* because it is a form of "secondary arbitration". It is, however ,wise for all parties to obtain ILA when negotiating their PC agreements and many PCs require it.

5. Consent Orders for parenting co-ordination will ideally address the following matters to ensure that it will be workable, enforceable and useful, and will not lead to further conflict.

- If the parties have not already agreed on the parenting co-ordinator, a process and timeline for selecting them is essential.
- A timeline to contact the designated parenting co-ordinator to schedule intake and screening meetings.
- It can be helpful to append the PC agreement of the designated professional, with a timeline for execution once both parties have been screened and assuming the PC considers it to be an appropriate matter for parenting coordination. (eg., there may be undisclosed IPV or risk that would render the process inappropriate.)
- Whether it will be open or closed.
- Term — usually 24 months but can be less or more.
- Jurisdiction — it is helpful if the Consent details the scope of authority the parenting co-ordinator will have. Parenting co-ordination is always "secondary arbitration" under the *Family Law Act* s. 59.7, meaning jurisdiction will be restricted to arbitration of possible future disputes relating to the ongoing management or implementation of the parenting plan. However, the more detail that can be provided in the PC agreement, the better to limit future jurisdictional disputes.

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