

BC Association of Clinical Counsellors

Standards of Practice for Counsellors Acting as Parenting Coordinators

Prepared by: George Bryce, legal counsel

Current to November 18, 2015

BCACC

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1) Introduction

These *Standards of Practice for Counsellors as Parenting Coordinators* set out the requirements for BCACC members who act as Parenting Coordinators under the new *Family Law Act*¹ (FLA), which came into force in British Columbia in 2013.

1.1) A brief introduction to the FLA

BC's new FLA came into force on March 18, 2013, resulting in the repeal of the *Family Relations Act*,² which had not been substantially revised in decades and was out-of-date.

The new FLA introduced many changes to family law in BC, including new terms to describe the legal status of parents undergoing a separation or divorce, and defining their responsibilities concerning any children of their relationship. In particular, the new Act places emphasis on the rights of children to be properly cared for rather than on the legal rights of their parents. For example, the Act no longer uses terms like “custody” or “access,” but speaks instead to parental responsibilities and parenting time with children.³

1.2) Counsellors acting as Parenting Coordinators

Under Division 3 FLA, Parenting Coordinators are given the authority to assist the parties in a family law dispute by helping them resolve their disputes (“building consensus”) and by making certain decisions (“making a determination”) as prescribed in that Division and the regulations. Clinical counsellors in good standing with the BCACC and who meet the prescribed criteria are permitted to act as Parenting Coordinators pursuant to section 6(1) of the FLA Regulation.⁴ These Standards set out the prescribed criteria, as well as the general duties and expectation of counsellors when they are performing the statutory duties of a Parenting Coordinator.

1.3) Why was the BCACC listed as one of the regulators?

Section 6(1)(a) of the Regulation lists seven organizations that someone must be a member of if he or she wants to act as a Parenting Coordinator under the FLA; one of these prescribed organizations is the BCACC. So long as a counsellor remains in good standing with the BCACC and meets the prescribed requirements to become a Parenting Coordinator, a counsellor is then entitled to provide a range of services as prescribed by the Act.

The BC Ministry of Justice identified the BCACC as an appropriate regulatory body to be listed in the Regulation because the Association had a proven track record of regulating clinical

¹ SBC 2011, c.25.

² R.S.B.C. 1996, c.128 (*repealed*).

³ Counsellors wanting a more in-depth understanding of the new FLA are encouraged to read George Bryce's June 2013 *Legal Commentary on the New Family Law Act*, available to members at the BCACC website.

⁴ BC Reg. 347/2012.

counsellors in the public interest. Not only do many counsellors provide services in support of separating or divorcing parents and their children, but, through its Bylaws, the BCACC:

- a) sets minimum education and experience requirements for persons to become clinical counsellors,
- b) has a Code of Ethics and numerous Practice Standards its members must follow, and
- c) administers an investigation, mediation and discipline program to deal with *bona fide* complaints filed against counsellors.

These are the same criteria that the government applied when deciding if an organization should be listed under section 6(1)(a) of the Regulation.

1.4) Standards reflect minimum requirements

These Standards reflect the minimum level of competency and practice that is expected of a counsellor seeking to become a Parenting Coordinator, and later when performing the functions of a Coordinator as set out under the FLA.

While these Standards articulate the requirements for counsellors acting as Parenting Coordinators, reference should also be made to the more general guidance that is provided to counsellors within the BCACC Bylaws and Code of Ethics, in particular if there is an aspect of practice that is not covered in these Standards.

These Standards also recognize that, while there are certain minimum requirements a counsellor must follow when acting as a Parenting Coordinator under the FLA, there are also areas of practice where the counsellor has options and should exercise his or her best clinical judgment. To reflect the difference between a mandatory requirement and a suggested or recommended practice, these Standards will use two different sets of verbs.

- a) The use of “shall” or “must” denotes an action or event that a counsellor must perform as a mandatory or minimum requirement; one that can later be the subject of a complaint, peer review or possible disciplinary action under the Bylaws.
- b) The use of “should” or “may” denotes an action or event that it is recommended or suggested a counsellor should perform, but is not necessarily a mandatory or minimum requirement.

2) Requirements to become a Parenting Coordinator

2.1) General requirements

Section 6(1) of the Family Law Act Regulation provides that, before acting as a Parenting Coordinator, a Counsellor must:

- a) meet the training requirements of, and be eligible for membership in, the Mediate BC Family Roster or Family Mediation Canada;
- b) have at least 10 years of experience in family-related practice;
- c) complete at least 40 hours of training in parenting coordination through a training provider that is recognized as providing high quality training in that field;
- d) complete at least 21 hours of family law training;
- e) complete at least 14 hours of family violence training, including training on identifying, assessing and managing family violence and power dynamics in relation to dispute resolution process design;
- f) maintain professional liability insurance that provides coverage as a Parenting Coordinator.

To meet the requirement of clause (c), the prescribed training must include training in relation to the role and responsibilities of a Parenting Coordinator, arbitration and decision making, communication skills development, the effects of separation and divorce on parents and children, high conflict family dynamics and child development and developmental needs.

To meet the requirements of clause (d), the family law training must be provided by the Justice Institute of British Columbia, by the Continuing Legal Education Society of British Columbia or by any other training provider that is recognized as providing high quality training in that field.

To meet the requirements of clause (e), the family violence training must be provided by the Justice Institute of British Columbia, by the Continuing Legal Education Society of British Columbia or by any other training provider that is recognized as providing high quality training in that field.

2.2) Continuing professional development

In addition, the Regulation requires that, every calendar year, the counsellor must complete at least 10 hours of continuing professional development applicable to family dispute resolution practice, at least seven hours of which must be in the form of a prescribed course. While the seven-hour prescribed course must be provided by the Justice Institute of British Columbia, there may be other opportunities to apply hours under continuing education programs if applicable.

3) Practice Standards for Counsellors acting as Parenting Coordinators

Herein, a reference to a Parenting Coordinator is a reference to a counsellor who is authorized to act as a Coordinator pursuant to the FLA and its Regulations.

3.1) Statutory duties

According to section 8 of the FLA, as one of the prescribed “family dispute resolution professionals,”⁵ a Parenting Coordinator must comply with the following section of the FLA regarding statutory duties:

Duties of family dispute resolution professionals

8(1) A family dispute resolution professional consulted by a party to a family law dispute must assess, in accordance with the regulations, whether family violence may be present, and if it appears to the family dispute resolution professional that family violence is present, the extent to which the family violence may adversely affect

- (a) the safety of the party or a family member of that party, and
- (b) the ability of the party to negotiate a fair agreement.

(2) Having regard to the assessment made under subsection (1), a family dispute resolution professional consulted by a party to a family law dispute must

- (a) discuss with the party the advisability of using various types of family dispute resolution to resolve the matter, and
- (b) inform the party of the facilities and other resources, known to the family dispute resolution professional, that may be available to assist in resolving the dispute.

(3) A family dispute resolution professional consulted by a party to a family law dispute must advise the party that agreements and orders respecting the following matters must be made in the best interests of the child only:

- (a) guardianship;
- (b) parenting arrangements;
- (c) contact with a child.

3.2) Preconditions for a Parenting Coordinator assisting the parties

Section 15(2) FLA states that a Parenting Coordinator may only assist the parties in the following circumstances:

- a) if there is a parenting coordination agreement or order⁶ in place, and
- b) for the purpose of implementing an agreement or order respecting parenting arrangements, contact with a child or other prescribed matters.

In turn, section 6(2) of the Regulation sets out two requirements that describe what a Parenting Coordinator must do before assisting the parties in a family law dispute:

- a) enter into a written agreement with the parties to the family law dispute to provide them with parenting coordination services;

⁵ A Parenting Coordinator is one of six different types of practitioners listed in the definition of a “family dispute resolution professional” under section 1 FLA.

⁶ Section 1 FLA defines a **parenting coordination agreement or order** as: “a written agreement or an order to use a parenting coordinator”. And under section 15(1) “A parenting coordination agreement or order may be made at the same time as, or after, an agreement or order respecting parenting arrangements, contact with a child or other prescribed matters is made.”

- b) provide to the parties written confirmation that the counsellor meets the professional requirements set out in section 6(1) of the Regulation (as set out in section 2.1, *General requirements*, above).

3.3) Term of a parenting coordination agreement

While a parenting coordination agreement must be established with the parties, section 15(4) FLA state that a Parenting Coordinator's authority to act ends two years after the parenting coordination agreement is made, unless the agreement specifies that the Parenting Coordinator's authority is to end on an earlier date, or on the occurrence of an earlier event, or if both parties have already agreed to end the agreement.

Section 15(5) FLA allows the agreement to be extended for an additional two years, but the agreement cannot be for more than a total of four years.

Finally, section 15(6) FLA provides that a parenting coordination agreement can be ended by any of the parties in the following circumstances:

- a) by a further agreement of the parties or by a Court order made on application by either of the parties;
- b) by the parenting coordinator, on giving notice to the parties and, if the parenting coordinator is acting under a Court order, to the Court.

3.4) Focus on “best interest of the child”

In performing functions of a Parenting Coordinator, section 18(2) of the Regulation states: “In making a determination respecting parenting arrangements or contact with a child, a parenting coordinator must consider the best interests of the child only...”

Section 37(2) of the FLA sets a legal standard as to what constitutes something being in the “best interest of the child” in the following terms:

- 37 (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

If a counsellor acting as a Parenting Coordinator is faced with a conflict between this legal provision and any other principle or standard set out in this document, the best interest of the child principle as articulated above prevails.

3.5) Scope of services under the FLA

Counsellors acting as Parenting Coordinators under the FLA are authorized to provide two types of services in relation to specific kinds of disputes: (a) to help build consensus, and (b) to make determinations. If a counsellor was working as a Parenting Coordinator under an agreement or Court order made before the FLA came into force in March 2013, section 6(5) of the Regulation allows the counsellor to continue to so act.

3.6) Parenting Coordinator's consensus-building role

Section 17(a) of the FLA describes the consensus-building role of a Parenting Coordinator as including:

- a) creating guidelines to explain how a parenting agreement or Court order will be implemented;
- b) creating guidelines to facilitate communication between the parties;
- c) identifying, and creating strategies for resolving conflicts between the parties;
- d) providing information on the resources available to the parties for the purposes of improving communication or parenting skills.

3.7) Parenting Coordinator's determination role

Section 18 of the FLA describes the determinations that a Parenting Coordinator can make:

- 18(1) A parenting coordinator
 - (a) may make determinations respecting prescribed matters only, subject to any limits or conditions set out in the regulations,
 - (b) must not make a determination respecting any matter excluded by the

parenting coordination agreement or order, even if the matter is a prescribed matter, and

(c) must not make a determination that would affect the division or possession of property, or the division of family debt.

(2) In making a determination respecting parenting arrangements or contact with a child, a parenting coordinator must consider the best interests of the child only, as set out in section 37 [*best interests of child*].

(3) A parenting coordinator may make a determination at any time.

Subsection 6(3) of the Regulation provides that, as Parenting Coordinators, counsellors are permitted to make determinations concerning parenting arrangements and contact with a child. In turn, subsection 6(4) of the Regulation goes on to list the scope and limits of a Coordinator's determinations:

(4) For the purposes of section (3), a parenting coordinator

(a) may make determinations in respect of

(i) a child's daily routine, including a child's schedule in relation to parenting time or contact with the child,

(ii) the education of a child, including in relation to the child's special needs,

(iii) the participation of a child in extracurricular activities and special events,

(iv) the temporary care of a child by a person other than

(A) the child's guardian, or

(B) a person who has contact with the child under an agreement or order,

(v) the provision of routine medical, dental or other health care to a child,

(vi) the discipline of a child,

(vii) the transportation and exchange of a child for the purposes of exercising parenting time or contact with the child,

(viii) parenting time or contact with a child during vacations and special occasions, and

(ix) any other matters, other than matters referred to in paragraph (b), that are agreed on by the parties and the parenting coordinator, and

(b) must not make determinations in respect of

(i) a change to the guardianship of a child,

(ii) a change to the allocation of parental responsibilities,

(iii) giving parenting time or contact with a child to a person who does not have parenting time or contact with the child,

(iv) a substantial change to the parenting time or contact with a child, or

(v) the relocation of a child.

The determinations that a Parenting Coordinator can make under the FLA can have a significant impact on the parties and their children, and – therefore – they should be made with consideration and care.

While a Parenting Coordinator can make a determination orally, which might be the case where a dispute involves a significant degree of urgency, section 18(4) FLA provides that a Parenting Coordinator’s determination must be put into writing as soon as possible after it is made.

Subsection 18(5) of the Act goes on to state that: “... a determination (a) is binding on the parties, effective on the date the determination is made or on a later date specified by the Parenting Coordinator, and (b) if filed in the Court, is enforceable under this Act as if it were an order of the Court.”

However, section 19(1) of the FLA allows either party affected by a determination to apply to the Court to have a determination set aside if the counsellor acting as a Parenting Coordinator: “(a) acted outside his or her authority, or (b) made an error of law or of mixed law and fact.” If the counsellor so acted, the Court can then set aside the determination and make an order in substitution. But if the determination is not set aside, the Court can then issue a compliance order that would be binding on the parties.