



# AFCC ONTARIO

## NEWSLETTER

VOLUME 1. NUMBER 1

Association of Family and Conciliation Courts – Ontario Chapter

WINTER 2009

### AFCC Ontario Launches First Newsletter

Since October 2007, a team of committed volunteers have been diligently working at bringing the Ontario chapter of the AFCC to life. We are thrilled to say that we have been very successful.

In January 2008, we had a launch event at the University of Toronto’s law school. In May, we hosted a divine dinner for Ontario members who attended the AFCC conference in Vancouver, British Columbia. Both events exceeded our wildest expectations.

We also applied for provisional chapter status and received it while we were at the conference in Vancouver.

Our work continues. The inaugural conference and annual general meeting will be held on April 3, 2009. The day’s events will include an educational component, the Ontario AFCC’s first annual general meeting and a cocktail reception.

The parent AFCC’s tradition of mixing education with an ability to socialize and collaborate with other professionals will be maintained by this chapter. Further details about the event can be found in this issue. Please register soon – space is limited.

Meanwhile, each month a number of us get together to plan events, organize newsletters and work on the incorporation and by-laws for the chapter. If you are interested in joining us, please contact patti cross at [patticross@gmail.com](mailto:patticross@gmail.com).

We are really excited about this chapter. We see the possibility of great things and we would love for you to share them with us.

Mr. Justice Craig Perkins (SCJ) and patti cross

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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)

## Join AFCC Ontario

The Ontario Chapter of the Association of Family and Conciliation Courts, named "AFCC Ontario", is one of the newest chapters in AFCC and received provisional chapter status in May 2008 at AFCC's 45<sup>th</sup> Annual Conference in Vancouver, B.C. The Ontario Chapter is the first Canadian Chapter of AFCC and we hope to support other provinces to establish their own provincial chapters in the near future.

The Ontario Chapter is committed to diversity within our chapter; we are comprised of a vibrant group of professionals representing the various disciplines in family court matters such as judges, lawyers, mental health workers, mediators, custody evaluators, parenting coordinators and academics. We also strive for representation of members from the various geographical areas in our vast province.

We provide opportunities for our members to network and share their interdisciplinary views of family court matters on a local level and within a Canadian context. We endeavour to facilitate the creation and maintenance of these networks by creating opportunities for roundtable discussions, conferences, newsletters and additional opportunities to get together with other members.

Are you a member?

[Join or Renew...](#)

AFCC offers member benefits that promote excellence in practice.

[View member benefits...](#)

## Looking back and moving ahead

Thirty years after AFCC held its first annual conference outside of the United States in Vancouver, and twenty five years after electing its first Canadian President, Justice John Vanduzer, it was only fitting, that in Vancouver, Ontario became the first non U.S. provisional chapter approved by the AFCC Board.

For over 45 years Ontario members of AFCC have made significant contributions to the success of AFCC. The enthusiastic response to the formation of the chapter has filled a need as local events held to date have been well attended. As the Ontario chapter began accepting chapter membership, we have quickly grown to 152 members as of February 4, 2009 and growing daily.

AFCC's vision of a justice system in which all professionals work collaboratively through education, support, and access to services to achieve the best possible outcome for children and families is consistent with vision of Ontario professionals. The new chapter will facilitate and promote local initiatives to promote this vision.

Ontario AFCC members of different professions will now have a home connected by a common vision for children and families of Ontario. As you read this first e news you will begin to see the hard work and dedication of so many working to launch Ontario AFCC and put in place the opportunities to work and learn together.

Mr. Justice George Czutrin (SCJ)

## AFCC Ontario Membership Status Report

Things are bubbling along nicely at the AFCC Ontario. We currently have 152 members – 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.

Our first Annual General Meeting combined with a conference will be held on April 3, 2009 in Toronto, Ontario. Our conference, *Improving the Lives of Children and Families in Conflict*, includes speakers such as Dr. Jean Clinton, Justice George Czutrin, Justice Harvey Brownstone, Justice Debra Paulseth, Bernie Mayer, Jeffrey Wilson, and Lorraine Martin. At our AGM, we will be electing a Board of Directors and approving the bylaws. Following the conference, we will be having an evening reception. It promises to be a great day for the Ontario members. If you would like to attend, please contact Matthew Hodgson at: [afccontarioreg@gmail.com](mailto:afccontarioreg@gmail.com).

patti cross

## **AFCC Ontario's Organizing Committee**

Organizing a chapter of the AFCC has proved to be a LOT of work. There are conferences to organize, speakers to arrange, newsletters to write, websites to create, finances to consider – you name it: we're doing it.

Are you interested in using your creative skills to help us out?

Are you a person with time and expertise to share?

Do you believe that together we can do anything?

If so, we need you!

The organizing committee meets every 4 to 6 weeks at the Office of the Chief Justice at the Ontario Court of Justice in Toronto. (Thank you, Chief Justice Bonkalo for lending us your space!)

If you live out of Toronto but would like to be involved, you can call in on our conference line. In fact, we are very interested in making the AFCC Ontario a truly provincial organization by arranging events throughout the province – we would love your help.

Please let patti cross know if you are available.

She can be reached at [patticross@gmail.com](mailto:patticross@gmail.com). It would be great to have you.

## **AFCC Ontario Quicktopic Message Board**

As part of our commitment to ensure that the AFCC Ontario members have an easily accessible forum for communication and discussion, we started an AFCC Ontario Quick Topic message board. It can be found at: <http://www.quicktopic.com/share?s=Fsyf>.

This free bulletin board allow everyone to introduce ourselves, discuss various issues, keep informed and up-to-date about AFCC Ontario events, and allows both you and the Board of Directors to communicate with each other. It's a wonderful tool.

As administrator of the site, I post topics to keep you up-to-date on what is happening to the chapter. You can read the messages posted under the topics and add messages.

It is an easy bulletin board to use. You simply add a message simply by providing your email address.

You can also subscribe to topics. To do this, you need to provide an email address, but nothing else. If you subscribe, you will receive email updates when new postings are added to selected topics.

Please note that your email addresses are private. They will never be sold to anyone!

I hope that you subscribe to this bulletin board. It's fast, easy, and incredibly inexpensive!!

## **AFCC Communications Committee**

### **1. Major activities of the Communications Committee**

- Two main activities will be the development, production and dissemination of regular newsletters and the development and maintenance of a website.
- To share and educational and substantive work relevant to all disciplines.

### **2. Role as an “Editorial Board”**

- Members will participate within an ‘editorial board’ structure where the responsibility of the Committee will be to develop the procedures and formats for including and screening possible products and materials for dissemination within the newsletters and website.
- Members are responsible for developing and/or acquiring the necessary technology and services to disseminate products and materials deemed relevant for AFCC Ontario.
- Although the majority of products and materials will be developed by members of AFCC Ontario, the Committee members may also write articles, news events or other related productions as needed.
- Committee members will develop guidelines for chapter members to publish works in the newsletters and websites.

## **Tribute For Professor Nicholas Bala**

The AFCC Ontario is planning a day of tribute for Professor Nick Bala in Kingston, Ontario on May 8, 2009.

Professor Bala is extremely admired and well-known by the AFCC family in Canada and the United States. In 2008, he received the Stanley Cohen Distinguished Research Award from the parent AFCC. The award recognizes outstanding research and/or research achievements in the field of family and divorce. This is just one of many of Nick’s accomplishments. Nick is the epitome of the AFCC mandate – a true professional dedicated to improving the lives of children and families through the resolution of family conflict.

With this in mind, the AFCC Ontario is hosting a tribute for Professor Bala. Details are being worked out but please circle May 8, 2009 on your calendar. Further information will be posted on our Quick Topic message board at <http://www.quicktopic.com/share?s=Fsyf> when it becomes available.

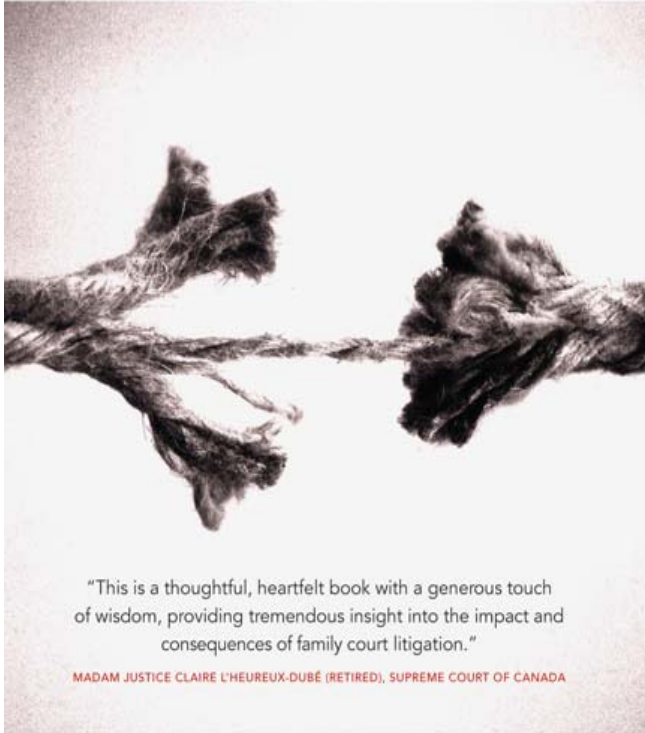
## **AFCC Leadership Seminar and Custody Evaluation and Parent Education Programs in Albuquerque, New Mexico**

<p>On October 2-4, 2008, Justice Craig Perkins attended a new, one day program for members of the board of directors for each of the AFCC chapters. All chapters, including the two new ones (Minnesota and Ontario) were represented. AFCC brought in a consultant who specializes in working with non profit organizations to help the chapters' representatives focus on the challenges of maintaining and growing their membership numbers and focusing on good governance.</p> <p>One of the lessons learned was that new organizations, after the initial push to get established and sign up members, tend to lose members after the first couple of years.</p> <p>The average return rate for members in non profit organizations in the US, after the first couple of years of existence, is about 60%. It takes work, mainly in the form of communicating with members and responding to their programming needs, to hold on to members and continue to grow.</p> <p>Some members will inevitably drift away because their hopes or expectations are not met, but effective communications and good programs have allowed some of the American chapters of AFCC to stay strong and continue to grow.</p>	<p>There was a good opportunity for the different chapters, some of which have been in existence for 15 years, to compare the challenges and issues they face (rivalries, politics, geography, for example) and to get ideas from each other for how to meet members' needs at the local or provincial/state level.</p> <p>It turns out that of AFCC's approximately 3600 members, 13% are from outside the USA, and Canada represents 12 of the 13%. Our influence is increasingly being felt at AFCC.</p> <p>At the same time as the Leadership Institute, the AFCC Board of Directors met in Albuquerque and AFCC ran two concurrent programs, one on Custody Evaluations (which we Canadians call assessments) and one on Parent Education. Both programs were extremely well attended and included participation by our own Justice John Harper, Alf Mamo and Lorraine Martin. Also in attendance was Wendy Bryans, from Justice Canada.</p> <p><b>Mr. Justice Craig Perkins (SCJ)</b></p>
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MR. JUSTICE HARVEY BROWNSTONE

# TUG OF WAR

A JUDGE'S VERDICT ON SEPARATION, CUSTODY BATTLES,  
AND THE BITTER REALITIES OF FAMILY COURT



Sometimes people just need to hear it from a judge. They don't believe their lawyers, counselors, family or friends. They are convinced that if they can just tell their side of the story to a judge, they will be vindicated and "justice" will prevail. There have been lots of books written about the impact of separation and divorce on children and their families, but *Tug of War* provides the unique perspective of a family court judge.

Mr. Justice Harvey Brownstone has seen a lot during the fourteen years he has presided in the Ontario Court of Justice and this book was his opportunity to share his experiences and wisdom with parents who think they want or need a judge to decide how their family will function in the future. Although this book was written for parents, it will be of interest to anyone who is involved with people, on a professional or personal basis, who are trying to figure out how to raise their children when they are not living together.

Justice Brownstone's main theme is that the single biggest factor that distinguishes couples who can resolve their differences without surrendering the decision to a judge and those who engage in bitter custody and access battles is maturity. He acknowledges that court intervention is sometimes necessary, especially in cases where one or both of the parents has mental health or addiction issues or where parties genuinely need the protection of the court. What Justice Brownstone has seen in his courtroom on a daily basis has convinced him that many couples could do themselves and, more importantly their children, a big favour if they focused their energy on reaching a solution that works best for their family and not on pursuing that ever-elusive "victory".

Justice Brownstone's book is full of common sense advice, including "Ten Tips for Success in Resolving Parenting Disputes". These tips cover everything from "be child focused" to "separate your financial issues from parenting

issues" and "don't hesitate to seek help". Many parents would benefit from keeping a list of these tips in a place where they can be reminded of them on a regular basis.

It will likely come as a revelation to many potential family law litigants that a judge would try to persuade them that going to court should be a last resort and not the first course of action. Justice Brownstone assures them that there is plenty of work for family court judges in cases such as child protection, where court intervention is necessary. *Tug of War* includes a chapter on alternatives to litigation and another on deciding when going to court is necessary. Justice Brownstone implores parents to take all reasonable steps to avoid letting a stranger, i.e. a judge, determine how their lives will be organized.

The concepts in Justice Brownstone's book apply to parents in any jurisdiction in which family law cases are decided through the adversarial system. *Tug of War* is not a "how to" or "self-help guide". In fact, Justice Brownstone cautions parents about thinking that they can represent themselves in family court. Chapter five is titled: "Lawyers: why you need one, how to choose one, and how to measure performance". He also devotes a chapter to explaining the concept of "the best interests of the child" and another explaining why child support and access are not to be meted out on a *quid pro quo* basis.

Justice Brownstone writing style is clear and eminently readable. If you have a client, friend or family member who is contemplating separation, going through a separation or engaged in ongoing conflict with a former partner, tell him or her about this book. No one can force people to be reasonable, but few books argue in as compelling a fashion as this one, that most family law litigants have the power to take the high road and put their money where their mouths are when they say they want what is best for their children.

All of the author's proceeds from the sale of this book are being donated to the Children's Wish Foundation and other children's charities.

**Jane L. Long, Senior Counsel, Ministry of the Attorney General**

## Major Upcoming Events

### **AFCC 46th Annual Conference**

*Children, Courts & Custody: Back to the Future or Full Steam Ahead?*

May 27-30, 2009

Sheraton New Orleans

New Orleans, Louisiana

[Conference Brochure\(PDF\)](#)

[Online Conference Registration](#)

[Online Hotel Reservations](#)

[Conference Scholarship Application](#)

### **Online Registration Coming Soon**

### **AFCC Regional Training Conference**

*Interventions for Family Conflict: Stacking the Odds in Favor of Children*

November 5-7, 2009

Peppermill Resort

Reno, Nevada

### **AFCC 47th Annual Conference**

June 2-5, 2010

Sheraton Denver

Denver, Colorado

### **AFCC 48th Annual Conference**

June 1-4, 2011

Hilton Orlando Bonnet Creek Resort

Orlando, Florida





# IMPROVING THE LIVES OF CHILDREN AND FAMILIES IN CONFLICT

## AFCC ONTARIO'S INAUGURAL EVENT

Friday, April 3, 2009

8:30 am – 4:30 pm

West Event Centre

130 Dundas St. W., 3<sup>rd</sup> Fl., Toronto, ON

### Speakers Include:

*Dr. Jean Clinton*

*Justice Harvey  
Brownstone*

*Justice Debra Paulseth*

*Justice George Czutrin*

*Bernie Mayer*

*Lorraine Martin*

*Jeffery Wilson*

*This unique educational event is dedicated to improving the lives of children and families through the resolution of family conflict*

**This program is for judges, lawyers, mental health professionals, custody assessors, parenting co-ordinators, parent educators, academics and mediators working with families in conflict**

**AFCC Ontario's first  
Annual General  
Meeting will take place  
over lunch!**

**Evening Reception follows**



ASSOCIATION OF FAMILY  
AND CONCILIATION COURTS  
ONTARIO CHAPTER

## Registration Information

FOR INFORMATION CONTACT:

Matthew Hodgson @ afccontarioreg@gmail.com

**EARLYBIRD RATE APPLIES TO:**

**February 27, 2009**

**Deadline for Registration:**

**March 27, 2009**

(Please, one form per person and kindly print clearly.)

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Agency/Institution: \_\_\_\_\_ E-mail: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal/Zip: \_\_\_\_\_

Day Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

<b>FEES:</b>	<b>Members</b>	<b>\$150</b> until February 27, 2009 <b>\$175</b> thereafter
	<b>Non-members</b>	<b>\$175</b> until February 27, 2009 <b>\$220</b> thereafter

**(No admittance at the door)**

### Method of Payment

Payment must be made by cheque only and must accompany the registration form. Cheques to be made payable to: **Maggie Hall**

Please mail cheques to: **AFCC Ontario**  
c/o Dr. Barbara Fidler  
1709 Bathurst Street  
Toronto, ON M5P 3K2  
Attn: Matthew Hodgson

### Cancellation Policy:

For a refund, notice of cancellation must be received in writing 14 days prior to the event. After that time, a colleague may be substituted for attendance. An administrative fee of \$40 will be charged for all cancellations. AFCC Ontario reserves the right to cancel due to under enrolment, work stoppages, instructor illness, or inclement weather. If cancelled, AFCC Ontario is responsible for refunding only the fee portion.

**Do you want to make a difference?**

**Do you enjoy working on challenging, important issues?**

**Do you want litigation experience?**

## **CONSIDER PRACTICING CHILD PROTECTION LAW**

The AFCC, Ontario Chapter is hosting a FREE dinner for law students interested in exploring opportunities in family and child protection law and practice on March 31, 2009 in Toronto, Ontario.

If you are a law student who may be interested in learning more about practicing child protection/family law, please come to our AFCC Ontario chapter dinner for law students. At the dinner, you will enjoy a unique opportunity to dine informally with family judges and lawyers who work in this field. It will be your opportunity to talk with people about how to enter into and practice child protection law. Not only will you receive a complimentary dinner but for just a few hours of your time, you can get career advice and make lasting connections with sitting judges and practicing lawyers. If you are interested, please contact Ms. Sheryl Beckford at 416-327-8973 or [sheryl.beckford@ontario.ca](mailto:sheryl.beckford@ontario.ca).

# MAKE A DIFFERENCE!

*The Association of Family and Conciliation Courts,  
Ontario Chapter*

**invites you to dine with judges and  
family law lawyers to explore opportunities  
in family and child protection law and practice.**

*Dinner is courtesy of the Law Foundation of Ontario*

**Where: Ontario Bar Association  
20 Toronto Street, Suite 200  
Toronto, Ontario M5C 2B8**

**When: Tuesday, March 31, 2009 at 5:30 pm**

**HURRY!!! – Register Now as Space is Limited**

**To Register, please fill in the attached Registration Form and send before  
Friday, March 6, 2009.**



**The Law Foundation of Ontario**  
*Building a better foundation for justice in Ontario*



## CONSIDER A CAREER IN CHILD PROTECTION LAW

**Deadline for Registration:  
March 6, 2009**

**Registration for:**

**AFCC DINNER FOR STUDENTS INTERESTED IN EXPLORING OPPORTUNITIES  
IN FAMILY AND CHILD PROTECTION LAW AND PRACTICE**

(Please, one form per person and kindly print clearly.)

**Name:** \_\_\_\_\_

**Home Address:** \_\_\_\_\_

**Address while at law school:**       Same as Home Address

\_\_\_\_\_

**Phone:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Law School:** \_\_\_\_\_

**Are you interested in practicing family law?:**     Yes     No

**Would you like to learn more about child protection law/family law?:**     Yes     No

**(No admittance at the door)**

**Any Special Dietary Requirements for Dinner?:**     No     Yes, \_\_\_\_\_

**FOR INFORMATION CONTACT:**

Sheryl Beckford at [Sheryl.beckford@ontario.ca](mailto:Sheryl.beckford@ontario.ca)

**Send completed form before Friday, March 6, 2009, to:**

**Sheryl Beckford, Counsel  
Office of the Chief Justice  
Ontario Court of Justice  
1 Queen St. E., Ste. 2300  
P.O. Box 91  
Toronto, ON M5C 2W5  
Phone: 416-327-8973 / Fax: 416-326-4787**

## LAW AND SOCIAL SCIENCE RESEARCH

We want to engage in a truly collaborative approach to family law with this Newsletter. Lawyers have access to legal databases that address court cases and provide thoughtful analysis and mental health professionals have their trade journals that provide current social science research. Yet, few publications, except for the *Family Court Review* or *Journal of Child Custody* speak to both audiences and more importantly can be accessed by both. As such, we will be providing interesting case law decisions and social science research that we hope will inform our members.

We ask readers to let us know of cases and evidence-based social science research that may be of interest to our respective disciplines.

### **Denial of access...what tools are available to remedy this ongoing problem?**

With all the attention given to the subject of parental alienation, reunification workshops in Texas and custody reversal orders, there has been a growing concern for the 'right' approach to deter a custodial parent from hampering an access parent's relationship with his or her children.

The Divorce Act makes it clear in section 16(10) that when deciding a parenting schedule, the judge must be guided by the "principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact."

In the majority of cases, the separated spouses faithfully comply with the orders and agreements and indeed achieve the very objective of the law – addressing the best interests of the children by ensuring that they have maximum contact with both their parents.

It is the minority of cases that have caused a stir. It is those cases where lawyers, then judges, then mental health professionals become frustrated and look for tools - any tools in their tool-boxes - to remedy the situation.

Often times, the custodial parent appears in court facing a claim by the access parent that he or she has been denied access to the children. This usually results in the custodial parent providing an explanation for his or her obstruction of access (eg. the child was ill, there was a more important event to attend to, the child did not want to go, etc.). In many of these cases, the judge provides a stern warning to the custodial parent, which may resolve the problem.

But then there are families that appear again...and again...and again.

Case-management of these cases facilitates the speedy and inexpensive resolution of these cases. Judges in courts that use case-management attempt to identify the cause of the problem at an early stage and make changes to the order that will hopefully eliminate the conflict and ensure that the needs of the children are met. Regrettably, in those jurisdictions where family court cases are not case-managed, the road to resolution may be longer, more costly and painful. In fact, many access parents do not have the financial ability, nor the emotional energy, to seek a remedy to the obstruction of access.

Thus, the cases that have made headlines are the rare ones where the aggrieved parent made a commitment to seek a remedy from a judge.

The 'tool-box' referred to above, regrettably, has very few tools in it.

In cases where a parent has been denied access to the children, the solution has been to seek an order from a judge finding the custodial parent in contempt. In Ontario, section 31 of the Family Law Rules provides that an order (such as an access order) may be enforced by a contempt motion. In these cases, the access parent must file a number of documents including a notice of contempt motion that sets out what remedy is sought. This must be supported by a sworn affidavit that sets out the exact details of the problem, including the dates, times, places and circumstances of the alleged breach.

This process is one of the few court procedures in family law that are treated as a criminal proceeding. The custodial parent may be imprisoned if a finding of contempt is made. The access parent must prove the breach by using the criminal standard of proof. The custodial parent has a right to a trial (which means that the case may be delayed for many months and will significantly increase its cost). The custodial parent is not required to testify in the proceeding. All in all, the contempt proceeding operates much like a criminal prosecution and, likewise, the custodial parent is afforded many of the same protections of persons accused of a crime.

If after all this, the judge makes a finding of contempt, then the judge must decide the most suitable remedy. Section 31(5) of the Family Law Rules empower the judge to order any of the following remedies:

- a. imprison the custodial parent;
- b. order the custodial parent to pay a fine;
- c. order the custodial parent to pay a penalty to the access parent;
- d. order the custodial parent to do "anything else that the court decides is appropriate";
- e. order the custodial parent to "not do what the court forbids";
- f. order the custodial parent to pay the access parent's costs; and
- g. order the custodial parent to obey any other order.

Section 38 of the Children's Law Reform Act empowers a judge who finds the custodial parent in contempt to "punish by fine or imprisonment, or both, any willful contempt of or resistance to its process or orders in respect of custody of, or access to, a child, but the fine shall not in any case exceed \$5,000, nor shall the imprisonment exceed ninety days."

In many of the cases where the custodial parent is faced with a contempt motion, he or she then counters with a motion to change the access schedule. This can, of course, result in even greater delays and costs. In some of these cases, there are reasonable grounds to change the access schedule, or to adjust it so that the conflict is reduced. For example, changing the manner of access exchanges (i.e. the location of the pick-up or drop-off) or involving third parties to facilitate the access, may be appropriate.

But coming back to the most problematic cases...the repeat offender. It is in these (rare) cases that professionals are most frustrated.

It is therefore understandable why novel remedies such as the forcible removal of children from their homes and away from their primary caregivers to attend workshops in the U.S. are considered, and even employed. This idea made headlines in 4 recent court decisions – 3 adopted this tool and one rejected it.

In *J.K.L. v. N.C.S.*, [2008] O.J. No. 2115, Mr. Justice Turnbull considered the case of a 13 year old boy who was living with his father. The court found that the father was responsible for the child's fractured relationship with his mother. This case considered the many efforts made by the mother and by many judges to resume access to her son. After hearing evidence of the many court orders made to remedy the problem, including motions, contempt proceedings, warnings from judges and a comprehensive custody assessment, Justice Turnbull's frustration is best captured with the introductory statement in his written decision – "parental alienation is a difficult issue increasingly faced by the courts, and it appears that the means to deal with this issue are very limited in this province."

Dr. Richard Warshak, a Texas-based psychologist whose practice focuses on alienated children, testified at trial that his "Family Workshop for Alienated Children" consists of 7 phases: gaining physical possession of the child; safely transporting the child to the intervention site; orienting the child to the program and assessing any risks; facilitating contact between the child and the rejected parent; repairing the parent-child relationship; providing aftercare; and working with the favoured parent to reestablish contact with the child and support the child's healthy adjustment.

In the ruling in *J.K.L.*, the court decided to send this child to Dr. Warshak's workshop. The order also prohibited any contact between the child and his father and directed the police to become involved to enforce the terms of the order, including the apprehension and delivery of the child.

In *A.G.L. v. K.B.D.*, [2009] O.J. No. 180, Madam Justice McWatt considered an application by the father of three girls aged 14, 11 and 9 years. The court found that the mother minimized the father's role in parenting, made unfounded accusations of abuse, flouted many access orders, changed her residence without notifying the father, used the police for her own selfish purposes, involved the children in court proceedings and, collectively, engaged in a campaign of alienating the children from their father. The court made a change in custody to the father and granted him the right to transfer the children to Dr. Warshak's workshop for alienated children.



In the third case of *Filaber v. Filaber*, [2008] O.J. 4449, faced with another case of parental alienation, Madam Justice Van Melle approved of an assessor's recommendation of a reversal of custody and the alienated parent's use of Dr. Warshak's workshop.

In the fourth case, *S.G.B. v. S.J.L.* 2009 CanLII 4523, Madam Justice Herman was asked to sanction an arbitrator's award requiring the 14 and 17 year old children to be transferred to the custody of the mother, who would then be at liberty to use Dr. Warshak's workshop for similar reasons as in the above cases. However, Justice Herman refused to do so. She stated that the arbitrator failed to consider the particular needs and circumstances of the children, particularly since the younger child suffered from Klinefelter's Syndrome, a chromosomal disorder, and had various special needs. He also needed his older brother to agree to participate in the workshop, which was not certain given his age.

It is evident that the forcible removal of children from their homes and away from their primary caregivers to attend workshops in the U.S. is a remedy that requires more data to determine whether this is a tool that properly fits into the 'tool-box'.

On the subject of other tools, recall Rule 31(5)(c) of the Family Law Rules - ordering the custodial parent to pay a penalty to the access parent.

On December 14, 2007, Madam Justice Abella, writing for the majority of the Supreme Court of Canada in the case of *Bruker v. Marcovitz* [2007] S.C.J. No. 54, upheld a trial judge's ruling that the husband pay his wife damages for his refusal to abide by a term of a Separation Agreement. In this case, the term required him to grant his wife a Ghet – a Jewish divorce. When the Separation Agreement was signed in 1980, the husband agreed to grant her a Ghet. But afterwards, he refused and his refusal lasted for 15 years. This breach prevented the wife from remarrying according to her religion and would deem any further children she would have as illegitimate children. This behaviour also conflicted with section 21.1 of the Divorce Act that required the husband to remove any religious barrier to the wife's remarriage. The trial judge decided that the wife was entitled to the remedy of damages for this breach. She was awarded \$2,500 per year for each of the 15 years that the husband had been in breach of the Separation Agreement, amounting to \$37,500.

One does not need to look too deep to see the similarities between the frustration suffered by Ms. Bruker and that suffered by parents who are routinely denied access in the face of access rights spelled out in court orders and Separation Agreements.

In another case, *Mantella v. Mantella* [2008] O.J. No. 3761, Madam Justice Van Melle was also faced with a litigant who had failed to comply with a family court order – this time an order for financial disclosure. In this case, on January 16, 2008, Mr. Justice Corbett had ordered the husband to prove the value of his interest in his family's business. He did not. The case came back before the court on April 22, 2008, at which time the husband was again granted a deadline for the delivery of this information. The court provided a penalty in the event that the husband breached the order again. The husband was given a deadline of 5:00 p.m. on April 25, 2008 to deliver the financial disclosure, failing which he would pay a fine of \$2,500 per day for every day of his breach.

On September 22, 2008, Madam Justice Van Melle was faced with the wife's claim that she was owed payment of this penalty for 74 days of the husband's breach (the husband did not deliver the disclosure until July 7, 2008). The wife was seeking an order for the payment of this penalty, amounting to \$185,000. The court granted her that order.

Based on this decision, one can certainly argue that being willfully deprived of access to a child (as opposed to financial disclosure) should have its financial consequences to the party who is in breach of the order.

A proper investigation is needed to understand the cause for the denial of access by a custodial parent. This could include legitimate concerns for the safety of the child or, otherwise, the custodial parent's mental illness or simple vindictiveness and refusal to facilitate a relationship with the child's other parent. The tool used to resolve this problem must match the cause for the problem and the outcome that is desired. In some cases, the solution may be a change in the access schedule. A stern warning may suffice. A fine for each missed visit may be suitable. In the more grave cases, imprisonment, a change in custody or even the forced removal of the children from their home to attend a mandatory reunification workshop in the U.S. may even be appropriate.

The good news is that there is a growing hunger in the mental health and legal communities to better understand the cause of the problem and the effects of the various 'tools in the tool-box' that may be used to solve it and, ultimately, serve the 'best interests of the children'.

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### **Social Science Research News:**

*Dimensions of Conflict in Separated Families Scale (DCSFS: Saini, M., Burrows, S., Fidler, B.J., Freeman, R., Gertner, E., Goldberg, D., Popielarczyk, L., Radovanovic, H. and Birnbaum, R.,2007)*

Improved understanding of the situation and problems faced by families in high conflict separations is essential for efficient dispute resolution by the family justice system and for effective service provision by professionals working with children involved in the justice system, such as child welfare workers, mental health professionals, lawyers and judges. High conflict families are characterized as litigious, exhibiting poor communication and having poor problem-solving skills and in some cases by violence. The need to target and distinguish between the normal levels of conflict found in separation and the toxic levels referred to as "high conflict" separations must be investigated more fully in order to provide more effective interventions. Yet, to date, there has been no empirically validated instrument that accurately differentiates high conflict families and targets specific interventions.

With research funding from the Social Sciences and Humanities Research Council and in cooperation with Jewish Family and Child Service of Greater Toronto, Catholic Children's Aid Society of Toronto, Metropolitan Toronto Children's Aid Society, Catholic Family Services, Child Development Institute, Aisling Discoveries Child and Family Centre, and Blue Hills Child & Family Centre our interdisciplinary research team (Rachel Birnbaum, Nick Bala, Peter Jaffe, and Lynn McCleary) will explore the development of an instrument to accurately differentiate types of conflict (minimal, mild,

moderate, moderately severe, severe). The goal is ultimately to be able to link the different types of conflict to effective interventions for children and families undergoing post separation disputes.

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