



Ontario College of
Social Workers and
Social Service Workers

Ordre des travailleurs
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en travail social de l'Ontario

Practice Guidelines for Custody and Access Assessments

Guidelines for Social Work
Members of the Ontario
College of Social Workers and
Social Service Workers

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Guidelines for Social Work Members of the Ontario College of Social Workers and Social Service Workers

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STATUS OF GUIDELINES

The following guidelines contain information and practice advice which should be considered by social work members of the Ontario College of Social Workers and Social Service Workers. These guidelines are designed to assist social work members in interpreting and applying the College's standards to particular circumstances or contexts of practice and to provide additional guidance to members on practice issues.

It should be noted that these guidelines are not themselves standards of practice and have not been enacted by regulation or College by-law. The College's standards, which are the minimum standards applicable to all College members, are the ones set out in the *Social Work and Social Service Work Act, 1998*, the regulations under the *Act*, the College's Code of Ethics and Standards of Practice and the College's by-laws. Those College standards prevail over these guidelines. However, the guidelines may still be used by the College (or other bodies) to assist in determining whether appropriate standards of practice and professional conduct have been maintained by a College member in a particular case.

Introduction

The following guidelines were developed for social workers in Ontario who conduct custody/access assessments.¹ These guidelines are to be used to supplement the College's Code of Ethics and Standards of Practice. Generally, a social work member of the College should not make a recommendation for custody/access unless he or she has completed a structured, systematic custody/access assessment as outlined in these guidelines.²

APPLICATION OF THESE GUIDELINES

As noted above, these guidelines were developed for social workers in Ontario who conduct custody/access assessments. Social workers may also be retained to perform a focused or brief intervention to assess a particular issue relevant to custody/access. Any opinions or recommendations resulting from a focused or brief intervention should be limited to the particular issue investigated and must be appropriately substantiated by evidence.

CUSTODY/ACCESS ASSESSMENTS

A custody/access assessment is a comprehensive clinical exploration of the needs of a child, within the context of his/her family and environment and resulting in recommendations relevant to custody and/or access, regarding how those needs can best be met. In conducting a custody/access assessment, a social worker may recommend how parental rights and responsibilities relating to the care of a child may be structured.³ As such, a social worker may recommend a detailed plan for the care of a child. Decisions relating to custody/access of a child may occur in a variety of contexts. These guidelines refer generally to situations in which a custody/access dispute is the result of a separation or divorce.⁴ An assessment may be ordered by the court or may be conducted, at the request of and with the consent of both⁵ parties in the dispute, under a private contractual arrangement between the parties (or their legal counsel) and the assessor.

The purpose of a custody/access assessment is to assist families and the court in developing parenting arrangements⁶ that are in the best interests of the child⁷ by outlining the obligations and responsibilities of each party. The parties may reach an agreement with regard to parenting arrangements during the course of the assessment or at any point subsequent to the completion of the assessment. In the event that the disputing parties do not come to such an agreement, a custody/access assessment may be used as an additional source of evidence to be considered by the court in arriving at a disposition that reflects the child's best interests. The best interests of the child may be different from the views and/or preferences of the disputing parties or the child. The social worker is obligated to focus on the best interests of the child.

FOOTNOTES

1. Throughout these guidelines the term custody/access will be used to indicate custody and/or access. **The term “custody access assessment” is used to refer to any comprehensive clinical exploration of the needs of a child within the context of his/her family and environment, relevant to custody and/or access, whether or not it occurs in the context of anticipated or pending litigation, or in the absence of litigation, or pursuant to any legislation, regulations or rules and regardless of the context in which the social worker who conducts the assessment practises.**
2. A social worker may be retained as an arbitrator or as a parenting coordinator. Both these roles may provide the social worker with the mandate to provide input or make a decision relating to custody/access arrangements. A social worker retained as an arbitrator must be knowledgeable about the *Arbitration Act* and its requirements. A social worker retained as a parenting coordinator should be familiar with the Association of Family and Conciliation Courts Guidelines for Parenting Coordination.
3. Throughout these guidelines, the term “child” will be used to refer to “child” and “children”.
4. In Ontario, a parent of a child or any other person may apply for custody of, or access to a child. Sometimes an assessment involves parents who have not cohabited, or other significant people, such as grandparents, uncles or aunts.
5. On occasion, there may be more than two parties in the dispute.
6. The parties in the dispute are not always the parents, but will be acting in a parenting role (e.g. step-parent, guardian).
7. The term “best interests” is defined in Section 24(2) of *The Children’s Law Reform Act*.

Preamble

Separation and divorce is often an extremely stressful transition in the life of a family. Parental rights and responsibilities must be restructured in a manner that meets the needs of the child within the context of a reconstituted family. Most parents can come to an agreement with regard to parenting arrangements either on their own, through negotiation with the assistance of counsel, or with the assistance of a mediator. There is, however, a sub-group of families who cannot come to an agreement, and require more extensive assistance and/or the direction of the court. These families are generally characterized by high inter-parental conflict. Additional stressors such as mental health issues, substance abuse, domestic violence or child maltreatment may further complicate the family dynamic. For these families, who are unable to resolve parenting issues through other forms of dispute resolution, the court may order a custody/access assessment, or the parents may consent to such an assessment.

Knowledge and Training

A custody/access assessment requires an impartial and comprehensive exploration/examination and analysis of a breadth of factors, intra-familial and systemic, which impact on the child and on the parents. The process involves a series of clinical judgments made by the social worker that serve as the basis of actions to be taken throughout the assessment process, and which result in a recommendation, or facilitation of a parenting plan. Although the social worker may make a recommendation, the parties and/or the court make the final decision. In order to conduct a custody/access assessment a social worker should be knowledgeable in the following areas:

- Impact of separation and divorce on families and children
- Dynamics of high conflict families
- Impact of high conflict on children
- Family systems theory
- Child development theory
- Attachment theory
- Family violence and the impact on family members, particularly children (e.g. safety issues that may arise during the assessment and the potential effects on all the participants)
- Impact of various diversities (e.g. culture, religion, ability, socioeconomic factors)
- Interview techniques appropriate to children and adults
- The justice system as it relates to family law
- Conflict resolution and/or Mediation skills
- How to maintain professional neutrality and objectivity when conducting an assessment

In order to conduct a custody/access assessment a social worker should be familiar with relevant case law and legislation which may include:

- *The Children's Law Reform Act*
- *The Divorce Act*
- *The Child, Youth and Family Services Act*
- *The Family Law Act*
- *The Courts of Justice Act*

Scope of the Assessment

The scope of an assessment will be determined by the referral question, the nature of the issues raised by the parents and/or their counsel, and the social worker's clinical judgment. Where the parties have entered into a contract with the social worker, retaining him or her to perform a custody/access assessment, the contract should define the general scope of the assessment. Similarly, where the assessment occurs at the request or direction of the Court, the Court's order will define the general scope of the assessment. Within that defined scope,⁸ the particular issues to be addressed in the assessment and the methods of obtaining, analyzing and disseminating information are usually at the discretion of the social worker.⁹ The assessment process may include an issue focused educative component around the needs of children and families and/or a settlement component. As noted previously, the best interests of the child are the focus of any intervention.

Although the parents and/or their counsel may be consulted, the process of the assessment including the number of interviews, the order in which they are conducted, whom to include in the process, whether or not there are to be home visits, and the nature of collateral information to pursue, is to a large extent within the professional judgment of the social worker. However, the exercise of that judgment by a social work member of the College is always subject to the requirements of the College's Code of Ethics and Standards of Practice.

In addition, although the process of the assessment may vary depending upon the circumstances and the social worker involved, the social worker should always make an attempt to balance the process in terms of time spent with both parents. There may be times when it is necessary to spend more time with one parent than the other. However, if a substantial discrepancy occurs, the social worker should be prepared to explain the rationale underlying this and should ensure that the assessment conducted is sufficient to support any recommendation made by the social worker regarding custody/access.

FOOTNOTES

8. and bearing in mind any relevant statutory framework, such as the provisions for determining the "best interests" of a child in section 24(2) of the *Children's Law Reform Act*.
9. The dissemination of information regarding the assessment and the social worker's recommendations may also be affected by (among other things) the *Family Law Rules* or by statutory requirements.

Procedures in Arranging Assessments¹⁰

REFERRAL

Referrals are generally made by lawyers with the consent of the parents and/or by court order.¹¹ If the parents do not agree on an assessor, the court may designate the social worker/assessor. In order to proceed with the assessment, the social worker must provide his or her consent to act as the assessor.

CONTRACT

The social worker should communicate with the lawyers (or, in the case of an unrepresented party, with the party directly) prior to commencing the assessment. The communication may be in person, by telephone or in writing. This communication clarifies:

- Specific issues to be addressed and assessed
- The required fees including an hourly rate, an estimate of total hours, conditions of a retainer, and the proportion to be paid by each party
- Materials required to proceed with the assessment (e.g. prior court documents, affidavits)
- Specific policies and procedures as determined by the social worker

Following contracting with counsel or the parties, as the case may be, the social worker clarifies contracting issues with the parents. The social worker can meet with the parents jointly or individually.¹² During this contracting meeting, the social worker reviews the key elements of their policies and procedures, including:

- Who may be interviewed or contacted
- Where the interviews will take place
- The possibility (if relevant) of standardized testing
- The hourly fee and division and method of payment
- The limits of confidentiality including the duty to report child protection concerns as per the *Child, Youth and Family Services Act*¹³

It is suggested that in a custody and access assessment there be a written contract signed by the parties.

FEES

Fees for an assessment are outlined as part of the contracting. Usually fees are charged on an hourly basis for all services rendered in relation to the assessment. This includes, but is not limited to, interviews, review of materials, telephone discussion, preparation for meetings, any written material prepared, cancellation of appointments without adequate notice, and testimony in court. It is important that this is clearly stated in the contract. Most commonly, parties share the cost of the assessment equally, but there are occasions where the cost is divided unequally or where one party pays for the full cost of the assessment. This is acceptable, and addressed as part of the contracting. The social worker remains impartial regardless of the method of payment for services.

FOOTNOTES

10. The preceding paragraphs (titled "Referral", "Contract" and "Fees"), regarding arranging assessments, apply only to court-ordered assessments under s. 30 of the *Children's Law Reform Act* and assessments arranged on consent and without any court order.
11. Occasionally, parties do not have counsel and represent themselves throughout the court proceedings. In these situations social workers can use discretion as to how to contract, the underlying principles being equality, transparency and informed consent.
12. It is advisable to have individual contracting meetings if there has been domestic violence.
13. All aspects of assessment, including data collected, opinions expressed, or the assessment report, may become part of the public record.

The Assessment Process

CONDUCTING THE ASSESSMENT

1. Individual interviews with each parent¹⁴

A custody/access assessment should involve both parents in the process and should include interviews with both parents. The purpose of such interviews includes but is not limited to:

- Determine each parent's perspective of the issues and his/her views regarding a proposed parenting plan
- Assess the parents' ability and willingness to cooperate with each other
- Assess the parents' ability to focus on and meet the child's physical and emotional needs
- Obtain personal history
- Obtain information about the history of the relationship
- Obtain information about parenting history
- Explore issues such as violence, mental health issues, addictions
- Obtain background information about the child
- Explore each parent's willingness to foster the child's relationship with the other parent and significant others in the child's life
- Discuss which other family members and/or collateral contacts, such as teachers, day care providers, doctors, and therapists should be contacted¹⁵

2. Interviews with the child¹⁶

A custody/access assessment should include interviews with and/or observations of all children who are the focus of the assessment. The purpose of such interviews is to:

- Assess the child's level of maturity, interests and special needs
- Determine the child's relationship with each parent and, if relevant, with significant others, such as step-parents, siblings and grandparents
- Assess how the child is coping emotionally, socially and academically
- Explore to what extent the child has been involved in the conflict and what impact this has had on the child
- Understand the views and preferences of the child, where appropriate¹⁷

All children who are the focus of the assessment should be interviewed and/or observed by the assessor, depending on the age and the child's receptive and expressive language skills. An assessment should not be completed with the social worker never having met the child(ren) who is (are) the focus of the assessment. Generally, the child should be interviewed individually¹⁸ and separately from the parents in a private setting (in addition to any interviews of the child that may occur in the presence of a parent). Interviews may take place in the social worker's office, in the parent's home, or in a neutral environment such as the school. There should be a reasonable balance in terms of who is bringing the child to the interview or in whose home the child is being interviewed.¹⁹ A social worker may also choose to interview siblings together, but it is generally advisable to spend some individual interview and/or observation time with each child.²⁰ Ultimately, it is the social worker's clinical judgment that should determine the number of interviews, the setting of these interviews, and who is involved in these interviews. If there is a clear imbalance, the social worker should be prepared to explain the rationale for this. The social worker should inform the child of the limits of confidentiality.

3. Joint interview(s)/observation(s) with each parent and the child

A custody/access assessment should generally include a joint interview or observation (sometimes referred to as an observational visit) with each parent and any child who is the focus of the assessment. The purpose of such interviews includes but is not limited to:

- Observe the nature of the interaction between each parent and the child
- Observe the relationship between the child and significant others such as siblings, grandparents or step-parents, who may be acting in a parenting role²¹

In rare situations, a social worker may decide not to see a child with a parent. This may occur if the social worker is concerned about the child's emotional well-being or safety.

4. Interviewing significant others

A social worker may choose to interview significant people in the child's life such as, but not limited to, caregivers, extended family, step-siblings, parents' partners and family friends. If a new partner were living in a residence with the children and performing a caregiving role, or were reasonably likely to be living in a residence with the children or performing a caregiving role, it would be important to include him or her. The choice of which collateral information to obtain remains with the social worker. All participating parties should be informed of the limits of confidentiality. The purpose is to:

- Determine their perspectives on the child and, if appropriate, on the family dynamics
- To explore their relationship with the child and/or the parents
- To obtain a broader understanding of the family system

5. Collateral Information

The social worker should be mindful of the importance of gathering information from multiple sources in order to thoroughly explore the issues relevant to the assessment. Collateral information is important in obtaining a full understanding of the child and the family. Information from appropriate outside sources provide important data that may enhance the reliability of the assessment. Collateral information may be obtained from professionals such as physicians, teachers, therapists, social service workers or probation and law enforcement officers. The choice of which collateral information to obtain remains with the social worker, who may contact these collateral sources once the parents have signed the necessary consent for release of information. Participants should be informed of the limits of confidentiality. The collateral interviews may take place in person or by telephone, as determined by the social worker.

6. Objective tests and evaluative measures

Occasionally, objective testing may be helpful to obtain a broader understanding of a parent's psychological and social functioning and how this might impact on parenting ability. Although the use of objective tests and measurements is not restricted to any one profession, it is the responsibility of the member to ensure that he or she has the required advanced training, education and experience to provide evidence of this competence. Members should note that tests must be purchased from an established, legitimate vendor and furthermore, that eligibility to purchase tests is determined on the basis of training, education and experience. Many tests and measures require that the user has advanced training at the graduate level in tests and measurement. The intended use of the objective test must also be considered. It is important to recognize that the testing is conducted within the context of a comprehensive custody assessment, and consequently, the results must be interpreted with caution and seen as hypotheses to be further tested and integrated with the findings of the member's assessment. No inferences should be drawn *from the testing alone* as to what would be in the child's best interests with respect to custody and/or access. If the test is used to assist with the diagnosis of disorders, a social worker would be well advised to exercise caution in his or her use of the measure, and the interpretation and communication of the results, so as not to be in breach of the *Regulated Health Professions Act, 1991* with respect to the controlled act of "communicating a diagnosis."

The social worker may refer the psychological testing portion of the assessment to a qualified person, who will conduct the testing and interpret the results for the social worker's use in completing the assessment.

7. Home Visits

A home visit can often provide valuable information relevant to the assessment and is arranged at the discretion of the social worker. If it is determined that a home visit is to be conducted, then the homes of both parents should be visited. On a rare occasion, a social worker might decide to visit only one home. If this is the case, there must be a clear rationale for this decision.

8. Joint parental interviews

The social worker may meet with the parents jointly at any point during the assessment.²²

The purpose would be any, or all, of the following:

- Observe the parental interaction
- Discuss issues relating to the child
- Provide education relating to the impact of separation and divorce on children
- Discuss alternatives regarding parenting plans
- Explore areas of agreement with regard to parenting arrangements

CONCLUDING THE ASSESSMENT

After collecting and analyzing the data, the social worker will need to disclose the outcome of the assessment. The social worker may choose to do so in any of the following ways:

- Discussion with the parents and/or counsel to facilitate settlement. It is at the social worker's discretion whether this should be done individually with each parent, or jointly with both parents.
- Meetings with the parents and/or counsel to assist them to develop a parenting plan based on the social worker's assessment and on parental input.
- Assist the lawyers in developing Minutes of Settlement.
- A verbal disclosure of recommendations to the parents and/or counsel. If disclosing to the parents, the social worker can decide to do this individually or jointly.
- A written assessment report that may include recommendations. This report may be sent to counsel and/or the parents and/or the court, depending on the individual circumstances.

It is important that the social worker disclose information in a balanced and equitable manner and, to the extent possible, assure that both parents receive the information within a reasonably close time-frame. If a report is to be submitted, it should be sent, to the extent possible, at the same time.

WRITTEN REPORT

At the conclusion of the assessment a written report may be required or requested. This is most often the case when a settlement relating to the issues in dispute has not been reached. Where a written report is required, the social worker should prepare a report that includes:

- Referral source and the referral question, as outlined by the parents and their counsel or by the court
- Parent's issues and a summary of parental concerns²³
- Sources of information, noting specifically collateral contacts, relevant reports and materials reviewed

- Number of interviews with the parents and the children
- Sufficient information, analysis of data and the rationale for recommendations

The social worker may include family background, relationship history and other information provided by the parents, children or collateral sources. It is at the social worker's discretion how detailed this information should be. The social worker may choose not to make recommendations and may instead choose to outline various parenting alternatives.²⁴

Should a settlement be reached, the social worker may choose to write a summary report.

ETHICAL CONSIDERATIONS

- Recommendations for custody/access should generally not be made outside a custody/access assessment. For example, a child's therapist should not make recommendations regarding custody/access. An exception to this is when a social worker is engaged as an arbitrator or as a parenting coordinator. In these situations, the scope of the mandate must be contracted with counsel for the parties (or, where a party is unrepresented, with the party). (See footnote 2)
- A social worker acting as a child's therapist may offer factual and observational information based on their contacts, however, should not make recommendations regarding custody/access.
- A social worker should not conduct a one-sided custody/access assessment, in which only one party is interviewed, if any recommendation regarding custody or access is to be made. Both parents must be part of the process.
- A social worker should not make a recommendation or draw a conclusion about a person who has not been interviewed.
- A social worker should not make a recommendation of custody/access based solely on a review of legal documents or another professional's assessment.
- A social worker who has acted as a therapist to parent/parents or to the child, or has had a personal relationship with a parent or a child, should generally not conduct a custody/access assessment.²⁵ When avoiding multiple relationships is not feasible (e.g. in small communities), the prior relationship must be fully disclosed to the parties and counsel and the parties must provide informed consent.
- If there is a prior relationship with a lawyer, other than in a professional capacity, this should be disclosed prior to accepting the referral.²⁶
- A custody/access assessment is an "open" process and information collected cannot be considered confidential. Participants should be informed of the limits of confidentiality. Social workers must expect that their written report may become part of a court file and as such is a public document. Unless required by contract, operation of law or by court order, the social worker has the discretion as to how to disclose the information and which information to disclose.

For more information about this or other practice issues, contact the College's Professional Practice Department at practice@ocswssw.org.

FOOTNOTES

14. The number of the interviews is at the social worker's discretion.
15. The final decision as to who should be contacted remains with the social worker.
16. The number of interviews is at the social worker's discretion.
17. This must be explored with caution and understood in the context of intersecting factors including the family dynamics, the child's age, maturity and temperament.
18. With very young children (under five), the social worker may decide not to have an individual interview with the child.
19. Children may present very differently depending on whom they are with. Therefore, if one parent maintains sole responsibility for bringing the child to the interviews, it is possible that the information obtained may not be reliable.
20. If a social worker does not see a child individually, the social worker should be prepared to explain the rationale for this decision.
21. This is at the social worker's discretion.
22. The social worker should use caution in situations where there are concerns relating to violence. The social worker should determine whether there is a court order prohibiting contact, and if so, may require the intervention of the court in order to amend the condition to allow such a meeting to take place.
23. It is not necessary to detail every concern.
24. The social worker does not have decision-making authority. The decision as to custody/access is made by the parents or by the court.
25. Further, any action undertaken must be in accordance with the College's Standards of Practice, 2nd Edition, Principle II, Interpretation 2.2.1 and footnotes 6 and 7 of the Standards set out the applicable requirements regarding conflict of interest.
26. The social worker may proceed with the assessment if there has been disclosure and informed consent by both parties, subject to College's Standards of Practice, including Principle II, Interpretation 2.2.1, which sets out the applicable requirements regarding conflict of interest.

REFERENCES

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