

Court of Queen's Bench of Alberta
Family Law Practice Note 8
Child Custody/Parenting Evaluation
EFFECTIVE: MAY 1, 2019

Purpose and Application

[1] A Practice Note 8 Child Custody/Parenting Evaluation (the "Evaluation") is a comprehensive and objective assessment of a family in cases where the family is experiencing an impasse and an Intervention under Practice Note 7 is inappropriate or has not resulted in resolution of the parenting issues.

[2] Currently in Alberta, psychologists with sufficient training and experience to be accepted by the Court as Parenting Experts conduct Evaluations. The Parenting Experts are qualified to give opinion evidence on parenting arrangements, parenting responsibilities and decision-making.¹

[3] While the process may vary between Parenting Experts, Evaluations generally involve home visits/observations, interviews with each parent separately, interviews with each parent with the child(ren), and depending on the child(ren)'s ages, interviews with the child(ren) separately. The Evaluation may also involve document review including, when Court ordered, Alberta Child and Family Services files and police files. The Evaluation may also involve administering psychological testing to the parties and interviews with collateral witnesses such as counsellors, Alberta Child and Family Services and police personnel, teachers, as well as personal sources such as new spouses and partners, grandparents or close friends.

[4] The purpose of a Practice Note 8 Evaluation Order is to:

- a) have the Parenting Expert report back to the Court and assist the Court in making a final determination through trial² or summary trial as to the parenting and decision-making arrangements that are in the best interests of the child(ren)³; and,
- b) bring the Parenting Expert under the jurisdiction and protection of the Court.

[5] Notwithstanding the intended use of the Evaluation, the parties are encouraged, where possible, to resolve parenting issues by way of agreement.

¹ A roster of psychologists who conduct Child Custody/Parenting Evaluations is found at <http://www.afccalberta.com/referral-page>

² Trial includes an oral hearing where the parties agree, or where the Court directs, that the decision will be final.

³ The Court shall not use a Practice Note 8 Evaluation for an interim order on parenting or decision-making, except in extraordinary circumstances.

Limitations and Restrictions

[6] A Parenting Expert who has conducted any form of Practice Note 7 Intervention for a family must not conduct a Practice Note 8 Evaluation for the same family.

[7] A Parenting Expert under this Practice Note is a Court expert who must provide an independent report to the Court. The Parenting Expert is a friend of the Court and the Court may not apply Rules 6.40 to 6.43 in relation to these experts.

[8] This Practice Note does not apply to matters under the *Child, Youth, and Family Enhancement Act*, RSA 2000, c C-12.

[9] The Court shall order an Evaluation only if the parties are able to pay the cost of the Evaluation, or if the party seeking the Evaluation is able to pay the entire cost of the Evaluation at first instance, subject to their right to seek a contribution from the other party at the conclusion of the Evaluation.

The Process

i. Where both parties are represented by counsel and there is agreement on an Evaluation

[10] Where both parties are represented by counsel, counsel shall schedule a brief telephone conference with the Parenting Expert in advance of the application for a Practice Note 8 Evaluation Order.

[11] The purpose of the telephone conference is to:

- a) ensure the Evaluation is the appropriate mechanism by which to obtain the necessary information regarding child custody and parenting; and,
- b) discuss the terms of a service agreement, the required retainer and the date the retainer is to be paid.

[12] Counsel should incorporate the above information into the template Practice Note 8 Evaluation Order attached as Appendix A.

[13] If counsel are able to resolve the wording of the Practice Note 8 Evaluation Order, they may submit the proposed Order in the form attached as Appendix A, signed by the parties and the Parenting Expert (indicating his/her approval of the terms of the Order and consent to act), by desk application.

ii. Where one or both parties are self-represented litigants or where there is no agreement on an Evaluation

[14] Either party may apply for a Practice Note 8 Evaluation Order. The party bringing the application has an obligation to provide the name(s) of one (1) to three (3) proposed Parenting Expert(s).

[15] On hearing an application pursuant to paragraph 14 above, if the Court is satisfied an Evaluation is warranted and counsel and/or the parties are able to resolve the wording of the Practice Note 8 Evaluation Order, including the selection of a Parenting Expert without further

assistance from the Court, they may submit the proposed Order in the form attached as Appendix A, consented to by the parties and the Parenting Expert, by desk application.

[16] On hearing an application pursuant to paragraph 14 above, if the Court is satisfied an Evaluation is warranted, but the particulars of the Order have not yet been determined, including the selection of a Parenting Expert, the parties shall select a Parenting Expert within 30 days, on their own or from a list provided by the Court.

[17] All actions in which an Evaluation is ordered shall be case managed. The party seeking the Practice Note 8 Evaluation Order must submit the Request for the Appointment of a Case Management Justice⁴ within seven (7) days of the granting of the Practice Note 8 Evaluation Order. The Response to a Request for the Appointment of a Case Management Justice is not required.

[18] The Practice Note 8 Evaluation Order will also contain a direction requiring the parties to meet with the assigned Case Management Justice, set the matter for trial or summary trial and pay the required fees, within 45 days of the granting of the Practice Note 8 Evaluation Order. The filing of Forms 36 to 39 (as applicable) will be as directed by the Case Management Justice. Unless otherwise directed by the Court, the party seeking the Practice Note 8 Evaluation will provide a copy of the filed Practice Note 8 Evaluation Order to the Civil Trial Coordinator in the applicable judicial centre.

During the Evaluation

[19] Unless otherwise directed by the Court, the Evaluation will not commence until the parties have secured a date for trial or summary trial.

[20] Counsel and the parties shall not communicate unilaterally with the Parenting Expert, except at the direction of the Parenting Expert.

[21] The parties are prohibited, without leave of the Case Management Justice, from making further applications or proceeding with steps in previously scheduled applications until the Evaluation is completed.

[22] Unless ordered by the Court, only the following documentation shall be provided to the Parenting Expert:

- a) filed Court applications (not affidavits or sworn statements under the *Family Law Act*) and Court Orders; and,
- b) professional reports or letters provided to the Court, including Practice Note 7 letters and Intervention Report(s).

To avoid unnecessary duplication and delay, counsel are encouraged to provide a joint binder of documents to the Parenting Expert.

[23] Each party may provide the names of no more than three (3) personal collateral witnesses whom the Parenting Expert may interview. This does not limit the Parenting Expert from contacting any professional or other collateral witnesses they deem appropriate.

⁴https://albertacourts.ca/docs/default-source/qb/request-for-appointment-of-a-case-management-justice.docx?sfvrsn=fd45ac80_2

[24] The parties and the child(ren) shall cooperate with the Parenting Expert and attend before the Parenting Expert, answer questions, submit to testing, and allow access to the child(ren)'s current or proposed residence. Where a party refuses to consent to the Evaluation or any part of it, or refuses to cooperate with the Evaluation, the Court may dispense with that party's consent and order the Evaluation to proceed without that parent's involvement.

[25] All third parties involved with the child(ren) and their parents, including but not limited to the child(ren)'s teachers and school authorities, family and child counsellors and assessors, mediators, church personnel, visit supervisors, medical service providers, psychologists and social workers are authorized to be interviewed and to release any and all information about the child(ren) and their parents, including documentary information, to the Parenting Expert, where release is not prohibited by statute, privilege or otherwise. The ability of the parenting expert to obtain information, including documentary information, from a person employed or assisting in the administration of the *Child, Youth and Family Enhancement Act*, is subject to the confidentiality and privilege provisions of that Act, including section 126.11 thereof.

[26] To facilitate the Evaluation, the Court may include a provision in the Practice Note 8 Evaluation Order limiting or suspending a Queen's Bench No-contact Order, an Emergency Protection Order, a Queen's Bench Protection Order or a Restraining Order to the extent necessary to facilitate the Evaluation, provided the safety of the parties is maintained.

[27] The Parenting Expert, at any time, may seek the direction of the Court on any matter. The Parenting Expert shall, by letter addressed to the Court and copied to counsel (or the parties where they are self-represented), seek direction in the following circumstances:

- a) where a party withdraws from the Evaluation;
- b) where a party fails to cooperate with the Parenting Expert;
- c) where the Parenting Expert's fees are not paid as directed by the Court;
- d) where information necessary for the completion of the Evaluation is in the possession of a third party and an application under Rule 5.13 of the *Rules of Court* or section 126.11 of the *Child, Youth and Family Enhancement Act* is necessary; and,
- e) where the Parenting Expert wishes to review other records (print or electronic).

[28] Where a party objects to the Parenting Expert's review of the requested record, they must bring an application to oppose production within 15 days of the date of the Parenting Expert's letter to the Court.

[29] No concern or complaint may be made to the professional body governing the practice of the Parenting Expert until after:

- a) the parties have resolved all parenting issues as evidenced by a written settlement agreement or final order or judgment; or,
- b) the Court has rendered its decision in the matter for which the Evaluation has been ordered, and all appeals have been heard or all appeal periods have expired.

Review and Use of the Practice Note 8 Evaluation Report

[30] The Parenting Expert shall prepare an Evaluation Report. The Evaluation Report shall contain:

- a) the Parenting Expert's name and qualifications;
- b) the information and assumptions on which the Parenting Expert's opinion is based;
- c) a list of all persons interviewed or observed;
- d) a summary of the Parenting Expert's observations and opinion(s); and,
- e) an appendix containing the Parenting Expert's recommendations to the parties.

[31] The Parenting Expert shall provide two (2) copies of the Evaluation Report to the Case Management Justice (one for the Court file and one for the Case Management Justice's file) and a copy to counsel for the parties. The Parenting Expert shall notify self-represented litigants when the Evaluation Report is sent to the Case Management Justice. The parties shall not receive a copy of the Evaluation Report, but they may receive, from either counsel or the Parenting Expert, a copy of the appendix to the Evaluation Report containing the Parenting Expert's recommendations.

[32] The Case Management Justice will keep one copy of the Evaluation Report and any portion of the Parenting Expert's file (provided pursuant to paragraph 37) on the Case Management file, until final determination of the parenting issues. The second copy of the Evaluation Report will be placed in a sealed envelope on the Court file (sealing does not preclude a party's access to the Evaluation Report, as outlined below). Following final determination of the parenting issues, the Court shall seal all copies of the Evaluation Report and any portion of the Parenting Expert's file produced by Court Order.

[33] The parties may review the entire Evaluation Report at their counsel's office, while under supervision. They shall not have a cell phone or other electronic device in their possession while viewing the report. The parties shall not receive a copy or make handwritten notes or electronic copies of the report without prior leave of the Court.

[34] Where a party is self-represented, the party may contact the Court to arrange to review the entire Evaluation Report in the presence of a Clerk of the Court, which may include a Clerk of the Provincial Court. Parties shall not have a cell phone or other electronic device in their possession while reviewing the report. They shall not receive a copy or make handwritten notes or electronic copies of the report without prior leave of the Court.

[35] The child(ren) shall not see or receive copies of any portion of the Evaluation Report, including any appendix, nor shall the parties discuss any aspect of the report with the child(ren), including the Parenting Expert's recommendations.

[36] Either party may apply to the Case Management Justice to retain, at their sole expense, another Parenting Expert to conduct a work file critique. In granting this Order, the Case Management Justice must be satisfied that the work file critique can be completed within a reasonable time prior to the date for final determination of the parenting issues. The work file

critique shall be a documentary review and shall not involve re-interviewing the parties, the child(ren), or any collateral witnesses.

[37] The Case Management Justice may require a Parenting Expert to disclose all or part of the contents of the Parenting Expert's file to the person conducting the work file critique, but only after the Parenting 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. The Case Management Justice may make such order as to costs for copying the file as is appropriate in the circumstances.

[38] Within 60 days of completion of the Evaluation, the parties shall schedule and attend a case conference with the Case Management Justice, counsel (where one or both parties is represented), and the Parenting Expert (who may appear by telephone) with a view to discussing resolution of the parenting issues. If it appears that resolution is not possible, the case conference will address procedural matters in preparation for final determination of the parenting issues. This will include:

- a) determining whether the documents reviewed by the Parenting Expert will be entered into evidence by consent, and whether they will be entered for the truth of their contents, or alternatively, which documents must be proven through a witness; and,
- b) determining which collateral witnesses can be dispensed with at trial and which shall be made available for cross-examination.

[39] The Parenting Expert who prepares the 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. Where possible, the Parenting Expert(s) should give their evidence after all lay witnesses have testified.

[40] If counsel withdraws as lawyer of record, counsel is responsible for removing the Evaluation Report and any work file critique from their file and returning them to the respective Parenting Experts before releasing the file to the party.