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## Postdivorce Counselling and Dispute Resolution: Services, Ethics, and Competencies Counseling et résolution de conflits suite à divorce : services, éthique, et compétences

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### ABSTRACT

This article orients practitioners to postdivorce counselling, assessment, and dispute resolution services. First, 11 services that mental health practitioners can provide to individuals and families following separation and divorce are described. I then discuss ethical issues that can arise with divorcing and postdivorce families. Finally, I describe how Canadian counsellor education programs provide a sound base for work with divorcing families and articulate the additional knowledge, skills, and attitudes necessary for specialized practice. Canadian counsellors, practicing with ethical awareness and prudence, can do important work to alleviate the suffering of divorcing families.

### RÉSUMÉ

Cet article sert à orienter les praticiens aux services de counseling, d'évaluation, et de résolution de conflits après divorce. On décrit d'abord 11 services que les praticiens de la santé mentale peuvent fournir aux individus et aux familles à la suite d'une séparation ou d'un divorce. On présente ensuite les enjeux éthiques qui peuvent se présenter quand on travaille auprès de familles en instance de divorce ou après un divorce. Enfin l'article suggère comment les programmes canadiens de formation des conseillers offrent une base saine pour la pratique auprès des familles en instance de divorce et explique les autres connaissances, techniques, et attitudes requises pour une pratique spécialisée. Les conseillers canadiens exerçant une pratique éthique sensible et prudente peuvent contribuer significativement à soulager les familles aux prises avec un divorce.

Separation and divorce are stressful for adults and children. Families change in many ways as a result of divorce. Structurally, living arrangements (e.g., parenting time, one or both parents' new partners, and contact with extended families) change. Functionally, tasks of daily living (e.g., school pick-ups, health care appointments, driving to sports and lessons) shift. Emotionally, the spouse initiating the separation may be well prepared, but the separation may come as a surprise to others. Legally, changes to property ownership and parenting arrangements are formalized by court order, usually based on the agreement of the parents. However, sometimes this requires protracted litigation.

Many counsellors find it difficult and stressful to work with divorcing and postdivorce families (Johnston, 2006). The adversarial nature of the legal system may complicate the difficult work of counselling clients through a significant life

transition. Working with divorcing and postdivorce clients invites a higher than usual proportion of ethical complaints, given the personal stake that many clients have in parenting conflicts, how adamantly they hold their positions, and how personally some clients take allegations of their shortcomings as parents (Greenberg, Martindale, Gould, & Gould-Saltman, 2004; Morris, n.d.). Accordingly, many counsellors avoid working with divorcing or postdivorce clients, especially those in high conflict.

In this article, I orient counsellors to work with individuals and families experiencing divorce. I start by describing 11 distinct services that counsellors and psychotherapists can assume, in order to assist counsellors in making informed choices about which services they may wish to provide in their practices. I then warn of ethical issues that may arise with divorcing or postdivorce clients. I assert that the competencies embedded in Canadian counsellor education programs provide a sound base for practitioners who wish to provide service to divorcing or postdivorce families, and describe the additional knowledge, skills, and attitudes that are necessary. Canadian counsellors and psychotherapists have an important role in providing services to divorcing families and can contribute significantly to the alleviation of suffering, making ethical decisions that balance compassion for children and parents suffering a difficult life transition with prudence and self-protection.

#### POTENTIAL SERVICES FOR COUNSELLORS AND OTHER MENTAL HEALTH PRACTITIONERS

I have distinguished 11 services that mental health practitioners can provide to divorcing and postdivorce families. These 11 services are listed along a continuum from therapeutic/supportive to evaluative. As divorces become more adversarial, the services that clients use become more evaluative, and client vulnerability increases.

##### *Adult Counselling/Psychotherapy*

Adults' reactions to divorce vary widely. Most divorcing adults adapt to divorce adequately, but those undergoing divorce are two to three times as likely to seek mental health treatment as those who are not (Ahrns, 1998). Parents may wish to consult about how to tell the children about the separation/divorce, handle transitions of parenting time, reconfigure parenting arrangements, select a school, address developmental changes, and/or deal with children's reactions. Parents often use this opportunity to improve communication, coparenting, and problem-solving skills. However, about one third of former spouses have significant difficulty establishing a healthy relationship with each other after divorce, and between 5% and 15% have what can be described as high-conflict relationships (Carter & Herbert, 2012), which are particularly distressing for children (Ahrns, 2004, 2007; Kelly, 2000). Accordingly, counselling can be useful to assist parents to manage their reactions and behaviour toward their former spouses.

Parents may seek counselling for feelings of loss, stress, depression, or guilt, which may compromise their functioning (Ahrns, 1998). Sometimes a family lawyer will refer a parent to a counsellor if the lawyer concludes the parent has greater than usual difficulty coping with the separation, divorce, or litigation (Mucalov, 2015). In addition to being motivated to reduce the client's suffering and improve the client's coping, a lawyer may wish to improve the client's position in litigation, a possibility of which counsellors should be mindful.

### *Child Counselling/Psychotherapy*

A child whose parents are divorcing may display behavioural problems in the immediate aftermath of separation. One quarter of children whose parents are separating, divorcing, or remarrying have adjustment difficulties, compared to about 10% of those whose parents do not divorce. Children's reactions and coping methods depend on their age and developmental status when their parents separate (Oppawsky, 2014). Young school-aged children tend to react to their parents' separation with sadness. They may show signs of insecurity, fearfulness, and helplessness, and ask many detailed questions about postseparation life. They may also feel guilty and blame themselves for their parents' divorce (Di Stefano & Cyr, 2015; Pelleboer-Gunnink, Van Der Valk, Branje, Van Doorn, & Deković, 2015). Older school-aged children (i.e., ages 9 to 12) tend to express more anger about the divorce, in addition to loneliness, loss, shock, surprise, and fear (Weaver & Schofield, 2015). They may also reject the parent they blame for the divorce. Adolescents whose parents are divorcing also experience loss, sadness, anger, and pain. However, they may also act out by committing delinquencies, by using alcohol and drugs, through aggression, and through sexual behaviour (Arkes, 2013; Boring, Sandler, Tein, Horan, & Vélez, 2015).

There are a variety of approaches to working with children whose parents are divorcing. Play therapy (Chafe, 2016; Gardner & Yasenik, 2008) is particularly popular. Chang (2013) has suggested that because children are embedded in families and rely on them for basic care, all child counselling can be seen as family counselling. While individual therapy with children can offer a safe place to express their concerns and learn to cope and manage their behaviour, it is necessary to enlist the support of the child's social network to support changes to "ripple on" (Chang, 2013, p. 8). Some former spouses may be able to set aside their animosity for each other to assist their child to cope (Carter, 2011).

### *Family Counselling*

In some situations, it is more appropriate to meet as a family. Issues might include practical matters such as how living in two homes will change routines and tasks; emotional issues such as the hurt, loss, and/or anxiety experienced by the children; or dealing with children's sense of responsibility for the divorce or loyalty issues. When parents are cooperative with one another and able to manage their potential anger, hurt, or loss in session, this may be manageable for most counsellors. Because Canadian counsellor education programs mainly emphasize counsel-

ling individuals, therapists should take special care with multiple clients in the room. Affirming one client's perspective may be perceived as disqualifying someone else's, unless one speaks carefully. For example, when reflecting content, meaning, or affect, it is useful to frame it as one individual's experience, while affirming the alternative (and perhaps even contradictory) views of others (Chang, 2015).

### *Mediation*

Mediators assist divorcing couples to express their positions and negotiate to reach an agreement. Typically, mediation is brief and structured (ranging from 1 to 10 sessions), focused on developing agreements on specific issues (Emery, Sbarra, & Grover, 2005), and may encompass parenting matters (e.g., parenting time, decision-making) and/or finances (e.g., property division, child and spousal support) depending on the needs of the separating couple and the competence of the mediator. Usually, mediation is *without prejudice*, meaning that the content discussed (including any agreements reached, but later rescinded) and the behaviour of the parties may not be used in evidence in litigation. The agreements reached in mediation may form the basis of a court order (i.e., a "consent order").

There are several distinct approaches to mediation. To name just a few, *facilitative mediation* (Mayer, 2004) focuses on the parties' positions and interests, commonalities, and negotiated agreements. The mediator works on the issues articulated by the clients, facilitating the process, leaving the outcome between the couple. Bush and Folger (1994), developers of *transformative mediation*, emphasized empowerment of the clients even if no agreements are reached. In *evaluative mediation* (Lowry, 2004), a mediator with background knowledge of typical outcomes in the disputed issue(s) shares this information with clients in an attempt to influence them to accept a settlement. In *therapeutic mediation* (Irving & Benjamin, 2002; Pruett & Johnston, 2004), the mediator assumes that emotional issues underlie the disputed issues, and uses quasi-therapeutic interventions to help clients process their issues and enhance the possibility of settlement. In *strategic mediation* (Kressel, 2007; Saposnek, 1998), the mediator develops a family systems conceptualization and intervenes purposefully to interrupt problematic patterns of interaction to achieve agreement.

### *Parenting Coordination*

Parenting coordination is a relatively new alternative dispute resolution process, usually implemented after the settlement of parenting matters. It is useful when parents have a history of high conflict or protracted litigation and require ongoing support to make decisions (Coates, Deutsch, Starnes, Sullivan, & Sydlik, 2004; Higuchi & Lally, 2014; Kelly, 2008). Ideally, a parenting coordinator (PC) meets proactively with parents to focus on the child(ren) by developing practical applications of court orders and parenting agreements, making timely and developmentally appropriate decisions, and preventing recurring litigation.

PCs serve three intertwined functions: First, they educate parents about the developmental needs of children, and the likely effect of parents' behaviour and

parenting plans on children. Second, they provide alternate dispute resolution, assisting parents with recurrent issues (i.e., extracurricular activities, health care, school, vacations, and holiday time). Finally, in some jurisdictions, at the direction of the court and subject to provincial or territorial legislation, PCs may be permitted to arbitrate parenting issues. The product is an arbitration award, a binding decision that is enforceable in court (Coates et al., 2004; Higuchi & Lally, 2014; Kelly, 2008).

Parenting coordination is generally not *without prejudice*. A PC may be authorized to speak with other professionals involved with the family, and the court may require PCs to provide information about outcomes and the conduct of the parents. There is preliminary evidence of the benefits of parenting coordination for families and the courts (Henry, Fieldstone, & Bohac, 2009; Higuchi & Lally, 2014; Scott et al., 2009).

### *Therapeutic Facilitated Access*

*Therapeutic facilitated access* is a structured process to renew a relationship between a parent and child after an interruption of contact due to alienation, estrangement, or a parent's inappropriate behaviour. The counsellor monitors the interactions between parent and child, coaches the parent, and supports healthy parent-child interactions. Therapeutic access facilitation is often paired with supervised access (Abercromby, 2009).

### *Parental Conflict Intervention*

In some jurisdictions, the court may direct a quasi-therapeutic intervention to remediate problematic patterns of interaction between the parents, hopefully developing a mutually agreeable parenting regime. Parents who are court-directed to this type of service are typically experiencing a high level of conflict. For example, a justice of the Court of Queen's Bench of Alberta (CQBA) may direct an intervention with a mental health professional who "is appointed by the Court to assist the Court and the parties to find a resolution to their conflicts, using tools appropriate to the family and the particular issues before the Court" (CQBA, 2012, p. 2). The process is primarily settlement focused and secondarily therapeutic. Carter (2011), Johnston (2006), and Lebow and Newcomb Rekart (2007) have developed treatment approaches for high-conflict families.

### *Formal Assessment and Expert Witness Testimony*

Mental health practitioners are sometimes asked to provide a formal assessment to produce expert opinion and recommendations in response to a particular referral question (CQBA, 2012; Zumbach & Koglin, 2015). If both parents request the assessment, the practitioner is appointed as the court's witness. If the parties cannot agree, one party is permitted to call the practitioner as his or her witness. Of course, any assessment of a child requires parental consent or a court order. The subject of such an assessment, for example, could be

- the risk of a parent abusing a child,

- the risk that a parent's substance misuse will compromise his or her parenting,
- the effect of a parent's depression on parenting capacity,
- the nature of the estrangement between a parent and a child,
- an older child or adolescent whose preferences about parenting time or residence are being questioned by one parent, to determine if he/she is being unduly influenced by a parent ("voice of the child"),
- or any other questions requiring expert opinion.

The practitioner does not comment on overall proportion of parenting time.

### *Bilateral Custody Evaluation*

In a small number of cases, a mental health practitioner is court-directed to conduct a bilateral custody evaluation. This type of assessment provides information and recommendations to assist judges to decide the best interests of the child, assessing the "fit" between parents and child—the balance between each parent's functional abilities and the individual needs of the child. The evaluator conducts clinical interviews with parents, observes parent-child interactions, administers psychological tests, interviews children, reviews court documents, and consults collateral contacts (Ackerman, 2006; Hynan, 2014; Tolle & O'Donohue, 2014). Usually, a bilateral evaluator makes recommendations about the proportion of parenting time. Relatively few practitioners offer such assessments because of the specialized training needed and most counsellors' reluctance to assume an expert position (Emery, Rowen, & Dinescu, 2014). Occasionally, bilateral evaluators request that counsellors (with the clients' consent or a court order) provide information after having counselled an individual, couple, or family.

### *Providing Expert Evidence on Psychological Issues*

Mental health professionals are occasionally called upon to give expert evidence on psychological issues without performing an assessment. For example, an expert could testify on the literature on same-sex couples as parents, the effects of a particular parenting schedule on attachment, the conditions necessary for a child to develop a secure attachment with a parent, the effects of prolonged exposure to domestic violence on children, and so on (Kisthardt & Handschu, 2015; Lonsway, 2005). Austin, Dale, Kirkpatrick, and Flens (2011) also referred to this role as an "instructional testimony" (p. 57).

### *Litigation Support*

A practitioner can be contracted by a lawyer to review another professional's report or file to advise on whether he/she has exercised sound methodology, followed professional standards, and reached conclusions and recommendations based on the data (Austin et al., 2011; Kisthardt & Handschu, 2015). A litigation support consultant does not reassess the parents or make alternative recommendations, but instead may advise legal counsel about cross-examining the assessor; submit a written critique, which may be placed in evidence; or hear the evaluator's evidence as it is being given in order to critique it.

## ETHICAL CHALLENGES WITH POSTDIVORCE FAMILIES

Some of the services counsellors offer to help divorcing and postdivorce families may pose ethical challenges. In this section, I review several of the most common ethical issues that arise and suggest strategies for maintaining an ethically sound position.

*Change in Therapeutic Agenda and Participants*

Separation often changes the participants in counselling. Deciding to separate, one spouse may cease couples counselling. The Canadian Counselling and Psychotherapy Association (CCPA) *Code of Ethics* (CCPA, 2007) requires counsellors to clarify the relationship between the client(s) and counsellor when the client system is more than one person. If one spouse wishes to continue counselling, the counsellor may feel torn between the desire (and the ethical imperative) to provide continuity of care, and the need to avoid an inappropriate dual relationship. The partner who discontinues counselling may believe the counsellor is siding with the remaining spouse. Minimally, the withdrawal of one person from counselling requires a reclarification of confidentiality provisions, and a conversation about how the relationship dynamics might change with both partners. Recently, a regulatory college found a practitioner's conduct lacking, not because the practitioner saw a client individually after doing couples therapy or failed to discuss the change with each party, but because that practitioner failed to document the discussion in the file (College of Alberta Psychologists [CAP], 2012).

Even if the same family members continue therapy, the therapeutic agenda will likely change. Couples counselling may be transformed into separation counselling or consultation on postdivorce parenting. Counsellors must be vigilant to know when issues are entering the domain of mediation or parenting coordination, as described above, so they do not end up fulfilling dual roles (American Psychological Association [APA], 2010; Greenberg & Shuman, 1997).

*Seeing Children of Separated or Divorced Parents*

*Recent separations.* When a couple living together brings their child to counselling, the counsellor can usually assume that one parent's consent for counselling is adequate. On the other hand, counsellors should take care when asked to see children of recently separated parents, when the atmosphere is typically most fraught with urgency and distress (Ahrons, 2011). When a separation is recent, and especially before a court has made an order for parenting (in many cases, an interim order precedes a final one), one should not assume that both parents are in favour of counselling. They may simply disagree on the need for counselling, with one believing the children are "just fine," and the other seeing their distress. Or one parent may be deterred by a private practitioner's fees, especially if it is still unclear how expenses for the children will be divided under Section 7 of the Divorce Act (1985) and if finances are tight (Ahrons, 2011).

In more conflictual separations, one parent may believe that the other is recruiting the counsellor to build a case in potential parenting litigation. When receiving a request from one parent to support a child through a marital separation, it is wise to ask if the parents agree. It is necessary to clarify one's therapeutic role with each parent, reiterating that you aim to support their child, not their position in litigation. Also, reaffirm that each has equal access to information about the child. Although this does not guarantee a counsellor will not be compelled to give evidence, it clarifies the counsellor's intent.

*After parenting has been decided.* In other situations, parenting issues have been finalized (usually, but not always, when a divorce has been granted). A parent requesting counselling for a child may state that he/she has "sole custody," suggest that the other parent is uninvolved with the child, or maintain that the other parent will be "just fine" with your therapeutic involvement. Some parents may interpret a court order specifying parenting generously in their favour. Therefore, it is worthwhile to remember that in Canada, "custody" generally refers to decision-making on issues such as education, health care, and religion, and is a separate issue from residence (Slinko, 2013). This is different from American terminology, which refers to "physical" and "legal" custody. Currently, in Canada, divorcing spouses are generally granted "joint custody" or "shared parenting," requiring shared decision-making. It is unusual for a court to give sole decision-making on education or health care to one parent, unless the other parent's conduct has been found to be egregious. If in doubt, counsellors should review and retain a copy of the court order specifying the parenting arrangement. In many cases, the parents are relatively friendly, and a phone conversation with the less involved parent will reveal that he or she is motivated to help the child by being a part of the child's counselling (Spelliscy, 2012). Alternately, some less involved parents are perfectly happy to permit a counsellor to meet with a child as long as they do not have to be involved (and do not have to pay).

A more problematic situation occurs when a parent initially requests counselling for a child, but later wishes to use the counsellor's work to support a court application for an increase in his or her parenting time. Counsellors are more vulnerable to this if they neglect to clarify the parameters of their involvement before counselling begins. A parent with this agenda may simply not select a counsellor who makes his or her position clear at the outset of counselling.

In some contentious postseparation parenting situations, a court directs *reunification counselling*. This is an umbrella term to refer to counselling interventions designed to renew the relationship between a parent and a child who has refused contact with that parent. Fidler and Bala (2010) provide an overview of situations in which such a refusal occurs, and described appropriate counselling interventions. This is a specialized focus requiring particular training (Friedlander & Walters, 2010). This is discussed below.

*Confidentiality and access to information about a child.* Clients have access to their health records (*McInerney v. MacDonald*, 1992); normally a guardian exercises this on behalf of a child, with unfettered access to a child's records. However,

there are significant exceptions to this. For example, CAP's *Standards of Practice* (2013) permit a psychologist to withhold information from parents if an exception is negotiated at the beginning of counselling. In other instances, a "mature minor" (usually, but not always, an older adolescent) may consent to treatment on his or her own behalf, and personal information may not be disclosed to the parents (CAP, 2014).

Moreover, there is a trend toward respecting the privacy rights of preteens, as opposed to simply assuming that parents should have access to any and all information. For example, the Office of the Information and Privacy Commissioner of Alberta (OIPCA, 2012) ruled that a school board was justified in limiting the access of a father to information about his 10-year-old daughter, who was seeing a school counsellor, stating, "The very nature of counseling services generally implies that the individual obtaining the services provides his or her personal information to the counselor in confidence. The fact that the individual is a child makes no difference" (para. 48). Counsellors should know the applicable law in their jurisdictions.

Even in situations where "sole custody" permits one parent to consent to counselling for a child, it is useful to remember that divorce seldom alters guardianship (Spelliscy, 2012). Accordingly, counsellors should be prepared to deal with a parent who may not have been very involved in a child's life, but may wish to access the file. Although a counsellor may be legally and ethically "in the clear" seeing a child whose parent has sole custody, doing so without the knowledge of the other parent may replicate the secret-keeping that may be operating in the family and compartmentalization of a child's life (Imber-Black, 1993). This could expose a counsellor to the unpleasant possibility that the noncustodial parent will learn a counsellor is seeing the child and conclude the counsellor is doing something behind his or her back. In certain situations (e.g., domestic violence, child abuse, unplanned pregnancy, a child struggling with sexual minority identity), it is necessary to take great care in involving a noncustodial parent, and there are some cases in which it should not happen at all. However, secret-keeping is difficult, and a parent may have access to a counsellor's file anyway. In many, if not most, cases, it is both ethically prudent and clinically astute to invite a noncustodial parent to help you help his or her child.

### *Giving Evidence*

Approximately 80% of divorces proceed without conflict and litigation, while another 10% to 15% require just one court appearance, leaving about 5% to 10% that are highly litigious (Carter & Hebert, 2012). Despite measures like parent education, mediation, and parenting coordination, which are designed to reduce conflict, the Canadian legal system defines parents as adversaries. Legal processes (Alberta Justice, 2010) such as placing evidence before the Court by way of affidavit or testimony, cross-examination, and disclosure can exacerbate conflict. Counsellors do not usually start counselling intending to give evidence.

*The unplanned trip to court.* Some counsellors attempt to preclude court appearances by stating during their informed consent process that the purpose of counselling is not to give evidence. This may deter some clients from asking a counsellor to testify. However, despite a client's apparent agreement, it is not possible to avoid giving evidence if a lawyer can convince a judge that the counsellor's knowledge is relevant.

While a lawyer may believe the therapist has information that could help his or her client's position, this may be largely a "fishing expedition." The first indication of this is usually a letter from the lawyer requesting release of a counsellor's file or his or her attendance at court. Counsellors unaccustomed to legal issues may find a letter from a lawyer officious, even intimidating. However, a letter from a lawyer has no special power, and release of records still requires the consent of all competent persons (both spouses in the case of couple or child counselling) or a court order. Counsellors should respond to such requests (irrespective of its tone, *it is a request*) promptly, make every attempt to discuss with clients the implications of release of information, and document their actions carefully. Often, one client believes that a counsellor's input is favourable to his or her position, and the other does not.

If one client declines to consent, the next step is for the lawyer seeking information to obtain a *Notice to Attend as a Witness*, requiring the release of records and/or the counsellor's appearance. CCPA's (2008) *Guidelines for Dealing with Subpoenas and Court Orders* provides excellent advice, and the reader is advised to review this.

Assuming the client(s) have consented or there is a valid court order for a counsellor to give evidence, it is important for a counsellor to distinguish between the roles of a *fact* or *lay witness* and *expert witness*. Fact or lay witnesses may only testify about matters on which they have *direct knowledge*—what one has actually seen or heard. On the other hand, an expert witness is permitted to give opinion evidence and answer hypothetical questions. For expert evidence to be admitted: it must be relevant, it must be necessary (the issue is outside of the general knowledge of a judge or jury), the expert must be qualified via education and professional competence, and the issue under consideration is based on theory and/or technique that is generally accepted and tested (via research, peer review, and publication, including a known error rate) (Glancy & Bradford, 2007).

Whether one is a fact witness or expert witness depends on the scope of the evidence sought and the agreement between the witness and the lawyer who wishes to call the therapist's evidence. Most counsellors will be comfortable, or at least more comfortable, being a fact witness. If a practitioner is asked to draw conclusions and inferences, and express opinions, this requires being qualified as an expert. The lawyer seeking to use the practitioner's expert evidence presents the prospective expert's curriculum vitae to the court and questions the practitioner about his or her qualifications. Opposing counsel and the judge also question the practitioner, and the judge decides whether the practitioner qualifies.

Of course, the practitioner only gives evidence after having had adequate professional contact with those about whom he or she is expressing an expert opinion.

For example, while it might be appropriate to give evidence on a child's reactions to a particular parenting arrangement, based on contact with the child, it is not permissible to make recommendations about changing parenting time without a bilateral evaluation.

It is important to note that any written document, if placed in evidence by one party, gives the other party the right to cross-examine the author. Accordingly, a client's casual request or a lawyer's reassurance ("All I need is a brief letter—nothing extensive. You won't have to testify") means little (*Canada Evidence Act*, RSC, 1985).

Whether testifying as an expert or a fact witness, the witness should ask the lawyer calling the witness to prepare him or her. The legal principle that "there is no property in a witness" (Law Society of British Columbia, 2012, p. 23) permits either side to interview a witness before the witness testifies. The party whose position your facts or opinion favours will likely wish to prepare you. In court, their lawyer will lead you through your *direct examination* or *examination in chief*, emphasizing the evidence favourable to their position. The other party's lawyer will then cross-examine the witness. Further direct- ("re-direct") and cross-examination ("re-cross") may occur on evidence arising during testimony, and the judge may also question the witness. It is also common practice for private practitioners to be compensated for the time spent preparing and giving evidence in court. The lawyer calling the witness should estimate the likely duration of the practitioner's time, pay for it in advance, and undertake to cover any time that has not already been compensated for.

*Intending to be an expert witness.* Some practitioners develop practices intending to provide formal assessments, producing expert opinions and recommendations in parenting matters, expressed in a written report. Often, a report and the file are ordered to be released to a litigation support consultant, who reviews them in preparation for possible critique and cross-examination. When doing a formal assessment, it is preferable to be court-appointed, which defines the practitioner as the court's witness and therefore not working for either party. However, the practitioner may be retained by only one party. Either way, the opinion must be based on substantial professional contact with the client, and is subject to cross-examination.

### *Multiple Roles/Services*

Counsellors are cautioned against engaging in multiple roles or offering multiple services to clients. In cases of divorce, especially when clients are in conflict with one another, and when services are intended to provide evaluation or conflict resolution, it is inappropriate to provide multiple services. There is a distinction between evaluative and therapeutic roles, and therefore it is not appropriate to be a counsellor to a family, and then to do mediation or conduct any kind of evaluation with members of the same family. Adhering to one role decreases the likelihood that one will stray outside of one's expertise and be drawn into the conflictual patterns inherent in high-conflict separation and parenting (Greenberg et

al., 2004; Greenberg & Shuman, 1997; Love, 1997). The description of distinct services above is offered so that readers can be aware of whether they are confusing therapeutic and evaluative roles.

#### COMPETENCE AND SCOPE OF PRACTICE

Counsellors have much in the way of knowledge, skills, and attitudes that can be applied to provide any of the 11 services described above. Graduates of Canadian counsellor education programs have studied models of human functioning and theories of psychotherapy, psychological test construction and assessment processes, lifespan development (including child development), ethics, social justice issues, human diversity, and possibly models of family and couple counselling (CCPA, 2015; Task Group for Counsellor Regulation in British Columbia, 2007).

Through their graduate training, counsellors have developed skills for interacting with clients: listening, reflecting (content, affect, and meaning), purposeful questioning, summarizing, and structuring sessions (Cormier, Nurius, & Osborne, 2013). Additionally, competent counsellors have learned how to be present, regulate their emotional reactions when dealing with distressed clients, balance emotional presence and support with task orientation, and observe and conceptualize client presentation according to a coherent view of human functioning (Chang, 2011). Finally, competent counsellors are altruistic, compassionate, open, and nonjudgemental. The knowledge, skills, and attitudes displayed by practicing counsellors are necessary, but not sufficient, to be effective practitioners with clients during and subsequent to divorce. Also required are conceptual knowledge, knowledge of specific procedures and routes to recognition of competence, and personal preparedness.

#### *Conceptual Frameworks*

Those working with divorcing and postdivorce families must know the dynamics of marriage breakdown, separation, and divorce (Ahrns, 1998, 2007; Fisher & Alberti, 2000; Hetherington & Kelly, 2002), and, in particular, the effects on children (Ahrns, 2004; Wallerstein, Lewis, & Blakeslee, 2000). If working with families, practitioners need to be skilled at managing the working alliance with multiple clients at the same time, and have a working conceptual knowledge of one or more models of family therapy (Chang, 2015). In addition, it is essential to know the effects of high-conflict divorce and coparenting (Birnbaum & Bala, 2010), and about treatment approaches (Carter, 2011; Johnston, 2006; Lebow & Newcomb Rekart, 2007). Those working directly with children require specialized knowledge of child development, including normal development, child psychopathology, and attachment theory.

#### *Procedural Knowledge*

The 11 services described above require specific procedural knowledge. However, certification or endorsement for these activities is a “broken field” of statutory

regulation (provincial licensure in a health discipline), voluntary regulation (e.g., Canadian Certified Counsellor [CCC] in CCPA, Registered Clinical Counsellor in the BC Association of Clinical Counsellors [BCACC], or Clinical Fellow of the American Association for Marriage and Family Therapy), and specialty training and certification.

Practitioners considering offering services to divorcing and postdivorce families, especially those in high conflict, often ask what they “are allowed” to do (e.g., “Is a CCC permitted to do mediation?”). Because of the common law principle “everything which is not forbidden is allowed” (Slynn, Andenæs, & Fairgrieve, 2000, p. 256), and because provincial regulatory colleges provide broad scopes of practice in which few acts are restricted or protected, it is much more appropriate to ask, “How can I become as competent as possible?” This is especially the case because our ethics codes are meant to be aspirational and proactive (CCPA, 2007). For example, CAP (2010, p. 1) defines competence as “knowledge, skills, judgment, and diligence.” If one desires to offer specialized services such as mediation, parenting coordination, or formal assessment, one must be aware of training opportunities, routes for supervised practice, best practice guidelines, and certifications and practice rosters.

*Training opportunities.* Mediation is usually practiced by lawyers and mental health practitioners, but some mediators are not from either professional background, being trained only as mediators. Counsellors wishing to practice mediation can find training events advertised or sponsored by counselling, family therapy, social work, psychology, and legal professional associations, or post-secondary institutions’ departments of continuing professional education. Most provinces and territories have mediation or alternate dispute resolution (ADR) associations, and most have a section within the ADR association or a separate association dedicated to family mediation. Family Mediation Canada, a national professional association that advocates for the field of family mediation, operates a certification process for family mediators. In Quebec alone, mediation is a restricted act (*Regulation Respecting Family Mediation*, CQLR c C-25, r 9, 2015) that requires professional licensure as a lawyer, psychologist, social worker, family therapist, counsellor, or notary, 3 years postlicensure practice, 60 hours of training, and 10 supervised mediation files (Committee of Accrediting Organizations in Family Mediation [CAOFM], 2012).

With respect to formal assessment, all Canadian counsellor education programs require at least one course on assessment processes, covering test construction, reliability and validity, varieties of psychological tests (i.e., vocational, cognitive, achievement, and personality), assessment interviewing, and the process of integrating multiple types of assessment data. This gives graduates an adequate foundation to begin training and supervised practice in specific types of assessments. The Association of Family and Conciliation Courts (AFCC)—an international organization composed of mental health professionals, lawyers, and judges—has provincial chapters in Alberta and Ontario, and delivers training at provincial, state, and regional conferences throughout North America. Division 41 of APA

(Psychology and Law) has biennial meetings that often include training pertaining to high-conflict parenting and child custody work.

*Routes for supervised practice.* Although many counsellors in community practice will see clients going through divorce, the more specialized services of mediation, parenting coordination, and evaluation tend to involve high-conflict situations. Working with clients in high-conflict divorce is not for dabblers. A practitioner who focuses on serving these families would do well to find a practitioner or site that focuses on high conflict and has the competence to provide adequate supervision. Some provinces or regions provide publicly funded family court-oriented services, offering mediation, conflict resolution-oriented intervention, and bilateral custody evaluations on a subsidized or fully funded basis, usually connected with the courts. Often parents are court-ordered to participate in services.

Some private practices focus on high-conflict family matters. When approaching a private practitioner for mentorship, keep in mind that, for a private practitioner, providing supervision would be an *opportunity cost*, diverting time away from other business endeavours. Accordingly, it is advisable to approach a potential supervisor with a business plan (Grodski, 2000), suggesting how the novice practitioner and the mentor can mutually benefit. It may take some time before a new private practitioner gains the trust and confidence of the family lawyers and judges who will make referrals. Some locales offer low-fee mediation, parenting coordination, intervention, and evaluation, sometimes subsidized by the provincial ministry of justice. These provide the opportunity to acquire skills, market your services, and, most importantly, contribute to the well-being of children and families and offer much-needed services to the legal community. Family lawyers tend to refer to mental health practitioners who are known to them (Mucalov, 2015), so associating with an established practitioner or program is an important first step.

*Best practice guidelines.* Best practice guidelines are published by professional associations and regulatory bodies. AFCC and APA each publish guidelines for custody evaluation (AFCC, 2007; APA, 2010) and parenting coordination (AFCC, 2006; APA, 2012). AFCC (2001) has also developed them for mediation. CCPA (2015) provides general guidance within its *Standards of Practice* on “custody-access issues.” None of the provincially legislated colleges for counsellors (i.e., Ontario, Quebec, or Nova Scotia) have developed guidelines for these practice areas. In Quebec, the CAOFM (2012) has published practice guidelines that are binding on all mediators, reflecting that family mediation is a restricted act under Quebec’s Civil Code. In British Columbia and Ontario, the colleges of both psychology and social work have developed guidelines for custody evaluation, as have BCACC and the Newfoundland and Labrador Association of Social Workers. Practitioners who are members of a college or association must abide by that organization’s guidelines.

*Certifications and practice rosters.* Some professional associations award a certification based on training and supervised practice. For example, Family Mediation Canada certifies family mediators, and the Alberta Family Mediation Society (AFMS) awards the Registered Family Mediator designation. Both associations protect title among their members. However, except for Quebec (CAOFM, 2012),

family mediation is not a controlled or restricted act in any Canadian jurisdiction, so while it is advantageous to hold a designation signifying competence, it is not legally necessary.

The same holds true with custody evaluation, parenting coordination, and arbitration. The accepted practice (sometimes market-driven) in a given location and the organization offering the designation determine whether a designation garners recognition. For example, the Professional Academy of Custody Evaluators offers the Nationally Certified Custody Evaluator designation, but it has not been widely adopted by practitioners nor required by courts (Larry Fong, personal communication, September 24, 2015). On the other hand, AFMS awards Registered Parenting Coordinator and Arbitrator status, which appears to be growing in acceptance by lawyers and judges (Tara Fitch, personal communication, October 14, 2015). ADR Institute of Canada awards Chartered Arbitrator status, which is commonly obtained by lawyers who arbitrate a wide range of issues, including corporate and employment matters that might otherwise go to court. Only a small proportion of mental health practitioners arbitrate parenting issues and, accordingly, few hold this designation.

Some jurisdictions have established practice rosters for specific professional activities. For example, Mediate BC maintains a roster of family mediators. The BC Parenting Coordinators Roster Society similarly maintains a list of qualified practitioners, and has adopted practice guidelines for parenting coordination.

While the lack of a specific designation does not prohibit one from offering any given service, holding a designation may assist others, as well as practitioners themselves, to recognize their competence. It may be useful when marketing services in private practice. Most importantly, a designation documents entry-level skill and knowledge, which are necessary to fulfill the ethical imperative of competence.

### *Jurisdiction-Specific Legal Authorities*

Readers have noted that I have provided many examples from Alberta, where I practice. These include CQBA “Practice Notes” that provide guidance to judges, *Standards of Practice* and rulings of my provincial regulatory body (CAP, 2012, 2013), and a finding of Alberta’s Privacy Commissioner (OIPCA, 2012). Of course, readers are bound by federal and provincial legislation, decisions of courts and quasi-judicial bodies, and professional regulatory colleges in their home jurisdictions. Competence requires adequate knowledge of these jurisdiction-specific provisions. Readers are advised to consult a trusted practitioner, attend training, or consult legal counsel if in doubt about their legal obligations.

### *Personal Preparedness*

Individuals, couples, and families experiencing divorce are common in our clinical practices. Besides the sometimes thorny ethical issues in these matters (Nuttgens & Chang, 2015), these client situations invite, and even compel, us to confront our own issues (Murphy, 2013; Wallerstein, 1990), especially if we find one spouse’s behaviour egregious (Silverstein, 1998). We owe it to our clients to

make sure we can approach such issues in an even-handed way, which may require self-reflection or consultation with colleagues who can be trusted with both our personal information and our clinical dilemmas.

It is even more stressful to work with high-conflict divorcing families (Eddy, 2012), especially where parents are in conflict about parenting time and parenting practices. Stahl (2009) suggested that work with parenting disputes and child custody may be the most challenging type of psychological work. Counsellors enter the profession because of their altruism and their belief they can make a difference (Chang, 2011), and may not have a high tolerance for conflict, especially when a good outcome might be to do little more than deescalate “open warfare” to an armed truce, and thereby mitigate but not eliminate negative effects on children.

US data indicate that high-conflict divorce and child custody situations generate more regulatory complaints than any other practice area (Stahl, 2009). On the other hand, when done carefully and well, this work is extremely satisfying, knowing that the work is helpful to an overburdened court system and mitigates the distress of vulnerable children.

#### SUMMARY

In this article, I have described the various services or roles that counsellors can assume with clients navigating divorce. I then described some of the ethical pitfalls that may present with such clients, and recommended some actions to minimize ethical risk. Finally, I described how graduates of Canadian counsellor education programs might acquire the competence to work with divorcing clients and, in particular, high-conflict divorce and parenting. As can be seen by the number of services that counsellors can offer to divorcing clients, this work can be complex, stressful, and ethically challenging. However, Canadian counsellor education programs provide the baseline knowledge and many generic skills that counsellors can build upon as they develop the competence to perform the challenging and rewarding work with these clients.

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