

# Spouse Abuse & Family Courts: Mock-Examination of Expert

## Participants:

- Judge Nancy Flatters – Provincial Court of Alberta,  
Calgary Family and Youth Court
- Dr. Peter Jaffe – University of Western Ontario
- Mr. Alf Mamo – lawyer, London, Ontario
- Prof. Nicholas Bala, Faculty of Law, Queen's University, Ont.

These materials prepared by Prof. Bala: [bala@post.queensu.ca](mailto:bala@post.queensu.ca)

World Conference on Prevention of Family Violence  
Banff, Alberta  
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# Aim of Session

- Testifying in court is an important part of helping victims of family violence.
- Testifying can produce anxiety
  - Formal & unfamiliar environment
  - Scrutiny & challenge of witness's work
  - Lack of control
- This session is intended to help professionals understand legal process & hence be better witnesses, whether they are assessors or have other involvement with adult and child victims of abuse

# This Session

1. Introduction – Prof. Bala
2. Mock Examination of “Dr. Jefferies”[Jaffe]
3. Discussion & Questions

Note: These materials are provided for background and will not be discussed in detail in this session

# Outline of Materials:

1. The Law Governing Assessments
2. The Controversy Over Assessments
3. Practical Advice for Assessors & other professionals called as witnesses

The Law Governing Assessments  
&  
The Nature of the Assessment Process

# Types of Assessments

- court ordered/consent
  - legislative & inherent judicial basis to order
  - vs. expert retained by one side only
- social worker, psychologist, psychiatrist or clinic team
  - not proven that higher status professionals (psychologists) are better than social workers in making judgments about children & families
- gov't paid vs parties pay
  - Cost ranges from \$1,500 to \$20,000, but most in \$6K to \$10K
- all aspects of case vs  
limited (e.g. access or parenting capacity)
- education & experience of assessor
  - assessment based practice vs.  
inexperienced & occasional assessment

No universally accepted standards for assessments, but guidance from:

**Books:**

- Condie, *Parenting Evaluations for the Court: Care and Protection Matters* (2003)
- Leonoff & Montague, *Guide to Custody and Access Assessments* (1996)
- Pezzot-Pearce & Pearce, *Parenting Assessments in Child Welfare Cases*, (Toronto: University of Toronto Press, 2004).
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# Guidelines

## **Guidelines:**

- American Psychological Association
- American Psychiatric Association
- Association of Family & Conciliation Courts (under review)
- College of Alberta Psychologists

*Professional Guidelines for Psychologists:  
Child Custody Assessment*

# Common Features of Multi-modal assessment Process

1. **interview each parent** alone & interview each **parent with child**
2. **interview child alone** (usually at least 2X)
3. **interview new partners**
4. **contact others, including professionals** who have worked with parents or child e.g teachers, family doctor, and perhaps grandparents
5. **review records** from other sources e.g school, medical, psychological
6. **possibility of psychological tests (if psychologist)**
7. **analysis & recommendations**

# Assessment Procedures: Tests

At least 25 custody/parenting capacity tests

Psychologist likely to use tests such as :

- MMPI (personality) (parent)
  - Ackerman-Schoendorf Scales for Parenting Evaluation of Custody (ASPECT) (parent)
  - Child Abuse Parent Inventory
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- These tests can be useful and there is literature & research about them. None is **proven** as having **scientific “validity” for child related disputes**, though they are used and correlate with court outcomes (USA)
  - **Need to consider reliability of specific test for parents & children -> SES, culture etc.**

# Review of Psychological Tests

For good (but technical) reviews of many of the psychological tests used in child-related disputes, including the limitations of various tests, see:

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# Role of the Court-appointed Assessor

- Delegated fact finder
  - Parents & family
  - Child, including views & wishes
  - Social science research
    - Informing court about research : Without expert witness  
-> judges may rely on personal experience as parent/child or bias
    - Relating research to specific cases
- Recommendations to court about best interests decisions
- Facilitator of settlement

# Concerns About Assessments

- intrusive to parent & child to be 'put under microscope'. Parents & children may not be fully open and candid with assessor
- time consuming & expensive (\$1,500 to \$20,000)
- lack of *rigorous scientific* research on outcomes, effects etc, though there is research about tests

## Concerns About Assessments (cont.)

- Ethical and practical impossibility of doing ‘double blind’ research on outcomes etc.
  - scientific “validity” not established
- The real world is complicated and dynamic with multiple interacting variables, so difficulty in applying any research studies to specific case

## Concerns About Assessments (cont.)

- not 'objective' -> judgment, values & personality of assessor affect interviews, 'factual' findings & recommendations.
- Any recommendation inevitably is set in a particular legal context and incorporates the assessor's view of how to apply legal standards (esp. best interests test).
- Limits to information of assessor

## SCC on Expert Witnesses (criminal cases) *R v Mohan* (1994, Sopinka J)

- expert must satisfy “threshold” of being scientifically “reliable”
- “**danger** that expert evidence will be misused and will distort the fact-finding process.... this evidence is apt to be accepted by the *jury* as being virtually infallible and as having more weight than it deserves.”
- In *Mohan* SCC rules that psychiatrist **cannot** testify that accused is not the type of doctor who would sexually abuse adolescents as proposed evidence “not reliable” [no research basis]
- *Mohan* approach is narrow but generally not followed in Family Law cases

# Assessors & Experts in Family Law Cases: Why the Family Context is Different

- jury vs judge
- retrospective vs prospective
- event focus vs relationship & personality
  - eg exclusion of character & similar fact in criminal

# Assessors & Experts in Family Law cases: Why the Family Context is Different (cont.)

- retained by one party vs. court appointed
  - BUT qualified privately retained expert should be permitted to challenge assessor
- state initiated prosecution vs best interests inquiry
  - Presumptions for accused do not resolve
- institutional role of assessments:  
legislative mandate & settlements

# *Tucker v. Tucker*

(1998), 165 D.L.R. (4th) 103 (Alta. C.A.). Conrad JA

- In variation application, Alta CA upheld trial judge's order for psychological assessment despite no evidence of change in circumstances
- "The appointment of an expert ...is to ensure that the court obtains objective evidence to assist in its determination of custody and access issues."
- "an assessment should not be ordered routinely or without good reason"
- **"Determining a child's welfare is difficult if reliance is based solely on descriptions offered by the parents who are in a state of conflict. An assessment of best interests involves appreciating and understanding the implications of the behaviour of each of the involved parties on each other."**

# Qualifying 'Experts' in Family Cases

(1) challenging the court appointed expert

(2) scope of assessor's expertise

- Semble: If assessment is ordered, opinion of assessor about custody or access is deemed to be admissible.
- BUT if lack of experience & training with specific type of case (eg sexual abuse allegation) this may affect admissibility or weight about that issue.
- Experts can express opinions & relate hearsay (though in family law cases tendency for all witnesses to do this)
- More concern about hearsay of child if factual issue like abuse than wishes

# Ordering an Assessment: Alberta

- Queen's Bench FLPN 7 (Rule 218)
  - Court appointed expert
  - Court may act on own motion or request of parties
  - Gov't subsidies available for low income
  - Chartered psychologist or social worker
- Provincial Court Family Mediation Services
  - Family Counsellors (social workers)
- *Child, Youth and Family Enhancement Act*
  - Gov't usually pays

# How to Order an Assessment:

- consent or motion for court order
- Application for an assessment may be on motion with affidavit but usually based on submissions
- if request opposed or resources limited, may be helpful to restrict or focus assessor on areas of concern (eg access)
- lawyers should prepare their clients for assessment process (including counsel for the child)

# Order for assessment should include:

- name of the assessor or assessors;
- time frame;
- the location of the assessment (should be carried out where the child has closest links);
- initial determination as to the person(s) responsible for the payment of the assessor's fees & disbursements;
- the nature of the assessment to be conducted;

# What to Include in Order

- whether the assessment is expected to include recommendations;
- whether the assessment is to be a complete assessment or is to address specific questions;
- specific people to be interviewed and/or assessed as part of the report;

## Directions:

- parties to cooperate in the process, and that the custodial parent arrange for participation of the child to the extent required by the assessor;
- Consents to record release;
- report not be disclosed to the child without prior leave of the Court.

# Challenging the Expert Witness: What weight to give expert evidence?

## Qualifications: Education, Training, Experience

- Were standards of discipline followed?
- Adequate for specific case?
  - Sexual abuse
  - Domestic violence
- Privately retained - lack of access to all parties & identification or selection concerns
- Incomplete background information
  - What is missing? Why is it missing?
- Factual error
  - Assumptions of assessor refuted?

## Challenging the Expert Witness (cont.)

- Procedural error
  - Unequal time with each or unbalanced process
  - Can procedural error be related to recommendations in the case?
- “Error of law”
  - E.g. considering step-mom vs. mom instead of mom vs. dad (*Edwards vs Van de Perre*)
- Lack of cultural sensitivity

## Challenging the Expert Witness (cont.)

- Bias or predisposition
  - theoretical orientation
  - personal or “political agenda”
  - institutional bias
  - frequent referrals for one source
- Are recommendations properly linked to facts & research?
- Should counsel retain expert to provide support for counsel in preparation for cross-examination or even prepare critique?

# Influence of Court-appointed Assessors

# Assessors Influential with courts

- USA study – over 80% of experienced family lawyers & judges want assessor's recommendations and consider them influential (Bow & Quinnel, 2004)
- Scores on some tests (eg ASPECT, Bricklin) correlate with judicial outcomes (50%-90%) (Schuman, 2002)

# Canada: Abella J.(SCC)

“ ... since the evidence required must necessarily go beyond materially demonstrable perceptions, it is difficult to see how informed judgements can be made about the best interests of children without at least the assistance of a non-partisan expert who can better attempt to evaluate the competing emotional claims that underlie the pursuit of legal remedies....This is not usurpation of the judicial function - it is an indispensable contribution to its proper exercise.”

Rosalie S. Abella

# Settlement after Assessment

- Often settlement based on assessor's recommendation
- Judges tend to rely on recommendations of court appointed assessor, and tactical onus to challenge:
  - can cross-examine
  - full opportunity to challenge factual determinations
  - Full opportunity to raise issues of bias, process etc.
- Majority of cases settle after assessment
  - Parents feel that they have been 'heard' by a person focused on child
  - Parents have more information
  - Costs of litigation

Controversy Over Assessments

Are Assessors Too Influential?

# O'Donohue and Bradley (1999)

## USA psychologists

- 'Beyond extremes such as severe physical abuse, without empirical research regarding the effects of relevant events on children, it is still difficult to comprehensively assess which variables will "hurt" a child', and even if that empirical research was available, recommendations about best interests decisions would still in large measure be a question of values.'
- Propose 'a moratorium of mental health professionals' participation in child custody evaluations, as it appears that the mental health profession currently cannot ethically conduct these evaluations.'

# L'Heureux-Dubé J. (1993, SCC)

‘Expert evidence should not be routinely required to establish the best interests of the child. In my view, it is a modern-day myth that experts are always better placed than parents to assess the needs of the child. .... judges have increasingly come to rely on the recommendations of experts....believing that such experts possess objective, scientific knowledge and can in fact “know” what is in the best interests of the child. However, expert testimony, while helpful in some and perhaps many circumstances, is often inconclusive and contradictory....such assessments are both speculative and may be affected by the professional values and biases of the assessors themselves’

# Limitations of Assessment Process

(Tippins & Wittman, 2005)

- Values & personality of assessor affect interviews, 'factual' findings
- Multiple interacting variables of child, parents and circumstances make it difficult to apply research to specific case
- Best interests decisions not 'objective' -> values assessor affect recommendations
- Recommendation is set in a particular legal context & incorporates the assessor's view of how to apply legal standards
- Assessors recommendations do not meet standards for expert evidence – not scientifically reliable (*Daubert* [USA], *Mohan* [Can.])
- Tippins & Wittmann argue against assessors making best interests recommendations

# Recognizing the Value & Limitations of Assessments: The Role of Psychology in Resolving Family Disputes

# Why Family Law Cases are Different: Courts should NOT strictly apply expert evidence rule of *Mohan/Daubert*

- retrospective vs prospective
- event focus vs relationship & personality
  - e.g. exclusion of character & similar facts in criminal
- jury vs judge
- presumptions cannot resolve family case
- retained by one party vs. court-appointed
- institutional role of assessments:  
legislative mandate & settlements

# Assessor: Whether to Appoint

- Is qualified assessor available?
  - Nature of case
- Scope of assessment
  - General or focused?
- Timing & delay
- Expense

# What weight to give expert evidence?

- Qualifications: Education, Training, Experience
  - Were standards of discipline followed?
  - Adequate for specific case?
    - Sexual abuse
    - Culture, disabilities etc.
- Bias or predisposition
  - theoretical orientation
  - personal or “political agenda”
  - institutional bias
- Factual error or incomplete information
  - Assumptions of assessor refuted?
- Are recommendations linked to facts & research?

# Role of privately-retained expert

- Judges tend to discount
  - Lack of access to all parties
  - Selected for views?
- England: need permission of court
- Potential value
  - Fairness if state appointed assessor
  - Most knowledgeable critic

# Bala Conclusions on Assessors:

- Assessors have an important role in making providing information & recommendations:
  - Important ‘voice’ for child
  - Information for judges
  - Parties for settlement
  - Judges for trial (some lack interest, training etc.)
- Need to be aware of limitations
  - Not a pure science
  - Values & experiences of assessors
  - Costs, delay, qualifications
- Systemic change to improve assessments
  - Qualification & training standards for assessors
  - More research to on instruments & tests
  - Clearer standards & methodologies
  - Better education for judges & lawyers about social science research and its limitations.

**Testifying in Court:  
Practical advice for assessors &  
other professionals called as  
witnesses**

- . What to do if summonsed as witness?
  - Find out what type of proceeding & why called
  - Usually meet with lawyer calling you as witness (confidentiality concerns?)
  - For any professional (eg teacher) not retained by one party, usually appropriate to also answer questions of the “other side” *if requested, subject to confidentiality* ( if sensitive material about child, may have *O’Connor* application)
  - Review notes & file – good to prepare summary for self & lawyer, but cannot use in court
  - If expert report is being prepared for court, have ready & circulated as required by court rules

# Coming to Court

- Dress & act like a professional
- Discuss scheduling - can you be 'on call'?
- Be prepared to wait
- Bring all relevant notes, documents & files
  - As a matter of law, may be restricted to contemporaneous notes & files (not later summary)
- If retained as expert, discuss fees in advance
- If you haven't been before, come to watch another case
- Likely to be excluded from court before testifying
- Ask how to address the judge
  - "Your Honour" in Ontario

# Testifying

- Be honest and avoid exaggeration
- Listen to the Question
- Ask for clarification if needed
- Take your time
- Don't guess
- Be wary of "always" & "never"
- Be aware of your body language
- Don't lose your temper
- Speak slowly for the reporter (avoid nods)
- Try to look at the judge (jury)
- Don't worry about objections & lawyers arguing about the admissibility of questions.  
BUT try to follow judge's instructions

# Examination-in-chief (aka direct examination)

- Begins with oath (or affirmation)
- On exam-in-chief, lawyer will not be able to “lead” the witness on the stand, but can prepare you before
- Notes may be used to “refresh memory” ONLY if made at the time of events (later summary of file may not be used to aid testimony, but can tab notes)
- Opposing counsel entitled to see all of your notes/file
- Acknowledge weakness, uncertainty, errors
- If testifying as expert, bring c.v. and copies of your articles & key literature

# Cross-examination

- Broad scope for cross-examination
- Cross-examiner likely to try to
  1. challenge factual statements or gain helpful facts
  2. establish inconsistencies, gaps
  3. show bias/perception limited
- When preparing, try to anticipate lines of questioning. Be fair, remain professional
- Only answer the question asked, but also qualify if necessary
- “Let me finish.”
  - If interrupted, ask judge for permission to answer fully.

- Do not feel obliged to answer “Yes” or “No” if this is misleading
- Do not guess at an answer - admit you do not know
- Avoid speculation and avoid going into areas of expertise if not qualified
- Be wary of :“Is it possible that?”
- Admit any errors in handling of case, but no more than is accurate
- Be candid about discussions of case before court
- Don’t argue with the lawyer – you’ll lose
- If you’re certain, don’t back down

- Do not look at “your lawyer” to object, though this may happen
- Do not accept questions with false premises
- Be wary of attempts to bait you into angry response
- Correct factual errors in questions
- You may NOT discuss your testimony with anyone if adjournment during cross-examination
- There may be re-examination by lawyer who called you and questions by judge

# References

- Bala & Saunders, “Understanding the Family Context: Why the Law of Expert Evidence is Different in Family Law Cases” (2003), 20 *Can. Fam. L. Q.* 277 - 338.
- Bala, “Assessments for Post-Separation Parenting Disputes in Canada” (2004), 42 *Family Court Review* 485-510
- Bala, “Tippins & Wittmann Asked the Wrong Question: Evaluators May Not be ‘Experts,’ But They Can Express Best Interests Opinions” 43:4 *Family Court Review* (*in press*, October 2005).
- T.M. Tippins & J.P. Wittmann, *Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance*, 43 *Fam. Ct. Rev.* 193-222 (2005)

# Further Resources

**Vogl & Bala**, *Testifying on Behalf of Children: A Handbook for Canadian Professionals*(2001)

**Bala, Zaph, Williams, Vogl & Hornick**,  
*Canadian Child Welfare Law*, 2nd edit. (2004)

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# Assessors Influential with courts

- USA study – over 80% of experienced family lawyers & judges want assessor's recommendations and consider them influential (Bow & Quinzel, 2004)
- Scores on some tests (eg ASPECT, Bricklin) correlate with judicial outcomes (50%-90%) (Schuman, 2002)

# Canada: Abella J.(SCC)

“ ... since the evidence required must necessarily go beyond materially demonstrable perceptions, it is difficult to see how informed judgements can be made about the best interests of children without at least the assistance of a non-partisan expert who can better attempt to evaluate the competing emotional claims that underlie the pursuit of legal remedies....This is not usurpation of the judicial function - it is an indispensable contribution to its proper exercise.”

Rosalie S. Abella

# Settlement after Assessment

- Often settlement based on assessor's recommendation
- Judges tend to rely on recommendations of court appointed assessor, and tactical onus to challenge:
  - can cross-examine
  - full opportunity to challenge factual determinations
  - Full opportunity to raise issues of bias, process etc.
- Majority of cases settle after assessment
  - Parents feel that they have been 'heard' by a person focused on child
  - Parents have more information
  - Costs of litigation

Controversy Over Assessments

Are Assessors Too Influential?

# O'Donohue and Bradley (1999)

## USA psychologists

- 'Beyond extremes such as severe physical abuse, without empirical research regarding the effects of relevant events on children, it is still difficult to comprehensively assess which variables will "hurt" a child', and even if that empirical research was available, recommendations about best interests decisions would still in large measure be a question of values.'
- Propose 'a moratorium of mental health professionals' participation in child custody evaluations, as it appears that the mental health profession currently cannot ethically conduct these evaluations.'

# L'Heureux-Dubé J. (1993, SCC)

‘Expert evidence should not be routinely required to establish the best interests of the child. In my view, it is a modern-day myth that experts are always better placed than parents to assess the needs of the child. .... judges have increasingly come to rely on the recommendations of experts....believing that such experts possess objective, scientific knowledge and can in fact “know” what is in the best interests of the child. However, expert testimony, while helpful in some and perhaps many circumstances, is often inconclusive and contradictory....such assessments are both speculative and may be affected by the professional values and biases of the assessors themselves’

# Limitations of Assessment Process

(Tippins & Wittman, 2005)

- Values & personality of assessor affect interviews, 'factual' findings
- Multiple interacting variables of child, parents and circumstances make it difficult to apply research to specific case
- Best interests decisions not 'objective' -> values assessor affect recommendations
- Recommendation is set in a particular legal context & incorporates the assessor's view of how to apply legal standards
- Assessors recommendations do not meet standards for expert evidence – not scientifically reliable (*Daubert* [USA], *Mohan* [Can.])
- Tippins & Wittmann argue against assessors making best interests recommendations

# Recognizing the Value & Limitations of Assessments: The Role of Psychology in Resolving Family Disputes

# Why Family Law Cases are Different: Courts should NOT strictly apply expert evidence rule of *Mohan/Daubert*

- retrospective vs prospective
- event focus vs relationship & personality
  - e.g. exclusion of character & similar facts in criminal
- jury vs judge
- presumptions cannot resolve family case
- retained by one party vs. court-appointed
- institutional role of assessments:  
legislative mandate & settlements

# Assessor: Whether to Appoint

- Is qualified assessor available?
  - Nature of case
- Scope of assessment
  - General or focused?
- Timing & delay
- Expense

# What weight to give expert evidence?

- Qualifications: Education, Training, Experience
  - Were standards of discipline followed?
  - Adequate for specific case?
    - Sexual abuse
    - Culture, disabilities etc.
- Bias or predisposition
  - theoretical orientation
  - personal or “political agenda”
  - institutional bias
- Factual error or incomplete information
  - Assumptions of assessor refuted?
- Are recommendations linked to facts & research?

# Role of privately-retained expert

- Judges tend to discount
  - Lack of access to all parties
  - Selected for views?
- England: need permission of court
- Potential value
  - Fairness if state appointed assessor
  - Most knowledgeable critic

# Bala Conclusions on Assessors:

- Assessors have an important role in making providing information & recommendations:
  - Important ‘voice’ for child
  - Information for judges
  - Parties for settlement
  - Judges for trial (some lack interest, training etc.)
- Need to be aware of limitations
  - Not a pure science
  - Values & experiences of assessors
  - Costs, delay, qualifications
- Systemic change to improve assessments
  - Qualification & training standards for assessors
  - More research to on instruments & tests
  - Clearer standards & methodologies
  - Better education for judges & lawyers about social science research and its limitations.

**Testifying in Court:  
Practical advice for assessors &  
other professionals called as  
witnesses**

- . What to do if summonsed as witness?
  - Find out what type of proceeding & why called
  - Usually meet with lawyer calling you as witness (confidentiality concerns?)
  - For any professional (eg teacher) not retained by one party, usually appropriate to also answer questions of the “other side” *if requested, subject to confidentiality* ( if sensitive material about child, may have *O’Connor* application)
  - Review notes & file – good to prepare summary for self & lawyer, but cannot use in court
  - If expert report is being prepared for court, have ready & circulated as required by court rules

# Coming to Court

- Dress & act like a professional
- Discuss scheduling - can you be 'on call'?
- Be prepared to wait
- Bring all relevant notes, documents & files
  - As a matter of law, may be restricted to contemporaneous notes & files (not later summary)
- If retained as expert, discuss fees in advance
- If you haven't been before, come to watch another case
- Likely to be excluded from court before testifying
- Ask how to address the judge
  - “Your Honour” in Ontario

# Testifying

- Be honest and avoid exaggeration
- Listen to the Question
- Ask for clarification if needed
- Take your time
- Don't guess
- Be wary of "always" & "never"
- Be aware of your body language
- Don't lose your temper
- Speak slowly for the reporter (avoid nods)
- Try to look at the judge (jury)
- Don't worry about objections & lawyers arguing about the admissibility of questions.  
BUT try to follow judge's instructions

## Examination-in-chief (aka direct examination)

- Begins with oath (or affirmation)
- On exam-in-chief, lawyer will not be able to “lead” the witness on the stand, but can prepare you before
- Notes may be used to “refresh memory” ONLY if made at the time of events (later summary of file may not be used to aid testimony, but can tab notes)
- Opposing counsel entitled to see all of your notes/file
- Acknowledge weakness, uncertainty, errors
- If testifying as expert, bring c.v. and copies of your articles & key literature

# Cross-examination

- Broad scope for cross-examination
- Cross-examiner likely to try to
  1. challenge factual statements or gain helpful facts
  2. establish inconsistencies, gaps
  3. show bias/perception limited
- When preparing, try to anticipate lines of questioning. Be fair, remain professional
- Only answer the question asked, but also qualify if necessary
- “Let me finish.”
  - If interrupted, ask judge for permission to answer fully.

- Do not feel obliged to answer “Yes” or “No” if this is misleading
- Do not guess at an answer - admit you do not know
- Avoid speculation and avoid going into areas of expertise if not qualified
- Be wary of :“Is it possible that?”
- Admit any errors in handling of case, but no more than is accurate
- Be candid about discussions of case before court
- Don’t argue with the lawyer – you’ll lose
- If you’re certain, don’t back down

- Do not look at “your lawyer” to object, though this may happen
- Do not accept questions with false premises
- Be wary of attempts to bait you into angry response
- Correct factual errors in questions
- You may NOT discuss your testimony with anyone if adjournment during cross-examination
- There may be re-examination by lawyer who called you and questions by judge

# References

- Bala & Saunders, “Understanding the Family Context: Why the Law of Expert Evidence is Different in Family Law Cases” (2003), 20 *Can. Fam. L. Q.* 277 - 338.
- Bala, “Assessments for Post-Separation Parenting Disputes in Canada” (2004), 42 *Family Court Review* 485-510
- Bala, “Tippins & Wittmann Asked the Wrong Question: Evaluators May Not be ‘Experts,’ But They Can Express Best Interests Opinions” 43:4 *Family Court Review* (*in press*, October 2005).
- T.M. Tippins & J.P. Wittmann, *Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance*, 43 *Fam. Ct. Rev.* 193-222 (2005)

# Further Resources

**Vogl & Bala**, *Testifying on Behalf of Children: A Handbook for Canadian Professionals*(2001)

**Bala, Zaph, Williams, Vogl & Hornick**,  
*Canadian Child Welfare Law*, 2nd edit. (2004)

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Synopsis of Case : Hobson v Hobson

Margaret and George Hobson have been separated for two years and are now in a custody trial over their sons Daniel (11) and Aaron (8). Ms Hobson wishes to have sole custody and relocate from Calgary, Alberta to Regina, Saskatchewan to be closer to her parents and extended family that can provide a job and housing. Mr. Hobson wants to have a joint custody plan with the boys alternating weeks at each parent's home in Moncton. He strongly opposes the move away because it will limit his influence in raising the boys and the vital role of the paternal grandparents who provide after school care. This is an extremely high conflict separation. One court appointed assessor, Dr. Robert Wilson recommends father's plan with the support of a parent coordinator to help the parents communicate. Dr. Wilson makes no findings in regards to allegations of domestic violence indicating that it is a matter of "she said, he said" uncertainty. Another assessor appointed by the court to review the issues of domestic violence, Dr. Peter Jefferies, supports mother's plan to relocate based on findings of domestic violence, the valid reasons for the move and the likelihood of reduced conflict in the boys' lives. Dr. Jefferies supports access to Mr. Hobson during half of the summer, Spring Break, half of Christmas holidays, and five additional extended weekends in October, November, February, April and May conditional upon Mr. Hobson taking responsibility for the domestic violence and receiving appropriate counseling in this area.

The hearing is before Judge Nancy Flatters, Provincial Court of Alberta, Calgary Family and Youth Court

**CUSTODY AND ACCESS ASSESSMENT**

RE: Margaret Hobson;  
George Hobson;  
Daniel and Aaron Hobson

REQUESTED BY: Nicholas Bala, Lawyer for Ms. Hobson  
And  
Alfred A. Mamo, Lawyer for Mr. Hobson

ASSESSMENT BY: Peter G. Jefferies, Ph.D., C Psych.

ASSESSMENT DATED: April 6, 2005

**REASON FOR REFERRAL**

Pursuant to the Order of Judge Nancy Flatters dated December 19, 2003, and the consent of both counsel, Mr. Bala and Mr.Mamo, the Hobson family was referred to our office to conduct a custody and access assessment. This assessment is the second one completed for this family. The prior report by Dr. George Wilson was considered deficient by Mr. Bala, counsel for Ms. Hobson, who felt that the allegations of domestic violence were not adequately addressed. Judge Flatters ordered another assessment in order to have these issues examined.

This custody dispute has been one involving extreme conflict. There has been no successful resolution of financial and child related issues. When we were first involved in this matter, Mr. Hobson was allowed to return to the matrimonial home for one week per month. In our interim report of April 30, 2004 we suggested that this plan was untenable for the children and Ms. Hobson and recommended a more traditional custody and access plan with a third party involved in the exchange of the children. The order of Justice R. Williamson dated May 21, 2004 gave Ms. Hobson interim custody of the children and Mr. Hobson access alternating week-ends and alternating Wednesdays. Both parents are currently seeking custody of the children.

## SOURCES OF INFORMATION

In preparing our interim assessment we held six interviews with Ms. Hobson, combined with psychological testing, on February 26, March 26, April 5 and 22, November 10 and April 25, 2005. We also held six interviews with Mr. Hobson, combined with psychological testing on February 27, March 26, April 5 and 22, November 10, 2004 and May 10, 2005. Daniel and Aaron Hobson were observed informally for a short period of time with both parents on March 26 and November 10, 2004 and interviewed on these dates as well as on April 25, 2005 and May 10, 2005. On April 5, 2004 in addition to the individual interview, Mr. Hobson and Ms. Hobson were interviewed together in our office to assess their ability to communicate in regards to their children.

Ms. Barbara Hamilton, Ms. Hobson's sister-in-law, was interviewed in our offices on April 22, 2004. An interview was also conducted with Shelly Smith, Ms. Hobson's daughter (from a prior marriage) on November 10, 2004 and who was temporarily residing with Ms. Hobson and the Hobson children in the family home in Calgary.

On November 29, 2004 interviews were conducted with Mr. Mike Smith, the homeroom teacher of Daniel Hobson and Ms. Michelle Knellie, the homeroom teacher of Aaron Hobson at St. Jerome's School in Calgary. Ms. Barbara Savage, Principal of St. Jerome's School and Ms. Darcy Kaplan, Social Worker with Calgary District School Board were interviewed in their respective offices on November 29, 2004. In addition, on November 29, 2004 interviews were held with Ms. Samantha Lamb, the mother of Ms. Hobson; Ms. Geraldine Hobson and Mr. Gary Hobson, parents of Mr. Hobson.

Telephone interviews were conducted with: Ms. Shelly Smith, Ms. Hobson's daughter, on March 31, 2004; Ms. Geraldine Hobson, Mr. Hobson's mother, on April 11, 2004; and Ms. Julie Gallagher, Social Worker with Calgary Family and Children's Services, on April 14, 2004. In addition Ms. Yvonne Kelly, a long-time family friend of the Hobsons was interviewed by telephone on November 29, 2004. Ms. June Redmond, a social worker with the Calgary Family and Children's Services provided a telephone interview on March 9, 2005.

To date we have received information from the following sources:

1. Affidavit of Margaret Hobson Sworn December 9, 2003
2. Affidavit of George Hobson Sworn December 17, 2003
3. Affidavit of Margaret Hobson Sworn December 18, 2003
4. Affidavit of Geraldine Hobson Sworn December 18, 2003
5. Affidavit of Gary Hobson Sworn December 18, 2003
6. Affidavit of Jackie Campbell Sworn December 18, 2003
7. Affidavit of Shelly Smith Sworn December 18, 2003
8. Parent's Report Form (Achenbach) for Aaron Hobson dated February 27, 2004 and March 27, 2004
9. Parent's Report Form (Achenbach) for Daniel Hobson dated February 27, 2004 and March 27, 2004

10. Fifteen Occurrence Reports from the Calgary Police Service involving the Hobson Family received March 5, 2004
11. Teacher's Report Form (Achenbach) for Aaron Hobson dated March 9, 2004
12. Teacher's Report Form (Achenbach) for Daniel Hobson dated March 4, 2004
13. Letter from The Calgary Shelter for Abused Women dated March 8, 2004
14. Report from The Calgary Shelter for Abused Women dated March 8, 2004
15. Report from Calgary Children's Aid Society dated March 19, 2004
16. Letter from Dr. W. J. Casselman, Psychiatrist dated March 22, 2004
17. Report from Dr. Catherine Lee dated April 6, 2004
18. Notes from the Family Communication Book March 28, 2004-April 4, 2004
19. Three occurrences from the Calgary Police Services involving George Hobson
20. Teacher's Report Form (Achenbach) for Aaron Hobson dated November 28, 2004
21. Teacher's Report Form (Achenbach) for Daniel Hobson dated November 28, 2004

## QUALIFICATIONS OF AUTHOR

As of April 1, 2005 Dr. Jefferies is a professor in the Faculty of Education, at The University of Western Ontario. For the previous thirty years he was the Founding Director of the Centre for Children & Families in the Justice System of the London Family Court Clinic. Dr. Jefferies has been working in the areas of child custody disputes, domestic violence, child abuse, young offenders, trauma and families involved with the courts for over thirty years. He is a member of the Clinical Adjunct Faculty for the Department of Psychology and the Department of Psychiatry at the University of Western Ontario. Dr. Jefferies was founding Chairperson of the London Custody & Access Project, London Co-ordinating Committee to End Women Abuse, a member of the Canadian Panel on Violence Against Women, Chairperson of the Board of Directors for the Centre for Research on Violence Against Women and Children, a member of the Joint Committee on Domestic Violence and the Ontario Domestic Violence Death Review Committee. Dr. Jefferies's extensive publications include articles and books on domestic violence, child welfare, young offenders, custody and access disputes and children exposed to spousal violence. Dr. Jefferies's expertise in research, theory and clinical work has resulted in appearances as an expert witness in provincial and federal courts throughout Canada.

## SECTION A – BACKGROUND

### OVERVIEW OF PARENTS' LIVING CIRCUMSTANCES

Ms. Margaret Hobson and Mr. George Hobson met during high school days, have known one another since they were teenagers, dated for awhile during high school, broke up then each went their separate ways and each eventually marrying other people. After separating and divorcing from their respective partners, Ms. Hobson and Mr. Hobson reconnected and began living together in October of 1988. Upon starting to talk about having a family and getting married Mr. Hobson initiated the process to have a Domestic Contract drawn up that Ms. Hobson signed on September 16, 1993. The legitimacy of

the contract is the subject of another court proceeding. They were married on April 5, 1994. Daniel Hobson was born on June 18, 1994 and Aaron Hobson was born three years later on September 11, 1997. The matrimonial home located at 257 Crescent Street in Calgary was purchased and registered in Mr. George Hobson's name on July 29, 1999.

Ms. Hobson reports that their separation occurred on August 20, 2003 due to the ongoing emotional, mental and physical abuse she suffered at the hands of Mr. Hobson. She states that Mr. Hobson left the matrimonial home to live with his mother and step-father in an apartment, just five blocks from the matrimonial home. She reports that for reasons unknown to her, Mr. Hobson returned to the matrimonial home on November 4, 2003 which escalated the conflict between them.

Ms. Margaret Hobson currently resides in the matrimonial home in Calgary with Daniel and Aaron Hobson. Both children have and are currently attending St. Jerome School in Calgary. Ms. Hobson has an adult daughter, Shelley Smith (age 24) from her first marriage who lived with Ms. Hobson and Mr. Hobson until 1995. Ms. Smith is living on her own with two young children and receives support and supervision from the Calgary Child and Family Services. Ms. Hobson has been off work since August 12, 2003 and is currently on long-term disability from her employment as a teaching assistant with the local school board. The disability is related to significant anxiety and depression due to the marital breakdown and historical allegations of domestic violence from Mr. Hobson.

Mr. Hobson reports that he left the matrimonial home on or about August 20, 2003 due to being threatened and assaulted by Ms. Hobson. He states during that time he maintained daily contact with the children often taking care of their daily needs. Mr. Hobson reports the date of separation as December 20, 2003.

Mr. Hobson currently resides in an apartment in his mother and step-father who are retired and provide after-school care for the children. This is also a second marriage for Mr. Hobson. He has no children from his first marriage. Mr. Hobson is self-employed in a home renovation business and has eight full-time employees. He also has income from rental properties and other investments.

## PARENTS' DESCRIPTIONS OF PAST EVENTS

### Family of Origin

Ms. Margaret Hobson is the daughter of Gary and Samantha Lamb who were both raised in by Mohawk parents in the Six-Nations reserve outside Brantford Ontario. The Lambs left the reserve as young children and lived in the Brantford community before moving to Calgary shortly after their marriage. Mr. Lamb is a skilled tradesman and was highly sought after for major building projects. The Lambs currently reside in Regina, Saskatchewan where Mr Lamb owns a large construction company and his family is

successfully involved in selling condominiums in the area.. Ms. Hobson has three older brothers who all live in the Regina area and work in their father's business. Ms. Hobson has always had an interest in children with special needs. After high school, she attended community college and received a diploma for work with developmentally delayed students. She has worked for the local school board as an educational assistant for the past seven years until her disability leave. Ms. Hobson describes her childhood in positive terms and her family as very loving and caring. Ms. Hobson is very involved with her family of origin and was particularly close to her parents and oldest brother. Ms. Hobson also has had a close relationship with Mr. Hobson's family, in particular Mr. Hobson's mother, Mrs. Geraldine Hobson. Ms. Hobson confirmed the relationship stating she has known Ms. Hobson since she was sixteen and described Ms. Hobson as a caring daughter-in-law who made sure the children were involved with extended Hobson family.

Mr. Hobson is the only child of Geraldine Hobson and the late John Hobson . Mr. Hobson has two step-siblings. Mr. Hobson was six years of age when his parents divorced and his mother married Mr. Frank Bolton. Mr. Hobson reports that "his world ended" when his parents separated. He states he missed the relationship with his father as a young boy and has struggled personally with the separation of his parents up and until this point in his life. Mr. Hobson indicates that he and his father had become close friends in the years prior to his death ten years ago and expressed the grief he experienced upon the death his father.

Mr. Hobson reported that while he and his mother didn't have a close relationship it had been good up until January 2004 when she had taken his wife's side after separation. The tension developed between Mr. Hobson and his mother after she signed the affidavit dated December 18, 2003 indicating, while both the father and mother were good parents, the mother had been the primary care giver of the children, throughout the marriage, with the help of a nanny. In Mrs. Hobson's (Senior) affidavit dated December 18, 2003 she stated that while she was reluctantly swearing the affidavit, she was doing so out of concern for her grandchildren, Daniel and Aaron. However, during the interviews, Mrs. Hobson (Senior) now states that she and Mr. Hobson shouldn't have sworn the affidavit for mother's counsel , as this action may have given others the opinion that Mr. Hobson was not supported by his parents. She further is concerned because she feels that she have "messed-up" by signing the affidavit and that they had no idea that this "would have been so traumatic". Mrs. Hobson (Senior) also reports that the hurt and trouble she feels she has caused her son is "tearing her apart". In the interview on November 29, 2004, Mrs. Hobson indicated that Mr. Hobson and Ms. Hobson are "both good parents" and what would be the best for everyone in the family would be for the parents to have "50-50, joint custody".

#### Parents' Marital Relationship

On the initial interview Ms. Hobson described the initial marital relationship as good except for Mr. Hobson's drinking. Ms. Hobson witnessed a definite change in Mr. Hobson's behaviour after the death of his father and cites this as the turning point in their

marriage. She states that as his drinking escalated, he became more bossy and controlling. Ms. Hobson states that she is very concerned that Mr. Hobson will not watch the children carefully due to his dependence on alcohol. The importance of money to Mr. Hobson was also identified as problematic to the relationship. For example, she reports that Mr. Hobson insisted she work when she knew they could afford for her to be at home with children. According to Ms. Hobson, Mr. Hobson was hardly ever at home but busy with work, renovations or drinking. As well according to Ms. Hobson, Mr. Hobson had her sign Domestic Contract with little preparation and help in understanding what she was signing. This contract is a source of litigation with a trial scheduled in November 2005.

As the marriage deteriorated Ms. Hobson reports suffering significant abuse from Mr. Hobson. For example she indicated that there was constant verbal abuse, including racist comments directed at her aboriginal roots. Ms. Hobson further states that he made fun of her employment because she wasn't a "real" teacher and only an assistant. He would call her a "stupid bitch" and an "idiot". Even Ms. Hobson's mother, Mrs. Lamb asked Mr. Hobson to stop making derogatory comments at her daughter. Mrs Lamb was asked to attend the home at one point early in the marriage due to her daughter's fears of Mr. Hobson. Ms. Hobson has kept a diary of the events in the marriage since that time after she went for counseling with her family doctor. Ms. Hobson reports being pushed and being forced to having sex against her will on a regular basis. Ms. Hobson indicates that Mr. Hobson would intentionally break things and that she would have to pay to have them repaired.

The police were called to the home five times in the context of a 'domestic disputes requiring police assistance'. Charges were laid on one occasion early in the marriage but later withdrawn by the Crown because Ms. Hobson was not willing to testify against her husband. The other police occurrences were resolved by one party leaving the home and no other charges were ever laid because there were no reasonable and probable grounds to support an allegation of physical violence.

Ms. Hobson admits that her emotional well-being took a turn for the worse in the light of all the marital conflict and abuse. She took a leave of absence from her job of August 2003 and kept this information from Mr. Hobson out of fear. Mr. Hobson believes she was having an affair during this period, but she vehemently denies this allegation. She admits during this period that she drank too much and together with Mr. Hobson's drinking escalated the family conflict that created a troubling environment for the children. Their care became more dependent on their nanny. Ms. Hobson states that alcohol is no longer a problem for her and she will have a social drink on occasion.

According to reports, Mr. Hobson called Calgary Family and Children's Services on April 13, 2004 to report that Ms. Hobson was intoxicated and that he was concerned for the safety his children. Upon investigation, the Family and Children's Services reported that Ms. Hobson was "not intoxicated whatsoever and the children were safe". As indicated by reports, Mr. Hobson was told not to use Family and Children's Services for custody and access disputes.

Although the nanny, Ms. Desjardins provided excellent care for the children, Ms. Hobson began to feel increasing jealous of Mr. Hobson 's attention to her in the home and during the family holidays. Ms. Hobson reports that a number of times when she came to the house and inquired as to the whereabouts of Mr. Hobson , she was told by her sons that he was upstairs in the nanny's apartment. While he appeared very sparing in spending money on home renovations, Mr. Hobson was perceived by Ms. Hobson to readily spend money on redecorating the nanny's apartment. More recently she alleges that he has provided Ms. Desjardins with a van, a television and VCR while being hesitant to provide adequate financial support for Ms. Hobson and the children. She believes that Mr. Hobson was having an affair with the nanny and continues to keep her in a financially dependent role by hiring her as his secretary for his business and continuing to rely on her for child care for Daniel and Aaron.

Ms. Hobson states that she was struggling with the relationship that summer and wanted help because of the daily arguments and the constant conflict. However, she firmly believes that Mr. Hobson was planning a divorce because she found a lawyer's business card and during their conflicts he kept telling her to "get a lawyer".

On the first interview Mr. Hobson stated that while the "relationship was up and down" and in spite of the terrible arguments he felt it was overall a good relationship. He describes the tension arose due to the fact Ms. Hobson was outgoing socially, he like to stay home and watch television .

Mr. Hobson denies that he ever physically or sexually abused Ms. Hobson and feels set up with these false allegations. He reports that they called each other names and admits they argued while the children were present but that he couldn't win an argument because Ms. Hobson would walk away. Mr. Hobson states that he had sometimes made joking comments about her aboriginal roots but he never intentionally tried to hurt her feelings. Mr. Hobson described Ms. Hobson as a caring person who loves the children but that she spent too much time on the computer email her parents and extended family.

Early on in their relationship Mr. Hobson reports their arguments were over the behaviour of Ms. Hobson 's teen-age daughter, Shelley Smith. Mr. Hobson contends that Ms. Hobson threw Shelley Smith out of the house at the age of fifteen and that the Children's Aid Sociey was involved due to Ms. Hobson 's parenting. Both Ms. Hobson and Ms. Shelley Smith state that due to Kelly's rebellious behaviour it was a joint decision of Ms. Hobson and Mr. Hobson to have Ms. Shelley Smith placed out of the home in the care of the CAS.

Mr. Hobson states they did argue over money but insists that they had both agreed for Ms. Hobson to continue working after the birth of the children. He held this view in spite of his reported financial success and business acumen. In discussions with regards to his drinking patterns, Mr. Hobson indicates "he is a friendly drunk" and that alcohol is not a problem for him as he drinks only 2-4 drinks socially, 2 or 3 times per week. According to Mr. Hobson he never drinks when the children are present. On the other

hand he reports that Ms. Hobson was often drunk when he came home and when she drinks she becomes belligerent, gets in the car and leaves.

Mr. Hobson believes Ms. Hobson has had a number of affairs throughout the marriage and believes that there “was a man sitting in the wings and she would be with another man in my house”. He also expressed concern for the safety of the children if there was another man involved in Ms. Hobson’s life. In our initial interview of February 27, 2004 Mr. Hobson alleges a number of concerns with Ms. Hobson’s care of the children; that “Ms. Hobson is a bomb ready to go off, that she has made a number of suicidal threats and that he feels she might physically hurt or strand the children”. In contrast, in our interview on November 10, 2004 he states “she did a good job, the children are healthy and she has proven herself with regard to the children”.

In our interviews we presented Mr. Hobson with information received from other sources such as Ms. Hobson. In asking him about reports that he spent little time with the children prior to separation, Mr. Hobson stated he could modify his work schedule to accommodate a more vigorous parenting role. When we discovered that he had enrolled both children into latch-key program after his commitment to spend more time with them he indicated that he was preparing them for him having custody and allow him to fulfill his work commitments. When asked about the abuse allegations and Ms. Hobson’s reported fear of him, he stated that they were all false allegations but in general he had a sense that people could be afraid of him for no reason. He denied that he and Ms. Desjardins were involved in a relationship other than one that was professional in nature. Ms. Desjardins maintains a positive relationship with the children when they visit their father.

PARENTS’ DESCRIPTIONS OF PRESENT CONCERNS

Since the implementation of the Interim Court Order dated May 21, 2004 the conflicts between the parents have been reduced only on a limited basis because of the stipulation that neither parent have direct contact with one another. Ms. Hobson continues to have a genuine fear of Mr. Hobson and holds the belief that Mr. Hobson has the power and ability to create havoc in her life. Ms. Hobson firmly believes that Mr. Hobson continually lurks around the house and watches every move she makes. Mr. Hobson denies that Ms. Hobson has any basis to be fearful of him. Other than the fact that the matrimonial home is on the route to his parents’ apartment, he denies that he watches Ms. Hobson’s activities or that he ever goes near the matrimonial home.

The former nanny of the children, Ms. Barb Desjardins currently works as a secretary in his business. Ms. Desjardins has an ongoing involvement with Daniel and Aaron, providing child care when Mr. Hobson is not available. Ms. Desjardins’s familiar connection with the children continues to create stress and tension between Ms. Hobson and Mr. Hobson. According to the reports of the children to their mother, Ms. Desjardins has on occasion stayed the night in Mr. Hobson’s apartment to take care of the Aaron when he was ill and Aaron refers to Ms. Desjardins as a “second mother.” It is the belief of Ms. Hobson that Mr. Hobson and Ms. Desjardins developed a personal relationship during the time when Ms. Desjardins was employed as a live-in nanny for the children and that this relationship continues as they both reside in neighbouring

apartment buildings. Mr. Hobson and Ms. Desjardins maintain they have a professional relationship, although they have grown to be “good friends”. Despite Ms. Hobson’s concerns, Ms. Desjardins provides a positive relationship with the children and has represented a point of continuity for the children through the difficult separation period.

Even with the interim order that prohibits direct contact between the parents, the family remains in turmoil. The parents are unable to trust each other or communicate (even in writing) with each other in an effective manner with regard to organizing the lives of their two young children. The day to day activities such as attending the children’s community or family activities, taking the children to the doctor and the sharing of clothing, costumes or beaver uniforms has required outside intervention. Ms. Hobson implemented a communication book in the spring of 2004 during the transition of visits with Mr. Hobson. Ms. Hobson states her ongoing frustration with Mr. Hobson’s refusal to acknowledge or reply to the information she shares with him about the children’s outings and any health concerns. She indicates that Mr. Hobson doesn’t help the children with their home work.

It is the contention of Ms. Hobson that Daniel continues to be put in the middle by Mr. Hobson. She has been told about many adult problems for example, Mr. Hobson’s problem with Shelley Smith as a tenant and the transfer of birth certificates preventing the children from travel. On the other hand, Mr. Hobson has expressed that Daniel is left baby-sitting for Shelley Smith’s children when she had returned to live with her mother. Currently Shelly is residing in an apartment with her two young children in Calgary with supervision of the Family and Children’s Services. Mr. Hobson expressed concern about the negative influence that Kelly may have on the younger children. After expressing these concerns, Mr. Hobson was asked what he thought would bring more peace in the family, he responded that he “didn’t know there was turmoil”.

## SECTION B – CLINICAL FINDINGS

## THE CHILDREN

Aaron Hobson is the youngest of the two children and will turn eight years of age in September (DOB 09-11-97). He currently attends Grade 2 at St. Jerome School in Calgary. He is an active little boy who presented as very verbal and engaging with the assessors. His teachers in Grades 1 and 2 describe him as an average student with no significant emotional or behavioural problems. Over the course of our assessment he has shown improvement in his school work and organizational abilities. His Grade 2 teacher reported that “he is a very caring and respectful student who is always willing to help others when needed.” His parents describe Aaron in positive terms as well as being a young boy with many interests and talents related to sports and cars. The school achievement tests suggest he would qualify for placement in a gifted class, but both he and his mother do not want him disrupted from his friends and peer group.

Teachers and the school principal perceive him as trying to please both parents in this high conflict dispute. In our observations, Aaron appears attached to both parents and very relaxed in their presence. In our interviews, it was clear that he is distressed by the conflict between his parents and tries to avoid being caught in the middle. He expressed a preference to split his time equally between his parents on an alternate week plan. He clearly stated his wishes as his father’s explicit plan. Aaron appeared to be parroting his father’s wishes rather than articulating the ideas of a boy his age. He enjoys a close relationship with his former nanny, Ms Desjardins, and refers to her as a “second mother.”

Daniel is the older of the two children and just turned eleven years of age on June 18th (DOB 06-18-94). He currently attends Grade 5 at St. Jerome School in Calgary. Compared to his brother, he was much more cautious in our interviews and lacked spontaneity in his answers. He seemed to be censoring his thoughts and presenting information that would be fair to both parents. He tended to minimize the extent of the conflict even when we had information to the contrary about an event. His teachers in Grades 4 and 5 see him as an average student overall with a talent in language arts. He is seen as hard working and motivated but requiring help with his organizational skills. Daniel has minor difficulty concentrating on his work and appears to be in his own world at times. Both parents describe Daniel in positive terms related to his interests and skills in skating, swimming, fishing and working on crafts. Ms. Hobson reports more adjustment problems related to anxiety, depression and anger. Mr. Hobson does not report the same level of difficulties.

In our interviews and observations of Daniel, he appears to be more affected than his brother by his parents’ separation and the continuing conflicts between them. He is more aware of the issues because of his age and desire to reportedly counsel his parents. Both parents admit he has been exposed to conflicts that are not age appropriate. However, he is attached to both parents and enjoys his relationship with Ms. Desjardins as well. His wish is to have alternate weeks between his parents on the basis of fairness to both of them. He is excited by his father’s promise to buy a farm and purchase a horse for him.

In our view, his wishes are offered to please his father and maximize the benefits of the promises he has made to him. His wishes have become clearer after our interim assessment and are parallel to the ideas shared by his paternal grandmother after being confronted by Mr. Hobson about his disappointment with earlier affidavits.

## **MS. HOBSON**

Prior to the separation, all reports indicated that Ms. Margaret Hobson had the most consistent active parenting role albeit with some assistance. She was and remains a very involved parent, overseeing their physical and emotional health, their education and their social and family activities. Even Mr. Hobson has acknowledged that Ms. Hobson has proven herself and has done a great job with the children.

From the school reports, the children are doing remarkably well academically and socially in spite of being in the middle of parental struggle for their custody. School personnel support and maintain the belief that Ms. Hobson has consistently been the most involved parent, overseeing their academic activities as well as volunteering and participating in many school events.

Prior to the separation, Mr. Hobson's role was and continues to be that of a hard worker and a good provider for his family. He has taken a more active role with his children's education and social activities in the past year. The school personnel also acknowledge that Mr. Hobson has been more visible at the school and has taken more interest in the schoolwork of his children during the past year or so. He has coached their soccer teams since May of this year.

The overall finding with Ms. Hobson is that she is an extremely vulnerable individual who functions poorly under stress. The results of the Personality Assessment Inventory suggest that she is hampered in her adjustment by depression and poor self-esteem. The current custody dispute and any claims that she is less than a dedicated parent undermine her self confidence and ability to present herself in the best possible light. Her claims of abuse appear credible in their presentation and in no way appear contrived as false allegations to further her claims for the custody of the children.

Ms. Hobson has continued to receive counselling and support for herself from many different professionals in order to address her personal issues and as well as to decrease the stress she has been experiencing during the last several years. Dr. J. Richards, a Calgary psychologist in private practice, has been treating Ms. Hobson for anxiety and depression. She has written a letter to Ms. Hobson's employer to enable her to qualify for her disability. In her June 3, 2004 report, Dr. Richards describes Ms. Hobson's as a person who is overwhelmed by the impact of the reported abuse at the hands of her partner and has suffered many symptoms related to post traumatic stress disorder associated with the marital relationship.

In addition, with Ms. Hobson's involvement, the children have had counselling services through the Calgary School Board and Calgary Shelter for Abused Women. Currently both children are receiving regular counselling with the School Board Social Worker and both are on the waiting list for the Crossroads Group (formally known as the Early Intervention Program for Child Witnesses of Woman Abuse) at the shelter. Ms. Hobson went to the shelter for two brief periods (24 hours and 3 days) around the time of the separation when she indicated she was fearful of Mr. Hobson.

## **MR. HOBSON**

Overall our finding with Mr. Hobson is that he is a friendly and out-going individual who shows no signs of any emotional or mental disorder. The results of the Personality Assessment Inventory suggest that he is eager to make a positive impression on others and presents himself in the best possible light. He denies any problems, even in areas such as his marital difficulties which are well documented. He has only recently taking an active interest in the children's lives. Prior to the separation he had never attended the children's school, doctors' or dentists' appointments or recreational events. Since the separation he has gone to the school every week, starting coaching the boys' soccer teams and sought a second opinion about Aaron's potential placement in a gifted class.

Although there is no doubt that he loves the children and they love him he appears to see this litigation as a battle for control of the matrimonial home and the protection of his finances. Since the separation he appears anxious to create a new image of himself as an active father and is engaged in various activities to make this happen. While he appears non-plused in achieving this image, the process is destroying Ms. Hobson. Mr. Hobson seems oblivious to the apparent turmoil that surrounds him and his family. We found Mr. Hobson to be less than genuine in our interviews. In our opinion he often would tell us what he thought would be helpful for the moment. Sometimes he was positive about Ms. Hobson as a mother and other times he would raise very serious allegations.

In the November 2004 interview Mr. Hobson couldn't identify that his family was currently in turmoil. When asked about the status of his individual counselling, he reported that the counsellor at Changing Ways (Batterer Intervention Program) told him "he was not suitable for this program" and that "I see no reason for you to be here". However, according to the report from Changing Ways dated November 15, 2004, that in their interview, Mr. Hobson "indicated that there were no issues he could readily identify in himself that could be a causative factor in the ongoing issues between Ms. Hobson and himself. Outside of 'ordinary family problems' he seemed unsure of any underlying factors in his marital/family problems". Further Mr. Hobson also reported that while his counsellor at Calgary Family Service also told him "You don't really need to be here" but he states he continues to attend and "learns something new every time he is there". Mr. Hobson did not identify any personal issues he was struggling with but that he was able to identify parental issues with regards to the children and wanted to enhance his parenting skills when they visited with him. Mr. Hobson told her of the custody battle and stated he was concerned for their well being and their ability to cope with the

separation. Mr. Hobson 's counselling sessions with regard to his children were bi-monthly beginning on July 19, 2004 and are now monthly.

Mr. Hobson steadfastly believes that the custody of Daniel and Aaron should be equal and "split down the middle". He states he would like to spend more time with them and has suggested that the children rotate week about with each parent. While requesting a more equitable custody arrangement, Mr. Hobson indicates the current alternating of weekends is not compatible with his work schedule as his business requires more of him on week-ends and during the holiday periods.

## SUMMARY AND RECOMMENDATIONS

In considering our overall assessment and recommendations for the court, we reviewed all the "best interests" factors under the relevant legislation. . Both parents would qualify for custody of the children based on "the love, affection and emotional ties between the child and each person seeking custody or access", "the child's view and preferences", "the length of time in a stable home environment" and "the ability and willingness to provide guidance, education and necessities of life". Each parent has shortcomings. Ms. Hobson suffers from anxiety, becomes easily stressed and may have more difficulty managing her children in adolescence because of her vulnerabilities. Mr. Hobson has been an absent parent until recently and has failed to acknowledge his responsibilities in the breakdown of the marital relationship. Ms. Hobson wishes to move with the children to Regina in order to be closer to her parents and extended family in that area. Her parents have confirmed that they could provide housing and part-time employment within their construction company. Mr. Hobson opposes the move.

In my view there is considerable information on which to make a clinical finding that there is a history of domestic violence from the collateral sources of information and the very detailed accounts of Ms. Hobson. This issue undermines Mr. Hobson "ability" to be an effective parent because he offers a poor role model in the manner in which he has treated the boys' mother. I am concerned about his lack of remorse or willingness to address these problems.

Ideally, these parents should be developing a joint custody plan that would maximize contact with their schedules and special interests. The parents would be more effective as a team. However, the Hobsons as a couple represent an extreme of a high conflict separation, with no trust or mutual respect. In fact, what is reported to the assessors is a history of abuse and fear by one parent and denial of any problems by the other parent. In the absence of any reasonable hope of a workable joint custody plan, the assessors are forced , in the best interests of the children, to choose between the parents. This choice is clear in our view as Ms. Hobson has always been the primary parent. Furthermore, because of her vulnerabilities and expressed fears and upset over past mistreatment by Mr. Hobson, she needs to feel some control. The historical relationship seems to involve a significant power imbalance (in Ms. Hobson's disfavour) which would be aggravated by Mr. Hobson having custody or joint custody. Ms. Hobson needs to continue in her role

as a primary caretaker and have control over the day to day parenting of the children in order to provide the consistency and stability which they require. Nonetheless, Mr. Hobson should have liberal access that is scheduled in a manner that maximizes his availability and minimizes contact between the parents. The need for a parent coordinator that is removed from the litigation process and the possibility of any court reports or testimony is clear and already implemented by counsel based upon our prior report.

Although both parents have strengths and shortcomings, Ms. Hobson presented in a more consistent manner throughout our lengthy assessment process. From the outset, she was consistent in her expressed fears of Mr. Hobson but wanted him to have a positive relationship with their children. Mr. Hobson alternated his views as he felt the situation demanded. He accused Ms. Hobson of being unfaithful and planning for another man to take his role. We found no support for these concerns while at the same time finding information that suggested Mr. Hobson had sexually harassed one child care provider. Ms. Hobson is concerned that the same behavior pattern underlies his current relationship with their former nanny who is now managing his restaurant. Concerns were raised about Ms. Hobson as a mother during some interviews, however, he had no difficulty leaving the children in her care during the marriage. At times during our sessions Mr. Hobson could also be positive about Ms. Hobson's parenting. His own mother spoke clearly to Ms. Hobson's caring and strengths as a mother. Mr. Hobson even tried to minimize any conflict in their parenting relationship when arranging interviews with our team lead to problems. His inconsistency undermined any appearance of a genuine approach to problem solving in this dispute.

Our recommendation is that Margaret Hobson should have custody of Daniel and Aaron and be allowed to relocate to Regina in the best interest of her children. George Hobson should have regular access for half of the summer and Christmas holidays, March Break and five long-weekends during the school year.

Our rationale in the above recommendations is based on the following facts and opinions:

1. The children are attached to both parents. Both parents acknowledge the important role the other parent can play in the children's future development.
2. The parents are asking the court as well as the assessors for an opinion about custody of the children. It is clear that joint custody is not even a remote possibility at this point in light of the level of conflict and lack of communication between the parties.
3. In having to choose between the parents, it is clear that Margaret Hobson has more often been in the role of primary caretaker albeit with the assistance of a nanny. George Hobson, his mother and a former nanny all indicate that Ms. Hobson is a caring and competent mother. Independent professionals who we contacted describe her as a sincere individual willing to seek assistance for her children throughout the crisis of the separation and on an ongoing basis. In discussions with the school community, it is apparent that Ms. Hobson was an actively involved mother.

4. Both parents have raised serious allegations about the other parent, some of which we addressed in our interim report. Senior family law lawyers could easily spend several weeks in a trial trying to prove or disprove these allegations from a series of lay and professional witnesses. Ms.Hobson has genuinely and appropriately pursued assistance for her difficulties from many available resources in the Calgary area. George Hobson has acknowledged no shortcomings and has failed to understand his role in the marriage dissolution.

5. In awarding custody to one parent we recognize the importance of maintaining a balance of power between the parents. The children enjoy the contact with their father and their mother will cooperate with any plan agreed upon. The children see their former nanny who now resides in a nearby apartment and works in George Hobson's business is seen as a very important relationship (Aaron refers to her as a "second mother"). On the other hand Ms Hobson presents as a vulnerable individual who has suffered from the marital discord. Irrespective of any findings of fact about abuse, she genuinely feels that she has been victimized by her George Hobson's behaviour. Her sense of self and raison d'être revolve around her role as mother. She has done a thorough investigation of schools and extra-curricular activities for the boys in Regina in the event that the court allows her to have custody and relocate. Although the boys will be away from their father, they will also be better protected from the ongoing acrimony between the parents.

In reviewing the previous assessment report prepared by Dr. Wilson, we disagree with his lack of findings in regards to domestic violence and his lack of support of the planned move to Regina in these circumstances. I would be pleased to expand on these findings during my testimony at the upcoming trial.

Respectfully submitted,

Peter Jefferies Ph.D., C.Psych.