**Parenting Capacity Assessments: Balancing the Benefits against the Costs within the Current Legal Framework**

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A parent’s capacity to parent a particular child is the central issue in most child protection cases before the court. This task requires an analysis of the complex interplay between parent, child, environmental and cultural factors. Cases where a child protection agency is seeking an order to terminate parental rights are the most difficult cases for courts to decide. These cases engage the Charter rights of the parents and require courts to ensure that decision making is based on a process that is scrupulously fair to the parents. At the same time, the children in these cases have a fundamental right to feel safe and secure and to be cared for over the course of their childhoods in a manner that is “good enough”.

Given the degree to which decision making in the child protection field touches on issues related to child development, the level of the attachment between a parent and child and/or the mental health and general functional capacity of a parent, courts and child protection agencies in many jurisdictions have turned to experts in the behavioural sciences to obtain opinion evidence to assist the court to make decisions in the best interests of these children.

A thorough, and methodologically sound parenting capacity assessment by a properly qualified independent assessor can be useful to the court in many ways. It can provide a check and balance on the work of the protection agency. For example, an assessment may identify a previously undiagnosed learning disability that may have interfered with the ability of the parent to benefit from parenting programs and learn new parenting skills. It may also provide the court with valuable evidence related to the quality of the attachment between a parent and a child and the impact on the child of continuing or severing this relationship. These assessments can also facilitate settlement in some cases and spare the parties from enduring the emotional stress of a difficult trial.

Professors Nicholas Bala and Alan Leschied in 2006 conducted a survey of judges and other family justice system stakeholders in Ontario to examine the use of parenting capacity assessments in child protection proceedings and to make recommendations for reform.[[1]](#footnote-1) The researchers received survey responses from 27 family court judges of the Superior Court of Justice and the Ontario Court of Justice. In this survey, judges indicated that a parenting capacity assessment provided information that influenced their decisions in 88% of cases where such an assessment was conducted and that the outcome of the case was consistent with the recommendations of the assessor in 79% of all such cases. All of the judges surveyed and the majority of the lawyers surveyed (both CAS counsel and parents counsel) also indicated that these assessments help to settle cases.[[2]](#footnote-2)

Despite the identified utility of these assessments, Dr. Bala and Dr. Leschied identified a number of concerning issues including the following:[[3]](#footnote-3)

1. Lack of Standards or Guidelines for the conduct of an assessment;
2. Lack of training opportunities for assessors;
3. Lack of qualified assessors;[[4]](#footnote-4)
4. Clinicians’ lack of familiarity with the demands of completing a forensic child welfare assessment.

The authors recommended that the Ontario Government establish a centre, independent of child welfare agencies, which would have a province-wide mandate to develop standards, establish the qualifications needed to be an assessor, conduct training and research and oversee this important work.[[5]](#footnote-5)

Unfortunately, these recommendations were never implemented. Furthermore, the same issues identified by the authors in their 2008 paper continue to pose serious challenges for child protection courts in Ontario today. In addition, the potential dangers of relying on flawed and unreliable opinion evidence have been highlighted in Ontario in both the *Goudge* and *Motherisk* Reports.[[6]](#footnote-6) In the wake of the recommendations outlined in these reports, courts are taking their gatekeeper role very seriously and are routinely applying an enhanced level of scrutiny to all expert opinion evidence.

In this current post *Goudge* and post *Motherisk* era, expert opinion evidence is now more likely to be excluded altogether by the child protection trial judge or given minimal weight. This caution by the courts is understandable given the extremely high stakes of a child protection trial where an extended care order is being sought within a context where there is an absence of clear forensic standards or any effective regulation of these assessors.

At their best, a methodologically sound parenting capacity assessment by a properly qualified assessor can provide an objective evaluation of clinical issues that are relevant to the determinations necessary in a particular case. Such a report can contribute to accurate fact-finding and fair decision-making. It can make recommendations for interventions and highlight issues that may not have been properly identified or understood by child protection workers. This type of assessment can also provide an important check and balance on the work of frontline protection workers who have varying degrees of training, skill and experience in assessing the capacity of parents who often present with a complex range of clinical issues.

At their worst, these assessments can unnecessarily increase the length and expense of a trial and distort the fact-finding process through the provision of unreliable opinion evidence. The reliability of opinion evidence may be flawed due to multiple sources of potential error including assessor bias, unreliable testing instruments or a general lack of adherence to forensic methods. Examples of both reliable and flawed assessments are evident in a review of child protection caselaw in Ontario spanning the past decade.

This paper will provide a brief overview of research and best practice recommendations from the field of psychology for the conduct of these assessments. The second part of the paper will review caselaw from the Ontario jurisdiction spanning the past decade where parenting capacity assessments have been considered by the courts.

**What is “Good Enough” Parenting**

A central focus in child protection cases is the determination of whether a particular parent can provide ‘good enough’ or ‘minimally adequate’ parenting to a particular child. However, given the number of complex environmental, family, child and parent variables involved in this task, there is no single legal or clinical definition of the ‘good enough’ parent. In one comprehensive literature review on the assessment of parenting capacity published in 2005, Angela Walker underscores the challenges inherent in evaluating parenting capacity given the absence of any empirical clarity surrounding the definition of minimally adequate parenting.[[7]](#footnote-7) Walker suggests that ‘good enough’ parenting “is a term generally used to describe the minimum amount of care needed so as not to cause harm to a child”.[[8]](#footnote-8)

Another prominent researcher and psychologist in this field in the United States, Dr. Karen Budd, has similarly underscored the assessment challenges that flow from the lack of universal models or standards of minimal parenting competence in the fields of child development, psychology and law.[[9]](#footnote-9) She points out that guidelines that do exist such as those found in child welfare legal statutes, “lack behavioural specificity and consistency across jurisdictions.”[[10]](#footnote-10) Budd suggests that a good clinical practice model for parenting capacity assessments should not focus on optimal or middle-class parenting standards but instead, should include a consideration in each case of the “lowest threshold of parenting skills necessary to protect a child’s welfare, given the risks and protective factors present in the family.”[[11]](#footnote-11) She illustrates this point as follows:

For example, maternal conditions such as low intellectual functioning or mental illness pose clear risks to parenting and child safety, yet these risks may be tempered by factors such as the child’s age and functioning, a supportive family network, the mother’s recognition of her limitations, and her participation in intervention services.[[12]](#footnote-12)

**Parenting Capacity Assessments versus Other Types of Assessment**

Where there are clinical issues present in a family, the necessary opinion evidence related to the mental health or functional capacity of the parent can often be produced in a focused manner through a psychological or psychiatric assessment. It is important to understand the differences between the fields of psychology and psychiatry. While both psychologists and psychiatrists, depending on their training, can diagnose a range of mental health conditions, generally only psychologists can conduct psychoeducational assessments to identify learning disorders and intellectual disabilities. Psychologists are not able to prescribe or monitor medications; only psychiatrists can prescribe medications as a form of treatment.

In a case where the parent appears to be suffering from mental health issues, the following questions might be appropriate for a general clinical assessment of the parent by a psychiatrist:

1. What is the parent’s diagnosis?
2. What are the treatment recommendations for this disorder?
3. What is the responsiveness of this condition to treatment both generally and with respect to the specific individual before the court?
4. What is the usual length of treatment needed to improve functioning in relation to this condition?
5. What is the likelihood of success of treatment for this person and what would treatment success look like in terms of the person’s general functioning?
6. Does this person have insight into their mental health condition?
7. Is this person compliant with treatment recommendations?

A narrow mental health assessment may be sufficient in cases where there is substantial evidence from other sources about the quality of the person’s parenting behaviours and the needs of the children.[[13]](#footnote-13) However, child protection cases are often complicated by the presence of multiple issues which may include one or more mental health conditions in addition to past childhood trauma and addictions issues. The children in the family may also have special needs through the impact of genetics or the parenting environment or some combination of both.

These issues can pose complex fact-finding challenges to the family court judge and narrow assessments may not always be sufficient to provide the court with the opinion evidence necessary to make the needed determinations in the case. Further, there may be significant gaps in the evidence provided by child protection workers and other collateral witnesses. There will always be cases where clinical opinion evidence will be necessary to evaluate areas of concern such as the following:[[14]](#footnote-14)

1. The parenting capabilities of the proposed participants in the child’s plan of care, including those attributes, skills and abilities most relevant to the child protection concerns.
2. Whether the proposed participants in the child’s plan of care have any psychiatric, psychological or other disorder or condition which may impact upon their ability to care for the child.
3. The nature of the child’s attachment to a proposed participant in the child’s plan of care and the possible effects on the child of continuing or severing that relationship.
4. The psychological functioning and developmental needs of the child, including any vulnerabilities and special needs.
5. The current and potential abilities of the proposed participants in the child’s plan of care to meet the needs of the child, including an evaluation of the relationship between the child and the proposed participants in the child’s plan of care.
6. The need for and likelihood of success of clinical interventions for observed problems.

Parenting capacity assessments can provide objective, independent and relevant clinical information to assist the court in making the necessary determinations. According to Budd (2005) a parenting capacity assessment can do the following:[[15]](#footnote-15)

1. Describe characteristics and patterns of a parent’s functioning in adult and childrearing roles;
2. Explain possible reasons for abnormal or problematic behaviours and the potential for change;
3. Identify person-based and environmental conditions likely to positively or negatively influence the behaviour;
4. Describe children’s functioning, needs and risks in relation to the parent’s skills and deficits;
5. Provide directions for intervention.

Budd has also outlined what Parenting Capacity Assessments cannot do:[[16]](#footnote-16)

1. Compare an individual’s parenting capacity to any universal parenting standard;
2. Predict parenting capacity from a mental health diagnosis;
3. Rule out the effects of situational influences (e.g. current stressors, cultural issues, time limitations) on the assessment process;
4. Predict future behaviour with certainty.

**A Forensic Approach to Parenting Capacity Assessment**

The purpose of a clinical assessment is to provide a diagnosis and treatment recommendations. Forensic assessments are evaluations conducted by a properly qualified expert to assist a court to “identify the examinee’s functional capacity or impairment directly relevant to the legal issue before the court”.[[17]](#footnote-17) In the child protection context, the purpose of a forensic assessment is to provide relevant, reliable independent and objective opinion evidence to the court to assist the trier of fact in making determinations about the parenting skills and deficits of the parent before them.

Unfortunately, very few clinicians have the training or the breadth of professional expertise necessary to conduct a forensic parenting capacity assessment.[[18]](#footnote-18) Authors in this field have described these assessments as some of the most challenging work that a clinician can undertake. Assessors require expertise in child development, adult mental health and the impact of parental addictions, family violence or mental health issues on parenting capacity including the ability to assess the impact of available interventions and the capacity for change in the parent.[[19]](#footnote-19) It has also been noted that there is very little training, preparation or ongoing guidance for assessors and that the necessary skills are often acquired in a piecemeal fashion, through trial and error and informal discussion with colleagues.[[20]](#footnote-20)

Attempts to develop forensic standards and guidelines for these assessments have been made in a variety of jurisdictions in both Canada and the United States with varying degrees of success. Dr. Paul Steinhauer, a Canadian child psychiatrist, attempted to develop a formal standardized approach in the 1980s and 90s with a number of child protection stakeholders.[[21]](#footnote-21) Canadian researchers and clinical psychologists Pezzot-Pearce and Pearce also published a comprehensive book in 2004 which reviews research in the field and makes recommendations for best practices for parenting assessments in the child welfare field.[[22]](#footnote-22)

More recently in 2011, rigorous and detailed forensic recommendations for best practices in parenting capacity assessments conducted by psychologists were developed in the United States by Karen Budd, Mary Connell and Jennifer R. Clark.[[23]](#footnote-23) Dr. Karen Budd is a clinical psychologist and academic based in Chicago, Illinois who has conducted extensive research on Parenting Capacity Assessments, including within a family court clinic. The authors wrote a concise

 book outlining best practice recommendations for forensic parenting capacity evaluations, having regard to the available research in the field and the law related to the admission of expert opinion evidence in the United States[[24]](#footnote-24).

These authors suggest a general best practice methodological approach for forensic assessments of this type. I have reproduced a summary of their recommended methodological approach below because their guidelines are very well grounded in the best available empirical research on these types of assessments having regard to the law related to the admission of expert opinion evidence in the United States which shares similarities with the law in Canada.

The recommended approach by Budd et al. to a forensic parenting capacity evaluation includes the following steps:

1. Obtaining records:

The records gathered by the clinician should include child protection court documents; past assessments of parents and children; occurrence reports and criminal records of parents; relevant medical records for parents and children including those related to findings of abuse or neglect; academic and attendance records of children; access notes; incident reports related to children.[[25]](#footnote-25)

1. Interviews with parents

Where it is possible, more than one interview with parents is recommended. The authors point out several reasons for multiple interviews including the fact that it allows for an evaluation of the consistency and validity of the parent’s responses.

They recommend that the interviewer conduct a mental status examination and gather relevant historical and current information about the parent’s functioning in a variety of areas. The authors provide a wide-ranging and comprehensive checklist for interview topics that cover all aspects of the parent’s life including their own experience of being parented, level of education, relationship history, employment history, education level, medical and mental health history and current coping skills and supports.[[26]](#footnote-26)

1. Collateral Interviews

The authors suggest that gathering information from collateral sources is also an important step in the evaluation. Common collateral sources are protection workers, foster parents, collaterals identified by the parents, service providers and family members related to the parents. A best practice suggestion is to ask each collateral only about the areas where they are able to provide reliable and unbiased information.[[27]](#footnote-27)

1. Parent-Child Observations

The authors highlight that parent-child observations should take place in a setting where the parent and child are used to interacting and where they feel most comfortable. This could be the home environment, a community park if weather permits, or the agency access centre depending on the current access arrangements and the length of time the child has been in care. The authors recommend as a best practice observing both structured (such as a mealtime or bath time) and unstructured activities between parent and child.[[28]](#footnote-28) With respect to the number of observational sessions, they point out that there is no consensus in the literature but there is some indication that more than one increases the validity of the conclusions drawn and allows for observation of patterns of behaviour.[[29]](#footnote-29) No specific length of time is recommended although visits longer than one hour are suggested.[[30]](#footnote-30)

The authors underscore that the parent-child observation provides “concrete information about the parent’s caregiving strengths and weaknesses, ability to meet the child’s individual needs, and the nature of the parent-child relationship.”[[31]](#footnote-31) In addition, important observations can be made about the general functioning (eg. Emotional, behavioral and social) of the parent and the child.[[32]](#footnote-32) The authors provide comprehensive and detailed guidance for the assessor with respect to areas to assess during an observation visit.[[33]](#footnote-33)

1. Psychological Testing

Budd et al. recommend a cautious approach to the use of testing in a parenting capacity assessment, suggesting consideration of the following: (1) Will the test obtain relevant evidence that cannot be obtained through other means? (eg. Review of records, clinical or collateral interviews); (2) Will the test provide relevant concurrent data on relevant constructs?; (3) Is there evidence that test is valid and reliable for its intended use?; (4) Is there evidence regarding use of the instrument with the examinee’s demographic, cultural or ethnic group?

Testing instruments are grouped by the authors into two groups: (1) Traditional Psychological Tests and; (2) Tests of Parenting Knowledge, Beliefs and Perceptions. Traditional psychological tests can be useful to help measure characteristics that may explain a parent’s caregiving deficits even though they cannot measure parenting capacity itself. Budd et al. review a number of standardized tests that have clinical norms for different populations and measure characteristics relevant to parenting capacity, including measures of intelligence such as the Weschler Adult Intelligence Scale (“WAIS”) and measures of personality functioning and psychopathology such as the Minnesota Multiphasic Personality Inventory (“MMPI – 2”), the Personality Assessment Inventory (“PAI”) or the Millon Clinical Multiaxial Inventory - 3 (“MCMI - 3”). The authors are careful to stress that a cognitive disability or a mental health disorder can help to explain the conditions responsible for parenting strengths or deficits but are not substitutes for more direct evidence of parenting behaviours.[[34]](#footnote-34)

Of the tests that assess parenting knowledge, beliefs and perceptions, only two have been found to have sufficient standardization, validity and peer-reviewed research to support their use in a forensic context: the Child Abuse Potential Inventory (“CAPI”), which was constructed and validated with a group of parents who were known to be physically abusive, and the Parenting Stress Index (“PSI”).[[35]](#footnote-35)

f. Interpretation and Presentation of Assessment Data

Budd et al suggest that assessors should steer clear of making recommendations about the ultimate legal issues before the court but should instead express their conclusions in terms of strengths or protective factors and risk factors that are relevant to the legal determinations that the court must make.[[36]](#footnote-36) They also suggest that the assessor can be most helpful to the court by describing clinical findings in behavioural terms with specific references to the data collected.[[37]](#footnote-37)

**Legislative Framework for Parenting Capacity Assessments in Ontario**

In Ontario, section 98 of the *Child, Youth and Family Services Act*, 2017 specifies in section 1 that the court may order a child, a parent of the child or any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child to undergo an assessment. Subsection 98(2) sets out the following criteria for ordering an assessment:

98(2) Criteria for ordering assessment – An assessment may be ordered if the court is satisfied that,

(a) an assessment of one or more of the persons specified in subsection (1) is necessary for the court to make a determination under this Part; and

(b) the evidence sought from an assessment is not otherwise available to the court.

The content of a parenting capacity assessment that has been ordered under section 98 of the *Child, Youth and Family Services Act*, 2017 is prescribed to some degree in section 36 of Ontario Regulation 155/18[[38]](#footnote-38). With respect to the presentation of the assessment findings, section 36(2) of the regulation provides that every assessment report shall include the following:

2. A schedule setting out,

i. a summary of the instructions received, whether written or oral,

ii. a list of the questions upon which an opinion is sought, and

iii. a list of the materials provided and considered.

3. A schedule setting out the methodology used in carrying out the assessment, including the interviews, observations, measurements, examinations and tests, and whether or not they were conducted or carried out under the assessor’s supervision.

4. The reasons and factual basis for any conclusions drawn by the assessor.

5. A direct response to the questions presented to the assessor in the assessment order, or an explanation of why these questions could not be addressed.

6. Recommendations where these were required of the assessor, or an explanation of why recommendations could not be made.

**The Legal Test for the Admission of Expert Opinion Evidence**

In *White Burgess Langille Inman v. Abbott and Haliburton Co*., Cromwell J. speaking for the majority, states as follows:

Expert opinion evidence can be a key element in the search for truth, but it may also pose special dangers. To guard against them, the Court over the last 20 years or so has progressively tightened the rules of admissibility and enhanced the trial judge’s gatekeeping role. These developments seek to ensure that expert opinion evidence meets certain basic standards before it is admitted.[[39]](#footnote-39)

The test for the admission of expert opinion evidence was first articulated in *R. v. Mohan* which set out the four factors of relevance, necessity, absence of an exclusionary rule and a properly qualified expert.[[40]](#footnote-40) In the 2017 decision of *R. V. Abbey* #2, the court summarizes the current law as it has developed since *Mohan* in relation to the admissibility of expert evidence:[[41]](#footnote-41)

[47] The test in *White Burgess* is now the governing test for the admissibility of expert evidence. It adopts a two-stage approach first suggested in Abbey #1: the first stage focuses on threshold requirements of admissibility; the second stage focuses on the trial judge’s discretionary gatekeeping role. Each stage has a specific set of criteria.

[48] The test may be summarized as follows:

Expert evidence is admissible when:

(1) It meets the threshold requirements of admissibility which are:

a. The evidence must be logically relevant;

b. The evidence must be necessary to assist the trier of facts;

c. The evidence must not be subject to any other exclusionary rule;

d. The expert must be properly qualified, which includes the requirement that the expert be willing and able to fulfill the expert’s duty to the court to provide evidence that is:

i. Impartial,

ii. Independent, and

iii. Unbiased.

e. For opinions based on novel or contested science or science used for a novel purpose the underlying science must be reliable for that purpose.

And

(2) The trial judge, in a gatekeeper role, determines that the benefits of admitting the evidence outweigh its potential risks, considering such factors as:

a. Legal relevance,

b. Necessity,

c. Reliability, and

d. Absence of bias.

[49] In short, if the proposed evidence does not meet the threshold requirements for admissibility, it is excluded. If it does meet the threshold requirements, the trial judge then has a gatekeeper function. The trial judge must be satisfied that the benefits of admitting the evidence outweigh the costs of its admission. If the trial judge is so satisfied, then the expert evidence may be admitted; if the trial judge is not so satisfied the evidence will be excluded.

The court made the following important comments about how the criteria of independence and impartiality fit into the overall test for the admission of expert evidence:

1. A proposed expert’s independence and impartiality go to admissibility and not simply to weight and there is a threshold admissibility requirement in relation to this duty.[[42]](#footnote-42)
2. This threshold requirement is not particularly onerous and it will likely be quite rare that a proposed expert’s evidence would be ruled inadmissible for failing to meet it”.[[43]](#footnote-43)
3. Anything less than clear unwillingness or inability” to provide the court with fair, objective and non-partisan evidence should not lead to exclusion, but be taken into account in the overall weighing of the costs and benefits of receiving the evidence.[[44]](#footnote-44)

In *R. v. K.A*., the Ontario Court of Appeal set out some helpful principles for the court to consider on the question of necessity of the proposed expert opinion evidence:[[45]](#footnote-45)

1. Will the evidence allow the court to appreciate the technicalities of a matter in issue?
2. Will the evidence provide information likely to be outside the experience of the judge?
3. Is the judge unlikely to form a correct judgment about a matter in issue if unassisted by the evidence?
4. What is the complexity of the evidence? Is it easily understood or likely to confuse?
5. To what extent is other evidence available to assist in determining the issue?
6. Is the need for the evidence sufficient to overcome its potential prejudicial effect?

**Are Parenting Capacity Opinions Based on Science?**

The opinions expressed by parenting capacity assessors simply cannot be scientifically validated. In *R. v. Abbey* #1, the Ontario Court of Appeal reviewed that there are different types of expert evidence and that not all expertise is grounded in the scientific method. The court stated as follows:[[46]](#footnote-46)

[109] Scientific validity is not a condition precedent to the admissibility of expert opinion evidence. Most expert evidence routinely heard and acted upon in the courts cannot be scientifically validated. For example, psychiatrists testify to the existence of various mental states, doctors testify as to the cause of an injury or death, accident reconstructionists testify to the location or cause of an accident, economists or rehabilitation specialists testify to future employment 2009 ONCA 624 (CanLII) prospects and future care costs, fire marshals testify about the cause of a fire, professionals from a wide variety of fields testify as to the operative standard of care in their profession or the cause of a particular event. Like Dr. Totten, these experts do not support their opinions by reference to error rates, random samplings or the replication of test results. Rather, they refer to specialized knowledge gained through experience and specialized training in the relevant field. To test the reliability of the opinion of these experts and Dr. Totten using reliability factors referable to scientific validity is to attempt to place the proverbial square peg into the round hole.

On this same point, the court quoted Professor Paciocco at paragraph 114 as follows:[[47]](#footnote-47)

[114] Clearly it is inappropriate to consider all expertise as science, or to require all expertise to attain the scientific method. Some expert witnesses rely on science only in a loose sense. Actuaries apply probability theory and mathematics to produce decidedly unscientific results. Appraisers make subjective assessments of objective data, as do family assessment experts. Professionals testifying to standards of care within their profession are doing nothing scientific.

The court then expanded on this point with reference to the *Goudge Report*:[[48]](#footnote-48)

[115] Commissioner Goudge made the same point in his report, at p. 493: Forensic pathology provides a good example of a discipline that has not traditionally engaged in random testing or determining rates of error. The reasons are obvious: testing and reproducibility cannot be used to verify a cause of death. The forensic pathologist's opinion must instead rely on specialized training, accepted standards and protocols within the forensic pathology community, accurate gathering of empirical evidence, attention to the limits of the discipline and the possibility of alternative explanations or error, knowledge derived from established peer-reviewed medical literature, and sound professional judgment.

In *R. v. Abbey* #1, the court suggests a number of factors that may be relevant to the reliability of a non-scientific opinion as follows:[[49]](#footnote-49)

1. To what extent is the field in which the opinion is offered a recognized discipline, profession or area of specialized training?
2. To what extent is the work within that field subject to quality assurance measures and appropriate independent review by others in the field?
3. What are the particular expert’s qualifications within that discipline, profession or area of specialized training?
4. To the extent that the opinion rests on data accumulated through various means such as interviews, is the data accurately recorded, stored and available?
5. To what extent are the reasoning processes underlying the opinion and the methods used to gather the relevant information clearly explained by the witness and susceptible to critical examination by the jury?
6. To what extent has the expert arrived at his or her opinion using methodologies accepted by those working in the particular field in which the opinion is advanced?
7. To what extent do the accepted methodologies promote and enhance the reliability of the information gathered and relied upon by the expert?
8. To what extent has the witness, in advancing the opinion, honoured the boundaries and limits of the discipline from which his or her expertise arises?
9. To what extent is the proffered opinion based on data and other information gathered independently of the specific case or, more broadly, the litigation process?

Many of these factors listed above could be useful in the evaluation of the reliability of Parenting Capacity opinion evidence. There are no scientific tests that a court, or a child protection worker or a parenting capacity assessor can employ to determine whether a parent can parent a particular child in a good enough manner. The opinions of parenting capacity assessors must be grounded in specialized training and accepted standards and protocols for the conduct of a forensic assessment of this type.

Unfortunately, in Ontario, there are no structured training programs, standards or best practice protocols for assessors to follow. This raises serious challenges to any court attempting to evaluate issues of threshold and ultimate reliability and the weight to be given to this form of opinion evidence. There are reasons to conclude, however, that child protection judges are particularly skilled gatekeepers in the face of expert evidence from psychologists and psychiatrists.

**Parenting Capacity Assessments and the Gatekeeping Stage**

At the gatekeeping stage, the court weighs the costs of admitting the opinion evidence against the benefits. In *White Burgess*, the court pointed out that one of the key dangers of expert opinion evidence is that “the trier of fact will inappropriately defer to the expert’s opinion rather than carefully evaluate it”.[[50]](#footnote-50)

However, child protection judges are generally very experienced in evaluating and weighing opinion evidence offered by psychologists and psychiatrists. This danger of deferring to an expert may not be present to a significant degree when the expert opinion evidence is a parenting capacity opinion being evaluated by a child protection judge who reviews evidence related to parenting skills and deficits on a regular basis. In most cases, an experienced child protection judge is well positioned to evaluate how the findings of a parenting capacity assessor do or do not correspond with other evidence before the court.[[51]](#footnote-51)

**When is Expert Evidence on Parenting Capacity Necessary?**

A qualified parenting capacity assessor can assist the court by providing clinical opinion evidence about the likely impact of certain parenting behaviours on the child’s emotional, psychological, physical and social development over time. It is then the role of the court to analyze how this evidence should be weighed along with all of the other evidence in the case to reach a determination about whether this parent can provide “good enough” parenting for this child. There are certain forms of parental behaviour in which the impact on the child is challenging to assess for a person without specialized training. Neglect and emotional harm cases often fall into this category.

**Cases Where Parenting Capacity Assessments Have Been Relied Upon by Courts**

***Catholic Children’s Aid Society of Toronto v. D.V.R. and L.C.B.* (2018) ONCJ 271**

In most of the reported decisions where a parenting capacity assessment has been ordered or produced, at least one parent suffers from a complex mental health condition and there is concern about the impact of the condition on the development and emotional well-being of the child. For example, in this case, both of the parents of two young children before the court struggled with a history of mental health concerns.[[52]](#footnote-52) The father had a past diagnosis of schizophrenia and the mother had a history of depression, anger issues and homelessness. This case also highlights the methodological approach of a psychiatrist in the conduct of a parenting capacity assessment and how this differs from that of a psychologist.

At the time of the trial, the parents were living together in a subsidized apartment managed by the Canadian Mental Health Association (“CMHA”). The trial judge heard from a number of witnesses over eight days of trial, including the father’s psychiatrist, whom the court summoned to attend. The father’s psychiatrist gave evidence that the father had been substantially compliant with his treatment regime over the years. He testified that he was not sure the diagnosis of schizophrenia still applied. He testified that it was unusual for someone with this diagnosis to avoid hospitalization for such long periods of time and to continue to comply with the drug treatment regime. The parents called evidence which suggested that they were more stable now and were supported socially, emotionally and financially by CMHA and various family members. A CMHA worker testified that the parents would be offered a larger housing unit if the children were returned to their care.[[53]](#footnote-53) After hearing all of the evidence, t

he court ordered a parenting capacity assessment on the court’s own motion. Justice Penny Jones stated as follows:[[54]](#footnote-54)

After hearing the evidence adduced, I felt that I required further information in the form of a parenting capacity assessment in order to fairly decide the matter, as the evidence raised unanswered questions about mental health issues and parenting capacity. In this case, both parents suffer from mental health conditions, the father with schizophrenia and the mother with depression. I recognize that a diagnosis of a mental illness is not determinative of the ability to parent, and that many other factors must be considered in assessing parenting capacity. How an individual’s mental health diagnosis affects that parent’s ability to parent is a difficult question.

The court directed that the assessment should be conducted by a psychiatrist given the mental health issues of the parents. It is worth noting that the parties encountered serious difficulty in finding a psychiatrist who was both qualified and available to do the assessment. The unfortunate result of this challenge was that the trial resumed a full 21 months after the order for the assessment had been made.

The psychiatrist, Dr. Jean Wittenberg, was qualified on consent as an expert witness in assessing parenting capacity and in making recommendations arising from such assessments. Dr. Wittenberg testified that he has conducted between 100 and 150 parenting capacity assessments and has been qualified as an expert in assessing parenting capacity between 20 and 30 times. Dr. Wittenberg’s methodology was summarized by the trial judge as follows:[[55]](#footnote-55)

[49] Dr. Wittenberg testified as to the process he undertakes in the preparation of such reports. He indicated that he usually spends one day gathering information. He begins with interviewing the workers for about an hour and a half, and he then interviews the foster parents, and children (if old enough) for about one hour. Next he observes one access visit for about an hour and a half and then he interviews the parents for three hours. He refers to this process as a ”very extended clinical assessment”. It is only after these interviews that he reviews the written material sent to him by the lawyers.

[50] Dr. Wittenberg indicated that it is not his usual practice to request any psychological testing of the people he is assessing. It was his opinion that such tests were never designed for the child welfare population and that there is no evidence that such tests are better predictors of the quality of parenting overall than a good clinical assessment. As well, it was his opinion that multiple observed access visits would put him in no better position to understand what is going on between the children and the parents than the single access visit that he traditionally observes. He said he has done thousands of assessments of children and families in his work, and he has found that he can pick up a lot of information by seeing parents with children and much of that information comes from non-verbal interactions. He acknowledged that there is a difference between the approach taken by a psychiatrist in conducting a parenting capacity assessment and a psychologist, but he expected that the findings made in an assessment of the same family by a qualified assessor in either discipline would come to substantially the same conclusions.

After completing the assessment, Dr. Wittenberg gave the opinion that the parents were unable to meet the needs of their children. He testified that the father would repeatedly withdraw emotionally or physically from the children and that he was insensitive to the children’s cues and safety concerns. Dr. Wittenberg testified that the father’s serious mental illness and the medications he took to control the symptoms may well have contributed to his behaviour. Dr. Wittenberg assessed that, over time, the father’s issues would result in an “accumulation of neglect”. He noted that the father was doing his best to deal with his issues but he would worry about the effect of the father’s behaviour on the children.[[56]](#footnote-56)

Dr. Wittenberg also diagnosed the mother with a significant personality disorder that resulted in frequent bouts of anger and feelings of being under attack or threatened by those around her. He testified that both parents “have histories of many years of dysfunction” and that he expects little change in this pattern over time in the future. Based on his review of the history, he observed that the parents were only intermittently open to collaboration with the Society. He testified that it would be traumatizing to the children were they to return to the care of the parents.[[57]](#footnote-57)

The court accepted Dr. Wittenberg’s expert opinion evidence about the impact of the parents’ mental health conditions, and the parenting behaviours that were driven by these conditions, on the healthy development and emotional well-being of the children. The court also reviewed in her decision the evidence of the workers that was corroborative of Dr. Wittenberg’s opinion evidence. In addition, she commented on her own observations of the mother’s angry behaviour towards others in the courtroom. The court made the Crown Wardship order being sought by the Society.[[58]](#footnote-58)

It is important to underscore that it was the court in this case who initiated the process for obtaining a parenting capacity assessment to better understand the impact of the mental health issues on the parents’ behaviour and the impact of that behaviour on the development and well-being of the children. The court found that this additional clinical evidence was *necessary* and it assisted the trial judge to make the required disposition determinations in the case. Even though the court found it to be necessary, the detailed reasons of the court make it clear that the opinion evidence was treated as just one piece of the evidentiary picture. The court was able to skillfully evaluate how the assessor’s findings should be weighed within the context of the other evidence heard during the course of the trial.

***Huron-Perth Children’s Aid Society and A.C. and J.S.- H.* 2020 ONCJ 251**

The case management judge in this case also found that a parenting capacity assessment was necessary to properly determine the issues in the case. The protection concerns were focused on transiency, neglect, domestic violence, parental capacity and the low intellectual functioning of the parents. At the time of the trial, the two subject children were 5 and 4 years of age. The parents had a history of involvement with multiple child protection agencies dating back to the birth of their first child. The Society was seeking an order of extended care.

A parenting capacity assessment was ordered on consent under section 98 of the *Child, Youth and Family Services Act,* 2017 prior to the trial. The assessor, Dr. Kimberly Harris, was registered with the College of Psychologists of Ontario and was authorized to practice in the fields of clinical and forensic/correctional psychology. She was also the Assistant Executive Director and Director of Assessment Services at the London Family Court Clinic. The trial judge pointed out that, “at the time the s. 98 order for the assessment was made, all parties and the court agreed that the assessment was necessary for the court to make a determination regarding what disposition was in the children’s best interests”.[[59]](#footnote-59)

After a *voir dire*, Dr. Harris was qualified as an expert in the areas of parent capacity assessment, psychometric testing and domestic violence.[[60]](#footnote-60)

The court reviewed that Dr. Harris’ methodology in conducting the assessment was not challenged and was described as follows:[[61]](#footnote-61)

[Dr. Harris] obtained information from multiple sources including service providers involved with the parents; she conducted the assessment over time; she met with the parents both together and individually for 10 hours in total; and saw the children and parents interacting with each other on three occasions for a total of 6 hours, including at the offices of the Society and in the community, as well as conducted psychological testing on the parents.

Dr. Harris found that both parents had significant cognitive delays and concluded that the parents were not able to meet the needs of the children currently or over the long-term and that the high needs of the children were beyond the parents’ capacity. She further found that any intervention offered to the parents was likely to be unsuccessful.[[62]](#footnote-62)

The court made an order of extended care with access to the parents and to their siblings. The court also relied upon the evidence of the assessor to craft access orders in the best interests of the children.

***The Children’s Aid Society of Toronto v. V.D. and P. V.* (2016) ONSC 3297**

This 2016 case involved similar issues where findings of fact were needed in relation to the mental health of a parent and the impact of the parent’s behaviour on the development of a child who was 3 years old at the time he was admitted to Society care.[[63]](#footnote-63) This case is also noteworthy because one of the central issues on appeal was whether the parenting capacity assessor had usurped the role of the trial judge.

This case involved 35 days of trial and multiple expert witnesses including two parenting capacity assessors, a pediatrician, a child psychologist and a psychiatrist who treated the mother. The court also heard from a second psychiatrist who had seen the mother for five sessions and diagnosed her with a “mixed personality disorder.”[[64]](#footnote-64)

The court heard evidence from a pediatrician and a child psychologist that the child was developmentally delayed upon his admission to care but had made significant gains after two years in foster care (as measured by cognitive testing of the child at the time of admission and again two years later). The court also heard evidence that community members at a local family drop-in centre and a family doctor and dentist had not noted signs of neglect in the child in the weeks leading up to the placement of the child in temporary care.[[65]](#footnote-65)

The first parenting capacity assessor was a very experienced psychologist and parenting capacity assessor who assessed the mother shortly after the child’s admission to Society care and a second time two years post-admission and just prior to the trial. This assessor, Dr. N. Perlman, testified that the mother had normal intelligence but lacked insight. She testified that the mother did not agree that the child had any behavioral or developmental problems at the time of his admission to Society care. She concluded: “In the absence of recognition of a problem and motivation to change, there is no indication that the past will not repeat itself.”[[66]](#footnote-66)

The mother introduced evidence that her apartment, which was not habitable at the time of the apprehension, had been cleaned and maintained in an orderly state for a significant period of time. The mother had attended 44 parenting classes at a local community centre and that she was somewhat cooperative with resources not attached to the Children’s Aid Society. The court also heard evidence from the mother’s treating psychiatrist who saw her for 20 sessions that covered an eight-month period of time. He diagnosed the mother with an adjustment disorder with depressed mood but found her to be “highly motivated, cooperative, punctual and attentive.” This psychiatrist supported a return of the child to the mother’s care.[[67]](#footnote-67)

After hearing all of the evidence, the court made the protection finding in December, 2014 and decided that further evidence was needed before a disposition order could be made. The court questioned the length of time over which the child had been neglected given conflicting evidence on this point. A parenting capacity assessment order was made on consent to obtain this additional evidence. It was agreed that Dr. Jean Wittenberg would conduct the assessment.

The trial resumed several months later after the release of Dr. Wittenberg’s report in March, 2015. Dr. Wittenberg was qualified as an expert in child psychiatry, parent-child relationships, parenting capacity and child development. Dr. Wittenberg was provided with extensive documentary material selected by each of the parties, including transcripts of the evidence heard to date. His methodology was as follows:[[68]](#footnote-68)

* 1. He observed a total of three and a half hours of access visits on three separate dates in January, 2015;
	2. He interviewed the mother on three occasions for a total of five hours and forty-five minutes;
	3. He interviewed several society workers, the foster mother and the child.

Dr. Wittenberg produced a 76 page assessment report which included detailed observations of each access visit he observed, in addition to his clinical findings, which included the following:[[69]](#footnote-69)

1. The mother has a very significant personality disorder (mixed type with schizotypal characteristics) that seriously impacted her ability to care for the child.
2. The mother’s personality disorder caused her to derive a distorted perception of other people and of their intentions. It also caused her to respond maladaptively to them. This was true of her interactions with everyone she encountered including the child. She was not capable of accurately understanding other people nor of recognizing her distorted perceptions or maladaptive responses and thus correcting them.
3. There was very significant stress in the child’s relationship with his mother. The mother’s manner with him was stress-invoking by its unpredictability, her lack of attunement, her tendency to dissociate, her repeated tendency to overlook, ignore or contradict wishes that the child expressly conveyed. There was significant evidence of this stress in the child at the time of the assessment. He repeatedly welcomed the arrival of the driver to end visits. He not infrequently left his mother without saying goodbye and without looking back…During visits he behaved in a remarkably regressed fashion. He spoke in an infantile voice. This suggested a process of dissociation in him, a psychological defence associated with stress and trauma.
4. The child had a very serious genetic history making him vulnerable to psychosis. All of these vulnerabilities and highly stressful experiences are of great concern. They make him, more than the average child, in need of supportive and secure, well-attuned, and well-structured responses within a family that can provide that to him predictably, consistently and in the long-term.
5. The mother fell significantly short of being able to meet the child’s needs.
6. The nature of the presentation in the child when he was apprehended is characteristic of long-term neglect.

Dr. Wittenberg also gave evidence about how neglect in a child is assessed. He testified that one has to know what you are looking for to detect neglect. He testified that an Early Childhood Educator at a community drop-in centre could miss signs of neglect if they did not conduct a specific assessment using standardized instruments related to the relevant areas of development.

After hearing Dr. Wittenberg’s opinion evidence, the trial judge made a final order of Crown Wardship with no access for the purpose of adoption.

On appeal of the trial judge’s decision, the mother claimed that the assessor had usurped the role of the trial judge. The appeal judge found that Dr. Wittenberg, as an expert in child development, was qualified to offer opinion evidence on whether the neglect was short-term or long-term and it was open to the trial judge to rely upon that opinion. The court found that Dr. Wittenberg provided “specialized information outside the trial judge’s knowledge and experience.” The appeal court also found that the expert did not provide an opinion on the ultimate question of whether to make the child a Crown Ward or whether the mother should have access and that this decision was made by the trial judge upon review of the totality of the evidence heard.[[70]](#footnote-70)

**P.D. v. The Children’s Aid Society of the Region of Peel and K.D. 2022 ONSC 1817**

This recent 2022 appeal decision also deals with a ground of appeal related to the opinion evidence of a parenting capacity assessor.[[71]](#footnote-71) In this case, a self-represented mother brought an appeal of a trial decision where a section 102 order had been made after a 16 day trial placing a child in the care of her father with supervised access to the mother.

Prior to the trial, a section 98 order was issued for what was referred to as a parenting capacity/psychological assessment. One of the mother’s grounds of appeal was that the trial judge had erred in law by permitting Dr. Wittenberg to testify outside of his area of expertise. Specifically, she was concerned that Dr. Wittenberg was not qualified to diagnose her with a personality disorder.

The appeal court rejected this ground of appeal. The court reviewed that the trial judge was “particularly attuned to the areas of expertise in which Dr. Wittenberg was permitted to give opinion evidence.”[[72]](#footnote-72) The court commented on the trial evidence as follows:[[73]](#footnote-73)

Dr. Wittenberg admitted that he is not a psychologist and therefore cannot do a psychological assessment, but then added, “[…] part of a parenting capacity assessment is to understand, and the – actually, the area of my greatest expertise has to do with the interactions, and how a parent’s psychology affects the development and psychology of a child.” He testified that his report did just that.

The appeal court found that “the evidence of Dr. Wittenberg was clearly relevant, necessary, and not subject to an exclusionary rule”. The court found that Dr. Wittenberg was qualified to provide parenting capacity opinion evidence and, in particular, was qualified to answer the questions put to him in the section 98 order.[[74]](#footnote-74) The court further found as follows:[[75]](#footnote-75)

[80] In addition, I find that the trial judge exercised his role as a gatekeeper properly. While the Mother focused on her diagnosis of a personality disorder, that was only one part of Dr. Wittenberg’s overall analysis. The remainder of the questions posed to Dr. Wittenberg were in areas that also fall squarely within his area of expertise, and with which the Mother takes no position. . . . A possible psychological or psychiatric diagnosis was only one part of his overall opinion. Given the many facets of Dr. Wittenberg’s opinion, the trial judge was correct in finding that the potential benefits of Dr. Wittenberg’s evidence justify the risks of so admitting.

[81] Accordingly, I find that the trial judge focused on the impact of the Mother’s behaviour, not her diagnosis, when determining the risk of harm to the child. The trial judge relies on Dr. Wittenberg’s focus on the behaviour of the Mother and *impact* of the Mother’s behaviour on the physical, emotional, and psychological health of the child, which is the focus of a parenting capacity assessment. The trial judge also considered Dr. Wittenberg’s conclusion that the child is suffering emotional harm when living with the Mother and that it will be exacerbated in the future if a change in custody is not made. I see no error of law.

**Cases where Parenting Capacity Reports have been Excluded or Assigned Minimal Weight**

There have been some recent cases where serious concerns have arisen about some aspect of an assessor’s credentials or the methodology employed in the course of their assessments or both.

***Children’s Aid Society of the Regional Municipality of Waterloo v. P.W. and M.T.* 2022 ONSC 4340**

In the recent decision of *Children’s Aid Society of the Regional Municipality of Waterloo v. P.W. and M.T.*, the mother had a serious and untreated mental health condition and there was extensive evidence before the court related to the impact of this condition on her parenting behaviours. The Society had obtained a s. 98 assessment order for a parenting capacity assessment and Dr. Jean Wittenberg was the appointed assessor. The Society was seeking a six-month interim care order. Dr. Wittenberg gave the opinion that “the mother does not have the capacity to raise the child safely and securely”.[[76]](#footnote-76)

Dr. Wittenberg was qualified by the court as an expert in parenting capacity assessments and child psychiatry. However, the court placed little weight on his assessment report for the following reasons: (a) he met with the mother only once; (b) he reviewed materials provided by the Society but not by the mother; (c) he did not speak to collaterals, explaining that he felt that he had the information he needed.[[77]](#footnote-77)

Although the court did not place much weight on Dr. Wittenberg’s assessment report, the court concluded on all of the evidence that the child could not safely return home to the mother and a six month interim care order was made.

***Halton Children’s Aid Society v. J.B. and D.T.* 2018 ONCJ 884**

In one well known decision reported in the media, Justice Penny Jones excluded the parenting capacity report of a psychologist, Dr. Walton-Allen, who was found to have intentionally misled the court and the parties by referring to herself in her Curriculum-Vitae and in a letter written to a collateral professional as a “clinical psychologist” when she was actually trained and described by the registrar of her regulatory body, the Ontario College of Psychologists, as a “school psychologist”.[[78]](#footnote-78) Justice Jones reviewed the differences between a school psychologist and a clinical psychologist with reference to the College of Psychologists of Ontario website.[[79]](#footnote-79)

After hearing testimony from the Registrar of the College of psychologists that there is no rule prescribed by the College concerning who can do a parenting capacity assessment, Justice Jones commented as follows in her decision:[[80]](#footnote-80)

[33] Dr. Morris indicated that there is no rule that a clinical psychologist is the only type of psychologist who is qualified to complete such a report. I would urge the College of Psychologists of Ontario to review this policy in light of the recent miscarriages of justice that have resulted from unqualified expert opinion evidence being accepted by the court. The College of Psychologists of Ontario is a self-regulating body and has the ability to prescribe the qualifications and experience a member would have to possess before performing a parenting capacity assessment. Parenting capacity assessments are only being ordered by the court where the court requires reliable, expert opinion on complex psychological and social issues and where the stakes are very high – often the very continuation of the family unit is at issue. It is clear from the statute that these reports are to be ordered only when the information is necessary for a court to make a determination on an issue and that that information is not otherwise available. Parenting capacity assessments are not ordered because the information would be merely “helpful”. Sometimes these reports actually decide the issue, particularly when the case is resolved prior to trial and the report is used in settlement negotiations. At trial, these reports can be very persuasive. It would be difficult to over-state both the importance of these reports to the court, to the Society, and to the vulnerable population who are often being served and the need to ensure that these reports are only being prepared by qualified assessors.

Justice Jones found that Dr. Walton-Allen’s opinion evidence did not meet the test for threshold admissibility. The court struck Dr. Walton-Allen’s report from the record “on the basis that Dr. Walton-Allen intentionally misstated her qualifications to the case management judge, Justice Starr, when she was approved by the court as a person qualified to perform a ‘medical, emotional, developmental, psychological, educational or social assessment’.”[[81]](#footnote-81)

Dr. Walton-Allen testified during the v*oir dire* that she had been conducting parenting capacity assessments since 1992 and had completed over 100 such assessments. She also gave evidence that she had testified at court in relation to approximately 20 of those assessments and that she “had never **not** been qualified as an expert.”[[82]](#footnote-82) These facts raise some obvious concerns about the impact of her unqualified opinion evidence in previous cases. These concerns became the subject of a Toronto Star series on the regulation of parenting capacity assessors:[[83]](#footnote-83)

The concerns related to this case also prompted the Ministry of Children, Community and Social Services to issue a Policy Directive on August 22, 2019 under section 42 of the *Child, Youth and Family Services Act*, 2017 regarding parenting capacity assessments. This directive requires protection agencies using these assessors to verify the credentials of any proposed assessor with the assessor’s regulatory body and to file a complaint about any assessor who has misrepresented their credentials.[[84]](#footnote-84)

***Children’s Aid Society of Algoma and F.M.* 2021 ONCJ 186 Voir Dire Decision**

This case was a ruling on a *voir dire* held on the first day of a trial of a Status Review Application. The Society had previously obtained a section 98 parenting capacity assessment on a motion before the case management judge. The assessor’s qualifications were not contested at the hearing of the motion for the section 98 order. The assessor in this case had a Master’s degree in counselling psychology and his regulatory body was the College of Alberta Psychologists.

The court found that although the assessor had performed approximately 200 parenting capacity assessments to date, this did not “necessarily equate to expertise sufficient to give an opinion on such tests in the context of legal proceedings”.[[85]](#footnote-85) The court commented that the assessor had no professional publications and that his main education and experience in the use of parenting capacity assessments came from a two day seminar in 2010 and six to nine months of shadowing a mentor psychologist.[[86]](#footnote-86)

The court found that the description on the College of Alberta’s website of what falls within the branch of Forensic Psychology seems more suited to the type of expertise required to give expert opinion evidence on parenting capacity. The court quoted the description of Forensic Psychology from the College’s website as follows:[[87]](#footnote-87)

The application of psychological knowledge, skills and judgment about human behaviour to the understanding, assessment, diagnosis and/or treatment of individuals within the context of criminal and/or legal matters.

The court was also concerned that the assessor had not signed a Form 20.2 acknowledgement of expert’s duty and he did not seem to understand that he was the court’s expert. It was his understanding that he was working for the Society.[[88]](#footnote-88)

Despite this ruling, the court did rely upon two sections of the parenting capacity assessment. The court accepted the assessor’s opinion evidence related to the assessment of the mother’s intelligence, which relied upon the use of the Weschler Adult Intelligence Scale. The court also placed some weight on the assessor’s direct observational evidence of the mother’s interactions with the child.[[89]](#footnote-89)

***The Children’s Aid Society of Toronto v. A.L.* 2021 ONCJ 258**

Further recommendations from the bench to the Ontario College of Psychologists were made in 2021 in *The Children’s Aid Society of Toronto v. A.L*.[[90]](#footnote-90) In this case, the parenting issue of concern was the impact of the mother’s level of cognitive functioning on her capacity to parent.

A parenting capacity assessment was conducted by an experienced assessor, Dr. McDermott, who was a registered clinical psychologist with 24 years of experience. This case involved a two-year old child for whom the Society was seeking an extended care order based on concerns about the mother’s intellectual functioning and the risk of neglect.

No section 98 court order was obtained for the assessment*.* However, the assessor was chosen on consent and a joint retainer letter was prepared by counsel for the Society and the mother. The assessor concluded that the mother was not capable of parenting the child independently due to a “severe non-verbal learning disability.” She found that the mother missed seemingly simple cues from the child, “cues that often appear painfully obvious to those who work with her.” [[91]](#footnote-91)

A three-day *voir dire* was held during the eleven-day trial in relation to the admissibility of this expert opinion evidence. A second psychologist, Dr. Peter Marshall, was retained by the mother’s counsel to conduct a critique of the Parenting Capacity Assessment prepared by the first psychologist. Unlike the parenting capacity assessor, this critique assessor was not jointly selected and no joint letter was sent to him. He testified that he has been qualified as an expert witness in relation to parenting capacity assessments on approximately 15 occasions and had previously conducted approximately 10 critiques.[[92]](#footnote-92)

Dr. Marshall raised concerns about Dr. McDermott’s interpretation of the psychometric testing, her use of some outdated tests, and her conclusion that the mother’s intellectual disability was determinative of her parenting capacity. He gave evidence that the peer-reviewed research reflects that there is no correlation between IQ score and parenting capacity until the IQ score falls below 50.[[93]](#footnote-93) Dr. Marshall also raised concerns about the amount of time that Dr. McDermott had spent observing the mother and child. She had spent 4 hours over two visits observing the mother and child during access visits at the Society office. Dr. Marshall opined that the average period of observation for any one visit should be a minimum of four consecutive hours.[[94]](#footnote-94)

A further concern of the court was that Dr. McDermott did not appear to recall signing the “Acknowledgement of Expert’s Duty” and did not seem to understand her duty to be “objective, fair and non-partisan”.[[95]](#footnote-95) The court was also concerned that Dr. McDermott did not interview any of the mother’s collaterals, including the mother’s doctor. Given the stakes involved for the parent, the court essentially found that the process should be much more comprehensive with particular attention given to parent collaterals in addition to the Society collaterals.

The court was generally critical of the fact that the assessor did not seem to understand the legal or forensic context of a child protection proceeding and how it differs from other family court proceedings. The definition of forensic psychology on the College of Psychologists of Ontario, (which was put to the assessor during cross-examination), is “the application of knowledge about human behaviour to the understanding, assessment, diagnosis and/or treatment of individuals within the context of criminal and/or legal matters”.[[96]](#footnote-96)

The court found that the report of the parenting capacity assessor failed to meet even the basic threshold reliability requirement under the first stage of the Mohan test and it was excluded. The court went on to say that if she was wrong about her application of the first stage of the Mohan test, she would have excluded it under the second stage of the test where the court is required to conduct a cost-benefit analysis. The court found that the admission of the report would not be beneficial but would, in fact, be “dangerous to the fact-finding process”.[[97]](#footnote-97)

In the reported decision, the court raised serious questions about the failure of the Ontario College of Psychologists (the “College”) to properly regulate this area of practice for their members, which would include the provision of clear guidance in relation to: (1) the training required to engage in this work; and (2) forensic standards for the conduct of these important assessments.

Justice O’Connell makes the following comments at paras 163-165 in *CAST v. A.L*.:

[163] In fairness to Dr. McDermott, a significant number of parenting capacity assessors do not see the work they do as forensic in nature, and therein lies the problem. Although the College of Psychologists should be aware of the area of parenting capacity assessments in child protection law, for reasons unknown, the College has never required psychologists who conduct these assessments to be forensically trained, nor have they required the area of parenting capacity assessments to be a regulated area of practice.

[164] It is concerning that parenting capacity assessments are not strictly regulated by the College given the significant legal implications of these assessments for parents and children in child protection proceedings.

[165] It is surprising that the College does not require parenting capacity assessors to be authorized to practice in the area of forensic psychology, or at a minimum, that the College has not developed clear forensic standards for psychologists when conducting parenting capacity assessments in child protection proceedings, particularly in light of the Goudge and Motherisk inquiries.

**Lack of Regulation by the Ontario College of Psychologists**

A review of the Ontario College of Psychologists website reveals that the College has posted a 12 page Task Force Report from 2014 that provides some guidelines for members who are providing assessment reports within the family law context. Unfortunately, it is quite general in nature, it fails to outline any particular methodology for its members to follow, and it does not reference the forensic context within which these assessments are conducted and evaluated by the courts. It also does not differentiate in any meaningful way between the child protection context and other family law matters.[[98]](#footnote-98)

In contrast, the American Psychological Association (“APA”) has specific and detailed guidelines on their website for the conduct of psychological assessments of families and individuals within the child protection context. As well, this type of work is classified on the APA website as falling within the realm of “forensic psychology”.[[99]](#footnote-99)

**Critique Reports**

Critique evidence also played a prominent role in a 2015 case, *The Children’s Aid Society, Region of Halton and A.W. and G.K.W*.[[100]](#footnote-100) In this case, a critique assessor who reviewed the first assessor’s report but did not meet the parents or children, described the parenting capacity assessor’s report as “more in the nature of a general psychological assessment rather than a parenting capacity assessment.”[[101]](#footnote-101) The assessor in that case was also criticized for making a recommendation about the ultimate disposition issue before the court when he was not asked to do so, for failing to use up to date psychological assessment instruments, and for failing to interview any collaterals for the mother.[[102]](#footnote-102) He also failed to take a comprehensive history from the mother. This particular assessor had been a licensed psychologist for 37 years and gave evidence that he had conducted approximately 300 parenting capacity assessments, that he had been doing these assessments for 30 years and that he had been qualified as an expert witness in parenting capacity approximately 30 to 40 times.[[103]](#footnote-103) The court ultimately assigned little weight to his opinion evidence.[[104]](#footnote-104)

The issue of critique evidence is controversial in the family law context. In the 2015 Ontario Court of Appeal decision of *M. v. F*., a ground of appeal raised by the appellant mother was that the trial judge had placed little weight on the critique evidence of a psychologist who had been retained by her to “raise concerns” about the custody and access assessment of an assessor who had been appointed by the court on the consent of both parties.[[105]](#footnote-105)

On appeal, Justice Benotto found that it was not surprising that the trial judge had placed little weight on the critique assessor who had never met the child. Justice Benotto commented in that case that the critique assessor’s “self-described task was to ‘raise concerns’ about the court-appointed assessment. The court further commented that “it would be difficult to find that such evidence meets the criteria of Mohan.” [[106]](#footnote-106)

In both the *CAST v. A.L.* and the *A.W*. and *G.K.W*. decisions, the court distinguishes the *M.v.F*. decision on the basis that it was a private family law dispute, where the considerations differ from the child protection context. The court points out the high stakes of a child protection trial where an extended care order is being sought. The court reviewed the fact that, unlike other family law matters, an extended care order with an adoption plan cannot be varied and there are Charter rights at stake for the parent.[[107]](#footnote-107)

These are all strong points in favour of treating expert reports in child protection proceedings with a very high degree of caution. At the same time, the fact that parents have Charter rights does not squarely address the concern about whether a critique report can meet the necessity and reliability criteria in the Mohan test. If a critique assessor approaches the task of the critique with a view to “raising concerns” about the assessment methodology, this could raise an obvious concern about the impartiality or independence of the critique assessor.

In the *CAST v. A.L*. decision, there is a lack of analysis with respect to how it was determined by the court that the evidence of the critique expert was truly necessary or impartial as is required by the *Mohan* test. In fact, based on a review of the trial decision, one is left with the impression that the critique report of the work of the parenting capacity assessor was uniformly negative.[[108]](#footnote-108)

There are also child protection cases where critique assessments have not been admitted. For example in a 2012 decision, *Children’s Aid Society of the County of Simcoe and B.D. and S.S*., the parents sought the return of a baby to their care in response to a summary judgment motion where the Society was seeking an order of Crown Wardship, for the purposes of adoption. The parents previously had four children removed from their care permanently after a lengthy trial that had included an unfavourable parenting capacity assessment by the McMaster Children’s Hospital and the Child Advocacy and Assessment Program (“CAAP”). The parents obtained a critique assessment from Dr. Peter Marshall and the court declined to admit it into evidence but did admit evidence of Dr. Marshall’s psychological testing and conclusions with respect to the parents, in addition to his observations of their parental interaction with the child during a day-long observation period.[[109]](#footnote-109)

In its reasoning with respect to declining to admit the critique assessment, the court cited *Sordi v. Sordi*, which was a 2011 Ontario Court of Appeal decision where a parent had appealed the trial judge’s decision not to admit a social worker’s critique of a court ordered custody and access assessment. [[110]](#footnote-110) Justice Epstein, on the appeal in *Sordi v. Sordi*, commented as follows:[[111]](#footnote-111)

I find no fault with the trial judge’s refusal to admit the report on the basis of (1) its frailties, and (2) the fact that its value – to impeach the report of the court-appointed expert – remained available to the appellant through cross-examination and, ultimately, argument.   I strongly support the view expressed by Justice Wein in *Mayfield v. Mayfield* (2001), [2001 CanLII 28213 (ON SC)](https://www.canlii.org/en/on/onsc/doc/2001/2001canlii28213/2001canlii28213.html), 18 R.F.L. (5th) 328, at para. [44](https://www.canlii.org/en/on/onsc/doc/2001/2001canlii28213/2001canlii28213.html#par44) (Ont. S.C.), that

in most cases, it is simply not necessary or appropriate to have the parties bring forward the evidence of a collateral critique. A social work critique may of course be done to assist counsel in formulating questions for cross-examination of the assessor or to assist counsel in developing an argument concerning the weight to be attached to an assessment report but it will rarely be “necessary” to introduce the critique as original evidence or to call the critique as a witness. The expense in most cases could be better spared or applied to an independent assessment.

Justice Epstein’s point is illustrated in the *Children’s Aid Society of the County of Simcoe and B.D. and S.S*. when the same parents were before the court again in relation to another child born in 2013. Once again, the Society brought a summary judgment motion and the court made the statutory and protection findings but scheduled a trial for the disposition ruling in order to allow time for Dr. Peter Marshall to conduct a second full parenting capacity assessment to augment his previous critique report and narrowly focused psychological assessment of the parents. This full parenting capacity assessment was not favourable to the parents and corroborated the findings of the CAAP assessment report which Dr. Marshall had previously critiqued. After this report was produced, the parents consented to a final order of Crown Wardship for the purposes of adoption with an agreement for some level of openness between them and the child.[[112]](#footnote-112)

In the current regulatory vacuum, it is understandable that courts want to find a way to analyze the methodology employed by a particular assessor. An alternative to a critique is a second opinion parenting capacity assessment. This may be preferable to a critique in cases where there are possible concerns about the methodology or thoroughness of the first parenting capacity assessor.

A second full assessment by a neutral, impartial assessor would address concerns about the lack of reliability inherent in admitting opinion evidence from a psychologist who has never met or observed the parents and children but is asked only to review the quality of another assessor’s work. In the absence of any clear universal standards for the conduct of a parenting capacity assessment, many competent assessors may have reasonable disagreements on aspects of the methodology, even in cases where there might be agreement on the conclusions and findings related to the capacity of the parent. There is a danger that a critique report may simply waste time and add to the expense of a trial by raising doubt in the mind of the trial judge without offering any meaningful adjudicative assistance on the central issue before the court: namely, can this parent meet the needs of this child.

**Conclusion**

Despite the challenges in evaluating the inherent reliability of parenting capacity assessments, this work has clear relevance to many child protection cases, particularly where concerns of neglect and/or emotional harm are present. The need for these assessments by courts and other child protection stakeholders is reflected in the existence of statutory provisions and an Ontario regulation that supports this form of forensic evaluation. There are many reported decisions where courts have found that these assessments were necessary to their determinations. This is not surprising given the complex variables present in many child protection cases, the high stakes and Charter implications to the parents, and a corresponding concern about the potential negative impact to a child if harmful parenting practices continue.

The judicial commentary in *Children’s Aid Society of Toronto v. A.L.* underscores the current lack of professional forensic training and guidance for assessors who do work in this area. In the absence of training and oversight, it will remain difficult to find assessors who understand the forensic nature of the work, or the methodology that they should be following to protect the integrity and admissibility of their opinion evidence. Further, in the absence of any standards or guidelines adopted by the regulatory agencies, it will not be difficult for a critique assessor to find fault with a parenting capacity assessment report. These assessment reports will continue to pose difficult challenges for courts and counsel.

In Toronto, there are only a handful of qualified assessors and most of them are nearing retirement. Without a collaborative inter-disciplinary effort to address some of the valid concerns raised by the courts our field is at risk of losing the opinion evidence of highly educated and experienced experts in the fields of psychology and psychiatry.

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**Appendix A**

**Best Practice Tips for Counsel in relation to Parenting Capacity Assessments**

1. Consider carefully whether a full parenting capacity assessment is really necessary. A better alternative may be a targeted psychological assessment of the parent or child or both.
2. Always obtain a section 98 assessment order on the prescribed endorsement form even where the proposed assessment is on consent.
3. Follow the guidelines for court ordered assessments which are set out in sections 34-36 of Ontario Regulation 155/18.
4. Carefully vet your assessor at the front end by reviewing their CV, speaking to colleagues and conducting a caselaw search to review how the expert’s evidence has been evaluated by other courts.
5. Verify the credentials of the assessor in accordance with **Policy Directive: CW 001-19 Ministry of Children, Community and Social Services**.
6. Review with the assessor their understanding or familiarity with the current legal principles in child protection related to expert evidence, the changes to the law relevant to post-adoption access, etc. The assessor must have an understanding of the child protection legal context.
7. Counsel should recommend to every psychologist assessor that they review the APA Guidelines for Psychological Evaluations in Child Protection Matters. They should also review Budd, K.S., Connell, M. and Clark, Jennifer (2011) *Evaluation of Parenting Capacity in Child Protection: Best Practices in Forensic Mental Health Assessment*. Oxford University Press Inc.
8. Parties should provide some basic joint parameters to the assessor with respect to methodology having regard to the critique caselaw such as *CAST v. A.L*. and *Halton* *Children’s Aid Society v. A.W*. 2016 ONCJ 358. The assessor should be able to explain his general methodology, the testing instruments, if any, that he will use, and how he was trained to conduct a parenting capacity assessment.
9. Ensure that the assessor clearly understands their duty to the court pursuant to the *Family Law Rules* 20.1 and 20.2. Ensure that the assessor signs and understands the Acknowledgement of Expert’s Duty (Form 20.2).
10. If you are society counsel and are faced with a parent who has received funding for a critique opinion, consider asking the chosen critic to conduct a second full PCA as an alternative to preparing a methodological critique. The protection agency should seriously consider funding a second assessment as an alternative to a critique.
11. Ask the assessor to clearly document each step in their assessment process along with the time taken for each step. Advise them to keep all raw data in case it is needed for review within the litigation process.
12. When relevant to the particular family being assessed, ensure that the assessor has a good understanding of the impact of racism and inter-generational trauma on indigenous and racialized communities. As well, ensure the assessor understands and conveys in her report the limitations of any psychometric testing instruments they may use in relation to the particular racial/cultural background of the parent being assessed.
13. CAS lawyers need to remember that child protection agencies have broad statutory powers and their actions are subject to Charter scrutiny. The Motherisk Commission found that Society counsel have a special public interest responsibility that is akin to crown attorneys to make best efforts to ensure the reliability of any expert opinion evidence upon which it is relying and to report any serious concerns about experts to their regulatory bodies. (see pages 140-141 of the *Report of the Motherisk Commission*).

1. Court-Ordered Assessments in Ontario Child Welfare Cases: Review and Recommendations for Reform Nicholas Bala and Alan Leschied Canadian Journal of Family Law [Vol. 24, 2008]. Professors Bala and Leschied were retained by the Assessments Working Group established under a Family Court Steering Committee which was established with representatives from the judiciary, the government and the bar to address various issues related to the adjudication of child protection cases. [↑](#footnote-ref-1)
2. Ibid at page 21 [↑](#footnote-ref-2)
3. Ibid at pages 29, 31, 46 and 51. [↑](#footnote-ref-3)
4. Dr. Bala and Dr. Leschied point out on page 19 of their paper that few clinicians “have both the wide-ranging professional expertise and the willingness to become involved in the court process to properly undertake a forensic child welfare assessment.” [↑](#footnote-ref-4)
5. Ibid at page 64. [↑](#footnote-ref-5)
6. “*Inquiry into Paediatric Forensic Pathology in Ontario*” Toronto: Queen’s Printer for Ontario, 2008 (the “*Goudge* Report”) and The *Report of the Motherisk Commission*, February 2018, Ministry of the Attorney General The Honourable Judith C. Beaman, Commissioner (the “*Motherisk* Report”). [↑](#footnote-ref-6)
7. Angela White (2005) *Assessment of Parenting Capacity. Literature Review*. NSW Department of Community Services, Centre for Parenting & Research [↑](#footnote-ref-7)
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9. Budd, K.S. (2005) *Assessing Parenting Capacity in a Child Welfare Context* Children and Youth Services Review 27, 429-444 at page 433. [↑](#footnote-ref-9)
10. Ibid, at page 433. [↑](#footnote-ref-10)
11. Ibid, at page 433. [↑](#footnote-ref-11)
12. Ibid, at page 433. [↑](#footnote-ref-12)
13. See *CAS of Toronto v. R.S*., 2019 ONCJ 866 where no Parenting Capacity Assessment was conducted but the trial court reviewed a focused psychological assessment of a parent and extensive evidence from a number of sources to ground the findings of fact needed with respect to the impact of the mental health issue on the parent’s capacity to safely parent. Para 114 of this decision contains a comprehensive list of factors relevant to assessing cases where the mental health of a parent is a focus of concern. [↑](#footnote-ref-13)
14. These questions are reproduced from section 35(2) of Ontario Regulation 155/18 which provides guidelines for the contents of an assessment order made under section 98 of the *Child, Youth and Family Services Act*, 2017. [↑](#footnote-ref-14)
15. Ibid, at page 436. [↑](#footnote-ref-15)
16. Ibid, at page 436. [↑](#footnote-ref-16)
17. Budd, K.S., Connell, M. and Clark, Jennifer (2011) *Evaluation of Parenting Capacity in Child Protection: Best Practices in Forensic Mental Health Assessment*. Oxford University Press Inc. at page 28. This book was written as part of a 19 Book series on Forensic Mental Health assessment in a variety of legal contexts. [↑](#footnote-ref-17)
18. Bala and Leschied (2008) at pages 19 and 31. [↑](#footnote-ref-18)
19. Ibid at page 29. [↑](#footnote-ref-19)
20. Pezzot-Pearce, T.D., & Pearce, J. (2004). *Parenting Assessments in Child Welfare Cases: A Practical Guide*. Toronto: University of Toronto Press at page 4. [↑](#footnote-ref-20)
21. See Bala and Leschied, supra note 1 at page 46. Some of Dr. Steinhauer’s work is found in Steinhauer, Paul D. (1993) *The Least Detrimental Alternative: A Systematic Guide to Case Planning and Decision Making for Children In Care*. University of Toronto Press. [↑](#footnote-ref-21)
22. Pezzot-Pearce & Pearce, supra at note 19. [↑](#footnote-ref-22)
23. Budd et al. supra, note 16. [↑](#footnote-ref-23)
24. *Daubert v. Merrell Dow Pharmaceuticals, Inc*. 509 U.S. 579 (1993) is the leading case in the United States on the admission of expert opinion evidence. [↑](#footnote-ref-24)
25. Budd et al. at page 116 Table 5.1. [↑](#footnote-ref-25)
26. Budd et al. at pages 120-122. [↑](#footnote-ref-26)
27. Budd et al. at page 129-130. [↑](#footnote-ref-27)
28. Budd et al. at pages 134-135. [↑](#footnote-ref-28)
29. Ibid at page 136. [↑](#footnote-ref-29)
30. Ibid at page 136. [↑](#footnote-ref-30)
31. Ibid at page 130. [↑](#footnote-ref-31)
32. Ibid at page 130-131. [↑](#footnote-ref-32)
33. Ibid at pages 132-133 Table 5-3 Observation Areas for Parent-Child Interaction [↑](#footnote-ref-33)
34. Ibid at page 141. [↑](#footnote-ref-34)
35. Budd et. al (2011) provide a thorough review of the research relevant to the psychometric properties and limitations of the various testing instruments that are referred to in this paper. [↑](#footnote-ref-35)
36. Ibid at page 149. [↑](#footnote-ref-36)
37. Ibid at page 168. [↑](#footnote-ref-37)
38. Ontario Regulation 155/18 [↑](#footnote-ref-38)
39. *White Burgess Langille Inman v. Abbott and Haliburton Co*., 2015 SCC 23 at para 1. [↑](#footnote-ref-39)
40. *R. v. Mohan*, 1994 2 S.C.R. 9. [↑](#footnote-ref-40)
41. *R.v. Abbey*, 2017 ONCA 640 at paras 47-49. [↑](#footnote-ref-41)
42. *White, Burgess* at para 40. [↑](#footnote-ref-42)
43. *White, Burgess* at para 49. [↑](#footnote-ref-43)
44. *White Burgess* at para 49. [↑](#footnote-ref-44)
45. *R. v. K.A*., [1999] O.J. No. 3280 (ONCA) [↑](#footnote-ref-45)
46. *R. v. Abbey* (2009) ONCA 624 at para 109. [↑](#footnote-ref-46)
47. R. v. Abbey (2009) ONCA 624 at para 114. [↑](#footnote-ref-47)
48. Ibid, at para 115. [↑](#footnote-ref-48)
49. Ibid at para 119. [↑](#footnote-ref-49)
50. *White Burgess*, supra note 36 at para 17. [↑](#footnote-ref-50)
51. Professor Nicholas Bala and Jane Thompson made a similar point in their paper, *Expert Evidence and Assessments in Child Welfare Cases*, (2015) Queen’s Law Research paper Series at page 15 as follows: “Although these issues of reliability are important, many judges and lawyers have greater understanding of issues in the “soft sciences,” and judges may be better able to limit the weight of expert evidence regarding behavioural or social science than evidence from a “hard scientist” whose testimony may not be fully comprehended.” [↑](#footnote-ref-51)
52. *Catholic Children’s Aid Society v. D.V.R. and L.C.B.* (2018) ONCJ 271. [↑](#footnote-ref-52)
53. Ibid, at para 21. [↑](#footnote-ref-53)
54. Ibid, at para 25. [↑](#footnote-ref-54)
55. Ibid, at paras 49 and 50. [↑](#footnote-ref-55)
56. Ibid, at paras 52-58. [↑](#footnote-ref-56)
57. Ibid at paras 49-50. [↑](#footnote-ref-57)
58. Ibid at para 59. [↑](#footnote-ref-58)
59. *Huron-Perth Children’s Aid Society and A.C. and J.S.-H*. 2020 ONCJ 251 at para 89. The case is also noteworthy for the presence of a very well qualified assessor who was authorized to practice as both a clinical and a forensic psychologist. [↑](#footnote-ref-59)
60. Ibid at para 94. [↑](#footnote-ref-60)
61. Ibid at para 100. [↑](#footnote-ref-61)
62. Ibid at para 18. [↑](#footnote-ref-62)
63. *The Children’s Aid Society of Toronto v. V.D. and P.V.* (2016) ONSC 3297. Note this was the first level appeal decision. The trial decision was not reported. This appeal decision was later affirmed by the Ontario Court of Appeal at *The Children’s Aid Society of Toronto v. V.D.* 2016 ONCA 959. [↑](#footnote-ref-63)
64. Ibid at para 26. [↑](#footnote-ref-64)
65. Ibid at paras 16 and 29. [↑](#footnote-ref-65)
66. Ibid at para 20. [↑](#footnote-ref-66)
67. Ibid at para 23 and 25. [↑](#footnote-ref-67)
68. Ibid at para 35. [↑](#footnote-ref-68)
69. Ibid at para 37. [↑](#footnote-ref-69)
70. Ibid at para 46. [↑](#footnote-ref-70)
71. *P.D. v. The Children’s Aid Society of the Region of Peel and K.D*. 2022 ONSC 1817. [↑](#footnote-ref-71)
72. Ibid, at para 71. [↑](#footnote-ref-72)
73. Ibid, at para 71. [↑](#footnote-ref-73)
74. Ibid at para 78. [↑](#footnote-ref-74)
75. Ibid, at para 80-81. [↑](#footnote-ref-75)
76. *Children’s Aid Society of the Regional Municipality of Waterloo v. P.W. and M.T.* 2022 ONSC 4340 at para 118. [↑](#footnote-ref-76)
77. Ibid at paras 118-121. [↑](#footnote-ref-77)
78. *Halton Children’s Aid Society v. J.B. and D.T*., 2018 ONCJ 884 [↑](#footnote-ref-78)
79. Ibid at paragraph 30. [↑](#footnote-ref-79)
80. Ibid at paragraph 33. [↑](#footnote-ref-80)
81. Ibid at paragraph 38. [↑](#footnote-ref-81)
82. Ibid at paragraph 19. [↑](#footnote-ref-82)
83. *There’s no rule on who can write assessments that ‘effectively decide’ if an Ontario parent loses their child. Experts say that must change*. August 2, 2019 Jacques Gallant Toronto Star. In another article within the same series, the Star reported that Dr. Oren Amitay had completed four parenting assessments for Children’s Aid Societies without the agencies knowing that he had been cautioned and ordered by the Ontario College of Psychologists to work with a mentor. See ‘Ontario psychologist completed assessments without children’s aid societies knowing he had been cautioned’. Toronto Star October 15, 2019 Jacques Gallant. [↑](#footnote-ref-83)
84. Policy Directive CW 001-19: Verifying the Credentials of Individuals Conducting Parenting Capacity Assessments. August 22, 2019. Ministry of Children, Community and Social Services. [↑](#footnote-ref-84)
85. *Children’s Aid Society of Algoma and F.M*., 2021 ONCJ 186 at para 19. [↑](#footnote-ref-85)
86. Ibid at paras 19 and 20. [↑](#footnote-ref-86)
87. Ibid at para 18. [↑](#footnote-ref-87)
88. Ibid at paras 24 and 25. [↑](#footnote-ref-88)
89. *Children’s Aid Society of Algoma and F.M*., 2021 ONCJ 393 at paras 69-73. [↑](#footnote-ref-89)
90. *Children’s Aid Society of Toronto v. A.L*., 2021 ONCJ 258 [↑](#footnote-ref-90)
91. Ibid at para 110. [↑](#footnote-ref-91)
92. Ibid at paras 188-122. [↑](#footnote-ref-92)
93. Ibid at para 205. [↑](#footnote-ref-93)
94. Ibid at para 147. Note: this recommendation by Dr. Marshall for the length of time of an observation session is not consistent with the recommendations of Budd et al (2011). They recommend simply more than one visit and for longer than one hour. See page 136. It is also worth noting that the expert opinion evidence of Dr. McDermott has been relied upon by many other courts including in the 2015 case *Children’s Aid Society of Hamilton v. V.B. and M.B*., 2015 ONSC 4602 where Justice Chappel pointed out in the face of a challenge to the report that she did not have any concerns about the credibility and reliability of Dr. McDermott or her methodology or integrity of her parenting capacity assessment (see para 19). [↑](#footnote-ref-94)
95. Ibid at para 171. [↑](#footnote-ref-95)
96. Ibid at para 185. [↑](#footnote-ref-96)
97. Ibid at para 226. [↑](#footnote-ref-97)
98. *Information for Consideration by Members Providing Psychological Services in the Context of Child Custody Disputes & Child Protection Proceedings* January 2014 CPO.ON.CA/Resources [↑](#footnote-ref-98)
99. *Guidelines for Psychological Evaluations in Child Protection Matters* American Psychological Association, January 2013 (these guidelines are reviewed and updated every 10 years by the APA). and *Education and Training Guidelines for Forensic Psychology*, November 19, 2007, Forensic Specialty Council at page 12. [↑](#footnote-ref-99)
100. *The Children’s Aid Society, Region of Halton and A.W. and G.K.W*. 2016 ONCJ 358. [↑](#footnote-ref-100)
101. Ibid at para 238. [↑](#footnote-ref-101)
102. Ibid at paras [↑](#footnote-ref-102)
103. Ibid at para 166. [↑](#footnote-ref-103)
104. Ibid at para 268. [↑](#footnote-ref-104)
105. *M. v. F*. 2015 ONCA 277. [↑](#footnote-ref-105)
106. Ibid at para 33. [↑](#footnote-ref-106)
107. Supra, CAST v. A.L. at paras 113-117. [↑](#footnote-ref-107)
108. These comments are not meant to suggest that no valid concerns were raised by this critique. [↑](#footnote-ref-108)
109. *Children’s Aid Society of the County of Simcoe and B.D. and S.S*. 2013 ONSC 1610. [↑](#footnote-ref-109)
110. *Sordi v. Sordi* 2011 ONCA 665 [↑](#footnote-ref-110)
111. Ibid at para 14. [↑](#footnote-ref-111)
112. The history regarding the child “O” is set out in *Children’s Aid Society of the County of Simcoe v. BD et al*, 2015 ONSC 2402 at para 9(f)-(h). [↑](#footnote-ref-112)