Position Paper: Frivolous and Vexatious Complaints Against Custody and Access Assessors

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TAG
The Action Group on Access to Justice
Groupe d'action sur l'accès à la justice

The Action Group on Access to Justice (TAG) is catalyzing solutions to Ontario's access to justice challenges by facilitating collaboration with institutional, political and community stakeholders. TAG is funded by the Law Foundation of Ontario with support from the Law Society of Upper Canada.

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Frivolous and Vexatious Complaints Against Custody and Access Assessors

TAG Assessment Task Force Position Paper

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Introduction

This paper has been prepared by the Task Force on Custody and Access Assessments, formally launched in June of 2015 as an initiative of The Action Group on Access to Justice (TAG) to develop potential solutions responsive to challenges arising in relation to the provision of custody and access assessments in Ontario. TAG was convened by the Law Society of Upper Canada in June 2014 with an initial list of almost 200 individual and organizational participants. The TAG community is currently developing a common agenda, a framework for collaboration and shared mechanisms to measure success.

The Task Force on Custody and Access Assessments includes representation from the Superior Court of Justice, the Ontario Court of Justice, the Ministry of the Attorney General, the Family Rules Committee, the family law bar, mental health professionals, the Office of the Children's Lawyer, law schools and researchers. We have also received input from the associations for professionals who conduct these assessments as well as the governing colleges. A detailed list of the Task Force's membership is attached as **Appendix A**.

It is important to note that family law professionals have been attempting to make progress in this area for many years, in particular on the specific issue of challenges that arise when unhappy litigants make unfounded complaints of professional misconduct to an assessor's governing college. A discussion paper was released by a multi-disciplinary group of Ontario family law professionals in 2009 to bring awareness to the issues and propose procedural reforms, largely in response to a complaint against a well-known psychologist that was dismissed only after extensive investigation. A particularly apt section of the executive summary from that paper provides as follows:

> …As a result, those who are willing and able to conduct these assessments are dwindling. This exodus of available and qualified assessors is a significant problem facing family law lawyers and the courts in Ontario and, most importantly, children and their families who are left at risk. Legal costs increase, families endure stressfully long wait-times and children suffer while their parents remain in tense custodial limbo due to excessive delays caused by a dearth in available assessors.

A copy of that paper is attached as **Appendix B**. Unfortunately, it does not appear that any procedural or legislative changes have been introduced in response to that work.

More recently, a presentation was delivered on this topic at the Association of Family and Conciliation Court's 52nd annual conference in June 2015 in New Orleans by Task Force members Tami Moscoe and Dr. Barbara Fidler, along with Dr. Graeme Clark (Alberta) and Dr. Jenni Neoh (Australia).

Background

High conflict family law cases frequently involve parents with problematic personality tendencies and/or personality disorders.[1] These cases can be very difficult to resolve without input from a mental health practitioner with experience in this area.

Ontario's family law legislation and rules permit the Court to appoint an assessor in custody/access cases to help determine the needs of the child and the ability of the parents to meet those needs. These reports are prepared by social workers, psychologists and psychiatrists, for the most part on a private retainer basis. In addition to custody/access assessments, the Office of the Children's Lawyer (OCL) may be appointed by the Court to conduct a clinical investigation and report to the Court on matters concerning custody of or access to a child and the child's support and education. Social workers may also provide services to assist counsel representing a child through the OCL. Custody/access referrals to the OCL must meet certain criteria to be accepted. Assessments are also available in the child protection context, usually but not always publicly funded.

Assessments can play a significant role in resolving high conflict parenting disputes for many reasons. Perhaps most importantly, they help to create child-focused parenting arrangements that are tailored to a family's particular circumstances and informed by the assessor's specialized training and experience. They do so by providing the parents with informed and independent evidence of the child's needs and the ability and willingness of each parent to meet those needs. This evidence helps to encourage negotiated resolutions and, where required, informs adjudicative decisions.

It is important to acknowledge upfront that conducting custody/access assessments is hard work. In many cases (although not all), the parents involved in these assessments fall into the high conflict category, battling over the most important people in their lives, namely their children. Assessors must work intensively with these individuals at a particularly challenging time in the parents' lives to obtain all of the necessary information in a timely fashion. The assessor then has to relay his or her opinions to the parties about their parenting and related issues that may give rise to feelings of embarrassment, offence and defensiveness.

It is also important to note that the professional's role when conducting an assessment is entirely different from the role in a traditional therapist-client relationship. The assessor is appointed by and accountable to the Court in a forensic role. Moreover, his or her evidence will be subjected to the scrutiny of each parent and ultimately the Court. In other words, both parents have the opportunity in the court process to challenge the assessor's view of the case and his or her recommendations. It is then up to the Court to determine the weight the assessment report, being one piece of evidence, will be given. Moreover, the assessor must display neutrality to each party as he or she evaluates their respective positions, in contrast to his or her obligation to a specific individual when providing therapeutic services.

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[1] Johnston J., Roseby V., Kuehnle K. (2009*) In the Name of the Child: A Development Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (2nd edition).

It should come as no surprise that mental health professionals are the subject of a higher proportion of complaints when providing services in the context of a custody/access case than in other professional contexts. Information from the College of Psychologists of Ontario shows historically that as many of 25% of all formal complaints made against members relate to custody/access or child protection services more generally, notwithstanding that it is only a small portion of the work of psychologists in this area. In 2007 a report from the College indicated that complaints against members providing services to those involved in family law disputes occurred more frequently than any other type of complaint. This figure has declined somewhat in recent years likely at least in part due to revised data collection practices which separate out assessors tasked with conducting these assessments. Other reasons for the decline in assessor complaints may include a fewer number of assessments being done and increased awareness and education for these professionals.

Information from the Ontario College of Social Workers and Social Service Workers provides that complaints arising in the context of custody and access proceedings, including but not limited to assessment services, comprise between 35% and 40% of all complaints received. Moreover, there has been a recent increase in the total number of annual complaints received by this College from 50-60 to 70-80.

Many of the cases that proceed to an assessment involve litigants who are deeply entrenched in the dispute. These cases are extremely difficult to resolve for many reasons, including the importance of the parenting issues to the parties, unrealistic expectations of one or both parties, an inability for litigants to move from their interests to those of the child and, in many cases, the involvement of some degree of mental illness and/or personality disorders. Consequently, it is perhaps not surprising that such a litigant questions the conduct of the assessor when they become dissatisfied with the assessor's recommendations, irrespective of whether or not the assessor has met his or her professional obligations. The litigant may be motivated to advance a professional complaint for many reasons, including: (i) to delay or even thwart the process, (ii) to harass the professional and bring them into the conflict including, perhaps, to the point that the assessor withdraws, and (iii) to gain access to information through the complaints process before it is available to the other party.

We recognize there are some situations where the assessor's conduct will not be beyond reproach and we of course recognize the colleges' obligations to protect the public from assessors and mental health professionals who are not meeting the appropriate standards of conduct. That said, we have significant concerns about the unintended consequences of the current overlap between the regulatory and court processes vis a vis complaints against assessors and have developed specific recommendations to begin to address these concerns.

The Regulatory Framework

Each college bears responsibility for reviewing and responding to complaints of professional misconduct against its members as part of its mandate to protect the public. Custody and access assessments are almost invariably carried out by one of three types of professionals, psychologist, social workers and psychiatrists. For psychologists, the governing body is the College of Psychologists of Ontario. Social workers are governed by the Ontario College of Social Workers and Social Service Workers. Psychiatrists are governed by the College of Physicians and Surgeons.

Subsection 26(4) of the *Health Professions Procedural Code*, schedule 2 under the *Regulated Health Professions Act*, which applies to psychologists, psychiatrists and several other professionals, **requires** the applicable college to screen for and NOT investigate complaints that are **frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process**. The *Social Work and Social Service Work Act* has a similar provision (see section 24 of that legislation).

Our Understanding Regarding Outcomes of Complaints

Information from the College of Psychologists of Ontario[2] shows that between 2006 and 2011, 25% (71) of all complaints were about custody and access and child welfare assessments. In 40% of these complaints (29), the College took no action following a full investigation. Four of these complaints were deemed frivolous, vexatious, made in bad faith or otherwise an abuse of process after some level of investigation. A further four were referred on to the Discipline Committee, resulting in either the imposition of a limitation in the Certificate of Registration (preventing authorization to continue working in the area) or a voluntary resignation from the College. In the remainder of these full investigation cases, the disposition was educational in nature with information provided to members for their future consideration.

With respect to social workers, we have been advised that:

- A very small percentage (1-2%) of complaints are referred to the College's discipline committee for a hearing. The rest appear to have been resolved either informally or through the investigation phase.
- Never has a complaint arising in the context of a custody and access proceeding resulted in disciplinary action against a college member.
- Notwithstanding the above, the use of the" frivolous and vexatious" analysis to dispose of any complaint, regardless of subject matter, is exceptional and employed very infrequently.

[2] College of Psychologists of Ontario E-Bulletin Vol. 3(1), February 2012.

Going back to 2001, a survey of 61 American state and Canadian provincial licensing boards over a 10 year period reported that only 1 percent of complaints resulted in findings of formal fault against the assessor[3].

In summary, it appears that these colleges are generally being quite conservative in using the above-noted legislation to dismiss a complaint without first subjecting it to thorough investigation and potentially adjudicative processes, notwithstanding the fact that complaints are often ultimately dismissed and they rarely if ever result in serious disciplinary outcome.

The Concerns

For the purposes of this paper, the Task Force has focused on four significant current concerns:

1. Fewer Qualified Assessors are Available

In the 1980s, there was a network of family court clinics in Ontario through which a generation of custody/access assessors were trained. This system was largely dismantled as government funding shrank in the 1990s and today few clinics remain. Consequently, there is a very limited breeding ground for new assessors.

Currently, there are limited opportunities for education and, equally importantly, limited internships for and clinical supervision of newer assessors.

Moreover, an entire cohort of experienced assessors, many of whom trained in Family Court Clinics, is nearing retirement. It will not be possible to supply the number of required trained assessors without a significant influx of new professionals, which is not anticipated in the current environment.

In an informal survey of the family bar conducted in 2015, lawyers in Ontario and Alberta consistently agreed there is a shortage of mental health professionals willing to do this work.

This is consistent with results from a recent survey conducted by the Ontario College of Psychologists, which found that only 5% if its members reported doing any significant amount of work in this area and a similar report of social workers who conduct clinical investigations and social worker assists through the OCL. Of the small group who performed court-related work, the workers had been registered for an average of 20 years.

2. The Chill Factor on Existing Assessors

The same survey points to a "chill" on the provision of custody and access assessments by professionals on account of current complaints practices. For example, many of those who identified as qualified to offer services in family court-related matters choose not to take on custody and access related work. A

[3] Kirkland K., Kirkland L., Reaves R. (2004) *On the Professional Use of Disciplinary Data*.

lack of interest in providing these services was the most common response, followed closely by the risk of a professional complaint.

American studies point to the lengthy, costly and stressful nature of the complaints process. Assessors who have been the subject of complaint investigations work under a cloud of emotional and financial stress while the complaint is outstanding, often for many years, which discourages further practice in this area.[4] A recent study of medical professionals shows significantly higher rates of depression and anxiety among those with current or recent complaints.[5]

A significant portion (30%) of respondents to a US survey of evaluators noted long-term impacts, including decisions to stop conducting custody/access evaluations or resigning entirely.[6]

When asked under what circumstances they might consider providing these services, Ontario psychologists provided the following top three responses:

- Increased professional supports
- Decrease in the risk of college complaints
- Decrease in civil/legal complaints

3. <u>The Delays in Starting and Finalizing Assessments</u>

A serious problem relating to many custody /access assessments is how long they take to start and/or complete. Several factors lead to delays in the commencement of an assessment. One key factor is that many jurisdictions in Ontario have a limited number of mental health professionals doing this work, and many of them will only do it as a portion of their practice. Those assessors willing to do this work are often overloaded with work and can therefore have lengthy wait lists to get started. Those few who take on cases often feel responsibility to take on many at the same time, which may contribute in part to delays in completing the assessments.

Results from the informal survey noted above confirm that a significant majority of family lawyers across several centres agree it takes too long to start and complete an assessment.

Delays in the availability of assessments limit the ability of the Court to proceed towards final disposition in these cases, leaving children and families in limbo while the dispute is pending.

4. <u>The Impact on the Family Law Case</u>

Once a complaint is made, the assessor may not be prepared or able to continue the assessment to completion. For example, they may have been advised by counsel acting for them vis a vis the complaint to withdraw because of a real or more likely perceived impact of the complaint on their opinion. Where

[4] Bow J., Bottlieb M., Siegel J., Noble G. (2010) *Survey of Licensing Board Complaints in Child Custody Practice*.
[5] Bourne T., Wynants L., Peters M., Van Audenhove C., Timmerman, E., Van Claster B., Jalmbrant M. (2015) *The Impacts of Complaints Procedures on the Welfare, Health and Clinical Practice of 7926 Doctors in the UK*: *A Cross Sectional Survey*.
[6] Bow J., Siegel J., Gotlieb M.C. (2010) *Survey of Licensing Board Complaints in Child Custody Practice*.

the assessor will not continue to act, if the assessment is incomplete, the family and the Court are left either having to appointing a new assessor to begin from scratch, or alternatively, to proceed without the assessment report.

Additional and significant costs and delays for the family will result if a new assessor is appointed. Research demonstrates that children suffer from persistent and sustained conflict between their parents post-separation and delays that prolong the conflict create further risk of harm for the children.[7]

5. The Potential Impact on the Professional's Recommendations

Though harder to quantify, related concerns have been raised that assessors are likely to be more tentative in their findings in order to protect themselves in the current complaints environment. This may have the unfortunate effect of inappropriately impacting the quality of the arrangements that are ultimately made.

Potential Improvements

There are a number of changes that could be introduced to reduce the risk of a further diminution in the availability of assessment services. The scope of any potential amendments depends on: (i) how far a jurisdiction wants to go in removing the complaints process from the regulatory body, (ii) what special recognition is be given to the unique context of a family law dispute, and (iii) what deference, if any, is given to a court-appointed expert who is providing these services.

It is the consensus of the members of this Task Force that more needs to be done to protect litigating families who require these services, the family court system, and the assessor from the impact of these complaints. This is particularly so before the assessment has been completed and a final decision, if required, has been rendered.

One other Canadian jurisdiction has already tackled this issue in a meaningful way. In Alberta, the Court of Queen's Bench worked with local mental health practitioners, lawyers, and the regulatory bodies a number of years ago to develop Practice Notes 7 and 8. Practice Note 7 governs an Intervention Order, where a parenting expert is appointed in an evaluative (e.g. parent psychological evaluation), therapeutic, or parenting coordinator role. Practice Note 7 describes the parenting expert as a friend of the court and notes the expert is responsible to the Court and not either party. Practice Note 7 specifically provides as follows:

> Unless otherwise ordered, no complaint may be made to the professional body governing the practice of the parenting expert until the Intervention is complete.

[7] Cummings, E.M., Davies P.T. (2011) *Marital Conflict and Children: an Emotional Security Perspective* and Emery R. E. (1982) *Interparental Conflict and the Children of Discord and Violence*. Psychological Bulletin, 92.

Practice Note 8 governs Assessments and provides as follows:

> Unless otherwise ordered, no complaint may be made to the professional body governing the practice of the parenting expert until the Assessment is complete or the court has rendered its decision in the matter for which an Assessment has been ordered.

As a result, permission of the Court that is dealing with the family case is required **before** a complaint can be launched while the case is before the court.

Similar provisions exist in Western Australia, where leave of the Court is required to make a complaint if the matter is before the Court, except in "exceptional circumstances". Further, it is worthy of noting that in Western Australia all documents in the assessment file remain the property of the Court, which avoids a significant problem that can arise in the Ontario context when the complaining party is able to obtain documents (for example third party reports) but the other parent is not.

In New Zealand, the Family Court is generally recognized as the best forum to deal with most complaints involving psychologists as part of its jurisdiction to regulate its own process and exercise the powers and functions conferred on the Court by statute. This generally includes allegations of: (i) perceived bias, (ii) concerns about the methodology used, (iii) allegations that one parent was treated differently than the other without sufficient reason, and (iv) any matter relating to the content of the report. The governing body, on the other hand, typically deals with matters that go beyond the process of the Court and those that raise questions about professional competence, conduct or ethics. The Family Court generally considers all complaints first (provided they have been made within 6 months of the conclusion of the case), where a judge decides whether the complaint relates to a matter within the court process, or alternatively, appears to be of sufficient seriousness to require a formal referral to the Board.

In Pennsylvania, legislation was introduced in 2011 providing that no party to a child custody matter in which the Court has appointed a licensed health care practitioner to assist the Court in determining or implementing a child custody agreement may be permitted to file a complaint against the practitioner during the pendency of the matter and for 60 days thereafter.

Similarly in New Mexico, regulatory processes require the complainant to demonstrate "exceptional circumstances" requiring the governing board's attention prior to the completion of the custody case. Also in New Mexico and Arizona complaints against assessors must be completed on a special form to recognize the unique and complex nature of this work. Copies of these complaint forms are attached as **Appendix C**.

We were pleased to learn that the Ontario College of Social Workers and Social Service Workers has a newly developed form that requires the complainant when making the initial complaint to identify him or herself and to specify the particulars of the complaint and the circumstances from which the complaint arises. This complaint form specifically notes the College cannot "reconsider or instruct the reconsideration of a custody and access assessment or influence a matter that is, or has been, before the courts".

In Arizona, a requirement existed until recently for the Court to first find a "substantial basis" before referring the complaint to the board for consideration. This regime was recently changed so that now these complaints go directly to a three member screening panel to see if the complaint may have merit or, alternatively, if the complaint is limited to someone merely being dissatisfied with the professional's decision. If the screening panel finds that a complaint does have merit, the complaint process will proceed to the full Board for investigation and decision.

In other jurisdictions, there is a legislative presumption the assessor has acted in good faith if they have met the governing body's standards. This approach was undertaken by way of legislative amendments in Florida[8] and West Virginia[9]. As summarized, their laws state as follows:

> A psychologist who has been appointed by the court to conduct a child custody evaluation in a judicial proceeding is presumed to be acting in good faith if the evaluation has been conducted pursuant to standards that a reasonable psychologist would have used as recommended by the American Psychological Association's Guidelines for Child Custody Evaluations in Divorce Proceedings.[10]

The laws in these two jurisdictions also provide that an administrative complaint against a court-appointed psychologist relating to a child custody evaluation may not be filed anonymously.

Recommendations

The goal of putting forth the recommendations in this paper is to address, to the extent possible, the challenges that arise when family litigants make unfounded complaints of professional misconduct to a custody and access assessor's governing body. The Task Force also recognizes that any procedural forms should not preclude legitimate complaints from going forward at the appropriate time.

In Ontario, the colleges of the professions engaged in *Children's Law Reform Act* section 30 assessments are currently the only bodies authorized to assess a member's compliance with the standards of the profession. Section 30 provides the authority for the Court to order an assessment, but the provision does not provide a mechanism for complaints that arise as a result of that assessment. With this background in mind, there are several approaches that reform could take, both within the existing complaints mechanisms or the family court, which are explored below.

[8] West's F.S.A. § 61.122 (2009).
[9] W. Va. Code § 55-7-21 (2004).
[10] Terrence Koller, (2005) *Should There by Immunity for Custody Evaluators?* Presented at the annual meeting of the American Psychological Association.

Potential improvements for court-side reform:

Changes to the court process could be carried out through legislative reform, amendments to the *Family Law Rules*, or through Practice Directions. According to some members of the College of Psychologists of Ontario[11], the Court is the appropriate forum to address concerns with custody and access assessments in the context of on-going litigation. Task Force participants agree with this statement. One option for reform is to introduce an absolute gatekeeping function of the Court where the family case is being heard. In this way, judges would be required to screen all complaints relating to section 30 assessments as a first step in this process to ensure they meet a preliminary threshold before proceeding to the assessor's governing body. This gatekeeping function is intended to prevent frivolous complaints from going forward for college/board consideration. Consideration would need to be given to the appropriate test to apply to an absolute gatekeeper function. For example, it may be that a complaint should only be permitted to proceed to the college after the Court has found **some merit**, as opposed to a higher requirement for a determination that the complaint has **a substantial basis** before it can proceed.

This type of an approach would be consistent with the following comments in the 2009 discussion paper:

> What the colleges or *RHPA* ignore and what is essential, in our view, is that the court itself is the foremost legal forum in which the public welfare is being served in custody disputes. In this regard, the family court process already provides very significant scrutiny and oversight. The court can disqualify an assessor, and the lawyers or parties themselves can assess the work and cross-examine to require the assessor to defend his or her evidence and recommendations if the need arises. Absent a consensus of both parties that the assessor was unprofessional or incompetent or a complaint from the judge or court, the college should not be involved in complaints brought by family law litigants. The college system does not have any of the legal checks and balances or accountability that the complainant faces in the family court system.

However, placing this absolute gatekeeping function on the Courts may impose an onerous task on family court judges who may not have the necessary information. It may also not strike the ideal balance between the need to preserve the integrity of the court process and the need to protect the public from assessors who are not meeting their professional standards. Indeed, two American jurisdictions (Arizona and Pennsylvania) have amended their legislation fairly recently for these reasons. Also, it would be virtually impossible to incorporate these reforms in jurisdictions that do not have single judge case management.

Alternatively, reforms could be incorporated based on the model that is in place in many jurisdictions, canvassed above, which prevent the filing of complaints against the assessor either: (i) until the report is completed, (ii) while the family litigation is ongoing, or (iii) a defined period of time after the litigation, without first obtaining the permission of the Court. This approach limits the Court's role to a preliminary assessment of merit, permitting complaints to be launched afterwards with the colleges without a

[11] The College of Psychologists of Ontario e-bulletin 3(1) (2012), *Complaints Regarding Assessments Undertaken in the Context of Pending Litigation*.

similar vetting. This approach would also make it more difficult for unhappy litigants to proceed with a meritless complaint mid-process and, as a result, should permit the Court to maintain control over its process. This approach does not, however, provide the professional with any assistance after the case has been concluded when many of these complaints are launched.

Members of the Task Force agree that requiring permission to put a complaint forward while the assessment and/or case is ongoing would not be as effective if it did not apply until the case was concluded on a final basis (either by Court order or settlement). This would ensure that the assessor's evidence is available at trial and also provide the Court with the ability to weigh the assessor's evidence in light of any concerns the parent may have. Again it would not, however, provide any protection to the assessor after the case is concluded.

Adding a requirement for the court's permission to be obtained before a complaint could be started while the case is ongoing could be combined with a presumption of good faith on behalf of board professionals.

The Task Force is also interested in the New Zealand provisions treat the assessor's file as the property of the court and give the court the discretion of if, when and how to release parts or all of the file to the parties based on the welfare and best interests of the child. This also protects the confidentiality of a particular child's comments which may not otherwise have been disclosed to the parties.

Potential college-side reforms:

The Task Force believes it is important to introduce changes to disciplinary processes that will preserve the integrity of the court process and create an environment that is more conducive to the provision of these essential services. Most importantly, reforms should be introduced to existing college complaint mechanisms that explicitly require systematic vetting before complaints are subjected to a full investigation. In other words, colleges should be required to conduct an early assessment of each complaint and to triage those complaints to an appropriate process. Best practices and triage tools should be developed in consultation with the other disciplines. Collaboration between the three colleges would be useful. The introduction of this type of a requirement could potentially give real practical meaning to the "frivolous and vexatious" test that already exists in Ontario's legislation.

The Task Force also recommends that each college introduce detailed and customized complaint forms for complaints against custody access assessors. This would require a family litigant to explain the specific nature of the complaint and alerts the College to relevant information up front that it may not otherwise have. Complaint forms for cases involving assessments should be required irrespective of whether or not the family is in litigation as similar issues may arise with assessors who have been appointed outside of the family court process. Customized complaint forms would bolster the screening process and provide the appropriate context to those who are conducting the initial assessment of the complaint.

Recommendations by the Task Force on what to contain in a complaint form include: [12]

- An overview statement of the complaints process
- Identifying information of the complainant (preventing the anonymity of complaints)
- Identifying information of the evaluator
- Status of the custody/access litigation
- Details of the litigation – court file number, parties, any final orders of the judge, etc.
- Explanation of the exceptional circumstances requiring the board's attention to the complaint prior to the completion of ongoing custody/access litigation
- If the case has already concluded, information about the final settlement or any decision that has been made on the parenting issues
- Details of the nature of the complaint

The Task Force also would like to see all colleges provide information to complainants that confirms that the college cannot influence a matter that is or has been before the courts (see above regarding the information provided to potential complainants from the Ontario College of Social Workers and Social Service Workers).

Background materials on high conflict parenting disputes could also be developed for use by mental health professionals who face these complaints. This would avoid the necessity of each mental health professional having to prepare this material for their response to the college.

It would be also appropriate for the complaining parent to provide the other parent with notice of the complaint and for them to be entitled to receive copies of any disclosure that is provided to the complainant through the investigation process. This would avoid the complaining parent being privy to information that is not available to the other party and is particularly important for cases that have not yet been resolved on a final basis. It may also be important afterwards where a change is sought to the parenting arrangements.

It should be noted that Task Force members are currently working on a number of related initiatives in order to encourage mental health professionals to do this important work, including the need for more training, mentoring and internship opportunities. Suggested improvements that fall within these categories will be canvassed separately.

[12] These recommendations are taken largely from the complaint forms prepared by the Board of Psychologist Examiners of the State of Arizona and New Mexico.

A Combined Approach:

The Task Force is proposing that changes be implemented to both Court and college processes as follows:

1. Most importantly, a mechanism should be adopted as soon as possible that requires a litigant to obtain leave of the Court, where the family case is being heard, to launch a complaint against an assessor until the case has been concluded on a final basis.[13]
2. Colleges should require any individual who wishes to file a complaint arising from a custody/access assessment to complete a special application form that identifies the complainant and sets out both the circumstances from which the complaint arises and specific concerns about the professional's conduct.
3. Colleges should also be required to develop more refined and informed protocols for vetting all complaints and triaging them to an appropriate process for consideration. Investigative and disciplinary processes should be modified so that they are proportionate to the severity of the allegations and the screener's initial assessment of the likelihood of merit.
4. The other parent should be notified if a complaint has been made against the assessor and entitled to request copies of any disclosure that the assessor provides in that context.
5. Background information should be developed for each profession on the nature of high conflict custody and access disputes and the increased likelihood of complaints in this area of practice. Ideally this would be prepared by each professional organization for the benefit of their members with expertise in this area.

Conclusion

In putting forward these recommendations, the Task Force aims to strike a more appropriate balance between the need to protect family litigants from assessors who have not done their job properly, as defined by their governing bodies and the relevant standards of practice, and the important goals of:

1. Recognizing the value of these services for separating parents and divorcing families and the Courts;
2. Recognizing/maintaining the integrity of the family court process and the need to minimize delays in that process wherever possible;
3. Limiting the influence on the court process of the launch of a complaint while the case is ongoing, unless it is clearly warranted; and,
4. Limiting the chill factor of complaints on the professionals who are willing to do this important work.

[13] Ideally this could be accomplished by an amendment to both the *Children's Law Reform Act* and the Family Law Rules.