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PRESIDENT'S MESSAGE

Dear AFCC Ontario Chapter Members and Colleagues,

As we move towards Spring, a time of renewal, I am optimistic about the future of family justice and the multi-disciplinary approach that we value. AFCC Ontario has been busy organizing events and programs in various jurisdictions in order to provide social and educational opportunities. Being closely connected to one another across our varied areas of practice is an important step towards improving the outcomes for children and families during the challenging days and years that follow separation and divorce.

The greater family law community has turned its focus to access to justice, triage, unbundled and affordable services, and materials written using plain language. Following the recent federal election, Ms. Wilson-Raybould, Canada's new Minister of Justice, received a mandate letter that includes the possibility of a unified family court. At times it seems we live in uncharted waters with exciting times ahead.

At AFCC Ontario we look forward to a flurry of activity over the next several months. Students from across Ontario and Manitoba are preparing to participate in the Walsh Family Law Moot and Negotiation Competition, set for March 11 and 12, 2016. From June 1 to 4, 2016, various Ontario members will speak at the AFCC (Parent) conference in Seattle.



Looking onwards to the Fall, the 8th AFCC Ontario AGM and Annual Conference will be held in downtown Toronto. On October 20, 2016, there will be a half-day Pre-Conference Institute on the practice skills required for effective direct examination, cross, and re-direct examinations. We will also have a session for new professionals that day, as well as a social event in the early evening.

On October 21, 2016, we present an engaging program- *Navigating the Steps to Family Resolutions: New Directions in a State of Uncertainty*. Our keynote speaker, Dr. Robin Deutsch, will speak on the topic of: *Big Issues, Baby Steps: Moving Difficult Cases to Resolution*. When we meet in Toronto we will recognize the Honourable Justice Geraldine Waldman and Lorraine Martin, by presenting awards in their names. Registration for annual conference and related events opens in April 2016.

We also look forward to the Intensive Child Protection Training Program for Lawyers, a joint initiative with the Law Society of Upper Canada, which will also take place in October 2016.

AFCC Ontario continues to support important research in the family justice field. We anticipate that by the date you receive this newsletter, we will have awarded the Request for Proposal in the area of: *Supervised Access as a Stepping Stone Rather Than a Destination: A Qualitative Review of the Interventions, Services and Programs that May Assist Families to Move Away from Supervised Access*.

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REMEMBERING OUR COLLEAGUES

Tribute to Justice Geraldine Waldman

"Gerry" was not only a great judge and a family law visionary, she was a wonderful friend. On October 20, 2015, we lost that friend. I, for one, (and there are many) miss her terribly.

I first met Justice Waldman when I started working at the Ontario Court of Justice in 2007. At that time, she was the local administrative judge at the 47 Sheppard Avenue family court in Toronto. She called me as I was settling into the job and said, "I guess that I am going to have to meet with you." I didn't quite know what, if anything, I should take from that statement. I soon found out. She began to grill me as soon as I entered the room. I had the distinct impression that she was going to be demanding. Frankly, I was scared.



Very soon after that, I began to hear from Gerry every day. In the mornings, prior to court, my phone would ring. My initial fear of Gerry was soon eclipsed by admiration and friendship. Every morning, we would get right down to business. There were things that Gerry wanted for family law and she was relentless in her pursuit.

That was the brilliant thing about Gerry. Family law was her passion. Certainly I had met people who loved family law as much as Gerry did but she was somehow different. She lived and breathed the law.

If you thought this would mean she had little room for anything else, you would be wrong. She loved her family – her husband, Chuck and children, Debbie, Misha and Michael – with an undeniable enthusiasm. And, she highly valued her friends and colleagues.

Gerry also loved politics. Often, at night, we would chat on the phone to dissect the next election. For Gerry, the most memorable elections were the mayoral race when Rob Ford became the mayor of Toronto (you can imagine how Gerry reacted) and the presidential elections in 2008 and 2012 when Obama ran (and then re-ran) for President. If you knew Gerry, you would also know her views on politics. She was never shy about sharing her views or debating yours.

When we started AFCC Ontario, Gerry was one of the first on board. She came to every single meeting. She joined in every discussion about family law. She was at all of the conferences. She was committed to AFCC Ontario. And, we were fortunate for it.


Her loss for us – the family law community – and her friends and colleagues is enormous. We lost a visionary, but we also lost someone who meant so much to so many people, including the litigants who appeared before her.

I wish that I could properly describe how much I already miss Gerry. But those who knew her will understand. She was the kind of individual who comes into your life and you feel blessed. And, I feel blessed.

The AFCC Ontario has designated an award in her name. It is only fitting. She would have been proud that her legacy will continue through a student or family law professional.



patti cross, LL.B., JD



REMEMBERING OUR COLLEAGUES

Tribute to Lorraine Martin

I recently came across an "IOU" note from Lorraine Martin, dated October 28, 1999. I cannot remember what I could have done for her to write me this note. The reality is that Lorraine has done so much for me and others over her career as a social worker, passionate advocate for children and families in crisis, and a tireless champion to improve their lives post separation.

As many of you may know, Lorraine died November 1, 2015 of lung cancer. She was surrounded by her family and friends. It is hard to express the profound sadness that I, and many others, felt on that day, and we shared our memories at her life's celebration on November 7, 2015.

I first met Lorraine in 1989 when she kindly agreed to let me conduct research into mediation outcomes at Family and Conciliation Court Services in Winnipeg, Manitoba where she was the Director at the time. Without question, Lorraine was an early pioneer in the field of services to divorcing families and was one of the first in Canada to become a trained family mediator.

Her early career included child and adult psychiatry and school board social work for special children in Saskatchewan from 1968 to 1971. She taught life skills to aboriginal women and youth in northern Manitoba from 1971 to 1974. From 1974 to 1992, she worked in Winnipeg holding positions at family services and starting her management career at a Winnipeg hospital overseeing pediatric and neonatal units.

Lorraine came to Ontario in 1992 to become the Manager of the Family Mediation Pilot Program at the Unified Family Court in Hamilton. I lost touch with her until she became the Clinical Coordinator at the Office of the Official Guardian, which later became the Office of the Children's Lawyer, and where I worked at the time.



I fondly recall the many meetings we had at her home in Hamilton and the swimming pool where we all gathered to laugh, eat, play, and... do some work.

In 2010, Lorraine retired from the OCL and that same year she received the Association of Family and Conciliation Courts President's Award for many years of highly respected service. She was a tireless champion for AFCC and one of the best supporters of the Ontario chapter.


As I write this tribute to my former boss, mentor, friend, and often collaborator on research projects, I can only say that Lorraine will be sadly missed. Her warm spirit, wit, laugh, and that remarkable ability to see the strengths rather than challenges of children and families as they make their way through the separation process will always remind me and so many others of what can be.

In lieu of flowers, memorial donations can be made to the Lorraine Martin Scholarship at the Factor-Inwentash Faculty of Social Work, University of Toronto, 2456 Bloor St. W., Toronto ON M5S 1V4.

The AFCC-O will also be honouring Lorraine's life and contributions to this field with an award to be presented at the AFCC-O annual conference in October, 2016.



Rachel Birnbaum, Ph.D., RSW, LL.M.



PRESIDENT'S MESSAGE (cont'd from page 1)

Our earlier research, *Crossover Youth: Improving Ontario's Responses*, was the precursor to the creation of a pilot project through Ryerson University. We are happy to report that the project is currently underway and will take place in four courts across Ontario. The original research paper is available on our website.

Details of these initiatives are set out in this newsletter and on our newly revised website. I conclude with a note of appreciation and gratitude: Your membership in AFCC Ontario enables our organization to continue to have a strong voice in the evolution of the Ontario family justice system. We thank you in advance for renewing your annual commitment to AFCC Ontario.

Andrea Himel, LL.B., M.S.W., AFCC Ontario Chapter President



ANNOUNCING AFCC-O's 2016 SPECIAL AWARDS

At our 8th Annual Conference on October 21, 2016, the AFCC-O will present *The Honourable Justice Geraldine Waldman Award for Excellence in the Intersection of Family Law and Criminal Law Relating to Domestic Violence*; and *The Lorraine Martin Award for Excellence in Dispute Resolution*.

The Honourable Justice Geraldine Waldman was an innovator and an outstanding voice for families and children, particularly victims of domestic violence. Justice Waldman was appointed to the Ontario Court of Justice in 1992. She pioneered the creation of the first Canadian court dedicated to hearing domestic violence cases that included both family law and criminal law issues. *The Honourable Justice Geraldine Waldman Award for Excellence in the Intersection of Family Law and Criminal Law Relating to Domestic Violence* award will be granted to a professional or student who has contributed meaningfully to the issue of domestic violence. A donation will be made in the award recipient's name to the Barbra Schlifer Commemorative Clinic.

Lorraine Martin was a pioneer of family mediation and is remembered for her varied contributions to the field of dispute resolution. Lorraine was the Clinical Coordinator of the Personal Rights Department at the Office of the Children's Lawyer for 17 years. *The Lorraine Martin Award for Excellence in Dispute Resolution* will be granted to a professional or student who has contributed meaningfully to the resolution of family law disputes in a family and child-focused manner. A donation will be made in the award recipient's name to the Lorraine Martin Scholarship at the Factor-Inwentash Faculty of Social Work.

Both award recipients will be provided complimentary registration to attend the AFCC Ontario Annual Conference on October 21, 2016.

The deadline to submit an application for either of these awards (on behalf of a colleague or on your own behalf), is September 9, 2016. Please visit our [awards webpage](#) for details on applying for either of these awards.



**DID YOU NOTICE THAT WE PROVIDE HYPERLINKS TO
WEBSITES AND EMAIL ADDRESSES IN RED INK
THROUGHOUT OUR NEWSLETTER ?**



AFCC-O 8TH AGM & CONFERENCE

Please join us for the 8th AFCC Ontario AGM and Annual Conference, ***Navigating the Steps to Family Resolutions: New Directions in a State of Uncertainty.***

October 20, 2016: Pre-Conference Events

Location: Children's Aid Society of Toronto, Central Branch,
30 Isabella St., Toronto

The New Professionals Committee brings together legal and clinical professionals in their first five years of practice, to examine and discuss interdisciplinary and collaborative approaches to family justice. Each year, the committee organizes a panel of senior family law judges and practitioners to discuss a topic of interest. The panel discussion is interactive providing ample opportunity for "Q&A". This session will be held from 1:00 p.m. to 2:15 p.m., before the Pre-Conference Institute.

The Pre-Conference Institute will present a mock trial with Dr. Irwin Butkowsky being examined and cross examined by Harold Niman and Patrick Schmidt. The process for having a mental health professional declared an expert will be reviewed and the strengths and weaknesses of the expert's report will be critiqued throughout the mock trial. Legal professionals will learn techniques to conduct an examination in chief and cross examination. Mental health professionals will learn how to give evidence consistent with the scope of their expertise. The Honourable Justice Debra Paulseth and the Honourable Justice Heather McGee will preside to keep order in the Court! This session will be held from 2:30 p.m. to 5:30 p.m.

The annual social event will take place at Spring Rolls Restaurant immediately following the Pre-Conference Institute, from 5:30 p.m. to 7:30 p.m. This Spring Rolls, a new venue, is conveniently located at Yonge and Bloor (691-693 Yonge Street, Toronto), a short stroll from where the afternoon session will take place.

October 21, 2016: AGM and Annual Conference

Location: Toronto Reference Library, 789 Yonge Street, Toronto

We are pleased to present our keynote address by Dr. Robin Deutsch, who will speak on the topic entitled, *Big Issues, Baby Steps: Moving Difficult Cases to Resolution*. We are also excited about the balance of our program which will include sessions in the following areas: The Intersection of Parenting Time and Child Support; Protecting Yourself from the Difficult Client; The Voice of the Child; Parental Estrangement: Identifying Risks and Early Interventions; Supervised Access; and our annual update on important child-related cases.

Our diverse group of speakers includes: The Honourable Justice George Czutrin, The Honourable Justice Lise Parent, The Honourable Justice Gerri Wong, Linda Chodos, Katherine Kavassalis, Alf Mamo, Judy Newman, Denise Whitehead, and others!

Registration for all events opens in April 2016. We look forward to seeing you at the Conference.

This program will be eligible toward the Law Society's CPD Requirement as Substantive Hours. A CPD application is pending for Professionalism Hours.

FOURTH ANNUAL WALSH FAMILY LAW MOOT



The Walsh Family Law Appellate Moot Competition Turns 4 & The Walsh Family Law Negotiation Competition Turns 2

Chairs Steve Benmor and Justice Roselyn Zisman (Appellate Moot Competition) and Chairs Elizabeth Hyde and Jennifer Suzor (Negotiation Competition) are proud to announce that, on March 11 & 12, 2016, two exciting family law competitions are taking place - the 4th Annual Walsh Family Law Appellate Moot Competition and the 2nd Annual Walsh Family Law Negotiation Competition.

The AFCC-O is excited that this year both competitions are collaborating together and working under the AFCC-O umbrella. We want to thank our AFCC-O members and other supporters who have agreed to participate in, or sponsor, these important events. Bringing them together brings the full spectrum of services to family law litigants into one fabulous weekend.

For the Appellate Moot Competition, students from seven law schools across Canada will bring their advocacy skills to argue the appeal of an exciting family law case. Teams from Osgoode Hall, University of Toronto, University of Ottawa, Queen's University, University of Western Ontario, University of Windsor and the University of Manitoba will compete. Awards will be presented to the top scoring team, second place team, best oral argument, second best oral argument, best written appellant team factum and best written respondent team factum.

For the Negotiation Competition, six of Ontario's seven law schools will participate in the ultimate test of dispute resolution skills based on a realistic and compelling parenting dispute. This year's competition will include teams returning from Osgoode Hall, University of Ottawa and Queen's University, as well as teams from University of Western Ontario and Lakehead University, who will be competing for the first time. Awards will be presented to the top scoring team, second place team, top scoring individual and best negotiation plan.

Today's law students are eager for exposure to the real practice of family law which includes both ADR and litigation. These events also honour the Honourable George Walsh, a pioneer in the resolution of family disputes.

We are looking forward to a terrific event and the collaboration with all our AFCC-O partners.



Steve Benmor, B.Sc., LL.B., LL.M.

The WALSH FAMILY LAW MOOT & NEGOTIATION COMPETITIONS

**ARE SCHEDULED
FOR:
Friday, March 11th
& Saturday, March
12th, 2016**

The Walsh Family Law Moot Rules and Regulations, and sponsorship information can be found at: www.afccontario.ca/walsh-moot/

AFCC AND AFCC-O MEMBERSHIP BENEFITS

AFCC membership includes:

- A subscription to the ***Family Court Review***, quarterly journal with full access to archives dating back to 1963!
- Access to an online membership directory of over 4,800 colleagues worldwide (don't forget to login to the members section of the AFCC website at www.afccnet.org to update your member profile!).
- AFCC eNews monthly electronic newsletter.
- Parenting Coordination listserv of AFCC members.
- Special member discounts to attend AFCC Conferences, training programs and publications.

DID YOU KNOW... AFCC has 21 chapters, only one other in Canada (Alberta), and AFCC-O is the second largest chapter to California in terms of membership! AFCC-O members are eligible to receive discount pricing to attend our annual conference, seminars and special events. Check our events calendar at this link: www.afccontario.ca/calendar/



Are you a member of the AFCC and would like to join the Ontario Chapter?

www.afccnet.org/Chapters/JoinaChapter

AFCC-O members have access to our new "members only" section of our website. This section contains presentations from past AFCC-O Conferences, as well as links to valuable resources and articles.

AFCC-O MEMBERS:

As of March 1st, 2016 we have 456 AFCC members in Ontario, and 403 are AFCC-O Members

A warm welcome to all new Ontario chapter members!

AFCC-O members are family law judges, lawyers, mental health professionals, mediators, and other professionals in the family justice system.

We are dedicated to providing an interdisciplinary forum for the exchange of ideas and the development of procedures emphasizing collaborative methods of dispute resolution to assist families in conflict. We share a strong commitment to education, innovation, and collaboration to benefit communities, empower families and promote a healthy future for our children.



VIEWS OF THE CHILD REPORTS

An Important Addition to the Ontario Family Toolbox?

Views of the Child reports, sometimes called “Voice of the Child” or “Hear the Child” reports, are being increasingly used in a number of Canadian provinces and other countries as a means of obtaining the child’s perspective in parenting disputes between parents and/or guardians. These reports provide information about the child’s perspective on their lives and the matters in dispute based on one or more interviews with a professional. Although less informative than a full custody assessment, these reports are relatively inexpensive and can be prepared without delaying a resolution of the proceedings.

The reports are intended to communicate the child’s views, perspectives and wishes, for use in litigation, mediation, negotiation or other dispute resolution between separated or divorcing parents. They may be prepared by mental health professionals or by lawyers. Generally the reports are non-evaluative and only report on the child’s statements, without offering a conclusion or opinion from the professional who prepared the report about their reliability or significance. However, Views of the Child reports can also be evaluative, offering an opinion in addition to summarizing the children’s views, but they are not full assessments of the parties, the children and circumstances. Mental health professionals typically provide these evaluative reports.

Views of the Child reports are a relatively inexpensive way of informing courts, lawyers and parents about the views of children, and advance children’s rights to participate in disputes that affect them, as required by the *United Nations Convention on the Rights of the Child*. An initial survey of Canadian practitioners—especially in British Columbia, Alberta and New Brunswick, where the preparation of these reports is now common—revealed considerable recognition of their utility, as well as unevenness in practice.¹ However, there has been very little empirical research about the value of these reports, their impact on judicial and parental decision-making during custody and access disputes, and there is disagreement about the best practice for preparing these reports.

It is therefore timely to study this method of bringing children’s views before the courts, to be used as another resource to facilitate children’s participation in family dispute resolution. The Offices of the Chief Justice of the Ontario Court of Justice and Superior Court of Justice, the Office of the Children’s Lawyer and Dr. Rachel Birnbaum, have developed a “Views of the Child Report” pilot project to ascertain the views and preferences of children in custody and access cases. The project is funded by the Law Foundation of Ontario and will be carried out by mental health professionals in five pilot sites (Toronto, Hamilton, Ottawa, Brampton, and Timmins).² The key objectives of this pilot project in Ontario are to:

1. improve collaboration between government, the bar and the judiciary for seeking the views and perspectives of children in a sensitive fashion that will facilitate family dispute resolution;

VIEWS OF THE CHILD REPORTS (cont'd from page 8)

2. provide education about the importance of seeking children's views and preferences to Ontario lawyers, mental health professionals, judges and other interested key stakeholders, including parents and children;
3. pilot and evaluate an innovative project that has the potential to improve access to family justice for parents and children in Ontario, and have cases resolved in a less expensive and more timely fashion, ultimately improving outcomes for children.

The Views of the Child reports *may* well have a place along the continuum of services for and with children so that their direct input can be considered when parents separate. These reports have *the potential* to enhance children's participation, and facilitate the resolution of cases. However, given the limited research to date about their use and impact, further discussion and research needs to take place. Clarification regarding the best use of these reports in Ontario will require collaboration between government, judges, lawyers, mental health professionals, researchers and regulatory bodies.



Rachel Birnbaum, Ph.D., RSW, LL.M.³

¹Birnbaum, R., Bala, N., & Boyd, J.P. (*In Press*). The Canadian Experience with the Views of the Child Reports: A valuable addition to the toolbox? *International Journal of Law, Policy and the Family*.

²While Dr. Birnbaum is being financially supported by The Law Foundation of Ontario, the findings of this research do not necessarily reflect the views of the Foundation. Professors Birnbaum & Bala will be presenting on this topic at the Annual Family Law Summit in April, 2016 hosted at the Law Society of Upper Canada, Educational Program. She can be contacted at: rbirnbaum@uwo.ca

³Professor, Cross-Appointed to Childhood Program (Interdisciplinary Studies) & Social Work, King's University College, Western, Ontario, Canada. Professor Nicholas Bala will also be participating in the evaluation process.

"Views of the Child reports are a relatively inexpensive way of informing courts, lawyers and parents about the views of children, and advance children's rights to participate in disputes that affect them"

Domestic Violence: Problems at the Intersection of Criminal Justice and Family Justice

- Clyde Smith and Linda Smith

Our comments are offered irrespective of the guilt or innocence of a person charged with a domestic violence offence and they reflect what we see happening in the cases we deal with in our Eastern Ontario law practice restricted to criminal and family law.

It is important that all family justice practitioners be aware of what happens after criminal charges are laid because these events will affect the whole family—the accused, the complainant and the children.



The rule book for Ontario domestic violence offences is the Crown Policy Manual, which leaves little discretion as to whether or not criminal charges are laid once a 911 call or a domestic complaint is made. Complainants do not “press charges”. They report their allegations to the police and the decision whether to lay a charge is then made by the police. Once the police receive a complaint of domestic violence (DV), be it assault, criminal harassment, uttering threats, mischief, or some combination thereof, the laying of a charge is virtually mandatory.

The accused in a domestic violence case will typically be taken into custody and held overnight for a bail hearing in the Ontario Court of Justice. An accused arrested on a Friday, will likely spend the weekend in jail. While an accused can be released from the police station on a Promise to Appear, the police prefer to leave the release decision to a Crown Attorney. The accused will be taken to bail court at which time the Crown will advise if they are prepared to agree to the accused being released on conditions. If the Crown does not agree, then the matter is scheduled

for a contested “show cause hearing” during which evidence is presented by both sides and a presiding Justice of the Peace decides whether the accused should be released or detained. A show cause hearing can usually be scheduled within two to three days if the only issue is availability of court time. If, however, there is difficulty finding someone to act as a surety—a person to keep an eye on the accused and help ensure compliance with bail conditions—then the development of a release plan may take longer. In DV cases, the Crown and the Court usually look to have the accused residing with a surety, which makes for an added challenge.

Release conditions typically include provisions forbidding contact between the accused and the complainant and sometimes the children. Conditions may require the accused to remain away from certain places such as the parties’ home (a *de facto* interim exclusive possession order) and the children’s school or day care. The usual clause regarding contact between the accused and any children will preclude any contact without the written approval of the CAS or a subsequent family court order, and obtaining either always takes time. Obtaining a family court order can also be difficult and expensive creating a significant, if not insurmountable, challenge for many families.

The police will contact the relevant child protection agency to report the charge, and this agency will often investigate and weigh in on the suitability of contact between the accused and the children. This assessment also takes time.

Domestic violence cases are dealt with in specialized sessions of the criminal courts. These courts, together with Ontario’s Justice on Target Initiative, are designed to increase the speed with which these cases move through the system. Unfortunately it can still take between six to twelve months for a matter to reach trial, leaving bail conditions in place for a long time for those accused who do not plead guilty. The initial chain of events happens quickly and then the matter often slows to a snail’s pace.

By virtue of the fact that the complainant and accused are now adverse in interest and experiencing high conflict, the relationship between the accused parent and the child is altered. One byproduct of the criminal charge is that the child of an accused person is often denied the right to a relationship with that parent without there having been a determination as to whether or not that disruption in the relationship is in the child’s best interest. Many months can pass before a child is able to have contact with the

Domestic Violence: Problems at the Intersection of Criminal Justice and Family Justice (cont'd from page 10)

accused parent and the longer the parent/child contact is interrupted the more challenging it is to re-establish the relationship.

An ameliorating measure such as mediation may be impossible due to the concern about the imbalance of power or because of the high conflict between the parties. Bail conditions restricting contact may preclude attendance at mediation or family counselling.

Supervised access, either at a supervised access centre or by a neutral third party, is often an option for quick reintegration. In those cases, it is vital that the supervisor be aware of the nature of the charges, why the visits require supervision and any rules applicable to the release conditions and the visits. However, as beneficial as supervised access is as an interim solution, it is generally quite limited in both duration and frequency.

A family court application often follows on the heels of the criminal court charge. In addition to the problems of such an action often being lengthy and expensive, there is the added complication that the family case and the parallel criminal case have different objectives even if they are driven by the same facts. These two courts are two distinct jurisdictions and two separate processes, which rely on two different standards of evidence. Currently the two courts have little ability to communicate with one another.

Is it possible to deal with DV matters in a safe and family-focused way? Is there a balance between child safety and emotional wellbeing and a child's right to a relationship with the accused parent?

In Toronto's Integrated Domestic Violence Court, a single judge of the Ontario Court of Justice can hear cases where there are concurrent criminal and family proceedings. The judge can monitor families over time, addressing legal issues as well as matters of accountability and safety, and the interests of children can be taken into account in both proceedings. Unfortunately, this court has faced some administrative challenges, and has limited scope: It can only deal with family cases where property or divorce are not at issue, since those matters can only be dealt with in the Superior Court, and child protection issues cannot be included (See Birnbaum, Bala & Jaffe, *Canadian Journal of Family Law*, 2015).



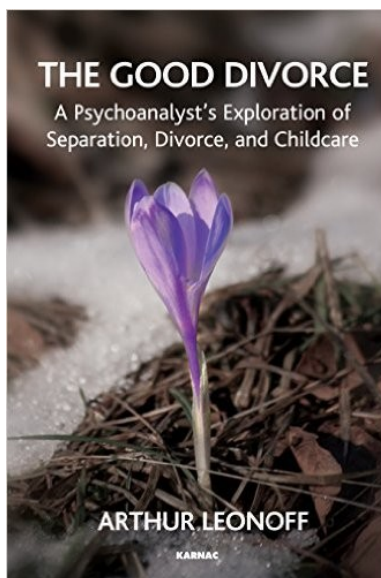
Lanark County in Eastern Ontario has tackled the problem by introducing a DV Protocol and Early Resolution Meetings. Its goals include improving communication and reducing conflicting orders between criminal and family court, ensuring restraining order provisions are communicated to and enforced by the police, permitting safe and appropriate visitation between the accused and their children and ensuring that the safety needs of victims of domestic violence are being met. Early Resolution Meetings are informal. All involved, including the parties, the Crown, the criminal lawyer, the family lawyers and, in many cases, the child protection lawyer, meet with a Superior Court Justice to try to resolve, on an interim basis, the issues surrounding a particular family. This is a grass roots bench-and-bar initiative, which is described by one of its founders, Justice K. Pedlar (retired), as 'light on its feet' in that it has no regulations, funding, or forms. With the co-operation and participation of all involved, creative interim solutions are explored for each family and they can be implemented on the consent of all parties. In addition to providing better outcomes for the families, Justice Pedlar reports that this collaborative approach has resulted in systemic change by allowing cases in that jurisdiction to be addressed with a minimum of delay and expense.

Linda Smith is an AFCC-O member and a lawyer practising family and child protection law. Clyde Smith is a lawyer whose practice is restricted to criminal law. They work together at Smith & Company Barristers, Kingston, ON www.smithlawyers.ca

BOOK REVIEW

The Good Divorce: A Psychoanalyst's Exploration of Separation, Divorce and Childcare, by Dr. Arthur Leonoff

Dr. Arthur Leonoff is a psychologist and psychoanalyst practising in Ottawa. His experience as an assessor, expert witness and clinician working with families experiencing divorce and family adjustment spans four decades. More recently, he has taken a leadership role in addressing concerns expressed by the judiciary, bar, mental health professionals and parents about the shortage of custody assessors willing and available to provide a much needed service. His willingness to take the bumpy road, when he could have easily taken the smooth road, has been the impetus for several groups to take a good and hard look at finding practical solutions and protocols that will hopefully rejuvenate the willingness and availability of mental health professionals to provide this important service to children and families in conflict.



To make workable and informed decisions, parents need to be adequately and accurately informed. This book offers information, useful to parents and professionals, starting with how to communicate to one's partner the need or desire to separate, followed by equally important practical matters including managing emotions, providing children with developmentally focused explanations, positive co-parenting, parenting plans and residential schedules. The final chapter, "Space for Discovery," charts a path towards learning from one's mistakes and healthy ways to move forward. The reader is left with a greater understanding, many practical take-aways, and hope — the essential ingredient for growth.

In Arthur's words:

As much as society has made divorce easier to obtain, it has not found ways to make it less painful. Indeed, divorce remains a major risk factor to the mental health of adults and children. Of course, there are shelves laden with 'how to' books that narrowly define self-help and propose mechanical steps or advance behavioural prescriptions to follow. There is a surprising lack of general literature, however, exploring in-depth the emotional and social challenges faced by divorcing adults, parents and children. This book

attempts to fill this gap. Professionals in the field will recognize the cases and challenges described; the general reader should find the book educative rather than instructional, setting the tone for what is essential to the ethical divorce.

Divorce is likely not as harmful as the way people do it. If properly understood and handled, much misery and harm can be avoided or significantly reduced. When children are involved, the requirement for the "good divorce" increases exponentially. In this regard, some remnant of family identity must be retained for children to find their way between homes and parents. In cases of "alienation" or debilitating high conflict, it is the notion of 'family' that is often attacked leaving children without any conduit between their parents.

Nowhere is this notion of 'family' more symbolically expressed than in the transition between two households. Parents who support this middle space and understand its significance for children very much help their offspring make a good adjustment. The parents who came together to make a baby, come together post-marriage to exchange care of their child. The transition recapitulates the family bond that must survive to some degree despite the marriage breakdown. It is the remnant of what once was or was intended.

In terms of the adults themselves, what constitutes the good divorce includes an awareness of the different perspectives of the one initiating versus the one on the receiving end. Most marriages end unilaterally and are not the result of a joint decision. To be sure, they do not end as much as rupture. On the other hand, how the partner is told, a respect for process and honesty, the willingness to communicate and engage even in a 'bad marriage' all contribute to lessening the damage and permanent hurt that characterize the legacy of many divorces.

BOOK REVIEW (cont'd from page 12)

This book assists the reader with the challenge of telling the children and understanding how they tend to react. It discusses what factors should be taken into account when devising a framework for decision-making and for the raising of children. Here again, the book is not mechanistic but guides the reader to get inside the experience and make sense of what is happening or what needs to occur.

Case examples are used to make these insights come alive within the text. It is the ongoing reference to the clinical work that inspired the book and will hopefully inspire the reader.

The Good Divorce is not just another book on divorce. It is a wonderful read, covering a breadth of relevant topics. The eloquently summarized case scenarios will be easily recognized by those who have experienced separation and divorce, by their helpful, and sometimes, not so helpful friends and family, and by legal and mental health professionals who work tirelessly to help children and parents navigate *the* separation. The *Good Divorce* reminds us of the importance of the ethics of divorce and the need for each parent to strive for greater understanding of what they bring to the family circumstance, not only in terms of their own past, but to the present and most importantly to the future, all for the sake of positive outcomes for them and their children. Dr. Leonoff provides important information to inform the inevitable critical decisions. He offers many useful practical suggestions for parents, their extended families and friends and for legal and mental health professionals. The reader is left with greater understanding and many practical take-aways.

The book cautions: Divorce without reflection and new learning is fraught with the risk of repetition. Most importantly, hope to parents that they can thrive despite the many difficulties they face is instilled. The cover, depicting a delicate while robust crocus rising from the moist spring earth, with snow crystals still there, sends the book's intricate message of vulnerability, hope and renewal.



Barbara Fidler, Ph.D., C.Psych., Acc.FM.



The Nicholas Bala Award for Excellence is an annual scholarship award that will be granted to a student enrolled in or recently graduated from a graduate level program in social work, joint social work/law or law (LL.B. or JD), psychology and/or medical school (psychiatry).

This award includes a \$1,000.00 cash award, a one year membership with AFCC and AFCC-O, and free registration at our AFCC-O Annual Conference.

The submission deadline for the Nick Bala Scholarship award is May 1st of each year

For information on the scholarship and how to apply, please visit our website at:

www.afccontario.ca/awards/



Where Have All The Assessors Gone? Addressing Frivolous and Vexatious Complaints and Moving Towards Potential Solutions

High conflict family law cases can be challenging to resolve without input from a mental health practitioner with specialized knowledge, training and experience. Custody/access assessments have an important role to play in resolving parenting disputes. Perhaps most importantly, assessments help to create child-focused parenting arrangements that are tailored to a family's circumstances. Assessments provide informed and independent evidence about the child's needs and the ability and willingness of each parent to meet those needs. This helps to encourage facilitated resolutions and informs adjudicative decisions where required.

An assessor's role is entirely different from a traditional therapist-client relationship. The assessor is appointed by and accountable to the Court in a forensic role. Both parents have the opportunity in the court process to challenge the assessor's findings, opinions and recommendations. It is then up to the Court to determine the weight that will be given to this particular piece of evidence.

Custody and access cases are extremely difficult to resolve for many reasons including the importance of the parenting issues to the parties, the unrealistic expectations of one or both parties, an inability for litigants to move from their interests to those of the child and, in many cases, the involvement of some degree of mental illness and/or personality disorders. Consequently, it is not surprising for a litigant to question the conduct of the assessor when they are dissatisfied with the opinions and recommendations, regardless of whether or not the assessor has met all of their professional obligations. The litigant may be motivated to advance a professional complaint for many reasons, including: (i) to delay or even thwart the process, (ii) to harass the professional and bring them into the conflict to the point they may withdraw, and (iii) to gain access to information through the complaints process before it is available to the other party.

A 2009 discussion paper was prepared by a multi-disciplinary group of Ontario family law professionals to bring awareness to these issues and propose procedural reforms, largely in response to a complaint against a well-known psychologist that was ultimately dismissed only after extensive investigation. The paper states:

...As a result, those who are willing and able to conduct these assessments are dwindling. This exodus of available and qualified assessors is a significant problem facing family law lawyers and the courts in Ontario and, most importantly, children and their families who are left at risk. Legal costs increase, families endure stressfully long wait-times and children suffer while their parents remain in tense custodial limbo due to excessive delays caused by a dearth in available assessors.

Recognizing the dwindling pool of willing and available custody and access assessors, that significant challenges persist regarding frivolous and vexatious complaints against these professionals, and the importance of this work for the benefit of children and their parents, several AFCC-O members have been busy over the past year working to develop potential

Where Have all the Assessors Gone? (cont'd from page 14)

improvements. Tami Moscoe, Dr. Barbara Fidler, Dr. Graham Clarke (Alberta) and Dr. Jenni Neoh (Australia) presented on this topic at the AFCC conference in Los Angeles.

In addition, an interdisciplinary working group has developed a new endorsement form for custody and access assessments, which will be available shortly on the website of the Ministry of the Attorney General (MAG) located with the 'court forms', also found at www.ontariocourtforms.on.ca/en. Most recently, an interdisciplinary effort has continued under The Action Group (TAG) umbrella to develop proposed reforms to both family court and regulatory processes. Stay tuned for more information.



Barbara Fidler, Ph.D., C. Psych., Acc.FM., and



Tami Moscoe, LL.B.

Pathways to Accessing Family Justice Services: Barriers and Facilitators

The Ottawa High Conflict Forum, with the Ontario Superior Court in Ottawa, has developed a coordinated case management process for high conflict custody and access cases. The goal is to provide high conflict families with enhanced access to judicial and community resources and support as they enter the court system to help resolve parenting disputes promptly and efficiently. The project has been ongoing since January 2015, and includes an evaluation component. Since its inception, the stakeholders identified several key barriers and facilitators to enhancing services to families.

As a result, Dr. Birnbaum has received funding from the Department of Justice (Canada) in collaboration with Ottawa Family Services (High Conflict Forum) to bring together key decision-makers in the family justice system— for example, legal professionals, police, court services, school personnel, private mental health practitioners, mental health educators, and parents— for a one day symposium. This symposium will be a unique opportunity for family justice stakeholders to learn from one another about promoting collaborative and more effective family justice services to parents and children. Attention will be given to the issues for both unrepresented and represented litigants, as well as those who are thinking about separating or divorcing in Ottawa, Ontario. The findings gathered will be used to identify clear and actionable steps to implementing a collaborative and sustainable community-based model to assist parents and children in the family justice system.

Rachel Birnbaum, Ph.D., RSW, LL.M., and Mark MacAulay, MA, CCC



The Evaluation of Grandparents as Supervisors of Parental Access

The evaluation of grandparents as supervisors of a non-custodial parent's visitation, and for that matter any relative or non-professionally trained third party who wishes or agrees to provide supervision, must be assessed in relation to three main components. Implementation of those components and subsequent report, as noted by Justice K.L. Hawke of the Ontario Court of Justice, added "positive value" to the judicial decision-making (*Rekes vs Ali*, 2015 OCJ 622-14).

The first component involves the evaluation of the supervisor's qualifications, commitment, and knowledge regarding the responsibilities involved in the provision of supervision as well as an awareness of the reason for supervised visitation. The second component involves the knowledge necessary in relation to full time observation of parent/child interaction. The third component involves the grandparents' capacity and willingness to act on their observations, if and when necessary. The protocol for evaluation had to be created in view of very limited literature on the subject.

The assessment begins with ascertaining the grandparents' qualifications for providing supervised access by way of a background check. Next, one must evaluate the grandparents' commitment to the responsibilities of supervision in terms of how reliable and dependable they can be in relation to their availability to provide such a service on a full time basis without exception. Another necessary factor is their ability to be neutral and objective in their observations, and unencumbered in any way by their relationship with the non-custodial parent they are supervising. The grandparents must be aware of the court's rationale for ordering supervised access and accept it as a basic parameter in relation to their observations.

The assessment of the supervisor's knowledge of parenting is the next component. The supervisors must be aware of the child's age and stage of development and hold to an acceptable standard of parenting and methods of child management. They must be aware of, and focus on, the child's physical and emotional needs and be prepared to ensure that they are met. The grandparents, as supervisors, must have some basic knowledge in relation to domestic violence, sexual abuse, and the impact of drug or alcohol use. The supervisors must also demonstrate respect for the custodial parent, particularly in relation to transfer of the child.

Finally, the grandparents must be evaluated in relation to their ability and willingness to intervene in a positive way:

- (i) by providing necessary parenting instruction to the non-custodial parent when appropriate;
- (ii) when the non-custodial parent does not meet any of the child's physical and emotional needs through neglect, negative influence, or any instance of undermining the child's relationship with the custodial parent; and
- (iii) to report to the police or the Children's Aid Society any observation of abuse in any form, or report observations when required by the court, legal counsel, or the Children's Aid Society.

Using these three components allows for the assessment of the supervisor's understanding of the seriousness of his or her role and responsibilities. It is understood and suggested that

The Evaluation of Grandparents as Supervisors of Parental Access (cont'd from page 16)

these procedures will be conducted in a caring fashion with focus on the child in question and provide an educative component to the process.



Raymond M. Morris, Ph.D., C. Psych., Acc.FM.

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Rekes vs Ali 2015 OCJ 622-14

To review Dr. Morris' full paper please visit his website at

www.drraymondmorris.com

Same Sex Parenting: The experiences of professionals involved with parents navigating the family justice process

This is your invitation to participate in a study that involves research to explore the challenges, if any, of working with disputing same-sex parents and their experiences in the family justice system. We are asking legal and mental health professionals across Ontario to consider completing an anonymous and confidential online survey. It should take no more than 20 minutes to complete, and may be done at your convenience.

If you are interested in participating please copy the URL below into your search browser:

www.surveymonkey.com/r/same-sexpostseparation

Shely Polak, MSW, RSW, Acc.FM., Ph.D(c), Factor-Inwentash Faculty of Social Work, University of Toronto

Rachel Birnbaum, Ph.D, RSW, LL.M., Professor, King's University College, Western University

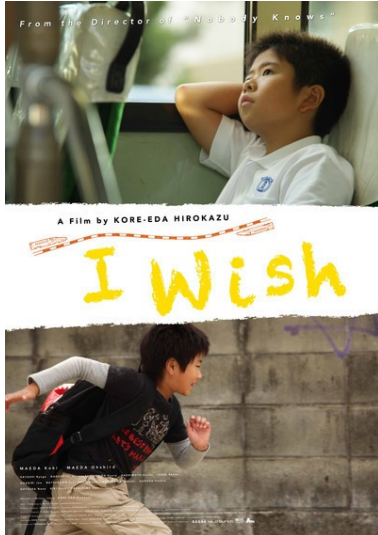
Alex Finlayson, Barrister and Solicitor, Toronto, Ontario



FILM REVIEW

I Wish (2011) - Japan

Set on the island of Kyushu in Japan, *I Wish* follows two young brothers who have been separated following their parents' divorce. The eldest of the brothers, Koichi, resides in the south of the island with his mother and maternal grandparents. Ryu, the younger of the two, resides with his father in the north – apparently an arrangement decided on by the children.



While there is a strategy behind the children living separately, Ryu's decision to reside with his father has been difficult for everyone - especially Koichi who dreams of them being together again. The brothers talk to each other regularly over the telephone, but it is not the same as being together, and it becomes difficult for them to make time for each other. Their initial strategy seems to backfire as both Ryu and Koichi begin to develop very different lives – Koichi, a life of stress and longing, and Ryu, one of freedom and new friends. The tension builds between the brothers as Ryu, who is enjoying the new life, seems to deviate from the initial plan, culminating in an argument in which Koichi suggests that Ryu is just like their father.

Koichi learns that soon a high speed bullet train will connect his city with the north of the island and comes to believe that when the two trains pass each other a miracle will occur and one's wishes will come true. Koichi plots for he and his brother to be there at that moment and figures that if they both wish for the family to reunite then it will happen. The story follows this journey as both Ryu and Koichi, with the support of friends, strangers, and their maternal grandfather, make their way to each make their wish to reunite the family and witness the miracle moment.

The strength of the movie is its ability to capture brief moments - moments of tension and connection in relationships. The movie also captures the characters' experiences of the guilt, sadness, confusion, anger, acceptance and growth associated with the separation and life in general. The movie possesses a highly realistic quality and captures not just the impact of separation and distance on the sibling relationship, but also the impact of environment, care giving, and parental behaviour on a child's worldview. The brothers (played by actors who are actually brothers in real life) have markedly different temperaments and personalities. This plays out on the screen, and is central to their journey in the film. While Koichi's assumption is that his younger brother longs for what he does, the reality is that he may be at a different place in his journey. As a result, his acceptance of his parents' separation, and his needs, wants and wishes may not mirror those of his brother, and that in some ways may prove to be the harder reality to reconcile.



Jared Norton, MSW, RSW, Acc.FM., AFCC-O Newsletter Committee



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AFCC-O UPCOMING EVENTS

March 11-12, 2016

Walsh Family Law Appellate Moot and Negotiation Competition. See our [Walsh Moot webpage](#).

April 22, 2016

New Child Protection Lawyers' Group Lunch and Learn Program: Lessons From Experienced Child Protection Practitioners—47 Sheppard Ave. East, Courtroom A, 2nd Floor.

October 20, 2016

New Professionals Event and Pre-Conference Institute will be held at the Children's Aid Society of Toronto, Central Branch, at 30 Isabella Street, Toronto, Ontario.

AFCC-O Social and Reception, Spring Rolls Restaurant, Toronto, Ontario.

October 21, 2016

AFCC-O 8th Annual AGM & Conference, "Navigating the Steps to Family Resolutions: New Directions in a State of Uncertainty". See Page 5 for details. Our conference brochure will be available on our website soon. Registration for Pre-Conference & Conference events will open April 2016.

October 26-29, 2016

Intensive Child Protection Training for Lawyers—SAVE THE DATE—details TBA

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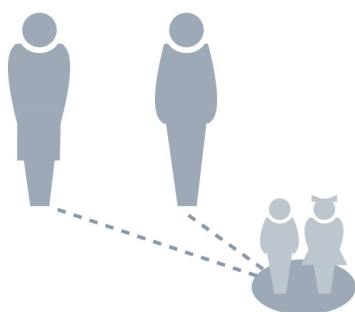
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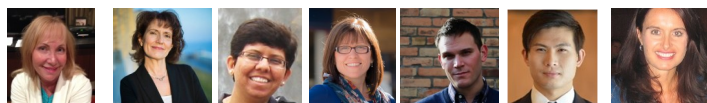


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Linda Feldman & Linda Popielarczyk (co-chairs),
Archana Medhekar, Karla McGrath, Jared Norton,
and Jason Zhong

Administration, Layout and Design:

Kimberly Brown



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