

SOCIAL WORK SERVICES

SOCIAL WORK SERVICES

Social workers with the Office of the Children's Lawyer, investigate and enquire into the wellbeing of children of separated or divorced parents. Their social work interventions have the goal of assisting the parties to resolve their disputes in a manner that is conducive to the children's welfare and in the children's interests. Social work interventions also allow children to have a voice in the proceedings which necessarily affect them and in the outcome of those proceedings. Should a written report result from an investigation, it is filed with the court to assist the judge to examine the circumstances affecting custody and access.

Not all cases will require a comprehensive approach; it is necessary to assess the needs of each family and provide the service that is most appropriate. Social work service may result in an issue focused report which provides a concise account of the information gathered and pertinent issues.

Social work service may also result in a settlement with or without a written report. Settlement may be an option when the parties demonstrate that they have managed to maintain some level of communication regarding the children despite their personal conflict. Settlement may also be an option when the parties demonstrate an ability to agree to settle their issues despite their conflict and are able with the assistance and direction of the Children's Lawyer's representative to resolve the dispute.

A. ASSESSMENT PROCESS

The following represents a comprehensive assessment format that is intended to serve as a guideline. During the course of their involvement, social workers will not necessarily address all of the issues identified in this section. Social workers are to limit their investigations and assessments to those areas which are relevant to the children's interests and to a resolution of the issues.

Issues to be assessed

In the course of an assessment the following issues are normally assessed:

- Family relationships between:
 - the parties and the children
 - the parties (including conflict maintenance behaviour)
 - the children themselves

- Conflict: Intensity and effect on the children
- Parenting strengths and weakness
- Current parenting arrangements
- Parenting plans proposed by the parties
- The children's needs and the parties' abilities to meet these needs
- The children's preferences with respect to parenting plans

The following suggestions are general guidelines for investigations and report writing. The content and limits of these guidelines will depend on the nature of each particular family situation.

1. Pre-Contact Phase

The social worker receives the assigned case, contacts the lawyers and clients by telephone or letter, and seeks clarification of any questions which arise from the referral regarding the scope of the assessment or other matters and arranges initial interviews.

2. Initial Party Interviews

The initial interview with each party is normally held in an office or at the party's home in private and has the following objectives:

- a) To set the tone for the assessment process; establishing initial rapport and eliciting the client's co-operation and acceptance of the process.
- b) To explain the assessment process, the time frame involved, and the social worker's role and responsibility to the court.
- c) To obtain necessary preliminary information.
- d) To explain the use of release forms and obtain signatures.
- e) To address the limits of confidentiality in the assessment process. Any information received during the process, including collateral information, is not confidential.

The content of the interview should include a clear explanation of the assessment process and the social worker's role and impartiality. When appropriate, the alternative of mediation should be addressed. The focus of the assessment on the children's needs is emphasized. The time frame of the assessment is given. The parties are advised that the social worker will observe the children in the company of each party (where possible, and, if necessary) and will be contacting other

significant care givers as well as professional collateral resources. The parties should understand that if a report is prepared, it will be filed with the court and will include recommendations. Any uncertainty about the focus of the

assessment, the issues. i.e. custody or access, or the social work and the court's role must be clarified.

Personal information is taken, as well as information regarding present household composition, child care arrangements, employment, and past and present marital and common-law relationships.

It is to be expected that there will be a high degree of conflict between the parties and serious allegations about the other party may be made. These allegations need to be explored fully with both sides during the course of the assessment so that the final report reflects a parallelism of approach which insures that equal weight or attention has been given. Parties are frequently unable to view the child's needs and concerns as separate from their own, or from the dispute itself. The social worker will constantly be balancing the objective assessment of the family situation with educative and counselling activities with the family.

The following may be used as a guideline to ascertain this information.

3. Background Information

a) Personal family history

- Age
- Date and place of birth
- Nuclear family configuration
- Life events and family functioning
- Family relationship patterns, past and current
- Education
- Employment history
- Health, if relevant
- Police record, if applicable

b) Marital History

- How the parties met
- Courtship
- How decision to marry or co-habit was reached
- What attracted them to each other
- Early stages of marriage, co-habitation and/or relationship problems and/or strengths
- External events, i.e., deaths in the family, work or career changes, financial problems, health problems, etc.
- Sharing of responsibilities in child care
- When problems in the relationship developed: what they were, why they occurred, what attempts were made to rectify the problems, how many children were involved in the marital problems, how in-laws were involved
- Counselling received
- Prior separations and reconciliations - lengths, dates and reasons
- Previous marriages
- Other children

4. Current Situation

- How the final separation occurred
- Who initiated - How did partner react
- Was it planned or impulsive
- Immediate arrangements made for children and reasons
- Nature of contact between parties after separation
- Nature of contact between parties and children
- Considerations of reconciliation
- How each party dealt with separation
- Children's reactions (See Children's Interviews)
- How the arrangements were maintained
- Amount of conflict between parties regarding the children
- Lawyer and court involvement
- Their experience with the legal and court systems
- Other changes in their lives since separation, e.g., career, family relationships, living arrangements

5. New Relationships

- History
- How they met, attraction, courtship, etc.
- Satisfaction, stability, future plans

- Relationships between the new step-parent and children
- Step-parent's involvement in child care and decision making
- Other children of step-parents, relationships with the children who are being assessed

6. Information about the Children

It is important that there be a discussion with the parties with respect to what the children have been told about the dispute and the assessment process. Here, as throughout the assessment, the social worker plays an educative role in terms of the children's need for reassurance, support regarding their relationships with both parties and honest, objective information about what is going on. Children should know that the judge has been asked to decide what is the best arrangement for them and how they will share time with each parent. They should be told that a social worker's role is to help the judge by getting to know the children and the parties and, perhaps, writing a report. It is important for parents to avoid blaming each other or telling the children what to say. Children need to know that they will not be asked to make the decision about with whom they will live but that their views and preferences are very important. Children do not usually appear in court.

Information about the children may include:

- Needs - general description of children's personalities
- Developmental history
- Interests and activities
- Children's health and medical history
- Any serious illnesses, accidents or diseases
- General physical condition
- Evidence of emotional difficulties
- Nature of difficulties
- Referrals to specialized services - results of children's academic history, grade level, behaviour attendance, learning problems
- Cleanliness, nutrition, bruises, contacts with school
- Copies of school reports, if available
- School contacts, names
- Children's reactions to discipline, rules
- Schedules and routines
- Conflicts with the law
- Peer relationships

- Relationships with siblings, each party, step-parent, extended family, step-siblings and half-siblings
- Knowledge and involvement in the custody or access issues
- How each child relates to each party
- The parents' understanding of the children's views and preferences with respect to custody/access issues
- Housing, number of moves since marriage, suitability of present housing
- Parenting plan changes.

7. Home Visits

Home visits offer the opportunity to observe parent-child interaction in a familiar setting. They provide a familiar and non-threatening setting in which to interview children. Allegations regarding inadequacy of physical environment can be assessed. Unanswered questions or ambiguity in information received from the parties during the office interview may be addressed.

During home visits children are observed in interaction with each party and, as much as possible, in the presence of other persons who normally reside in the home and have a significant role in the children's lives (new spouses, partners, step-siblings, grandparents). The optimal duration of a home visit is between one and a half and two hours.

Visits may be scheduled to coincide with periods of normal household activity such as meal times, children's arrival from school, recreation time, the children's arrival from, and departure for, a visit with the other party. The social worker must avoid any inappropriate invasion of the family's privacy (e.g. visiting close to bedtime or at the time of special family events). The social worker should be aware of cultural and religious considerations, particularly during the home visit. For example, the social worker should understand the context of the party's hospitality or desire to please.

The home visit provides a very good opportunity to have the children introduced to the social worker, and to be given an appropriate explanation of the social worker's role. An effective technique for engaging the children is to ask them to show the social worker areas of particular importance to them, such as their room and play area. This will provide information as to the children's place in the home, both physical and psychological. It will also assist the social worker to establish a comfortable rapport with the children.

8. Observations

During the home visits, and where applicable, during office contacts, the social worker observes and assesses the following as appropriate:

- Interactions and relationships
- Parenting skills
- Party's ability to focus on children's needs
- Effectiveness and appropriateness of party's control and discipline
- Appropriateness of parental expectations of the children
- Children's and party's comfort in talking about the other party.

9. Interviews with Children

Children who are able to express themselves verbally should be interviewed in the course of the assessment. Ideally, children's interviews should take place in an environment where the children can feel comfortable, and are not strongly under the influence of either party. Children may be interviewed in a sibling group, separately, and in various sibling combinations. The interview should be geared to the children's chronological and developmental age and may include direct and/or indirect questioning, play, and drawing activities. The social worker will determine the best approach.

Children are likely to display various emotions, dependent upon how they feel about their parents' separation, the extent to which the parties have involved them in the litigation, and their understanding of the social worker's role. The social worker will often see ambivalence in the children's behaviour, as well as anger, anxiety, hostility and denial.

During the interview, children should be told how the information that they have given will be used, i.e. that it may be included in the report and/or shared with the parties and their lawyers. Social workers may wish to ask children if they would prefer that some information be kept confidential. If children state that they prefer that some information not be shared, the social worker should respect the children's wishes.

Children should never be asked to make a choice between parties. However they should understand that they may state their preferences, if they wish to do so.

The social worker interviews the child to obtain information about the following:

- a. The children's perception of their interaction and relationships with significant others in that particular party's home, for example, step-parent, other adults, and other children. e.g. to whom the children feel closest, who the child turns to for comfort and affection, with whom they share secrets, etc.
- b. The children's ability to manage stress and change. The children's feelings regarding the separation, their awareness of the strife between the parties before the dissolution of the marriage and their responses.
- c. The child's likes and dislikes.
- d. The degree to which parties have involved the child in the custody dispute. The social worker will want to note when the child's feelings about a party reflect the expressed feelings of the other party.
- e. Validation of each party's concerns or allegations which may directly affect the child. These may centre around the child's interaction with the other party, the child's feelings towards the other party and/or events in the family which the child may have witnessed.

With older children, it may be helpful to let them know they can call the social worker with further questions or concerns.

10. Interviews with Significant Others

Significant others may include step-parents, grandparents, whole, half and step-siblings and various other persons in the child's extended family. Contact with such individuals will provide the social worker with a broader view of the family. These interviews should be conducted only if the social worker expects to receive significant information. Signed release forms are not required for these contacts.

11. Interviews with Relevant Collateral Sources

Contacts with professional collateral sources provide the social worker with a broader perspective. They may also provide information substantiating or nullifying concerns and allegations. Such contacts often include professionals who may have intervened in the family by providing counselling, therapy, medical care or educational services. Specifically, they may include physicians, teachers, parties' counsellors, Children's Aid Societies and police officers.

A release form must be signed and sent to such a collateral source prior to the interview.

The following questions may be considered for collateral sources:

- How long have they known the parties
- The context of the contact
- Have they seen children with each of the parties
- General description of parenting styles
- Specific questions relating to parenting and relationships -affection, attention, involvement, discipline, general care, routine, chores, extra-curricular activities, common interests of child and parties, nature of relationship between parties and children
- Their impression of how party is restructuring his/her life
- Invitation of general and final comment.

12. Sharing Conclusions

Once the assessment process has been completed, there are several options available to the social worker with respect to how information will be communicated.

The social worker may prepare an extensive or brief focused Social Work Report of the Children's Lawyer and submit this to be filed with the court.

The social worker may also wish to arrange to meet with the parties and/or their lawyers separately or together to share information and provide them with an understanding of the social worker's conclusions and recommendations.

The social worker may choose to meet with the parties individually or together to share information and conclusions and listen to their responses. Information gathered in the context of such meetings may be incorporated into the final report. There should be no pressure on either party to accept the social worker's recommendations. Each party should have the opportunity to reflect on the information given and to discuss this with their lawyer.

The social worker may also choose to meet with the lawyers to share information in a disclosure meeting or with the lawyers and the parties in a settlement meeting. Settlement meetings provide a venue for sharing information and also offer the opportunity for dispute resolution and settlement. The social worker must recognize that, unless otherwise stated, information shared at settlement meetings is 'without prejudice', i.e. the information is not to be disclosed to the court.

As well, the social worker may be asked to attend a settlement meeting arranged by the lawyers or a Legal Aid mediation meeting. At such meetings the role of the social worker is to assist in the process so that the parties may resolve their dispute and that the outcome is in the interests of the children.

When parties come to an agreement they may sign Minutes of Settlement. This is a formal written agreement, signed by the parties and their lawyers. The social worker does not sign Minutes of Settlement. If Minutes of Settlement are signed, the social worker obtains a copy and submits this to the Regional Social Worker with the appropriate draft settlement letter. If the parties themselves come to an agreement and advise the social worker, that social worker will advise the Regional Social Worker and may then draft a letter for the lawyers and the court and send the letter to the Regional Social Worker; this letter will include the terms of the agreement and suggestions that may assist the children and their families. (Samples of form settlement letters are to be found in the Administration section.)

It is important to note that, at times, it is helpful to prepare a written report for a settlement or disclosure meeting or to have a written report available and/or filed with the court should the dispute continue or if the social worker believes that it would be of assistance to the court and the parties and in the children's interests.

The social worker also shares information as a witness at trial. Please see Attendance at trial in Administration of Social Work Services.

B. WRITING THE REPORT

The Social Work Report of the Children's Lawyer is a written report to the court, read by the lawyers and their clients. In order to write a report that is helpful to the court, the lawyers and the clients, the social worker must sort out the information gathered and concentrate on those elements which have direct bearing on the recommendations offered to the court. The assessor must determine what information is important for the court to have. Two sample reports are included in the appendix, Sample Documents.

Contents

1. Affidavit page
2. First Page. The first page of the report must include the title of the proceeding, the name of the court and the case number in the upper left hand corner.
3. Reasons for the Report. This section should include the date that the s.112 court order was obtained and the name of the judge who ordered the assessment. The current custodial arrangement should be detailed as well as the nature of the current dispute and major issue to which the report is addressed.
4. Sources of Information. This section should include all sources of information about the family. This includes detailing the dates of all interviews with the parties and collateral sources. It also includes any court documents and other written material.
5. Personal Background. This section may present a very short family history. The report should contain only relevant family history, pertaining directly to the objectives of the assessment. For example, discussion of a parent's family of origin should relate to that parent's current functioning as a parent and an adult. It should also give information about that parent's current support system. This section could also include: the parent's educational background, current employment with past employment history, if relevant, medical or criminal history, past significant relationships and any current relationship.
6. Marital History. This section provides a brief outline of each parent's perception of his/her marriage as well as his/her perception of the reason for separation. Each party's adjustment to the marriage breakdown and their current living situation is addressed.

Generally, parties offer tremendous detail about the marriage and the separation issues and both parents need to feel fully heard in this area. It is important to assess that information and include only that which is relevant and helpful to the court.

A description of the current conflict and how it is being maintained may be included.

7. Custody and Access Issues or Summary of Parental Concerns.

This section will include each party's perspective on the custody/access issues. It will describe each party's custody and access plan and explain why he/she believes that his/her plan best meets the children's needs. It will also document each party's concerns about the other parent and the other party's response to each concern. Ensure that the wishes of both parties regarding access are presented in the eventuality that they do or do not obtain custody.

8. Children. This section should provide a description of the children from each parent's perspective including their perception of the children's relationship with them, the other parent and other siblings. Specific issues or concerns related to each child such as problem behaviours, medical concerns, etc. are addressed.

Birth history, if remarkable, is addressed in the report.

The social worker's involvement with the children is specified by indicating the settings in which the children are interviewed, and with whom. The children's ages, ability to interact with the social worker, and the social worker's evaluation of the children's development should be included. The children's interaction with each parent and with relevant others in the home are included.

The issue of presenting the children's statements in the report is a sensitive one. Often there is concern on the part of the children that their parents will have access to the information they provide. As well, there is concern on the part of the social worker of repercussions to the children from the parents after they read the report. Children's statements may be stated so that important content is not lost and, at the same time, there is no further disruption to the family. If a child wishes to have the information they have given to the social worker kept confidential and the social worker would like direction as to how this should be handled, that social worker should consult the regional social worker.

The child's perception of the situation must be identified in the report. Any information that provides the reader with the child's view regarding his relative comfort with each parent, e.g. whom the child turns to for comfort and affection, with whom he/she shares secrets, the child's day to day activities, his description of discipline and routines in each home, and his perception of his parent's feelings regarding the current dispute.

9. Collateral Sources. Collateral sources generally refer to all professional sources contacted by the social worker. At times, family and relatives provide useful information. The usefulness of this information, in the context of the report, is a matter of the social worker's professional judgement. Only information that is helpful to the court should be included. Written reports received from collateral sources are attached to the Report.

Information from collateral sources related to the children, i.e. school personnel, doctors and babysitters should be detailed so that the reader obtains a well rounded picture of the children in the context of their environments. This information may be included in the section with information about the children. Written reports received from collateral sources are attached to the report.

10. Formulation of Conclusions and Recommendations. Conclusions and recommendations must flow logically from the information presented in the body of the report. The factors that lead the assessor to his or her conclusion need to be clearly stated so that the reader fully understands the factors that were considered when making the specific recommendations.

Conclusions and recommendations may include identifying the strengths and weaknesses of each parent and of their respective plans. The report may include a recommendation for a parenting plan, sole or joint custody and parental sharing of time, decision making and information. Primary residence must be addressed where custody is in dispute. Detailed plans regarding access by the other parent are included. Where parents are in severe conflict, it may also be useful to include specific recommendations about telephone access and ability to write the child.

Conclusions may identify family, community, or professional supports for the parents. The social worker may recommend referral of the family, or a member, to other professionals or agencies.

This section may serve an educational function through the inclusion of how the parents need to behave differently in order to meet the children's needs. Research information about the effects of separation and divorce on children may also be identified in this section.

SOCIAL WORK ASSISTS

This service has developed in the last few years as lawyers and social workers have begun to work collaboratively in custody and access disputes. It differs from the Social Work Report of the Children's Lawyer in that it is not an independent assessment of the issues. In the Social Work Assist, the social worker provides assistance to child's counsel whose job it is to formulate a position on the matters in dispute. At the current time there is wide variation in Ontario as to what information courts will allow child's counsel to put before the court. At times it is necessary and desirable to have the court understand the context of the child's stated views. It may be useful to have a social worker act as a witness for child's counsel to submit evidence as to the context of the child's wishes.

The following guidelines have been developed to clarify the functions and the procedures in the social work assist. It is hoped that they will assist both the social worker and the lawyer to maximize the effectiveness of the social worker's involvement in this collaborative process.

OFFICE OF THE CHILDREN'S LAWYER

GUIDELINES - SOCIAL WORK ASSISTS

Purpose of a Social Work Assist

There are four major situations where a lawyer should consider requesting social work assistance when providing legal representation to a child in a custody and access proceeding:

- ◆ to obtain evidence, including a child's views and preferences, for court
- ◆ to put a child's wishes in context, especially when dealing with:
 - potential parental alienation or other forms of influence that may be affecting the child's wishes
 - separation or reunification of siblings
 - a disability on the part of a child or parent
- ◆ issue focused case consultation
- ◆ complex fact situation.

Social work assistance is not provided in child protection or property rights cases, except in the most extraordinary circumstances.

Procedure for Obtaining a Social Work Assist

- ◆ The lawyer must identify as early as possible the need for a social work assist. This should be done no later than the pre-trial conference, unless the lawyer believes the pre-trial conference may settle the case. If the case is not resolved at the pre-trial conference, the lawyer must contact the Office of the Children's Lawyer ("OCL") immediately for social work assistance. If sufficient notice is not given, the request may be refused.
- ◆ Panel lawyers need to contact their regional supervisor in writing to outline the circumstances and request a social work assist. The lawyer must clarify the intended purpose of the assist.
- ◆ The request is forwarded by the regional supervisor to the Clinical Director of Social Work for acceptance and assignment. (Please note that the lawyer and social worker must not make arrangements to work together before receiving authorization or not to proceed).
- ◆ If it is decided by the OCL to proceed with a social work assist, an assignment letter is sent to the lawyer by the social work department, with a copy to the social worker and regional legal and social work supervisors, confirming the name of the social worker assigned to the case.
- ◆ Parameters as to the extent of the involvement of an OCL social worker may be

established in the assignment letter.

Checklist - Appendix A

Attached is a checklist for lawyers and social workers when they are working together on a case.

Double Deployment

Double deployment involves joint interviews being conducted by the social worker and lawyer. The objective is to avoid an unnecessary duplication of resources. Generally, any first interview by the social worker with the child should be done with the lawyer present. Subsequent interviews with the child may be done by the social worker alone. Observational visits are usually done by the social worker alone. Other interviews should not be conducted jointly, unless extraordinary circumstances exist. Examples of situations when joint interviews may be appropriate include:

- ◆ allegations of serious clinical issues
- ◆ allegations of violence.

When the social worker and lawyer conduct a joint interview, the social worker should write the notes if the purpose of the assist is to give evidence to the court. There may be exceptions (e.g. an intensive interview conducted by the social worker) where the lawyer makes notes and the social worker adopts them (writes "read and reviewed", and signs and dates the notation). The notes are to be read and changes made within twenty-four hours. A social worker can only adopt notes of interviews he or she was present for, otherwise the information is hearsay.

If the social worker is meeting with the parties and the collaterals, it is not necessary for the lawyer to be present as well.

Legal Aid Settlement Meetings

Where there is a meaningful opportunity for settlement, the social worker may attend Legal Aid settlement meetings.

Attendance at Court

A social worker should not attend court, unless there is a meaningful opportunity for settlement (e.g. at a pre-trial), or the matter has proceeded to trial and the social worker is testifying.

Court dates where a social worker is required to attend should only be set by the lawyer after consulting the social worker.

Documents

Written materials prepared by the social worker, e.g. letters, memoranda to file, notes of interviews and meetings, and records of telephone conversations are never to be appended to affidavits or shared with counsel for the parties. Any memoranda prepared by a social worker and addressed to child's counsel is meant for child's counsel only and should not be disclosed unless the social worker consents.

All communications, written and oral, between child's counsel and the social worker are privileged and cannot be produced or compelled into evidence.

Affidavit

The social worker's affidavit must be prepared by the lawyer. It should include the purpose of the assist; i.e. "I was asked to assist to...". The lawyer is responsible for preparing the social worker for cross-examination which may take place in the court or in a special examiner's office.

Closing Social Work Files

The social work file is to be closed when the contracted involvement has been completed, or when the case has been inactive for six months.

Privilege - Appendix B

Attached is a document outlining the Children's Lawyers policy on privilege. It should be noted that interviews by the lawyer and/or the social worker with children are subject to solicitor-client privilege.

APPENDIX A

Social Work Assist Checklist

This checklist is a guide for social work assists in order to encourage consistency and enhance the effectiveness of social work assists.

After the case is assigned to a social worker, the social worker and lawyer should clarify the following:

1. Confirm the reason for the request - what is the objective of the assist?
2. What will the social worker's role be in the case?
3. Discuss the history of the case - how long has the file been open, what activity has already taken place and what is the status of the court proceeding? The lawyer should ensure that the social worker has an opportunity to review the lawyer's copy of the pleadings. Unnecessary duplication of material is to be avoided.
4. Are there any upcoming court dates, settlement meetings, or legal aid mediation?
5. Who are the relevant collateral sources?
6. Will any interviews or any activity on the file be conducted jointly? Confirm who will be taking notes, and clarify that social work notes, memoranda to file and letters sent to the lawyer are not to be shared with other counsel (see guidelines).
7. What tasks are to be performed and who is responsible for setting them up? eg. home visits (number and location), parent interviews, introduction to and subsequent meetings with children, collateral interviews, review of materials.
8. If the purpose of the assist is to provide evidence, what are the arrangements for trial preparation?
9. If there is to be an affidavit, it is always to be prepared by the lawyer. The affidavit is reviewed by the social worker for changes and revisions.
10. Regional supervisors are to be contacted for approval if the purpose of the social work assist has changed.
11. If, during the course of an assist, a disagreement arises between the social worker and the lawyer that they cannot resolve, the social worker should consult the regional social work supervisor and the lawyer should consult the regional legal supervisor. The decision will be made by the department heads.
12. Social work assists will be closed when the social work involvement, as contracted, is completed, or the case has been inactive for six months. For an assist to be reopened, the lawyer must communicate with his/her regional legal supervisor, who will consult with the Clinical Co-ordinator of Social Work for approval.

Documents

Written materials prepared by the social worker, e.g. letters, memoranda to file, notes of interviews and meetings, and records of telephone conversations are never to be appended to affidavits or shared with counsel for the parties. Any memoranda prepared by a social worker and addressed to child's counsel is meant for child's counsel only and should not be disclosed unless the social worker consents.

All communications, written and oral, between child's counsel and the social worker are privileged and cannot be produced or compelled into evidence.

Affidavit

The social worker's affidavit must be prepared by the lawyer. It should include the purpose of the assist; i.e. "I was asked to assist to...". The lawyer is responsible for preparing the social worker for cross-examination which may take place in the court or in a special examiner's office.

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APPENDIX B

The Applicability of Solicitor-Client Privilege to the Representation of Children by Lawyers and Social Workers at the Office of the Children's Lawyer

The doctrine of privilege applies to the relationship between a solicitor and client. Communications between lawyer and client are confidential and cannot be disclosed without the client's express or implied authorization (Rule 4 of the Rules of Professional Conduct). Disclosure is authorized only if the disclosure is required by law, or there are reasonable grounds to believe that a crime is likely to be committed. Where a social worker is assisting a lawyer in providing legal representation to a child client, it is the policy of the Office of the Children's Lawyer that the privilege extends to communications between the child and the social worker.

The doctrine of privilege can be extended to the social worker by the application of any of the following principles:

- ◆ the social worker is assisting the lawyer in the representation of the child client's interests pursuant to a court order for legal representation pursuant to s.89(3.1) of the Courts of Justice Act.
- ◆ a disclosure made by the child to the social worker is a communication that has been made in anticipation of litigation. Communications and documents that are prepared by third parties in anticipation of litigation are privileged materials that cannot be disclosed against the client's will.
- ◆ a privileged relationship may exist between the social worker and the child that is independent of solicitor-client privilege. The four criteria of the Wigmore test must be met:
 - (1) communications must originate in a confidence that they will not be disclosed;
 - (2) this element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
 - (3) the relation must be one that in the opinion of the community ought to be sedulously fostered; and
 - (4) the injury that would inure to the relation by disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

Any communication held by the lawyer and social worker, either together or separately, in the absence of any other person, is strictly confidential.

By virtue of the privilege, the social worker cannot disclose confidential information that has been collected from the child or the child's lawyer, without the child's permission.

The issue of privilege can arise in two situations:

1. A child discloses information about wishes respecting custody or access to the lawyer and/or social worker in confidence, and does not want the parents to know this preference. This disclosure does not raise any professional dilemmas for either the social worker or lawyer, and it is clear that this information is not to be released.

Certain strategies may be useful to a lawyer and a social worker who are dealing with a child who does not wish the wishes revealed:

- ◆ explore the reason why the child does not want the wishes revealed.
- ◆ explore the limits of what the child will allow to be disclosed, by reframing the wishes.
- ◆ refer the child for assessment or counselling.
- ◆ determine if there are other sources that would provide the same information, without targeting the child.

2. A child discloses abuse to the lawyer and/or social worker, and states that no one else is to be told. There are conflicting professional duties: social workers have a professional obligation to report information (Principle V, College Members Handbook), and s. 72 of the Child and Family Services Act requires that social workers who discover suspected abuse while carrying out their professional duties report the abuse. Lawyers, however, are specifically exempt from the reporting provisions of the Child and Family Services Act because of the solicitor-client relationship existing with the client, although the Rules of Professional conduct allow a lawyer to report abuse if this will prevent the commission of a future crime (Rule 4, commentary 11).

In cases where a lawyer and social worker suspect that a disclosure of abuse may occur, it is helpful to explain to the child that solicitor/client privilege exists, but if the child says something of concern, they will discuss with the child why it would be important to tell someone.

If the social worker feels obligated to report abuse that the lawyer believes should remain privileged, the following issues should be considered in deciding whether the information is to be reported to the Children's Aid Society:

- ◆ is there a risk of continued and/or future victimization by the abuser?
- ◆ what are the implications to the child of not reporting the abuse, e.g. denying the child the opportunity for needed treatment?
- ◆ what is the potential harm to the lawyer/social worker-child relationship and to the child's emotional state, if the information is disclosed?

- ◆ what is the potential harm to the parent-child relationship if the information is disclosed?

Regional supervisors, both legal and social work, are available for consultation.

Although the social worker is covered by solicitor-client privilege when performing a social work assist to the child's legal representative, the Children's Lawyer recognizes that the decision to report is an individual one to be made in consideration of the duties of the respective professions.

In any event, where this situation arises, the Office of the Children's Lawyer must be informed.