

Parenting Coordination

A New Option for High Conflict Families?

by Anna Parker and Mark Wilson

Introduction

In a number of jurisdictions in the United States and Canada, a dispute resolution process known as parenting coordination is used to assist families who are unable to reach agreement in relation to parenting matters and who engage in ongoing harmful conflict in relation to their children.

Parenting coordination is a non-adversarial, quasi-legal, quasi-mental health process which combines assessment, education, case management, conflict resolution and decision-making.¹ It involves a legal or mental health professional overseeing the implementation of parenting arrangements on an ongoing basis, assisting the parents to resolve disputes in a child-focused manner, and in some instances exercising decision-making power where agreement cannot be reached.²

This article examines the key features of parenting coordination and the potential benefits of adopting the process for use with high conflict families. It also considers the constitutional limitations on the introduction of parenting coordination in Australia, and suggests some modifications to the process which may enable many of the positive aspects of parenting coordination to be implemented in Australia notwithstanding those limitations.

High conflict families and the courts

It is well recognised that ongoing, high conflict parenting disputes are stressful and expensive for parents, costly for the court system, and damaging to children.³

Litigants in family law proceedings whose matters proceed to trial are typically "one-shot"

litigants, but there is a minority of "repeat players" who continually engage with the court system in relation to their parenting disputes.⁴ These repeat players consume a large amount of court time and resources, causing delays and potentially limiting access to justice for other families.⁵ American studies suggest that families embroiled in entrenched conflict make up approximately 10% of cases and take up approximately 90% of courts' and legal professionals' time.⁶ Their disputes are often over minor, non-legal issues such as one-off time changes, after school activities or day-to-day issues.⁷

It is widely accepted that children are often distressed and damaged by ongoing conflict and litigation between their parents.⁸ Children who are exposed to ongoing entrenched conflict can suffer emotional problems, poor conflict resolution skills, behavioural difficulties, poor academic performance, depression, anxiety and loyalty conflicts.⁹ The delay and uncertainty involved in ongoing litigation can also have detrimental impacts on children's stability and wellbeing.¹⁰

Research has found that traditional dispute resolution models, such as mediation and negotiation between lawyers, are unlikely to help high conflict families.¹¹ Significant questions have also been raised as to the appropriateness of the adversarial system, which exacerbates conflict, is not dynamic, and fails to foster ongoing relationships and communication, in the determination of the best interests of children.¹²

There is therefore a sound public policy basis for exploring initiatives designed to reduce conflict between separated parents and limit the extent to which high conflict families continue to engage with the courts.

What is parenting coordination?

Parenting coordination has been defined as:

"a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract."¹³

Parenting coordination is usually used in cases involving entrenched conflict and a demonstrated inability on the part of the parents to make decisions cooperatively and shield their children from conflict.¹⁴ It can be court ordered or agreed upon by parents.¹⁵

Anna Parker is an Accredited Family Law Specialist and Accredited Children's Law Specialist, and a Senior Associate, Nicholes Family Lawyers, Melbourne.

Mark Wilson is a member of the Victorian Bar.

The main objectives of parenting coordination are to:

- Assist high conflict parents to make decisions;
- Resolve disputes in a timely manner as they arise;
- Help the parents deal with unanticipated events and circumstances;
- Assist the parents to develop effective dispute resolution strategies;
- Assist the parents in making their own decisions;
- Monitor implementation of and compliance with orders;
- Reduce conflict;
- Facilitate communication and information sharing, and develop communication techniques;
- Promote and encourage healthy and meaningful parent-child relationships; and
- Maintain focus on children's best interests.¹⁶

The process of parenting coordination involves intensive case management on the part of the parenting coordinator.¹⁷ In addition to working towards achieving the goals outlined above, the parenting coordinator may provide recommendations as to the best interests of the child or children, educate and coach the parents, provide referrals to other useful services such as counsellors or drug and alcohol services, and work to empower the parents to regain control over their own parenting decisions.¹⁸

While parenting coordinators generally have some degree of decision-making authority, their primary aim is to assist parents to manage their disputes and make parenting decisions for themselves – and binding decision-making is considered a last resort.¹⁹ The ultimate goal is to enable the parents to function on their own without a parenting coordinator.²⁰ Parenting coordinators also provide a neutral and readily accessible communication channel and resource for parents when issues arise, which can assist in minimising high conflict direct exchanges.²¹

Parenting coordinators generally have training in mediation, arbitration, conflict resolution, parenting education, family law issues and case management.²²

Although it can be used prior to the final resolution of a case, the process generally involves monitoring and assisting with the implementation of parenting orders and working with parents to modify their arrangements to suit their children's changing needs, particularly in chronically litigious cases.²³

First developed over two decades ago, the parenting coordination model has been growing in

popularity in recent years, and has been introduced in many US states as a means of managing parents who remain embroiled in ongoing conflict.²⁴ Parenting coordination is not a panacea and will not be suitable for all families. However, the literature suggests that parenting coordination can be effective in reducing conflict and increasing the ability of disputing parents to focus on their children;²⁵ and although research is in its early stages, there is evidence to suggest that parenting coordination has had considerable success in reducing relitigation rates.²⁶

How does it work?

The parenting coordinator is generally a private legal or mental health practitioner who is appointed by the court, with or without the consent of the parties.²⁷ The scope of the parenting coordinator's authority, and the issues in relation to which they are expected to provide assistance, will generally be specified in the order of appointment.

Parenting coordinators usually deal with day-to-day parenting issues, clarification as to the operation of orders, or determination of minor issues such as when regular parenting time recommences after the school holidays, where changeover will occur, or whether a child can attend a function for one parent that falls during the other parent's time.²⁸ Parenting coordinators can also assist in the development of protocols, such as how to handle the transition of the children's clothing and belongings or travel planning, to avoid similar disputes arising in future, and can monitor communication between the parties to ensure that it remains civil and productive.²⁹

Parenting coordinators are generally not authorised to make substantial alterations to children's living arrangements, which is an area of decision-making considered more appropriate for judicial determination.³⁰ In the recent Washington DC decision of *Jordan v Jordan*,³¹ where a mother challenged the court's power to appoint a parenting coordinator over the objection of a party, the court held that the appointment was valid as the delegation of power related to day-to-day issues only and did not impinge on the court's exclusive responsibility to adjudicate on issues of custody and visitation.

A parenting coordinator is often appointed for a specific term, such as two years, but may resign or be removed by the court (on the application of either party) at an earlier time.³¹ The parenting coordinator may be reappointed at the conclusion of his or her term on the application of either party or on the court's own motion.³³ The order of appointment

generally specifies the proportions in which the parties are to pay for the parenting coordinator's services.³⁴

Generally, a parenting coordinator will meet with the parents individually – and, if appropriate, together – to obtain an understanding of the issues that are in conflict, and will also meet with the children to ensure that their views are taken into account in the process. Sessions are generally informal, and take place as determined by the parenting coordinator. Although the process is different for each family, it is common for there to be regular meetings in the beginning and for their frequency to decrease over time, with the parenting coordinator eventually being called on, sometimes by telephone or email, to assist on an 'as-needs' basis.³⁵ Parenting coordinators generally have access to information from the court file and may also engage with third parties such as other family members, treating psychologists or the children's schools.³⁶

The parenting coordination process is not confidential. Parenting coordinators' recommendations are generally provided to the parties' lawyers (where applicable) and often to the Court.³⁷ The parenting coordinator's knowledge of the family dynamics, the needs of the children and the sources of conflict may also be shared.³⁸ Parenting coordinators may be called as witnesses.³⁹ Where parenting coordinators have the power to make determinations, these decisions are in some cases lodged with the courts and immediately become binding, subject to a right of review by the parties, which often takes the form of a hearing *de novo*.⁴⁰

Parenting coordinators are accountable to the courts, and their decisions and conduct are subject to judicial and professional scrutiny and review.⁴¹

AFCC guidelines

The Association of Family and Conciliation Courts (AFCC), of which an Australian chapter has recently been established, published a set of Guidelines for Parenting Coordination in 2005 ("the Guidelines").⁴² The Guidelines cover the following issues:

- The training, education and experience required of parenting coordinators;
- The requirements of impartiality, objectivity, fairness, transparency and freedom from bias or conflicts of interest;
- The limitations of confidentiality and issues pertaining to information sharing and communication;
- The role of the parenting coordinator in reducing conflict and promoting children's interests;
- The assessment, educative, case management and decision-making functions of parenting coordination;
- The parenting coordinator's duties in ensuring that the parties are fully informed as to the scope of the parenting coordinator's role, the process and the costs involved;
- The importance of awareness of and sensitivity to issues pertaining to violence, abuse, substance abuse and mental health problems;
- The role of the parenting coordinator in facilitating decision-making, and, where appropriate, making determinations; and
- The scope of limitations to the parenting coordinator's authority.

Constitutional issues

The implementation of parenting coordination, as practised in the United States, would involve constitutional difficulties in Australia. Some aspects of parenting coordination, such as the facilitation of the resolution of disputes and the education of high conflict parents, are not constitutionally problematic. However, difficulty is encountered when it is suggested that parenting coordinators should have the power to make decisions of a binding nature.

The constitutional difficulties confronting the introduction of decision-making parenting coordination in Australia are obvious to any Australian lawyer with a passing knowledge of family or constitutional law, and the obvious nature of those difficulties probably explains, at least in part, why introduction of the practice has not been actively considered before.

Nor are those difficulties unique to Australia. The authors of the Guidelines say:

"... the Canadian constitutional framework does not permit judges to delegate to third parties any judicial or quasi-judicial functions. In essence, this means that it is not possible for a judge to order the parties to attend and work with a PC under any circumstances and, accordingly, it is also not possible for a judge to order parties to attend with a PC who has arbitral powers or any decision-making powers. That would be considered an improper delegation."⁴³

In order to properly consider those difficulties it is necessary to distinguish between situations in which the parties have agreed to decision-making parenting coordination, and where it has been imposed by legislation or court order.

Legislated or ordered decision-making parenting coordination

To the extent that legislation or a court-imposed order empowers a parenting coordinator to make decisions purporting to determine a justiciable dispute and legally bind the parties, that legislation or court-imposed order may constitute an impermissible delegation of the judicial power of the Commonwealth. Section 71 of the Constitution provides that the judicial power of the Commonwealth shall be vested in the High Court of Australia, such other courts as the Parliament creates, and such other courts as it invests with federal jurisdiction. Implicitly this means it cannot be vested elsewhere.⁴⁴

In *Harris v Caladine*⁴⁵ the majority of the High Court held that whether the judicial power of the Commonwealth can be validly delegated to non-judicial officers of a court depended on whether the judicial officers of the court maintained effective supervision and control over the exercise of that power. Consequently, the majority concluded that the existence of the right to review the exercise of delegated power by a hearing *de novo* meant that the delegation of power to Deputy Registrars of the Family Court to make consent orders was valid.⁴⁶ Interestingly for present purposes, Gaudron J also spoke of the importance of the "judicial process" as follows:

"... the limits on the delegation by a court of its powers and functions derive from the nature of judicial power and the nature of courts. Judicial power is usually defined in terms of its subject matter, but it is a power that, for complete definition, requires description of its dominant and essential characteristic, namely, that it is exercised in accordance with that process which is referred to as 'the judicial process'. Thus, in general terms, it is a power which cannot be exercised until the 'tribunal which has power ... is called upon to take action' (Huddart, Parker, at p 357), which (subject to limited exceptions) proceeds by way of open and public enquiry, which involves the application of the rules of natural justice and which is directed to ascertaining 'the law as it is and the facts as they are, followed by an application of the law as determined to the facts as determined': *Tasmanian Breweries*, per Kitto J at p 374. This characteristic imports a requirement that a court delegate its powers and functions only to persons and on terms designed to ensure that the judicial process will be observed. Thus, for example, a particular power or function cannot be delegated to a person having an interest in the matter or on terms permitting of its being exercised secretly or arbitrarily."⁴⁷

To this description might be added a further characteristic of the judicial process, namely, the obligation to give reasons for the decision made.⁴⁸

In the cases of *Harris v Caladine*⁴⁹ and *Commonwealth v Hospital Contribution Fund*⁵⁰ the High Court upheld the validity of delegations of power to make orders to officers of the court, namely, Deputy Registrars and Masters of the courts in question respectively. The authors are not aware of any decision upholding a delegation to persons who were not part of the court in question.⁵¹ Although in *Harris v Caladine* Gaudron J said that such a delegation might be valid,⁵² no other member of the court ventured that view, and such a conclusion would in the authors' view, represent a very considerable extension of what has long been assumed to be the limits of permissible delegation.

The limitations to permissible delegation make it very unlikely that judicial decision-making power could be validly delegated to a parenting coordinator. It might be thought arguable that effective supervision and control could be maintained by establishing rights of review by the court – in particular a right to a hearing *de novo* – although there would be difficulties in practice, especially as to the status of a decision made by a parenting coordinator whilst a review was pending. It might also be thought that parenting coordinators could be made officers of the court for the purposes of giving validity to the delegation, although making people without legal qualifications officers of the court for the purpose of delegating judicial power to them would present unique challenges. However, ensuring that the process could properly be described as "judicial" provides the greatest, and in the authors' view, insuperable, difficulty.

The significance or importance of decisions proposed to be made by a parenting coordinator could range from the trivial to the far-reaching. Conceptually, it is at least arguable that a decision may be so unimportant and/or routine that it does not involve an exercise of judicial power. Court orders that effectively delegate minor decisions to others are not uncommon (for example, enabling children's contact centres to determine the precise arrangements for, and conditions attaching to, a parent spending time with a child) and those decisions can be enforced by virtue of the order obliging a party to comply with them.⁵³

However, although decisions to be entrusted to a parenting coordinator may be defined to ensure that they are by nature relatively minor (the classic, "should time commence at 4.00pm or 5.00pm" type of decisions), if what is purported to be delegated is

the capacity to determine justiciable disputes and make decisions that legally bind the parties, judicial power is being employed and the requirements for valid delegation must be met. Of course, the moment a more significant power is in question (such as whether a child should spend time with a parent at all) it is obvious that what is being sought to be delegated is in fact judicial power as traditionally understood.

Consensual decision-making parenting coordination

If a parenting coordinator is empowered to make decisions binding the parties by the terms of a consent order made by the court, it would appear that there would not be any legal or constitutional difficulties, nor that any of the requirements for a valid delegation of judicial power have to be met, because the process is entirely consensual. The parties are at liberty to bind themselves as they see fit, including that they will be bound by decisions made by others that they have freely and properly entrusted to make.⁵⁴ Further, such arrangements are not materially different to orders that are frequently made providing for a parent to spend time with a child as the parties may agree, and it is not doubted that an agreement proved to have been made subsequent to such an order is enforceable as an order, the agreement having the effect of an order by virtue of the terms of the order previously made.

Whilst it may be said that even a consent order should be in the best interests of the child, the courts have traditionally and usually deferred to parents who have agreed as to what is in the best interests of their child. As a matter of logic this could include an agreement to engage a parenting coordinator. Further, an agreement to engage a suitable person as a decision-making parenting coordinator could hardly be said to be contrary to the best interests of a child merely because of that provision. In order to ensure that such consensual arrangements are constitutionally permissible they should not prevent a parent aggrieved by a parenting coordinator's conduct from seeking relief from the court subsequently. The enabling order or legislation ought to ensure and define an aggrieved parent's right to have the court intervene.

The obvious drawback of restricting parenting coordination to consensual arrangements is that a significant proportion of the high conflict families who would most benefit from decision-making parenting coordination are unlikely to agree to embark upon or persist with such coordination.

Alternatives to direct decision-making parenting coordination

Family consultants employed by the courts in Australia under the Family Law Act 1975 ("the Act") already work with some high conflict families after orders have been made by virtue of orders for "supervision" pursuant to section 65L of the Act. Similarly, private practitioners who have written assessment reports sometimes accept appointments to continue working with difficult families on the basis that further reports can be made back to the court if an impasse is reached or the court's intervention is required. In each situation the practitioner does not make decisions but recommendations for the court to make further orders. This mechanism is not as frequently employed as it might be because of the necessity for further court proceedings.

It may not offend constitutional constraints if parenting coordinators were empowered to make decisions that become effective upon court ratification. In much the same way as s13H of the Act provides that an arbitration award when registered with the court has effect as if it were an order of the court, a process of court ratification could be devised that would make decisions made by parenting coordinators effective and enforceable by court registration. If the parenting coordination regime was consensual, it is unlikely that any difficulty would be encountered.⁵⁵

If the parenting coordination regime was not consensual, the court's ratification of the parenting coordinator's recommendations should involve some judicial consideration of those recommendations; mere registration, an administrative function, without more will be insufficient.⁵⁶

This model is used in some American jurisdictions.⁵⁷ For example, in Kansas, the process involves the parenting coordinator filing recommendations with the court, with the parties each having the opportunity to file a motion objecting to the recommendation and requesting a court review. In the recent Kansas Court of Appeals decision of *Hutchinson v Wray*,⁵⁸ a parenting coordinator made a recommendation that the primary residence of a child be changed from the mother, who proposed to relocate, to the father. This recommendation was based on the parenting coordinator's assessment that remaining with the father would provide the child with stability, and that the mother had a history of undermining the child's relationship with the father. The mother objected. The district court considered the mother's

objection on the papers, and had made orders in terms of the parenting coordinator's recommendations without a hearing. The Court of Appeals held that due process required that the mother be given an opportunity to have the issue heard at an evidentiary hearing before a determination was made.

The position in Washington DC is similar. A decision made by the parenting coordinator is the starting point, and the court has the power to adopt, modify or reject the decision upon application by either party. Decisions of parenting coordinators take effect until the court has the opportunity to review them, but final decision-making is reserved for the Court.⁵⁹

Practical problems would be encountered in devising such a process to be used in Australia including, in particular, to what extent such recommendations would be subject to court scrutiny in the absence of objection by a party, and the status of a recommendation made by a parenting coordinator both before ratification and whilst an objection by a party was pending before the court.

It may be that adopting a cautious approach on these issues means that decisions made by parenting coordinators lose some of the efficacy that advocates of the practice would have wanted. Indeed, some proponents of parenting coordination view the authority to make binding decisions as essential for the process to be effective,⁶⁰ and without decision-making authority, the parenting coordination process has the scope to provide yet another forum for arguments between high conflict parents. It may, however, provide an effective means of accessing some of the many potential benefits of parenting coordination within the applicable constitutional limits.

A further alternative would be for legislative provision to be made for costs to be awarded against a party who unsuccessfully defended an application for orders in terms of the recommendations of a parenting coordinator, or unsuccessfully sought orders in different terms. This model would also be similar to that in place in some jurisdictions in the US, where costs are payable by an objecting party when the court adopts the parenting coordinator's recommendations.⁶¹ This would not prevent parties in relation to whom parenting coordinators had made decisions from accessing the courts if they were determined to do so. It would, however, provide a strong disincentive to recourse to litigation over inconsequential matters in many cases.

Conclusion

Parenting coordination offers a potential means of assisting high conflict families to manage and contain their disputes and work towards child-focused decision-making as an alternative to ongoing litigation. The many benefits to children, parents and the community of reducing conflict and litigation and promoting cooperative parenting are well recognised. Notwithstanding the constitutional difficulties with implementing parenting coordination as practised in other jurisdictions, it appears that there is considerable scope for exploring some of the potential benefits of parenting coordination for high conflict families in Australia.

NOTES

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- 2 Anju Jessani and Laura James, "Mediators and Parenting Coordinators: Comparing and Contrasting – 20 Questions/40 Answers" (2006) 20(3) *American Journal of Family Law* 180 at 180; Association of Family and Conciliation Courts, above n 1 at 2; Fiddler, above n 1 at 237.
- 3 Judy Cashmore and Patrick Parkinson, "Reasons for Disputes in High Conflict Families" (2011) 17(3) *Journal of Family Studies* 186 at 186; Robert Guyot III, "Using a Parenting Coordinator in a High Conflict Case" (2005) 19(3) *American Journal of Family Law* 178 at 178; Wilma Henry *et al*, "Parenting Coordination as an Antidote for High Conflict Divorce and Court Relitigation" (2011) 52 *Journal of Divorce & Remarriage* 455 at 456-457.
- 4 Cashmore and Parkinson, above n 3 at 186. See also Christine Coates, "Parenting Plan Coordinators: When you Need Professional Help to Make Joint Decisions" (2010) 33 *Family Advocate* 20 at 20.
- 5 Cashmore and Parkinson, above n 3 at 186; American Psychological Association, above n 1 at 63; Coates *et al*, above n 1 at 246-247; Hayes, above n 1 at 698-699.
- 6 Ron Neff and Kat Cooper, "Parental Conflict Resolution: Six-, Twelve- and Fifteen-Month Follow-Ups of a High Conflict Program" (2004) 42(1) *Family Court Review* 99 at 99; Linda Fieldstone *et al*, "Training, Skills and Practices of Parenting Coordinators: Florida Statewide Study" (2011)

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- 7 Matthew Sullivan, "Parenting Coordination: Coming of Age?" (2013) 51(1) *Family Court Review* 56 at 56; Karl Kirkland and Amber Ritter, "Parenting Coordination in Alabama: The Current Status" (2011) 2 *Faulkner Law Review* 247 at 249, 251; Coates *et al*, above n 1 at 247; Bacher *et al*, above n 6 at 84.
- 8 Jennifer McIntosh, "Enduring Conflict in Parental Separation: Pathways of Impact on Child Development" (2003) 9(1) *Journal of Family Studies* 63, 63, 67; Janet Johnston, "Children's Adjustment in Sole Custody Compared to Joint Custody Families and Principles for Custody Decision-making" (1995) 33(4) *Family and Conciliation Courts Review* 415, 420; Bruce Smyth, "Parent-Child Contact Schedules after Divorce" (2004) 69 *Family Matters* 32, 32; Cashmore and Parkinson, above n 3 at 186, 196.
- 9 Janet Johnston, Marsha Kline and Jeanne Tschann, "Ongoing Postdivorce Conflict: Effects on Children of Joint Custody and Frequent Access" (1989) 59(4) *American Journal of Orthopsychiatry* 576, 588-589; 2003) 279, 279-280; Joan Kelly and Robert Emery, "Children's Adjustment Following Divorce: Risk and Resilience Perspectives" (2003) 52(4) *Family Relations* 352, 353; Joan Kelly, "Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research" (2000) 39(8) *Journal of the American Academy of Child & Adolescent Psychiatry* 963, 964; Jennifer McIntosh and Caroline Long, "Current Findings on Australian Children in Postseparation Disputes: Outer Conflict, Inner Discord" (2005) 11(1) *Journal of Family Studies* 99, 100.
- 10 Janet Weinstein, "And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System" (1997) 52 *University of Miami Law Review* 79 at 124, 126.
- 11 See, for example, Cashmore and Parkinson, above n 3 at 200; Henry *et al*, above n 3 at 463.
- 12 See, for example, Weinstein, above n 10 at 82-84, 123-124; American Psychological Association, above n 1 at 63; Henry *et al*, above n 3 at 460; Michelle Mitcham-Smith and Wilma Henry, "High Conflict Divorce Solutions: Parenting Coordination as an Innovative Co-Parenting Intervention" (2007) 15(4) *The Family Journal* 368 at 369; Sullivan, above n 7 at 56; Kirkland and Ritter, above n 7 at 251.
- 13 Association of Family and Conciliation Courts, above n 1 at 2.
- 14 Ibid; Matthew Sullivan, "Ethical, Legal and Professional Practice Issues Involved in Acting as Psychologist Parent Coordinator in Child Custody Cases" (2004) 42(3) *Family Court Review* 576 at 576.
- 15 American Psychological Association, above n 1 at 64.
- 16 Association of Family and Conciliation Courts, above n 1 at 2; American Psychological Association, above n 1 at 64, 70; Coates *et al*, above n 1 at 246-247; Henry *et al*, above n 3 at 463; Kirkland and Ritter, above n 7 at 247; Guyot, above n 3 at 178; Hayes, above n 1 at 698; Coates, above n 4 at 21; Mitcham-Smith and Henry, above n 12 at 370.
- 17 Coates *et al*, above n 1 at 246.
- 18 Association of Family and Conciliation Courts Task Force on Parenting Coordination, "Parenting Coordination Implementation Issues" (Report, 2003) at 20; Christine Coates *et al*, "Parenting Coordination: Implementation Issues" (2003) 41(4) *Family Court Review* 533 at 548; Mitcham-Smith and Henry, above n 12 at 371; Nora Lockwood Tooher, "Parent Coordinators Help Divorced Couples Who Won't Stop Fighting" (2006) *Minnesota Lawyer* <http://minnlawyer.com/2006/12/04/parent-coordinators-help-divorced-couples-who-won8217t-stop-fighting/> at 23 June 2013; Sullivan, above n 14 at 576; Bacher *et al*, above n 6 at 87, 89; Coates, above n 4 at 21; Henry *et al*, above n 3 at 464.
- 19 Greenberg, above n 1 at 207.
- 20 Fiddler, above n 1 at 257.
- 21 Coates *et al*, above n 1 at 247; Sullivan, above n 7 at 61.
- 22 Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 25; Coates *et al*, above n 18 at 552; Bacher *et al*, above n 6 at 86; Fiddler, above n 1 at 250; American Psychological Association, above n 1 at 64; Coates, above n 4 at 21; Guyot, above n 3 at 178-179.
- 23 Bacher *et al*, above n 6 at 84; American Psychological Association, above n 1 at 64; Coates *et al*, above n 1 at 247, 540; Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 10.
- 24 Henry *et al*, above n 3 at 463. See also Karl Kirkland and Matthew Sullivan, "Parenting Coordination (PC) Practice: A Survey of Experienced Professionals" (2008) 46(4) *Family Court Review* 622 at 622; Sullivan, above n 14 at 576; Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 1; Coates *et al*, above n 18 at 533; American Psychological Association, above n 1 at 63; Mitcham-Smith and Henry, above n 12 at 370; Coates *et al*, above n 1 at 247.
- 25 Wilma Henry *et al*, "Parenting Coordination and Court Relitigation: A Case Study" (2009) 47(4) *Family Court Review* 682 at 689; Fiddler, above n 1 at 240; Henry *et al*, above n 3 at 467; Fieldstone *et al*, above n 6 at 803; Barsky, above n 1 at 21.
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- 28 Sullivan, above n 14 at 576; Lockwood Tooher, above n 18; Fiddler, above n 1 at 239.
- 29 Association of Family and Conciliation Courts, above n 1 at 13-15; Fiddler, above n 1 at 239-240.
- 30 Association of Family and Conciliation Courts, above n 1 at 13-15; Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 15; Coates *et al*, above n 18 at 543; Sullivan, above n 14 at 577.
- 31 14 A.3d 1136 (2011). http://www.dccourts.gov/internet/documents/09FM1152_MTD.PDF. The authors are grateful to Professor Patrick Parkinson for the provision of the American cases referred to in this article.
- 32 Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 13; Coates *et al*, above n 18 at 542; Bacher *et al*, above n 6 at 88.; Fiddler, above n 1 at 239; Coates, above n 4 at 22.
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- 34 Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 24; Coates *et al*, above n 18 at 551.
- 35 Association of Family and Conciliation Courts, above n 1 at 11-12; Jessani and James, above n 2 at 181-182; Fiddler, above n 1 at 239; Fiddler, above n 1 at 239; Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 19, 23; Coates *et al*, above n 18 at 547, 550-551; Coates, above n 4 at 21.
- 36 Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 19; Coates *et al*, above n 18 at 547; Guyot, above n 3 at 181; Fiddler, above n 1 at 239; American Psychological Association, above n 1 at 64.
- 37 Jessani and James, above n 2 at 182; Barsky, above n 1 at 8.
- 38 Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 30; Coates *et al*, above n 18 at 556.
- 39 Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 16; Coates *et al*, above n 18 at 545.
- 40 Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 29; Coates *et al*, above n 18 at 554.
- 41 Coates *et al*, above n 1 at 247.
- 42 Association of Family and Conciliation Courts, above n 1.
- 43 Association of Family and Conciliation Courts, above n 1, Appendix C, at 25.
- 44 *R v Kirby; Ex parte Boilermakers' Society of Australia* ("Boilermakers' case") [1956] HCA 10; (1956) 94 CLR 254. See the discussion by the majority in para. 5 about what the absence of Chapter III in the Constitution might have meant for Parliament's ability to create courts and tribunals.
- 45 (1991) FLC 92-217, [1991] HCA 9.
- 46 Compare *Brandy v Human Rights & Equal Opportunity Commission* [1995] HCA 10 (23 February 1995).
- 47 at FLC pages 78,500-1, HCA para. 18.
- 48 *Wainohu v New South Wales* [2011] HCA 24 (23 June 2011).
- 49 Above n 45.
- 50 (1982) 150 CLR 49, [1982] HCA 13.
- 51 The only attempt of which the authors are aware was *Le Mesurier v Connor* [1929] HCA 41; (1929) 42 CLR 481, which involved the Commonwealth purporting to make a Commonwealth public servant an officer of a state court invested with federal jurisdiction. The attempt failed because the majority of the High Court held that the Commonwealth must take the state court as it finds it, and the question of the validity of the delegation of power exercised was not directly considered by the majority.
- 52 at FLC page 78,501, HCA para. 19.
- 53 See, for example, *Botsman v Amundson* [2009] FamCA 978 (16 October 2009), a case in which a father was found to have contravened orders by not observing the centre's 15 minute waiting policy at changeovers.
- 54 As is the case with commercial arbitration, see *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* [2013] HCA 5 (13 March 2013).
- 55 See *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* [2013] HCA 5 (13 March 2013).
- 56 See *Brandy v Human Rights & Equal Opportunity Commission* [1995] HCA 10 (23 February 1995).
- 57 Coates, above n 4 at 22.
- 58 Case No. 106,292 (KS Ct. App., Jun. 29, 2012) at <http://www.kscourts.org/Cases-and-Opinions/Opinions/CtApp/2012/20120629/106292.pdf>.
- 59 See the Washington DC Court of Appeals' analysis in *Jordan v Jordan* 14 A.3d 1136 (2011) at http://www.dccourts.gov/internet/documents/09FM1152_MTD.PDF.
- 60 See, for example, Sullivan, above n 7 at 59.
- 61 Association of Family and Conciliation Courts Task Force on Parenting Coordination, above n 18 at 28; Coates *et al*, above n 18 at 553.



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