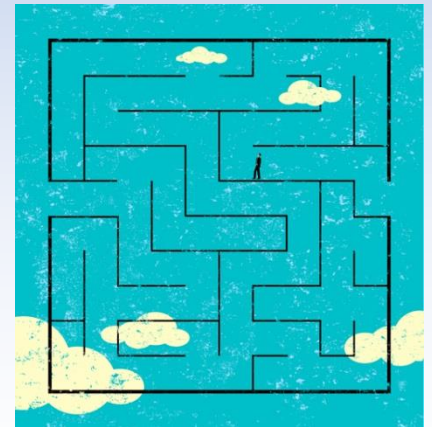


# Working with and Understanding High Conflict Separated Families: Challenges and Opportunities

Rachel Birnbaum, Ph.D.; RSW; LL.M.  
King's University College at Western  
London, Ontario



December 9, 2019  
Boost Child & Youth Advocacy Centre, Toronto

# Learning Goals

- Understanding the literature about high conflict families (e.g. myths and realities)
- Understanding the different types of services and interventions working with high conflict families (e.g. what works and what does not)
- Understanding the need for early intervention and interdisciplinary collaboration with family justice professionals

# DIFFICULTIES IN THE USE OF “HIGH CONFLICT”

- There remains no clear working definition of “high conflict”.
- Lack of consensus on predictive factors of high conflict.
- Social science research on high conflict is scattered, unorganized & terminology is inconsistent.
- Parents/lawyers and judges use “high conflict” to mean quite different things.....can lead to negative consequences for child-parent relationships.

# WHY UNDERSTAND HIGH CONFLICT DISPUTES?

Quality of the post-divorce relationship between parents is a critical factor in both children's and parent's adjustment following separation and/or divorce

(Amato Keith, 1991; Hetherington, 1993; Hetherington & Kelly, 2002)



# SOME CHARACTERISTICS OF HIGH CONFLICT FAMILIES

- PARENTS INVOLVED IN PROTRACTED LITIGATION FOR OVER 3 YEARS
- INVOLVED WITH A MULTITUDE OF PROFESSIONALS/AGENCIES
- PROFESSIONALS ‘FIRED’ (LAWYERS/MHP)
- BIAS CONCERNS OF JUDGE (JUDICIAL COUNSEL REFERRALS)
- 
- MULTIPLE ASSESSMENTS AND CHALLENGES/CRITIQUES
- REPEATED ALLEGATIONS OF CHILD MALTREATMENT
- CHILDREN EXPERIENCING PSYCHO-EMOTIONAL DIFFICULTIES

Johnston, 1994

# Research Literature To Date

## 16 studies surveyed since 2000:

- 3 from 2019 [Dept. of Justice Report, 2019; Francia, Millear, & Sharman, 2019; Polak & Saini, 2019]
- 3 in 2018 [Birnbaum, McCleary, Saini, & Bala, 2018; Mahrer, O'Hara, Sandler, & Wolchik, 2018; & Public Safety Canada Report, 2018]
- 2 from 2017 [Houston, Bala, & Saini, 2017; Jevne & Andenaes, 2017]
- 3 in 2016 [Black, Saini, Fallon; Braver, Sandler, Cohen, Hita, & Wheeler, 2016; Deljavan, Theoduloz, & Wall 2016; Joyce, 2016]
- 3 from 2010-2015 [Cashmore & Parkinson, 2011; Dept. of Justice Report , 2015; Saini, Black, Lwin, Marshall, Fallon, & Goodman, 2012;]
- 2 from 2000-2009 [Family Conflict Resolution Service Report, 2004; Gilmour, 2004]

# High Conflict Separations

(Birnbaum & Bala, 2010)

- High conflict characterized by distrust, anger, resort to courts, repeated litigation and often concurrent proceedings
  - Most resolve within 3 – 5 yrs
  - Some continue until children are adults
- Different & **often overlapping** situations of high conflict present range of legal issues in varying contexts
- 2/3 of high conflict cases are “bi-lateral”
  - both warring; often both personality disordered
- 1/3 unilateral
  - Need to support more reasonable parent to stay involved

# ....Explanations/Definitions

- Conflict is often not unilateral, but may be
  - More disturbed party may provoke “unreasonable” response
- Need for systems perspective on how conflict is encouraged and maintained by others (e.g. family, friends, professionals, community advocates)



# CONSEQUENCES

- **Parents:** emotional and psychological well-being, creates parenting problems, limits their ability to be attuned to the child.
- **Child:** maladjustment- stress, insecurity, agitation, shame, self-blame, guilt, helplessness, fear for own physical safety, etc.

# Myths and Realities About 'WHO' They Are

- They are not necessarily low income...often they can be very affluent
- Access to lots of resources (e.g. \$, advocates)
- They are not disempowered...they are fervent in their belief that an injustice has been done
- Committed to doing what's 'right' for their child
- Conflict junkies

# Legal Systems Engaged

- Parenting disputes are often the primary battlefield
- Criminal proceedings
- Child protection proceedings
- Youth criminal justice proceedings
- Civil proceedings
- Other administrative tribunals (e.g. CFSRB; immigration & refugee)

# Challenges for Family Justice System

- Family court agencies often serve as either the point of entry or the initial point of services for most parents with parenting disputes, staff must be equipped to deal with a wide range of issues and varying levels of conflict (Salem, et al. 2008)
- But not all conflict is the same (Kelly, 2003)

# Failure to Consider Unique Aspects of Family Violence

- Safety risks to both parent and child.
- Power imbalance between victim and offender.
- Custodial interference and prolonged custody battles.
- ADR professionals may not always understand domestic abuse dynamics from high conflict or have the ability to recognize it; may promote unsafe practices and unsafe agreements.

# Tiered Approaches

## Linear service delivery model

- continuum of services is identified and made available in a linear fashion.
- Families begin with the service that is least intrusive and time consuming, and, if the dispute is not resolved, the family then moves to the next available process.
- Under this approach, each service tier is typically more intrusive and directive than the one preceding it.
- Typical progression might include a divorce education program, mediation, parenting evaluation or investigation, moderated settlement conference and, finally, a trial.

# Tiered Approaches

- From least intrusive to most intrusive
- Court-based interventions attempt to keep family members safe, help to limit conflict or help parents and children get unstuck from conflict divorce
  - parent coaching
  - mediation
  - parenting assessments
  - parenting coordination
  - family group conferencing
  - judicial case management
  - supervised access program

# Limitation of Tiered Approaches

- Services are not geared to all levels of conflict.
- “From least intrusive to most intrusive” suggests higher conflict families must receive services that won’t work before they are able to receive more specialized services.
- Ineffective interventions are not only a waste of resources, but can result in escalating polarization (Schepard, 2004).



# Differential Response (Kelly, 2007)

1. Moving away from a “one size fits all” paradigm that all conflict is negative.
2. Providing a foundation for a better assessment of appropriateness of parenting plans for families experiencing different dimensions of conflict.
3. Diminishing the ‘gender wars’ about gender and conflict with data/stories rather than rhetoric.
4. Developing effective intervention programs more tailored to the unique needs of families.

# Triage (Differential)

- *Triage* is used to determine the referral to the most appropriate service
  - Information is collected about violence and the presence of protection orders, criminal charges, mental health and substance abuse issues, as well as information about legal proceedings and the kinds of court services previously used.
  - Information about ability to communicate and concerns about parenting are also solicited.

# Differential Response Assumptions

- Early assessment by a court-appointed mental health professional with specialized knowledge in high conflict, abuse, intimate partner violence and children who refuse to visit the other parent is highly desirable.
- Parent-child contact problems generally become more difficult to address with the passage of time, as children and parents are more likely to become entrenched in their positions, further exacerbated by the litigation over parenting and financial matters.

# Differentiated Response Assumptions

Family Justice Services will depend on:

- Level of interparental conflict
- Degree of receptivity and responsiveness of both parents
- Degree of intentionality of parent behaviours
- Complexity and stage of the case
- Types of services available geared for different levels of conflict
- Number of community of services available

# Service Models/Triage With High Conflict Families

- Impasse- focused mediation model (California, USA)
- Fast Track Service Model for High Conflict (California, USA)
- Needs and Focused Assessments (B.C., Ontario, Manitoba)
- *Family Civil Intake Screen* (Connecticut, USA)
- *Dimensions of Conflict in Separated Families Scale* (Ontario)

# Objectives of Preventative Interventions

- Reduce parental conflict
- Promote healthy parent-child relationships, and
- Keep the children out of the middle of difficult parental interactions

# Focus of Prevention Programs

- Conflict management for parents
- Positive parenting programs
- De-triangulation to remove children from the middle
- Development of coping skills for children

# Systemic Innovations

- Toronto Integrated Domestic Violence Court (Toronto)
- Court Process Coordinator (Moncton)
- Case Conferences in Family Court where Crown and CPS are asked to attend if there are other proceedings (Brockville, Ont.)



# BENEFITS TO COLLABORATION

- Network Of Professionals;
  - Improved Working Relationships and Understanding of These Families
- Enhanced Practice, Research And Education Between Disciplines, Community Partners, and Academia
- Leads To More Effective Communication and Collaboration In Program Development

# Working Collaboratively

What does that mean?

When has it worked well? (e.g. Forums across Ontario)

# How do we forge a collaborative working relationship...

- With lawyers representing other parties...
- With CAS.....
- With therapists....
- With child specialists
- With Child Advocacy Centres/Child & Youth Advocacy Centres!

# Summary of the Various Pathways

- There is growing recognition that not all interventions work the same across the family justice system.
- Early assessment and targeted approaches help to differentiate services based on need.
- Differential approaches have the promise of being more efficient and a better use of scarce resources.

# Summary of Research

- A lot of variation by professional backgrounds to what is useful or not in terms of services [children & families].
- A lot of variation on what is important for good outcomes [children & families].
- Responses based on individual experiences and “hope” vs. empirical support.
- Need for next generation of research that is interdisciplinary and crosses practice and policy.

Thank You!

Merci!

---

*Questions/Comments/Thoughts?*

[rbirnba@uwo.ca](mailto:rbirnba@uwo.ca)

