

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

**FAMILY LAW PRACTICE NOTE "7"**

**USE OF INDEPENDENT PARENTING EXPERTS**

**EFFECTIVE MARCH 31, 2001**

**AMENDED APRIL, 2004**

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**PURPOSE AND APPLICATION:**

1. This Practice Note is for use in a small minority of separated and divorcing families where:
  - a) the families are experiencing an impasse,
  - b) the intervention of the Court is required; and
  - c) the Court requires assistance from Parenting Experts.
2. It is in the best interests of children who are members of conflicted families that there be early, quick and effective intervention by the Courts and mental health professionals.
3. This Practice Note may be used:
  - a. **First** to target specific issues in the family and to facilitate resolution using Parenting Experts in an expeditious, non-adversarial fashion.
  - b. **Second**, where resolution is not possible, to provide for an objective assessment of the family by a Parenting Expert as a litigation aid to assist the Court in addressing the best interests of the children.
4. This Practice Note takes into account the limitations imposed on Parenting

Experts by the professional bodies that govern them, and has been prepared in consultation with the College of Alberta Psychologists and the Alberta College of Social Workers.

5. This Practice Note does not apply to matters under the ***Child, Youth and Family Enhancement Act***, R.S.A. 2000, c. C-12.

#### **DEFINITIONS:**

6. Definitions are set out in Appendix 1 to this Practice Note.

#### **PROCEDURES:**

7. This Practice Note provides for two kinds of procedures: **Interventions (both short-term and long-term)** and **Assessments**.

#### **A. General Provisions for Interventions and Assessments**

8. Appendix 2 provides forms of Order for Interventions and Assessments. Those forms of order are guides and may be modified to suit the specific case.
9. Failing agreement by the parties as to the Child Parenting Expert to be appointed by the Court, the Court will select the Expert taking into consideration the parties' suggestions. The Expert may not be appointed unless the Expert consents to act.
10. This Practice Note expressly recognizes that Parenting Experts are not permitted by their colleges to engage in the dual roles of Assessment and Intervention with the same person or family.
11. Where an order is made under this Practice Note, and the parties are not under case management, the Court shall direct the parties to make an application for case management or shall order that any letters or reports from the Parenting Experts are to come to the judge making the Practice Note 7 order.
12. Each Order for an Intervention or an Assessment must address funding, time lines for funding, and each parent's responsibility for that funding. Before ordering an Assessment or an Intervention, the Court must determine the ability of the parties to pay. If the parties cannot pay and subsidies are not available then an Intervention or an Assessment must not be ordered.
13. Each Order must address the intended use of a Parenting Expert report or letter. In particular, the Order should address whether the report or letter may be used only for interim applications, or only for trials or for both.
14. The Parenting Expert may, on notice to all parties and by letter seek directions

from the Court at any time during an Intervention or Assessment, provided that the Parenting Expert has first contacted legal counsel for the parties in an attempt to resolve the issue. Given the circumstances in each case, the Parenting Expert shall give counsel a reasonable time to respond before seeking directions from the Court. Once a letter is received, the Court may convene a hearing with the Parenting Expert and the parties, or may attempt to resolve the issue by letter to the parties and the Parenting Expert. The notice provision of this paragraph applies to all of those provisions in this Practice Note that provide for the Parenting Expert to contact the Court.

15. The Parenting Expert, on notice by letter with copies to legal counsel, shall seek further directions from the Court in the following circumstances:
  - a) where a party withdraws from an Intervention or an Assessment,
  - b) where a party fails to cooperate with the Parenting Expert; or
  - c) if the Parenting Expert fees for the Intervention or Assessment are not paid as directed by the Court.
16. The Court may include a provision in any order prohibiting further applications by the parties with respect to a parenting, custody or access until the Intervention or Assessment is completed, unless the safety or health of a child is at risk or the Parenting Expert recommends an application.
17. Where a parent refuses to provide his/her consent to the Parenting Expert for an Intervention or an Assessment, or consent to allow the Parenting Expert to speak to the children alone or with the other parent, the Court may dispense with that parent's consent and order the Intervention or Assessment to proceed without that parent's involvement.
18. Unless otherwise ordered, no complaint may be made to the professional body governing the practice of the Parenting Expert until the Intervention is complete or the Court has rendered its decision in the matter for which an Assessment has been ordered

## **B. Interventions**

19. An Intervention means a short or long term therapeutic involvement by a Parenting Expert that is resolution oriented to assist families to overcome conflict. The Intervention is intended to support the family in a collaborative, child-centred manner. Some examples of Interventions are given in paragraph 21.
20. The Court may make an order appointing a Parenting Expert to conduct an Intervention which order may include terms that:

- a) describe the nature of the issues in dispute;
  - b) set the type of Intervention and the time limits; and,
  - c) set the date by which the Intervention should be completed.
21. The types of Intervention may include:
- a. **counselling/therapy:** assisting family members in the adjustment of changed circumstances and the restructuring of family roles ;
  - b. **educational sessions:** in addition to the Parenting After Separation Course, providing family members with education regarding children's needs, parents' roles, caregivers' roles and negative impact on children of prolonged conflict;
  - c. **parenting plan:** assisting the parents to jointly develop a parenting plan;
  - d. **parallel parenting plans:** where the parents cannot cooperate, assisting the parents to develop and implement a parallel parenting plan;
  - e. **evaluation:** evaluating particular issues specific to that family;
  - f. **canvassing** the specific needs or, where appropriate, the wishes of the children;
  - g. **remedial facilitated access:** between parent and child;
  - h. **recommendations:** to the Court for longer term counselling; mediation/arbitration; other forms of intervention; other community group or support service; psychological testing; whether an Assessment is required; or any other recommendation which the Parenting Expert is of the opinion is appropriate in the circumstances.
22. Where the Intervention results in a written resolution such as a parenting plan defining how the proposed new family arrangements will meet the children's needs, the Court may require the parties to file the resolution with the Court. Where the Intervention does not result in a written resolution, the Parenting Expert shall communicate the resolution of the Intervention to the Court and the Court may use the written resolution or the letter as the basis for a court order determining appropriate parenting arrangements, including parenting time, contact, custody and access arrangements for the children.
23. Where the Parenting Expert communicates with the Court by letter, the Parenting Expert shall not send the letter directly to the parents or the children. The parents are entitled to view the letter with their counsel, but neither the parents nor the children may receive copies of the letter without an order of the Court. Where a party is self-represented, the Court shall provide in the Order how the party may review letters from the Parenting Expert.
24. If, at any point, the Parenting Expert determines that continuing the Intervention would not be useful, the Parenting Expert may terminate the Intervention and

report by letter to the Court and legal counsel:

- a. that the Intervention has not been successful, describing factors contributing to the success or lack of success;
- b. that referral to a more appropriate Intervention could be beneficial;
- c. that because there has been no resolution or significant allegations have arisen, a Bilateral Custody Assessment is necessary, or
- d. anything else that the Parenting Expert thinks will be useful to the Court.

### ***Confidentiality for Interventions***

25. All participants shall be made aware that the Parenting Expert has a discretion either to disclose all information received from a parent, child or other source, or to keep all or some information confidential if it is in the best interests of the children to do so. However, if the dispute between the parents proceeds to trial the Court may compel production of any information not previously disclosed.

### **C. Assessments**

26. To assist the Court in determining the best interests of the children, the Court may appoint a Parenting Expert to conduct an Assessment or a Bi-lateral Custody Assessment. Assessments will generally be used when the parties are going to trial or to special applications where the Court will determine parenting arrangements in the best interest of the children.
27. An Assessment is an objective, neutral evaluation carried out by a Parenting Expert as an aid to litigation. An assessment may address only one home or parent or child. Assessments may include psychological testing. An Assessment may also explore individual issues such as the educational needs of a child, the mental health of an individual, and anything else that the litigants identify and the Court orders. Assessments include Bi-lateral Custody Assessments.
28. The Court may seek the Expert's recommendations as to the parameters of the Assessment and the necessity for psychological testing.
29. Where a Parenting Expert has commenced an Assessment and concludes that an Intervention may be more appropriate, the Parenting Expert may, by letter, notify the Court and the legal counsel of that conclusion and seek direction from the Court.
30. A Parenting Expert may investigate and collect evidence, and is not limited to reviewing evidence.

31. Where information necessary for the Parenting Expert to complete the Assessment is held by a non-party, the Court may, on notice to the non-party, and permitting the non-party to make submissions to the Court, order the production of that information.
32. If the Parenting Expert concludes that the Assessment or Bi-lateral Custody Assessment must be terminated, the Expert shall identify the factors contributing to the termination and shall make recommendations to the Court as to further Interventions or Assessments.
33. Once the Court has ordered an Assessment, no additional assessments involving the children may be undertaken by the parties without an order of the Court.

### ***Assessment Reports***

34. A Parenting Expert shall prepare and deliver to the Court and to all legal counsel the Assessment Report or Reports at times and in the manner directed by the Court.
35. The parents are entitled to view the Report but the parents may not receive copies of the Assessment Report without prior leave of the Court. Legal counsel may not provide copies of the Report nor disclose the contents of the Report to any person, other than their client or experts retained by that counsel on behalf of the client. The children shall not see the Report, nor receive copies of the Report.
36. Where a party is self-represented, that party must be notified by the Expert by letter, a copy of which shall also be provided to the Court and the other party through counsel where that party is represented, that the Assessment Report is being delivered to the Court and that the self-represented party may contact the Court to arrange to see the Report.
37. The Court may direct that an Assessment Report be admitted as evidence in any proceeding in which the best interests of the child who is the subject of the Report are at issue. Where the Report relies on information from a file under the ***Child, Youth and Family Enhancement Act***, or where for any other reason the Court deems it appropriate, the Court may order that the filed Report be sealed.
38. A Parenting Expert who prepares an Assessment Report is compellable to give *viva voce* evidence and to be cross-examined by the parties in any proceeding in which the best interests of the child are in issue.
39. Where an Assessment Report is admitted into evidence at trial, or where a Parenting Expert gives *viva voce* evidence, the Justice, if it is appropriate and cost effective, may order the Expert to conduct further reviews or updated

Assessments and make further recommendations after the conclusion of the trial. No such order shall place the Expert in a conflict of interest or require an Expert to act if he is unwilling or unavailable.

***Confidentiality for Assessments***

40. The Assessment Order shall provide that the Assessment is not confidential unless the Expert considers that information disclosed by the children should not be disclosed to the parents. In that event, the Expert shall bring the issue before the Court and the Court may order that information be kept confidential.
41. A Parenting Expert may be required to disclose all or part of the contents of the Expert's file after the Expert has been given an opportunity by the Court to explain the consequences of releasing such information and to explain the regulations of the Expert's college. The Court may make such order as to costs for copying the file as is appropriate in the circumstances.

Dated this 31<sup>st</sup> day of July, 2006

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Allan H. Wachowich  
Chief Justice

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Neil C. Wittmann  
Associate Chief Justice

## APPENDIX 1 - DEFINITIONS

42. The following definitions apply for this Practice Note:

**“Bi-lateral Custody Assessment”** means a comprehensive Assessment of the nuclear family to assist the Court in determining parenting arrangements that are in the best interests of the children and within the capabilities of the family. Such an assessment evaluates the parents’ capacities to meet their children’s needs, and their personal and parenting strengths and vulnerabilities. It may also include assessments of any new partners, extended family members or other associates who play a significant role in parenting the children within the home. Additionally, it involves a comprehensive evaluation of the children’s developmental needs, observation of parent/child interactions, and corroboration of reports and observations through collateral information sources.

**“Parent”** means the father, mother or guardian of the children as defined in the Family Law Act.

**“Parenting Expert”** or **“Expert”** means a psychologist, social worker or other professional, or a team of professionals, with sufficient training and experience to be accepted by the Court as expert in matters relating to parenting, contact, custody and access to children.

**APPENDIX 2 - ORDERS**

Action No: [Action No.]

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

**[Applicant]**

Applicant

- and -

**[Respondent]**

Respondent

BEFORE THE HONOURABLE

MR./MADAM

JUSTICE \_\_\_\_\_

Law Courts Building, Edmonton, Alberta

)  
)  
)  
)

On \_\_\_\_\_, the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

**Practice Note 7 Intervention Order**

UPON THE APPLICATION of the Applicant, [Applicant]; AND UPON having read the Applicant's Affidavit, sworn [date]; and UPON having read [insert]

AND UPON having heard from [insert] and from [name of the Parenting Expert] as to the appropriate terms of this Order;

AND UPON NOTING that this Intervention Order is made under Practice Note 7;

AND UPON NOTING that the Court [put in the purpose of the Intervention];

AND UPON NOTING that the Parenting Expert appointed by the Court herein is a friend of the Court and responsible to the Court and not responsible to either party;

AND UPON NOTING that the Parenting Expert may not disclose all information received from a parent, child or other source, and may keep all or some information confidential if it is in the best interests of the children to do so, but if the dispute between the parents proceeds to trial the Court may compel production of information

from the Parenting Expert.

AND UPON NOTING the Interim Order of Justice [name of Justice] dated [date] which provides that the [parent(s)] has/have [parenting time, joint, sole, shared] custody of the children, and that the primary residence of the children is with [mother/father];

AND UPON the Court being advised that the name and birth date of each child of the parties' marriage or relationship is as follows:

[Child's Name], born [Child's Birth date];  
[Child's Name], born [Child's Birth date];

AND UPON [insert any other preamble information].

**IT IS HEREBY ORDERED THAT:**

1. [name of professional] is hereby appointed as a Parenting Expert to carry out the following [short term or long term] Intervention under Practice Note 7:
  - a. [describe fully the nature of the Intervention that is being ordered considering the types of intervention set out in the Practice Note]
  - b.
2. [where the Intervention is short term the following should be included:] This is a short term Intervention which must not take longer than [specify the number of hours] hours without leave of the Court.
3. [where the Intervention is long term, the court should consider setting time lines in consultation with the Parenting Expert]
4. The Parenting Expert may during the course of his/her mandate seek directions from the Court on notice to the parties provided that the Parenting Expert has given a reasonable time to counsel to respond before seeking directions from the Court, where:
  - a. the parties are not cooperating with the Parenting Expert;
  - b. the Parenting Expert concludes that the Intervention should be terminated and the Expert shall identify the factors contributing to the termination and shall make recommendations to the Court as to further Interventions or Assessments that the Court might order; or

- c. the parties have failed to fund the Intervention in accordance with the terms of this Order.
5. When seeking directions, the Parenting Expert may communicate with the Court by letter with copies to counsel representing the parties.
6. The Parenting Expert shall not, without leave of the Court, give the letter or copies of the letter to the parties. [where one or both of the parties are self represented, set out in the order how they will view the letter.]
7. Counsel for the parties shall not, without leave of the Court, give a copy of the letter to the parties or to the children. [where one or both of the parties are self represented, set out in the order how they will view the letter.]
8. The Parties may use the letters or reports from the Parenting Expert for: [all purposes in the litigation, or only for the purpose of the case management, or only for the purpose of trial, or anything else the Court may order].
9. If a parenting plan or other written resolution is developed by the parties during the course of the Intervention, they shall file it with the Court.
10. Where it is necessary for the Parenting Expert to speak with a child, either alone or with the parents, the consent of the parents is hereby dispensed with.
11. Subject to the ultimate determination by the trial Justice as to how the parties shall bear the costs of the Parenting Expert, the remuneration for the Parenting Expert shall be paid in the first instance by the parties as follows:
  - a. [address whether either or both parties are to seek a subsidy]
  - b. [name of party] is to bear [percentage] share of the costs in the interim;
  - c. [name of other party] is to bear [percentage] share of the costs in the interim;
12. If either party fails to comply with the terms of this order concerning remuneration of the Parenting Expert by [set date], the parties shall return to this Court for further direction [set default date].
13. [if there are to be no applications to the Court until the Intervention is complete] There shall be no applications to the Court until the Intervention is complete without leave of the Court.

14. Unless otherwise ordered, no complaint may be made to the professional body governing the practice of the Parenting Expert until the Intervention is complete.

Justice of the Court of Queen's Bench  
of Alberta

ENTERED this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

Clerk of the Court

Action No: [Action No.]

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**IN THE COURT OF QUEEN'S BENCH  
OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON**

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BETWEEN:

**[Applicant]**

Applicant

- and -

**[Respondent]**

Respondent

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**Intervention Order**

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IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

**[Applicant]**

Applicant

- and -

**[Respondent]**

Respondent

BEFORE THE HONOURABLE )  
MR./MADAM )

JUSTICE \_\_\_\_\_ )

Law Courts Building, Edmonton, Alberta )

On \_\_\_\_\_, the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

**Practice Note 7 Assessment Order**

UPON THE APPLICATION of the Applicant, **[Applicant]**; AND UPON having read the Applicant's Affidavit, sworn **[date]**; and UPON having read **[insert]**;

AND UPON NOTING that this Assessment Order is made under Practice Note 7;

AND UPON having heard from **[insert]** and from **[name of the Parenting Expert]** as to the appropriate terms of this Order;

AND UPON NOTING that the Court wishes to have an Assessment to assist the Court in determining the family arrangements that will be in the best interests of the children of the family;

AND UPON NOTING that the Parenting Expert appointed by the Court herein has consented to conduct the Assessment and is a friend of the Court and responsible to the Court and not responsible to either party;

AND UPON NOTING the process set out herein is a Court directed process and is not confidential unless otherwise ordered by the Court and that no confidentiality attaches to the information shared by the parties, third parties or the children with the Parenting Expert and that all such information may be disclosed to the Court;

AND UPON NOTING the Interim Order of Justice [name of Justice] dated [date] which provides that the [parent(s)] has/have [kind of parenting time] [joint, sole, shared] custody of the children, and that the primary residence of the children is with [mother/father];

AND UPON the Court being advised that the name and birth date of each child of the parties' marriage or relationship is as follows:

[Child's Name], born [Child's Birth date];

[Child's Name], born [Child's Birth date];

AND UPON [insert any other preamble information];

**IT IS HEREBY ORDERED THAT:**

1. [name of professional] is hereby appointed as a Parenting Expert to carry out the following Assessment under Practice Note 7:
  - a. [describe fully the nature of the assessment that is being ordered]
  - b. [or] a Bi-lateral Custody Assessment.
2. The parties and the children are ordered to cooperate with the Parenting Expert and: to attend before the Expert; to answer questions; to submit to testing; to allow access to the child's current or proposed accommodation; and to authorize non-parties to release relevant information, where release is not prohibited by statute, privilege or otherwise.
3. If the parties do not cooperate with the Parenting Expert, the Expert shall report the lack of cooperation to the Court on notice to the parties.
4. The Parenting Expert will provide the Assessment Report directly to the Court

copying all information to counsel for the parties.

5. The Parenting Expert shall not, without leave of the Court, give the Assessment Report or copies of the Assessment Report to the parties. Further, counsel for the parties shall not give a copy of the assessment report to the parties. The parties may view the assessment report in their counsel's office. [where one or both of the parties are self represented, set out in the order how they will view the reports.]
6. The Parenting Expert may at any time seek directions from the Court upon reasonable notice to the parties.
7. Where it is necessary for the Parenting Expert to speak with a child, either alone or with the parents, the consent of the parents is hereby dispensed with.
8. Subject to the ultimate determination by the trial Justice as to how the parties shall bear the costs of the Parenting Expert, payment of the Parenting Expert shall be paid by the parties as follows:
  - a. [address whether either or both parties are to seek a subsidy]
  - b. [name of party] is to bear [percentage] share of the costs in the interim;
  - c. [name of other party] is to bear [percentage] share of the costs in the interim;
9. If either party fails to comply with the terms of this order concerning remuneration of the Parenting Expert by [set date], the parties shall return to this Court for further direction [set default date].
10. The parties may not obtain additional Expert reports which involve the children without prior leave of the Court.
11. Unless otherwise ordered, no complaint may be made to the professional body governing the practice of the Parenting Expert until the Court has rendered its decision in the matter for which the Assessment has been ordered.

Justice of the Court of Queen's Bench  
of Alberta

ENTERED this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

Clerk of the Court

Action No: [Action No.]

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**IN THE COURT OF QUEEN'S BENCH  
OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON**

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BETWEEN:

**[Applicant]**

Applicant

- and -

**[Respondent]**

Respondent

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**Assessment Order**

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