

39 CFLQ 151  
Canadian Family Law Quarterly  
2020

## The Importance of Psychological Testing in Canadian Family Law

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### 1. — INTRODUCTION

Personality characteristics and psychological factors can form important components for a family law litigant's ability to positively parent a child. Such psychological issues typically get raised in the context of parenting capacity assessments in custody disputes or child protection matters. And, when psychologists perform the parenting assessments, a significant number utilize psychological testing.

When used correctly, psychological testing can form an integral component of a parenting assessment. However, when accepted principles and methodologies are overlooked or ignored, the consequences can be quite unfortunate.

Accordingly, the purpose of this article is to describe the most common psychological tests, summarize the type of information the tests provide, review the methodology of how the test results form part of the evidence, and elaborate on how judges incorporate the psychological test results as part of their decision-making process.

Additionally, this article proposes a set of guidelines for family law lawyers, judges and mental health professionals when psychological tests are used in a parenting capacity report or assessment. These guidelines incorporate the methodology and application of psychological testing as they relate to issues of evidence in family law.

### 2. — WHAT IS PSYCHOLOGICAL TESTING?

In general, psychological testing has been used to detect major patterns of personality and assess psychological disorders or characteristics. Testing has also assessed patterns of personality and major symptoms indicative of social and interpersonal maladjustment. The tests are typically linked to modern theories and models of psychopathology and personality, and some even consider diagnostic possibilities.

Psychological testing also allows the psychologist to check their primary assessments obtained through interviews for any new or missing information. It can further measure how extreme any one psychological issue is that has already been hypothesized in the primary interviews. The testing can be viewed as a gateway to go back and obtain more information about the individual or confirm already existing information.<sup>1</sup>

There are dozens of different types of psychological tests available, but over the last thirty years, the prevalent psychological tests throughout Canada have been the Minnesota Multiphasic Personality Inventory (MMPI), the Millon Clinical Multiaxial Inventory (MCMI) and the Personality Assessment Inventory (PAI).

The case law shows that other tests have been used, but not as frequently or regularly. Other tests include the Adult Adolescent Parenting Inventory (AAPI), the Child Abuse Potential Inventory (CAPI), the Parenting Stress Index (PSI), the Thematic Apperception Test (TAT) and the Rorschach Psychodiagnostic Test, to name a few.

Additionally, some of the major tests are updated every few years to incorporate changes within the fields of psychology and psychiatry. For example, the most current version of the Minnesota Multiphasic Personality Inventory is the MMPI-2 that was released in 1989 followed by subsequent revisions and updates. However, there are other versions, namely, the MMPI (released

in 1943) and the MMPI-2-RF (2008).<sup>2</sup> Similarly, for the Millon Clinical Multiaxial Inventory, the most current version is the MCMI-IV (2015) preceded by the MCMI (1977), MCMI-II (1987) and the MCMI-III (1994).<sup>3</sup>

The most current version of the test is preferred. In the context of family law, the psychological tests are almost always part of parental capacity assessments and typically involve more than one test during the course of the assessment. In preparation, the involved psychologist interviews the parties and the children, watches the interactions with the parents and the children, and interviews collaborative sources such as family, friends, colleagues and professionals of various capacities. The tests themselves have been referred to as psychological tests, personality tests, psychological inventories or psychometric tests. For the purposes of this article, the term psychological testing will be used.

**(a) — MMPI, MCMI and PAI**

As mentioned above, the three most common psychological tests found in Canadian jurisprudence are the Minnesota Multiphasic Personality Inventory (MMPI), the Millon Clinical Multiaxial Inventory (MCMI) and the Personality Assessment Inventory (PAI).

**(i) — Minnesota Multiphasic Personality Inventory (MMPI)**

The Minnesota Multiphasic Personality Inventory is an objective personality test designed to detect a number of major patterns of personality and emotional disorders.<sup>4</sup> The MMPI is "... probably the most widely used psychological test in the world."<sup>5</sup> It is empirically based, objective, extremely well researched and a highly reliable instrument. Specifically, the MMPI

assesses valuable information about the accuracy of the self-report. It can measure the extent (if any) of levels of distortion or impression management. These scales are collectively referred to as the Validity Scales. The scales measure the persons (sic) attitude towards the testing situation and provides a highly reliable and valid interpretation in terms of the persons, (sic) insight, and ability to be honest with revealing uncomfortable and/or embarrassing personal information.<sup>6</sup>

In *A.B. v. C.D.*, Dr. Mary Korpach reported that the MMPI-2 is considered the most widely used test in custody litigation. It was designed to assess a number of major patterns of personality and psychological disorders and it provides objective scores and profiles based on well-documented norms. The interpretations of the test are made by comparing individual profiles with similar profiles developed through large scale validation studies. Interpretations are useful in generating hypotheses regarding personality traits and interpersonal functioning.<sup>7</sup>

The MMPI is published by the University of Minnesota Press and distributed by Pearson Assessments. According to the Minnesota Press website, the latest version of the MMPI, namely, the MMPI-2 (Minnesota Multiphasic Personality Inventory-2), is linked conceptually and empirically to modern theories and models of psychopathology and personality. The MMPI-2 is composed of 567 true and false questions and takes approximately 1 1/2 hours to 2 hours to complete. It is designed for individuals 18 and older and requires a grade 5 minimal reading level.<sup>8</sup>

There are numerous examples in reported decisions of the MMPI being administered during the course of family law litigation. The test results of the MMPI typically describe various personality characteristics. The following are some examples.

In *A.B. v. C.D.*, the parties separated after a 4 1/2 year marriage with two sons ages 18 and 8. The father wanted to relocate from Vancouver to Victoria resulting in custody and access issues pertaining to the 8-year-old child. The court described the parties' relationship as stormy and litigious with countless interlocutory proceedings. Dr. Mary Korpach prepared an expert custody and access report in the case and she administered the MMPI, MCMI and the PAI on the parents and the two children.<sup>9</sup> The results of the mother's MMPI in part were outlined as follows:

- a. a suggestion of a severe psychological disorder;

- b. concerns with erratic and possibly assaultive behaviour;
- c. tending to be suspicious of the actions of others;
- d. tending to blame others for one's own negative frame of mind;
- e. feelings of loneliness and being misunderstood;
- f. unable to develop genuine deep and loving relationships due to difficulty trusting others;
- g. suggesting the presence of delusions; and,
- h. family relationships likely to be affected by moody and irritable behaviour.<sup>10</sup>

The father's MMPI results were notably more favourable than the mother's:

- a. indicates no unmanageable psychological conflicts or stressors at this time;
- b. his personal adjustment appears to be adequate;
- c. interpersonally, he indicates an average interest in being with others;
- d. he appears to meet and talk to others with relative ease;
- e. his responses suggest that he usually tries to project a positive attitude about life;
- f. usually enters new relationships with an open and accepting attitude; and,
- g. no mental health considerations and no diagnosis is provided.<sup>11</sup>

Another case that included detailed MMPI results was in *AE v. TE*. In *AE v. TE* the mother and father separated after a 4 year marriage with two children, namely, a 5-year-old son and a 3-year-old daughter. The court noted that the household during the marriage was conflict-ridden including a lack of stability and calm and affectionate behaviour between the parents. In the case, Dr. Joanne Seitz provided a Parenting Time/Parenting Responsibilities Assessment Report.<sup>12</sup> In preparing her report, Dr. Seitz administered a number of tests including the MMPI. The mother's MMPI test results suggested the following:

- a. feels others are trying to influence or control her which likely reflects her current conflict with [the Father];
- b. tends to be sensitive and overly responsive to the opinions of others;
- c. might tend to be moralistic and somewhat rigid in her options and attitudes;
- d. probably tends not to express angry feelings, nor to be verbally hostile in reaction to frustration;
- e. suspicious and untrusting of others; and,
- f. sees the world as a relatively threatening place.

The father's MMPI results suggested the following:

- a. has a poorly developed conscience and fluctuating ethical values;
- b. narcissistic, selfish and self-indulgent;
- c. can be impulsive and unable to delay gratification of their impulses;

- d. frequently displaying poor judgment;
- e. acting without consideration of the consequences;
- f. often fails to learn from experience;
- g. not willing to accept responsibility for their own behaviour and tend to blame others for their problems;
- h. has a low tolerance for frustration and can appear to be moody and irritable; and,
- i. hold intense feelings of hostility and may express them in occasional emotional outbursts.<sup>13</sup>

The above two cases show the extent to which the MMPI can provide specific personality information about the litigants involved. Other cases which also have similar examples include *V. (A.C.) v. R. (S.J.)*,<sup>14</sup> *G. (N.) v. E. (R.)*,<sup>15</sup> *Hayes v. Goodfellow*,<sup>16</sup> *E. (L.)*, *Re*<sup>17</sup> and *S. (J.) v. J. (A.)*.<sup>18</sup>

(ii) — *Millon Clinical Multiaxial Inventory (MCMI)*

The Millon Clinical Multiaxial Inventory (MCMI) compared to the MMPI is more of a personality inventory rather than the MMPI which identifies more serious psychological problems.<sup>19</sup> The MCMI measures various personality traits and disorders and assesses relatively specific personality characteristics including both characterological and emotional factors.<sup>20</sup> Dr. Korpach in *A.B. v. C.D.* described the MCMI as a measure more often used in clinical settings which directly assesses personality and psychopathology and considers diagnostic possibilities.<sup>21</sup> Dr. Lloyd Flaro in *M. (D.) v. Alberta (Director of the Child, Youth, and Family Enhancement Act)* described the MCMI as specifically designed to assess personality disorders.<sup>22</sup>

According to Dr. Laura Mills in *British Columbia (Director of Child, Family and Community Service) v. D. (D.L.)*, the MCMI compares responses provided by the individual with responses of individuals with known personality types of mental health characteristics and disorders. It allows inferences to be made regarding the similarity of the individual to others with known personality styles and coping strategies.<sup>23</sup>

As described in *Children's Aid Society of Ottawa v. D. (S.N.)*, the test is used to evaluate behavioural patterns in personality styles. It also "can provide a psychologist with valuable information on the parent's personality traits and any possible clinical symptomatology that may have an adverse effect on the nature of the particular environment that such parents may provide for the child."<sup>24</sup>

The MCMI is published by the Millon Personality Group and distributed by Pearson Assessments. According to the publisher's website, the latest version of the MCMI, namely, the Millon Clinical Multiaxial Inventory-IV (MCMI-IV) (2015) is described as follows:

The MCMI-IV features an updated set of Grossman Facet Scales, which also help guide therapy by identifying the most salient domains of an individual's personality (e.g., interpersonal, cognitive). Noteworthy responses have been significantly expanded in this edition, offering both immediate notification of critical areas (e.g., violence potential, self-destructive potential) as well as for potential differential diagnostic needs for DSM constructs falling out of the MCMI-IV's main measurement areas (e.g., ASD, ADHD). The result of this new instrument's comprehensive approach is a highly personalized reflection of the individual completing the inventory, with significant directives for effective, targeted, and comprehensive treatment.<sup>25</sup>

The MCMI-IV has 195 true and false questions and takes 25 to 30 minutes to complete the test. As with the MMPI, the MCMI is designed for individuals ages 18 and older and requires a fifth grade reading level.<sup>26</sup>

There are also numerous examples in reported decisions of the MCMI being administered during the course of family law litigation.

For example, in the case of *A.B. v. C.D.* as introduced previously, Dr. Korpach administered the MCMI and the mother's test results indicated the following:

- a. a suggestion of a personality disorder;
- b. characteristics of a delusional/paranoid disorder;
- c. unwilling to accept the viewpoints of others;
- d. self-centered and uncharitable;
- e. quarrelsome and quick tempered;
- f. a suggestion of experiencing a Generalized Anxiety Disorder;
- g. may be dramatizing distress to gain attention;
- h. exhibiting an inflated sense of self-worth;
- i. may be skilled in cleverly deceiving others;
- j. tending to project blame onto others;
- k. any rebuffs to self-esteem may result in unpredictable behaviour such as anger, depression, moodiness, and social withdrawal; and,
- l. possible diagnoses of a Generalized Anxiety Disorder, a Delusional Disorder, and a Narcissistic Personality Disorder with Histrionic traits.<sup>27</sup>

In contrast, the father's MCMI test results showed that he demonstrated a tendency toward avoiding self-disclosure, although not significantly so but suggesting defensiveness which is characteristic of individuals participating in custody and access disputes.<sup>28</sup>

In *M. (D.) v. Alberta (Director of the Child, Youth, and Family Enhancement Act)*, the mother appealed the trial decision that granted Permanent Guardianship Orders in respect of her two children. Schutz J. held that Dr. Lloyd Flaro's expert testimony at trial was pivotal to the ultimate finding of the Hearing Judge. Dr. Flaro was qualified as an expert in parenting and psychological assessments and completed assessments on both parents. He expressed serious concerns about the mental health of both.<sup>29</sup> The mother's MCMI test results were as follows:

- a. suggests the presence of narcissistic personality disorder;
- b. tends to be quite self-centered, impatient, and hypersensitive to criticism;
- c. have an idealized image of themselves and who they are;
- d. if confronted or challenged, can become quite upset and reactive, and produce quite a few emotional outbursts;
- e. would be more resistant to working with supports;
- f. often self-satisfied and see little need for change; and,

g. perceive themselves in positive terms and blame others for their problems.<sup>30</sup>

The other cases which also have thorough descriptions of MCMI test results include *D. (A.J.) v. B. (T.)*,<sup>31</sup> *Doncaster v. Field*,<sup>32</sup> *Children's Aid Society of Ottawa v. D. (S.N.)*,<sup>33</sup> *S.A.T. v. N.A.T.*,<sup>34</sup> *New Brunswick (Minister of Social Development) v. C. (L.E.)*,<sup>35</sup> *Highland Shores Children's Aid Society v. P. (N.)*,<sup>36</sup> *Children & Family Services for York Region v. B. (T.)*<sup>37</sup> and *B. (S.) v. S. (D.D.)*.<sup>38</sup>

(iii) — *Personality Assessment Inventory (PAI)*

The Personality Assessment Inventory (PAI) provides an overall assessment of psychopathology and personality functioning.<sup>39</sup> It is a valid alternative to the MMPI<sup>40</sup> but in comparison, the MMPI requires a higher level of reading and comprehension than the PAI.<sup>41</sup>

In *Olfert v. Olfert*, psychologist Francis Stewart described the PAI as an objective measure of adult personality designed to provide information about the individual's functioning on eleven clinical scales, five treatment scales, and two interpersonal scales. The test assesses patterns of personality and major symptoms indicative of social and personal maladjustment. There are four separate validity indicators on the PAI, in addition to a Defensiveness Index that determines the validity of an examinee's profile.<sup>42</sup>

According to Jarvis J. in *Kern v. Kern*, the PAI is a self-reporting personality test that assesses a person's personality and psychopathology and is a "widely accepted diagnostic tool."<sup>43</sup> In *A.B. v. C.D.*, Dr. Korpach described the test as "a comprehensive personality inventory that assesses a broad range of personality symptoms and behavioural problems. It includes validity indicators, and provides diagnostic possibilities in accordance with the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders)."<sup>44</sup> Dr. Suderman in *L.G. v. T.P.* testified that the test allows the parent to provide an opinion about themselves and is designed to assess clinical areas such as PTSD, depression, stress, substance use, social support and suicidal ideation.<sup>45</sup>

Dr. Laura Mills in *British Columbia (Director of Child, Family and Community Service) v. D. (D.L.)* noted that the PAI compares the responses provided by the individual with responses of individuals with known personality types and mental health characteristics and disorders. This allows inferences to be made regarding the similarity of the individual to others with known personality styles and coping strategies.<sup>46</sup>

The author of the PAI is Dr. Leslie C. Morey who created the test in 1991 with the most current edition being released in 2007.<sup>47</sup> The PAI is published by Psychological Assessment Resources and describes the PAI as an "objective inventory of adult personality, the PAI assesses psychopathological syndromes and provides information relevant for clinical diagnosis, treatment planning, and screening for psychopathology". The publisher describes the test structure as follows:

The 344 PAI items constitute 22 non-overlapping scales covering the constructs most relevant to a broad-based assessment of mental disorders: four validity scales, 11 clinical scales, five treatment scales, and two interpersonal scales. To facilitate interpretation and to cover the full range of complex clinical constructs, 10 scales contain conceptually derived subscales.<sup>48</sup>

As with the MMPI and the MCMI, there is a number of reported decisions with PAI test results. For example, in *A.B. v. C.D.*, the mother's PAI results indicated the following:

- a. areas of difficulty including traumatic stress, stress in the environment, suspiciousness, alcohol abuse or dependence, drug abuse or dependence, history of antisocial behaviour, physical signs of depression, and compulsiveness or rigidity;
- b. no marked elevations that would indicate the presence of clinical psychopathology;

c. additionally,

On the PAI, she self-reported a generally stable self-concept. She indicated she is a normally confident and optimistic person and that she is reasonably self-satisfied. Her interpersonal style seems best characterized by a strong need for affiliation and positive regard from others. This may result in rather uninhibited social behavior that is seen by others as attention seeking and dramatic. Her needs in this area may be so strong that the quality of social interactions may be relatively unimportant compared to their quantity. While her behaviors may be intended as friendly, others might view them as somewhat overbearing. She reports adequate social supports. She also reports no difficulties with anger management and no distressing thoughts related to suicidal ideation.

d. the wife's diagnostic possibilities included an Adjustment Disorder, and a Personality Disorder, Not Otherwise Specified.<sup>49</sup>

The father in *A.B. v. C.D.* also took the PAI and his results indicated that he tended to portray himself as being relatively free of common shortcomings and somewhat reluctant to recognize faults or problems in himself. According to Dr. Korpach, this degree of defensiveness was not uncommon among custodial litigants. However, the clinical profile may have underrepresented the extent of any significant findings.<sup>50</sup>

Also, in *B. (S.) v. S. (D.D.)* the father's PAI results indicated the following:

- a. concerning level of his hostility and paranoia, which may be accompanied by potentially delusional thoughts;
- b. appearing to be an extremely hypervigilant person who questions and mistrusts the motives of those around him. . . . because of his level of hypervigilance, suspiciousness and resentment, he may be seen by others as hostile and his working relationships may be very strained even if others are trying to demonstrate support and assistance to him;
- c. no evidence of significant obsessive-compulsive thoughts or behaviours but he is probably hypervigilant in trying to avoid any contact with situations or individuals who he perceives as not treating him well;
- d. reported a number of symptoms consistent with a significant level of clinical depression;
- e. suggested that his use of drugs has had many negative consequences in his life at a level that is above average even for individuals who attend specialized treatment programs;
- f. suggested that his use of drugs has had numerous ill effects in his life including strained interpersonal relationships, legal difficulties, vocational failures, financial hardships and/or possible medical complications from prolonged drug use;
- g. probable that the father is drug-dependent and withdrawal symptoms may be a part of the present clinical picture;
- h. being emotionally labile, demonstrating fairly rapid and extreme mood swings and in particular, episodes of poorly controlled anger;
- i. lack of success in relationships has probably left the father preoccupied with consistent fears of being abandoned or rejected by those around him; and,
- j. reported being potentially prone to more extreme displays of anger including damage to property and threats of assault to others. "These may happen unexpectedly and take others by surprise. When they happen, it is likely that those around him may be intimidated by his temper and his potential for violence."<sup>51</sup>

Other cases where PAI test results are described in detail include *Kern v. Kern*,<sup>52</sup> *W. (M.A.J.), Re*,<sup>53</sup> *M. (K.M.) v. M. (D.R.)*,<sup>54</sup> *Hokhold v. Gerbrandt*,<sup>55</sup> *Children's Aid Society of St. Thomas & Elgin v. R. (C.)*,<sup>56</sup> *B. (J.B.), Re*,<sup>57</sup> *Doncaster v. Field*,<sup>58</sup> *Children's Aid Society of Peel v. C.D.*<sup>59</sup> and *Catholic Children's Aid Society of Hamilton v. D. (T.)*.<sup>60</sup>

### 3. — INFORMATION DERIVED FROM PSYCHOLOGICAL TESTING

The results of psychological testing are sometimes buried within a parental capacity report and are only briefly referred to either in the report or as part of the expert's evidence, if at all. However, the test results provide a considerable amount of information about the psychology of the litigant that can be used to complement the report. For example, counsel may argue how certain personality traits derived from the tests have also been supported by the evidence. Alternatively, a collection of similar psychological abnormalities from different tests may be used to offer an explanation with respect to a previously unexplained behaviour by one of the litigants.

As shown above, the information from psychological testing encompasses a wide range of personality traits and provides a significant depth of various psychological characteristics and diagnostic considerations. The information includes diagnostic considerations of psychopathology and other aspects of personality functioning that may not in and of themselves be indications of psychological disorders. Regardless of the severity of the mental component, the scope of the psychological tests is usually broad and thorough.

The personality characteristics found in any family law litigant may explain a lot about their parenting behaviour when crafting parenting plans. For example, a self-centred individual with narcissistic qualities may decide to reject any reasonable requests for a particular parenting schedule and instead focus on their own interests. An individual that is emotionally unstable with poor anger management skills may not be ready for unsupervised access. A person who has a major depressive diagnosis may not be suitable for prolonged parenting time until he or she obtains proper treatment.<sup>61</sup>

Behaviours listed above are commonly observed by family law practitioners and judges, but not necessarily with sufficient understanding of the underlying reasons. However, when one combines observations by a professional along with psychological or psychometric testing, it can be quite informative for the lawyers and the court.

For example, in *Minister of Families and Children v. V.T.*, the psychologist in the case concluded the following about the father: "Psychometric testing, file information and clinical interviewing indicates that he lacks insight into his mental health needs and relies considerably on repression and denial to cope with negative feelings. It is hypothesized that these defences have evolved as survival skills following his early exposure to trauma." DeWare J. held that the evidence of the assessor and other professionals was alarming given their opinion to the high likelihood the father would "continue to be abusive in his intimate relationship at times of stress."<sup>62</sup>

Furthermore, psychological testing results along with corroborative evidence can be very helpful for lawyers and judges in obtaining a more thorough understanding of the psychology of a family law litigant relevant to custody and/ or access. The following case law references show the importance of psychological testing:

- In *Jennings v. Garrett*, Blishen J. held that a good parenting capacity assessment should include "psychological tests on parents and perhaps children, if a registered psychologist is involved".<sup>63</sup>
- In *Children's Aid Society of Ottawa v. D. (S.N.)*, Beaudoin J. wrote that the Millon Clinical Multi-axial Inventory (MCMI) can ". . . provide a psychologist with valuable information on the parent's personality traits and any possible clinical symptomatology that may have an adverse effect on the nature of the particular environment . . ." <sup>64</sup>
- Jarvis J. in *Kern v. Kern* wrote that the Personality Assessment Inventory (PAI) is a "widely accepted diagnostic tool".<sup>65</sup>



- In *Children's Aid Society of Ottawa v. S. (C.)*, McKinnon J. held that the psychological testing conducted on three prospective parents for adoption "revealed serious and pervasive obstacles to act in the best interests of the children".<sup>66</sup>
- In *M. (B.D.) v. M. (A.E.)*, Sewell J. found that a psychologist's report was of considerable assistance in resolving the issues of the case and that "his observations about the parties remain useful, as do the results of his psychological testing."<sup>67</sup>
- In *Children's Aid Society of the Districts of Sudbury and Manitoulin v. V.T.*, Jones J. was concerned about the future possibility of serious assaultive behaviour by the father towards the mother given the statements of the father about his black rage and the findings by the assessor that his psychometric testing had indicated an increased risk of a "destructive outburst of rage".<sup>68</sup>
- In *Culp v. Culp*, Maddalena J. quoted the father's MMPI test results at length to reinforce the fact that little had changed with his behaviour leading up to the hearing. Maddalena J. was also critical that the father did not provide a record of any recent testing or comprehensive treatment received by him.<sup>69</sup>

Still, some professionals do not use psychological testing in the course of their assessments or point out the limitations of such tests. For example, psychiatrist Dr. Jean-Victor Wittenberg in *Catholic Children's Aid Society of Toronto v. D.V.R.* indicated that it was not his usual practice to request any psychological testing of the people he assessed. It was his opinion that such tests "were never designed for the child welfare population and that there is no evidence that such tests are better predictors of the quality of parenting overall than a good clinical assessment."<sup>70</sup> It is of note that psychiatrists are generally taught not to administer Level C tests which include the MMPI, the MCMI and the PAI. Rather, these tests require a high level of expertise in test interpretation and can only be purchased by individuals having specific qualifications as required by the publishers of the tests.<sup>71</sup>

Similarly, in *P. (K.M.) v. R. (J.V.E.)*, Veale J. recommended the preparation of a Custody and Access Report but also indicated that psychological testing was not required unless the assessor believed it was necessary.<sup>72</sup> Additionally, in *CAS v. M.B. & K.D.*, the psychologist who prepared the parenting capacity assessment and performed psychological testing pointed out a limitation in the testing in that ". . . personality disorders cannot be diagnosed through psychological tests."<sup>73</sup>

Nevertheless, despite the existence of assessments without psychological testing, there are sufficient examples where judges have alluded to the requirement for such testing:

- In *JG (Re)*, D'Souza J. made a reference to a parental assessment that was provided and held that with no psychometric testing, the report was "tentative in its findings." Additionally, the psychologist writing the report also recognized that the report, without testing, was limited.<sup>74</sup>
- In *L.M.W. v. S.L.S.*, the history of the mother's childhood satisfied the court that she had significant psychological and emotional difficulties and that her mental health concerns may negatively impact her ability to parent. Scherman J.'s additional concern was that, although the mother testified that she had seen six or seven counsellors, she had never seen a psychiatrist or psychologist "nor received psychological testing."<sup>75</sup>
- In *O.M.M., Re*, Justice Goebel suggested that the mother seek out mental health support. The mother may not have been making good choices and appeared to prioritize her relationship with a particular partner over the "stability of the children." Goebel J. had held that the children's interests were best met by attempting to create a period of stability during which the parties and the children could obtain "counselling support, pursue psychological testing and engage in assisted problem solving strategies."<sup>76</sup>
- In *Children's Aid Society of Algoma v. M.L.*, Kwolek J. held that it is through cognitive and psychological testing, together with observation visits of the family, that the assessor can provide expert evidence that is not currently before the court,

that is unbiased and is necessary in helping the court to determine the strengths and weaknesses of the parents and whether or not they have the capacity to care for the children with family and other supports.<sup>77</sup>

When used correctly psychological testing has been able to assist the court with important information about family law litigants relating to parenting issues. As noted in the examples from Canadian family law jurisprudence below, in concert with other evidence, psychological testing has been able to contribute the following:

- 1) provide a hypothesis for the court's consideration that a litigant may have a psychological factor that is contributing to their emotional and/or educational shortcomings;<sup>78</sup>
- 2) screen for the presence or absence of psychological disorders;<sup>79</sup>
- 3) offer a deeper level of insight and a contextual basis with respect to the reasons why a couple was unable to have joint custody due to an inability to communicate effectively;<sup>80</sup>
- 4) reinforce and provide a more thorough analysis of a litigant's psychological behaviour exhibited during the course of litigation and/or trial;<sup>81</sup>
- 5) suggest that a litigant has an unwillingness to report problems, has an unrealistic view of self, and is either in denial and/or in active deception;<sup>82</sup>
- 6) provide explanations with respect to behavioural issues of the parents as well as rule out personality disorders or mental health problems;<sup>83</sup>
- 7) form a significant component of a judge's analysis with respect to the issues of supervised access<sup>84</sup> and parenting time allocation;<sup>85</sup>
- 8) provide confirmation with respect to a litigant's behaviour as it impacts on ability to parent;<sup>86</sup>
- 9) assist the court to understand the parties' behaviour and psychology related to parenting issues;<sup>87</sup>
- 10) provide useful psychological context to assess the merits of a mobility case of a parent that has a history of denying access;<sup>88</sup>
- 11) complement evidence of an individual's positive temperament with respect to their ability to parent their children;<sup>89</sup>
- 12) obtain an acknowledgement from an individual that alcohol had been a major problem in their life<sup>90</sup> and provide a deeper understanding as to the reasons for alcohol abuse, such as enhancing self-esteem and undoing a sense of alienation and isolation;<sup>91</sup> and,
- 13) suggest the presence of a narcissistic personality disorder.<sup>92</sup>

#### 4. — ASSESSING RELIABILITY, VALIDITY AND METHODOLOGY

##### (a) — *Validity Scales*

Although the psychological test results are generally reliable and valid, various court decisions have addressed the importance of the process in obtaining those results. The three major psychological tests (MMPI, MCMI and PAI) all use validity scales which are internal mechanisms that address the reliability and validity of the responses within each test.

For example, an elevated score on the "lie scale" in the MMPI may indicate a measure of defensiveness. The MCMI also includes a measure to assess a tendency of defensiveness and avoidance of self-disclosure.<sup>93</sup> Still, a validity scale indicating that an individual has responded in a defensive and guarded fashion may not necessarily be unusual for individuals who are involved in custody disputes. Rather, the results can be interpreted to mean that the test results portray a profile that is not completely representative of the individual in that given time.<sup>94</sup>

The individuals administering the tests are thus able to conclude whether certain test results are invalid or provide a caution in accepting the results. For example, in *Newfoundland and Labrador (Manager of Child, Youth and Family Services, Zone A) v. M. (C.)*, the psychologist administering the tests concluded that "both the MMPI-2 and MCMI-III profiles were invalid due to omission of 43% of test items, and random responding".<sup>95</sup> Also, in *Nova Scotia (Community Services) v. C.H.*, the court accepted the Minister's submissions that the father's results of the MCMI test were not reliable as he was responding to create a positive impression.<sup>96</sup>

In *Nova Scotia (Minister of Community Services) v. G. (E.)*, the psychologist preparing the psychological assessment indicated that participation in the psychological testing administered as part of the assessment was hampered by the mother's learning difficulties.<sup>97</sup> In *British Columbia (Director of Child, Family and Community Services) v. S. (J.G.)*, Shaw Prov. J. held that some of the psychological testing was unreliable given the deceptive actions of the parents. The deception included the father situating himself nearby in the house where the mother was taking the tests, listening to the questions and to the mother's answers and then calling the mother on her phone during the examination and assisting her to answer the questions or changing her answer.<sup>98</sup>

#### **(b) — Methodology**

In addition to the validity scores of the tests themselves, courts have also assessed the methodology used in psychological testing. For example, in *Children's Aid Society, Region of Halton v. W. (A.)*, O'Connell J. found significant issues which called into question the methodology and science behind the psychometric testing used. Specifically, the psychologist used tests that were no longer available for purchase from the publisher because they were considered obsolete and outdated.<sup>99</sup>

Similarly, in *D. (D.J.) v. D. (M.L.)*, the court placed little weight on a psychologist's interpretation of the test results outlined in his report since (a) the administering psychologist used several psychological tests that were not used by any other psychologist in child custody evaluations, (b) the use of these tests in child custody evaluations had not been generally accepted by the professional community, and (c) the use of these tests for child custody evaluations had not been subject to peer review and had not been empirically validated.<sup>100</sup>

In *Children's Aid Society of Ottawa v. S. (S.)*, the mother's counsel raised concerns as to the proper use of the psychometric test results and their interpretation; however, Shelston J. pointed out that there was no countering expert report provided or even a critique to contest the testing.<sup>101</sup>

The issue of the location where the test was administered was raised in *Children's Aid Society of Toronto v. M. (F.)*. There, the psychologist administered a number of personality tests on the mother and concluded that she had the potential for emotional instability, disturbance of mood and that her problems required long-term therapeutic intervention. However, Wong J. found a number of concerns with respect to the methodology of the assessment. One of them was that the assessment was not carried out on "neutral ground", namely, that for appearances' sake it would have been preferable for the psychologist to meet and assess the mother at the psychologist's office rather than the office of the children's aid society.<sup>102</sup>

In *S. (M.) v. S. (J.)* the passage of time was raised where the psychologist testified that one of the psychological test results (i.e. the Parenting Stress Index) was dated as of the time of trial. Accordingly, Yamauchi J. did not refer to its results. Nonetheless, the same psychologist also referred to the MMPI and maintained its importance for his analysis despite stating that certain aspects were "time-sensitive".<sup>103</sup>

In *Kunuwanimano Child and Family Services v. S.L.*, Kukurin J. questioned the utility of the parenting assessment report which included psychometric results on the mother and her partner as it was dated and there had been developments since it was prepared.<sup>104</sup>

Additionally, the psychological state of the test taker has also been a factor when determining whether to allow psychological testing to occur in the first place. For example, in *Hess v. Hamilton*, Paisley J. dismissed a request for an independent disability examination which included psychological testing. Paisley J. held that there was already an independent examination conducted with existing medical records and

... to require the Applicant to be assessed by a psychologist who is not a professional involved in the Applicant's treatment would be unduly intrusive in this case, and in light of the litigation history referred to above would likely be used by the Respondent as an abuse or a nuisance.

Furthermore, a psychiatrist submitted a medical update which stated:

In my professional opinion forcing Ms. Hamilton Hess to undergo a disability medical assessment consisting of a clinical *psychological assessment with psychological testing* would put an additional strain on this already very vulnerable, very depressed and anxious patient who has been extremely overwhelmed by current legal proceedings and who although not currently suicidal had suicidal ideations in the past. (emphasis added)<sup>105</sup>

**(c) — Raw score data**

Along with the conclusions of the psychological testing, the psychologist retains the preliminary test score data that is analyzed and interpreted before the conclusions of the test are reported. This raw data has at times been the focus of an argument whether the data can or must be produced in court in addition to the test results themselves.

The courts have been consistent that the raw data should be produced in order to verify that the psychological tests were administered properly and accurately. For example, in *Catholic Children's Aid Society of Toronto v. M. (M.)*, Murray J. held that opposing counsel should have the raw data from the tests available for use on cross-examination and that counsel should have an opportunity to review the data and, if required, to obtain a second opinion.<sup>106</sup>

Similarly, in *Catholic Children's Aid Society of Toronto v. W. (D.)*, Nevins J. ordered the psychologist to provide to the mother's counsel a copy of all information and documents in his possession or control relating to the preparation of and delivery of his assessment report, including, but not restricted to, any specific answers, marks, scores or results of any psychological tests administered.<sup>107</sup>

Nevertheless, there is a real concern for potential misuse or misunderstanding of the raw score data unless it is explained by a psychologist. Furthermore, there also exists a potential to compromise the validity and reliability of the results of the tests by making the test questions known to the test taker beforehand. Therefore, this issue would need to be addressed on a preliminary basis to avoid any such impropriety by way of a non-disclosure and/or confidentiality clause, for example.

In *BN v. Alberta (Child, Youth and Family Enhancement Act, Director)*, Filice Prov. J. provided additional factors to consider with respect to the production of psychological testing:

... the release of third-party records such as, and including, psychological testing records, must be addressed on a case by case basis so that their relevance can be addressed; and then authorized, if necessary, in a discreet and responsible manner which maintains an appropriate level of regard for the rights and concerns of third parties whose records are sought.<sup>108</sup>

**(d) — Considering the qualifications of the test administrator**

A number of court decisions have also discussed and assessed the qualifications of the psychologist administering the test. For example, in *Child and Family Services of Central Manitoba Inc. v. E.B.*, McKenzie J. accepted the credentials of a test administrator conducting an assessment and found her to be an expert. The court took into account that the administrator was a candidate for her clinical psychology doctorate at the time of the assessment, and that she was supervised by a clinical psychologist. Further, she had participated in numerous courses in clinical psychology, including a specialty practicum in adult assessments amongst others that involved various psychometric assessments.<sup>109</sup>

Likewise, in *Lachapelle v. Leblanc*, Shelston J. responded to the parents' request to have a parenting capacity assessor and held that one of the prerequisites for the assessor in the proceeding was someone who had the ability to conduct psychological testing, interpret the results and provide an opinion on that individual.<sup>110</sup>

On the other hand, courts have also disqualified assessors for various reasons. For example, in *Halton Children's Aid Society v. J.B. and D.T.*, an associate of the assessor conducted the psychological testing on the parents and there was no evidence that the associate was qualified to conduct the testing. The psychologist also admitted that the observation notes of the associate were merged with her own observations in the report without any attribution as to the source of the information contained therein.<sup>111</sup>

The courts have rejected critique assessments with respect to psychological testing as was discussed in *M. v. F. In M. v. F.*, the Ontario Court of Appeal held that critique evidence is rarely appropriate and in general has little probative value, adds expense and risks elevating the animosity between the parties.<sup>112</sup> Similarly, in *Dimitrijevic v. Pavlovich*, Kent J. was critical of a critique report in response to psychological testing. The court was concerned that the psychologist putting forth the critique had not conducted any testing on his own and he did not review and opine on the raw data generated by the tests in the assessment. Kent J. concluded that the psychologist thus had " . . . nothing positive to offer the court in coming to grips with the issues to be decided . . . " in the case. Kent J. further emphasized that the primary purpose of the critiquing psychologist was merely to

. . . cast doubt on the conclusions reached in an attempt to persuade the court that contrary conclusions should be reached (without identifying what they might be) and to lead the court to believe that Dr. Elterman might well have come to a different opinion. There is simply no benefit to the court, or the trial process as a whole, to this sort of evidence.<sup>113</sup>

**(e) — Objectivity, impartiality and bias**

When reviewing the test results, the courts have also considered the objectivity, impartiality and bias of the psychologist conducting the psychological test. For example, in *A., Re*, the court heard testimony from a psychologist who administered several psychological tests. After hearing the psychologist's position on how differing test results should be approached, the court was concerned about the objectivity of his interpretation of the particular test results he was referencing and of his evidence generally.<sup>114</sup>

In *R. (B.T.) v. A. (U.)*, the court was concerned about how much a psychologist's involvement with one of the litigants as a consultant affected her scores on the MMPI and the PAI. The court questioned whether the psychologist was assisting the court in an impartial manner as opposed to being an "advocate" for one of the parties.<sup>115</sup>

In *AE v. TE*, one of the issues was whether a psychologist who conducted a parenting assessment report was biased in that she negatively skewed interpretations of the MMPI validity scores. Renke J. rejected the father's claim of bias and reasoned that the psychologist's conclusions were based on evidence from multiple sources and not on prejudice or reasoning skewed against the litigant.<sup>116</sup>

Similarly, in *B. (S.) v. S. (D.D.)*, the claim of the father in that case was that the psychologist's report was "biased and tainted". The court concluded that there was no evidentiary basis for the claim and any such claim should have been put to the psychologist during cross-examination, which it was not.<sup>117</sup>

As a further example of how courts have addressed this issue of bias, in *Catholic Children's Aid Society of Hamilton v. D. (T.)* counsel for the mother argued that the psychologist's evidence must be tested through cross-examination since in his view, there was concern about the psychologist's impartiality and that there was a reasonable apprehension of bias.<sup>118</sup> In response, Chappel J. held that the psychologist's findings and conclusions as set out in her report mirrored in most respects those reached by the Society workers and visit supervisors. Chappel J. also reasoned that while the psychologist's report was helpful, it was "not determinative" of the issues which she had to decide and the court would have reached the same result even if it had not had the benefit of the psychologist's report.<sup>119</sup>

## 5. — CORROBORATIVE EVIDENCE

### (a) — *Information in addition to psychological testing*

One of the most important factors in the interpretation and application of the psychological test results is the amount of additional information to support the administrator's conclusions. The court quoted Dr. Butkowsky in *D.J. v. S.F.* when he testified that

. . . it is somewhat dangerous to rely on the result of a single psychological test as being accurately predictive of any element of personality functioning. It is only when the results of such a test [are] integrated with known history, diagnostic interviewing, clinical impressions, observations, and information obtained from collateral sources that these results bear any real validity and reliability.<sup>120</sup>

In the same vein, Dr. Nicole Aube in *M. (C.L.) v. S. (M.J.)* pointed out that "individual test results cannot be taken as valid and meaningful on their own and must be considered in light of other test results and related information."<sup>121</sup> Similarly, in *Halton Children's Aid Society v. T. (J.)*, Kurz, J. held that what was important was "not simply the result of any individual test but the pattern that the tests established across a number of areas of functioning."<sup>122</sup>

In *P. (M.) v. A. (A.D.)* Baird J. emphasized that although the psychological profiles were interesting in that particular case, they would not determine the outcome and instead the court was relying on its own observations of the witnesses, the evidence and its experience and knowledge.<sup>123</sup>

In *Children's Aid Society of Waterloo (Regional Municipality) v. M. (L.)*, Dr. Sandra McDermott stated that (a) psychological inventories were to be viewed only as sources of hypotheses about the individual being evaluated, (b) no decision was based solely on the information contained in one inventory, and (c) the hypotheses derived were integrated with all other sources of information in reaching clinical decisions about an individual.<sup>124</sup>

Similarly, in *Children's Aid Society of Ottawa v. S. (S.)*, Dr. Worenklein testified that "psychometric testing results should be placed in context to allow the hypothesis to be tested in a parent-child interaction."<sup>125</sup>

### (b) — *Interviews*

The importance of interviews being used to complement psychological testing has also been illustrated in many court decisions dealing with family law issues. For example, in *Catholic Children's Aid Society of Hamilton v. I. (J.)*, Dr. Baxter conducted a parenting assessment of the mother. Dr. Baxter indicated that without an interview with the mother, he would not have been able to make his determination from the psychological test that she had traits of a narcissistic personality type.<sup>126</sup>

In *Newfoundland and Labrador (Manager of Child, Youth and Family Services) v. F. (L.)*, McGrath J. was concerned that the psychologist's report was based solely on psychometric testing and the results were therefore not determinative. McGrath J. noted that the psychologist conducting the parenting capacity assessment had done only a minimal personal history and would have needed to carry out an assessment under relevant circumstances, such as a home visit.<sup>127</sup>

Similarly, in *T. (L.M.) v. T. (R.S.)*, a competing expert claimed that a psychologist "placed undue reliance on computer generated reports, and seemed to have taken them at face value even though such results might not always be accurate." Shabbits J. held that the psychologist did not interview a number of collateral witnesses who had information that would have been helpful and indicated that the evidence that was heard at trial was far more extensive than was available to the psychologist.<sup>128</sup>

As a further example, in *Olfert v. Olfert* Sandomirsky J. concluded that "Only after this extensive battery of tests and clinical interviews and observations" did the psychologist deduce that the mother was, on balance, the parent more relied upon and connected to each child.<sup>129</sup>

**(c) — Weighing the evidence relating to psychological testing**

A court has the additional benefit of viewing all the different pieces of evidence together to decide how much weight to give psychological test results.

For example, Preston J. in *Metzner v. Metzner* found that it was probable that the individuals consulted one another when answering one of the psychological tests. However, Preston J. took into consideration that the particular test was only one of several tests administered and concluded it was clear that the administering psychologist formed his opinions of the litigants based on his many interviews with them, with the tests presenting a consistent picture. Furthermore, it was held that, since the psychologist made limited use of the particular test results, the maladministration of those tests did not significantly undermine the reliability of his conclusions.<sup>130</sup>

In *Children's Aid Society of Toronto v. C. (R.)*, Spence J. held that ". . . while psychological tests themselves, and the outcome of those tests, do not necessarily lead to the conclusion that a parent cannot properly care for a child . . .", the mother's actions in the case tended to reinforce the negative conclusions reached by the psychological testing.<sup>131</sup>

Corroborative evidence has also been a positive factor when the psychological tests of a particular parenting assessor were not accepted in a previous court decision. This occurred in *Prince Edward Island (Director of Child Protection) v. P. (C.)*, where one of the parents' arguments was that, because the psychologist's evidence was not accepted in a previous case, it should have been rejected in their case. Nevertheless, the Prince Edward Island Court of Appeal found no error in the trial judge's reasoning. The reasoning was that in the previous case the judge had reached the conclusion that the psychologist's opinion was not based on evidence of the mother's behaviour but on standardized tests only. In contrast, the current case had independent viva voce evidence through admissions made by the mother to the psychologist and others and through observations of the Director's workers which served to augment the test results.<sup>132</sup>

**(d) — Court opinions contrary to psychological test results**

Depending on the evidence, a court can draw its own conclusions with respect to mental health issues, despite a psychological report to the contrary. For example, in *Highland Shores Children's Aid Society v. F. (C.)*, the psychological testing revealed that the mother ". . . appeared to be generally free of significant mental health issues" despite also noting that the mother did self-report some challenges in interpersonal sensitivity.<sup>133</sup> Malcolm J. nonetheless held that, despite the psychological reports indicating that the mother had no psychological diagnoses, "she had serious issues with anger and relationships." Malcolm J. also noted that the mother needed to accomplish more in her emotional and mental health. Although the mother testified that she has done everything the Society asked her to do, the court held that she had not.<sup>134</sup>

If a court determines that the test administrator did not consider important pieces of information in the process of reaching his or her conclusions, the court can give the entire report less weight especially if there is insufficient corroborative evidence. For example, in *M. (K.M.) v. M. (D.R.)* the psychologist diagnosed the father with narcissistic and obsessive-compulsive personality traits based on psychological testing and collaterals interviewed.<sup>135</sup> However, many of the collaterals that the psychologist spoke to did not give evidence at trial. Tindale J. placed no weight on the psychologist's opinions. Tindale J. reasoned that the

psychologist "did not utilize all of the evidence from the respondent in the form of the affidavits that he agreed to review" and that this decision to ignore the affidavits of the father "was unfair to him".<sup>136</sup>

A psychologist providing conclusions based on psychological testing also has a responsibility to present his or her findings in a clear manner so the trier of fact can connect the original data with the conclusions reached. Otherwise, any offered conclusions may risk not being accepted. For example, in *Children's Aid Society of Cape Breton-Victoria v. D. (N.)*, a psychologist conducted a parental assessment and administered several psychological tests on the mother including the MCMI-3.<sup>137</sup> The psychologist concluded that the mother could not parent in the long term, she could not put her children first, she had poor impulse control and she had problems communicating with her children.<sup>138</sup> MacLellan J. found, however, that the character or personality traits as put forward in the objective testing did not conform with the psychologist's objective observation of the mother.<sup>139</sup> MacLellan J. concluded that the responses from the psychologist provided the court with "no insight as to why a young woman, who is basically healthy and passed the majority of her psychological tests, acts in the manner she does."<sup>140</sup>

## 6. — PSYCHOLOGICAL TESTING GUIDELINES FOR RELIANCE ON PSYCHOLOGICAL TESTS IN LITIGATION

When a family law practitioner is involved in a case where psychological testing may be useful or where either their client or the opposing client has taken a psychological test, the following guidelines may be helpful. These guidelines were derived and developed from the jurisprudence where psychological testing had been used and are divided into the following five sub-categories: (1) The Role of the Court, (2) The Roles of the Assessor and Test Administrator, (3) The Psychological Test Results, (4) Corroborative Evidence, and (5) The Connection to Parenting Ability.

These guidelines can be used as a form of a checklist for lawyers, judges and mental health professionals to ensure that fundamental considerations with respect to psychological testing are not overlooked or over-emphasized. As one reviews the following list, one should keep in mind the overarching theme, namely, that a person's psychological issues ultimately may or may not impact their ability to parent a child.

### 1) — *The Role of the Court*

- a. a court can order a child custody or parental capacity assessment report to specifically include psychological testing of the parties;<sup>141</sup>
- b. the court may order that a parenting capacity assessment be conducted by an assessor who has the ability to conduct psychological testing;<sup>142</sup>
- c. on consent, the court can order that parties undergo psychological testing as part of a custody and access assessment;<sup>143</sup>
- d. the court should not only use psychological profiles to determine the outcome of a case but rather the court should rely on its observations of the witnesses, the evidence and the court's experience and knowledge in these matters;<sup>144</sup>
- e. the court should assess the conclusions reached from psychological testing with the existing evidence;<sup>145</sup>
- f. a court can use psychological testing to opine on a litigant's credibility and reliability as a witness in relation to existing evidence;<sup>146</sup> and, g. a court should reach its own conclusions with respect to mental health issues of a litigant especially when there is evidence contrary to psychological testing results.<sup>147</sup>

### 2) — *The Roles of the Assessor and the Test Administrator*

- a. a psychological test should be administered by a psychologist competent in performing such a test;<sup>148</sup>



- b. a psychological test should not be used contrary to a psychologist's authorized area of practice;<sup>149</sup>
- c. claims of confirmation bias against a test administrator can be addressed by taking into consideration the psychological test results along with the interviews with the parties, the children, extended family members and others;<sup>150</sup>
- d. when the test administrator is not a certified clinical psychologist, the court may still make a finding of expertise in psychometric assessments by relying on additional factors;<sup>151</sup>
- e. an administrator of psychological testing is required to assist the court in understanding the conclusions based on psychological tests with reference to the administrator's methodology;<sup>152</sup>
- f. an administrator of psychological tests is required to explain any discrepancies between the tests and his or her observations;<sup>153</sup> and, g. concerns with bias against an administrator of a psychological test may be counterbalanced by a finding of the court that the conclusions reached by the tests were supported by other evidence.<sup>154</sup>

### 3) — *The Psychological Tests*

- a. a psychological test used for child custody assessments should have been already subjected to peer review and empirically validated;<sup>155</sup>
- b. the presentation of psychological test results should include a discussion of the standardized or normative groups upon which the designers of the tests build their conclusions;<sup>156</sup>
- c. a psychological test should not be the main driving force in a diagnosis;<sup>157</sup>
- d. the results of a single psychological test should not be relied upon as accurately predictive of any element of personality functioning;<sup>158</sup>
- e. a psychological report will likely be rejected if the assessor's opinion is based on psychological testing only;<sup>159</sup>
- f. individual psychological test results cannot be taken as valid and meaningful on their own and must be considered in light of other test results and related information;<sup>160</sup>
- g. psychological test results are hypotheses that should not be considered in isolation from the rest of the assessment;<sup>161</sup>
- h. a finding of the maladministration of a single psychological test does not necessarily undermine the reliability of the psychologist's overall conclusions;<sup>162</sup>
- i. English as a second language of the test taker may impact the validity and reliability of the test results;<sup>163</sup>
- j. psychological testing can be conducted in a language other than English;<sup>164</sup>
- k. results of psychological tests should be recent relative to the date of trial<sup>165</sup> and may be considered "stale" after a prolonged passage of time;<sup>166</sup> and,
- l. it is reasonable to expect for parents to share in the costs of psychological testing<sup>167</sup> or pay for their own individual psychological testing.<sup>168</sup>

### 4) — *Corroborative Evidence*

- a. more weight should be given to psychological test results that are consistent with other evidence;<sup>169</sup>
- b. the veracity of tests results from a less than fully cooperative litigant can also be assessed by the court during the course of examination and cross-examinations of the litigant;<sup>170</sup>
- c. the results of psychological tests only bear real validity and reliability when they are integrated with known history, diagnostic interviewing, clinical impressions, observations, and information obtained from collateral sources;<sup>171</sup>
- d. it is important to look for corroborative evidence to determine whether or not the predictions from psychological test results are accurate;<sup>172</sup>
- e. little if any weight may be given to psychological testing resulting in diagnoses of litigants if collaterals that contributed to the diagnoses do not give evidence at trial;<sup>173</sup> and,
- f. results from thoroughly-conducted psychological testing that are consistent with the evidence at trial can form a significant feature of a parenting capacity report.<sup>174</sup>

**5) — *The Connection to Parenting Ability***

- a. a primary purpose of psychological testing is to determine whether there are any personality characteristics that could be potentially problematic for the individual parenting children;<sup>175</sup>
- b. a court should generally prefer evidence of demonstrated parenting abilities over a prolonged period of observation instead of interpretations of psychological test results where those results are not consistent with the evidence;<sup>176</sup>
- c. consideration should be given to whether any personality traits are enduring or situational;<sup>177</sup>
- d. testimonial evidence with respect to a litigant's parenting abilities obtained at trial can serve as an important counterbalance to contrary findings of psychological tests;<sup>178</sup>
- e. the usefulness of psychological test results will be limited if the test administrator is not also able to observe the parent interacting with the children;<sup>179</sup>
- f. the administrator of a psychological test should provide an analysis of how any identified characteristics from the test results might impact on an individual's ability to effectively parent children;<sup>180</sup>
- g. a parenting assessor can recommend that a litigant undergo psychological testing before unsupervised access can occur;<sup>181</sup>
- h. scores on psychological testing that suggest paranoia may not necessarily be considered negative with respect to parenting ability, especially if there is situational justification for such feelings;<sup>182</sup>
- i. a diagnosis of narcissistic personality traits should include evidence of whether that diagnosis would negatively impact the children;<sup>183</sup>
- j. conclusions of negative parenting derived from psychological testing with minimal parent-child observations will generally carry less evidentiary weight compared to contradictory evidence derived from numerous sources and obtained over longer periods of time;<sup>184</sup> and, k. a positive psychological test result will not be enough to obtain custody if there is sufficient other evidence that casts doubt on a parent's ability to care for children.<sup>185</sup>

## 7. — CONCLUSION

Canadian jurisprudence over the last 30 years contains a wealth of information with respect to the use of psychological testing in family law cases. On the surface, the personality characteristics and psychological functioning of parents may appear to be an insignificant factor in how parenting cases should be decided. However, what psychological testing as part of a comprehensive assessment can show is that the personality of an individual has great depth and can have serious ramifications to their ability to parent.

One of the important benefits of psychological testing is that, unlike any other tool, they can provide a thorough analysis of a person's psychology and produce the information in an organized and comprehensive fashion. The tests allow to assess for reliability and validity and have internal checks and balances as part of their design. The tests also can be a way to confirm conclusions derived from interviews of the psychologist or to see whether any personality abnormality may have been overlooked. Finally, the tests are regularly updated and conform with changes in our knowledge and application of the fields of psychology and psychiatry.

Furthermore, judges have repeatedly emphasized the importance of psychological testing in parenting-related matters. They have noted that the tests themselves or the information derived from them are valuable, useful, widely accepted, offer a deeper level of insight and provide a more thorough analysis of a litigant's psychological behaviour exhibited during the course of litigation.

However, as with any useful tool, there exists a danger of it being misused whether through carelessness or incompetence by the test administrator. Therefore, it is important for family law lawyers and judges to be cognizant of the proper and improper ways that psychological tests have been applied in previously decided decisions. To assist in this process, the above research, the derived principles and the proposed guidelines are offered to hopefully provide a holistic summary of what to be mindful of to ensure the consistent and reliable use of psychological testing.

### Footnotes

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1 David Frenkel's notes from discussions with Dr. Robert Colby on July 24, 2019.

2 <<https://www.pearsonclinical.ca/en/products/product-master/item-134.html>>; <<https://www.upress.umn.edu/test-division/MMPI-2-RF>>

3 <<https://www.millonpersonality.com/inventories/MCMI-IV/>>; <[https://en.wikipedia.org/wiki/Millon\\_Clinical\\_Multiaxial\\_Inventory#MCMI](https://en.wikipedia.org/wiki/Millon_Clinical_Multiaxial_Inventory#MCMI)>

4 *Hokhold v. Gerbrandt*, 2012 BCSC 1313, 2012 CarswellBC 2756 (B.C. S.C.) at para. 32, ; additional reasons 2012 CarswellBC 3531 (B.C. S.C.).

5 *D.J. v. S.F.*, 2017 ONCJ 879, 2017 CarswellOnt 21016 (Ont. C.J.) at para. 470, ; additional reasons 2018 CarswellOnt 16299 (Ont. C.J.).

6 *Simard v. Simard*, 2015 MBQB 165, 2015 CarswellMan 551 (Man. Q.B.) at paras. 28 and 29.

7 *A.B. v. C.D.*, 2014 BCSC 1081, 2014 CarswellBC 1707 (B.C. S.C.) at para. 68.

8 <<https://academic.oup.com/ocmed/article/59/2/135/1387433>>.

- 9 *Supra* note 7 at paras. 2, 4 and 53.
- 10 *Ibid.* at para. 69.
- 11 *Ibid.* at para. 76.
- 12 *AE v. TE*, 2017 ABQB 449, 2017 CarswellAlta 1727 (Alta. Q.B.) at paras. 4, 5, 10 and 64, ; additional reasons 2017 CarswellAlta 2310 (Alta. Q.B.).
- 13 *Ibid.* at paras. 150-151.
- 14 *V. (A.C.) v. R. (S.J.)*, 2011 BCSC 1279, 2011 CarswellBC 2587 (B.C. S.C.) at para. 40. A 46-year-old mother of three children took the MMPI with her profile results being described as (a) somewhat self-centered immature person with a strong need for attention and affection; and (b) tending to avoid openly expressing anger and instead attempting to control others indirectly.
- 15 *Hayes v. Goodfellow*, 2011 ONSC 2476, 2011 CarswellOnt 3048 (Ont. S.C.J.) at para. 148, ; additional reasons 2011 CarswellOnt 4311 (Ont. S.C.J.). The MMPI's results of a mother of a 10-year-old boy was as follows: (a) tends to be strongly moralistic, perfectionistic and self-critical; (b) indications of being responsible, conscientious and hardworking; (c) being comfortable with oneself and socially self-confident; (d) indications of tending to be empathetic, considerate, friendly and talkative; (e) signs of feeling angry, resentful and suspicious; (f) indications of behaving in a defensive manner; (g) no signs of schizophrenic or psychopathic deviance; and (h) emotionally healthy but experiencing negative feelings in reaction to a current situation.
- 16 *G. (N.) v. E. (R.)*, 2010 NLTD(F) 18, 2010 CarswellNfld 478 (N.L. T.D.) at para. 54. The mother's MMPI results did not disclose the presence of depression, psychosis, neurosis, thought disorder, anti-social behaviour or paranoia. There were also no warning signs of current borderline personality disorder.
- 17 *E. (L.), Re*, 2010 ABPC 141, 2010 CarswellAlta 769 (Alta. Prov. Ct.) at para. 37. The mother of a two-year-old child subject of a child protection hearing took the MMPI and had the following results: (a) likely having a history of antisocial behaviour problems; (b) being socially isolated, avoiding contact with others and presenting as awkward and lacking social skills when pressed into interpersonal situations; (c) likely seen by others as caustic, sarcastic, cynical, and pessimistic; (d) being insensitive towards others, lacks empathy, and being manipulative and exploitive; and (e) prognosis for change being poor given the reluctance to honestly disclose personal issues, poor insight, and lack of self-awareness.
- 18 *S. (J.) v. J. (A.)*, 2010 BCSC 222, 2010 CarswellBC 380 (B.C. S.C.) at para. 73, ; additional reasons 2010 CarswellBC 3568 (B.C. S.C.). The MMPI test results of a 45-year-old father of 9-year-old twins suggested the following: (a) being defensive in responding with an attempted to present himself in an unrealistically favourable light; (b) tending to form superficial relationships but beyond the initial presentation are likely to be immature, narcissistic and exhibitionistic; (c) likely to be insensitive to the feelings of others, impulsive, hedonistic and show poor judgement; and (d) prognosis for change being poor due to the tendency to intellectualize excessively and blame others for their difficulties.
- 19 *L. (L.K.) v. L. (R.J.)*, 2000 BCSC 1111, 2000 CarswellBC 1544 (B.C. S.C.) at para. 32, ; additional reasons 2000 CarswellBC 2723 (B.C. S.C.).
- 20 *New Brunswick (Minister of Social Development) v. A.T.*, 2020 NBQB 73, 2020 CarswellNB 151 (N.B. Q.B.) at para. 60; *Hokhold v. Gerbrandt*, 2012 BCSC 1313, 2012 CarswellBC 2756 (B.C. S.C.) at para. 34, ; additional reasons 2012 CarswellBC 3531 (B.C. S.C.); *Hokhold v. Gerbrandt*, 2014 BCSC 1875, 2014 CarswellBC 2939 (B.C. S.C.) at para. 60, ; affirmed 2015 CarswellBC 1592 (B.C. C.A.); additional reasons 2016 CarswellBC 993 (B.C. C.A.).
- 21 *Supra* note 7 at para. 72.
- 22 *M. (D.) v. Alberta (Director of the Child, Youth, and Family Enhancement Act)*, 2015 ABQB 30, 2015 CarswellAlta 46 (Alta. Q.B.) at para. 108.
- 23 *British Columbia (Director of Child, Family and Community Service) v. D. (D.L.)*, 2016 BCPC 73, 2016 CarswellBC 831 (B.C. Prov. Ct.) at para. 160.

- 24 *Children's Aid Society of Ottawa v. D. (S.N.)*, 2011 ONSC 4313, 2011 CarswellOnt 6997 (Ont. S.C.J.) at para. 135, ; affirmed 2012 CarswellOnt 3914 (Ont. Div. Ct.).
- 25 <<https://www.millonpersonality.com/inventories/MCMI-IV/>>.
- 26 <<https://www.pearsonassessments.com/store/usassessments/en/Store/ProfessionalAssessments/Personality-%26-Biopsychosocial/Millon-Clinical-Multiaxial-InventoryIV/p/100001362.html>>.
- 27 *Supra* note 7 at para. 72.
- 28 *Ibid.* at para. 76.
- 29 *Supra* note 22 at paras. 1, 4, 97 and 98.
- 30 *Ibid.* at para. 108.
- 31 *D. (A.J.) v. B. (T.)*, 2013 NBBR 224, 2013 NBQB 224, 2013 CarswellNB 355, 2013 CarswellNB 356 (N.B. Q.B.) at para. 18. The mother was denying access to the father of a 2-year-old child. The father undertook the MCMI with the following results: (a) having a history of disappointments in personal and family relationships; (b) tendency to precipitate self-defeating vicious circles; (c) may experience periods of marked emotional, cognitive or behavioural dysfunction; (d) feeling insecure with a lower self-worth and shows an edgy defensiveness against anticipated criticism; (e) may be exploitive and may expect special consideration from friends and relatives, often without assuming much reciprocal responsibility; (f) fearing domination and dependence; (g) resisting external influence and carefully protecting rights to self-determination and autonomy; (h) may exhibit a rash willingness to risk harm and may be notably fearless in the face of threats and punitive action; (i) aggressiveness in others may be used to justify his own aggressive inclinations leading to occasional legal entanglements; (j) may be envious of others and feel unfairly treated; (k) may feel suspicious of those in authority; (l) may exhibit readiness to attack those he distrusts; (m) if unsuccessful in channeling his omnipresent suspicions and impulses, his resentment may mount into acts of abuse; and (n) deep resentment that is restrained in his sober state may be unleashed in full force when he is drinking.
- 32 *Doncaster v. Field*, 2013 NSSC 85, 2013 CarswellINS 174 (N.S. S.C.) at para. 27, ; additional reasons 2013 CarswellINS 578 (N.S. S.C.); affirmed 2014 CarswellINS 269 (N.S. C.A.); leave to appeal refused 2014 CarswellINS 752, 2014 CarswellINS 753 (S.C.C.). The results of the father's MCMI indicated that "it may be reasonable to assume" that the father was "exhibiting psychological dysfunction of mild to moderate severity."
- 33 *Supra* note 24 at para. 135. The mother's MCMI results showed that she was exhibiting an inflated sense of self-worth and pretence of self-satisfaction along with a persistent seeking of attention and stimulation. Additionally, her interpersonal relationships may at times be "self-serving, shallow, frivolous and fleeting".
- 34 *S.A.T. v. N.A.T.*, 2018 CarswellNB 423, 2018 CarswellNB 424 (N.B. Q.B.) at para. 71, ; affirmed *N.A.T. v. S.A.T.* 2019 CarswellNB 639, 2019 CarswellNB 640 (N.B. C.A.). The mother's MCMI test results suggested (a) a tendency to minimize psychological difficulties; (b) a person who conforms to social norms and authority figures; (c) a certain lack of self-assertion; (d) tends to take the blame when things go wrong and hesitates to express conflicting opinions; and (e) does not like to make mistakes, which sometimes gives rise to performance anxiety (this may contribute to psychosomatic ailments such as headaches and gastrointestinal disorders).
- 35 *New Brunswick (Minister of Social Development) v. C. (L.E.)*, 2015 NBQB 204, 2015 CarswellNB 463 (N.B. Q.B.) at para. 198. The mother's MCMI results showed: (a) tendency to distance herself from others and a general social shyness and awkwardness; (b) tendency to self-protect herself from the fear of being abandoned and rejected; (c) may experience recurrent periods of sadness and mood disharmony; (d) cognitions tending to be agitated and easily distracted by external circumstances; (e) may have learned to avoid emotional experiences and to suppress events that stir disturbing memories and feelings; (f) may be experiencing a major depression with some periodic thoughts of suicide; (g) definite problem with substance abuse, in this case being alcohol; (h) may find drinking to be a useful lubricant that reduces tensions and fears, provides brief moments of enhanced self-esteem, and enables quick resolutions of the psychic pain; and (i) alcohol may serve to undo her deep sense of alienation and isolation.

- 36 *Highland Shores Children's Aid Society v. P. (N.)*, 2013 ONCJ 151, 2013 CarswellOnt 3919 (Ont. C.J.) at paras. 65-66. The mother's MCMI results showed that she tended to be (a) over-reactive, volatile, engaging and provocative; (b) she was impulsive and highly emotional responsiveness; and (c) she tended to be attention-seeking and cognitively flighty.
- 37 *Children Family Services for York Region v. B. (T.)*, 2010 ONSC 7047, 2010 CarswellOnt 9715 (Ont. S.C.J.) at para. 33. The MCMI suggested that the father's psychological makeup to include the following: (a) inclination to vacillate between social withdrawal, sullen passivity, and explosive anger and may try to cope with these issues by abusing legal medication, street drugs, and/or alcohol, especially during times of frustration, disappointment, and resentment; (b) unable to restrain intense and unstable emotions; (c) chronic level of anger and irritability greatly aggravated when drinking; (d) at times, prone to irrational accusations and intimidation, as well as aggressive and destructive behaviours towards others including family members; and (e) hostile acts driven, in part, by self-destructive tendencies, as evidenced by the careless disregard he may express about the consequence of his drug or alcohol use.
- 38 *B. (S.) v. S. (D.D.)*, 2017 BCPC 28, 2017 CarswellBC 316 (B.C. Prov. Ct.) at para. 6. The father's MCMI results showed his abuse of drugs was consistent with his report that he is addicted to morphine. The results also suggested that he either has or continues to abuse drugs.
- 39 *Salim v. Safdar*, 2019 ONSC 200, 2019 CarswellOnt 1085 (Ont. S.C.J.) at para. 411, additional reasons 2019 CarswellOnt 6152 (Ont. S.C.J.).
- 40 *Stead v. Stead*, 2005 CarswellOnt 7064, [2005] O.J. No. 5203 (Ont. S.C.J.) at para. 273.
- 41 *C. (J.L.) v. J. (G.R.)*, 2006 BCSC 619, 2006 CarswellBC 964 (B.C. S.C.) at para. 43.
- 42 *Olfert v. Olfert*, 2012 SKQB 301, 2012 CarswellSask 522 (Sask. Q.B.) at para. 124, ; affirmed 2013 CarswellSask 558 (Sask. C.A.).
- 43 *Kern v. Kern*, 2015 ONSC 4345, 2015 CarswellOnt 11408 (Ont. S.C.J.) at para. 45, ; additional reasons 2015 CarswellOnt 15910 (Ont. S.C.J.).
- 44 *Supra* note 7 at para. 70.
- 45 *L.G. v. T.P.*, 2018 ONSC 3982, 2018 CarswellOnt 14111 (Ont. S.C.J.) at para. 194.
- 46 *Supra* note 23 at para. 160.
- 47 <<https://www.sigmaassessmentsystems.com/assessments/personality-assessment-inventory/>>; <<https://psycentre.apps01.yorku.ca/wp/personality-assessment-inventory-2nd-edition-pai-2/>>
- 48 <<https://www.parinc.com/products/pkey/287>>.
- 49 *Supra* note 7 at para. 71.
- 50 *Ibid.* at para. 76.
- 51 *Supra* note 38 at para. 6.
- 52 *Supra* note 43 at para. 45.
- 53 *W. (M.A.J.), Re*, 2016 SKQB 340, 2016 CarswellSask 684 (Sask. Q.B.) at para. 18.
- 54 *M. (K.M.) v. M. (D.R.)*, 2015 BCSC 1126, 2015 CarswellBC 1818 (B.C. S.C.) at para. 182, ; varied on reconsideration 2017 CarswellBC 2291 (B.C. S.C.).
- 55 *Hokhold v. Gerbrandt*, 2014 BCSC 1875, 2014 CarswellBC 2939 (B.C. S.C.) at paras. 58, 61-62, ; affirmed 2015 CarswellBC 1592 (B.C. C.A.); additional reasons 2016 CarswellBC 993 (B.C. C.A.).
- 56 *Children's Aid Society of St. Thomas Elgin v. R. (C.)*, 2014 ONCJ 245, 2014 CarswellOnt 6735 (Ont. C.J.) at para. 17.

- 57 *B. (J.B.), Re*, 2014 SKQB 49, 2014 CarswellSask 91 (Sask. Q.B.); affirmed 2014 CarswellSask 845 (Sask. C.A.) at para. 37, ; leave to appeal refused *B. (J.) v. Saskatchewan (Minister of Social Services)*, 2015 CarswellSask 495, 2015 CarswellSask 496 (S.C.C.).
- 58 *Supra* note 32 at para. 26.
- 59 *Children's Aid Society of Peel v. C.D.*, 2018 ONCJ 917, 2018 CarswellOnt 22305 (Ont. C.J.) at para. 181.
- 60 *Catholic Children's Aid Society of Hamilton v. D. (T.)*, 2013 ONSC 5650, 2013 CarswellOnt 13733 (Ont. S.C.J.) at para. 64.
- 61 It is noteworthy that many individuals are well enough to parent despite their depression (Dr. Mary Korpach notes to draft).
- 62 *Minister of Families and Children v. V.T.*, 2018 NBQB 27, 2018 CarswellNB 37 (N.B. Q.B.) at paras. 51-82, ; affirmed 2018 CarswellNB 501, 2018 CarswellNB 502 (N.B. C.A.); reasons in full 2018 CarswellNB 674, 2018 CarswellNB 675 (N.B. C.A.).
- 63 *Jennings v. Garrett*, 2004 CarswellOnt 2159 (Ont. S.C.J.) at para. 90.
- 64 *Supra* note 24 at para. 135.
- 65 *Supra* note 43 at para. 45.
- 66 *Children's Aid Society of Ottawa v. S. (C.)*, 2016 ONSC 3828, 2016 CarswellOnt 9323 (Ont. S.C.J.) at para. 184.
- 67 *M. (B.D.) v. M. (A.E.)*, 2014 BCSC 453, 2014 CarswellBC 706 (B.C. S.C.) at para. 74.
- 68 *The Children's Aid Society of the Districts of Sudbury and Manitoulin v. V.T.*, 2018 ONCJ 220, 2018 CarswellOnt 5401 (Ont. C.J.) at para. 53.
- 69 *Culp v. Culp*, 2019 ONSC 6191, 2019 CarswellOnt 17720 (Ont. S.C.J.) at paras. 32-35, ; additional reasons 2019 CarswellOnt 20352 (Ont. S.C.J.).
- 70 *Catholic Children's Aid Society of Toronto v. D.V.R.*, 2018 ONCJ 271, 2018 CarswellOnt 6415 (Ont. C.J.) at para. 50.
- 71 <<https://www.pearsonclinical.ca/en/ordering/qualification-levels.html>>  
Tests with a C qualification require a high level of expertise in test interpretation, and can be purchased by individuals with:  
  
A doctorate degree in psychology, education, or closely related field with formal training in the ethical administration, scoring and interpretation of clinical assessments related to the intended use of the assessment,  
  
OR  
  
Licensure or certification by a provincial College of Psychology to practice in your province in a field related to the purchase,  
  
OR  
  
Certification by or full membership in a professional organization such as College of Psychology, the Canadian Psychological Association (CPA), the Canadian Register of Health Service Providers in Psychology (CRHSPP), the Canadian Association of School Psychologists (CASP) or other North American organizations such as the American Psychological Association (APA) that requires training and experience in the relevant area of assessment.
- 72 *P. (K.M.) v. R. (J.V.E.)*, 2016 YKSC 10, 2016 CarswellYukon 21 (Y.T. S.C.) at para. 27.
- 73 *CAS v. M.B. K.D.*, 2017 ONSC 6504, 2017 CarswellOnt 17322 (Ont. S.C.J.) at paras. 142 and 168. As per Dr. Korpach, it is more correct to say that personality disorders cannot be diagnosed through psychological tests alone.
- 74 *JG (Re)*, 2018 ABPC 34, 2018 CarswellAlta 248 (Alta. Prov. Ct.) at paras. 70 and 72.
- 75 *L.M.W. v. S.L.S.*, 2018 SKQB 39, 2018 CarswellSask 83 (Sask. Q.B.) at paras. 70-72.

- 76 *O.M.M., Re*, 2017 SKQB 361, 2017 CarswellSask 684 (Sask. Q.B.) at para. 75.
- 77 *Children's Aid Society of Algoma v. M.L.*, 2019 ONCJ 398, 2019 CarswellOnt 9642 (Ont. C.J.) at para. 56.
- 78 *Supra* note 56 at paras. 17 and 18.
- 79 *Supra* note 16 at paras. 50, 54. Author's note: although not specifically mentioned, it goes without saying that any conclusions from psychological testing would need to have support from collateral evidence such as witnesses and testimony at trial, to name a few.
- 80 *Wu v. Sun*, 2009 BCSC 985, 2009 CarswellBC 1943 (B.C. S.C.) at paras. 44, 45 and 46, ; reversed in part 2010 CarswellBC 3253 (B.C. C.A.); reversed in part 2011 CarswellBC 1180 (B.C. C.A.).
- 81 *Supra* note 57 at paras. 38.
- 82 *Supra* note 17 at paras. 37-40.
- 83 *Supra* note 34 at para. 71.
- 84 *C. (R.A.) v. W. (F.M.)*, 2008 ABQB 500, 2008 CarswellAlta 1124 (Alta. Q.B.) at paras. 12 and 48.
- 85 *Neudorf v. Neudorf*, 2011 SKQB 413, 2011 CarswellSask 817 (Sask. Q.B.) at paras. 15-19.
- 86 *Supra* note 18 at paras. 85-90.
- 87 *Shapiro v. Simpson*, 2016 BCSC 211, 2016 CarswellBC 340 (B.C. S.C.) at paras. 118-126.
- 88 *Supra* note 4 at paras. 110, 111 and 115.
- 89 *Kwan v. Lai*, 2016 BCSC 1626, 2016 CarswellBC 2416 (B.C. S.C.) at paras. 30-31.
- 90 *Santelli v. Trinetti*, 2018 BCSC 300, 2018 CarswellBC 469 (B.C. S.C.) at para. 167, ; varied 2019 CarswellBC 2641 (B.C. C.A.).
- 91 *Supra* note 35 at para. 197.
- 92 *Supra* note 22 at para. 108.
- 93 *Alberta (Director, Child, Youth and Family Enhancement Act) v. M. (D.)*, 2016 ABPC 133, 2016 CarswellAlta 1131 (Alta. Prov. Ct.) at para. 57.
- 94 *L.L.H. v. C.C.H.*, 2019 BCSC 1346, 2019 CarswellBC 2362 (B.C. S.C.) at para. 208, ; additional reasons 2020 CarswellBC 494 (B.C. S.C.).
- 95 *Newfoundland and Labrador (Manager of Child, Youth and Family Services, Zone A) v. M. (C.)*, 2013 NLTD(F) 12, 2013 CarswellNfld 180 (N.L. T.D.) at para. 16.
- 96 *Nova Scotia (Community Services) v. C.H.*, 2019 NSSC 346, 2019 CarswellNS 819 (N.S. S.C.) at para. 27.
- 97 *Nova Scotia (Minister of Community Services) v. G. (E.)*, 2016 NSFC 16, 2016 CarswellNS 514 (N.S. Fam. Ct.) at para. 162.
- 98 *British Columbia (Director of Child, Family and Community Services) v. S. (J.G.)*, 2016 BCPC 12, 2016 CarswellBC 269 (B.C. Prov. Ct.) at para. 67.
- 99 *Children's Aid Society, Region of Halton v. W. (A.)*, 2016 ONCJ 358, 2016 CarswellOnt 9713 (Ont. C.J.) at paras. 269.
- 100 *D. (D.J.) v. D. (M.L.)*, 2016 BCSC 1515, 2016 CarswellBC 2311 (B.C. S.C.) at para. 83, ; additional reasons 2017 CarswellBC 2201 (B.C. S.C.).



- 101 *Children's Aid Society of Ottawa v. S. (S.)*, 2016 ONSC 1747, 2016 CarswellOnt 4016 (Ont. S.C.J.) at para. 75.
- 102 *Children's Aid Society of Toronto v. M. (F.)*, 2003 CarswellOnt 4514, [2003] O.J. No. 4327 (Ont. C.J.) at paras. 79, 80 and 83.
- 103 *S. (M.) v. S. (J.)*, 2010 ABQB 127, 2010 CarswellAlta 348 (Alta. Q.B.) at paras. 66-67.
- 104 *Kunuwanimano Child and Family Services v. S.L.*, 2017 ONCJ 518, 2017 CarswellOnt 11986 (Ont. C.J.) at para. 160, ; additional reasons 2018 CarswellOnt 3566 (Ont. C.J.).
- 105 *Hess v. Hamilton*, 2018 ONSC 661, 2018 CarswellOnt 1010 (Ont. S.C.J.) at paras. 111 and 112, emphasis added.
- 106 *Catholic Children's Aid Society of Toronto v. M. (M.)*, 2012 ONCJ 440, 2012 CarswellOnt 8904 (Ont. C.J.) at paras. 182-185.
- 107 *Catholic Children's Aid Society of Toronto v. W. (D.)*, 2003 CarswellOnt 9195, [2003] O.J. No. 6267 (Ont. C.J.) at paras. 49 and 50.
- 108 *BN v. Alberta (Child, Youth and Family Enhancement Act, Director)*, 2019 ABPC 322, 2019 CarswellAlta 2727 (Alta. Prov. Ct.) at para. 157.
- 109 *Child and Family Services of Central Manitoba Inc. v. E.B.*, 2018 MBPC 11, 2018 CarswellMan 90 (Man. Prov. Ct.) at Appendix A, paras. 14-16.
- 110 *Lachapelle v. Leblanc*, 2016 ONSC 6327, 2016 CarswellOnt 15964 (Ont. S.C.J.) at paras. 7-8, ; additional reasons 2016 CarswellOnt 18256 (Ont. S.C.J.).
- 111 *Halton Children's Aid Society v. J.B. and D.T.*, 2018 ONCJ 884, 2018 CarswellOnt 21705 (Ont. C.J.) Additionally, Jones J. was concerned about the psychologist's credibility and that the psychologist did not have the skill and knowledge necessary to proffer the opinions and prognosis for change that was contained in the report. Jones J. further held that the psychologist intentionally misrepresented her qualifications in her Curriculum Vitae and answered before the court in an evasive manner when questioned about this mischaracterization of her qualifications. (See paras. 34-35.)
- 112 *M. v. F.*, 2015 ONCA 277, 2015 CarswellOnt 5630 (Ont. C.A.) at paras. 29-34.
- 113 *Dimitrijevic v. Pavlovich*, 2016 BCSC 1529, 2016 CarswellBC 2316 (B.C. S.C.) at paras. 39 and 44.
- 114 *A., Re*, 2013 NWTTC 9, 2013 CarswellNWT 29 (N.W.T. Terr. Ct.) at paras. 37 and 41.
- 115 *R. (B.T.) v. A. (U.)*, 2014 BCSC 1012, 2014 CarswellBC 1595 (B.C. S.C.) at paras. 55, 56 and 57.
- 116 *Supra* note 12 at paras. 168 and 181.
- 117 *Supra* note 38 at para. 38.
- 118 *Supra* note 60 at paras. 15, 48 and 64.
- 119 *Supra* note 60 at paras. 15, 48 and 64.
- 120 *Supra* note 5 at para. 471.
- 121 *M. (C.L.) v. S. (M.J.)*, 2017 BCSC 799, 2017 CarswellBC 1286 (B.C. S.C.) at para. 226, ; additional reasons 2017 CarswellBC 2350 (B.C. S.C.).
- 122 *Halton Children's Aid Society v. T. (J.)*, 2017 ONCJ 267, 2017 CarswellOnt 6252 (Ont. C.J.) at paras. 138-139.
- 123 *P. (M.) v. A. (A.D.)*, 2011 NBQB 351, 2011 CarswellNB 737 (N.B. Q.B.) at para. 349.
- 124 *Children's Aid Society of Waterloo (Regional Municipality) v. M. (L.)*, 2012 ONCJ 238, 2012 CarswellOnt 5305 (Ont. C.J.) at para. 222.

- 125 *Children's Aid Society of Ottawa v. S. (S.)*, 2016 ONSC 4499, 2016 CarswellOnt 10912 (Ont. S.C.J.) at para. 82.
- 126 *Catholic Children's Aid Society of Hamilton v. I. (J.)*, 2006 CarswellOnt 3510, [2006] O.J. No. 2299 (Ont. S.C.J.) at paras. 174-176.
- 127 *Newfoundland and Labrador (Manager of Child, Youth and Family Services) v. F. (L.)*, 2012 NLTD(F) 35, 2012 CarswellNfld 423 (N.L. T.D.) at para. 82, ; affirmed *Newfoundland and Labrador (Manager of Child, Youth and Family Services) v. F. (J.)*, 2013 CarswellNfld 305 (N.L. C.A.).
- 128 *T. (L.M.) v. T. (R.S.)*, 2008 BCSC 890, 2008 CarswellBC 1540 (B.C. S.C.) at paras. 186, 187 and 205.
- 129 *Supra* note 42 at para. 162.
- 130 *Metzner v. Metzner*, 1993 CarswellBC 2992 (B.C. S.C.) at paras. 59-63, ; reversed in part 1997 CarswellBC 648 (B.C. C.A.).
- 131 *Children's Aid Society of Toronto v. C. (R.)*, 2016 ONCJ 335, 2016 CarswellOnt 8935 (Ont. C.J.) at para. 65.
- 132 *Prince Edward Island (Director of Child Protection) v. P. (C.)*, 2014 PECA 18, 2014 CarswellPEI 59 (P.E.I. C.A.) at para. 32.
- 133 *Highland Shores Children's Aid Society v. F. (C.)*, 2016 ONCJ 831, 2016 CarswellOnt 21467 (Ont. C.J.) at para. 140.
- 134 *Ibid.* at para. 260.
- 135 *Supra* note 54 at paras. 153-154.
- 136 *Ibid.* at paras. 388-389.
- 137 *Children's Aid Society of Cape Breton-Victoria v. D. (N.)*, 2003 NSSF 19, 2003 CarswellNS 227 (N.S. S.C.) at paras. 31 and 34.
- 138 *Ibid.* at para. 36.
- 139 *Ibid.* at para. 35.
- 140 *Ibid.* at paras. 43-44; 46-48.
- 141 *Davies v. Davies*, 2018 BCSC 2235, 2018 CarswellBC 3393 (B.C. S.C.) at para. 6. See also *S.F.D. v. M.T.*, 2019 CarswellNB 369, 2019 CarswellNB 370 (N.B. C.A.) at para. 11.
- 142 *Supra* note 110 at paras. 7-8.
- 143 *Balfour v. Balfour*, 2018 ONSC 7007, 2018 CarswellOnt 20273 (Ont. S.C.J.) at para. 78, ; additional reasons 2019 CarswellOnt 7529 (Ont. S.C.J.); see also *Walker v. Maxwell*, 2014 BCSC 2357, 2014 CarswellBC 3744 (B.C. S.C.) at paras. 36-38, ; affirmed 2015 CarswellBC 1679 (B.C. C.A.).
- 144 *Supra* note 123 at para. 349.
- 145 *Children's Aid Society of Niagara Region v. G. (F.)*, 2004 CarswellOnt 2810 (Ont. S.C.J.) at paras. 27-32.
- 146 *A.M.F.D. v. S.T.D.*, 2020 BCSC 529, 2020 CarswellBC 896 (B.C. S.C.) at paras. 46-49.
- 147 *Supra* note 133 at paras. 140, 254, 255 and 256.
- 148 *Supra* note 111 at paras. 19.
- 149 *Ibid.* at paras. 19.
- 150 *V. (J.M.) v. K. (K.E.)*, 2005 BCSC 1735, 2005 CarswellBC 2950 (B.C. S.C.) at paras. 69 and 80.

- 151 *Supra* note 109 at Appendix A, paras. 14-16.
- 152 *Supra* note 137 at paras. 43-44.
- 153 *Ibid.* at paras. 36-39.
- 154 *Supra* note 60 at para. 50.
- 155 *Supra* note 100 at para. 83.
- 156 *DCP v. J.P., J.L., and L.M.*, 2013 PESC 6, 2013 CarswellPEI 72 (P.E.I. S.C.) at para. 66.
- 157 *Prince Edward Island (Director of Child Protection) v. P. (C.)*, 2013 PESC 18, 2013 CarswellPEI 37 (P.E.I. S.C.) at para. 110, ; reversed 2014 CarswellPEI 59 (P.E.I. C.A.).
- 158 *Supra* note 5 at para. 471.
- 159 *Supra* note 132 at para. 32.
- 160 *Supra* note 121 at para. 226.
- 161 *Ibid.* at para. 226.
- 162 *Supra* note 130 at paras. 59-63.
- 163 *H. (A.) v. K. (N.)*, 2008 BCSC 660, 2008 CarswellBC 1042 (B.C. S.C.) at para. 184. See also *BK (Re)*, 2019 ABPC 311, 2019 CarswellAlta 2695 (Alta. Prov. Ct.) at paras. 51 and 253 where the mother could not complete the MMPI as it appeared that she did not understand the questions.
- 164 *C.A.S.T. v. Y.Z. and P.H.*, 2020 ONSC 1844, 2020 CarswellOnt 4399 (Ont. S.C.J.) at para. 14.
- 165 *FAH v. MTH*, 2020 ABQB 193, 2020 CarswellAlta 620 (Alta. Q.B.) at para. 14.
- 166 *AN (Re)*, 2019 ABQB 173, 2019 CarswellAlta 740 (Alta. Q.B.) at para. 76. See also *C.D.M. v. K.M.A.W.*, 2019 BCSC 608, 2019 CarswellBC 1078 (B.C. S.C.) at para. 38 where Dr. Waterman stated that psychological test results become suspect after a year or so and that any psychological testing should be repeated at the end of two years to ensure its validity and reliability.
- 167 *M.M. v. E.M.*, 2020 ONSC 352, 2020 CarswellOnt 1214 (Ont. S.C.J.) at paras. 155-157, ; additional reasons 2020 ONSC 2929 (Ont. S.C.J.).
- 168 *Balfour v. Balfour*, 2019 ONSC 2892, 2019 CarswellOnt 7529 (Ont. S.C.J.) at para. 22.
- 169 *Catholic Children's Aid Society of Toronto v. M. (A.D.)*, 2016 ONCJ 742, 2016 CarswellOnt 20836 (Ont. C.J.) at para. 196.
- 170 *Supra* note 41 at para. 71.
- 171 *Supra* note 5 at para. 471. See also *Newfoundland and Labrador (Manager of Child, Youth and Family Services) v. F. (L.) supra* note 127 at paras. 82: results from a psychological report based solely on psychometric testing will not be determinative and would require additional evidence. See also *Bradford v. Bradford*, 2017 BCSC 661, 2017 CarswellBC 1089 (B.C. S.C.) at paras. 41 and 127: a parenting capacity assessment will likely be considered flawed in a case of over-reliance on psychological testing and a failure to take into account evidence relevant to the conclusions proposed in the report.
- 172 *Children's Aid Society of Simcoe (County) v. S. (M.)*, 2006 CarswellOnt 1301 (Ont. S.C.J.) at para. 112, ; affirmed 2007 CarswellOnt 3316 (Ont. Div. Ct.).
- 173 *Supra* note 54 at paras. 388-389.

- 174 *Bramwell v. Bramwell*, 2004 BCSC 72, 2004 CarswellBC 93 (B.C. S.C.) at paras. 37-39.
- 175 *Supra* note 128 at para. 105.
- 176 *Children Family Services for York Region v. P. (A.)*, 2005 CarswellOnt 3399 (Ont. S.C.J.) at paras. 158-160, emphasis added.
- 177 *British Columbia (Director of Family Child Services) v. D. (J.)*, 2000 BCPC 57, 2000 CarswellBC 3280 (B.C. Prov. Ct.) at para. 50.
- 178 *Supra* note 145 at paras. 27-32.
- 179 *Supra* note 32 at paras. 31-32.
- 180 *Supra* note 128 at para. 105.
- 181 *Supra* note 6 at paras. 11-12.
- 182 *Pettenuzzo-Deschene v. Deschene*, 2007 CarswellOnt 5095 (Ont. S.C.J.) at para. 27.
- 183 *Supra* note 54 at para. 388.
- 184 *Catholic Children's Aid Society of Toronto v. S. (C.)*, 2010 ONCJ 656, 2010 CarswellOnt 10360 (Ont. C.J.) at para. 64.
- 185 *Supra* note 43 at paras. 69, 71 and 72.

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