

# Nova Scotia Board of Examiners in Psychology

## Custody and Access Evaluation Guidelines

*We are grateful to the Ontario Psychological Association and to the College of Alberta Psychologists for making their Child Custody Guidelines available to the Nova Scotia Board of Examiners in Psychology. The work done by our colleagues in Ontario and Alberta provided us with valuable direction in terms of both content and format.*

### **Introduction**

The purpose of these guidelines is to promote consistent, ethical practice in the area of child custody evaluations. These guidelines do not replace the psychologists' responsibility to adhere to the Code of Ethics and to exercise sound professional judgment at all times when preparing custody/access assessments. These guidelines reflect the standards identified as important and necessary in the field of custody/access assessment at this time. Adhering to the guidelines should help the psychologist ensure they have met minimal standards thus providing protection for the consumer and also protection for the psychologist practicing in this highly litigious area.

### **General Principals**

- 1. The primary purpose of a custody and access evaluation is to assess the best interests of the child.** In child custody evaluations, the child's interests and well being are given priority. Individual and family factors that affect the child's best interests are assessed, with the legitimate concerns, interests, and legal rights of the parents addressed. However, the best interests of the child must remain paramount.
- 2. The psychologist should have specialized competence in conducting child custody evaluations.**
  - a. Special competencies and knowledge are required for conducting child custody evaluations. Competence in completing psychological assessments of children, adults and families is necessary. Specific skills, including interviewing techniques, knowledge of psychometric testing, and preparation of psychological reports are required. In addition, the psychologist must have education, training, experience and/or supervision in child and family development, child, adult, and family psychopathology, and the impact of family conflict and divorce on children.
  - b. The psychologist should be knowledgeable of relevant laws and procedures in his or her local jurisdiction.

- c. The psychologist maintains current knowledge of scientific, professional, and legal developments related to child custody evaluation. Data collection follows accepted clinical and scientific standards.
  - d. In the course of completing a child custody evaluation, allegations of neglect, abuse, or family violence may occur. When knowledge in these areas does not fall within the scope of an individual assessor's expertise, the psychologist should seek additional consultation, supervision, knowledge and/or training when necessary.
- 3. Multiple roles for psychologists are avoided.** Psychologists involved in child custody situations must clearly define their roles. The mixing of professional and personal relationships is avoided, as are multiple professional roles. If a dual professional role is unavoidable, the psychologist must carefully consider ethical and professional codes of conduct in determining a sound rationale for assuming a multiple role and must be able to defend his or her impartiality.

Below are some of the potential roles for psychologists in child custody matters and examples of multiple roles which should be avoided:

- a. **Assessor:** The psychologist is contracted by the parents, or their lawyers, or appointed by the Court to conduct an impartial, objective, formal assessment of the family situation for the purpose of custody determination. If called to present assessment information in Court, the psychologist acts as an expert witness. Psychologists should avoid assuming the role of assessor if they have a previous relationship with any of the parties to be assessed.
- b. **Therapist:** The psychologist is contracted to provide therapy for one or both of the divorcing parents, the child(ren), or the family as a whole, with the goal of assisting family members in sorting out their difficulties or to ease the emotional strain of the separation of the family unit.

The psychologist who is in the role of therapist shall not assume the role of assessor, because of the inherent conflict of interest between these two roles.

Being in the role of therapist does not preclude the psychologist from testifying as a fact witness. However, the psychologist should be aware of the limitations and potential biases inherent in such a role and the possible impact to the ongoing therapeutic relationship.

The psychologist who is in the role of therapist should decline the role of expert witness regarding custody and access issues, unless so ordered by the court.

Therapeutic contact with the child or other participants following the completion of a child custody assessment is undertaken with caution.

- c. **Consultant:** The psychologist is contracted by one or both parents to provide general information about child development, the impact of divorce and various custody and access arrangements on children, and an understanding of what to expect in divorce situations. The psychologist does not formally assess the child or family as part of the consultation and if called to Court acts only as a fact witness.

The psychologist who is in the role of consultant should not serve as an assessor because the dual roles may jeopardize the psychologist's objectivity.

- d. **Mediator:** The psychologist is contracted to act as a skilled and knowledgeable, impartial third party to assist the parents in reaching a formal and mutually agreeable decision. The role of the mediator does not include formal assessment or an attempt to address behavioural, emotional, or psychological problems. Mediation may be "closed," in which case there is explicit agreement between the parties that mediation sessions will be confidential. If called as a witness to Court, the psychologist acts as a fact witness.

The psychologist who is acting as a mediator should not be an assessor or make recommendations regarding custody.

- e. **Arbitrator:** The psychologist is contracted to provide a binding or an advisory opinion in circumstances where all parties request and consent to such a role. The psychologist should ensure that such an opinion is not construed as resulting from a formal assessment and is not advanced to the Court as such.

Once a psychologist takes on the role of arbitrator, he or she should not take on the role of assessor. An independent assessor should take on any subsequent comprehensive evaluation.

- f. **Advisor:** The psychologist is contracted by one or both parties, or their lawyer, or the court, to critique an assessment report completed by another assessor and may advise on inquiries that can be advanced in Court. In such circumstances, the psychologist does not need to interview any of the involved parties and does not make recommendations regarding custody and access. Psychologists should avoid adversarial positions with other psychologists.

A psychologist acting as an advisor should not suggest that he or she conduct another evaluation in the same matter and should decline to do so if requested. If called to present an opinion in Court, the psychologist acts as an expert witness.

4. **The psychologist maintains professional objectivity and impartiality.** The psychologist accepts the role of advising and informing the Court of relevant psychological factors which relate to the custody matter and is sufficiently aware of personal attitudes and biases to maintain professional objectivity. The psychologist acts

neither as judge, who makes ultimate decisions, nor as advocating attorney, who strives to present his or her client's best case. The psychologist assumes an impartial stance, regardless of whether retained by the Court or by one of the parties. If the psychologist or the client is unable to accept this neutral role, or recognizes that professional objectivity and impartiality is impossible or has become compromised, the psychologist should withdraw from the assessment process.

5. **The psychologist strives to engage in non-discriminatory practices.** The psychologist maintains awareness of how biases, including those regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status, may interfere with an objective evaluation and recommendations. The psychologist recognizes and strives to overcome any such biases or withdraws from the assessment process.
6. **The psychologist is sensitive to the high financial and emotional costs associated with custody and access evaluations.** The psychologist strives to conduct evaluations in an efficient and effective manner. The psychologist strives to recommend actions that will reduce conflict and lead to a long-term, stable parenting arrangement which reflects the best interests of the child.

### **Assessment Arrangements**

1. **The scope of the assessment is determined by the psychologist in consultation with the referral source(s).** The scope of the assessment is usually determined by the nature of the question(s) or issue(s) raised by the referral source(s), or is inherent to the situation. The scope of a particular assessment may be limited or broadened according to need, or as determined by the professional judgment of the psychologist.
2. **Any limitations apparent at the outset of the assessment process are clarified with the referral source(s).** A Comprehensive custody and access evaluation would generally involve assessment of all parents or guardians and all children. However, the scope of the assessment in a particular case may be limited to the evaluation of one parent or to an evaluation of the children, only. In such cases, the psychologist refrains from giving any opinion regarding the functioning of an individual who has not been personally evaluated. Recommendations or opinions favouring one parent over another are not made in such situations.
3. **A psychologist who has assessed a parent or child in another context, or who has acted in another role, such as consultant, therapist or advisor, does not allow such involvement to be construed as a comprehensive child custody assessment.**
4. **Arrangements regarding payment, the release of the assessment report and feedback to clients are clarified before the assessment begins.** Fees may cover such activities as

interviewing, test administration and interpretation, review of documentation, report preparation, Court time, travel, and other time spent in association with completing the assessment. The psychologist should provide an estimate of expected costs and the manner of payment prior to beginning the assessment. When billing for child custody evaluations, the psychologist does not misrepresent the nature of his or her involvement for reimbursement purposes. A psychologist should not withhold a report pending payment if doing so will cause harm to the child or children involved in the assessment.

5. **The psychologist does not become involved in a child custody assessment if he or she has had more than a casual or remote personal/professional relationship with any party.** For example, the psychologist does not accept an assessment if he or she has any prior knowledge of the parties to the assessment in areas related to the custody/access questions being investigated.

### **Issues of Confidentiality/Consent**

1. **The psychologist ensures that informed consent is obtained.** The Psychologist informs participants about the assessment process, the rights of clients, the distribution of the assessment report, and only then obtains written consent for the assessment to proceed. In order to make an informed decision clients require, at the minimum, a summary of the assessment process including a general description of any psychological testing that may be used; a list of the types of information that will be obtained; information regarding their right to terminate involvement and an opportunity to ask questions.
2. **The psychologist informs participants about the limits of confidentiality.** All participants, including collateral contacts, should be informed that information they provide, even if not in the assessment report, may be disclosed should the psychologist and/or the psychologist's records be subpoenaed to Court.
3. **Children involved are provided with information appropriate to their developmental level and if judged able to give consent are asked for such.** Whenever appropriate, the psychologist explains to the Child(ren) how their information will be used in the assessment. Given the vulnerability of children and the frequency of loyalty binds in custody/access cases, the Psychologist takes great care in presenting information provided by the child. The form of contact between psychologist and child will vary depending on the child's age and circumstances. The psychologist must be able to provide the rationale for decisions made regarding the nature and degree of the child's direct involvement in the assessment.
4. **The Psychologist discloses information outside the context of Court only with the consent of capable parties, or as required or justified by law.**

5. **The Psychologist documents the processes used for obtaining consent to contact collateral sources.** There are a number of different collateral sources that may be contacted during the process of a custody/access assessment. The psychologist is careful to document the consent process used in each of these different cases. Professional collaterals will generally require the written consent of one or all parties involved, depending on the nature of the professional relationship. The psychologist is careful to request permission to speak with extended family members and/or other lay parties the psychologist sees as having information pertinent to the assessment.
6. **The Psychologist advises collateral contacts as to how their information will be used.** The psychologist informs collateral contacts, prior to obtaining any information, as to how the information will be used in the assessment. This should include how the information is likely to be presented in the written report and who will have direct access to the information.

### **Assessment Process**

1. **The Psychologist maintains a high standard of record keeping that clearly reflects the assessment process.** The Psychologist is aware of the fact that records documenting the contracting, process and results of the assessment are likely to fall within the public domain, and as such, ensures his or her records are sensitive to the dignity and well-being of the parties involved. Documentation on file should be sufficient to allow another psychologist, on review of the file, to understand the basis for the decisions reached and recommendations made. The Psychologist also ensures the documentation is maintained in a manner that meets or exceeds the Standards for Providers and the Standards for Professional Conduct.
2. **The psychologist uses multiple avenues of data collection to arrive at his/her professional opinion.** The primary opinions and conclusions reached must be objectively supported. Subjective information, obtained from one source only, should not be used as the basis for drawing primary conclusions. The Psychologist is aware, for example, that information provided by family members is not consistently reliable. The Psychologist may use subjective information, when he/she is able to demonstrate that the same or similar information has been obtained from more than one source and that the obtained information reflects a pattern compatible with the overall clinical picture.

While the Psychologist chooses the most appropriate methods for addressing the specific questions raised in an assessment, normally data will be obtained from most/all of the following sources: a review of historical documentation; assessment interviews including parents, children, extended family, and collateral contacts; observation; testing; and consultation with professionals previously or currently involved with the family(s).

In addition, the psychologist must attend to child factors, parent-child interactional factors, parent-parent interactional factors and cultural factors to ensure opinions and conclusions are based on as comprehensive an overview of the case dynamics as possible. As such the psychologist assesses the nature and quality of relationships, identifies the needs of the child(ren) as well as both parents' ability to meet these needs, screens for the presence of psychopathology that could have a negative impact on parenting ability and determines the child(ren)'s wishes as appropriate to his/her/their developmental level.

3. **Equivalent assessment procedures for each parent are utilized, unless specific circumstances dictate otherwise.** The psychologist must use equivalent procedures or be able to clearly explain his/her reason(s) for not using equivalent assessment procedures.
4. **Data sources used by the psychologist should be relevant to the questions at hand- exploration of issues not related to determining the best interests of the children is excluded.** The psychologist does not request information unnecessary to the purpose of the assessment. When sensitive information is volunteered, the psychologist carefully considers whether the information needs to be included in the assessment report.
5. **Children assessed are informed about the assessment process in a fashion that is sensitive to their developmental level.** Informed consent should be obtained from children who are capable of providing it. The psychologist ensures child(ren) understand that decisions rest with their parents and/or the Court.
6. **Indirect methods are used to determine the wishes and preferences of the children.** The psychologist is sensitive to loyalty bind situations. The Psychologist is aware of the various pressures the child(ren) may be experiencing and carefully chooses assessment methods that limit emotional distress or pressured responding.
7. **The Psychologist uses judgment with respect to the location of assessment meetings.** The psychologist may hold meetings in a variety of settings as long as privacy is protected and the parties involved are in full agreement. If formal testing is conducted outside of an office setting, the Psychologist must be able to demonstrate the testing environment was conducive to obtaining valid and reliable results. Also, he or she must clearly specify any reservations and/or limitations with respect to validity and reliability.
8. **The Psychologist is careful not to allow others (parents, lawyers) to unduly influence professional judgment with regard to the assessment process.** The psychologist proceeds in a balanced and impartial manner, avoiding multiple roles that might compromise professional objectivity. The Psychologist examines his/her attitudes throughout the process and withdraws if professional objectivity and impartiality becomes compromised.
9. **If the psychologist has reasonable and probable grounds to believe**

**that a child is in need of protection, the psychologist is required by law to report to the proper authorities.** The psychologist makes the parties to the assessment aware of this during the process of obtaining informed consent.

10. **The psychologist ensures that the parties involved are provided with information regarding procedures for receiving feedback and/or discussing the assessment report.** It is recognized that this type of assessment is part of an adversarial process and that frequently one of the parties to the assessment is distressed by the results. As such it is acceptable for the psychologist to define a specific process/format for discussing information after the assessment has been concluded.

### **Assessment Report**

1. **The psychologist prepares a report.** The psychologist prepares a comprehensive report which is defined by the focus of the assessment. Such a report should contain relevant background information and analysis of data from multiple sources which lead logically to conclusions and, where appropriate, recommendations.
2. **The report is written in a professional and sensitive manner.** The report is written clearly and the psychologist refrains from use of jargon. The report should be written in a manner which conveys respect and empathy for all individuals participating in the assessment. Care is taken in identifying specific sources of information. Sensitive material is presented with discretion, however, such presentation must not mislead the Court.
3. **Any limitations of the assessment are clearly stated in the report.** Limitations may include the failure of relevant individuals to participate in the assessment or aspects of the assessment; inability to access relevant documentation; lack of access to collaterals; or any other limitation which might warrant caution in arriving at conclusions or recommendations. Limitations prescribed at the outset (e.g. when the psychologist acts as an Advisor in reviewing another professionals report) are also clearly stated.
4. **The format of the report complies to an acceptable standard.** The report should usually contain, but is not limited to, the following components
  - a. Purpose: This would include the source and reason for referral and the scope and intent of the assessment.
  - b. Methodology: A citation of the sources of information is presented.
  - c. History: Individual and family history which is relevant to the objectives of the assessment is presented.
  - d. Evaluation of parent(s): Information about the psychological, social and parenting

functioning is described with the focus being their ability to care for the children involved.

- e. Evaluation of child(ren): A summary of the psychologist's perception of the children, including information and observations regarding the psychological and social functioning of the child(ren) which are relevant to the objectives of the assessment.
  - f. Family relationships: A description and evaluation of the relationships between parents and children and among the adults.
  - g. Parenting arrangements: A discussion of the plans presented by the participants and other viable options in light of the objectives of the assessment are addressed. Strengths and limitations of the alternatives may be presented.
  - h. Conclusion: A formulation synthesizing data presented in the body of the assessment report which leads logically to recommendations relevant to the objectives of the assessment. Conclusions are justified by information collected and/or appropriate research literature.
  - i. Recommendations: Recommendations are generated with the best interests of the child taking precedence.
- 5. The psychologist offers no opinion regarding individuals who are not assessed.**
- 6. The report is typically released to the Court who then distributes it to the other parties.** Other arrangements for the release of the report may be appropriate as long as such arrangements have been agreed to in advance of the report distribution.

**As Witness:**

- 1. The psychologist presents to the Court an accurate description of qualifications.** The psychologist is clear regarding limits of competence and takes care to ensure the Court has an understanding of these limits. When asked to answer questions that do not fall within the psychologist's area of competence, the onus is on the psychologist to advise the Court of his/her limitations with respect to the question.
- 2. The psychologist is able to inform the Court of the scientific basis and limitations of methods, data, research upon which testimony is based.** Expert testimony that is not adequately substantiated may lead to significant harm in child custody cases. As such the psychologist does not provide an opinion unless he or she is able to demonstrate to the Court that the opinion was arrived at in a manner consistent with scientific method.