

July 31, 2018



## **COURT OF QUEEN'S BENCH OF ALBERTA**

### **ANNOUNCEMENT FOR CONSULTATION**

#### **Proposed Revisions to Family Law Practice Note 7 (Interventions) and Practice Note 8 (Evaluations) – Feedback Desired**

Following extensive meetings of a working group comprised of members of the Court, Family Law bar and psychologists/social workers, the Court is seeking feedback on proposed revisions to Practice Note 7 & 8. Feedback may be provided in writing to [Family.QB@albertacourts.ca](mailto:Family.QB@albertacourts.ca) by August 31, 2018.

The proposed revisions to the Practice Notes are summarized below. The aim of the proposed revisions is to enable Interventions and Evaluations to be conducted as early and efficiently as possible in order to promote earlier resolution of family conflict; and where possible, to reduce the need for Court applications and orders in family law matters.

We look forward to receiving your feedback.

#### **Family Law Practice Note 7 (Interventions)**

Family Law Practice Note 7 Interventions include Evaluative Interventions that provide information to the Court to assist in decision-making, and Therapeutic Interventions that work toward resolution of family conflict and disputes.

Interventions are conducted by Parenting Experts who are regulated professionals, such as psychologists and social workers; and who qualify as expert witnesses by virtue of education, training, experience and continuing learning. Lawyers are not included as Parenting Experts under Practice Note 7. A Parenting Expert is a Court expert who must provide an independent report to the Court.

Under Practice Note 7, a Parenting Expert cannot provide an opinion or recommendation on parenting time, parenting responsibilities, decision making, or relocation. A Parenting Expert can describe what is happening with the child(ren) and within the family dynamic.

Highlights of the proposed revisions to Family Law Practice Note 7 Interventions include:

- Use of language consistent with Practice Note 8 Evaluations.

- New Template Orders (including a Preliminary Order) for appointing Parenting Experts, with the signature of the expert being required on the final Practice Note 7 Intervention Order.
  - All Orders for Practice Note 7 Intervention may be submitted by desk application.
- Provisions/processes to encourage the parties to agree upon the choice of the Parenting Expert; the scope and terms of the Parenting Expert's retainer; and the specific issues to be addressed in the Intervention; and to enable the Court to select a Parenting Expert where there is no agreement or where there is more than one self-represented litigant. More specifically:
  - Where the parties are represented by Counsel and there is agreement on a Practice Note 7 Intervention, Counsel are required to conduct a brief telephone conference with the Parenting Expert in advance of the application for a Practice Note 7 Intervention Order to settle the scope and terms of the Parenting Expert's retainer and the specific issues to be addressed in the Intervention.
  - Where one or both parties are self-represented litigants, or where there is no agreement on a Practice Note 7 Intervention, a Preliminary Practice Note 7 Intervention Order may be granted.
    - Once granted, the parties have 14 days to provide written notice to the Justice granting the Preliminary Order of the name of the Parenting Expert selected by the parties.
    - Failing agreement by the parties on the choice of Parenting Expert, the Court will select the Parenting Expert and direct steps required to confirm whether the Parenting Expert consents to act.
    - Within 30 days of the granting of the Preliminary Order, the parties shall schedule and attend a telephone conference in Court with the Justice and Parenting Expert to settle the scope and terms of the Parenting Expert's retainer and the specific issues to be addressed in the Intervention.
    - Thereafter, a Practice Note 7 Intervention Order will be completed.
- Limits to the documentation and the names of personal collateral witnesses to be provided to the Parenting Expert.
  - Unless ordered by the Court, only filed applications (not affidavits or sworn statements), orders and professional reports or letters provided to the Court may be provided to the Parenting Expert.
  - Each party may provide the names of no more than three personal collateral witnesses to be interviewed by the Parenting Expert. This does not limit the Parenting Expert from contacting any professional or other collateral witnesses they deem appropriate.

- Cessation of automatic Case Management where a Practice Note 7 Intervention Order has been granted.
  - The Justice granting the Intervention Order may recommend to the Chief Justice/Associate Chief Justice that the matter be assigned to Case Management; or take other action under the Rules of Court, such as convening a hearing with the Parenting Expert and the parties.
- Further provisions addressing access to the Parenting Expert's Report.
  - The parties shall not receive a copy, make handwritten notes or take electronic copies of the Parenting Expert's Report without prior leave of the Court.
  - If Counsel ceases to act for a party, Counsel is responsible for removing the Parenting Expert's Report from their file before releasing the file to their client.
- Enhanced protection for Parenting Experts.
  - Provisions prohibiting concerns or complaints to the professional body governing the practice of the Parenting Expert until after the parties have resolved all parenting issues (as evidenced by a written settlement agreement or final order or judgment); or the Court has rendered its decision in the matter for which the Parenting Evaluation has been ordered, and all appeals have been heard or all appeal periods have expired.
- Removal of Parenting Coordination; and references to education, mediation and arbitration from Practice Note 7.
- Development and management by the Alberta Association of Family and Conciliation Courts (AFCC) of a Roster identifying psychologists and social workers who conduct Practice Note 7 Interventions (by type) and Practice Note 8 Evaluations. The Alberta College of Social Workers' website will also list social workers who have training to assist with PN 7 Interventions.

### **Family Law Practice Note 8 (Evaluations)**

A Child Custody/Parenting Evaluation is a comprehensive and objective assessment of a family that assists the Court in determining parenting and decision-making arrangements that are in the best interests of the child(ren).

Child Custody/Parenting Evaluations are conducted by a psychologist with sufficient training and experience to be accepted by the Court as a Parenting Expert, and qualified to give opinion evidence on parenting arrangements, parenting responsibilities and decision-making.

A Parenting Expert who has conducted any form of Practice Note 7 Intervention for a family cannot conduct a Child Custody/Parenting Evaluation for the same family. A Practice Note 7 Intervention Report(s) shall be provided to the Parenting Expert conducting a Practice Note 8 Evaluation.

Except in extraordinary circumstances, a Practice Note 8 Evaluation shall not be used by the Court for an interim order on parenting or decision-making.

Highlights of the proposed revisions to Family Law Practice Note 8 Evaluations include:

- Use of language consistent with Practice Note 7 Interventions.
- New Template Orders, including provisions directing:
  - the setting of the action for trial or summary trial under Rule 8.5.
  - that the applicable Court filing fee be paid in full within 14 days of the order being pronounced.
- Provisions to enable the Court to select a Parenting Expert where there is no agreement between the parties (similar to Practice Note 7).
- Limits to the documentation and the names of personal collateral witnesses to be provided to the Parenting Expert (similar to Practice Note 7).
- (Unlike Practice Note 7 Interventions) provisions directing all files in which a Practice Note 8 Evaluation has been ordered, into Case Management.
  - The parties must complete the Request for Appointment of a Case Management Justice and the Response to Request for Appointment of a Case Management Justice within 14 days of the Practice Note 8 Order being granted.
  - The parties are prohibited from filing any applications pending completion of the Evaluation, unless leave of the Case Management Justice is first obtained.
  - A Parenting Expert is required to seek direction from the Court in a variety of listed circumstances, including where a party withdraws from or fails to cooperate with an evaluation, fees are not paid, the expert wishes to review other records where one party objects, and where an application is required with respect to records in the possession of third parties.
  - Within 60 days of completion of the Evaluation, the parties are required to attend a Case Management Conference with the Case Management Justice and the Parenting Expert, with a view to discussing resolution of the parenting issues, or alternatively, procedural matters in preparation for final determination of the parenting issues.
- An express procedure where a party challenges the Parenting Expert's recommendations/opinion, to have a "work file critique" by another Parenting Expert.
  - Upon application to the Case Management Justice, either party, at their sole expense, may retain another Parenting Expert to conduct a work file critique of the Evaluation. The work file critique shall not involve re-interviewing the parties, the child(ren) or any collateral witnesses.
- Further provisions addressing access to the Parenting Expert's Report including:

- The Case Management Justice may require a Parenting Expert to disclose all or part of the contents of the Parenting Expert's file after the expert has been given an opportunity to explain the consequences of releasing such information and to explain the regulations of the Parenting Expert's regulatory body.
  - A Parenting Expert who prepares an Evaluation is compellable to give *viva voce* evidence and may be cross-examined by both parties. A Parenting Expert who prepares a work file critique is compellable to give *viva voce* evidence and may be cross-examined by the opposing party. Parenting Expert(s) should give their evidence after all lay witnesses have testified.
  - Counsel shall not provide copies of the Evaluation Report nor disclose the contents of the Evaluation Report, including the Parenting Expert's recommendations, to any other person except for a second Parenting Expert retained to conduct a work file critique.
  - The Evaluation Report and any portion of the Parenting Expert's file produced by Court Order shall be sealed following the final determination of the parenting issues. Prior to final determination, the Case Management Justice will keep the report and any portion of the Parenting Expert's file on the Case Management file.
- An enhanced protection clause for the Parenting Expert (similar to Practice Note 7).