



### **Critiquing Custody and Access Assessments**

One of the challenges that faces people going through a divorce is settling a parenting plan. When parents cannot agree, their lawyers may suggest a custody and access assessment. The goal of an assessment is to provide unbiased recommendations to the courts.

Courts rely heavily on independent assessments to determine custody and access outcomes. Courts also rely heavily on the stated preference of children older than 12-years-of-age. This is reflected in the research of Kunin, Ebbesen, and Konecni<sup>1</sup> who found that only two factors directly affect judges; child preference and the recommendations of the evaluator.

But what if you think the assessment is wrong?

Custody and access assessments can be challenged. "Assessment critiques" evaluate the reliability of the assessment, looking for procedural and factual errors. The first step is to examine the procedures used in the assessment against current "Standards of Practice" as outlined by various professional bodies (e.g., American Psychological Association). Next, factual data is checked against the various sources of information. The critique also seeks to determine if the recommendations make sense, both in terms of the data reported and in terms of current social science research. There needs to be a clear and obvious connection between data and recommendations

As part of the critique process, it may be important to review an assessor's education to determine if they possess the requisite knowledge to address certain issues such as sexual abuse, psychiatric disorders, parental alienation and so on.

Further, an assessor's theoretical orientation may not be appropriate to understanding or assessing certain matters. For instance, a behavioural approach may discuss the antecedents and consequences of violence in a conjugal relationship, but this theoretical orientation falls far short on understanding the power imbalances and long-term implications that fear,

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<sup>1</sup>Kunin, C.C., Ebbesen, E.B., Konecni, V.J. (1992). An archival study of decision-making in child custody disputes, *Journal of Clinical Psychology*, 48:564-73.

intimidation and concern of reprisal have in developing a satisfactory access regime.

While Courts do accept the input of assessment critiques, there are challenges to their integrity:

- There are no particular standards of practice for assessment critiques.
- They can in no way be presented as an alternate assessment.
- The person providing the critique may be perceived as a "hired gun".
- If additional materials are provided for the purpose of the critique, the choice of materials may be subject to the bias of the referring lawyer.
- A critique is often requested unbeknownst to the other side and when disclosed, concerns of dubious practices can arise thus increasing tension between counsel and parties.

It is therefore important that a person of recognized competence provide the assessment critique. Further, the person providing the critique must be able to define their criteria or approach for conducting the critique. Lawyers are advised to provide all documentation requested by the person providing the critique so issues of bias can be minimized if under cross-examination.

Critiques, like assessments carry risks. It just may be that the critique supports the recommendations of the assessment even if procedural or factual errors are found. Alternately, a critique may support the procedures deployed in the assessment, but on the basis of the data, suggest other hypotheses and recommendations for consideration.

If you feel your custody/assessment is flawed and draws poor conclusions or recommendations consider an assessment critique. Be certain the person providing the critique is credible and be prepared if the recommendations are indeed supported.

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