

## Holiday Newsletter

Issue 23, December 2022

### PRESIDENTS' MESSAGE



Carolyn Leach  
Co-President

As 2022 comes to a close, Maxine and I would like to extend our best wishes to all of you for the upcoming holidays. It has been an exhausting few years for family justice professionals, as we adjust to transformative change in the way we deliver services to children and families and to the additional challenges arising from pandemic and post-pandemic experiences. Nonetheless, children and families have continued to be served, thanks to the dedication, perseverance, and resourcefulness of the family justice community. We sincerely hope that you will all have an opportunity to relax and recharge over the holidays with loved ones. We think of those who are less fortunate, for whom the holiday season is not a time of peace or celebration.



Maxine Kerr  
Co-President

Every fall, AFCC-O bids farewell to a group of dedicated Board members and welcomes fresh new faces onto the Board. This year, we said an official (but not real) goodbye to Dr. Shely Polak, Robyn Switzer, Hayley Glaholt, Robert Shawyer, and Justice George McPherson, with much gratitude for their contributions to our organization over the years.

We were delighted to welcome three dynamic new members to our Board: Chantel Carvallo (family lawyer, Ottawa), Fadwa Yehia (family lawyer, Oakville), and Dr. Rana Pishva (psychologist, Ottawa). All three have jumped in with both feet, enthusiastically taking on active roles. We're looking forward to a great year, and we've got some big plans.

As always, our overarching goal is to meaningfully contribute to the greater family justice system in Ontario and to improve the lives of children and families. We hope to do so in the following ways:

- We want to continue to lead in providing education to our members and our colleagues about chronic and emerging issues in family and child protection law, with a focus on the value of an interdisciplinary approach. With a little push from COVID, we launched the first of what has become a regular offering of webinars on varied topics. These webinars are free for our members, and available at a low cost to other interested parties. Last year, we hosted a total of 8 such webinars.

### Inside this issue

<a href="#">AFCC-O 14th Annual Conference</a>	3
<a href="#">Member Spotlight—Vicky Ringuette</a>	6
<a href="#">Parenting Plan Guide</a>	8
<a href="#">Member Spotlight—Justice Romuald F. Kwolek</a>	11
<a href="#">Relocation: The New Framework</a>	13
<a href="#">An Assessment of Psychological Functioning</a>	16
<a href="#">A tribute to the legacy of Willson McTavish</a>	21
<a href="#">Member Benefits</a>	23

## PRESIDENT'S MESSAGE —*continued*

- We are planning an exciting slate of webinars for the upcoming year, which we kicked off with a session delivered by Andrea Jones and Brian Burke on November 28 about AFCC's new guidelines for parenting plan evaluations. We welcome your suggestions for topics you would like to see addressed.
- We'd like to continue to leverage partnerships with like-minded organizations focused on services for children and families. Earlier this year, we co-hosted our first joint webinar in French with the Association des juristes d'expression française de l'Ontario (AJEFO), which focused on parent child contact problems. We will be co-hosting a second French webinar on January 19, this time to discuss the AFCC-O Parenting Plan Guide and Template.
- Plans are already underway for the 2023 Walsh Family Law Moot and Negotiation Competition, which will take place on March 4, 2023 and include all eight Ontario law schools. This banner event is intended to attract bright and talented law students to the practice of family law, and is always a fun and rejuvenating day. It's also a great opportunity for the family law community to come together to support and engage new talent, by volunteering their time, sharing their knowledge with students, or by providing financial support.
- Plans are underway for our 2023 Annual Conference. We are still basking in the glow of our successful 2022 Conference, which focused on the perspectives of children (further details provided later in this newsletter). The hybrid format allowed members and colleagues from across the province to elect participation in person or virtually, without incurring travel and other expenses. We intend to continue to use this format this year.
- We plan to continue to support research initiatives and are currently considering proposals submitted for AFCC-O funding. One of our best known research initiative is the AFCC-O Parenting Plan Guide and Template, a project which has surpassed our greatest expectations (see Maxine's article on this topic later in this newsletter).
- We have revived our newsletter with this holiday edition, and plan to continue to release the newsletter on a semi-annual basis.
- We will continue taking positions on important policy issues.

For our members: we would like to encourage you to consider becoming actively involved in some of our Board Committees. This is a great way to become more involved in AFCC-O work, to meet other family law professionals from different disciplines and regions, and also to assess whether you might be interested in serving on our Board in the future. This year, we've welcomed several enthusiastic new volunteers, and have really valued their energy and ideas. If you're interested, there is a volunteer application posted on our website – or alternatively you could simply reach out to one of the two of us and we'd be happy to talk to you about your interest.

Finally, we'd like to extend our heartfelt thanks for the support we've received from all of our Board members, past and present, and from our wonderful administrator, Kristy Joplin.

Happy holidays to all!

# AFCC-O 14TH ANNUAL CONFERENCE: FROM THE CHILD'S PERSPECTIVE

By Maxine Kerr

The AFCC-O Pre-Conference Institute and Annual Conference were back in person this year in Toronto, with a virtual option for the Annual Conference. We are thrilled that both events were well attended. Favorable reviews have exceeded our expectations, best expressed by the words of participants at the events:

"Being in person was the best – it was wonderful to see my friends and colleagues."

"The speakers were all amazing – it will continue to be the best family law conference in Canada!"

"I found Samra Zafar to be a very inspiring and engaging speaker."

"Having a youth speaker was a great way to open the conference and Samra in the afternoon was fabulous."

"The pre-conference institute was amazing!"



"I liked that the focus was on the child."



Justice Julie Audet and Dr. Kim Harris co-chaired the Annual Conference, with the assistance of their Committee, Maxine M. Kerr, Anisa Ali, Hayley Glaholt, Chantel Carvalho and Erin Betts. Tanya Road and Kristy Joplin provided support throughout.

The Pre-Conference Institute took place at The Advocates Society on October 13,

## AFCC-O Spotlights the Winner of Annual Conference Supporter Draw Whitehead Law and Mediation



Janet M. Whitehead is the principal behind Whitehead Law & Mediation in Sarnia, Ontario. After a lengthy career as a family law lawyer, Janet refocused her energies into developing a full-time mediation and arbitration practice. Approximately 70% of her matters involve lawyers bringing their clients to the mediation process. Janet is a graduate of the University of Western Ontario and was called to the bar in 1993. She has significant experience in family law and has litigated matrimonial disputes at the trial and appellate levels. She is also trained as a collaborative family lawyer and is certified as a family mediator by the Ontario Association of Family Mediators (OAFM).

Janet is a Past Chair of the County and District Law Presidents' Association (CDLPA and now FOLA), one of the original members of the Steering Committee for the Family Law Limited Scope Services Project and a former director of the OAFM. She recently completed a project with other volunteers to develop training material for lawyers and mediators to establish best practices for each profession to better coordinate to provide service to clients mediating on their own. Janet lives in Sarnia with her husband, David. She has two children, one of whom is a solicitor in Barrie, and one granddaughter, Rose.



519-491-9966  
[sarnialaw-mediation.com](http://sarnialaw-mediation.com)

## 2022 ANNUAL CONFERENCE—*continued*



2022, the subject of which was Expert Evidence: Effective Examination And Cross-Examination Of A Mental Health Professional In A Relocation Case. The afternoon featured instruction on expert evidence and a demonstration master class. We were privileged to have Justice Heather McGee, Dr. Barbara Fidler, Julie Hannaford and Aaron Franks share their insights and superb talent with us.



The Annual Conference took place October 14, 2022 at the Toronto Reference Library, having the child-focused theme, “From the Child’s Perspective”. Leaders in the family justice community presented, both individually and in panels. Memorably, Alex Driscoll of Children’s Aid Society Teens Ottawa opened the day, speaking of his own experience and perspective as a youth raised in care and of his advocacy work for vulnerable, racialized, and indigenous youth in care under the Children's Aid Society of Ottawa.



Co-presidents, Maxine M. Kerr and Carolyn Leach, presented the Dena Moyal Distinguished Service Award (formerly the President’s Award) to Professor Nicholas Bala, in honour of his exemplary contributions to AFCC-O over a sustained period of time, most recently for his pioneering work with the AFCC-O Parenting Plan Guide and Template. They also recognized in person last year’s recipient of the Award, Justice Andrea Himel, a tireless champion of AFCC-O, who worked alongside Prof. Bala in leading the Parenting Plan project, in addition to her many other contributions.



In the afternoon, participants were riveted by the keynote speaker, Samra Zafar, and the fireside chat that followed with her. Samra Zafar is an award-winning international speaker, bestselling author, consultant, educator, and entrepreneur who advocates for gender equity, inclusion, and human rights. Her international bestseller, *A Good Wife: Escaping The Life I Never Chose*, depicts her experience as a child bride and how she escaped years of abuse to become one of the Top 100 Most Powerful Women in Canada.



Annual Conference participants had the opportunity not only to learn from the exceptional speakers, but also to mix and mingle with their colleagues, and to partake in the exceptional lunch for which the Annual Conference has become known.



**Our thanks to Schulman Law for its generous sponsorship of both the Pre-Conference Institute and the Keynote Speaker.**



AFCC-O Recognizes and thanks our 2022 Annual Conference  
SPONSORS



## AFCC-O MEMBER SPOTLIGHT—VICKY RINGUETTE



*By Imran Kamal*

Vicky M. Ringuette, is originally from Northwestern New Brunswick. She holds a Bachelor of Arts with a concentration in Communication and a Bachelor of Laws (Common Law in French - LL.B.) both from the University of Ottawa. She has been practicing law since 2005 and works primarily in the niche areas of child protection, fertility and surrogacy as well as adoptions. She is an accredited family mediator offering services in the context of family disputes including international child abductions.

She is also a facilitator of Legal Aid Settlement Conferences in various jurisdictions across Southern Ontario. She is a Panel Lawyer with the Office of the Children's Lawyer, representing children in family law, child protection and human trafficking matters.

The pandemic has been an opportunity to learn new skills and Vicky took this opportunity to complete Coach training which has enabled her to join the Law Society of Ontario's Coach and Advisor Network. She also volunteers her time as the President of the Board of Directors of l'Association des juristes d'expression française de l'Ontario (AJEFO) and as 1st Vice- Chair of the Board of Directors of the Family Dispute Resolution Institute of Ontario (FDRIO) advancing issues relating to access to justice and dispute resolution. She holds the position of Director of the Centre for Legal Translation and Documentation at the University of Ottawa which produces a number of legal resources for lawyers and members of the public such as glossaries, translated court decisions and other legal documents and translations from both government and other legal industry stakeholders across Canada. Her passion for learning and teaching shines through in her role as co-instructor of the Programme de pratique du droit (PPD), which is the Law Practice Program offered in French at the University of Ottawa. She is also one of the lead instructors of the Family Law and the Advanced Family Mediation courses at York University's School of Continuing Studies.

When she is not busy devoting her time to legal and dispute resolution endeavours, she volunteers with Food4Kids Hamilton, which provides backpacks full of healthy food to children who have little to no access to food on weekends or during the summer months. As evidenced above, Vicky is bilingual and always happy to help others!

Vicky has three major passions outside of work: coffee, Canadian art and live music. She is a serious coffee connoisseur and regularly travels near and far in search of coffee beans and tasting experiences. She is particularly fond of "Luna", a coffee roaster located in British Columbia which blends her two passions for coffee and art.



## AFCC-O MEMBER SPOTLIGHT—VICKY RINGUETTE—*continued*

Much like coffee and Canadian Art, music is an important part of Vicky's life. She and her husband regularly attend live concerts in small venues and large venues. If you go to her office or home, music is likely going to be playing in the background as it both soothes and inspires her throughout the day.

Vicky is proud to be a member of AFCC-O and states that this membership is essential as a family law practitioner. Its interdisciplinary model provides its members with access to research, resources, education and colleagues that are cutting edge, innovative and promote best practices when working with families. It also provides a forum where judges, lawyers, mental health practitioners, academics and dispute resolution practitioners can discuss, debate and collaborate on challenging issues in family law. In her words, c'est "la crème de la crème" of memberships as a family law professional in Ontario.

Vicky also encourages more Francophone practitioners to become members of AFCC-O as it collaborates with more legal organizations such as AJEFO in the future. She sends this message to her French speaking colleagues:

Une adhésion à l'AFCC-O est essentielle en tant que praticienne en droit de la famille. Son modèle interdisciplinaire offre à ses membres un accès à la recherche, aux ressources, à l'éducation et à des collègues qui sont à la fine pointe, innovateurs et promeuvent les meilleures pratiques lorsqu'ils travaillent avec les familles. Elle fournit également un forum où les juges, les avocats, les praticiens de la santé mentale, les académiques et les praticiens en règlement des différends peuvent discuter, débattre et collaborer sur des questions difficiles en droit de la famille. Selon moi, c'est la crème de la crème des adhésions pour un professionnel du droit de la famille en Ontario.

### WHY JOIN AFCC-O? *Reason #1*

#### **We provide opportunities to connect**

Chapters provide members access to a local network and educational offerings tailored specifically for professionals living and working in Ontario. Opportunities include:

- ⇒ Free or discounted access to live and archived webinars
- ⇒ Discounted fees for AFCC-O's Annual Conference
- ⇒ Opportunities to be involved in chapter committees, and board of directors
- ⇒ Contribution to articles for chapter publications



## AFCC-O PARENTING PLAN GUIDE

*By Maxine Kerr and Shely Polak*



In the spring of 2018, law professor Nicholas Bala of Queen's University, then a member of the AFCC-O Board, suggested to the Board the possibility of an *AFCC-O Parenting Plan Guide* (the "*Guide*"). By November 2018, there was approval in principle for the AFCC-O to undertake the preparation of the *Guide*, with Professor Bala as the Chair of a small, multi-disciplinary Task Force drawn from AFCC-O members across the Province of Ontario.

The following is an extract of an article that Nick wrote in December 2018 for the AFCC-O Newsletter, goals for a project that, without a doubt, were admirably accomplished:

"The AFCC-O Board has approved a project for the preparation of an *AFCC-O Parenting Plan Guide*. The decision to undertake this project is in part motivated by the prospect of the enactment of reforms to the parenting provisions of the Divorce Act in Bill C-78. That Bill encourages parents and courts to have "parenting plans" that share parental responsibilities, rather than expecting the finality of a court order establishing a regime of "custody" and "access".

The *Guide* is primarily intended for parents, though it will also be useful for professionals, who may make it available to their clients and discuss its contents with them. Lawyers and judges with less experience with family law and child development will also find it valuable...

The *AFCC-O Guide* will address issues related to special needs children, domestic violence and taking account of the views of children. It will also consider the need for flexibility and the possibility of variation in plans as children mature and circumstances change, offer a template of possible terms, and discuss communication and co-operation issues as well as plans."

Professor Bala and Justice Andrea Himel (prior to her judicial appointment) sat on the AFCC-O Board of Directors in 2018. With their usual dedication and determination, they led the *Guide* and Parenting Plan Template (the "Template") initiative to a successful conclusion, of which the family justice community as a whole is the beneficiary. The *Guide* was released in January 2020. In 2021, the *Guide* was both updated and translated into French. AFCC-O will maintain responsibility for ongoing updates of the *Guide* and the Template.

The *Guide* includes information on child development broken down by ages and stages of development (i.e., newborns to late adolescence), clauses related to parent-child contact, virtual parent-child contact, social media and many others to assist parents on developing child focused parenting plans from an authoritative source. The central theme of the *Guide* is that in most cases, it is in the best interests of

## AFCC-O PARENTING PLAN GUIDE—*continued*

children for parents to co-parent effectively, minimize conflict between them, and for their children to have a significant relationship with both parents. The *Guide* provides suggestions intended to help improve communication between parents to address this central theme.

Since its release, the *Guide* has become an important “go to” resource in the conduct of parenting cases, an important reference for mental health professionals, lawyers, mediators, arbitrators and judges, all of whom are actively and routinely referring families with parenting issues to it. It is both the starting point and the litmus test of proposed parenting plans, to ensure they are child-focused and realistic.

At last count, at least fifteen Ontario Superior Court decisions in jurisdictions across the Province refer to the *Guide*, giving it considerable weight and relying upon it in reasons. Decisions are both temporary and final. They generally start by recognizing the value of the social science information about the effects of parental separation on children. Justice Chappel’s statement at paragraph 92 of *McBennett v. Davis* 2021 ONSC 3610 is illustrative:

“The AFCC-O Guide summarizes basic social science knowledge about the effects of parental separation on children, provides suggestions and guidance to help improve communications and cooperation between separated parents and offers valuable guidance about formulating parenting arrangements that meet the needs of the children.”

As further stated by Justice Kraft in *H v. A.*, 2022 ONSC 1560

“The parenting plan guide produced by the Association of Family and Conciliation Courts — Ontario (“AFCC-O”) has been found by many courts to be of great assistance in determining parenting schedules that are in a child’s best interests, depending on the age of the child and his/her developmental stage. While not binding on the courts, the Guide provides a great deal of helpful information and reflects a professional consensus in Ontario about the significant of current child development research for post-separation.”

It appears from reported decisions that recourse is most often had to the *Guide* for assistance in determining parenting schedules that are in a child’s best interests, depending on the age of the child and his/her developmental stage. Several decisions refer to the *Guide* in noting that Ontario does not have a presumption of 50/50 parenting, and in considering on the one hand the circumstances when an equal parenting time schedule is in the best interests of a child and on the other hand when it will rarely be appropriate. Many decisions refer to the *Guide* in identifying the impermissible harm children suffer when exposed to parental conflict.

A consistent theme of the reported decisions is that the *Guide* is not binding on the court, but that it nevertheless provides a great deal of very helpful information to the court. This language is familiar, reminiscent of judicial references to the *Spousal Support Advisory Guidelines*.

Thus far, the Ontario Court of Appeal has not commented on the use of the *Guide*, but that can only be a matter of time.

Quite aside from the reported decisions, we understand that many judges are directing parties’ attention to the *Guide* at virtually every step of a proceeding, starting with the Case Conference and throughout the

## AFCC-O Parenting Plan Guide —*continued*

conduct of a case. Outside of the courtroom, mental health professionals and lawyers are providing advice to parties by reference to the *Guide* and the companion Template from the time of the initial consultation. Mediators and arbitrators routinely invoke the *Guide* in their work and may request parents read the *Guide*,



as homework, before their scheduled mediation session. Usage of the *Guide* is swiftly becoming so standardized that it is difficult to remember that just a few short years ago the *Guide* was just a suggestion, an idea.

We at AFCC-O sincerely thank Professor Bala for his idea and vision. He brought the idea of the *Guide* to the AFCC-O Board. He and Justice Himel, with the support of their able Task Force, joined forces to transform the *Guide* and the companion Template from an idea into fruition and valued resource. The *Guide* is truly a legacy work, which unquestionably

improves the lives of an untold number of families.

In recognition of Professor Bala's exceptional contributions to AFCC-O, he is this year's recipient of the Dena Moyal Distinguished Service Award. This annual Award honours a member for their exemplary contributions to AFCC-O over a sustained period of time. Nick is the hands down winner of this year's award. The Board unanimously voted in his favour.

Our thanks go out to Nick. We continue to watch with pride the acceptance of and endorsement by the family justice community of the *Guide* and the Template. Yet, the true beneficiaries of this significant work will go unknown. One day, they will be the adult children of a better divorce.

### WHY JOIN AFCC-O? *Reason #2*

#### **We are interdisciplinary and international**

- ⇒ Members include sitting judges, lawyers, psychologists, and other professionals who work with family conflict
- ⇒ Our conferences and events are innovation incubators and friendly networking opportunities
- ⇒ AFCC-O members may attend frequently offered AFCC International webinars and conferences



## AFCC-O MEMBER SPOTLIGHT— JUSTICE ROMUALD F. KWOLEK



*By Kaitlyn McCabe*

In this issue, we recognize Justice Romuald F. Kwolek presiding in the Ontario Court of Justice in Sault Ste. Marie.

**Justice Romuald F. Kwolek** was called to the Bar in 1983 and had successful general and family law practice prior to being appointed in 2014.

Justice Kwolek was a deputy judge of the Small Claims Court and a member of the legal panel of the Office of the Children's Lawyer, representing children involved in family litigation.

Justice Kwolek was a long-serving executive member of the Algoma District Law Association and member of the executive for the County and District Law Presidents' Association.(now FOLA - Federation of Law Associations). He has served as chair of the Family Law Bench and Bar Committee for the Algoma and District Law Association, and was presented with the Harry Hamilton award for contributions to the community and legal profession. He was active in the community as a soccer coach and volunteered for a number of local organizations and charities.

Since being appointed to the Bench, he has served as co -chair of the Access to Justice Committee for the Canadian Association of Provincial Court Judges (CAPCJ) from 2015- 2022, and as the CAPCJ representative on the Action Committee for Access to Justice in Civil and Family Law. He has been active on a local level with the Ontario Justice Education Network (OJEN). Since May 2022, he has been appointed as a member of the executive of the Ontario Association of Judges (OAJ) as Vice President Family.

Justice Kwolek has advice for family lawyers new to the profession. First, he says “ thank you to all lawyers who have decided to practice family law”. Although it is a challenging area of practice, he advises that it can be very rewarding and he thoroughly enjoyed his 30 years in the practice of law, with much of that practice devoted to family law.

For new family law lawyers, if you have not already done so, he would recommend that you obtain significant training in mediation, which will not only provide you with another career option but will also be invaluable in dealing with your family law clients and opposing counsel.

Secondly, be sure to strike an appropriate work/life balance. Justice Kwolek indicates, “you cannot be an effective advocate if you do not ensure that you take care of your physical and mental health. If you are experiencing health issues be sure to ask for help whether it is from a health care professional or from a colleague. When I was appointed as judge, at our first education session I was told that the most common advice given by experienced judges to young judges was that they obtain a health club membership.”

Thirdly, Justice Kwolek encourages you to volunteer in your community, whether with OJEN, your local Law Association, AFCC or other community group. He states that he has found that he get more out of his

## AFCC-O MEMBER SPOTLIGHT— JUSTICE ROMUALD F. KWOLEK— *continued*

volunteer work than he puts into it and such volunteer work often improved his ability to be an effective advocate and allowed him to forge relationships which ultimately assisted him in the practice of law and in being a judge.

When not engaging in law, Justice Kwolek tries to spend leisure time with his wife, children, and grandchildren. He enjoys fishing with his son. He is an avid sports fan and follows most of the main stream sports including hockey, baseball, football and soccer.

He enjoys biking and running – “less running and more biking as I age”. He enjoys cross-country skiing in the winter. He states, “I am fortunate to reside a 10 minute drive away from some of the province’s best cross-country ski trails, and enjoy the peacefulness and serenity of skiing in the great outdoors.”

Justice Kwolek sees benefit to his membership in AFCC-O. The interdisciplinary nature of AFCC-O and the educational programming that it provides, he believes, is of most benefit to his membership. An opportunity to meet with and to obtain feedback from lawyers, mediators, social workers, psychologists and psychiatrists has allowed him to deepen his understanding of family law issues and to help him to be a better judge.

### WHY JOIN AFCC-O? *Reason #3*

#### **We fund research that matters**

- ⇒ We created the flagship Parenting Plan Guide and Template for use throughout Canada
- ⇒ We funded an extensive review and evaluation of court-based family mediation services throughout the province



# RELOCATION: THE NEW FRAMEWORK SINCE THE SUPREME COURT'S SEMINAL DECISION 25 YEARS AGO

By Golnaz Sara Simaei, J.D.

## Introduction

In May 2022, the Supreme Court of Canada ("SCC") released *Barendregt v. Grebliunas*, 2022 SCC 22. This is the first relocation case decided by the SCC since the amendments to the *Divorce Act*, R.S.C., 1985, c. 3 ("*Divorce Act*") came into effect, which provides for a statutory regime for relocation applications. Ontario was also one of the provinces which enacted a similar statutory relocation regime through the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, s. 39.4 ("*CLRA*").

The statutory regime for relocation cases and the amendments to the *Divorce Act*, and the CLRA, underscore the central and primary emphasis as being the best interests of the child. The various factors that are relevant in determining the best interests of the child require a unique and contextual analysis of the parenting issues that emanate from the condition, means, needs and circumstances of the child.

The case of *Barendregt*, *supra*, originates from a trial decision in the British Columbia Supreme Court in 2019. The parties met in 2011 in northern B.C. and in 2012 the mother moved to Kelowna to live with the father. They got married, purchased a home, and had two sons. The parties separated after six years together. The parties' home was an ongoing construction project and described as a "working environment" as opposed to a "living environment". After the parties' separation, the mother took the parties' sons to her parent's home in Telkwa (approximately 10 hours from Kelowna where the father continued to live). The parties agreed to share parenting time between Telkwa and Kelowna, and later they agreed that the children would remain in Kelowna with the father. The parents were to alternate parenting time on a weekly basis when the mother returned to Kelowna which did not occur. The

---

*The statutory regime for relocation cases and the amendments to the Divorce Act, and the CLRA, underscore the central and primary emphasis as being the best interests of the child.*

---

mother eventually applied to relocate the children to Telkwa.

The trial judge awarded primary residence of the children to the mother and permitted the mother's relocation request. There were two issues that convinced the trial judge in doing so: (i) the more significant issue of the two was the acrimonious relationship between the parents and its implication on the children, and (ii) the less significant issue was the father's financial situation and especially his inability to maintain the home in Kelowna and make it livable.

The father appealed and applied to adduce additional evidence about his finances and the renovations he had made to the house since the trial. The B.C. Court of Appeal admitted the additional evidence on the grounds that it challenged a major reason for the trial judge's decision (i.e. the father not being able to maintain his home), overturned the trial judge's order, and held that it was in the children's best interests to stay in Kelowna with both parents.

The *Divorce Act* amendments came into force on March 1, 2021, and so they were not in effect at the

## RELOCATION—*continued*

time of the trial decision or the appeal. However, they were in effect when the case made its way up to the SCC, which gave the SCC the opportunity to review the jurisprudence over the last 25 years since its seminal relocation case in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 (“*Gordon*”), and the legislative framework for relocation cases which now exists in the *Divorce Act*. In addition to the relocation issue, the SCC first addressed the test for adducing evidence on appeal.

### **The Confirmed Test for Adducing Evidence on Appeal**

The father sought to introduce evidence on appeal regarding the stability and certainty of his living circumstances which the trial judge had found was still an “open question”. The Court of Appeal considered the father’s evidence to be “new evidence” (i.e. not available at the time of the trial) as opposed to “fresh evidence” (i.e. available at the time of the trial but for whatever reason not introduced). The Court of Appeal also found that since the evidence was “new”, the test for the introduction of additional evidence by the SCC in *Palmer v. The Queen*, [1980] 1 S.C.R. 759 (“*Palmer*”) did not apply. The Court of Appeal allowed the evidence on the basis that it was “cogent and material” and it “directly address[ed] one of the two primary underpinnings of the trial decision” (*Barendregt, supra* at para. 85). The SCC could not disagree more.

The SCC found that the test set out in *Palmer* applies to all evidence that is sought to be adduced on appeal to review a decision below, whether it is new or fresh, noting that although where the best interests of the children are involved, a flexible approach to *Palmer* is taken, it still applies. Therefore, the SCC found that the Court of Appeal erred in not applying the *Palmer* test.

The SCC went on to find that the father did not satisfy the first criteria of the *Palmer* test and that the father failed to act with due diligence to adduce the evidence at trial. The SCC also emphasized that the *Palmer* test should not be used to avoid the specific procedures that are in place for a review or variation when there are factual changes after a trial determination.

In this regard, the SCC’s decision is noteworthy for all family law lawyers who conduct appeals, as the SCC has confirmed that the *Palmer* test continues to apply on admitting new evidence on appeal.

### **The Framework for Relocation Cases**

In the balance of its decision, the SCC considered the framework for relocation cases under the second stage of *Gordon*: whether the move is in the child’s best interests. In this regard, the SCC considered the development in the jurisprudence over the last 25 years, how the *Gordon* factors have changed, and the codification of those factors, and new ones, in the *Divorce Act*.

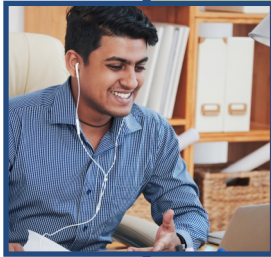
The SCC’s decision is significant for all family law professionals who work with separated parents on child related issues and on proposed relocations. Although the *Divorce Act* amendments codified the framework for relocation cases that was set out in the SCC’s decision in *Gordon* and the caselaw that refined that framework over the last 25 years, there are some notable changes.

While *Gordon* rejected a legal presumption in favour of either party, the *Divorce Act* now provides for a burden of proof where there is a prior parenting order, award or agreement (s. 16.93 of the *Divorce*

## RELOCATION—continued

### WHY JOIN AFCC-O? Reason #4

#### We invest in training and new professionals



- ⇒ We created the Intensive Child Protection Training Program and the Walsh Family Law Moot and Negotiation Competition to train students and young lawyers
- ⇒ We produced “Adult Children of Divorce”, a short film used for training across the province

Act). And, while the analysis in *Gordon* limited the consideration of a moving party’s reasons for relocating, this is now a specific consideration of the child’s best interests analysis (s. 16.92 (1)(a) of the *Divorce Act*).

The new *Divorce Act* amendments also address issues raised in the case law over the past few decades which were not present in *Gordon*. Courts are not to consider a parent’s testimony about whether they would move with or without the child (s. 16.92 (2) of the *Divorce Act*) and they must now consider any type of family violence and the impact on the perpetrator’s ability to care for the child (ss. 16 (3)(j) and 16 (4) of the *Divorce Act*). As well, with respect to contact between parent and child which should be according to the child’s best interests and not the “maximum contact principle”.

These issues and the analysis that is now required under the new framework are further discussed below.

#### Shared Parenting and the “Great Respect Principle”

In general, the pattern that has emerged over time is that a move initiated by a primary caregiver is more likely to be granted whereas it is less likely in the case of shared parenting (*Barendregt, supra* at para. 121). Section 16.93 of the *Divorce Act* now sets out this presumption. In shared parenting situations, the parent who seeks to relocate has the burden of proving that the relocation is in the best interests of the child, whereas if the primary caregiver wishes to relocate then the other parent has the burden of proving that the relocation is not in the best interests of the child.

#### Reasons for Relocation

*Gordon* restricted whether courts could consider a moving party’s reasons for wanting to move. However, the courts have found that the reason for the move bears on the best interests of the child (*Barendregt, supra* at para. 126). The new amendments to the *Divorce Act* now require the courts to consider the moving parent’s reasons for relocation (s. 16.92 (1)(a) of the *Divorce Act*). This factor should be considered

*Continued on page 18*

# AN ASSESSMENT OF PSYCHOLOGICAL FUNCTIONING – A TEMPLATE FOR UNDERSTANDING AND CONSIDERATION

*By Dr. Raymond M. Morris*

Psychologists are routinely asked to prepare psychological assessments of individuals who are involved in a family law dispute. It is critical that the assessor appreciate that the assessment of psychological functioning is unique when the question arises at the nexus of the legal and mental health systems during a family law dispute, and that it presents considerations that do not typically arise when an assessment is requested in the context of educational, vocational, mental health or other issues. The assessor must understand and manage the expectations of the court and/or legal advocates, as well as attend to a psychologist code of ethics, and standards of practice which might provide some limitations. For example, one can assess psychological functioning, but not render recommendations regarding decision making, and parenting time arrangements without conducting a comprehensive Section 30 Assessment pursuant to The Children's Law Reform Act.

This article will set out a proposed template for conducting psychological assessments in the context of a parenting dispute. At present, there is no accepted protocol or guidelines for collating the important aspects of the data gathered, nor format to report such to the sources of referral.

An assessment of psychological functioning in the above noted context has a specific focus on the evaluation of mental health, and/or personality and social adjustment of an individual as it might impact communication/co-parenting, decision making, and parenting time.

It is important to note as alluded to above, that the assessment of psychological functioning in the above regard cannot be considered equivalent to a Custody and Access Assessment pursuant to Section 30 of The Children's Law Reform Act, or Section 112 of The Courts of Justice Act, nor equivalent to a Parenting Capacity Assessment. It is rather an important component of these more comprehensive evaluations.

## THE ASSESSMENT

There are two prerequisites for the conduct of an assessment of psychological functioning in the family court. The first relates to qualifications. The assessor must have relevant educational background, training under supervision given the uniqueness of this particular endeavour, and both work experience and knowledge of relevant literature. The second prerequisite and consideration in the evaluation of such an assessment is that the work must be comprehensive, although specific to the referral issue(s) of concern. It would therefore be of great assistance to the assessor, if the source of referral (i.e. the judge, lawyer) could provide a focus or a particular issue of concern as a basis for the referral.

## ASSESSMENT METHODOLOGY

It is imperative that the approach to gathering clinical information be comprehensive. In order to achieve this, there are three main components to the process, each of which is essential to the completion of a comprehensive assessment of psychological functioning. The first involves clinical interviews, the second psychometrics (testing), and the third information gathered from external sources.

**A) Clinical Interview:** Clinical interviews with the individual in question should include, but not

necessarily be limited to gathering information regarding relevant history, that is, recent background to the referral for assessment, and a personal history, wherein, one can ascertain whether or not there were antecedents or predisposing factors in the development of personality that might impact psychological functioning in general. In addition, a history of alcohol and drug use, as well as a mental health/emotional status examination related to mood, cognitive, and behavioural functioning is gathered. Gathering the above information provides the primary basis for clinical observation and interpretation leading to initial clinical opinion regarding psychological functioning.

- B) Psychometric Evaluation:** Psychometric evaluation should include at least a combination of objective as well as projective personality tests, and other measures related specifically to the referral issues of concern. It is important that all of the tests chosen have been researched and have reached at least an adequate level of validity and reliability, meaning they have been found to measure what they have been set out to measure, and do so consistently overtime. One of the biggest problems with psychological testing is when the result of such are extrapolated to mental health/personality, or parenting issues that go beyond what the test was originally set out to measure. From a clinical perspective the psychometrics are an extremely useful comparison to clinically derived observations and interpretation, and therefore can serve to both support clinical observation and opinion, or add to a complex understanding of an individual's functioning.
- C) Externally Sourced Information:** It is expected that information would be gathered from external sources, including, but not necessarily limited to previous contact with professional collaterals or agencies, such as previous assessments or clinical reports, and on occasion depending on the referral issue the interview of significant others who are a major participant in the subject's life, and/or support system.

## **ASSESSMENT REPORT**

The assessment report should include a summary of all of the salient clinical observations and interpretation emanating from the three components of investigation. There should be a discussion section in which clinical observations and interpretation from all sources of data provides a basis for the assessor's opinions related to the individual's mental health in general, and personality and social adjustment as it might impact upon issues of concern. If the assessor deems it necessary to provide a diagnosis, then the criteria for arriving at such must be included in the discussion. There must also be logic and coherence between the summary of data collected and the final clinical opinion related to psychological functioning. Recommendations can be made related to therapeutic/educative interventions, if deemed appropriate, and based upon the assessment findings.

## **CONCLUSION**

An assessment of psychological functioning related to a family law dispute should be comprehensive in its methodology, yet remain within the bounds of the referral mandate and particular issues of concern. In order to remain within the guidelines and standards of practice for psychologists, no recommendations can be made with regard to decision making or parenting time. Clinical opinion related to an individual's mental health, personality, and social adjustment and possible recommendations must be founded upon salient aspects of the clinical data gathered from clinical interviews, valid and reliable psychometric evaluation and relevant externally gathered information.

## RELOCATION—*continued*

to the extent that it is relevant to the best interests of the child (*Barendregt, supra* at para. 130). As well, a court should not be critical of a parent's reasons for moving and the move does not need to be justified (*Barendregt, supra* at para. 129).

### **Parenting Time That Is Consistent With A Child's Best Interests**

*Gordon* required the courts to consider the maximum contact principle between the child and both parents. However, this factor was to be applied as far as it was in the best interests of the child even though the SCC notes that some courts interpreted the maximum contact principle as a presumption in favour of shared parenting or equal parenting time. The SCC held that such "interpretations overreach" (*Barendregt, supra* at para. 135). Section 16 (6) of the *Divorce Act* refers to this factor now as parenting time consistent with best interests of child, which frames this in a more child-centric way.

### **Parent's Testimony About Whether They Will Relocate Regardless Of The Outcome**

The court should not consider a parent's willingness to move with or without the child as it gives rise to a "double bind". A parent can appear to be prioritizing its own interests before the child (i.e. stating that they will move regardless) or they risk undermining their case (i.e. stating that they will not move if unsuccessful). This did not arise in *Gordon* but was an issue identified in the caselaw thereafter. This has now been codified in s. 16.92 (2) of the *Divorce Act* as a factor that is not to be considered.

### **Family Violence**

Since the decision in *Gordon*, courts have acknowledged that any family violence that may affect a child's well-being should be considered in relocation cases (*Barendregt, supra* at para. 142). The SCC stated "[t]he suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable" and that "[h]arm can result from direct or indirect exposure to domestic violence..." (*Barendregt, supra* at para. 143).

The recent amendments to the *Divorce Act* recognize that family violence is a critical consideration to the child's best interests' analysis (sections 16 (3)(j) and 16 (4) of the *Divorce Act*). The *Divorce Act* broadly defines family violence in s. 2 (1), which includes psychological abuse, financial abuse, and conduct that is violent or threatening.

### **The Factors To Consider For Relocation**

Over the past 25 years, the courts have refined the framework set out in *Gordon* and the *Divorce Act* has now codified it, subject to certain exceptions noted above.

Given the development of the caselaw and the amendments to the *Divorce Act* on this issue, the SCC stated that the common law relocation framework can be reframed as follows: the significant question is still whether the relocation is in the child's best interests, having regard to the "child's physical, emotional, psychological safety, security and well-being. This inquiry is highly fact-specific and discretionary" (*Barendregt, supra* at para. 152).

## RELOCATION—*continued*

### WHY JOIN AFCC-O? Reason #4

#### We advocate for change



- ⇒ AFCC-O is regularly invited to provide input on draft legislation, including Bill C-78 We passionately support “Access to Justice” initiatives across the province
- ⇒ We have organized numerous events that encourage debate regarding family court reforms

The SCC, at para. 153, summarized the factors that should be considered as follows, which are illustrative and not exhaustive:

All factors related to the circumstances of the child, which may include the child’s views and preferences, the history of caregiving, any incidents of family violence, or a child’s cultural, linguistic, religious and spiritual upbringing and heritage.

Each parent’s willingness to support the development and maintenance of the child’s relationship with the other parent, and shall give effect to the principle that a child should have as much time with each parent as is in the child’s best interests.

The SCC, at para. 154, further stated that the following factors should also be considered, which are set out in s. 16.92 (1) of the *Divorce Act* as part of the best interests of the child analysis:

Reasons for the relocation;

Impact of the relocation on the child;

The amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child’s life of each of those persons;

The existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;

The reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and

Whether each person who has parenting time or decision-making responsibility or a pending

## RELOCATION—*continued*

application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

### **Relocation and the AFCC Ontario Parenting Plan Guide**

The AFCC-O Parenting Plan Guide (“Guide”) outlines significant principles with respect to relocation which are important to highlight given the new relocation framework.

As required pursuant to s. 16.9 (1) of the *Divorce Act*, a person who wishes to relocate with the child is required to provide 60 days’ written notice to the other party of the intended move. As the Guide points out, this may give parents time to discuss the issues surrounding the relocation and given the various factors that need to be addressed under the new framework, and the focus on the best interests of the child, this is an important period for parents to consider and discuss all issues from a child-centric perspective. The time may also allow parties to obtain the assistance of a mediator if they are unable to resolve the relocation on their own. The Guide states that parents should discuss changes to the parenting schedule, communications, arrangements and cost sharing to allow the child to maintain a strong relationship with both parents.

As well, as the Guide points out, one of the important factors that a court will consider on a relocation application is whether the proposed moving parent is supportive of the relationship between the children and the other parent and has a good plan for keeping that relationship despite the proposed relocation. Given the emphasis on the best interests of the child under the new relocation framework, this is a significant factor to consider. In the SCC case, the court highlighted that the mother was more willing to facilitate a positive relationship between the father and the children than not, and this was one of the factors that led to the court’s decision in allowing the relocation. As the SCC stated, at para. 8, the best interests of the child is a “...heavy responsibility, with profound impacts on children, families, and society.”

### **WALSH FAMILY LAW MOOT & NEGOTIATION COMPETITION**

**March 4, 2023**

**Students from all eight Ontario law schools will  
participate in our first in-person Walsh event since 2020!**

**Stay tuned to our website for event updates.**

**[afccontario.ca/walsh-family-law-moot-negotiation-competition](https://afccontario.ca/walsh-family-law-moot-negotiation-competition)**

**Sponsorship opportunities coming soon!**



## A TRIBUTE TO THE LEGACY OF WILLSON MCTAVISH



AFCC-O wishes to pay tribute to the legacy of Willson McTavish, who passed away on June 7, 2022. Willson oversaw the transformation of the Office of the Children's Lawyer into a critical component of Ontario's family justice system, and did so in a manner that reflects the guiding principles of the Association of Family and Conciliation Courts: the resolution of family conflict through education, innovation and collaboration.

Willson became the Official Guardian for Ontario in 1984. At the time of his appointment, the Official Guardian had been representing the rights of children, the unborn and the unascertained since 1827. Initially, the focus of the office was squarely on property rights of children. It was not until the 1940s that the personal rights of children came alive for the first time as a result of the Attorney General's by the rising divorce rate and concern about the effect of divorce on the children of the marriage. This led to a requirement in the *Judicature Act*, and subsequently in the *Courts of Justice Act*, that an "Official Guardian's Report" be prepared in every Ontario divorce case in which the couple had children.

At the time of Willson's appointment, the office was in disarray. A paper filing system was the only way to locate files. By rationalizing, redefining and modernizing the office, Willson left an indelible mark.

In particular, Willson pushed to dispense with the mandatory requirement for an "OG Report" in all divorce cases and replace it with a more meaningful process that made better use of the skills of social workers to help children and families and to assist the court. The *Courts of Justice Act* was eventually amended to provide that these reports would only be done pursuant to a court order. The Social Work Department was "professionalized": social workers prepared 'clinical' assessments (reports) and began to take an active role in trying to resolve cases, important roles that persist to this day.

Willson also realized his vision for the two professions of law and social to work together when needed to serve the interests of children in custody/access cases. Under Willson's leadership, these two groups of professionals began to engage with one another, consulting on cases, participating in joint training, and eventually developing the now well-established model of social workers assisting lawyers representing children in family law matters.

Finally, Willson ushered in the formal process of empaneling, training, and supervising the work of OG lawyers and social workers across the province.

Willson was an agent of change, who believed that real change began at the grass roots. He reached out to everyone who crossed paths with the office - travelling North to meet with Indigenous communities to understand the issues they faced; consulting with judges about how the office could

## A TRIBUTE TO THE LEGACY OF WILLSON MCTAVISH—*continued*

better respond to the needs of the court system; mailing quarterly newsletters to judges, lawyers, panel members and staff at the Ministry of the Attorney General to provide information about case outcomes, changes in procedure and upcoming educational sessions; meeting with individuals to address concerns about their interactions with the office; making himself available to panel members to discuss individual files or broader issues arising in their regions; preparing, researching and writing articles for publication in numerous legal newspapers and journals and speaking at conferences held by numerous legal education providers.

He also understood the value and importance of research. In 2001, he co-authored a research study with then doctoral candidate Rachel Birnbaum about differential interventions to post-separation visitation disputes, funded by the Department of Justice. Willson expanded the reputation of the office beyond the boundaries of Ontario; in 1992, he hosted, a conference of international children's advocates in order to share his expertise with other jurisdictions.

Willson was a relentless advocate for children. In 1988, a sixteen year old boy suffered burns to ninety percent of his body as a result of a fire in his home. Willson was instrumental in ensuring that funds raised were deposited securely with the Accountant of the Superior Court of Justice. He personally attended the discharge meeting at the Hospital for Sick Children and assisted in the planning and building of a new home for the boy. In 2000, the contamination of the water system in Walkerton, Ontario with e-coli caused extensive illness and a child's death. The Children's Lawyer intervened in the class action that arose from these events to hold the government agencies responsible for actions that may harm children.

In 1995, at his behest, the name of the office changed to better reflect the role it had come to play within the justice system, and Willson became the first Children's Lawyer for Ontario. He held this position until his retirement in 2002. He is fondly remembered by many as a fearless leader with vision, compassion, and tenacity.

*By Carolyn Leach, with contributions from Dr. Rachel Birnbaum, Justice Gerri Wong, Ann Lalonde, and Priti Sachdeva.*



**SAVE THE DATE**

**AFCC-O's 15TH ANNUAL CONFERENCE**

**October 20, 2023  
Toronto Reference Library**

## BECOME A MEMBER OF AFCC AND AFCC-O

### AFCC-Ontario is a chapter of AFCC International

To join AFCC-O:

1. Join [AFCC International](#), then
2. Elect to join the Ontario Chapter

**If you are not a member of AFCC and AFCC-O, now is a great time to join!**

AFCC International provides resources on issues that are important to family law professionals, as well as debates, dialogues, and discussion on ground-breaking research.

Membership includes:

- Webinars and conferences that are free or discounted for members; member-only access to webinar archives
- Free subscription to the quarterly journal, [Family Court Review](#)
- Access to the Member Directory and the Parenting Coordination Network (PCNet) discussion group



**Are you a member of AFCC but not AFCC-O? Consider this: your membership benefits both *you* AND *others in Ontario*. How?**

- You will be part of an Ontario-based interdisciplinary group of family justice professionals that allows you to be involved at the local level and supports you in your career and the profession;
- You will recoup the membership fee with free and discounted rates for participation in webinars and conferences that focus on family justice issues in Ontario; and
- Your membership fee helps fund local research projects and policy efforts to benefit families and family justice professionals in Ontario.

To join, visit <https://www.afccnet.org/Membership/Member-Categories> and select Ontario Chapter!

**Published by:**  
**ASSOCIATION OF FAMILY AND  
CONCILIATION COURTS, ONTARIO CHAPTER**

551 Lakeshore Road E, #124  
Mississauga, ON L5G 0A8  
[afccontario.ca](http://afccontario.ca)  
[info@afccontario.ca](mailto:info@afccontario.ca)

**Communications Committee:**

Kaitlyn McCabe (Chair), Carolyn Leach, Imran  
Kamal, Andrea Barclay, Shaista Durrani, Jennifer  
Aternino, Christine Doucet, and Golnaz Sara  
Simaei

**Administration, Layout, and Design:**

Kristy Joplin



**AFCC-O BOARD OF DIRECTORS**

Maxine Kerr—*Co-President*  
Carolyn Leach—*Co-President*  
Dr. Kim Harris—*Co-President-Elect/Treasurer*  
Kaitlyn McCabe—*Co-President-Elect*  
Justice Julie Audet—*Vice-President*  
Virginia Workman—*Secretary*  
Anisa Ali  
Andrea Barclay  
Chantel Carvallo  
Shelley Kierstead  
Archana Medhekar  
Justice Heather-Ann Mendes  
Dr. Rana Pishva

**VOLUNTEER**

AFCC-O encourages members to be part of our committees. Often the pathway to board membership is through committee participation.

Contact [info@afccontario.ca](mailto:info@afccontario.ca) for more information

**CONNECT WITH AFCC-O**



Except where otherwise indicated, the articles in this AFCC-O Newsletter represent the opinions and views of the authors and do not necessarily represent the opinions or views of the AFCC, the AFCC-O, or any of the officers of either organization.