

## Family

# Increasing challenges with high conflict family cases

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(October 28, 2020, 11:17 AM EDT) -- While most parents who separate are able to make plans for their children on a consensual basis, perhaps with the assistance of lawyers or mediators, there has been a marked increase in the number of high conflict disputes that require resolution in Canada's family courts. We report here on some preliminary findings on our research project on high conflict family cases in Ontario.

This research project is a collaborative effort involving family justice professionals, child welfare agencies and the Office of the Children's Lawyer. The project aims to increase understanding and make recommendations to help the family justice system and professionals better respond to these very challenging cases.

### Increased incidence

One part of the research has been to identify and study reported judicial decisions over the past decade. We searched reported English language family decisions that the judges characterized as "high conflict." In Ontario, the number of these cases in the decade from 2009 to 2019 rose from 35 to 144.

While some of the increase may be attributable to growing judicial awareness of the effects of conflict and a greater willingness to confront parents with the reality of their situation, there has clearly been an increase in the actual incidence of these cases, as reported in other countries.

Although our research does not directly address the causes of this increase, one factor may be a growing incidence in personality disorders. The increasing use of social media, texting and the Internet may also play a role. The fact that fathers are more involved in parenting, both in intact families and after separation, is on the whole a socially positive development, but the growing number of shared parenting cases also creates a greater opportunity for interaction between former spouses who may have high degrees of hostility towards one another.

Whatever the causes, the trend is clear, and the challenges for the justice system and the harm to children from parental conflict are also apparent.

### Differentiating high conflict cases

For courts, lawyers and clinicians to properly address high conflict and make plans that promote the best interests of children, it is important to distinguish different types of high conflict cases. In a majority of cases, both parents are contributing significantly to the conflict and both may be responsible for poor communication.

But in a significant minority of cases, one parent clearly has primary responsibility, such as where one is a perpetrator of intimate partner violence, or there is alienating behaviour by only one parent. It is also important to recognize cases where one parent has significant mental health or substance abuse issues.

There is a growing tendency for parents in high conflict cases to involve child protection and police in their post-separation disputes. While these agencies can have a critical role in protecting the vulnerable, especially children, they are increasingly investigating cases with highly contested facts and with parents, and often their professional supporters like therapists, providing very different versions of events.

There are added challenges if there are concurrent proceedings in the family, child protection and criminal justice systems. Improving co-ordination and communication is needed to result in more effective and efficient responses.

### **Perspectives of social workers**

As part of this research project, focus groups were held with 53 child protection workers and clinicians from the Office of the Children's Lawyer. Almost half of the participants reported that high conflict cases are more challenging to deal with than the cases that they regularly work on.

Many child protection workers find these cases more stressful than cases involving abuse and neglect allegations without parental separation, and characterized these cases with words like *chaotic, complicated, difficult, emotional, exhausting, scary, straining, toxic* and *vindictive*. These social workers recognize that the cases are challenging for all of the professionals involved, including judges and lawyers.

The parents in these cases often have *poor communication skills* (e.g., yelling, arguing, violence) and *poor problem-solving abilities*, that result in further misunderstandings and conflicts that inhibit their ability to work in a co-operative manner to co-parent their children.

One respondent commented on parents in high conflict cases: "I find that very rarely are they able to self-reflect about how their own part is affecting the child." Another observed that these cases too often involve "parents speaking poorly about the other parent to the child, not being able to have focused conversations through e-mail or text in terms of planning for the child's well-being."

### **Conclusions**

This research project is exploring high conflict family cases from a number of perspectives to gain a better understanding of the complex dynamics of these cases. This project, however, was completed before the COVID-19 pandemic and lockdown. There are concerns that the pandemic has resulted in more tensions between parents, and more domestic violence, so there is a clear need to extend this research to consider the evolving circumstances.

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