



AFCC ONTARIO NEWSLETTER

VOLUME 4. NUMBER 2

Association of Family and Conciliation Courts – Ontario Chapter

FALL. 2009

AFCC Ontario is Live - www.afccontario.ca

We hope that you are enjoying our new website and welcome any comments about the design and content. Let us know what you think at: afcc.ontario@gmail.com.

Every month we are updating the website and providing the most current and up to date news on family law issues in Ontario and around the globe

We are aware that you may have heard about various projects through your own professional newsletters and magazines, but we wanted to make sure all our members have equal access to information on family law.

Our Newsletter is now only available to members only. We will continue to keep you posted on ongoing projects and task groups that are focused on family justice issues across Ontario.

Our Chapter has surpassed all expectations and our members are busy at work on various task force initiatives. To hear more about the committees and task forces and how you can contribute, please contact: afcc.ontario@gmail.com.

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AFCC NEWSLETTER

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Editor: Rachel Birnbaum

Communication Committee: Justice George Czutrin, Justice Debra Paulseth, Steven Benmor, Maggie Hall, Tami Moscoe, Jill St Clair

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E-mail: (afcc.ontario@gmail.com)

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AFCC Ontario Advertising Rates:

Full page
(7 1/2" x 10")
\$425 (member)
\$600 (non-member)

Half page
(7 1/2" x 4 7/8")
\$300 (member)
\$450 (non-member)

Quarter page
(3 5/8" x 4 7/8")
\$150 (member)
\$250 (non-member)

A Note From The President

AFCC Ontario is growing, and growing, and growing. We are now at 202 members and we are not seeing a slow down, despite the economy. If we continue at this rate, we will be one of the largest chapters in North America. Thank you to everyone who is recommending AFCC to your colleagues. So, what have we been doing? The Board of Directors (along with tremendous pro bono legal assistance from Fauzia Ahmed) has been working on an application for charitable status from the federal government. We expect that we will be approved by the end of the year (hopefully). Also, our outreach working group has worked with communities in Sault Ste Marie, Thunder Bay, and Pembroke. Our Conferences Subcommittee is developing the 2010 AGM/Conference which will look at what family law will look like in 2020. It is promising to be a very exciting event. Mark **October 14 and 15, 2010** in your calendars – you won't want to miss this conference! As for other events, we are also working on developing a movie night and a murder mystery evening. We also decided to make it easy for members to attend conferences. At our last meeting, we agreed that we would ask our web designer to make it possible for people to sign up for conferences on our website. This should drastically cut down on the amount of time that it takes to register and confirm participants at our conferences. This should be ready for our next event. Also at the last Board meeting, we discussed whether the Chapter could "go green". In an attempt to reduce the amount of paper that we produce, we want to give conference participants a choice as whether they want materials in hardcopy or on disc. I'm sure that you will agree with us that we need to do everything possible to ensure that we are conscious of our environmental impact.

Our next Parenting Assessor's Working Group meeting is on Friday, November 20, 2009 from 2:30 to 4:30 p.m. in the Auditorium of the Children's Aid Society of Toronto at 30 Isabella St., Toronto. The topic is *What Do You Want From a PCA and What Can You Expect*. This will be an interactive discussion among a panel including assessors, lawyers, judges and children's aid society staff about the proper use of parenting capacity assessments. Panelists include The Honourable Clifford S. Nelson, The Honourable Roselyn Zisman, Dr. Dan Ashboune, London Family Court Clinic, Cathy Breton, Toronto Branch Director, C.A.S.T., Mary Rella, INTERFACE, Thistleton Regional Centre, Ian Mang, Lawyer, Gary Gottlieb, Lawyer, and as Moderator, Charlotte Murray, Lawyer. The cost of the event is \$20 per person. Please join us and plan to stay longer as we will continue the discussion at a local pub following the event.

Thank you to Anthony Macri for organizing this event and the Children's Aid Society of Toronto for lending us their space. Anthony has also arranged for the next Parenting Capacity Assessor's meeting to be held on Friday, April 16, 2010, 2:30 to 4:30 p.m. at the same location. The topic will be *PCAs and Sexual Issues*.

Steven Benmor, chair of the Public Information Working Group has done a tremendous amount of work for this group laying out the parameters and mandate of the working group. (Thank you, Steven!) Different subcommittees of the group have been formed, including the Program Development Subcommittee, the Partnership Subcommittee, the Funding/Costing Subcommittee and the Implementation Subcommittee. If you are interested in participating in any of these subcommittees, please contact Steven at steven@benmor.com.

At the AFCC, Ontario, we continue to strive to make a difference in families lives. But, we also hope that we are making a difference in your professional life. If you have any suggestions about how to improve the chapter, we're always ready to listen. Please contact afcc.ontario@gmail.com.

Enjoy the December holidays and the new year and you will hear from us again in 2010.

AFCC Ontario Membership Status Report

We now have over 200 members and we are still growing – all since our provisional chapter status was approved in Vancouver in May 2008. We are absolutely delighted that so many people want to be a part of our community.

Patti Cross and Justice Craig Perkins

AFCC ONTARIO EVENTS

SAVE THE DATE!

The AFCC Ontario Annual General Meeting is scheduled for the evening of Thursday, October 14th and all day Friday, October 15th, 2010 at the University of Toronto Residence Conference Centre at 89 Chestnut Ave.

The theme of our conference is:
The Future of Family Law.

Over 20 speakers are scheduled to present on all aspects of family law. It will be the must attend event of the year .

SOCIAL NEWS ITEMS

Reception for The Honourable Justice George Czutrin

The Toronto Family Bar Association hosted a reception on November 2, 2009 to welcome Mr. Justice George Czutrin, one of our AFCC Ontario's founders, as the next Family Law Team Leader of the Superior Court of Justice, Toronto Division. The opportunity was also taken to thank Madam Justice Backhouse for her work as past Team Leader in Family Law.

New Award in Memory of First AFCC Canadian President Granted to PhD Student By Tony VanDuzer

John VanDuzer was my father and one of the founding judges of the Unified Family Court in Hamilton. He was also a long time AFCC member and supporter. In 1983, he was elected AFCC's first Canadian President. The John E. VanDuzer Scholarship Award for Family Law was created in his memory to be given annually for a paper on a family law subject by a student at an Ontario law school as a way of encouraging family law scholarship by students. The Award includes a \$2,000 honorarium.

In October 2009, the first winner of the Award was chosen. The Award committee, consisting of Madam Justice Mary Lou Benotto, Professor Rollie Thompson of Dalhousie University and Hamilton lawyer Leon Price, selected a paper by Noel Semple, written while he was an LL.M. student at Osgoode Hall Law School. Noel's paper, "The Eye of the Beholder: Professional Opinions about the Best Interests of the Child," uses original empirical research to analyze the extent to which judges in custody and access cases follow recommendations made by social workers in assessing the best interests of the child.

Noel is an especially fitting winner because he is now enrolled in a Ph.D program at Osgoode Hall Law School and intends to pursue an academic career in which he will continue his research and writing in family law. He is exactly the kind of person that we had hoped the Award would encourage. Upon receiving the award, Noel said "I am honoured to receive this award, and grateful to John VanDuzer and the selection committee. The creation of this scholarship award will certainly bring attention in Ontario law schools to family law issues, and to the crucial work of the AFCC in this field."

The committee ranked second a paper “Batman’s Battle of Ideas: The Father’s Rights Movement in Canada” by Vanessa Amyot, an Osgoode LL.B. student. Noel’s and Vanessa’s papers have received offers of publication from the Canadian Family Law Quarterly.

CONFERENCES

AFCC Regional Training Conferences

The Ninth AFCC Symposium on Child Custody Evaluations is being held October 28-30, 2010 in Cambridge, Massachusetts at the Hyatt Regency Cambridge

The 47th AFCC Annual Conference is being held June 2-5, 2010 in Denver, Colorado at the Denver Sheraton, June 2-5, 2010

The 48th AFCC Annual Conference is being held June 1-4, 2011 in Orlando, Florida at the Hilton Orlando Bonnet Creek Resort.

AFCC Parenting Coordination and Child Custody Training in Baltimore, Maryland. December 7-10, 2009 at the University of Baltimore School of Law, Student Center, Fifth Floor, 21 West Mount Royal Avenue, Baltimore, Maryland.

Parenting Coordination: Helping High Conflict Parents Resolve Disputes, presented by Joan B. Kelly, Ph.D., December 7-8,

Advanced Issues in Child Custody: The Child’s Perspective, presented by Mindy .F. Mitnick, Ed.M., M.A., December 9-10,

Each two-day training program is eligible for 13 hours of continuing education for psychologists and social workers.

For other conference events be sure to check our website

www.afccontario.ca/other_interesting_conferences.htm

AFCC ONTARIO INITIATIVES

DISCUSSION PAPER FOR LEGAL REFORM AFFECTING ASSESSORS

We are looking for feedback and support regarding a proposal for law reform affecting custody and access and child protection assessors. The proposal addresses how regulatory Colleges process complaints against assessors; specific suggestions are provided as to how this may be done. The need for a change in process arises from the many vexatious complaints, the fact assessors are dwindling as a result, and the negative impact this poses for children and families. If you are interested in receiving a copy please email drbarbarafidler@sympatico.ca. Thank you.

Committee Members: Nicholas Bala, L.S.M., B.A., LL.B., LL.M.; Fay Brunning, B.A., LLB; Linda Chodos, MSW, RSW; Barbara Jo Fidler, Ph.D., C.Psych., AccFM; Robert Groves, Ph.D., C. Psych.; Barbara Landau, Ph.D., LL.M., Cert.F.M.; Arthur Leonoff, Ph.D., C. Psych., FIPA; David McLean, MD FRCP[C], Martha McCarthy, LLB, and Jane Murray, B.Sc., LLB

PARENTING CAPACITY ASSESSORS WORKING GROUP Chaired by Anthony Macri

The Association of Family and Conciliation Courts – Ontario Chapter (AFCCO) invites all professionals who conduct parenting capacity assessments to participate in The Parenting Capacity Assessors Working Group.

The Parenting Capacity Assessors Working aims to:

- Create a forum for exchanging ideas among assessors
- Discuss protocols for parenting capacity assessments
- Discuss how assessments can be better understood by those who use them
- Discuss the impact of section 54 of the Child and Family Services Act
- Create a mentoring program for those seeking to conduct assessments

The next Parenting Capacity Assessors Workshop will be held on Friday, November 20, 2009 from 2:30 to 4:30 p.m. in the Auditorium of the Children's Aid Society of Toronto at 30 Isabella St.

The topic is *What Do You Want from a PCA and What Can You Expect*. This will be an interactive discussion among a panel including assessors, lawyers, judges and children's aid society staff about the proper use of parenting capacity assessments.

Panelists: The Honourable Clifford S. Nelson, The Honourable Roselyn Zisman, Dr. Dan Ashbourne, London Family Court Clinic, Cathy Breton, Toronto Branch Director, C.A.S.T., Mary Rella, INTERFACE, Thistletown Regional Centre, Ian Mang, Lawyer, Gary Gottlieb, Lawyer

Moderator-Charlotte Murray, Lawyer

The cost of the event is \$20 per person. Please join us and plan to stay longer as we will continue the discussion at a local pub following the event.

RSVP to Anthony Macri to confirm your spot and attendance at pca.afcco@gmail.com.

Also, set aside Friday, April 16, 2010, 2:30 to 4:30 p.m. for our next session. The topic will be *PCAs and Sexual Issues*.

PUBLIC INFORMATION FORUM WORKING GROUP
Chaired by Steven Benmor

AFCC Ontario has struck a Public Information Forum Working Group. Its mandate is to design and implement a multidisciplinary program that can be offered throughout the province to inform, educate and introduce separating spouses and parents to non-adversarial resources that are available in their communities to resolve their affairs and plan forward. The Working Group and its subcommittees chaired by Andrew Feldstein, Virginia Workman, Anisa Ali and Rachel Birnbaum are working to develop a program to educate Ontarians of the public and private tools, remedies and resources available in the community and to help separating spouses in the very early stages of separation - a critical time for the emotional health and stability of families and children.

If this project interests you, please send an email to steve@benmor.com.

CHILD PROTECTION FORUM

Chaired by Charlotte Murray and Anthony Macri

MAKE A DIFFERENCE: CONSIDER A CAREER IN CHILD PROTECTION LAW

An invitation to law students to explore opportunities in child protection law and practice. Law students will have the opportunity to dine with lawyers and judges who specialize in child protection law.



Student Lawyers
Flyer Dec 1 2009.doc

WHEN: December 1, 2009, 6:00 p.m.

WHERE: Mackenzie Hall, Windsor, Ontario

If you are a child protection lawyer or judge in the Windsor area and you would like to attend, please contact Patti Cross at 416.327.5683 or patti.cross@ontario.ca

LAW AND SOCIAL SCIENCE RESEARCH

We ask members to let us know of interesting cases and social science research that may be of interest to our Members.

WHY CUSTODY LABELS MATTER

Martha McCarthy: From the September 25, 2009 issue of the *Lawyers Weekly*

Most family lawyers in Ontario likely received at least one telephone call from a distraught client this winter following the series of national newspaper articles on parental alienation. Many of my clients called with a self-diagnosis: they were clearly “being alienated.” A handful of helpful clients clipped one of the articles out of the paper and mailed it to me personally. Sadly (but somehow not surprisingly) many of my clients had the pleasure of receiving a copy from a former spouse.

The dialogue surrounding alienation has caught the attention of not only the family law community, but also the public at large. Amidst the flurry of attention that it has garnered, we need to reflect on the reality that alienation does not occur in a vacuum. It exists as one of the many problems that lawyers, judges and other helping professionals face when confronted with a high-conflict family.

Although many issues surrounding alienation are hotly contested, it almost always occurs in the context of high-conflict families following a separation. High-conflict families exist and interact in a state of perpetual dysfunction and disorganization, which leads to further emotional and psychological strain.

Alienation or not, high-conflict families are not able to manage their interactions and communication at any level. They require, sometimes on a daily basis, the assistance and intervention of lawyers, judges, doctors, social workers and other helping professionals. They fight about travel, schooling, tutoring, soccer and music.

Tragically, in spite of the significant efforts made to identify and address the causes of conflict in post-separation families, we are confronted with not a decrease but an increase in high-conflict cases, including more alienating parents and alienated children. One of the major problems we face in dealing with high-conflict families arises from the major shift over the last ten years in our attitudes about identifiers and basic concepts of custody and access.

Structured definitions have become passé in the past decade, joint custody or label-free settlements have been considered by many to be the norm and requests for sole custody have become almost politically incorrect. This shift in attitudes is a result of a variety of social and political developments that have fundamentally altered the language of and attitudes about post-separation parenting roles across Canada.

In 1998, the Joint Senate House of Commons Committee on Custody and Access released its report, "For the Sake of the Children." The report was the result of a political compromise reached when the federal child support guidelines were in the Senate and Senator Ann Cools imposed her fathers' rights agenda on the process. The report suggested an increased emphasis on the maximum contact principle, a movement away from the language of "custody and access" and a presumption of joint custody in every case.

Although not adopted as law, the report and the fathers' rights agenda have been highly influential on the public, legal and judicial mindset. There has been an increased preoccupation in custody and access litigation with elevating the maximum contact principle through the language of shared parenting.

Clients often feel pressured by mediators, mental health professionals, judges or their own counsel to agree to joint custody. "Just give it to him and the conflict will end;" "Why would you object?" and "Nothing will change anyhow; you will still make all the decisions in a practical sense" are the common arguments. I have said these things myself. When respected authorities put this kind of pressure on individuals who are already quaking under the emotional and financial costs of conflict, the result is pretty much assured: joint custody or label-free "deals."

Sometimes spouses agree to these arrangements because they hope that conflict will abate if the other spouse's role is ratified. Sometimes they believe that there will be few changes to the reality of the parenting roles and that a little joint custody label

will not change that. In high-conflict cases, another compromise has been joint custody with the appointment of an arbitrator or parenting coordinator to assist with decisions that cannot be made jointly. Unfortunately, these rationales and compromises are almost always flawed.

Australia adopted radical new custody and access legislation in 2006 that established mandatory mediation of all custody cases and imposed a presumption of joint custody. The result has been increased conflict and custody litigation. This lesson translates to the issue of labels. Joint custody mixed with arbitration/parenting coordination can often create a forum for increased or continuing conflict by allowing access to a person who can be called, day or night, to referee issues that might actually not arise, or might get resolved naturally, if that opportunity for accessible conflict was not there.

Label-free arrangements can also lead to ongoing conflict and difficulty with third parties. Teachers, doctors and immigration officials require more than the language of “shared residency” or “parenting time.” In practice, many require opinion letters about what the terms mean, or refuse to take direction from one parent because they are unsure. In abduction and jurisdictional issues, the absence of custody can be devastating to an enforcement or Hague Convention proceeding. Police enforcement can also be very challenging without labels that everyone understands.

Sometimes the label the parties have put on their arrangements also matters to judges. In mobility cases, we are instructed by the Supreme Court to give the views of the custodial parent “great weight.” What is a court to make of a label-free parent, or the one who acts as a primary or sole parent but carries the label of joint? Or, when joint decision-making fails or parties become exhausted by parenting coordination, a material change is required and the judge wonders why he or she should change the former agreement, which the parties must have thought was in the best interests of their children at the time they settled.

While it is true that we all had good reasons and lofty ideas when we moved away from structured concepts, we need to re-examine these ideas in the context of high conflict cases. Parents and children who are embroiled in conflict need the certainty and stability that traditional concepts provide. Labels matter.

Martha McCarthy is a certified specialist in family law and the recipient of the Ontario Bar Association 2007 Award of Excellence in Family Law. She operates a boutique family law firm located in downtown Toronto.

W5 BROADCAST ON PARENTAL ALIENATION

This presentation by W5 on Saturday, November 7, 2009 portrays the complex realities for some children during times of parental breakdown. If you cannot open it on your computer system, please go to CTV W5 programming.

http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20091106/w5_divorce_091107/20091107?hub=Canada

A Special Note about Sending Emails to AFCC Ontario Members

Please be aware that if you would like to send an email to the AFCC Ontario members, you must receive special permission from the AFCC Ontario Board of Directors. The AFCC appreciates that our member's time is valuable and we want to ensure that members receive emails that are useful.

If you receive any emails that you do not wish to receive and you believe that they are from our distribution list, please do not hesitate to contact me. Thank you.

patti cross
AFCC Ontario
President
patticross@gmail.com

.....AND A VERY SPECIAL THANKS

Thank You!!!!

We would like to thank Fauzia Ahmed of Aird & Berlis LLP for all of her hard work on our charitable status application. Fauzia's work (pro bono, no less) was a great assistance to us – we're sure that if we didn't have her, we wouldn't have received our charitable status. So, thank you, Fauzia and thank you, Aird & Berlis for giving us some of Fauzia's most valuable time!!!

AIRD & BERLIS LLP
Barristers and Solicitors

A Brief Summary of Family Law Amendments

Bill 133, the *Family Statute Law Amendment Act, 2009*, received Royal Assent on May 14, 2009. Some parts of the legislation came into effect upon Royal Assent, with the remaining sections to come into force by proclamation of the Lieutenant Governor.

As of May 14, 2009, the *Family Law Act* was amended to correct a previous anomaly affecting the equalization payment following a spouse's death, and also to allow a spouse to disregard debts related to a matrimonial home that was owned at the time of marriage when calculating his or her net family property.

These changes resulted in minor amendments to Form 13.1: Financial Statement (Property and Support Claims) and Form 13C: Net Family Property Statement. The court forms can be found at www.ontariocourtforms.on.ca.

On May 14, 2009, the *Domestic Violence Protection Act*, which was never proclaimed, was repealed.

On October 15, 2009, amendments to the restraining order provisions in s. 35 of the *Children's Law Reform Act (CLRA)* and s. 46 of the *Family Law Act (FLA)* came into force.

Under the new evidentiary test added to both Acts, a restraining order may be granted if the applicant has "reasonable ground to fear for his or her own safety or the safety of any child in his or her lawful custody." Breaches of these new orders will be enforced under s. 127 of the *Criminal Code of Canada*.

An applicant can now seek a restraining order under the *FLA* against a spouse or former spouse or a person with whom he or she has cohabited for any period of time.

Restraining orders are to be made in the form prescribed by the *Family Law Rules*. The *Rules* have been amended to include three new standardized forms:

- Form 25F: Restraining Order
- Form 25G: Restraining Order on Motion Without Notice
- Form 25H: Order Terminating Restraining Order

Form 23C: Affidavit for Uncontested Trial has also been amended to accommodate the changes to the restraining order legislation.

The *Rules* provide that court staff will prepare these standard-form orders immediately after they are made. Lawyers and litigants are welcome to prepare their own draft orders as long as they use the stand-alone standard orders. The clauses in these orders are important for enforcement purposes. There are also standardized endorsement forms available for judges for restraining orders.

New provisions to Parts I, II and III of the *FLA* also came into effect on October 15, 2009, to provide specific authority to a court to include a non-communication order in an Application

under each Part. As well, s. 28(1)(c) of the *CLRA* was amended to permit specific terms to be included in an order for custody or access.

Proclamation dates for the remaining provisions in the *Family Statute Law Amendment Act, 2009* have not yet been set. These include changes to the custody and access provisions in the *CLRA*, and amendments to the *FLA* and the *Pension Benefits Act* relating to the division and valuation of a pension on marriage breakdown.

Upon proclamation of the amendments to ss. 21 and 24 of the *CLRA*, all persons seeking custody of or access to a child would have to complete and file a parenting affidavit at the same time as they start their claim. The new parenting affidavit would be prescribed by the *Family Law Rules*.

Non-parents seeking custody of a child would also have to provide a recent police records check and information relating to any involvement with a children's aid society. Court staff would be required to conduct a search of court records to determine if the non-parent applicant was or is a party in any other family case.

The Ministry is working on developing regulations needed before proclaiming the remaining provisions of the *Family Statute Law Amendment Act, 2009*.