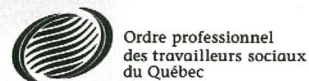
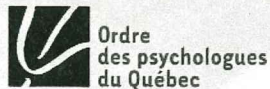


guidelines

for expert assessment concerning

child custody and access rights



february 2006

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INTRODUCTION

The standards of practice for expert assessment in child custody cases presented in this document are inspired by the standards of the Association of Family and Conciliation Courts, an international organization composed of experts working in this field either directly for the courts or in private practice. These experts' practices and philosophies vary considerably and the requirements imposed in their regions may influence certain aspects of the assessment. However, the standards presented here reflect commonly shared concerns and practices and the guidelines are applicable in almost every setting¹.

1. This text is adapted, in part, from a document issued by the Association of Family and Conciliation Courts. The present text was developed by the Ordre des psychologues du Québec and the Ordre professionnel des travailleurs sociaux du Québec, with support from the Association des centres jeunesse du Québec, to guide the conduct of the members of these Orders in dealing with this matter.

PRÉAMBLE

Expert assessment in child custody cases is a process through which, when the parents are unable to reach an agreement, an expert can make recommendations to the court on custody and access rights, taking account of the parents' respective parenting skills and the needs of the child(ren). This assessment may be requested by the parents (or guardians) or their attorneys². It may also be ordered by the court. It must be conducted by a professional who is a member of the Ordre des psychologues du Québec (OPQ) or the Ordre professionnel des travailleurs sociaux du Québec (OPTSQ). This professional may be attached to the Superior Court's psychosocial expert assessment service or work in private practice.

The key objective of the expert assessment for child custody is to evaluate the family and provide to the court, parents and attorneys objective information and recommendations made in the best interest of the child. Experts must always be impartial and never defend the interests of one of the parties. The assessment should examine the entire family situation in order to develop a custody and access rights plan which, in most cases, will give both parents the opportunity to participate in the child's upbringing. The written report produced at the end of the expert assessment gives the court, parents and attorneys the expert's recommendations and the reasons behind them. The assessment must take into account: 1) the developmental needs of the child; 2) the desires, interests and skills of the parents; 3) the strengths, vulnerabilities and needs of all family members and 4) the familial interactions.

2. For the sake of readability, in the remainder of this text, we will use the term "parent" to designate both parents and legal guardians. Moreover, we will use the masculine form to designate both genders.

I. INITIAL STEPS

A. APPOINTING OR CHOOSING AN EXPERT

Any one of the following situations may occur:

1. The judge may order the psychosocial expert assessment service attached to the Superior Court to carry out the expert assessment.
2. The court may appoint an expert working in private practice.
3. The two parties may agree on an expert and have their choice approved by the court.
4. The expert may be appointed by the child's attorney.
5. The expert assessment may also be conducted at the request of one of the two parties, with:
 - a) participation of the entire family (complete expert assessment), or
 - b) participation of part of the family (partial expert assessment).
6. a) In all cases of expert assessment:
 - Free and informed consent by all parties aged 14 and over must be obtained in writing or noted in the record.
 - Permission to meet with children under the age of 14 must be obtained in writing from both parents.b) Moreover, in the case of a partial expert assessment:
 - The expert may not make recommendations on custody or access rights.
 - The expert may not express an opinion about the other party.
7. The parties have the right to suspend or terminate the expert assessment.

B. PRIOR DISCUSSIONS

1. In discussions held prior to the expert assessment, the expert must explain to all parties, possibly during a joint meeting, the assessment process, the expert's professional qualifications, the costs (if any), limits to confidentiality, and mutual responsibilities of the expert and the parties. The expert must assure the parties and their attorneys that no relationship existed previously, nor exists presently, between the expert and either of the parties. If the expert had a previous relationship with either of the parties, albeit distant or long since ended, he must mention this fact and provide details to assure all parties that his objectivity will not be compromised. The decision whether to continue the process will be made after the parties and their attorneys have discussed the matter, in keeping with the provisions of the ethical codes.
2. If, at the orientation stage, information meetings prior to expert assessment are held, the expert must offer such meetings to the parents and their attorneys. The parties, and possibly their attorneys, should have a chance to ask any necessary questions.
3. Communication of important information between the expert and the attorneys should take place by conference call or in writing, with copies provided to both attorneys, in compliance with the rules of confidentiality. *Ex parte* communications should be avoided.

II. EXPERT ASSESSMENT PROCESS

A. ELEMENTS OF THE EXPERT ASSESSMENT

The expert determines the scope of each expert assessment, including which persons, in addition to the parties to the dispute, to include in the process. Generally, the use of multiple data collection methods is encouraged. These methods may include observation, interviews, tests, information obtained from third parties and home visits. It is important that the assessment remain consistently balanced, through the use of an appropriate assessment protocol, in order to obtain similar types of information from each parent.

B. METHODOLOGY

Experts may choose to use different evaluation methods in deciding on joint and/or individual interviews, the usefulness of a home visit and the circumstances in which the children are met. It is preferable to have all the parties to the dispute, as well as significant third parties, assessed by the same expert. In cases where the expert has reasonable grounds to believe that violence (including sexual abuse) is present in the family, joint interviews are not advised.

C. ASSESSMENT IN SITUATIONS OF GEOGRAPHICAL DISTANCE

If the parents do not live in the same region, the expert must still make every effort to meet both parents personally during the expert assessment if he wishes to be able to make recommendations.

An expert who meets both parents can make recommendations even if, in the course of the assessment, he asks another professional for additional information that is factual and objective, and therefore not subject to interpretation, concerning the physical environment of the geographically distant parent.

If this is not possible, and if two different experts conduct the assessment of the two parents, each of these assessments can be only partial and the experts cannot make any recommendations.

D. INTERVIEWS AND TESTS

1. Each parent must be assessed individually using comparable assessment methods.
2. If psychological tests or grids are used for general evaluation of one parent, they must also be used for the other parent participating in the expert assessment. However, if a particular technique is used to assess a specific problem (for example, alcoholism or drug abuse) regarding one of the significant adults, it is not necessary to use this same technique for all the other adults.
3. If the expert is not qualified to conduct a psychological evaluation of the parties and this evaluation is needed for the purpose of custody/access rights recommendations, the expert must:
 - a) Provide to the mandator or mandator's representative his report including a recommendation for a psychological evaluation and, if applicable, interim recommendations on child custody/access rights.

Or

- b) Make a referral to the designated psychologist with the consent of the parties and provide his report including, if applicable, interim recommendations on child custody/access rights.

When a psychologist is mandated or appointed to carry out the expert assessment, he ensures that he has access to the entire record, conducts all the interviews needed for execution of the mandate and makes use of psychometric tests, if deemed appropriate. He produces a report including, if applicable, recommendations on child custody/access rights.

4. If tests are used, the professional who administers them must be aware of their limitations and take them into account in the specific context of the information obtained through clinical interviews and other available data. The findings must take account of the stress caused by the issues involved in the expert assessment process.
5. If data from the psychological tests are used as major elements in the development of the final recommendations, the limitations and objectives of the tests must be clearly described in the report.
6. Each party's parenting skills and abilities must be the expert's central concern, with an eye to the best interest of the child. Test results must be considered complementary to the parenting skills evaluation.

E. METHODS TO BE USED WITH CHILDREN

After obtaining written permission from both parents (if the child is under 14 years of age) or noting it in the record, the expert evaluates each child individually using methods appropriate for his developmental level (age, maturity, etc.). These methods may include observation, verbal interview or game-playing and formal tests.

It is not appropriate to ask children to choose between their parents; in most families, the children should have access to both parents after a divorce and should not be put in a position of choice. The expert may obtain information on the child's feelings, thoughts and desires concerning the parents by using techniques that are not suggestive or damaging to the child and which do not exacerbate the child's conflict of loyalties. The child must be observed with each parent in conditions that are as similar as possible. If there is a major obstacle to conducting the observation in comparable conditions, the expert must explain this fact in the report and take it into account in his findings.

F. INFORMATION OBTAINED FROM THIRD PARTIES

Information from appropriate outside sources, such as health and social service professionals, teachers or daycare staff, should be obtained when considered necessary. However, information received from family members, friends and neighbours must be treated with great care given its potential to cause discord and thereby increase risks to the child. The expert must try to balance any information obtained from the parents' environment. Use of this information depends on the particular circumstances of the assessment and the expert should not use it unless he is convinced of its value.

Before seeking or collecting information, it is necessary to have both parents sign an information disclosure form, which indicates the reasons why the information is sought and the use to which it will be put. This permission form limits the expert's collection of information and its use in preparation of the assessment report. The person providing the information must also be informed of the use that will be made of it, and must consent to such use.

G. HOME VISITS

When the expert makes home visits, he must do so under similar terms and conditions for both parents. He must take into account any cultural differences and resist prejudiced reactions to unequal living conditions. In fact, economic situation alone should not be a determining factor in the expert assessment for child custody.

The purpose of a visit to the child's home is to collect relevant information on the child's and parent's living situation.

H. BILLING OF FEES

In cases where the expert assessment is required by a public or parapublic agency, the expert bills his fees to the agency upon submission of his report. For experts in private practice, if a dispute arises concerning the expert assessment, it is possible that a party dissatisfied with the recommendations may refuse to pay the professional's fees for interviews, tests, the report or time spent in court. As the codes of ethics of OPQ and OPTSQ members prohibit professionals from demanding advance payment for their services and it would be unethical to refuse to submit the expert assessment report before being paid, the following procedure is recommended:

1. During the orientation, the professional sets out, in writing, all the terms and conditions concerning billing and payment of fees at each stage of the mandate, and obtains, in writing, the mandator's/mandators' agreement.
2. The procedures that an expert is authorized to use include the following:
 - Demand that the amount of his remuneration, costs and disbursements be deposited in court before the opening of his report (section 422 of the Code of Civil Procedure);
 - Ask for post-dated cheques, cashable according to terms and a timetable agreed to in advance by the parties;
 - Demand a portion of the fees at the beginning of the expert assessment, deposited in trust and cashable according to terms and a timetable agreed to in advance by the parties.
3. OPQ and OPTSQ members may collect interest on amounts due only at the agreed rate or, if none, at the legal rate, after informing the client of this fact.
4. OPQ and OPTSQ members have potential recourse against clients who do not pay their fees in accordance with the procedures set out in section 88 of the Professional Code and the Regulation respecting the procedure for conciliation and arbitration of accounts.

III. KEY OBJECTIVES OF THE EXPERT ASSESSMENT

Note: For each part of the assessment listed below, the expert must take account of the impact of ethnic, cultural, religious and lifestyle factors.

A. QUALITY OF EACH PARENT'S RELATIONSHIP WITH THE CHILD

This part includes an evaluation of each parent's perceptions of the child, their respective strengths and weaknesses, the quality of their emotional relationship with the child, their ability to understand the child's needs and the child's emotional experience.

B. QUALITY OF THE RELATIONSHIP BETWEEN THE PARENTS

This part consists of an evaluation of the nature and level of the conflict between the parents, the effects of the conflict on family members, each parent's relative contribution to maintenance of the conflict, and the parents' willingness to communicate and cooperate with each other. The evaluation must also cover each parent's capacity to facilitate the child's relationship with the other parent.

C. ABILITY OF EACH PARENT TO PROVIDE FOR THE CHILD'S WELL-BEING

This part involves an evaluation of each parent's capacity to ensure the child's development, and their ability to distinguish between their own needs and those of the child and to meet the child's specific needs. The expert must also take into consideration the parent's ability and motivation. However, if certain situations have prevented one of the parents from developing or practicing their parenting skills, the expert must take this into account.

D. EVALUATION OF THE FAMILY SYSTEM

When a new family system is established by one or both parents, the expert must evaluate each new spouse and other children, if any. He must consider the quality of the new marital relationship, the new spouse's parenting skills with regard to the child, and this spouse's attitude toward the child's other parent. The expert must also consider the quality of the relationship between the new couple and their other children, if any, and the quality of the relationship among the children themselves.

E. FUNCTIONING OF EACH PARENT

This part includes an evaluation of each parent's adaptation to the divorce and fulfillment of his/her social roles. If applicable, the expert must consider the impact of mental and physical health problems on the parent's parenting capacities and day-to-day functioning. The impact of a chronic or terminal illness must be properly evaluated. The expert assessment must also take account of the impact of any alcohol, drug, medication or gambling addiction. The expert may seek information from a specialist in the field of the identified problem to evaluate its impact on the child.

F. FUNCTIONING OF EACH CHILD

This part includes an evaluation of each child's reactions, behaviours and particular needs, for example, health or developmental problems. The expert must also consider the child's adaptation to school, friends, the new family system, if any, the extended family and the community.

The expert must be aware of the risk of conflicts of loyalty in the children and must not ask them to choose between their parents. The children's desires and fears (expressed or not) concerning their relationship with their parents should be taken into account, but must not constitute the only basis on which the recommendations are made.

G. DANGEROUS SITUATIONS

If, at the beginning of the mandate, the expert finds a dangerous situation (for example, conjugal violence, severe drug abuse, expression of suicidal or homicidal ideations) and he feels that he lacks the competence to evaluate these dimensions, he must refuse the mandate and make a referral, as provided by the Code of ethics of social workers and the Code of ethics of psychologists. In a situation where the work has already begun, if the expert feels that he is not competent to evaluate certain problems, he may suspend the assessment. If he decides to continue, he must, in the interest of the child, consult other professionals, as provided by the Code of ethics of social workers and the Code of ethics of psychologists. The recommendation made by the expert after such consultation must take into account both the danger for the parents and the risks and impacts for the children. If the expert feels that the child's safety is endangered, he must make a report to the Youth Protection Office.

IV. EXPERT ASSESSMENT REPORT

A. STYLE

The expert assessment report must be written in a clear and simple style understandable by the court, attorneys and clients. The report should convey an attitude of empathy and understanding for all persons concerned, adults and children, and be written in a manner respectful of each individual.

B. CONTENT

When drafting the report, the expert must distinguish between his own professional observations, opinions and recommendations and opinions and conclusions coming from other sources. The report should include the following elements, in keeping with the collected data:

- Nature of the mandate
- Mandator(s)
- Methodology used (interventions)
- Documents consulted
- Family history leading to the present dispute
- Description of the parents' characteristics relevant to the exercise of parental authority
- Condition of the child
- Description of the quality of the child's relationship with each parent and the quality of the parents' relationship with each other.

The report should also include any other element that helps clarify the situation and the recommendations.

The expert's observations of persons and relationships must lead logically to the custody, access and visitation recommendations. The report may also mention any scientific or theoretical references used.

C. DISTRIBUTION

The expert's report must be provided to the mandator(s) or their representative(s).

D. TIMEFRAME FOR PRODUCTION OF THE REPORT

Normally, the expert should submit the report within 90 days of receipt of the mandate. If the expert is unable to produce the report within this time period, the parties must be informed in writing and be told the reasons for the delay.

V. ETHICAL PRINCIPLES

A. ETHICAL OBLIGATIONS

Experts must abide by the ethical principles of their profession, which take precedence over the parties' or representatives' needs.

B. PAST RELATIONSHIP

The expert must disclose to the parties and attorneys any past relationship with one or more members of the family system he is assessing. If he feels that the past relationship risks affecting his present objectivity, he must not perform the assessment. In addition, a professional who previously acted as a mediator or therapist to one or more family members must not agree to do an expert assessment of the same family.

C. FUTURE RELATIONSHIP

After the expert produces his report, he may be asked by the parties to change roles (for example, to that of mediator or therapist). If the expert feels that he lacks the necessary neutrality to take on the new mandate, he must refuse it. If, however, he accepts it, he must inform the parties that this change of role will prevent him from acting as an expert for them in future, for potential additional expert assessments.

D. PROBLEMS OUTSIDE THE EXPERT'S AREA OF COMPETENCE

When an aspect of problems encountered during the assessment falls outside the expert's area of competence, the expert must consult a professional specializing in this domain. This consultation must be limited to elements complementary to the assessment. The results of the consultation must be mentioned in the report.

E. LIMITS TO THE EXPERT'S RECOMMENDATIONS

The expert must make all necessary efforts to include every significant person in the assessment process. When writing his report, he must refrain from commenting on persons with whom he did not have contact.

It may happen that the expert is unable to meet every person involved in the child custody dispute, either because one of them refuses to participate or because of logistical factors, such as geographical distance. In such cases, the expert must limit his findings and recommendations to the collected data.

If the expert sees only one parent, he must not express any opinion regarding the other parent, or make recommendations on custody or access rights. However, he may report on the persons he saw and their interactions, and draw conclusions on the nature of these relationships. The expert may also make comments or express opinions on the desirability of a more extensive expert assessment. If, during the assessment, the expert finds that he lacks sufficient information to make recommendations, he must refrain from making any.

F. OBLIGATION TO REPORT TO THE YOUTH PROTECTION OFFICE

Despite their obligation under their respective code of ethics to preserve professional secrecy, psychologists and social workers who act as experts are required to report immediately to the Director of Youth Protection any situation giving reasonable grounds to believe that a child's safety or development is or may be considered endangered within the meaning of sections 38 and 38.1 of the Youth Protection Act. This obligation is imposed on professionals under section 39 of the Youth Protection Act:

Every professional who, by the very nature of his profession, provides care or any other form of assistance to children and who, in the practice of his profession, has reasonable grounds to believe that the security or development of a child is or

may be considered to be in danger within the meaning of section 38 or 38.1, must bring the situation to the attention of the director without delay. [...] The first and second paragraphs apply even to those persons who are bound by professional secrecy [...]

In this case, the expert must suspend the assessment and carefully examine his ability to complete the mandate.

G. RECORD KEEPING

The expert must keep a record as required by the Regulation respecting the keeping of records and consulting-rooms by psychologists or the Regulation respecting the keeping of records and consulting offices by social workers, as applicable.

H. ACCESS TO INFORMATION

When an access to information request is made, the expert must take into account the Act respecting access to documents held by public bodies and the protection of personal information, and the Act respecting the protection of personal information in the private sector, while also complying with the Code of ethics of psychologists and the Code of ethics of social workers, as applicable.

CONCLUSION

The court has the responsibility and authority to decide on child custody and access rights. Given that the expert's findings represent only one evidentiary element for the court, these findings are presented as recommendations.

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