

BC ASSOCIATION OF CLINICAL COUNSELLORS

STANDARDS OF PRACTICE

CHILD CUSTODY AND ACCESS ASSESSMENTS AND REPORTS

Second Edition - Approved by the Board of Directors on June 18, 2011

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1) Introduction

Clinical counsellors with the appropriate competencies are called upon to assess parental custody of and access to children in the context of marital breakdowns and similar situations, and to prepare custody and access reports to document their findings and recommendations. Sometimes a Court orders a counsellor to prepare a custody and access report. Other times the parents (jointly or separately) request a private assessment for the purposes of helping them resolve disputes concerning custody and access.

Regardless of how a counsellor has become involved, the BCACC recognized that there is a need to establish standards of professional practice concerning child custody and access assessments and the resulting reports. This document sets out the Association’s guidance and expectation for these services.

1.1) *What is a custody and access report?*

A Child custody and access report documents the assessment that a counsellor makes when assessing what would be in best interests of a child or children in the context of a marital dispute where the parents cannot reach an agreement on these issues. Custody and access reports are used to help the Court and families in determining the best interests of children and evaluating how those needs can best be met.

A court may order that an assessment be undertaken pursuant to section 15 of the *Family Relations Act*.¹ This usually occurs when the parents are not able to agree to a custody and access arrangement, or one or both parents ask the Court to order such an assessment. The Court may also issue an assessment order in situations where family mediation was unsuccessful.

¹ R.S.B.C. 1996, c.128.

On other occasions, both parents may agree, without seeking a court order, that a private assessment should be undertaken to help guide the parents in making their own custody and access decisions. The parents would then use the resulting private report as the basis to inform their mediated agreement on custody and access. In turn, the parents would file an order by consent. In these cases, the Court would not see the private custody and access report.

If the parents' cooperation breaks-down and a dispute arises as they try to mediate their separation, the private report could be submitted by one or both of the parents as the foundation to seek a court order on custody and access of the children. In such cases, the private assessment would be presented to the Court as an expert custody and access report, and – if so accepted by the Court – it would obtain the same status as a court ordered report under section 15 of the FRA.

In addition to custody and access reports ordered under section 15 FRA, the Court may order that other types of assessment reports be prepared in the context of a marital dispute, such as reports that document the views of the child or assess the parenting abilities of one or both parents.

These Standards speak to the full range of all such family law reports, although most often reference will be made to just custody and access reports.

Regardless as to how they are initiated, custody and access reports and other similar reports can become a primary source of information that is used by the Courts in making child custody and access and related family law decisions. Indeed, these reports usually document important information that is often not readily available to the Court by any other means.

Because of the unique nature of custody and access assessments, a clear distinction needs to be drawn between this form of clinical assessments and other types of assessment reports, such as those used in personal injury cases. In addition, and as this Standard will later describe, counsellors should ensure that their role in performing a custody and access assessment is not confused with their more common role of providing advice and support to clients in a clinical counselling session.

1.2) Effect of the New Rules

On July 1, 2010, a new set of Court Rules came into force; one set for general civil proceedings (*Supreme Court Civil Rules*²) and another parallel set of rules for family law proceedings (*Supreme Court Family Rules*³), which apply to proceedings that are conducted under the federal *Divorce Act*⁴ or BC's *Family Relations Act*.⁵ These will be referred to in this Standard as the Civil Rules and the Family Rules, respectively, and collectively as the New Rules.

² B.C. Reg. 168/2009, effective July 1, 2010 via O.C. 302/2009.; herein “the Civil Rules”.

³ B.C. Reg. 169/2009, effective July 1, 2010 via O.C. 303/2009.; herein “the Family Rules”.

⁴ R.S.C. 1985, c. 3 (2nd Supp.).

⁵ R.S.B.C. 1996, c. 12.

The expert report provisions of the New Rules replaced the 1990 version of Rules 32A and 40A of the *Supreme Court Rules*,⁶ but they also added many new requirements.

With the coming into force of the New Rules, the BCACC decided that it would replace the 2000 *Standards for Writing Court ordered Reports* with more comprehensive information to help counsellors better understand how they should prepare their expert reports and their role as experts, in particular as those functions that are now specified under the Civil Rules. In addition, the BCACC has updated the 2005 standards on *Child Custody and Access Assessment and Reports* to reflect the Family Rules. Changes to both sets of standards are necessary because the New Rules contain a number of new and important provisions that all counsellors should be aware of before they start to prepare expert reports or give evidence in support of their filed reports.

1.3) Role of the Courts and the BCACC

The Courts play a significant role in supervising the quality of the expert reports that are ordered pursuant to section 15 of the *Family Relations Act*, or under the new Civil Rules or Family Rules, as well as range of private expert reports that one or more of the parties may submit to a Court without an order. As such, the BCACC Board of Directors has adopted a separate policy that explains when the Association will investigate public complaints against clinical counsellors concerning any type of expert reports that have been or will be either ordered by or considered by the Courts.

In brief, the Inquiry Committee will not investigate a complaint against a counsellor concerning a custody and access or any other form of expert report that the counsellor prepared pursuant to a Court order or that was otherwise submitted to the Court by one of the parties as an expert report, unless the Committee is also provided with evidence that the Court which ordered or received that report was critical of either the counsellor's assessment process or the resulting report.

Notwithstanding the effect of the Inquiry Committee's "screening" policy, the BCACC practice standards can be used by the BCACC, the Courts and others to assess the quality of the custody and access assessments that are undertaken by clinical counsellors and their resulting reports. Most importantly, counsellors can use these Standards as a guide to maintain their skills in this growing area of clinical practice.

1.4) Standards reflect minimum requirements

The Standards set out in this document reflect the minimum level of competency and practice that is expected of a counsellor when undertaking a custody and access assessment. While these Standards articulate the requirements for counsellors who prepare custody and access reports,

⁶ Supreme Court Rules, B.C. Reg. 221/90 (as amended); pursuant to the *Supreme Court Act*, R.S.B.C. 1996, c. 443; herein "the Old Rules".

reference should also be made to the more general guidance that is provided to counsellors within the BCACC Bylaws and Code of Ethics, in particular if there is an aspect of practice that is not covered in these standards.

In preparing these standards, the BCACC recognizes that undertaking a custody and access assessment requires a counsellor to exercise his or her best clinical judgment. Being involved in a custody and access dispute is often a stressful situation for all concerned, and is usually the source of highly emotional disputes between the separating parents. As such, these Standards should be viewed and interpreted as encouraging counsellors to employ their clinical assessment and reasoning skills in a creative but balanced, impartial and objective fashion.

For counsellors who are preparing expert reports that are not based upon section 15 of the FRA, they should consult the companion set of standards on general clinical counselling expert reports.

1.5) Counsellors should avoid role confusion

The BCACC recognizes that counsellors can provide a range of services to children, parents and whole families before, during and after marital breakdowns. These Standards have been prepared with the understanding that the counsellor will be acting as an assessor for the purposes of preparing a court ordered, expert custody and access report or a follow-up report, or a private report that may later become an expert report. While acting as a custody and access assessor, a counsellor should avoid multiple roles, such as also acting as a therapist, a consultant, a mediator, an arbitrator or a critic or advisor for the same family members. It is expected that a counsellor, when acting as a custody and access assessor, will clearly differentiate between these different professional roles and avoid role confusion.

1.6) Application of the Personal Information Protection Act

The requirements of the *Personal Information Protection Act*⁷ (PIPA) apply to the information that a counsellor in private practice collects, uses or discloses while undertaking a custody or access assessment, whether ordered by the Court or at the request of one or more of the parties. Therefore, a counsellor should be aware of and follow the requirements of this Act, as well these Standards. The BCACC's guideline, *A Counsellor's Template for Client Personal Information Protection Policies and Procedures*, provides further guidance on this important legislation.⁸

These standards have been written with reference to the PIPA. If a counsellor who is not in private practice is relying on these standards, that counsellor or the employing agency may be required to comply with either that Act or the earlier *Freedom of Information and Protection of*

⁷ S.B.C. 2003, c.63.

⁸ The PIPA guidelines are posted at the BCACC website; reference: http://www.bc-counsellors.org/files/PIPA_ACounsellorsGuideOctober2004.pdf

*Privacy Act*⁹ (FOIPPA). If the FOIPPA applies, a counsellor should substitute a reference in these standards to the PIPA with a reference to FOIPPA.

Where there is a conflict between these custody and access standards and the requirements of either PIPA or FOIPPA, the privacy legislation takes precedence over these standards.

1.7) Application of other standards

If a counsellor has been appointed by the Court as a Family Justice Counsellor and is undertaking a custody and access assessment in that capacity, the counsellor should follow the policies and procedures set out in the *Family Justice Services Manual of Operation* produced by the Family Justice Services Division, Ministry of the Attorney General, rather than these standards.

1.8) Legal Commentary on Expert Reports

These standards should be read in conjunction with a legal commentary prepared by the BCACC legal counsel, George Bryce, titled *Legal Commentary on Expert Reports*.¹⁰

In that Commentary, Mr. Bryce explores the impact of section 15 of the *Family Relations Act*, the new Family Rules and the common law on the role of counsellors who prepare custody and access reports. He refers to a number of reported cases where the Courts have identified problems with custody and access reports that have been filed by counsellors and other professionals.

1.9) Sources

The BCACC acknowledges the following documents that have been considered in preparing these practice standards for clinical counsellors (listed in chronological order):

- *Guidelines for Child Custody Evaluations in Divorce Proceedings*, American Psychological Association (July 1994);
- *Professional Guidelines for Psychologists: Child Custody Assessment*, College of Alberta Psychologists (revised to January 2002);
- *Family Justice Services Manual of Operation*, Family Justice Services Division, Ministry of the Attorney General (revised to June 2005);
- *Standards for Child Custody and Access Assessments*, Newfoundland and Labrador Association of Social Workers (January 2007);
- *Guidelines for Child Custody Evaluations in Family Law Proceedings*, American Psychological Association (February 2009);
- *Custody and Access Assessment Guidelines*, Ontario College of Social Workers and Social Service Workers (September 2009);

⁹ R.S.B.C. 1996, c.165.

¹⁰ This Legal Commentary is available at the BCACC website; follow the links Continuing Competency – Legal Issues.

- *Psychological-Legal Assessments in the Family Law Context: Consultation Draft*, College of Psychologists of BC (July 2010);
- *Child Custody and Assessments Standards of Practice*, BC College of Social Workers (September 2002, reprinted 2010).

In addition, the BCACC has considered reported cases where the BC Courts have considered custody and access reports that have been prepared pursuant to the *Family Relations Act*.

1.10) Replace previous standards

The BCACC Board of Directors approved these standards pursuant to section 30(1)(b) of the BCACC Bylaws on the date noted on the front page. These Standards replace the first edition of the Standards originally approved by the Board of Directors in 2005.

2) Guiding Principles for Report Writing

Counsellors need to hold paramount the best interests of the child when writing custody and access reports. It is recognized that a child's best interests may, in turn, be affected by the interests of parents, families and friends. In order to preserve these interests, counsellors should consider the following in their reports:

- Take a strengths-based perspective. Custody and access reports by necessity may require concerns to be documented. However, a strengths-based perspective requires that the counsellor include only as many negative statements about a party as is necessary to make the point, and not to use inflammatory language.
- Preserve the dignity and privacy of the parties. Custody and access reports may require the disclosure of information that may be hurtful to significant relationships. Where possible, that is, where the integrity of the report can be preserved, counsellors should try and avoid damaging significant relationships. One means by which this could be achieved is for the counsellor to show respect for the collaterals and their relationship with the parties. However, a counsellor must bear in mind that a disclosure may be necessary to protect the paramount interest of a child.
- Add constructive comments to the report. Custody and access reports comment on family dynamics and intend to provide the best parenting option for children. Comments and recommendations that counsellors make should contribute positively to the parenting plan.
- Hold a broad theoretical and practical base. Custody and access reports should carefully guard against prescribing particular points of theory that are likely to become obsolete due to the evolving nature of the scientific knowledge and professional practice to which they refer.
- Avoid making absolute predictions. Custody and access reports represent the best current

knowledge of the profession and represent criteria for informing decisions that are superior to other alternatives. This limitation applies to both content and recommendations.

3) Terminology

The following definitions will be used throughout these Standards:

- “Adult” means a person 19 year of age or older who is interviewed during the assessment or report-writing process.
- “Child” means a child who is the subject of a custody and access assessment undertaken by or a report prepared by a counsellor. If the context so requires, a reference to a child in these standards applies to two or more children, and also to an adopted child, a stepchild or a foster child, unless otherwise noted.
- “Comprehensive report” means a report that documents a counsellor’s evaluation of a number of issues for both a child and the parents which results in recommendations about custody and access, but is not a limited report, and “comprehensive assessment” has a similar meaning. (See also section 19, below.) Unless otherwise noted, a reference to a “report” in these standards refers to a comprehensive report.
- “Court ordered report” means a custody and access or any other type of assessment report that has been ordered by the Court pursuant to either section 15 of the FRA or Family Rule 13-5(1).
- “Counsellor” means a person registered with the BC Association of Clinical Counsellors who is authorized to use the title Registered Clinical Counsellor pursuant to the Bylaws.
- “Focused report” means a report that documents a focused, limited or clinical assessment or evaluation of the function of one member or only a few members of a family, or a report that addresses a limited number of issues, and “focused assessment” has a similar meaning. An example of a focused report would be a Views of the Child Report, or a report that focuses on a particular issue, such as overnight visits or drug/alcohol issues. (See sections 6.2, *Views of the Child*, below.)
- “Parent” means an individual who is legally responsible for and parenting a child, and includes the custodial and non-custodial parent, an adoptive parent, a stepparent, legal guardian, a parent *in absentia*, or a caregiver. If the context so requires, a reference to a parent in these standards applies to both parents of a child, unless otherwise noted. It may also include a lawyer who represents a parent in a legal proceeding.
- “Private report” means a means a custody and access or any other type of assessment report that has been requested by one or both of the parents, but without a court-order, whether or not that report is later submitted by one or both parents as an expert report.

It is recognized that the terms “custody” and “access” may change in light of future changes to BC legislation governing divorce and family relations. However, until such changes are completed, this standard will continue to use these terms.

These standards also recognize that, while there are certain minimum requirements a counsellor must follow when doing an assessment or writing a report, there are also areas of practice where the counsellor has options and should exercise his or her best clinical judgment. To reflect the difference between a mandatory requirement and a suggested or recommended practice, these standards will use two different sets of verbs.

- The use of “shall” or “must” denotes an action or event that a counsellor must perform as a mandatory or minimum requirement; one that can later be subject to peer review or possible enforcement.
- The use of “should” or “may” denotes an action or event that it is recommended or suggested a counsellor should perform, but is not necessarily a mandatory or minimum requirement.

4) General Requirements

The following are the general principles that a counsellor is expected to apply or consider while undertaking a custody and access assessment, or similar assessment, and preparing a resulting report. Specific requirements and recommendations are set out in later Parts.

4.1) Competencies

In order to undertake a custody and access assessment or prepare a report, the counsellor should have knowledge, skills and abilities in the following subject areas:

- (a) family systems theory;
- (b) attachment theory;
- (c) theories of childhood development, including stages of development and the impact of abuse, neglect, and trauma on development;
- (d) the psychological effects of separation or divorce process on parents and children and separated siblings, including knowledge of appropriate parent or child residential schedules and visitation schedules;
- (e) the impact of cultural, spiritual, and religious background, including cultural self-concept, on separation and divorce;
- (f) the dynamics of grief or loss within the context of separation and divorce with particular emphasis on the impact on children;
- (g) psycho-social assessments commonly used by counsellors;
- (h) interview techniques appropriate to adults;
- (i) interview techniques appropriate to children;
- (j) interview techniques appropriate to collateral references;
- (k) if using testing or screening instruments during the course of an assessment, appropriate training in the administration of and in the interpretation of those instruments.

If the circumstances warrant, a counsellor must have knowledge, skills and abilities in the following additional subject areas:

- (l) family reorganization after separation or divorce;
- (m) issues of power and control and the cycle of violence, techniques for assessing the presence of family violence, and the effects of family violence on family members, particularly children;
- (n) substance abuse and addictions;
- (o) mental health.

If a counsellor identifies a subject listed in clauses (l) to (o) as relevant to an assessment either before or during the assessment but the counsellor does not have sufficient competencies concerning that subject or cannot obtain those competencies before completing the report, the counsellor should consult with another counsellor or professional who can advise the counsellor on that subject, and that consultation should be so noted in the report.

A counsellor should have basic knowledge of the following:

- (a) the financial impact of separation and divorce on a family unit;
- (b) the *Divorce Act*, Child Support Guidelines, the *Family Relations Act*, the *Child, Family and Community Service Act*, and the *Adoption Act*;
- (c) how the family justice system deals with the issues of child and spousal support and the distribution of matrimonial property;
- (d) international law concerning custody, access and abduction.

Recognizing that the acquisition of competencies is an on-going process, counsellors who undertake custody and access assessments should continue to learn and augment their current skills by undertaking continuing competency programs that are relevant to this service.

4.2) Best interest of the child

At all times during an assessment and in preparing a report, and notwithstanding who is paying the counsellor for the assessment service, a counsellor must take into consideration and act in the best interest of the child who is the subject of the assessment.¹¹

If a counsellor is faced with a conflict between this principle and any other principle or standard set out in this document, the best interest of the child principle should prevail.

¹¹ COMMENT: Section 24(1) of the *Family Relations Act* sets out the factors that the Court must consider when deciding what would be “in the best interests of the child” for decisions that are to be made under that Act. Each factor must be given emphasis according to the child's needs and circumstances: (a) the health and emotional well being of the child including any special needs for care and treatment; (b) if appropriate, the views of the child; (c) the love, affection and similar ties that exist between the child and other persons; (d) education and training for the child; (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.

4.3) Counsellor's duty

In undertaking an assessment or in preparing a custody and access report or any other assessment report, a counsellor must act in a balanced, fair and impartial fashion, in keeping with the counsellor's ethical and legal duties.¹²

The counsellor must undertake an objective assessment of the family to help the Court or the family reach a decision regarding the custody of and access to the child or children of that family that best meets the needs of each child.

When undertaking a custody and access assessment and in writing the subsequent report, a counsellor should

- (a) exercise his or her best clinical judgment, and
- (b) employ clinical assessment and reasoning skills in a creative but balanced fashion.

If a counsellor recognizes that professional objectivity and impartiality is impossible or has become compromised, the counsellor should withdraw from the assessment process and so advise the Court or the family.

4.4) Reference to an order or agreement

If a counsellor has been named by the Court¹³ in an order pursuant to section 15 of the *Family Relations Act* or Family Rule 13-5(1) to prepare a report (or the parents have agreed pursuant to an open-ended order to appoint a counsellor to prepare such a report),¹⁴ when the counsellor first initiates communications with the parents, the family and other persons, the counsellor should

- (a) refer to that court order, or
- (b) provide a copy of that order or any agreement flowing from that order to the person being interviewed,

unless the counsellor knows that a parent, family member or other person is already in possession of a copy of the court order or the subsequent agreement.

If the parents have agreed without a court order that the counsellor should prepare a private custody and access report or any other assessment report, the counsellor should refer to that agreement when initiating communications with the parents, the family and other persons, unless the counsellor knows that person is already in possession of a copy of the agreement.

¹² COMMENT: The *Legal Commentary on Expert Reports* provides a detailed discussion of the law as it applies to a counsellor's duty as an expert preparing a custody and access report, as well as examples in reported cases where counsellors and others have failed to meet this duty.

¹³ COMMENT: This would include a situation where the Court directed that a professional undertake a section 15 assessment, but left it to the parties to agree to have a specific counsellor undertake the ordered assessment.

¹⁴ COMMENT: If the Court ordered that a report be prepared by a Family Justice Counsellor, but both parents (through their lawyers) later agree that the report should be completed by a counsellor in private practice, the counsellor should encourage the parties to return the matter to Court to have the original ordered varied accordingly.

4.5) Avoiding dual relationships

Because a counsellor can provide a wide range of counselling and therapeutic services to parents and their children, a counsellor who has been ordered or contracted to undertake a custody and access assessment or another family assessment should make every effort to ensure that his or her role as an assessor is understood by those who will be involved, whether or not the counsellor has provided counselling, therapeutic or similar services to the family, either parent or a child in the past.¹⁵

A counsellor who has been ordered by the Court or contracted by one or both parents to prepare a custody and access report must not, while performing the assessment or preparing the report, provide any counselling, therapeutic or similar services to the child or family that is the subject of that assessment or report, unless

- (a) the Court so orders, or
- (b) the parents give their informed consent to the counsellor also providing those counselling services.

A counsellor who is providing counselling, therapeutic or similar services to the child or family must not while providing those services also undertake an assessment or prepare a custody and access report, or make any recommendations concerning custody and access, unless

- (a) the Court so orders, or
- the parents give their informed consent to the counsellor also providing the assessment service.¹⁶

If a counsellor has had prior contact with a parent or the child, the counsellor must disclose the nature of that contact to the parents or the Court prior to

- (a) undertaking a custody and access assessment or preparing a report, or
- (b) testifying in Court, and

the counsellor must not undertake the assessment or prepare a report, or testify in Court unless the parents so consent or the Court so orders.¹⁷

If a counsellor has had a prior personal relationship with one of the lawyers involved in the dispute, other than in a professional capacity, the counsellor should disclose that relationship to the Court or the parents before accepting the appointment.

¹⁵ COMMENT: It is recommended that the counsellor hold an “expectations meeting” with the parents before the assessment begins, as this can help the parties to understand the process they are about to be engaged in and allows the counsellor to deal with any potential concerns about dual relationships.

¹⁶ COMMENT: A counsellor who is providing counselling, therapeutic, or similar services to a client may produce a letter of advocacy on the request of the client or the lawyer, but such a letter should not make recommendations regarding custody and access.

¹⁷ COMMENT: For example, if the counsellor works or resides in a small community, prior contact between a parent or child and the counsellor may be unavoidable. In such cases, the counsellor should disclose that prior contact and the parents should consent to or the Court may approve the counsellor’s continued involvement.

4.6) Contracting

If a counsellor is acting pursuant to the request of both parents, a counsellor should enter into a written contract with each adult parent before beginning the assessment.

As explained in the Legal Commentary, Family Rule 13-4(2) requires that, if the counsellor has been appointed by the parties as their joint expert, the counsellor and the parties in the dispute must enter into a separate written agreement, and that this agreement must also be signed by the counsellor and the parties.

Establishing a contract is important because, as Family Rule 13-4(5) goes on to state, the counsellor who was appointed by the parties as their joint expert is deemed to be the only expert who may later give expert opinion evidence in the legal matter on the issues to be assessed. And Family Rule 13-4(9) also requires that the parties must cooperate fully with their appointed joint expert, and to also make full and timely disclosures of all relevant information and documents to their joint expert.

If a lawyer represents a parent, the counsellor may contract with that parent through the lawyer unless the parent or lawyer otherwise advises. But if a lawyer does not represent a parent, the counsellor should contract directly with that non-represented parent.¹⁸

If the counsellor is acting pursuant to a court order, the counsellor does not have to enter into a formal, written contract with the parents, as the counsellor would be then acting pursuant to that order, which is also binding on the parents. There should be no need for the counsellor to establish a separate agreement with the parents named in the court order. However, if practical issues such as the counsellor's fee for services, allocation of costs, and payment schedules are not addressed in the order, a counsellor should set out such matters in a separate written agreement with the parents.

Family Rule 13-5(4) provides that, if a counsellor is approached to be a court-appointed expert, the counsellor should be asked directly by the Court if he or she would consent to the appointment. At that time, the counsellor should ensure that all of the essential terms of the court ordered appointment, including financial arrangements, are spelled-out in the order.

4.7) Terms of a contract

Subject to what may already be set out in a court order, if any, the counsellor should ensure that the following subjects are addressed in the contract or agreement:

- (a) an outline of the process and procedures to be followed, and the areas to be covered during the assessment process;
- (b) scope of the assessment or general nature of the report, including whether ordered

¹⁸ COMMENT: To ensure that a parent is aware of his or her legal rights, a counsellor who deals with a parent who is not represented by a lawyer should encourage that parent to seek independent legal advice. This should also help the counsellor avoid becoming embroiled in a subsequent dispute with a disappointed parent.

- by the Court or not;
- (c) access to records;
- (d) estimated duration of the assessment process, including any deadline for submitting the report set out in a court order;
- (e) disclosure and distribution of the report;
- (f) whether recommendations will be made in the report;
- (g) registration and credentials of the counsellor;
- (h) confidentiality and the exceptions (see section 5.5, *Confidentiality and Exceptions*, below);
- (i) consent for the release of information;
- (j) financial arrangements for paying the counsellor (see section 4.8, *Financial Arrangements*, below);
- (k) dealing with any potential conflicts of interest (see section 1.5, *Counsellors Should Avoid Role Confusion*, above);
- (l) arrangements for consulting with other professionals;
- (m) if the counsellor was not appointed pursuant to a court order, what steps a parent may take if the parent has a question or concern regarding the professional work of the counsellor;
- (n) the counsellor's membership with the BCACC.

In addition, the counsellor may include the following subjects in the written contract if known at the time the contract is signed:

- (o) an assessment timetable, such as who will be interviewed, when and where;
- (p) use of any screening or assessment tools;
- (q) the number or nature of home visits;
- (r) requesting or using written collateral reports;
- (s) settlement opportunities and the role of the counsellor if parental agreement is reached concerning custody or access;
- (t) the general responsibilities of the counsellor and each of the parents.

If a Court orders the counsellor to prepare a custody and access report pursuant to section 15 of the *Family Relations Act*, the counsellor need not itemize in a contract those items that are specified in the order itself. However, the counsellor should refer to or attach a copy of that order to the written agreement.

4.8) Financial arrangements

Whether or not a counsellor is appointed by the Court, the counsellor must advise the parents about the financial arrangements with respect to the counsellor's statement of account, including:

- (a) the counsellor's fees and disbursements for undertaking the assessment and preparing the report, including an estimate of the total costs and the possibility of any additional or unanticipated fees or disbursements that may occur;
- (b) daily amount for attending Court to be examined on the report;

- (c) any taxes that may be applied to the fees or disbursements;
- (d) the nature of the services that the fees cover, including attending Court;
- (e) who will pay the counsellor's statement of account;
- (f) when the statement of account will be paid;¹⁹
- (g) what options the counsellor may pursue for obtaining payment on an unpaid statement of account.

Family Rule 13-5(10)(a) gives the Court the authority to fix the amount of remuneration to pay the counsellor who the Court appoints under the *Family Relations Act* or Family Rule 13-5(1). However, the counsellor who is to be appointed by the Court should agree to that amount *before* agreeing to the appointment. The counsellor should also agree to the other financial arrangements, as described in this section, and those terms should also be set out in the court order. If they are not, they should be documented in the subsequent agreement.

If the parents will not share equally in paying the counsellor's statement of account (because, for example, the Court has ordered that one parent pay for the assessment, or one parent has agreed to cover the costs of the assessment), the counsellor should

- (a) discuss fees and financial arrangements with the parents before the counsellor begins the assessment, and
- (b) specify in the contract the allocation of the costs between the parents.

A counsellor should document in the contract the terms of the financial arrangements, as recommended in section 4.7, above. The counsellor should also keep clear and accurate record of the time he or she has spent interviewing, writing the report, etc. All recorded work should be necessary to allow the counsellor to express the requested opinion.

If the total costs for completing the report will exceed those estimated in the contract, the counsellor must inform the clients of this as soon as practical and explain the reasons for the additional fees. If practical, the counsellor should negotiate a new or further arrangement with the parents for the payment of the additional costs.

5) Gathering Information

5.1) Pre-assessment meeting

If a counsellor holds a pre-assessment information meeting during the orientation process with one parent, the counsellor must offer a similar meeting to the other parent.

5.2) Consulting the parents re: scope

The counsellor must determine the scope of a custody and access assessment in conjunction with the parents, taking into consideration any directives given in a court order or a referral

¹⁹ COMMENT: It may help to safeguard the counsellor's role as an impartial assessor if the counsellor collected all or part of the agreed fee prior to or at the start of the assessment, or prior to release of the final report.

question.

If, after consulting with the parents, the scope of a particular assessment needs to be limited or broadened as determined by the counsellor, the counsellor should communicate such changes to the Court or the parties in a timely manner, and be prepared to justify such needed change.

5.3) Informed consent (children)

The requirements of this section apply only if a counsellor has not been named by the Court pursuant to section 15 of the *Family Relations Act* or Family Rule 13-5(1) to undertake a custody and access assessment or a related assessment, but is doing the assessment or preparing a private report at the request of one parent or both parents. In other words, if a counsellor has been ordered by the Court under section 15 FRA or the Family Rules to undertake an assessment and prepare a report, it is not necessary for the counsellor to then obtain parental consent before interviewing a child.

Before commencing an assessment of a child, a counsellor must obtain the informed consent of the parent(s) of the child to participate in the assessment.²⁰ Appendix A contains a chart that provides a framework to help a counsellor to decide which parent(s) should be asked to consent before the counsellor interviews a child.

If the child is a mature minor, the counsellor can rely on the consent of the mature minor for the purposes of interviewing that child, to the extent of that child's capacity for understanding based on the child's developmental level and ability to give or express consent.²¹

If a parent refuses to give the counsellor consent to interview a child, the counsellor will so inform that parent of the probable consequences of their lack of cooperation with the assessment process. And if the parent continues to refuse to cooperate, the counsellor must then inform that parent that a lack of cooperation can be documented in the final report.

A counsellor should obtain consent in writing, but if consent is given orally or it can be implied, the counsellor should make a note in the file documenting that oral or implied consent.

5.4) Informed consent (adults)

If a counsellor has been ordered by the Court under section 15 FRA or the Family Rules to undertake an assessment and prepare a report, the following requirements do not apply.

²⁰ COMMENT: If a counsellor is asked to undertake an assessment of a child without a court order, and if the requesting parent (or the lawyer) requests that the other parent not be informed, this may indicate a possible situation of abuse or neglect. If the counsellor later believes that the child is in need of protection, the counsellor must then advise the authorities of this belief; for details see section 6.1, *Child at Risk*, below.

²¹ COMMENT: For further guidance on obtaining consent from children, see Bryce, G. "Obtaining Consent from Children" 12:2 *Insights* (Summer 2000), which has been posted at <http://www.bc-counsellors.org/files/consentchildren.pdf>.

A counsellor must obtain the informed consent of each adult prior to their participation in the assessment process. A counsellor should obtain consent in writing, but if consent is given orally or can be implied by the adult's actions, the counsellor should make a note in the file documenting that oral or implied consent.

If a parent refuses to cooperate with the counsellor, the counsellor will so inform that parent of the probable consequences of their lack of cooperation with the assessment process. And if a parent continues to refuse to cooperate, the counsellor must then inform that parent that a lack of cooperation can be documented in the final report.

5.5) Confidentiality and exceptions

At the commencement of an interview, the counsellor must advise each person to be interviewed that personal information will be collected, used, disclosed and given security in accordance with the provisions of the *Personal Information Protection Act*.

In addition, the counsellor must advise all participants, including collateral references, of the following:

- (a) the information they provide during the assessment is not privileged and may become part of the public record;
- (b) they may be required to provide corroborative evidence in Court under oath;
- (c) if as a result of the information gathered the counsellor has a reason to believe that a child is in need of protection, the counsellor is required by law to file a report with the Ministry of Children and Family Development.²²

If during a court ordered assessment under section 15 of the *Family Relations Act*, a child requests that the counsellor keep important information confidential, but the counsellor considers it in the best interest of the child to disclose that information in the report, the counsellor should provide the report to the Court in a sealed envelope addressed to the judge, requesting that the judge rule on whether that information should be disclosed to the parents.²³

5.6) Gathering information

A counsellor must make every effort during an assessment to obtain or gather all relevant information from the best sources available that are necessary for the assessment, which must include direct methods and may include indirect sources.

A counsellor must personally conduct all forms of direct information gathering, such as

²² COMMENT: For more information on this duty, see section 6.13, *Child at Risk*, below.

²³ COMMENT: This guidance does not apply if a child discloses to the counsellor information that suggests that the child may be in need of protection. In such a case, notwithstanding that the child may have made the disclosure with an expectation of confidentiality or that the child specifically requested that such information be kept confidential, the counsellor may well have an over-riding duty under section 14 of the *Child, Family and Community Services Act* to report that disclosed information to the child protection authorities or the police.

interviews, observations and appropriate testing.

The counsellor should review all potentially relevant indirect sources of information, such as reports concerning the child or parents, as may be produced by schools, health care providers, child care providers, child care protection agencies, or health or social service organizations or institutions.

Notwithstanding the generality of the above, a counsellor may have

- (a) a counselling student undertake the gathering of indirect information, so long as the counsellor supervises that student, and
- (b) an assistant gather factual information such as school and medical records, as authorized and directed by the counsellor.

If someone other than the counsellor had a role in gathering information and preparing the report, the counsellor must so advise the parents and clearly explain that person's role and the form of supervision exercised by the counsellor, and do so either within the contract with or a letter to the parties, as well as in the final report.

Counsellors should seek as many sources as reasonable to corroborate the information they have gathered from third parties.

5.7) Information provided by parents

To ensure the results of an assessment are viewed as balanced, fair and impartial, the counsellor should make every effort to request information of the same kind and with the same degree of detail from both parents, so long as time and circumstances so permit. A counsellor meets this requirement if

- (a) the counsellor requests a parent to provide information, but that parent chooses not to provide the requested information, or
- (b) the parents' lawyers provide a joint letter to the counsellor setting out agreed facts and information.

If a counsellor cannot obtain the same kind of information or with the same degree of detail from both parents, the counsellor should include in the report an explanation as to why this requirement was not met.

5.8) Collateral sources of information

The counsellor may interview persons as collateral sources of information, including people who the parents or the child view as significant, such as grandparents, other relatives who are closely involved with the family, teachers, physicians and other health care professionals.

Before interviewing a collateral source of information, the counsellor must

- (a) ask each parent to recommend persons, who know about a parent's parenting capacity and the parent/child relationship to be references,
- (b) obtain the parent's consent, preferably in writing (in the form of a release), to allow a collateral reference to provide the counsellor with personal information about the parent, the child or the family,
- (c) ask the parents to tell their collateral references that they may be contacted by the counsellor, and
- (d) advise the parent that a collateral reference will be contacted if the counsellor decides it would be beneficial to do so.

The counsellor must also advise each collateral that

- (a) they may be subpoenaed to a hearing to give evidence on the information or observations they have provided to the counsellor, and
- (b) pursuant to the *Personal Information Protection Act*, the information or observations they have provided to the counsellor may, on the written request of a parent or a reference, be released to that requestor.

5.9) Contacting other sources of information

A counsellor may contact any other person who may be a source of personal information about the parent, the child or the family, but – as a courtesy – should do so with the parent's consent for these other persons to provide the counsellor with that information.

If a parent refuses to consent to the counsellor contacting other persons to obtain personal information about the parent, the child or the family, the counsellor may nonetheless contact those persons without the parent's consent and request information from those persons.

If a person who is a source of personal information about the parent, the child or the family declines to provide the information so requested, the counsellor must note that person's decision in the final report.

5.10) Consulting and cooperating with other professionals

A counsellor should cooperate and share information with other professionals who are qualified to work in the area of child custody and access to the extent that is authorized by the family, a Court or the law.

A counsellor may consult other professionals with specialized training and expertise in areas such as family violence, addictions or mental health, and if the counsellor so consults another professional, that consultation should be documented in the final report.

During a consultation with another professional, the counsellor may disclose otherwise confidential information about a child or parent to the extent such disclosure is permitted in the

written contract or as may be required for the purpose of the consultation.

5.11) Recording interviews

Every person has the right to record that person's interview with the counsellor.

If a person exercises the right to record the interview, the counsellor may also record the interview.

If the counsellor elects to record an interview, the counsellor may be required to provide a copy of that recording in a later legal proceeding or at the request of the party who was recorded.

5.12) Maintaining records

Because any notes and records a counsellor prepares during a custody and access assessment are subject to review by the parties on request or during a legal proceeding, a counsellor should ensure that the information and records obtained during an assessment are well maintained and reflect the process of the assessment.

A counsellor should create a separate record of each meeting and contact with the parents and all other sources of information, and note the location, date, length of meeting, individuals in attendance, and substance of the meeting.

In preparing notes or records, the counsellor must distinguish between the first hand information provided to or observed by the counsellor, and the counsellor's subsequent reflections on that information.

A counsellor should ensure his or her notes are concise but also provide enough detail to ensure accurate recall.

A counsellor in private practice is reminded that all personal information the counsellor collects during an assessment is subject to the provisions of the *Personal Information Protection Act*.

6) Undertaking an Assessment

This chapter sets out standards regarding the assessment process. The next chapter speaks to preparing the resulting report, including a framework for the report.

6.1) Focused assessment

If the counsellor is ordered by the Court or requested by one or both parents to undertake a focused assessment or provide a focused or limited report, the counsellor should advise the parent(s), verbally or in the written contract, as well as in the final report

- (a) that the counsellor is not undertaking a comprehensive custody and access assessment or preparing a comprehensive report, and

(b) of the specific limits or nature of the focused report.

If a counsellor advises a parent verbally concerning the focused assessment or report, the counsellor should make a note in the file to document that advice.

When the Court orders or the parents agree that a specific issue (such as access, overnight visits or drug and alcohol issues) be addressed in a report, the counsellor must determine the appropriate assessment process to properly address that issue in the focused report.

6.2) Views of the child assessment

When the Court orders a views of the child report, the counsellor must

- (a) conduct, where possible, separate interviews with the child, and
- (b) unless the Court specifically directs otherwise, conduct a separate interview with each parent.

Where possible, the counsellor should conduct interviews with the child as soon as possible after the child has spent time with each parent or party to the dispute.

The counsellor should conduct the interview with a child in accordance with the standards set out in section 6.5 *Interview or Observation of the Child*, below.

Appendix A contains a chart that provides a framework to help a counsellor to decide which parent(s) should consent before the counsellor interviews a child to obtain his or her views.

6.3) Comprehensive custody and access assessment

The primary focus of a comprehensive custody and access assessment is on:

- (a) the needs, interests, and wishes of each child;
- (b) the parenting ability and willingness of each parent including
 - (i) any current partners or other significant caregivers, and
 - (ii) their ability to meet both general developmental needs and any special needs of the children;
- (c) evaluating the relationship between each adult and each child.

6.4) General principles

In undertaking a custody and access assessment and preparing the resulting report, a counsellor should take into consideration the broader social context of the child and family, as well as their community, and the broad array of factors that can influence that social context.

The counsellor should assess child custody and access from social, emotional, developmental, relationship and cultural perspectives, which should be reflected in any report the counsellor prepares.

The counsellor should avoid a general personality assessment without attempting to place results of such an assessment in the appropriate context, such as: the availability and use of effective treatment, the growth of parenting attributes such as by support from other caregivers, and other factors that could affect the potential impact of an identified clinical condition on parenting.

6.5) Interview or observation of the child

In doing a custody and access assessment, the counsellor must interview each child independently from the parents, current partners and other siblings to give the child an opportunity to express views about the family situation.

The counsellor need not interview each child individually and independently if that child is an infant or toddler.

If a counsellor decides that it is not in a child's best interests to interview the child, the counsellor

- (a) should observe the child with the parents and siblings, and
- (b) must clearly state the reasons for that decision in the report.

If a parent insists on being present during the interview of a child who is not an infant or toddler, the counsellor should document the presence of the parent in the final report.

6.6) Interview or observation of two or more children of a family

This section applies if there are two or more children in a family who

- (a) may be living with the child who is the subject of the assessment, or
 - (b) who may be living separately from but have regular contact with that child,
- and include any adopted children, stepchildren, or foster children who are not the subject of the assessment.

Subject to section 6.5, above, a counsellor should interview or observe the children of the family separately and together, without the parents, so as to assess the sibling relationship.

If a counsellor decides that it is not in a child's or the children's best interests to interview or observe them separately or together, the counsellor must clearly state the reasons for that decision in the report.

6.7) Interview or observation at home

The counsellor should observe the child or children in the care of each of the parents, and on at least one occasion in their respective homes and, if practical, in any other home being considered for the child.

If a counsellor decides that it is not in the child's best interests to interview or observe the child

at (each) home, the counsellor must clearly state the reasons for that decision in the report.

6.8) Child assessment

The counsellor must assess the needs of each child independently, including ascertaining each child's level of maturity, interests, aptitude, special needs, educational needs, and routines. The counsellor should spend sufficient time interviewing the child.

If it is not possible to assess a child as described in this requirement, the counsellor must clearly state the reasons for that situation in the report.

When interviewing a child, the counsellor should assess and, if appropriate, discuss with the child the following issues:

- (a) the level of maturity, personality and character of the child;
- (b) the health and emotional well-being of the child, including any special needs for care and treatment;
- (c) the physical, psychological, social and economic needs of the child;
- (d) education and training for the child;
- (e) where appropriate, the views of the child;
- (f) all emotional bonds that exist between the child and each person to whom the child's custody may be entrusted, each person to whom access to the child may be granted, and, where appropriate, each sibling of the child;
- (g) the role of extended family and other significant persons in the child's life;
- (h) the child's cultural and religious heritage, and current traditions or practices if they are substantially different from the past;
- (i) the length of time each child has lived in a stable home environment;
- (j) each parent's home situation in relation to the child's needs;
- (k) the effect upon the child of any disruption of the child's sense of continuity.

A counsellor should avoid asking a child directly to choose which parent that child would prefer to live with, but in some circumstances it may be appropriate for the counsellor to ask an older child how they would feel if the Court made a custody or access order that favoured one parent over the other.

6.9) Parent and partner assessment

The counsellor must

- (a) interview and assess each parent individually;
- (b) interview and assess each current partner of a parent individually;
- (c) observe each parent interact with his or her current partner in order to assess their relationship with each other;
- (d) observe each parent and current partner interact with the child, separately and together, in order to assess their relationships with the child;
- (e) spend equal amounts of time with each parent;

- (f) take the same steps in gathering information from each parent.

The counsellor should interview all other adults living with the child, separately and together, in order to assess their relationships with each other and the child.

If it is not possible to interview or assess a parent, current partner or other adults as described in these requirements, the counsellor must explain why in the written report.

When interviewing a parent, the counsellor should assess and, where applicable, discuss the following issues:

- (a) relationships between each parent and the child or other children;
- (b) personal and marital histories of each parent;
- (c) the parents' relationship with their own parents, and their parents' relationships;
- (d) knowledge, skills and attitudes of each parent toward parenting;
- (e) the permanence and stability of the family unit of each parent;
- (f) presence or history of family violence;
- (g) mental health or addiction concerns;
- (h) presence or history of relevant criminal complaints or convictions;
- (i) resources in support of any special needs of the child;
- (j) parenting arrangements;
- (k) attitudes about and relationships within the extended family and the community;
- (l) ability and willingness to co-operate with and support a relationship between the child and the other parent;
- (m) capacity to resolve difficulties in the child's best interest;
- (n) strengths and challenges of the individual as a parent;
- (o) the parents' and child's support systems;
- (p) the wishes of the parent;
- (q) the parent's capacity to exercise the rights and responsibilities associated with guardianship, custody and access.

6.10) *Inter-parental assessment*

A counsellor should assess and, if appropriate, discuss with the parents the following inter-parental factors:

- (a) the effect that designating custody or primary care of the child to one parent would likely have on the other parent's ability to exercise reasonable access to the child;
- (b) the degree of support given by each parent figure to a healthy and ongoing relationship of the child with the other parent figures;
- (c) the degree of inter-parental conflict.

6.11) *Situational factors*

A counsellor should assess and, if appropriate, discuss the following situational factors in the report:

- (a) the relationship by blood or through an adoption order between the child and each parent;
- (b) the presence within the family of child neglect, abuse, domestic violence, substance abuse or other child protection concerns;
- (c) mobility issues.

6.12) Violence, power and control issues

The counsellor must screen each parent to identify possible violence, power imbalances and control issues in the following areas:

- (a) their relationship with each other;
- (b) the effect of violence or power imbalances on their child;
- (c) any acts of physical or emotional violence towards a child.

The counsellor must clearly state in the final report that the parents have been screened for violence, power and control issues, and the outcome of the screening.

If violence is a factor in the parents' relationship, the counsellor must present the history of that violence in the report, and in the context of parenting capabilities and impact on the child.

6.13) Child at risk

If during the course of doing an assessment a counsellor has a reason to believe that a child under 19 years of age has been or is likely to be neglected, physically harmed, sexually abused or sexually exploited or needs protection, the counsellor must report that belief to the Ministry of Children and Family Development or the police, as required by section 14 of the *Child, Family and Community Service Act* (CFCSA).²⁴

If a counsellor makes a report pursuant to section 14 of the CFCSA, the counsellor should consult with child protection authorities before deciding whether or not to stop the custody and access assessment process until all issues regarding the apparent risk of harm to the child have been resolved.

If the counsellor was appointed by the Court under section 15 of the *Family Relations Act*, and the Ministry of Children and Family Development or the police investigation concludes that a child protection action or criminal charges should result, the counsellor must so inform the appointing judge of that outcome. In the reporting letter to the judge, the counsellor must explain that, because the child may need protection from the alleged offender, the assessment will not proceed or the report will not be filed until the protection or criminal process has concluded.

²⁴ COMMENT: For more details on a counsellor's duty to report to the authorities a child who may be in need of protection, see Bryce, G, *Legal Commentary: A Detailed Consideration of a Counsellor's Legal Duty to Report When a Child is in Need of Protection* (October 4, 2010, as revised); posted at the BCACC website, Continuing Competency – Legal Issues.

If the child protection or police investigation yields inconclusive or unsubstantiated findings, the counsellor must continue the assessment and also note in the final report that the Ministry of Children and Family Development or the police investigation was inconclusive or the complaint was not substantiated.

6.14) Criminal record check

Canadian Police Information Centre (CPIC) records are not directly available to counsellors for the purpose of assisting with a custody and access report.

If a counsellor believes a criminal record check would provide important information necessary for the assessment, the counsellor may ask the parent in question to obtain a criminal record check and provide the result to the counsellor within a prescribed but reasonable period of time.

If the counsellor requested but has not received the criminal record check record from the parent by the prescribed deadline, that fact must be stated in the final report.

6.15) Community and environment

The counsellor must consider the child's community as part of appropriate custody and access arrangements, including:

- (a) the safety of the immediate home environment;
- (b) day care or after-school care arrangements;
- (c) religious, cultural and recreational supports;
- (d) health and counselling resources.

The counsellor should consider environmental factors ranging from economic to community support.

6.16) Use of evaluative instruments

If in the counsellor's determination an objective test or evaluative instrument would aid in the assessment of a parent's psychological and social functioning and how this might impact on parenting ability, the counsellor must ensure that they have the required advanced training, education, and experience to appropriately administer such a test and evaluate the results. Many tests require that a counsellor have advanced training at the graduate level and/or training in the specific test from the developer or vendor in order to properly use them. The counsellor should expect to provide evidence of their competence with any test or evaluation.

Further, it is required that tests be purchased from an established, legitimate vendor and that the eligibility to purchase tests is determined on the basis of training, education and experience.

A custody and access assessment is intended to be a comprehensive report with potentially highly significant consequences to those involved in the assessment. A counsellor therefore should not rely exclusively on objective tests and instruments to make inferences as to

what would be in the best interests of the child, and should interpret the results of any such tests or instruments with caution. Interpretations should be seen as hypotheses to be further tested and integrated with other findings from the assessment.

If the test is used to assist with the diagnosis of disorders, caution and qualification is appropriate in the use of the measure and the interpretation and communication of the results in a way that is consistent with what is legally and ethically expected of the counsellor as a professional. Counsellors should recollect that the purpose of their report is to provide a comprehensive evaluation rather than a diagnosis of a specific individual, and should note that any such interpretation is subject to further evaluation by a person whose expertise and mandate could include the treatment of the disorder.

Counsellors are encouraged to obtain advice from their own legal counsel in specific situations.

7) Writing the Report

When preparing a custody and access or any other family report, in particular if that report was ordered pursuant to section 15 of the Family Relations Act or Family Rule 13-5(1), the counsellor should frame that report in accordance with Family Rules.

7.1) Writing style

When writing the report, the counsellor should

- (a) use clear language;
- (b) avoid overly-technical language and the use of legal or psychological jargon;
- (c) use the active voice;
- (d) use gender-neutral language whenever possible;
- (e) convey an attitude of respect for all of the individuals involved;
- (f) preface an opinion with a phrase like "In my opinion...".

7.2) Presentation of information

When preparing a report, a counsellor must

- (a) present information that is based on direct observation;
- (b) state clearly if the view of another person is being relied on;
- (c) disclose any bias the counsellor may hold against either parent in relation to the custody and access of the child;
- (d) ensure the report
 - (i) is objective and based on facts,
 - (ii) is balanced and does not engage in linguistic advocacy, and
 - (iii) avoids making predictions but makes comments on current status.

If the counsellor presents information that is not based on direct observation but on the observations of another person, the counsellor should identify who made the observation and its circumstances.

Where possible, that is, where the integrity of the report can be preserved, counsellors should try and avoid damaging significant relationships.

A counsellor should cross-check all statements made in a report, and must be able to substantiate each reported statement under cross-examination.

A counsellor should avoid reporting an irrelevant fact, which is a fact that has no bearing on or contributes nothing to understanding the identified issues.

A counsellor must not only disclose the facts, information, documents, etc. that were considered, but also include information about those facts and any assumptions upon which the final opinion is based, including any deficiencies or errors in the disclosed facts.

A counsellor should point out in the report where the counsellor was unable to obtain sufficient information on a particular issue, or to explain where there are facts reported in the report that might conflict with each other, in particular conflicts in relation to an important issue.

A counsellor must not introduce new factual information in the assessment and recommendation section of the report that is not already set out in the summary of facts section.

7.3) Comprehensive report

A counsellor must ensure that the following topics are addressed in a comprehensive custody and access report:

- (a) the counsellor's academic qualifications, relevant training and experience, and professional registration;
- (b) who ordered or requested the assessment;
- (c) instructions for the assessment and the purpose of the report;
- (d) past relationship with the parties, if any;
- (e) summary of facts, test results, etc.;
- (f) list of documents and sources of information considered during the assessment;
- (g) the assessment process, including identifying the names of those interviewed, their relationship to the parties or child;
- (h) conclusions or opinions;
- (i) certification and signature.

A counsellor must ensure that the following information is summarized in a comprehensive report:

- (a) personal, family, and marital histories;
- (b) previous, present, and desired parenting or care-giving arrangements;
- (c) assessment of each child and each parent or caregiver, including their strengths and weaknesses;
- (d) issues of concern and how they have been addressed;
- (e) factors such as family violence, addictions, and mental health that might affect the

- safety of the children or negatively impact the ability to parent, and how these have been addressed;
- (f) procedures and assessment tools used;
- (g) an assessment of the relationships among parents and children and among the adults and the basis for this assessment.

A counsellor must ensure that the report identifies any area of agreement between the parents.

If the report contains recommendations concerning custody of or access to children, the counsellor must ensure that each recommendation meets the requirements of section 7.8, Recommendations, below.

Appendix B contains a recommended template for a comprehensive report.

7.4) Views of the child report

When preparing a views of the child report, the counsellor

- (a) must make it clear that what is being reported are the views of the child in relation to the subject matter at the date and time the counsellor interviewed the child, and
- (b) must not make any recommendation regarding custody and access.

7.5) Analysis

The counsellor must:

- (a) identify or disclose any assumptions made before rendering an opinion or offering a conclusion;
- (b) disclose any biases in analyzing the gathered information;
- (c) review impartially and consider all data collected in formulating the analysis;
- (d) explicitly state or disclose the data used in reaching a conclusion or making a recommendation.

A counsellor should avoid considering or applying an irrelevant fact (e.g. a fact that has no bearing on or contributes nothing to understanding the identified issues).

A counsellor should avoid using information that has little probative value (e.g. information that does not prove the truthfulness or accuracy of something), and should also avoid overstating the probative value or certainty of information in the report. Counsellors should avoid seeing certainty in situations where it may not actually exist.

A counsellor should disclose any errors in reported facts that the counsellor later identifies while writing the report or preparing any conclusions.

If two or more reasonable, alternative explanations present themselves, a counsellor should discuss each one and not avoid presenting different conclusions.

A counsellor should avoid making a diagnosis that is beyond that counsellor's expertise, and should also avoid offering legal conclusions. In particular, the counsellor should not comment on the legal issue that the Court has been or may be asked to adjudicate.

7.6) Reporting allegations

A counsellor should not provide an opinion in the report about the veracity of any outstanding criminal allegations against any parent to the assessment.

A counsellor may present in the report any unproven allegation of sexual, emotional, or physical abuse, but only as a hypothesis relating to the issue of parenting capacity.

7.7) Domestic violence

In cases in which domestic violence is alleged, or a pattern of domestic violence exists, the counsellor must consider the following in any resulting custody and access recommendations:

- (a) risks to the safety and well-being of the child;
- (b) effects of exposure to domestic violence on the child;
- (c) safety of the abused parent (or caregiver) including a risk assessment or safety plan;
- (d) available supports to the family.

If a risk assessment report or safety plan has been prepared pursuant to the Child, Family and Community Service Act and provided to the counsellor, the counsellor must consider and refer to that report or plan, as well as its findings or recommendations, within the counsellor's final report.

7.8) Recommendations

If a counsellor intends to make a recommendation to the Court, the counsellor should acknowledge that the Court has the sole jurisdiction to make the final decision.

Depending on the terms of the court order or a parental agreement, a counsellor may make a recommendation concerning custody and access, including the nature, duration, and intensity of parent-child contact, and whether contact will be in person, by telephone or written.

If a counsellor intends to make a recommendation to the Court, the counsellor

- (a) must consider the factors listed in section 24 of the *Family Relations Act*, being
 - (i) the health and emotional well being of the child including any special needs for care and treatment,
 - (ii) if appropriate, the views of the child,
 - (iii) the love, affection and similar ties that exist between the child and other persons,
 - (iv) education and training for the child,
 - (v) the capacity of each person to whom guardianship, custody or access rights

and duties may be granted to exercise these rights and duties adequately, and
(b) should acknowledge that the Court has the sole jurisdiction to make the
final decision under that section of the Act.

If a counsellor makes a recommendation, it must be

- (a) supported by reasons that are based in the evidence collected during the assessment, and
- (b) specific, clear, and practical, and
- (c) tentative, rather than absolute, regarding predictions and outcomes.

If the counsellor evaluates the parenting capacity of only one parent, the counsellor cannot make a recommendation favouring custody or access of one parent over another.

If the counsellor evaluates only the counselling needs of a child, the counsellor cannot make a recommendation regarding custody of or access to that child.

If no recommendation is made, the counsellor must explain why in the report.

When a parent has been assessed by another person (e.g. an out-of-province referral), the counsellor must not make a recommendation unless it is made jointly with the person who is assessed that parent.

If a counsellor can only offer a provisional conclusion or interim opinion because the counsellor has not yet obtained all the required facts or been able to complete all the necessary analysis, then the provisional or interim nature of the counsellor's conclusions should be made clear.

A counsellor should not make a recommendation regarding custody and access based solely on a review of legal documents or another professional's assessment.

A counsellor appointed by the Court under section 15 of the *Family Relations Act* should not include a detailed proposal for resolution of a marital dispute or a dispute over custody or access, unless specifically asked to do so by the Court, but the counsellor may provide an opinion on custody and access so long as it is not recommending an ultimate disposition.

7.9) Reviewing the recommendations with the parents

If a counsellor was appointed by the Court under section 15 of the *Family Relations Act* or Family Rule 13-5(1) to prepare a report or if a counsellor anticipates that a private report will be presented in Court, the counsellor should not discuss the progress of the assessment, recommendations and reasons with the parents or disclose a draft of that report to a parent, unless the Court expressly approves such a discussion or disclosure before the report is filed.

If a counsellor was not appointed by the Court and the counsellor does not believe that the final report is likely to be presented in Court, and if the counsellor determines it would be

appropriate and useful to do so in the circumstances, the counsellor may discuss the progress of the assessment, and any recommendations and reasons for them with the parents separately and, if requested, with their lawyers, or disclose a draft of that private report. The counsellor may use the parents' response to the proposed recommendations as a source of additional information for the final report.

8) Distributing the Report

Different rules apply to the distribution of court ordered and private reports, and it is also important to distinguish between serving a report on a parent and filing a report with the Court.

8.1) Distributing a court ordered s.15 FRA report

When a counsellor has been ordered by the Courts to prepare a custody and access report pursuant to section 15 of the *Family Relations Act*, the counsellor must follow the reporting requirements of that provision or as communicated to the counsellor by the Court or the lawyers. If such instructions are not provided, the counsellor should apply the following.

If it is a court ordered report, in particular one ordered pursuant to section 15 of the FRA, then - applying Family Rule 13-1(1) - the counsellor must serve a copy of that report on each of the parties, and do so at least 30 days before the counsellor files that report with the Court.

To serve a report on a party, the counsellor should personally (or by agent) deliver a copy of the report to the lawyers representing the parties in the proceeding or, if a party is not represented by a lawyer, to that non-represented party. If the counsellor does not serve personally (or by agent), the counsellor could arrange delivery by registered mail or courier, with a proof of receipt in the form of a return signature card. A counsellor should not simply mail the report to the parties by standard post.

To file a copy of the report with the Court 30 days after it has been served on the parties, the counsellor should deliver two copies of the report (in person or by agent) to the Registry for the Court that issued the original directive. The Registry clerk should then date-stamp the filed reports, and put them in the Court file. Alternatively, the filing could be done by registered mail or courier, with a proof of receipt of the package by a Registry official in the form of a signature card.

If the Court has ordered an assessment report and stated in the order that copies are to be sent to various third parties, the counsellor does not need to obtain a parent's consent to that ordered distribution.

If a counsellor is unable to complete and deliver the final court ordered report by the prescribed date, because of a delay due to injury, illness or other reason, the counsellor must as soon as practical, advise the appointing judge in writing

- (a) that there will be a delay in finalizing the report,
- (b) a summary of the reasons for the delay, and
- (c) the new date when the counsellor expects to be able to deliver the final report.

If the counsellor so advises the appointing judge of a delay in completing and delivering the final report, the counsellor should provide a copy of that letter to each party in the proceeding.

If a counsellor needs to file the report with the Court sooner than the prescribed 30 day requirement, the counsellor may apply under subsection 15(4) of the FRA to obtain an exemption to that filing deadline. A counsellor should consult with independent legal counsel before initiating such an exemption request.

8.2) Distributing other types of court ordered expert reports

When a counsellor has been ordered by the Courts to prepare an expert assessment report pursuant to Family Rules, the counsellor must follow the reporting requirements of that provision or as communicated to the counsellor by the Court or the lawyers. If such instructions are not provided, the counsellor should apply the following.

If it is a court ordered report ordered under Family Rule 13-5(1), then - applying Family Rule 13-5(12)(a) - the counsellor must send a copy of that report to the applicable Court Registry, and to each of the parties, and within the timeframes that the Court should specify in the order.

Unlike the case for court ordered section 15 FRA reports, the Family Rule 13-5(12)(a) allows the counsellor to send the reports to the Court and the parties by ordinary post. But if the Court specifies in the originating order some other form of distribution, the counsellor should follow that directive.

If the Court has not addressed distribution in the order, the counsellor may want to file a copy of the report with the Court Registry and serve a copy of the report on the parties, as has been described for section 15 reports, in the previous section.

If the Court has ordered an assessment report and stated in the order that copies are to be sent to various third parties, the counsellor does not need to obtain a party's consent to that ordered distribution.

If a counsellor is unable to complete and deliver the final court ordered report by the prescribed date, because of a delay due to injury, illness or other reason, the counsellor must as soon as practical, advise the appointing judge in writing

- (a) that there will be a delay in finalizing the report,
- (b) a summary of the reasons for the delay, and
- (c) the new date when the counsellor expects to be able to deliver the final report.

If the counsellor so advises the appointing judge of a delay in completing and delivering the final report, the counsellor should provide a copy of that letter to each party in the proceeding.

8.3) *Distributing private reports*

When a counsellor has been hired by one or more of the parents to prepare an expert assessment report without direction from the Court, the counsellor must follow the reporting requirements as should be set out in the originating request or the resulting agreement.

Unlike the case for court ordered reports, the counsellor does not have to provide a final private report to the Court. Instead, Family Rule 13-6(3) set 84 days before the scheduled trial as the minimum amount of time that an expert's private report must be served on every party in a proceeding. However, the parties in the proceeding or their legal counsel, not the counsellor, shoulder this responsibility. And whether or not the Court would accept the counsellor's private report as an expert report is also an issue that the requesting party would have to pursue separately.

If the requesting party agrees, the counsellor may provide a copy of the private report to third parties specifically named or approved by the requestor. If the requesting party is not the client or an agent of the client, the counsellor should obtain the consent of the requesting party (client) to release a copy of the report to any third party.

If a counsellor is unable to complete and deliver the final private report by the original agreed date, because of a delay due to injury, illness or other reason, the counsellor must as soon as practical, advise the requesting parent(s) in writing

- (a) that there will be a delay in finalizing the report,
- (b) a summary of the reasons for the delay, and
- (c) the new date when the counsellor expects to be able to deliver the final report.

9) After Distributing the Report

9.1) *Post-distribution meetings*

If a counsellor was appointed by the Court under section 15 of the *Family Relations Act* or Family Rule 13-5(1) to prepare the report or if a counsellor anticipates that the report will be presented in Court, the counsellor should not meet with the parents separately or jointly outside of Court to discuss the results of the assessment, etc., unless the Court expressly approves such a meeting.

If a counsellor was not appointed by the Court or if the final private report is not likely to be presented in Court, a counsellor may meet with the parents separately or jointly after the distribution of the report, and do one or more of the following:

- (a) discuss the results of the assessment;
- (b) provide an explanation of the process and a rationale for each finding or

- recommendation;
- (c) allow the parents to ask questions;
- (d) invite the parents to cooperate in an agreement and develop a plan based on the assessment findings;
- (e) discuss the implementation of the plan.

If a counsellor was hired by both parents and agrees to meet or meets with one parent for the purposes listed above, the counsellor should extend an invitation to the other parent for a similar meeting. But if the counsellor was hired by just one parent, the counsellor should not extend an invitation to the other parent without the first parent's consent.

As part of a discussion of the implementation of the plan under clause (e), the counsellor may discuss with the parents the need for subsequent reviews of the plan at regular intervals for a predetermined period of time.

9.2) Discussion with lawyer(s)

If the lawyer for one client wants to discuss a court ordered or a filed report with the counsellor prior to a pre-trial settlement or a hearing, the counsellor should ensure that the counsellor's information is equally available to both parents and their counsel. The counsellor should therefore advise the requesting counsel that both parents and their counsel should be invited to attend any discussion of a completed report.

9.3) Disclosure of notes

In the event that a parent or a reference requests that the counsellor's notes and background material be disclosed to them, the counsellor must advise the requestor orally or in writing that:

- (a) notes may not be a verbatim record of the interview or observation;
- (b) notes were taken to assist the counsellor in recollecting the interview for the purpose of giving evidence at a court hearing, and that it is preferable to have the counsellor address the notes in Court at the time of hearing of the custody or access matter;
- (c) due to the complex and sensitive nature of the information gathered, notes and background materials are not disclosed in response to an informal request, but that a formal written request for disclosure can be made under the *Personal Information Protection Act*.

The counsellor must ensure that information contained within the report notes will be evaluated and disclosed in accordance with the *Personal Information Protection Act*, and the counsellor's own privacy policy, as also required by the PIPA.

9.4) Cross-examinations

Any party in the legal proceeding may require the counsellor who prepared an expert report to attend Court and be cross-examined on the filed report. (See Family Rule 13-1(2) for section 15 reports and Family Rules 13-4(10) or 13-7(3) for other types of family law expert reports.)

The requesting party must give the counsellor sufficient advanced notice to attend Court to be cross-examined. (Family Rule 13-1(2) requires 49 day advanced notice in relation to court ordered section 15 reports. For other filed reports, such as a private custody an access report, Family Rule 13-7(3) requires 21 days advanced notice to the counsellor.)

If the counsellor who prepared a filed, court ordered section 15 report has been served with a notice to attend Court, that counsellor must not refuse a request to appear, but must attend to be cross-examined at the date, time and location set out in the notice (see Family Rule 13-1(3)).

Prior to attending the hearing for cross-examination, the counsellor should review the filed report and notes, and should index this material for easy reference.

A counsellor should be aware that any party (or their lawyer) is entitled to see the counsellor's assessment notes, etc. in Court, and – if so requested – the counsellor must bring the original of those notes, but should ensure a copy is retained in the counsellor's file.

A counsellor is allowed to charge the requesting party a fee for his or her time in preparing for and attending Court to be cross-examined on the filed report. A counsellor should ensure that this further service is covered in an agreement.

If necessary, the Court can order one or more parents to pay the expert, or even order that they file a security with the court to cover those fees (see Family Rule 13-5(10)).

The Court may impose a penalty on the requesting party if it becomes clear that the counsellor should not have been called to Court to be cross-examined. (See Family Rule 13-1(4) for section 15 reports and Family Rule 13-7(4) for other types of expert reports.)

*Standard for Child Custody and Access Assessments and Reports
BC Association of Clinical Counsellors
Approved by the Board of Directors
June 18, 2011*

Appendix A – Guidance on Obtaining Parental Consent

The following provides a framework to help a counsellor ascertain which parent(s)' permission the counsellor requires before the counsellor interviews children in a custody or access dispute.

The parents' legal status re: the child to be interviewed	The counsellor should seek permission needed from
Parent A has sole custody and sole guardianship	Parent A: If only one parent has been granted custody and guardianship, then only that parent can give consent.
Parent A has sole custody and Parent B has sole guardianship	Parent A: While this scenario is probably not common, the custodial parent alone would have the legal authority to give consent.
Parents share joint custody; Parent A has sole guardianship	Either parent: This scenario would probably never occur. If the parents have joint custody, it is highly unlikely that the Court would award only one parent sole guardianship. As a matter of law either of the custodial parents can give consent, but as a matter of practice a counsellor should try to obtain the consent of both parents.
Parent A has sole custody; parents share joint guardianship	Parent A: In general, the parents are required to consult with each other about important matters pertaining to the child, but in the event of a dispute, the custodial parent A will have the final say.
Parents share joint custody and joint guardianship	Either parent: The bundle of rights and obligations remain shared as between the parents. As a matter of law either custodial parent can give consent, but as a matter of practice a counsellor should try to get the consent of both parents.

COMMENT: If an older child is being interviewed by the counsellor, that child may be able to give consent without the need for parental consent. In such cases, the legal status of the parents' relationship to that child would not be a determining factor. The counsellor should follow the guidance for obtaining the consent of a mature child as outlined in Bryce, G. "Obtaining Consent From Children", 12:2 *Insights* at page 11; posted at the BCACC website under Continuing Competence – Legal Issues.

Appendix B - Template for a Custody and Access Report

COMMENTS: This template is based upon the framework for expert reports as required by the Family Rules and reflects a more detail discussion of legal issues as provided in the Legal Commentary on Expert Reports.

Those elements of this template that may not apply to a custody and access report that was requested by one parent or both, or a report that was not prepared pursuant to a court order, are noted by underlined text. Depending on the circumstances, these could be optional elements to include in such reports.

Title page

In the Provincial/Supreme Court of British Columbia (state city)

Court File #:

Between: Applicant/Plaintiff

And: Respondent/Defendant

Counsel for the Applicant/Plaintiff

Counsel for the Respondent/Defendant

Section 15 Family Relations Act²⁵

Custody and Access Assessment Report (or other title if a narrower report)

Name of counsellor and contact information (address, phone number, etc.)

Date the report was completed

Expertise and Qualifications

Family Rules 13-6(1)(a) and (b) require disclosure of the counsellor's area of expertise, as well as qualifications, employment and educational experience in his or her area of expertise. A copy of a counsellor's more detailed resume can be included as an appendix to the report.

A counsellor's previous experience as a recognized expert in Court can also be noted here, along with references to past cases.

It is not necessary to include copies of degrees, diplomas or certificates, but those should be available if later requested by the Court or either party.

²⁵ COMMENT: If the report was *not* ordered by the Court but was prepared at the request of one parent or both, it would be improper to refer to section 15 of the FRA or to otherwise suggest that it was ordered by a Court.

Authority

Pursuant to the Order made by the Hon. Judge/Master/ Hon. Justice _____
filed on the _____ day of _____ 20____, with respect to the custody and/or access of
the following child or children:

Name of Child: DoB:

Name of Child: DoB:

Name of Child: DoB.

If the report was ordered by a Court, that information should be reflected in this section. A copy of the court order can be included as an appendix to the report.

Instructions and Purpose

Family Rule 13-6(1)(c) requires that an expert report must include “the instructions provided to the expert in relation to the family law case.” And Family Rule 13-6(1)(d) requires that an expert report must include a description of “the nature of the opinion being sought and each issue in the family law case to which the opinion relates.”

If the report was requested by one or both parents and, in particular, if it was not prepared pursuant to a court order, that fact should be so noted here, along with any specific instructions that were provided to the counsellor. A copy of any detailed instructions can be included as an appendix to the report.

Unless the information is already set out in the Summary of Facts (see below), this section may include:

- *A brief history of marital relationship including screening for relationship violence and outcome;*
- *Present and past parenting arrangements;*
- *Brief paragraph on each parents’ position for future parenting arrangements.*

Relationship to the Parties

If the counsellor had no previous relationship with any of the parties, that fact should be so noted here.

If the counsellor had a previous relationship with one or more of the parties, that past relationship should be disclosed here. If both parties consented to the counsellor playing a dual role, then – pursuant to clause 15(1)(a) of the Family Relations Act - it should be noted that the parties gave their consent. A copy of any written consents should be included in the report as an appendix.

Summary of Facts

Family Rule 13-6(1)(f)(i) requires the counsellor to set out in the report “a description of the factual assumptions on which the opinion is based.” Only relevant facts that are material to the later conclusions or recommendations should be set out here.

Test results can be included in this section, or set out under a separate heading.

Persons Interviewed

The names of all persons the counsellor consulted can be listed under this heading, using the following wording:

That, in carrying out this assessment, I have interviewed (indicate by telephone or in person interview) the following persons (state relationship to child or children and/or clients):

(sample)

- Name/Relationship: Telephone/In Person
- Name/Profession or Title: Telephone/In Person

If this is an alphabetical list by last name, and not a list according to when each person is first mentioned in the report, that organization should be so noted.

List of Documents

Family Rule 13-6(1)(f)(iii) requires a counsellor to set out in his or her report “a list of every document, if any, relied on by the expert in forming the opinion.” The following wording is proposed:

That, in carrying out this assessment, I have reviewed the stated documents (list specific reports).

(sample)

- Name/Profession or Title: Type of Report

This section could list the books, publications, etc. that the counsellor also consulted.

It would be acceptable to combine the Persons Interviewed and the List of Documents under a single heading titled Sources.

Family Relations Act Section 24 Criteria Considered

It may be useful for the counsellor to consider the specific criteria that are set out in section 24 of the FRA, as follows:

A. Health and Emotional Well Being

This section may include an assessment on physical, mental and emotional health, including adjustment to parents’ separation.

B. Views of the Child or Children

This section may include the child or children’s views of the parenting plan if appropriate.

C. Love Affection and Similar Ties

This section may include an assessment on the child or children's relationship with each parent, siblings, significant others such as grandparents, uncles, aunts, etc.

D. Education and Training

This section may include the child or children's reports from school or day care. Address any special needs if applicable.

E. Parental Capacity

This section may include an assessment of each parents' ability to provide for the child or children in relationship to the factors as set out above (A, B, C, D,). Assessment of the parents' plan for self and child or children, description of the parent's relationship with the other parent in relation to the child or children

Conclusions or Recommendations

Family Rule 13-6(1)(e) requires the counsellor to state in the report the counsellor's opinion on the issues in the family law matter to which the opinion relates. These should reflect the issues that were summarized in the Instructions and Purpose section and they should also be supported by the information in the Summary of facts section, as noted above.

This section should include an assessment of information already presented and, if necessary, a recommended parenting plan:

- *Summary of the child or children's needs based on Section 24 criteria (see above);*
- *Assessment of the family situation and recommendation based on best interest of the child or children.*

Recommendation should be clearly outlined based on the counsellor's assessment. If a recommendation is not made, the reason(s) why must be clearly stated in the report.

Certification/Signature

Family Rule 13-2(2) requires the counsellor to state in the report that he or she is aware of the general duty in Rule 13-2(1), has made the report in compliance with that duty, and will give testimony in conformity with that duty if so requested. Therefore, at the end of the report and accompanied by the counsellor's signature, the following statement should appear:

In submitting this report, I hereby certify that I am aware of my duty under Rule 13-2(1) of the Supreme Court Family Rules to assist the Court and not to be an advocate for any party in a legal proceeding where this report may be used, and that I have made this report in conformity with that duty. Further, if called upon to give oral or written testimony, I will give that testimony in conformity with my legal duty to the Court.

Signature

(Print name of counsellor)

Date (if different than the date on the title page)