

WHAT DO JUDGES WANT IN A SECTION 54 ASSESSMENT?

Justice Anne C. Trousdale

Speaking notes from presentation at “Celebrating Professor Nick Bala”

Kingston, Ontario May 8, 2009

Judges want an independent assessment by a neutral assessor who is independent of the Society and the parties, and who is perceived by all the parties to be independent.

Judges want an assessor who is an expert in these matters. We want to know the qualifications of the assessor, including their education, training, practical experience, areas of expertise, and their prior experience in doing assessments. Judges will not want the expert to overstep the bounds of his or her expertise.

Judges want to receive the history of the parents, the child and the family. But just the recitation of the history is not enough.

PARENTING CAPACITY

Judge’s want to know particularly about parenting capacity:

- (a) the parent’s ability to provide for the basic needs of the child;
- (b) the parents ability to grasp the subtleties of parenting;
- (c) what are the strengths of the parent? We need to be aware of the positive as well as the negative;
- (d) whether or not the child has any special needs; if so, the nature of the special needs, and what care or treatment is required. What special skills or attention is required by the child’s caregiver?
- (e) whether the parent has the ability, cognitively, and otherwise to provide for any special needs of the child; in that regard, what is the level of parenting required and does this parent have the required skills to adequately care for this particular child? If not, why not?
- (f) if the parent does not have the skills now, can the parent be coached to become an

adequate responsible parent for this child, or is it too little, too late?

(g) if the parent has the ability to learn the necessary skills, what are the recommendations for the parent to acquire these skills? What is the estimated time line that would be required to accomplish that?

(h) whether the Society has assisted the parent in obtaining the needed training? Are there community resources available that might have made a difference?

(i) what community supports does the parent have?

(j) is the parent receptive to being coached and to receiving advice and assistance?

(k) what is the prior parenting history of the parent, if any? How did the parent cope or not cope?

WHAT ARE THE RISK FACTORS AND HOW SEVERE ARE THEY?

(a) does the parent have a mental illness or a physical or cognitive problem?

(b) does the parent have a substance abuse problem?

(c) does the parent have an anger management problem?

(d) has there been domestic violence in the home or a history of domestic violence towards other partners or children?

(e) does the parent have a criminal record and if so, what for?

(f) is there neglect involved? If so, what is the cause of it?

RELATIONSHIP AND ATTACHMENT ISSUES

(a) what are the observations of the interactions between the parent and the child?

(b) what is the nature of the relationship between the parent and the child? Is there an attachment between the parent and the child?

(c) what are the views and preferences of the child?

(d) what would be the potential consequences of rupturing the relationship?

OTHER ISSUES

- (a) Judges will want to see that the assessor has seen each party on a number of occasions, has seen the child on several occasions, and has seen the child with the parents.
- (b) Judges want the assessor to corroborate the information received from the parent, not just accept the parent's self-report. Therefore, interviewing relevant collaterals such as doctor's, teachers, and viewing reports, etc is necessary.
- (c) Judges also want the assessor to interview other key parties in the family dynamic including new partners, involved grandparents and others.

DO JUDGES WANT A RECOMMENDATION?

One school of thought is that the assessment should not offer recommendations for disposition as that usurps the role of the Judge.

However, after talking with my judicial colleagues, the answer is a resounding yes! We want recommendations. That was also the finding in the Bala and Leschied report:

“While there is controversy in some of the professional literature, it is clear that judges and lawyers in Ontario generally expect and value recommendations from court-ordered assessors in child protection cases, though always emphasize that a court is never bound by the opinion of any assessor or any other witness.”

The recommendation of the assessor, therefore is not determinative. It is one more piece of the puzzle. The Judge will weigh the assessor's report with all the other evidence in coming to his or her own decision in the case. However, Judges do value the recommendations, as the assessor is trained to assess, and has the chance to see the child interact with the parent and vice versa, while the Judge will never have the chance to do so.

Judges don't want the assessor to be too polite and not give an honest appraisal of the situation. We need to hear from you what your expert opinion is and upon what facts you rely in coming to that opinion.