

CUSTODY AND ACCESS INVESTIGATIONS

BY

MR. JUSTICE F. G. W. DICKSON
Judge of the Unified Family Court
Saskatoon, Saskatchewan.

A generation ago, when family units broke up, father seldom challenged the accepted practice of children remaining with mother. Today, custody and access disputes are commonplace. If they cannot be resolved by mediation, recourse must be had to trial. In the adversarial system, it is essential that the parties be given their "day in court"; that they be afforded the opportunity to present evidence they believe will support their claim. Existing procedures not only give the parties those rights but depend on them for all the evidence on which the Court will reach its decision. While it may be appropriate to depend only on the evidence of the parties in ordinary civil actions, such a procedural and evidentiary system is difficult to defend in a proceeding in which the Court is expected to protect the interests of a person who is not a party to the proceedings. Parties may be unable (more likely unwilling) to provide the Court with all the evidence relevant to the welfare of the child. While expert witnesses are now called more often than in the past, their evidence is often directed toward issues determined by the interest by the party who calls the witness. Otherwise, they wouldn't be called. The judge may doubt the impartiality of such a witness. Even when objectivity is not in doubt, the real question troubling the judge may not be answered. A recent analysis reveals that judges complained of inadequate evidence in 33% of custody cases reported in Saskatchewan between 1971 and 1977. The most common complaint was the lack of evidence relating to the psychological state of the parties, the psychological affect of a change of custody and the home environment.

Family courts have sought to improve the quality of evidence in custody cases through the use of independent court appointed investigators. The judges of the Unified Family Court in Hamilton, Ontario, must rely on personnel of existing agencies in the community while the Edmonton Family Court and the Unified Family Court in Saskatoon may call upon the help of investigation personnel attached to the Court.

In Saskatchewan, the authority to request such help is contained in rule 25 of the Rules of the Unified Family Court:

25. (1) The court may, at any time during a proceeding, direct a person to make an investigation relating to the proceeding in which support of a spouse or child or custody of or access to a child is in issue and may receive evidence resulting from the investigation.
- (2) The person making such an investigation shall file a report of the investigation and the report shall be served on all parties to the proceedings.
- (3) The person making such investigation shall be a competent and compellable witness.

When an investigation is directed by a judge of the Unified Family Court in Saskatoon, each parent is invited by letter (appendix I) to attend an individual interview with the counsellor assigned to the case. At this first meeting, the parents are acquainted with the process of investigation. They are told that the primary purpose is to assess their parenting ability and their children's needs. The counsellor also explores the possibility of mediation. If the parties are willing to mediate, the counsellor begins that process immediately. If agreement is achieved, a written memorandum of the terms are sent to the parties and their lawyers and a copy placed on the Court file. The judge may then be asked to incorporate the terms of the agreement into an Order.

If either party is unwilling to mediate or if the attempt at mediation fails, the case is put on the investigation waiting list. Because of the heavy demand placed upon too few social workers, the waiting period in the Saskatoon Unified Family Court averages three to five months. Such a wait, unfortunately, may contribute further to the family's anxiety and is seen by some as creating a status quo that a judge may be reluctant to disturb. However, some investigators believe a waiting period may

have some beneficial affect. Parties who commenced action impulsively have a chance to reconsider their position. There is time for anger to subside. There is opportunity to focus attention on the welfare of the children rather than on unresolved marriage issues. A surprising number of disputes are resolved during the waiting period on the initiative of the parties alone.

If no agreement is achieved by the end of the waiting period, a letter is sent to each parent (appendix II) inviting them to make an appointment with the person who will conduct the investigation. To assure complete neutrality, the counsellor assigned to complete the investigation is not the same person who conducted the preliminary interviews or attempted to mediate the dispute.

The parents are asked to complete a personal information sheet (appendix III) and return it to the investigator at the first interview. Each parent is interviewed separately and both are asked essentially the same questions. The role of the investigator is explained carefully; that he or she is acting as an agent of the Court and may be compelled to disclose, at trial, any information gathered during the investigation. Despite this ominous warning, investigators continue to be impressed by the candor of parents. Perhaps their frankness is prompted by the anticipation that if they don't reveal the information, the other party will.

The investigator then proceeds to gather background information including the following key questions:

- i) Important childhood issues
- ii) Former relationships.
- iii) Children born prior to the current relationship.
- iv) Marital and parental history:
 - how they met,
 - courtship,

- how decision to marry was reached,
- what attracted them to each other,
- early stages of marriage - problems and strengths,
- number of moves,
- external events, e.g. deaths in family, work or career changes, health problems,
- relationship with inlaws and extended families,
- pregnancies: - time of occurrence, planning, sharing of experience,
- sharing of responsibilities in child care,
- milestones of child(ren)'s development,
- when did problems in marriage develop: what were they, why did they occur, what attempts were made to rectify, how were children involved in marital problems, how where "inlaws" involved,
- counselling received,
- prior separations: lengths, dates and reasons for reconciliations.

v) Current separation:

- how it occurred,
- who initiated - how did partner react,
- was it planned or impulsive,
- immediate arrangements made for children and reasons,
- nature of contacts between parents after separation,
- considerations of reconciliation,
- how each parent dealt with separation,
- child(ren)'s reactions,
- contacts between child(ren) and other parent,
- how were visiting arrangements made,
- were the arrangements maintained,
- amount of conflict between parents regarding the children,
- other unresolved issues: property, maintenance,
- lawyer and court involvement,
- their experience with this,
- other changes in their life since separation, e.g. career, family, relationships.

vi) Children:

A. Needs:

- general description of child(ren)'s personality,
- school behaviours and performance,
- health,
- peer relationships,
- interests and activities,

- disciplines and rules,
 - schedules and routines, e.g., ask the client to outline a typical day,
 - sharing of discipline between parents.
- B. Relationships:
- children among themselves,
 - with each parent,
 - with step-parent(s),
 - with extended family,
 - with step-siblings or half-siblings,
 - child(ren)'s knowledge and involvement in custody and/or access issue.
 - MOST IMPORTANT: how each child relates to this parent.
- viii) Position towards custody and/or access issue:
- reason for issue,
 - their parenting strengths and weaknesses,
 - other parent's strengths and weaknesses,
 - custody and access arrangement of their choice
- ix) Preparation for home visit with children:
- what do the child(ren) know about custody/access dispute,
 - how will they introduce investigator to child(ren),
 - opportunity to work with parents around: clarifying situation for children, bringing some reassurance for children,
 - inform parent(s) about purpose of home visit,
 - parent told that he/she is in control of what happens during home visit,
 - encouraged to maintain as much routine as possible,
 - everyone who lives in the home is expected to be there.

NOTE:

Purpose of home visit:

- a) Opportunity to see family interacting in their environment, therefore be able to assess relationships as closely as possible.
- b) A more comfortable setting for children: child(ren)'s bedroom - their own turf, adequacy of it.
- c) Adequacy of personal surroundings.
- d) Setting in which children are interviewed.

If either parent has a new partner, that person is asked to attend an interview since he or she, ultimately, may be a presence in the life of the children. Typical questions asked this person are:

- background history: family, former relationships, children, health,
- perception of present relationship,
- relationship with each child,
- perception of his/her role with child(ren) whose custody or access is being contested,
- perception and feelings about other parent,
- relationship with their own ex-spouse if applicable.

The parents are asked to suggest other persons whom the investigator may speak to about the family: i.e., relatives, friends, employers, ministers, neighbors, teachers, doctors, etc. They are asked to sign a release of information form (appendix IV) for any professional reference they nominate. The parents' choice of references is often significant; i.e., all references are family members, none are family members, members of the other parent's family, people who know little about parenting. Some references are biased. They think they have been nominated to do a job; i.e. to praise one parent and vilify the other. Their comments are not helpful to the investigator. On the other hand, some references are quite impartial and maintain focus on the children's needs. Indeed, some may be quite critical of the parent who nominated them. References are usually asked:

- How long have they known the parents?
- Which family members do they know?
- In what context?
- Have they seen children with parents?
- General description of parenting styles.
- Would they leave their own children with parent?
- Specific questions: affection, attention, involvement, discipline, general care, routine and chores, extra-curricular activities, common interests of children and parents, nature of relationship between parents and children.
- Check some information that has been provided by the

- parents - ask if reference has been exposed to this, e.g., reactions to weekend visits.
- Their impressions of children's development: how they managed separation, changes emotionally and behaviourally.
 - Their impression on how parent is restructuring his/her life.
 - Invitation of general and final comment allows for information that investigator was not suspecting - sometimes telling of reference's bias.

Their responses can often confirm the investigator's assessment or indicate a need to look closely at some elements and possibly re-view conclusions already made. The school is a valuable source of information about peer relationships of the children, activity, participation, punctuality, behavioural problems or changes, grooming and cleanliness, parental participation, etc.

At the conclusion of the first interview, a home visit is arranged. The counsellor will use this visit to observe the interaction between parent and child; to assess parenting skills, strengths and weaknesses; to see first hand and in a natural setting the parent's ability to focus on the children's needs and to measure the effort and energy put forth to satisfy them; to discern how appropriate and effective is the parent's control and discipline and, finally, to assess the quality of the children's relationship with one another.

To gather a sense of how the family lives and to discern whether or not the children are oriented to the house, the investigator usually asks the children to show him around. Approximately one-half hour is spent alone with the children, the younger children in a group and the older children individually. It is important that this interview take place on the child's turf, usually in his bedroom or in the yard. He is asked about daily routine in the home, in the school and while in the care of the

babysitter. He is encouraged to express his own perceptions of the conflict in the home and how it effects him. The investigator will ask how he thinks his parents and siblings are doing and what he thinks of changes in the family: i.e., new members and new routines. The most important source of information is the investigator's experience with the family; i.e., what the members do and say, how they act in one another's presence and how they deal with the incidents of daily life. All children over three years of age are interviewed and the thoughts and fears that those too young and inarticulate to express themselves are inferred from drawings they make and games they play at the suggestion of the investigator. Custody and access issues are addressed directly only to older children. Younger children are not asked which parent they prefer because that question forces them to make a choice they often don't wish to make. Furthermore, they may well give an answer today that is different from the answer they would have given yesterday or might give tomorrow.

The investigator then sets about interpreting all the information gathered in an attempt to develop an accurate assessment of the family's condition and to recommend to the Court a living arrangement that will best meet the children's physical and emotional needs and yet preserve and enhance the child's relationship with each parent. At this point, parents are sometimes interviewed again, separately or together, to confirm assessment, to confront some issues, to observe open-mindedness and readiness to change or to clarify some points that remain ambiguous. The investigator will express his opinion to the parents and reveal his recommendations, hoping that it will have some therapeutic value in terms of feedback on their parenting skills and weaknesses and pointing out to them how their behaviour is contributing to the child's difficulty.

The report is then written, a copy sent to the parents' lawyers and a copy placed on the Court file. A typical example of this report is attached as appendix V.

What appears to be a most useful adjunct to the decision-making process in custody cases is not without its critics. The Saskatchewan Law Reform Commission sounded a warning in a 1980 report:

"The use of investigation and assessment is a valuable adjunct to established procedures to permit the judge to adequately protect the interests of children in custody disputes. In principle, investigation and assessment can be compatible with a procedural system which adequately protects the rights of litigants, but there is a danger that a court with power to order investigations and assessments may come to rely too heavily on its own witnesses, undermining what is of value in the established procedural framework.

While critics doubt the fact-gathering capacity of the adversary system in custody matters, in some contexts it is probably more effective than a system based on investigations ordered by the court. The evidence before the court in purely adversarial proceedings is limited to what the parties seek to introduce in their own interests, but the system does make it likely that no relevant and admissible evidence which may be of benefit to either party is overlooked. Neither judge nor investigator is apt to have the same concern for thoroughness in particular cases as the parties and their counsel. The unfortunate results which could follow are obvious. For example, in a recent child protection hearing in Ontario, a child was returned to its parents, only to die as a result of child abuse within a week. The judge frankly admitted that he had relied on the evidence of a social worker who recommended return of the child to its parents; the social worker found that, faced with a heavy caseload, she had not adequately

reviewed the case before testifying. In addition, any curtailment of the rights of the parties to make their cases as fully as the resources at their command permit is apt to lead to over-reliance on experts. Henry H. Foster, Jr. in a perceptive article on alternatives to the adversarial process indicates the way in which over-reliance on expert testimony led to a custody order which proved disastrous in practice. He comments that:

The major reason is the process was not truly an adversary one. Counsel for both mother and father deferred to the experts. Instead of a contest the proceeding resembled a seminar. Cross-examination was minimal. Significant facts and circumstances were never developed. . . . The same sort of contamination of the adversary process occurred in the famous case of *Painter v. Bannister*. There Dr. Glen R. Hawkes, a child psychologist, was the only expert witness appearing in the case. Dr. Hawkes and I were later on a panel which discussed *Painter vs. Bannister*. . . . There was no meaningful cross-examination, Dr. Hawkes was permitted to ramble, and as he put it, he had said "many things I had not intended to say", and engaged in a free-wheeling discussion and a lot of conjecture.

It should be noted that Mr. Foster does not attempt to attack the value of expert witnesses in custody proceedings. But experts are not infallible, and may appear to the court to speak authoritatively on questions about which there is no consensus in their profession. As Mr. Foster notes:

The impartiality of most experts is also in doubt. My good friend, Dr. Milton Helpert, says there is no such thing as an "impartial expert". . . . Even a court's so-called "impartial expert", who is said to be "draped with the mantle of infallibility" is bound to have a personal bias, and when the question asked calls for a political or social judgment or conclusion . . . usually the expert answers on the basis of a private rather than an expert opinion.²¹

(21 "Trial of Custody Issues and Alternatives to the Adversary Process", in Baxter and Eberts, *The Child and the Courts*, Toronto 1968.)

There is a place for court-ordered investigations and assessments in the trial of custody issues, but care must be taken to ensure that the use of investigators and experts does not undermine rules of procedure and evidence designed to permit the parties to test all the evidence on which the decision will be based through cross-examination and the testimony of their own witnesses. From that point of view, such procedures as the informal use of assessment services adopted in the Hamilton Unified Family Court should be avoided. In that Court, a report delivered to the judge may be read by the judge, but not placed in evidence or parts of the report withheld from evidence. Such a practice denies the parties an opportunity to effectively make their cases. The court should not have access to investigative reports or other material not in evidence and subject to cross-examination. The rules of evidence should be observed in all cases in which a custody dispute comes to a trial of the issue. Such a requirement is necessary not only to protect the rights of the parties, but also to ensure that evidence contained in investigative reports and assessments is thoroughly scrutinized in the proceedings. Reliance on evidence not available to the parties, and not subject to cross-examination invites capricious and uncritical decision-making.

The usual powers to control evidence in the Hamilton Family Court appear to have been adopted for two reasons. First, permitting the judge to determine what portions of investigative reports should be available to the parties allows him to act as a sort of filter, preventing irrelevant or highly prejudicial evidence of little value from being received in the proceedings. Such an approach, it is argued, avoids consideration of evidence which would encourage unproductive conflict between the parties. That goal was achieved in the Edmonton Family Court by appointment of an *amicus curiae*, a lawyer to whom the investigators report in the first instance. He can filter the evidence and determine how much of it should be introduced in the child's interests. The

Commission doubts, however, whether any filter is required. Professionals called upon to prepare investigative reports for the court should be left to determine what is necessary to make an assessment which will be of value to the court. Support personnel should be expected to give careful attention to the format and contents of reports intended for use in the court. If the support service personnel approach their task with an understanding of the role of the reports they prepare in court proceedings, there should be little substantial danger that they will be unable to control the contents of reports to meet the court's needs. Practice in the Saskatoon Court supports this conclusion. Reports prepared for that court are filed with court without any preliminary procedure. Court counsellors have spent considerable effort developing a standard format for the report which focuses attention on the custody guidelines contained in *The Infants Act*, and the needs of the court."

Despite the concerns expressed, the Commission recommended:

1. The court should have jurisdiction to direct that an investigation and assessment be undertaken for the court by child care professionals, including social workers, psychiatrists, and psychologists designated by the court.
- 2 (a) Evidence of child care professionals undertaking an investigation and assessment for the court should be admissible by way of written report available to the parties at a reasonable time prior to its admission as evidence.

(b) The person who prepares a report for the court should be available for cross-examination on the report on the motion of counsel.

(c) Reports of child care professionals designated by the court should be admissible without proof of the qualifications of the maker of the report, unless counsel raises the issue of qualification upon cross-examination.

A second problem relates to the status of the investigator's written report as evidence. Although rule 25 of the Saskatchewan Unified Family Court Rules provides that the Court "may receive evidence resulting from the investigation" and that "the person making such an investigation shall file a report of the investigation", there is no legislative provision that makes the report itself admissible evidence in the same manner as written reports of duly qualified medical practitioners are admissible "without proof of qualification" under section 32 of *The Saskatchewan Evidence Act*. The Law Reform Commission recommended that an analogous mechanism be adopted to permit introduction of reports prepared by social workers, psychologists, other childcare professionals and psychiatrists in custody matters. To date, no legislative action has resulted. Failing legislative action, the Court of Appeal may one day be called upon to address the problem.

The position is not so unclear in Ontario. Section 28(4) of *The Child Welfare Act*, R.S.O. 1980, c. 66, gives the court, in child protection proceedings, a mandate to "consider . . . any statement or report whether oral or written . . . that the Court may consider relevant to such consideration . . .". Yet in *CCAS, Metro Toronto v. T.* (1984) 46 C.P.C. 34, Nasmith, J. of the Ontario Provincial Court, after recognizing "a trend toward a relatively liberal view about admitting evidence in cases involving child welfare rather than excluding it for technical reasons or in borderline situations . . ." refused admission of a social worker's affidavit, intended to streamline his evidence, because such admission might permit hearsay. A similar reluctance to violate the hearsay rule was demonstrated by the Manitoba Court of Appeal in *Jandrisch v. Jandrisch*, 16 R.F.L. (2d) 239, when it refused to admit part of a social worker's home study report.

Furthermore, admission of a custody report may be resisted

on the ground that it is nothing more than an opinion of someone not qualified as an expert. Traditionally, under the common law, with the sole exception of expert testimony, opinions by witnesses are not admissible. Qualifying a social worker as an "expert witness" is not without difficulty. When the witness to be qualified is a medical doctor, it is not difficult to deem him qualified without an inquiry since all persons who are permitted to practice medicine have clear and established qualifications. The same cannot be said for social workers. Determining whether or not a person who works as a social worker has adequate qualifications to be qualified as an expert witness, may be difficult. Therefore, the Law Reform Commission has called upon the Legislature to provide that where no application is made to require the maker of a custody report to be called as a witness, the report will be accepted in evidence without proof of qualification.

The expert witness problem was side-stepped cleverly by Collins, J. in *Hamilton v. Hamilton*, (1983) 50 B.C.L.R. 104 who concluded that a court-appointed investigator under *The Family Relations Act*, R.S.B.C. 1979, is not an expert witness but, instead, has a unique status:

"In my view, the attempt to characterize Ms. Karnouk as either an 'expert' or an 'ordinary' witness, with the implication that she would thereafter be constrained by the evidentiary limitations of one or the other accepted class, is misguided. It is true that, historically, witnesses have been so divided but that does not prevent the statute from introducing a new type which does not fit within either category"

I am prepared to accept hearsay from a Family Court counsellor, because I do not see how she could report the results of her investigation to the court under s. 15(2) without getting into it."

The same attitude was demonstrated by Cameron, J. of the Newfoundland Unified Family Court in *Ammon v. Ammon* (1984), 47 N.F.L.D. and P.E.I.R. 176, who, after admitting into evidence a written custody report, said:

"... By the very nature of such inquiries one must expect that hearsay evidence will be tendered or used to form opinions. The weight to be given such reports is to be determined by the judge having regard to the source of such information and the nature of the allegation."

CONCLUSIONS:

Despite the concern of some counsel and some judges about evidentiary problems, custody investigations have performed a very useful role in the resolution of conflict. Some practitioners in the Unified Family Court in Saskatoon regard the process of investigation as more important than the result. That conclusion seems supported by the fact that approximately 90% of custody disputes referred to an investigator are resolved by agreement rather than by judicial decree.



Saskatchewan
Social Services

Unified Family Court

Saskatchewan

224 4th Avenue South
Saskatoon, Canada
S7K 5M5

APPENDIX 1

Dear

RE: Yourself vs.
Custody/Access Investigation Ordered On
U.F.C. No. _____

This is to confirm that we have received the order of The Honourable Justice _____ to do a custody/access investigation in this matter. We have placed your case on our waiting list and will be assigning it for investigation in due course.

In the meantime, I would like to invite you to attend at our office to talk about the nature of the custody/access investigation process and the alternative of mediating your dispute. If you decide to mediate your dispute, the process could start almost immediately.

I have arranged for a time to see you on _____, 19____, at _____ at my office. If this is not a convenient time for you, could you please call me to arrange a more suitable time. I have enclosed my card.

Should you have any questions, please feel free to contact me.

Sincerely,

Counsellor

/vb
Enclosure
cc

Saskatchewan



Saskatchewan
Social Services

Unified Family Court

224 4th Avenue South
Saskatoon, Canada
S7K 5M5

APPENDIX II

Dear

As you know a custody/access investigation was ordered by this Court on _____, regarding your child(ren) _____

I am writing to advise that I have been requested to complete this investigation and that I am ready to proceed.

Would you please contact me at your earliest convenience to arrange for an interview. (My card is enclosed.) I have enclosed a Personal Information questionnaire regarding you and your family. I would ask that you fill in the form and bring it with you to your first appointment.

Thank you.

Sincerely,

Counsellor

Enclosures
cc

PERSONAL INFORMATION

I. INFORMATION ON YOURSELF

Name: _____

Your Present Address: _____

Telephone: Home - _____ ; Work - _____

Name and Address of Place of Employment _____

Educational Background: _____

Present Profession, Trade or Occupation: _____

Religion: _____ Date of Birth: _____

Location of Birth: _____

Your Parents

Mother (if living)

Name: _____

Address: _____

Age: _____

Father (if living)

Name: _____

Address: _____

Age: _____

Your Brothers and Sisters

| Name | Age | Address |
|-------|-------|---------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

II. INFORMATION ON YOUR CURRENT SPOUSE OR COMMON-LAW PARTNER
(Fill in this section only if it applies to you)

Name: _____
Address: _____

Telephone: Home - _____; Work - _____

Name and Address of Place of Employment: _____

Educational Background: _____

Present Profession, Trade or Occupation: _____

Religion: _____ Date of Birth: _____

Location of Birth: _____

Circumstances under which you met this present spouse or common-law partner:

Length of Your Courtship: _____

Date of Your Marriage/Common-Law Union: _____

Does Your Spouse or Common-Law Partner have children from previous relationships?

| Names | Ages | Location |
|-------|-------|----------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

III. YOUR PREVIOUS RELATIONSHIPS

A. Name of Parent of child/ren involved in the custody and/or access dispute:

Circumstances under which you met the parent of the child/ren involved in the custody/access dispute: _____

Length of Courtship With Parent: _____

Date of Marriage or Common-Law Union With Parent of child/ren Involved in this dispute: _____

Residential Addresses While Married to or Living With the Parent of Child whose custody and/or access is being disputed:

- 1) _____
- 2) _____
- 3) _____

Separation from the parent of the child/ren involved in this dispute:
(List all separations that have occurred in your relationship with the parent of the child/ren involved in this dispute — Please indicate dates and duration).

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____
- 6) _____

B. Other Marriage(s) or Common-law Unions: (to whom and dates)

- 1) _____
- 2) _____

III. CHILDREN

Children Involved in the Custody and/or Access Dispute:

| <u>Name</u> | <u>Date of Birth</u> | <u>School Attended & Grade</u> | <u>Name of Teacher</u> |
|-------------|----------------------|------------------------------------|------------------------|
| 1) _____ | _____ | _____ | _____ |
| 2) _____ | _____ | _____ | _____ |
| 3) _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |
| 6) _____ | _____ | _____ | _____ |

Children of Other Relationships (please specify which relationship)

| <u>Name</u> | <u>Date of Birth</u> | <u>Relationship</u> |
|-------------|----------------------|---------------------|
| 1) _____ | _____ | _____ |
| 2) _____ | _____ | _____ |
| 3) _____ | _____ | _____ |
| 4) _____ | _____ | _____ |
| 5) _____ | _____ | _____ |



AUTHORIZATION FOR RELEASE OF INFORMATION

TO WHOM IT MAY CONCERN:

RE: _____ vs. _____
Custody/Access Investigation
Ordered by a Judge of the Unified Family Court

I, the undersigned, hereby consent to the release by you, of any information concerning myself, that may be in your possession to the Counselling department of the Unified Family Court.

I understand that this information may be used by the investigator in formulating recommendations to the Court concerning custody of, and/or access to my child(ren).

It is further acknowledged that a photocopy of this release shall be sufficient evidence of the contents of the of the original and shall be binding as against myself.

Witness: _____

Signed: _____

DATE: _____

CUSTODY REPORT

Unified Family Court No. [REDACTED] of 19[REDACTED]

NAME OF MOTHER

P [REDACTED] [REDACTED] E [REDACTED]

Address: 527 C [REDACTED] Way, Saskatoon

Telephone: [REDACTED]

Occupation: Dietitian, Director of Food Services
at [REDACTED]Education: Bachelor of Science,
Human Ecology
Professional Dietitian

Birthplace: Dauphin, Manitoba

Date of Birth: May 31, 1953

Religion: Roman Catholic

NAME OF FATHER

W [REDACTED] D [REDACTED] E [REDACTED]

Address: 905 [REDACTED] Street [REDACTED], Saskatoon

Telephone: [REDACTED]

Occupation: Pedologist, Agriculture
Canada, [REDACTED]
Soil Survey UnitEducation: Bachelor of Science, Agriculture
University of Manitoba, 19[REDACTED]Master of Science, University
of Saskatchewan, 19[REDACTED]

Birthplace: Virden, Manitoba

Date of Birth: December 25, 1951

Religion: Roman Catholic

CHILDREN

- 1) K [REDACTED] D [REDACTED] E [REDACTED], d.o.b. May 29, 1977. With mother in Saskatoon and attending grade 1 at [REDACTED] Elementary School.
- 2) D [REDACTED] W [REDACTED] E [REDACTED], d.o.b. October 13, 1978. With mother in Saskatoon and attending kindergarten at [REDACTED] Elementary School.

NOTE: Effective September 16, 1983, the children will be residing with their mother in Dauphin, Manitoba.

SOURCES OF INFORMATION

- 1) P [REDACTED] E [REDACTED]: 3 individual office interviews; 1 home visit.
- 2) W [REDACTED] E [REDACTED]: 3 individual office interviews; 1 home visit.
- 3) K [REDACTED] E [REDACTED]: 1 visit in mother's home; 1 visit in father's home.
- 4) D [REDACTED] E [REDACTED]: 1 visit in mother's home; 1 visit in father's home.
- 5) G [REDACTED] M [REDACTED], friend of the E [REDACTED] family: 1 telephone conversation.
- 6) G [REDACTED] H [REDACTED], P [REDACTED]'s friend and co-worker: 1 telephone conversation.
- 7) A [REDACTED] V [REDACTED], P [REDACTED]'s friend and co-worker: 1 telephone conversation.
- 8) D [REDACTED] A [REDACTED], W [REDACTED]'s friend and work supervisor: 1 telephone conversation.
- 9) S [REDACTED] A [REDACTED], W [REDACTED]'s friend: 1 telephone conversation.
- 10) T [REDACTED] M [REDACTED], long-time friend of the E [REDACTED] family: 1 telephone conversation.
- 11) M [REDACTED] S [REDACTED], K [REDACTED] and D [REDACTED]'s babysitter: 1 telephone conversation.
- 12) Dr. E. A. H. L [REDACTED], Family Physician: 1 telephone conversation.
- 13) Mrs. O [REDACTED], K [REDACTED]'s kindergarten teacher last year: 1 telephone conversation.

BACKGROUND INFORMATION

P [REDACTED] and W [REDACTED] met at University in 1973. They courted for 10 months, and were married by mutual consent in August of 1974. This was the first marriage for both of them.

for the marriage. He sought personal counselling at the Catholic Family Service Bureau for personal issues related to the breakdown of the marriage. W█████ maintains that his intent was and has always been to reconcile with P█████. P█████ and the children remained living in the matrimonial home, and P█████ continued to work as the Director of Food Services at the ██████████.

Since the separation, W█████'s access to the children has remained a contentious issue between he and P█████. P█████ contends that W█████ does not adequately care for or supervise the children, as she claims that they have been sick when they returned from visits with W█████ as he is negligent in attending them, and that on one occasion, D█████ had a minor injury and W█████ did not inform her of this. Communications between the parents have remained strained and difficult, and animosity has arisen between them when trying to discuss planning for the children. Additionally, P█████ feels that at least initially, W█████'s personal activities took precedence over his involvement with the children, but that more recently, this is changing and he is doing more with them. P█████ states that she has attempted to accommodate W█████'s visits by planning and preparing the children, but that W█████ is inconsiderate by not informing her ahead of time of his changing plans not to see the children for a scheduled visit due to a personal or work commitment.

W█████ refutes P█████'s claims of his inadequate care of the children. He states that their illnesses have been coincidental during his visits with them. Further, he claims that he is actively involved with the children during visits, and that soon after the separation, W█████'s limited access to the children was imposed by P█████, as they did not have a formal agreement between them regarding access. For approximately seven months subsequent to the separation, W█████'s access to the children included one day each weekend, alternating Saturday or Sunday from 9:00 a.m. to 10:00 p.m. This schedule was set out by P█████, and W█████ agreed so as not to increase conflict between them. During the summer of 1982, this schedule became unacceptable to W█████. P█████ and W█████ attended counselling services with S█████ D█████, a former counsellor at the ██████████, and W█████'s access was increased to include every other weekend from Friday at 5:30 p.m. to Sunday at 7:00 p.m., with W█████ being responsible for transporting the children to and from visits. W█████ has regularly visited on this schedule, and has periodically increased the length of the visits coinciding with special occasions.

CURRENT SITUATION

P [redacted] and the children continue living in the matrimonial home. She has supported herself and the children, and has continued to maintain the mortgage payment on the home through income from her job. P [redacted] is a dietitian and works fulltime at the [redacted] as the director of Food Services. Additionally, in order to maintain herself and her children, she has taken part-time seasonal work. This additional work includes teaching cooking classes for the [redacted], one six-week session in each the spring and fall, totalling 12 nights, 2½ hours each night. She also works periodically at the [redacted] for one week in the fall teaching a Cooking Skills class. P [redacted] states that she has a babysitter who comes to the home to accommodate caring for the children when she teaches night classes.

The family home is a three-bedroom bungalow that is clean, well-organized and comfortably furnished. The children have their own bedrooms which are comfortably furnished and equipped with their toys and belongings.

Effective September 16, 1983, however, P [redacted] plans to move to Dauphin, Manitoba, as she has accepted a position as director of Dietary Services with the Dauphin General Hospital. P [redacted] states that the income for the new job will be a substantial increase, and that she will not need several jobs in order to maintain herself and the children. She has plans to purchase a home in Dauphin, Manitoba. At present, she has enlisted the assistance of her parents who live a short distance from Dauphin in Pine River to find her accommodation until she purchases a home.

[redacted] is not involved in any other relationship at this time.

W [redacted] has continued to work as a pedologist for Agriculture Canada in the Soil Surveys Department at [redacted]. He maintains his field work schedule out of Saskatoon during the week throughout the summer months, but is in town during fall through spring. He states that there is a possibility to negotiate his travelling so that he may work only in the city. In July of this year, W [redacted] purchased a two-bedroom bungalow in Saskatoon. The home is clean, well-organized and sparsely furnished with used, but functional furniture. The children do not have bedroom furniture, although W [redacted] plans to purchase bunk beds for them. At the moment, they sleep in W [redacted]'s bed, and he uses a hide-a-bed.

W [redacted] has not established another relationship at this time, and he lives alone.

The children have continued to see their father every other weekend from Friday at 5:30 p.m. to Sunday at 7:00 p.m. They appear to be coping well with their parents' separation, and they look forward to seeing their father for visits. Generally, they seem to have adjusted quite well to their parents' separation, and have not demonstrated any specific behavioral or emotional changes.

RELATIONSHIPS

P [REDACTED] and W [REDACTED]

P [REDACTED] and W [REDACTED] have been separated for 19 months, and the two are at very different stages of resolution with respect to their separation. P [REDACTED] continues to feel anger and mistrust of W [REDACTED], and this is primarily related to her issue that he does not inform her of his re-scheduling visits or other incidents involving the children when they are with him during visits. She contends that she is responsible to make decisions on her own without information from W [REDACTED], and feels blamed by him for resulting conflicts between them. Additionally, she believes that she is over-accommodating to assist W [REDACTED] regarding visits with the children, and he does not reciprocate with basic considerations or recognition of her efforts. P [REDACTED] feels further antagonized by W [REDACTED] for such things as returning the childrens' soiled clothing after visits without having washed them.

W [REDACTED] has been deeply hurt by the separation and very much desired to have reconciled with P [REDACTED], but does not have much hope that this will happen. Essentially, W [REDACTED] feels that P [REDACTED]'s issues with their marriage were reason enough for a trial separation, which incidently he felt would be good for their marriage, but not good enough for a permanent separation. W [REDACTED] feels that there is considerable confusion between them about their expectations of the marriage. He believes that he may have embittered P [REDACTED] against him after the separation when he talked to P [REDACTED]'s friends about clarifying their marital problems and respective positions.

It is clear that P [REDACTED] has been emotionally separating from W [REDACTED] for some time, and is much more resolved about the end of the relationship than is W [REDACTED]. Although W [REDACTED] continues to struggle and accept that the marriage is over, he is beginning to gain more perspective on his circumstances and is beginning to reorganize his life. P [REDACTED] is more structured and settled about the separation. Their relationship remains strained, and communication between them is very poor as a result of hurt, disappointed and unresolved feelings. Unfortunately, discussion between them is kept to a minimum to avoid conflict, but this has the undesirable result of misunderstandings which in turn affects the children in a negative way. That is, the children are aware and saddened by the ongoing tension between their parents.

P [redacted] and the Children

P [redacted] and the children have a very positive relationship. The children are very comfortable and relaxed with their mom. They approach her freely and easily and P [redacted] is appropriately responsive to them. While with their mother, the children speak freely and easily about their dad without any fear of reprimand from her. Mother and children talked about enjoyable experiences together that reflect P [redacted]'s active involvement in all areas of the children's lives. She has control over the children, and they are appropriately respectful of her.

None of the reference people contacted expressed any concerns about P [redacted] as a mother. She is perceived as a responsible, caring and concerned parent. Her children are a top priority to her, and she was perceived as adequately attending to all of the children's emotional and physical needs. References who know P [redacted] and the children well state that she has been sensitive, understanding, and has actively assisted the children with their adjustment to the marital separation. P [redacted] was perceived by co-workers to be a reliable, stable employee.

W [redacted] and the Children

W [redacted] and the children have a positive relationship. The children appeared equally comfortable in W [redacted]'s home as they did in their mother's home. The children engaged their father easily and W [redacted] demonstrated a parental bond with his children. The children shared enjoyable times spent with their father in a way that reflected the importance of their contact with him. It was interesting that while W [redacted] was responsive to both children, D [redacted] demanded his attention through considerable physical contact. In part, this is related to the separation, and W [redacted]'s diminished availability to the children, but in my view, more attributed to the difference in social skill level of the two children. That is, K [redacted]'s dominant nature overshadows Dan's more passive presentation, resulting in K [redacted] more readily being attended by adults, and in this case, her father. While this behavior was exhibited to an extent in P [redacted]'s home, she ([redacted]) controlled this dynamic more equitably. W [redacted] has an awareness of the children's need levels, but could be more active in controlling this behavior for future considerations, vis a vis, W [redacted] continuing to develop and maintain strong, secure relationships with both children.

References who know W [redacted] and the children reported that during the marriage, W [redacted] was not as involved with the children as P [redacted]. References felt, however, that W [redacted] was a good father to his children, and the children expressed positive anticipation of seeing their father for visits, and that since the

separation, W [redacted] has drawn closer to and has become more involved with the children. Generally, he was perceived as a patient, concerned and caring parent by those who know him well. One reference who has often seen W [redacted] with the children since the separation felt that the children were competitive for his attention.

W [redacted] was perceived by his supervisor as a stable, conscientious, and responsible employee.

The Children with Each Other

The E [redacted] children get along quite well together, although there is some competition between them for parental attention. K [redacted] is generally more gregarious and open and has good social skills that enable her to meet her needs. Her stronger character dominates her younger brother that in some instances provides potential for rivalry between them, particularly if D [redacted] is vulnerable and feeling the need for recognition by significant people around him. Most remarkably, K [redacted]'s nature is exemplified by her tendency to speak for D [redacted] when questions have been directed to her brother. D [redacted] requires more individualized attention in order to balance the inequitable nature of the children's personalities.

These youngsters were described by references as generally healthy, well-behaved and well-adjusted children.

THE CHILDREN

K [redacted]

K [redacted] is an attractive, out-going girl who is now six years old. K [redacted] is a friendly girl who established a rapport quickly and easily with the interviewer. She openly shared her thoughts and feelings about her family situation.

The teacher who taught K [redacted] in kindergarten last year states that K [redacted] made a positive adjustment to the school. She was seen as a happy child who was always regular and prompt to school. K [redacted] did well in her work, and she developed and maintained many positive peer relationships. She was always neat and clean in appearance, and comported herself appropriately in class. K [redacted] did not talk about her family problems with the teacher, and reportedly, she did not exhibit any remarkable emotional or behavioral changes in class throughout the year.

The teacher reported that both parents were actively involved in school-related activities, for example, parent-teacher interviews. K is expected to do well in grade 1 this year.

Developmentally, K is a typical girl for her age. She enjoys appropriate interests and activities with peers and her parents. K has a leadership character. She is a bright, verbal child with good language and comprehension skills.

While she is coping with her parents' separation, she continues to be troubled with them being apart. She has a rudimentary understanding of her parents' separation inasmuch as she knows that her parents were unhappy, sometimes fighting and could not get along. While she says that she knows that it is unlikely that her parents would get back together, she does not see why her dad needs his own house as "mom's house is big enough for him". Her three fantasy wishes about her family reflect her troubles and those most commonly expressed by children of separated families. That is, her first wish was that her father would return home, her second wish that everyone would get along better, especially her mother and father, and her third wish was that she could see her dad more often.

Generally, K has adjusted well to her parents' separation, and this process has been enabled by maintaining positive contact with both parents, as well as by mother's honest and appropriate responses to K's questioning of the family situation. There is also evidence that mother has fostered and encouraged the relationship between the children and their father. Father has responded appropriately to engage K in a way that reassures her of his ongoing presence and involvement with her.

K is a healthy child as revealed by regular medical check-ups with Dr. .

D

D is a good-looking boy who will be five years old in October. He is a big boy for his age, and as a result of his size, there is potential for him to be treated as more mature than his years. Both parents are aware of the potential for frustrating situations for D.

D is a more reserved child, and much less easily engaged than his sister, especially in a group setting. That is, he responds more easily on a one-to-one basis. This is particularly significant for the parents to know and continue to respond to, given the stress of the separation and the difference between the two children's personalities.

D■ is the most troubled of the two children in regard to his parents' separation. In short, he tries not to think about the family situation, as this is reflected in his thoughts and feelings which were not as accessible as were K■'s. It has been noted that at times, D■ is "wondering or troubled", but does not share his thoughts in a direct way. He covers up his feelings as protection of feeling hurt and reportedly gives answers out of anger and frustration that reflect his true feelings about his family. There are several indicators that suggest D■'s troubles, and the fact that he misses his dad. Emotional and behavioral changes have been noted prior to visits with his father where D■ becomes more quiet and lethargic, as well as his resulting anger when he does not visit with his dad during the week. In the context of D■'s experience, it is my belief that he is painfully reminded of his parents' separation and the short time that he has with his father that causes him the obvious trouble. Further, he is reportedly more enthusiastic and enjoys spending more time with his father on extended visits. Dan needs more individualized attention for security and reassurance, especially from his dad.

Like his sister, D■ does not feel that his parents will get back together, and he relies on his mother's explanations to cope and understand the family circumstances.

D■ is a typical child in terms of his interests and activities. His language skills are good for a boy of his age when he chooses to express himself. His speech is characterized by a lisp, and it may be indicated that the parents could consult a speech pathologist in order to assist D■ with controlling his impediment.

Generally, D■ is a healthy boy with the exception of allergies related to a sensitivity to food additives. His condition has been specifically diagnosed most recently, and the problem is now controlled by diet. A well-controlled diet eliminates the chemical and dyes found in processed food from "fast" food outlets. D■ reacts to his allergies with headaches, vomiting and swelling.

D■ is beginning kindergarten this fall.

D■'s babysitter reports that he is a happy, well-behaved and active youngster. She did not have any specific concerns about D■.

FUTURE PLANS AND POSITION OF EACH PARENT

Until recently, P [REDACTED] had planned to remain living in the matrimonial home in Saskatoon. However, she received a job offer with the Dauphin General Hospital in Manitoba to take the position of director of Dietetics. She had made several job applications in an effort to secure employment that would increase her income and allow her to spend more time with the children. After considerations of the effect of the move on the family, she decided to take the job in Dauphin and to move there on or about September 16, 1983. She has been in contact with the school regarding enrolling the children, and has plans to purchase a home in Dauphin. She has relatives nearby to assist her with relocation. In addition, maternal and paternal grandparents are accessible, as Dauphin is a short distance from P [REDACTED]'s family, and a half-day drive from W [REDACTED]'s family.

P [REDACTED] feels that she has been adequately providing for the children's emotional and physical needs since the separation. She maintains that she has been primarily responsible in raising the children throughout the marriage and subsequent to the separation, and she sees no reason why that should change.

P [REDACTED] has concerns about W [REDACTED]'s capabilities in caring for the children related to poor supervision, not anticipating the children's needs, and poor nutrition related to taking the children to fast food restaurants, which she feels provides poor nutritional food, and also affects D [REDACTED]'s allergies. In general, she doubts that W [REDACTED] is capable of meeting the children's needs on an ongoing basis.

If P [REDACTED] is awarded permanent custody of the children, she states that she would participate in W [REDACTED]'s access, as she intends to travel to Saskatoon every other month, and would transport the children to his home for the weekend. She feels that W [REDACTED]'s access should continue every other weekend, if he is willing to drive to Dauphin. Additionally, P [REDACTED] feels that Christmas and Easter visits with the children should alternate between the parents, and that W [REDACTED] could see the children during the summer when his holidays would permit.

W [REDACTED]

W [REDACTED] states that he will continue living in the two-bedroom home that he has purchased in Saskatoon. He plans to continue working fulltime in a permanent position with Agriculture Canada in the Soil Surveys Section at [REDACTED]. He states that he works 8:30 a.m. to 5:30 p.m., but that his hours are flexible, and that while he will continue to do some travelling, it will not be as often as in the past. That is, from May to September, he may spend approximately five weeks of Monday to Thursday out of town.

W [REDACTED]'s position regarding custody of the children is related to his concern that he does not see his children as often as he would like because of the conflicts between he and P [REDACTED]. Warren reacts to P [REDACTED]'s innuendo that he does not care adequately for the children during visits, and he fears that this reinforces a negative message to the children that they should not spend time with him. Further, W [REDACTED] is concerned that P [REDACTED] does not spend enough time with the children, as she has other work commitments outside of her job at [REDACTED]. W [REDACTED] states that if the children were in his custody, that there would be less tension between he and P [REDACTED], and that he would have more input into the children's lives than he has now. W [REDACTED] qualifies the above statement saying that he does not question P [REDACTED]'s decisions regarding the children, but would like more involvement as he feels totally excluded from decisions now.

W [REDACTED] states that if he was awarded permanent custody of the children, that he would arrange for a permanent babysitter during the times when he was out of town, as well as to care for the children after school until he arrives home from work. W [REDACTED] feels that if the children were in his custody, that P [REDACTED]'s access to the children would include every other weekend and times during the week as negotiated between them. He feels that Christmas and Easter visits should alternate between the parents, and that P [REDACTED]'s access to the children in the summer would include as much time as her holidays permit.

INFORMATION FROM REFERENCES

Generally, references had no concerns about the parenting capabilities of either parent. Those references who know the F [REDACTED] family well, state that since the separation, W [REDACTED]'s involvement with the children has increased, and that he is more active and involved with them. The children were generally seen as well-adjusted, and several references felt that their adjustments were largely the result of P [REDACTED]'s efforts to explain and attend their needs around the separation.

ASSESSMENT AND RECOMMENDATIONS

- 1) Since the marital separation, P [REDACTED] has had custody of the children, and W [REDACTED] has maintained regular access. The children's physical and emotional needs have been adequately met, and parental efforts have assisted the children with their adjustment to the family breakdown.
- 2) Ongoing tension and conflict between the parents is a result of different stages of resolution about the end of the marriage, as well as residual disappointments and injustices suffered during the relationship. Primarily, poor communication and misunderstandings between the parents continue to be the source of access problems.

P [REDACTED] has been emotionally separating from W [REDACTED] for some time, and is more resolved about the end of the marriage. W [REDACTED] continues to feel hurt and has very much wished to reconcile with P [REDACTED]. He is realizing that this is not likely going to happen, and he is beginning to reorganize his life.
- 3) The children are very bright, generally healthy youngsters who are coping with their parents' separation. Both children miss their father, and their concern about seeing him infrequently will likely become more acute with P [REDACTED] and the children's relocation to Dauphin, Manitoba. The children maintain positive relationships with both their parents.
- 4) P [REDACTED] is the parent who has maintained the most constant presence in the children's lives in the past, and all references attest that she is a capable, competent mother. W [REDACTED]'s lack of involvement with the children in the past is primarily related to his job demands, particularly during the summer months. References who know the family well, however, report that W [REDACTED] was not as attentive to the children during the marriage as he could have been, and that the children were disappointed about that. With the separation, W [REDACTED] has become much more actively involved in the children's lives, and references regard him as a caring, concerned parent.

