

AFCC Ontario Chapter Symposium: Intersection of Domestic Family Law Cases and the Child Welfare System (November 25, 2016) Finalized January 10, 2017

Program Introduction – Andrea Himel (Co-Chair)

- The symposium is intended to facilitate discussion about what can be done to address and better manage high conflict domestic cases that intersect with the child protection system.
- The symposium builds on the recent research commissioned by the AFCC-O to develop strategies, better practices and next steps to improve the identification and management of domestic cases that intersect with the child protection system.
- Introduction of attendees.

The Honourable Chief Justice Heather Smith – Welcoming Remarks

The Chief Justice set the tone for the day, and stated:

- The Superior Court of Justice (“SCJ”) recognizes that addressing cases involving children at risk and children in need is a top priority.
- The judiciary is committed to ensuring an efficient and effective transition for children in high conflict cases.
- The SCJ has prioritized case management by a single judge for high conflict matters involving children.
- The Chief Justice has asked judges to consider policies to move cases forward quickly and in a meaningful way.
- Provincial and regional practice directions are on the SCJ website to support these initiatives, and will continue to be developed.

Panel 1: Recent Research & Recommendations

Introduction – Andrea Himel (Co-Chair)

- AFCC-O initiated this research three years ago. Claire Houston (PHD Candidate, Harvard Law School) and Professor Nick Bala have been working on this research since that time. The resulting papers can be found on the AFCC-O website. In general, their work aims to achieve better outcomes for children and improve the efficiency of the family court system.

Claire Houston and Professor Nick Bala – Overview of the Research

1. Summary of Children’s Aid Society (“CAS”) Involvement in High Conflict Cases:

- 12% of reports made to CASs in Canada are made in the context of separation, where there is an ongoing custody and access dispute.
- These reports are made for the most part by the parents, rather than by professionals.
- These allegations involve issues such as violence towards, and neglect of, children.
- These allegations are substantiated in a third of the reports.

- Risk of emotional harm: due to the ongoing parental conflict and repeated allegations of one parent about the other (i.e. post separation access exchanges):
 - o Ms. Houston referred to Professor Michael Saini's finding that children exposed to parental separation are reported to exhibit higher rate of emotional harm as opposed to those with parents who have not separated.
- High conflict cases more likely to be re-opened 3+ times, resulting in escalating the conflict between the parents ("Revolving Door").

2. Research on the Role of the CAS:

- The first study was a review of reported Ontario Court decisions from 2010 – 2015 relating to custody and access disputes involving reports made to CAS. This study is broken down into two groups:

A. Custody and Access ("Domestic") Cases

Findings

- As noted above, partner reports to the CAS in the context of high conflict separations are likely to be opened by the CAS 3+ times (escalating the conflict).
- The CAS substantiated abuse or neglect (or risk of same) within the statutory definition of "child in need of protection" in the *Child and Family Services Act* ("CFSA") at a relatively low rate (27%).
- In an additional 13% of the cases, judges expressed concern that parental conflict was emotionally harming or creating a risk of emotional harm to the children.
- Most decisions with CAS involvement but a failure to make a child protection application were found in the domestic realm.
- Increase in domestic cases involving a report to the CAS: 32 cases in 2010 v. 50 cases in 2015.
- This research found similar results to Professor Saini's research, in that parents make most of the reports, and the mothers and the fathers at similar rates make these reports.
- This research differed from Professor Saini's findings in that Ms. Houston and Professor Bala found fewer cases (2%) involved malicious allegations:
 - o Professor Bala qualified this difference by noting that their finding was based on the evidence CAS presented in court, versus the source in Professor Saini's research was by way of conversations with the CAS.
 - o This may mean that CASs are more hesitant to label allegations as malicious when testifying in a proceeding.
- Criminal Justice Intervention: in almost 75% of child protection proceedings, the police were involved.

Challenges

- Lack of Training:
 - o Workers and supervisors reported that they felt they did not know the dynamics of these high conflict cases.
 - o Only 1/3 said they had the training for high conflict cases.
 - o They said they did not have the policies for these cases or did not know

whether such policies that existed.

- These cases take more time and often involve counter allegations.
- Social workers reported that parents are more demanding in these cases rather than others:
 - o It was reported that parties in high conflict cases are usually more educated, are of a higher socio-economic class, often complain and are manipulative.
 - o Self-represented parties, due to their socio-economic class resulting in an inability to qualify for legal aid, exacerbate the problem.
 - o Social workers believe that parents in these intersection cases are trying to get them on their side.
- Social workers reported that parents in these high conflict cases often lack insight into how their conflict affects their children, and are unlikely to be able to overcome this challenge.
- Social workers noted that they are being pushed beyond their role in these cases and feel pressured to take a position. They feel pressure from parents and lawyers.

B. Child Protection Cases

- The research with respect to child protection cases involved telephone interviews with 64 family justice and CAS professionals from four Ontario cities.

Findings

- The Office of the Children's Lawyer ("OCL") counsel and clinical investigators reported the highest number cases to child protection agencies. If the matter in which the OCL is involved proceeds to trial, there is almost always a report made to a child protection agency.
- Role and response of CAS: Many respondents felt that CASs were not getting involved as often as they should be:
 - o In response, CAS professionals said the high conflict cases are dealt with differently, i.e. by educating parents, acting as parent coordinators and going beyond their roles.
- Ms. Houston noted that although protection applications are rare, CAS is moving towards providing evidence in custody and access proceedings through letters, testimony and/or file disclosure.

Challenges

- Lack of Training:
 - o CAS workers and supervisors felt that they did not have enough training and reported a lack of clear policies on how to deal with high conflict cases.
- Lack of communications and coordination across the various sectors: Professionals noted non-communication by the CASs presenting a challenge impeding the ability to work together to move families along and help them efficiently.
- Concerns raised by judges: Lack of communication and coordination with CAS and lack of information sharing. These are cases where one party is saying CAS is

- involved but judges not knowing the extent and having to rely on hearsay evidence without certainty as to whether the child is at risk.
- Similar to Professor Saini's Research: Same challenges with CAS professionals' time, energy, skill and demand. Pushing them beyond the CAS role (investigating risk to child) and being required to "counsel" parents (i.e., act as parenting coordinators).
 - o Emotional harm is not obvious – sometimes difficult to catch.

Professor Nicholas Bala - Recommendations and Good Practices

- Professor Bala summarized the findings by reiterating that every researched group reported a lack of coordination and communication. Moreover, the judiciary is calling for more information to deal with cases better to help children and parents. Professor Bala noted that some issues are systemic and others may be particular to a certain community. It is important to keep this in mind. He then provided the following suggestions:
 - o Judges should be making orders early for disclosure of all information requiring the consent of the parties and the lack thereof having an adverse inference to the parties/proceeding..
 - o Encouraging communication between different agencies. CAS should have a greater role in coordination.
 - Compared to the USA, Canada has public funding. We have courts, police, etc. and it would help to have a better degree of coordination. Maybe the OCL is a group that should be involved?
 - o Mediation is another suggestion - despite the level of conflict, Professor Bala believes that some of these cases can be resolved in mediation.
 - o More training (interdisciplinary and inter professional) in the child protection sector.
 - o Child protection cases in domestic matters are 1 out of 10 cases, but they take up a lot of the organization's resources.
 - o CAS should be providing documentary evidence to the parents that can be used in the family court – this is widespread in Ontario but not universal.
 - o Suggests that the Ministry of Children Services get involved with this issue.
 - o Court process: The judiciary supports single judge case management. Although it is more common in the OCJ, it is starting to happen in SCJ. The researchers support "one judge, one case" as more effective, and receiving evidence from the CAS will result in a judge having more information.
 - o If there are significant protection concerns, there should be a child protection application.
 - o Lawyer's role: we have an obligation to respond not only to the parents' instructions, but also to the children's best interests.
 - o Resources: more government funding is important, but we need to show it is warranted.
 - o Education: need for interdisciplinary education.
 - o Research: a lot more needs to be done.

Panel 2: Training Child Protection Workers About High Conflict Domestic Cases - An Overview of the Knowledge, Skills & Components of a Training Program

Howard Hurwitz and Professor Michael Saini

1. Introduction

- There are times when professionals do not attend to the emotional harm of children. There have been instances where allegations of 14-15 year old children go unheeded and the children have committed suicide. Agencies are requesting training because of these child deaths. Why did they happen? What could we have done to recognize the severity of these situations? What could we have done to help these parents and their children? How could we find and communicate with the regional mental health resources to fast track these children and prioritize these interventions?

2. Why Training is Important for Child Welfare Workers

- Most child welfare workers report they do not know what to do in these high conflict cases and despite best efforts, the revolving door effect occurs:
 - o Although high conflict and domestic violence cases are often substantiated, workers will usually close these cases once the parents are no longer living together (i.e., the risk is addressed through separation). However, due to the reality that the parental relationship continues through co-parenting and access, these cases continue to return to the child protection system.
- “Gatekeeping by allegation”: this concept refers to parents using the CAS agencies to ‘gate-keep’ the other parent.
- “Emotional commotion”: Prior to child welfare workers’ involvement, there is often history between these families and due to the custody and access issues the parties are spinning and trying to get traction. They go to the OCL, therapists, and child welfare to get something to stick.
- Essential to identify what the parent fears – what’s “under the iceberg”? – Is the fear that they’re going to lose their child? That they’re not respected as a parent? Need to recognize and break down.
- Need to recognize that not all domestic cases intersecting with the child protection system are high conflict.
- High conflict cases tend to be closed more quickly.

3. Research

- In a non-custody case, it is often the school that makes the child welfare report.
- When the teacher/principal calls you, you have a sense of what the call is going to be about. However, in custody cases, it is most likely a parent is making the report.
- Training is needed not only for those in the field, but also for those answering the phone (intake). The person who takes the call has an influence on how this case gets decided down the road.
- Sexual Abuse Allegations (the myth): When these high conflict matters go to

litigation, you see higher rates of sexual abuse investigations. However, this myth is not borne out by the research in Canada:

- Professor Saini points out that there is a myth that these high conflict matters are malicious and about sexual abuse.
- The result: if we are over emphasizing the sexual abuse allegations, we are missing out on the emotional harm and other harm done to children.
- The research suggests that children ages 4 – 7 represent the highest percentage of domestic cases where the CAS gets involved.
- There are higher rates of drug and alcohol abuse and mental health problems in these cases.

4. Obstacles to providing training

- Workers do not have the training and do not have the policies to deal with high conflict cases.
- Workers need to be neutral, however they talk about being pulled in many different ways and places.
- Workers need to know that they do not need to put themselves in a parenting coordinator's shoes.
- Workers report it depends on which supervisor they go to. They may have a supervisor who has had training in high conflict matters, or one that is just responding based on the facts of the case. They are begging for training.

5. Types of Training

- Reasons training is essential: premature closing of files, repeated allegations, fear of working with high conflict families, struggle of making determinations of child maltreatment vs. pressures of taking a position, working with the family law sector, more effective service to children and families, prevention of compassion fatigue or burnout, prevention of client complaints to the agency or college complaints.
- Also essential for the child protection worker to identify what he or she fears – Am I competent to deal with this? How can I help this parent understand my role? How can I work with community resources to give these parents and their child(ren) the help that they need?
- **Problem:** What services are out there to deal with high conflict matters? Most children's mental health services reluctant to deal with a high conflict domestic case if there's a court proceeding. Can be four to five years before determined. What happens to the children in that time? How can we get the child out of the middle? How can we give the child the skills he or she needs to manage the parents' conflict?
 - The message we should be sending these mental health service providers is that they are part of the puzzle and part of the solution. This includes family doctors and pediatricians.
- It is recognized that in some regions, the CAS is "the only game in town". Scarcity of resources results in the parents seeking CAS's involvement.

Participant: Training should not only be in the form of information, but it must also be

about training and supporting the workers, and this should be done at a level higher up.

6. Goals of Training

- Workers need to feel comfortable dealing with parents experiencing high conflict.
- Strategies needed to manage hostile behavior and angry parents.
- It is ok to acknowledge failures and look at why you fail. There is not much research to show what parenting plan is better with certain families. Workers need to feel comfortable talking about failures in order to look at alternatives and to become more efficient.
- Sometimes public bodies and private bodies do not step up to the plate. CAS plays a pivotal role.
- Breaking through Fallacies
 - o There needs to be clarity around ‘emotional harm’. There is confusion what evidence is needed to establish emotional harm v. the evidence needed to establish the risk of emotional harm:
 - Fallacies regarding emotional harm: when asked why workers are not bringing an application or bringing a child into care, a parent’s influence, financial resources and status within the community were cited as reasons for failing to act. However, when asked if workers would take the same approach if there were allegations of sexual abuse, they claimed they would act differently.
 - o Workers also said they fear that once they become involved in a domestic case, judges will want them to be involved longer than they would like to be, or than their mandate requires them to be.

7. Types of Issues for Training

- These issues are in the context of child custody disputes, IPV, alienation, rejection, sexual abuse allegations, emotional harm and risk assessment of conflicts.
- Alienation: alleged every 5 seconds about a high conflict parent either on the receiving or giving end. Confusion about when a child is refusing to see the other parent and this plays a role within child welfare issues.
- Sexual abuse: need to understand the research in this area and its intersection with custody and access.
- How to shift the focus from the parent talking about the other parent to talking about the children. Parents are so focused on their own needs and wounds.
- The way we train: If you have IPV training on one day training and then alienation training on the other, a false dichotomy is created that it must be one type of resolution or the other type. This is not true. The training and principles must be integrated. Not isolated.
- Systemic biases: Workers may prefer one parent to the other, and the issue becomes how to manage the bias in the work that they perform.

Open Discussion – Recommendations Re: How to Close the Gap

Preliminary Comments

1. Regarding allegations of emotional harm and workers not bringing protection applications or providing voluntary service with respect to these cases - The concept of emotional harm is still relatively new. Workers also fear complaints, and failing to act might be a method of self-preservation.
2. These are systemic problems. If the courts need evidence from CAS workers, they need training on how to write letters and testify in these types of cases. They need training on how to interview children and parents in order to make an appropriate parenting recommendations. We are talking about training at the bottom, maybe the training should be at the top – with policies and ministries and looking at effective ways to communicate with each other. The bottom feeders need appropriate instructions above. Top down.

Recommendations on How to Close the Gaps

1. Training at management level. Maybe this training is not for everyone – some people are not cut out for the high conflict disputes.
2. Ministries are talking about ‘core businesses’. One of the questions is how does the ministry see this as its core mandate? Do we try to chip away at myths (i.e. emotional harm less important than sexual abuse)?
3. Idea of ‘high conflict **parenting or high conflict families**’ – need to move away from the label of ‘high conflict **cases**’. Often situational. Therefore, need to focus on changing the language to refer to “parents experiencing high conflict or families experiencing high conflict”.
4. Roles of CAS workers need to be delineated and understood by others, including management. Other professionals need to respect those roles. CAS workers should not feel the kind of pressure they do from lawyers, assessors and other professionals.

Panel 3: Domestic family law cases that have crossed over into the child protection system – Assisting courts to address issues arising from investigations, ongoing CAS involvement, evidence and disclosure. Using the Family Law Rules and case management process to manage the litigation.

Senior Advisory Family Judge - Justice Debra Paulseth, Senior Judge of the Family Court - Justice George Czutrin, Katharina Janczaruk and Professor Nick Bala

Justice Paulseth

- Recommendation that the same judge deal with the case.

- These are the cases that benefit from good structure, good management and closer monitoring.
- Judges in the Ontario Court of Justice (“OCJ”) are not shy to report to CAS on these cases. In some cases when they review the pleadings the judge may see something of concern.
 - Judges who decide to report to the CAS should call the general intake line and then provide the information, which has caused concern (i.e. photocopy file and send it to CAS). The judge keeps the file open and tells the litigants that CAS has been contacted.
- Recommendation to keep the OCL on the file when it moves from one system to another (Child Protection and Domestic).
- Judges are supportive of counsel on limited retainers. Judges are prepared to accommodate limited retainers by setting up a timetable for tasks in an attempt to reduce the conflict and move the case along.
- Judges have requested that Legal Aid Ontario (“LAO”) launch a pilot with a minimum number of hours so that experienced counsel can assist in the early stages of high conflict cases where the parties do not otherwise qualify for LAO assistance.
- Rule 17 Conferences: After an emergency, judges will try to have a conference to help parties organize:
 - They are developing a solution-based conference and talk about child-focused issues to identify what the needs are.
 - Disclosure, evidentiary issues, resources and coordination/timelines will be dealt with. Each are dealt with in turn. These are all important in intersection cases.
 - Disclosure: Judges will make the disclosure order early and on consent. In *CFS* proceedings, only the society can bring a motion for production of records and information. This is when you want police records.
 - Evidentiary issues: be careful recognize the privacy and confidentiality issues arising between evidence produced in each proceeding.
 - Resources: Judges often have a letter from CAS. Sometimes the court will request the worker or supervisor to attend court. May be better for the child protection worker to give the evidence rather than having to redact the file and/or prepare a report.
- Rule 1 - Focused Hearings and Summary Judgment Motions: can be made quickly and get parents in right away.
- Justice Paulseth notes that judges also receive a lot of complaints initiated by parents, but we have to be fearless about these cases.

Justice Czutrin

- Justice Czutrin made the following comments:
 - Often at the beginning of a case involving people experiencing high conflict, these parents want to get on a list on a motion without notice to the other parent.
 - The Family Law Rules allow for a motion to be brought without a case conference in certain instances, and the court staff will direct these parents

- to the Family Law Information Center (“FLIC”).
- Police and the CAS often send litigants (mostly self-represented litigants) to the courts. The question then becomes, if there was something to be done, why was it not done at that place of first instance?
- Judges are cautious with high conflict domestic/child protection cases. There is usually no verification of what parties claim, no letter from CAS/police. Judges do not want to send someone away with a legitimate need for protection and come back with more evidence. On the other hand, they do not want to make an Order and get it wrong due to a lack of a complete picture.
- Judges will either call the society or get counsel to do it to get a child protection worker to come down to court. When they do come, judges will put them in the witness box.
- CAS Letters: some letters will say that the CAS has concerns, but the parents are dealing with the issues by coming to ‘court’. Therefore, from the CAS’ perspective that is a sufficient remedy. This is an issue.
- Other difficulties include: challenges in respect of communication with other jurisdictions and other judges, and the inability to easily share information with the criminal justice system.

Katharina Janczaruk - Information Before the Court

- Counsel for parents would take issue with a letter from the CAS being freely given because it may not give the total background and does not show the biases.
- Parents’ counsel should get disclosure of the CAS file. To expedite the disclosure, counsel should identify the key documents needed and reserve the right to make further requests.
- Ms. Janczaruk noted that courts are very receptive to ordering disclosure.
- **Difficulty:** If it is not an open file with the CAS, it is very hard to get a timely response from them. It is difficult to have evidence if the file is not provided. It is great to get the witness in the box, but it is difficult to examine the protection worker without receiving disclosure.
- Ms. Janczaruk emphasized the need for societies to respond faster to requests and recommended that counsel be very specific as to what they need from the society to allow them to do so.

Professor Nicholas Bala

- Role of family law lawyer is complex. You have to ask, “Are lawyers firefighters or arsonists?”
- The efforts to expand the Unified Family Court system does not appear to be gaining momentum, and this delay now further impeded by the fact that ministry attention and resources focused on dealing with the criminal case backlog due to SCC decision.
- Does not make sense that you have a case heard by an experienced OCJ judge that, once appealed, may go to an inexperienced single SCJ judge and *then* the Court of Appeal. There is an unnecessary intermediary step.
- Right now we have an integrated family violence court in Toronto and it looks

- more efficient.
- Case Management by Single Judge: In families experiencing high conflict, the parents have high psychological needs. If they see the same judge, more likely to change their attitude. The judge has a therapeutic role. The judge will give you the same message every time and may change the parent's behaviour.
 - o Australia conducted a study that showed this method is cheaper and more efficient.
 - There is a need for clear orders and boundaries. Judges can do this using the input of counsel.
 - Involvement of CAS: Professor Bala stated that as soon as counsel is involved, there is a right to challenge a witness. Moreover, a letter obtained from CAS should go to the judges to provide information about what is going on.
 - The OCL won't continue its clinical investigation when a report has been made to the CAS. It would be helpful to have better communication between the OCL investigators and the CAS.

Full Group Discussion – Questions, Comments & Priorities

1. **Question:** What does the court do and how do lawyers help get the court get information when the documents are scattered and it is impossible to get disclosure from the other side? How does the court deal with this?

Answer (Justice Czutrin): It is a question of how many times we are going to ask people to do the same thing and resourcing the court properly. Question is what more can we do? We can keep asking and ordering but people have to comply. The courts are advocating for this at every level. One option is for a court staff to complete self-rep forms for them. (Pro Bono Law Ontario does this for civil litigation self-reps).

Comment by Ms. Janczaruk: If you have educated represented parties and the judge is reminding them about providing disclosure, it should be done. But there are many people who do not qualify for legal aid. The tariff should be looked at again.

Comment by Professor Bala: What about the role of students and paralegals, under the supervision of a lawyer? Helping self-reps with forms, maybe that is a role for them. This is how justice can be improved.

2. **Comment:** Regarding The Access Group on Access to Justice (“TAG”) (with respect to the task force established looking at assessments), there is a sub-committee that completed a position paper building on the Advocates Society’s work to encourage change at the family court level to minimize frivolous complaints against s. 30 assessors. It reviews the policies in other jurisdictions, which allow responses from the colleges to be proportional to the complaints.

Suggestion: inter-professional communication

Comment by Professor Bala: “Think globally, act locally”. One of the structures is UFCs. Bring in social workers and lawyers to talk about the issues and bring it forward. Look at the schemes, budget, tariff, how do you make things work better at a community level?

- How do some communities have a better inter agency working relationships than others? This is more of a research question. In smaller

communities, there may be better communication because they deal with each other often.

Comment by Justice Paulseth: This initiative has to be community based. At the end of the day, if we do not have these cases properly resourced, you can waste a lot of time and money.

- There has to be a way to define the cases that need the resources and to manage them. We need lawyers to front end it.
- We need more direct links to children's mental health facilities so that kids can process what is happening in their family and the courts can assess it.

3. **Question:** To Mental Health Professionals: mental health professionals do not want to get involved in family court matters because they do not want to be subject to a subpoena. What do they need from everyone else to get involved?

Answer: Maybe an educational symposium of professionals, since educating professionals is the first step. The number one issue is the navigation hubs (hospital hubs) and trying to collect as many professionals together. Toronto can think about it, but every community needs to figure it out specific to regional resources and needs.

Comment: Education of professionals needs to start at university, before rather than after, since the current reality is that new staff unclear about what to do.

Comment: TAG is currently aiming to bring back the family court clinic and psychologist in the courtroom.

Comment: We need to bring the Ministry of Health into this discussion. We have to think about how to get them involved and think beyond Justice.

Comment: Often, when there is a dispute between parents and the child needs therapy, custody and access issues are brought to the therapist. The result is the therapist gets caught up in those issues and cannot do the therapy. That is one of the reasons why therapy does not work when there is an ongoing dispute because parents use the therapist the same way they use CAS (to validate themselves and get the therapist on their side).

Comment: If the legal system reinforces the mental health system it is more effective.

Comment: Judges are familiar with programs (i.e. Bill Eddy) and can require the parent to report to the court. Whether it is communication skills, etc. the judge as case manager can hear what the progress is.

Judges are all in, but the question becomes, where do you send the parties? They have had reports, most are good, but there is a huge implementation gap.

Structure within and outside the CAS – Options to improve how domestic cases are managed within the CAS, and the CAS as a case manager when multiple community organizations are / should be involved with a family – A Case Study

Professor Saini, Danielle Szandtner, Lisa Tomlinson and Justice Clay

Professor Saini

- Goal: collaboration among multiple agencies and addressing how to bring in other disciplines.
- In Central West Ontario, working with The Custody Dispute and Child Welfare Advisory Group, he and his team developed a ‘logic model’, which was presented to CAS executives and became part of their business plan.
 - o Many of the activities carried out were with 208 CAS participants comprised of workers and supervisors. Management was brought in to be part of the solution.
 - o The discussion revolved around interviewing high conflict families and training the participants to better work with high conflict families.
 - o The worker profiles identified were ‘educators’ who take too much time to educate the family, the ‘flutterers’ and the ‘sympathizers’.
 - o They did a case study with them and role-played using paid actors.
- Eight modules are being developed (GoAnimate), each taking about 1 hour to review. Outline of Modules: Review of the standard, case scenarios and discussions, relevant research applied, signs of safety facilitator discussions, supervision case scenarios, enhancing the supervision model, key messages and community links.
- Professor Saini takes the CAS through the entire process from the initial intake by assessing conflict and what to do in certain situations.
- Demonstrates what can be done within CAS to build capacity. Is it better to have different specialized teams? Or champions? The goal is to get those enthused within the agencies to be a resource and further promote capacity to better respond to the families.
- **Comment:** The GoAnimate is great and approachable from a child welfare business point of view.
- **Comment:** This GoAnimate Model may be good for lawyers as well.

Lisa Tomlinson (CAS – Intake Director)

- People see the perpetuating problems, know they exist within the CAS and are trying to adapt while also having to deal with a continual influx of policies, procedures, etc.
- They are not only dealing with high conflict, but many issues:
 - o For instance, a child may have a bruise on his or her arm and CAS has to be out there in 12 hours. The high conflict cases are very low. They do not have that type of response for the high conflict cases.
- She notes that workers forget to delve into the parents’ history sometimes. It is essential to slow the process down and ask about the relationship, them as parents,

- etc. to have a better context for the current situation.
- CAS has adopted the “Signs of Safety Network”, which came out of working with indigenous people in Australia and building networks for children.
- The CAS often refers the matter out, but it does not have to be referred only to professionals. referrals can be made to family members, etc. who are the people that can participate in this.
- The leadership messages that the workers get are important. Supervision for workers is key.
- She noted that it would be nice to know what the CAS are doing *right* and how things are going when they are out in the field so that they can better address concerns and better assess practices. More feedback needs to be provided.

Danielle Szandnter (CAS – Legal Counsel)

- It is important to go back to the statute and see where the facts fall, in any high conflict case:
 - o The emotional harm must be “serious” and includes extreme depression anxiety, etc. (Section 37(2)). Also a risk of emotional harm (s. 37(2)(g))
 - o Emotional harm is in the statute but it is very specific, not as fulsome as people would like it to be.
- Reference to case study: Jordan is 15 years old in the case study, which is important because once children are 16, they are out of the court’s reach. So there is latitude for 15 year olds.
 - o We are told that Jordan has anxiety and autism. This is before we are told of blood in urine, nose bleeds and stomach aches. No evidence that the mother is proactively addressing these issues.
 - o There is no therapeutic follow up, no mention of a counselor and we have an attendance at a walk in clinic, so we don’t have a doctor in the study.
 - o We have a child dropping out of school with no homeschool plans.
 - o We have alcohol abuse, however Bobby’s role is the one who is ringing that bell. In terms of investigation, the worker needs to go directly to the mother and get independent evidence on that issue. Bobby’s relationship with his mom is concerning as it is clear that Bobby is the source of the information that father has.
 - o Video games being played all day by the kids and high conflict on top of that.
- Statute says we should be seeking the least intrusive method
 - o We may have a condition seeking to get mom to refrain from consuming alcohol, to get urine screens, follow through with counseling (if the facts gave rise to that and would happen later on).
- High conflict domestic cases where there is no counsel: this is an issue where we are trying to access a method of finding pockets of resources for these people.
- Plus side: once you get through the gateway of a protection application, you get a CAS worker and lawyer on file where there was none before, the possibility of getting ahead on waitlists, terms and conditions (list of to-do’s that is court ordered), and OCL assigned.
- May be able to access child protection mediation and family group conferencing.

- Although this sounds great, in reality, when you get into court, it can be a road to nowhere. No statutory timelines in these cases because children are not in care, so they can go into limbo. Our child protection framework does not fit in well with what is going on with these types of families.
 - o OCL intervention may increase the harm to these children by bringing their views and preferences to the court. Need to know how parents will react to children's voices being heard.
- Tools of CAS are not nuanced enough to deal with these families.
- Role of OCL: If it was on the protection side, she would want OCL involved.

Justice Clay

- It is more likely that you will have represented parties in a child protection case.
- The advantage in family cases is that the only test is best interests, but in *CFSA* proceedings, you are looking at 'risk of harm'. You do not get to best interest test until those findings are made.
- Case Conference: It is important to ensure parties see duty counsel, but Justice Clay is ok with proceeding without, because high conflict litigants will not normally listen to duty counsel in any event:
 - o A judge's job is to provide education at the case conference. Justice Clay tells the parties that he has read their briefs and will give some details to show the parties that he is indeed knowledgeable about their case.
 - o He does not give them the opportunity to go off on a tangent. Will redirect them - Have to get information about the kids (this is paramount) i.e. what do they need? Are they getting counseling?
 - o Put the focus on the children from the beginning to make a clear message that this is about the children, not parents.
 - o Parents often have a script that they want to tell judges when they come in. Judges have to have them park that and have them tell the court how the kids are (from both perspectives) and then actively listen.
- Reference to case study: An appropriate question to the mother would be: Bobby has a concern about your drinking, what do you think? Then listen to the answer and try to look at it through the child's lens.
 - o Important to ensure that any subsequent brief is not going to be about the past, only from this day forward.
 - o Mandy, get some help, etc. and that is it. Careful not to be judgmental at this stage.
 - o Set a timeline.
- Justice Clay noted that one of his most gratifying situations as a judge was when a person who was an alcoholic followed the directions given through various court appearances, addressed the issue and returned to court sober.
- Delay is never neutral – it always benefits one parent and never benefits the children.
- Justice Clay asks for letters, but he can only ask, cannot order them.
- Open lines of communication are important.
- Role of OCL: children need someone independent to talk to. Someone who knows what the parents are doing. Children need an opportunity to present their views

and preferences, however it often gets back to parent. OCL can also provide the option of not presenting child's views if actual or perceived repercussions might make matters worse for the child. But the children knowing they have someone to talk to who is helping them with the process is useful.

The perspective and role for other stakeholders – A brief overview

Carolyn Leach, Jennifer Suzor, Chris Brown, Dr. Dan Ashbourne

Carolyn Leach (OCL Counsel)

- Role issues at OCL:
 - o Whether clinicians or lawyers, these cases are challenging for the same reasons that they are for child protection workers (parents are demanding, they take up a lot of our head space and time, and we worry a lot about the kids). Carolyn mentioned that the CAS is involved in her custody and access files. In each file, the children are dealing with mental health issues.
 - o These cases bring role challenges insofar as some kids tell the OCL they never want to see one parent again, whereas other kids are so anxious about the OCL sharing what they say with their parents. Other challenges arise when a child is telling the OCL what they want and it becomes clear that is not what they really want, but are afraid of hurting a parent.
 - o Carolyn spoke first hand about taking on roles that she never used to, due to the fact that parents either cannot afford appropriate supports, or these supports are not available. Her job is not just about finding out what the child wants, reporting this to parents/lawyers/court and trying to settle. She has cases where she is acting as an untrained parenting coordinator. She spends much time talking to the parents, even coaching them on how to draft an email to the other parent to ask for a change in access. She is also taking on (together with OCL clinicians) roles that are more therapeutic in nature – re-establishing contact between children and parents, facilitating difficult conversations between children and parents.
- Resources
 - o Most problems that come to the OCL are ones that the legal system cannot help i.e. where some form of therapy or PC might work, but most can't afford these services, or professionals with the requisite skills/training/experience are not available in the community where the family lives.
 - o Even if parties settle, you have an access plan and the parents are left at sea, with problems that are not going to go away.
- Collaboration with CAS
 - o It is important that the OCL make efforts to speak to CAS workers from the outset to ensure they are on the same page and have the same plan, and if possible continue to work collaboratively with the worker throughout the case.
 - o Problems arise when, for example, one parent speaks predominantly to the CAS worker and the other to the OCL. There is a need for collaboration

- especially in these situations.
 - Carolyn suggests that joint training and education about these intersection cases would be helpful for both CAS and OCLs.
 - She supports Bill Eddy's work, stating that many people can benefit from it the very practical tools he provides for working with parents experiencing high conflict
- CAS Investigation: The OCL steps back from their work on custody and access cases when the CAS is investigating a report. Need to be careful not to do or say anything to the parents and/or the children that might impact the investigation. But once that investigation is done, OCL continues its work. Important for the outcome of the investigation to be communicated promptly to minimize the delay.
- Child Protection ADR: Whenever an agency makes a referral to ADR, they are required to notify the OCL to make a decision as to whether OCL will be assigned. Carolyn noted that an increasing percentage of such matters are in relation to high conflict separated parents.
 - She thinks CP ADR is very useful and practical tool that is available to child protection workers in these high conflict cases , but has to happen at an early stage. Not as useful for a historically chronically conflicted family. Although it will not shift a family like this, ADR may be useful to figure out next steps/timelines.
 - CP ADR also allows for the OCL to become involved pre-court, and allows the children's views to be shared at this early stage.

Jennifer Suzor (Mediator/Lawyer, President of OAFM)

- Jennifer echoed Carolyn's comments on ADR. She reiterated that the earlier these files get to mediation, the better because we are not getting kids into intervention early enough.
- She defined a mediator as a 'conversation facilitator'. A mediator goes beyond a 'file' and asks how do we make this better. However, mediation is not a truth finding exercise.
- Myths: it is better to work with people who like to talk
- Bill Eddy's coaching module (pre-mediation)
 - She has tried to get CAS on board and succeeded – when the report is made early in the conflict, but does not reach the standard to open a file (yet CAS is not pleased with the dynamic), CAS can refer parties to a mediation program (not child protection mediation) which although not free to the parents, is subsidized.
- The process: MSWs who have done the program, will have an intake meeting with the parties to determine whether they can benefit. An MSW will meet with mom and dad separately. None of what is discussed at this meeting is brought to mediation. Rather, it is a preparation meeting for mediation.

Chris Brown (Clinical Manager, East Metro Youth)

- Many professionals do not want to provide therapy to people from families experiencing high conflict – they are not sure they have the right skill sets, or they are otherwise concerned they are not competent or will be accused of not being

competent.

- Although dealing with high conflict cases is not for everyone, query whether it is ethical to refuse providing a service because you do not want to. Chris is of the view that refusing service for that reason is inappropriate.
- How do we provide professionals with the training needed to be confident in that capacity?
- Cannot send someone for 2 days of training and expect them to know what to do.
- Cultural diversity is a problem: Chris gave an example of meeting with a father who had a completely different value system than him, but one needs to respect the values of others, however different. Language barriers also play a role.
- Mental health services for parents not being sufficiently provided.
- Trauma of a marriage breakdown: Clinical investigators need to understand why the marriage broke down. It is not enough to talk about conflict.
- Adversarial legal counsel get in the way.
- Parenting capacity needs to be measured and assessed. Parents want validation and someone to believe them.
- Maybe there needs to be a specialized branch to deal with children in these cases.
- “Culture eats strategy for breakfast”.
- We need specialized lawyers who can refocus a parent client who wants to “win” at all costs (i.e., lawyers who are “firefighters” instead of “arsonists”).

Dan Ashbourne (Symposium Co-Chair, Executive Director London Family Court Clinic)

- Focused on two perspectives: the court clinic view and broadening children’s mental health to family mental health service organizations.
- Children’s mental health is going to soon be subject to a funding formula, which defines what will and won’t be funded and what is included. This is scary when there is no support for certain initiatives or a lack of community awareness of the changes coming.
- There is dialogue currently happening across the province – i.e., which is a window of opportunity to get invited and participate in what is considered core services in children’s mental health and community service mental health planning.
- Part of facilitating conversations should also be about listening and encouraging healing steps, maybe not from mediation but to find out where that healing can happen such as through an ODR process.
- There has been a shift in the type of work that people will do. Unfortunately, there are more people trained who are not doing this kind of work, than who are doing this work (C&A and Parenting Assessments). This is because of the way the system is breaking it down, or through ongoing complaints, or these professionals felt undervalued or experienced bad situations and did not realize how they were used in the court system, and now are unwilling to be involved.
 - o The support needed to do this kind of work often comes from being in an organization, being part of a supervision practice or a community of professional practice, and using a model that is designed to ensure communities are working on the same path rather than at cross purposes.
 - o As an example the work on improving communication for families using

the “Brief, Informative, Friendly, and Firm” (BIFF) – model used by Bill Eddy is one good example that can aid many professionals doing this work.

- Support for other initiatives is also needed. How do we weave what we are doing today into different research or groups to ensure the information gets shared broadly?
- It is important to consider the way in which cross disciplines can be beneficial (such as AFCC and AFCC-O) and we can all recognize how mistakes are made and what we would do differently moving forward. How do these joint initiatives help us move forward?
- Some communities have used mediation for new referrals to get out of the cycle of allegations and improve communication. Dr. Ashbourne notes that a slight shift can cause many things to change for the better.
- Other communities use time limited ‘parent coordination’ activities. In considering this model, think about who is going to monitor what is taking place and how is that going to be judged.

Comment: one of the attendees’ noted the benefits of the use of major media outlets to educate the public.

Policy Issues and Funding Issues

Marcus Pratt (Director, Policy & Strategic Research, LAO)

- Role of legal aid: Marcus’ review of the literature is that not all families involved in high conflict litigation have very low income, which is required in order to qualify for legal aid. This is the limit we work with and, we try to be creative within such limits.
 - o For instance, there has been a recent expansion of certificate services for victims of domestic violence, involving some elasticity in financial eligibility for this group.
 - o There is a possibility that services for families experiencing high conflict might be reviewed, within our above-mentioned limits.
- Acknowledge panel’s earlier comments re: request for tariff to properly fund lawyers for these kinds of cases.
- The model for LAO in the criminal world is about file management. Introducing this into high conflict litigation in family and crown wardship applications is difficult because it is hard to identify these matters early.
- It is important to identify a crisis early and provide proper assistance to counsel.
- Consider whether in granting further certificate funding, we are providing services to the ‘good guy’ or are we just adding fuel to the fire?
- Also need to consider whether providing a limited hour certificate in a high conflict matter would be effective.
- Panel Management: under the current legislation, to take a legal aid certificate, you have to be on the panel for that subject matter. The question is whether you can identify a set of objective criteria to ensure effective lawyers are taking legal aid matters? Quantity is not the best measure of a good lawyer, and quality of a lawyer is tough to assess.

- The best way for Legal Aid to be of assistance in high conflict files is triage to identify high conflict cases in a system where there are other supports. This is the model in Nova Scotia, where the file is streamed to a single judge, with legal aid acting as one means triage, along with court staff, CAS, and judges themselves.
- We are starting to do that with child welfare in criminal law so that youth in care can be identified as such.
- Expertise and continuity is what this model provides.

Justice Clay

- Some less experienced lawyers are of the view that they have to fight for their client, but more experienced lawyers know that a judge is likely to listen to a calm reasoned argument, not an emotionally based submission.
- As a judge it is ok to allow a little bit of venting, and then refocus the parties and set them up to address the next issue.
- Judges should make clear in their body language that they are prepared to listen to the answers. Take notes, ask follow up questions, and ensure a factual base.
- Some clients can be very unreasonable. It becomes apparent that they want it all and will not settle for anything less.
 - o A Judge is looking to see which parent can put the children's interests first, but take it as a given that they both love the children equally.
 - o Justice Clay, when speaking to clients, will often say that he knows very little about the family and the client. Thus, if they do not settle this case, someone who knows very little about them and their family will decide the care arrangement for their children and, if that happens, both parties will lose control of the situation and they will have spent a lot of money.
 - o Justice Clay went on to say he would tell parties that if they want the most input into the arrangement, they will want to negotiate the terms.
 - o Children are always happy when they know their parents have agreed on something, rather than a judge deciding.
- Legal Aid: duty counsel to "do no harm" and do not give advice without context:
 - o They are essential in a busy court but do not know anything about the situation. Young practitioners need to remember not to believe everything they hear and to not give advice without context. These people want validation.
 - o High conflict clients look for allies and are on a mission to tell people their side.

Shelley Quinn (Lawyer)

- Succeeding as a legal aid lawyer can be done when you have experienced counsel focused on settlement. When you have difficult counsel, you have to know when to really push for settlement.
- Having a panel of lawyers who are skilled at high conflict cases would help a lot.
- Duty Counsel: Shelley likes Justice Clay comment to 'do no harm'. Very important not to give advice before you have full context.

Nicholas Bala

- MAG, crown, police are important and there is an overlap so these are players that should be in the room.
- Children also have a perspective on these cases.
- There is a project going on called 'the views of the child project' – much more focused, being prepared by social workers of OCL funded by the Law Foundation of Ontario:
 - o The focus is on what goes into the report what is going to be said in conveying children's wishes.
 - o That can have an important role. The judiciary is supporting this method. A more flexible coordinator response.

General Discussion re Possible Initiatives

1. Better coordination between systems, length of time for a s. 112 report to be completed because of delays. If there were better coordination between the OCL and CAS, it would be easier to accomplish.
2. Consider referrals to child protection/mediation/groups early, i.e. at first sign of conflict, and consider whether OCL should be there. If the CAS is getting involved because of 'emotional harm', then they should be involved right away.
3. Legal Aid – collaborative law training of those on the legal aid panel to expand toolbox of settlement oriented behaviours.
4. Government agencies having more quality control, which would be more effective and child focused.
5. Legal Aid lawyers could undergo routine training.
 - The MIPs have high statistics of how things are going and in every case, there seems to be a lack of follow up by legal aid. People are on the panel and are just remain there. Mediators also have to keep training on an ongoing basis and lawyers have to do CPD, but nothing specific to clients they are serving.
6. Maybe we could have GoAnimated modules for lawyers.
7. (Alternative view) These cases belong in the courts. Judges are dispute resolvers, they are good case managers, they give services and families require authority of the court more often than not. Sometimes parties will not listen to anyone but a judge.
8. Legal aid does not provide services to everyone in the same manner. Each court should have duty counsel and advice counsel. That is not happening across the province. Some courts share duty counsel. The people who are in court need help. What the courts are missing is the help once they are there. Services should be the same across the board and it is not.

9. Legal aid panel recruitment is tough. The indicator of skill is experience, however we should not just let someone do it because they have done it before, unless they have done it *well*.
10. Should be mandatory training for legal aid lawyers and training depending on the certificate one holds.
11. Maybe there is a way that duty counsel can go to training w/o having to pay the cost
 - In Brampton there is a “family law service center” that does pleadings. Done by young students and lawyers under supervision. FLSC is a great program that saves legal fees and wasted judicial resources.
12. It is important to emphasize the role of all sectors to help child welfare better deal with these issues, including hospitals, pediatricians, police, etc. It is not just a legal issue when these cases come to the courts.
13. Vital role that child protection professionals play and they need special training in this area. More work around the narrow definition of ‘emotional harm’. Training should be interdisciplinary.
14. Think globally act locally. Every child welfare agency is local. The ideas you have should be communicated to other jurisdictions and other cities. Everyone needs to hear about how to do these things better.
15. Training: We should be thinking about ways to specialize welfare workers and to hold on to qualified people we train.
16. Shared practices are important. When CAS agencies get together, they need to always consider a model framework for doing things efficiently, but also need to share what’s worked for them across agencies and systems.
 - A training aspect is a good example of this (cross appointments, sharing skills, mediator coming into an organization). This may help facilitate training and skills for the newer workers.
17. What has been key is that teams go out and develop relationships in the community. If there are specialty teams that do not go out, it is a problem. It is the linkage in the community that is important.
18. Community response: there should be dialogue between different disciplines. A participant noted that there is more of this dialogue going on. People are more informed about high conflict cases and assessing them. What was not happening 15 years ago is now happening. Maybe we don’t understand ‘emotional harm’ but we are working with it and writing decisions that detail what this entails. More people working together now.