

The Psychologist as Expert Witness, Parenting Assessor or Litigation Support

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Presented by:
Dr. Larry Fong
Fong Ailon Psychologists
Calgary, Alberta

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THE PSYCHOLOGIST AS EXPERT WITNESS, PARENTING ASSESSOR OR LITIGATION SUPPORT

The role of an expert witness in parenting matters in Alberta, and likely Canada is to assist the Court as a neutral. The focus is best interests of a child.

I will refer to psychologists as experts in this parenting field and acknowledge there are other mental health professionals who conduct similar work.

Whether the psychologist is retained to provide assistance to legal counsel, or the Court, in the criminal or civil system, there are similar parameters to remember, and they do have consequences for the client and the Court. Ethics, standards or guidelines for the psychologist may at times collide with the needs of the legal system.

RULES GOVERNING THE EXPERT:

1. The psychologist is guided by their code of ethics and the language in any document by their College may determine how the expert approaches any particular assessment or procedure. The language for ethics or standards or guidelines determines whether the approach is prescriptive or not. ('should or shall' for ethics – note the difference), (guidelines is 'may'), (standards of practice or code of conduct is 'shall').
2. Ethics tend to be aspirational, standards are prescriptive and guidelines are to guide the profession.
3. To complete a Practice Note 7 (Parenting Intervention), Practice Note 8 (Bi-Lateral Assessment), retain a psychologist by order of the Court, or by private retainer the psychologist requires the informed consent of the parties to proceed.
4. Informed consent is defined in the standards of the psychologists' practice (www.cap.ab.ca) and like other health care professionals (Health Professions Act) the psychologist must discuss the process with the clients to ensure that their consent is informed. For example, that would include, among other matters, explaining the risks and benefits of any procedure, determining the expectations of the client and professional, and all other criteria noted in the specific Act
5. Psychologists, while conducting any intervention, especially that which is court related (forensic) should ensure that they do not defer their responsibilities of informed consent to others (court or lawyers).

6. The psychologist, as a health care professional, must permit a client to withdraw from a procedure, however this becomes complicated when the assessment has been Court ordered and the client wants to withdraw from a procedure.
7. Under the Health Professions Act a client/patient may withdraw from a procedure should they wish to do so. Thus if there is a Court Order for parenting, consensual or otherwise a parent ought to be able to withdraw at will. However, most parenting agreements or retainer agreements should indicate that should a parent withdraw that their legal counsel should know immediately, or that the client would appear immediately in front of the Court to indicate their reasons for withdrawing from a court ordered assessment.
8. PN 7 and PN 8 assist lawyers, the clients and the psychologist in focusing on the scope of practice of the assessor. The process works best if all parties have agreement as to the intervention and the scope or terms of intervention.
9. Thus, when retaining an expert, especially with parenting matters, it is preferable to have a court order, to ensure that the court has and retains control over the assessment process.
10. Psychologists, in obtaining their license to practice, as registrants, must know the relevant laws and jurisprudence in conducting their practice.
11. Much of the jurisprudence is mentioned on the College of Alberta Psychologists (CAP) website includes R. v. Mohan (expert witness testimony) to K.(S.D.) v. Alberta (Director of Child Welfare), 2002 ABQB 61 (release of information).
12. Many guidelines such as the American Psychological Association (APA) speciality Guidelines for Forensic Psychology) strongly suggest that knowing the jurisprudence is important and that psychological expertise falls within those legal statutes, laws or expectations of the law.
13. It behooves psychologists to be acutely aware of the laws and jurisprudence within their jurisdiction
14. Psychologists in Alberta no longer have current custody or parenting guidelines, child protection or otherwise to guide them in conducting parenting assessments.
15. Currently psychologists focus on guidelines or model standards of other organizations
16. They include the American Psychological Association for the speciality guidelines for forensic psychology, child custody guidelines, parenting coordination guidelines (www.apa.org); Association for Family & Conciliation Courts for model standards for child custody and parenting coordination guidelines (www.afccnet.org).