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**Supervised Access as a Stepping Stone Rather Than a Destination:
A Qualitative Review of Ontario Services & Policies for
Assisting Families Transitioning from Supervised Access**

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Executive Summary

Background

Supervised access or exchange programs are designed to facilitate safe access between a non-custodial parent and child where there are concerns about intimate partner violence, poor parenting, alienation, addiction, mental health or lack of a parent's relationship with the child. In Ontario, there are three principal types of supervision in custody and access cases:

- 1) Supervision at an access centre funded by the Ministry of the Attorney General;
- 2) Supervision by a private, for-profit service; and,
- 3) Supervision by a relative or friend.

The Children's Aid Society may also provide supervision, though this generally occurs only in active child protection cases.

Supervision is generally intended to be a temporary measure, until the reasons for supervision are addressed. Moving to unsupervised contact is desirable, but not always. While there has been significant research respecting the reasons courts may order supervision, there needs to be further investigation into how families transition out of supervision and how other services (i.e., parenting education, mediation, counseling) can assist this process.

Purpose of this Research Project

This research project is intended to provide information about supervised access and exchange in Ontario. The focus is to learn more about how families may transition out of supervised access and exchanges, and make recommendations about improving services and policy.

Methodology

This project involved a review of literature, an analysis of reported Ontario case law, and interviews with Ontario Judges, Lawyers and Supervised Access Program providers.

There were interviews with 6 Ontario Court Judges, 3 Superior Court Judges, 10 Lawyers in the public sector (including OCL and Legal Aid lawyers), 2 Lawyers in private practice, 3 Supervised Access Program providers at MAG funded programs, and 1 Private service provider. The Manager for the Supervised Access Program of the Ontario Ministry of the Attorney General (MAG), Judy Newman, was also interviewed.

Overview of Findings

Literature Review

Supervised access services across North America are not standardized (Thoennes & Pearson, 1999), and client satisfaction with these services has been inconsistent (Pearson & Thoennes, 2000). The Supervised Visitation Network was established in 1992 and now has chapters across Canada and the United States and has voluntary guidelines for service provision. Lack of standardization has two aspects: 1) there is a need for standards for practice; 2) there is a need for more consistent judicial decision-making related to supervised access (Newman, 2014).

With respect to practice standards, MAG funded centres adhere to the Ministry standards and best practices, and many of the centres are also members of the Supervised Visitation Network and generally adhere to its *Standards for Supervised Visitation Practice* (2006) with respect to service provision, ethics, staffing and policy. However, membership to the Supervised Visitation Network is voluntary and many privately provided services are not members and may not adhere to any specific guidelines or regulations. Visits supervised by a relative or friend are also not subject to specified standards, and may increase the risk of harm to a child if ordered in cases where there is intimate partner violence or high-conflict between the parents (Schaffer & Bala, 2003, Shepard, 1992). Child protection cases are subject to the legislative scheme in the *Child and Family Services Act*. It is important that parents understand the difference between supervised access in child protection cases and child custody cases (Saini, Van Wert & Gofman, 2012, p. 168).

Intimate partner violence is one area that researchers have identified as needing particular scrutiny and understanding, especially in the context of supervised access (See e.g.; Farid, Boyd & Bala, 2016; Grant, 2005). Research has also questioned the use of supervised access in extreme parental alienation cases, especially when supervision continues long-term (Bala, Fidler, Goldberg & Houston, 2007). A useful checklist has been developed to guide judges and lawyers in making decisions about supervised visits (Saini & Birnbaum, 2015, p. 359).

Legal Context

Supervised access, when ordered, is a restriction on parental access post-separation. The foundation for restricting access is established in *Young v Young* (1993), where the Supreme Court of Canada held that “the custodial parent has no ‘right’ to limit access” and that “a judge must consider *all factors* relevant to determining what is in the child’s best interests”. Courts must also give effect to the maximum contact principle, as contained in section 16(1) of the *Divorce Act*, which generally means that children should have opportunity to see their parents if there is potential for a “meaningful [...] post divorce relationship” between the child and access parent. Nevertheless, access may be supervised or terminated if required for the child’s best interests.

In *M(BP) v M(BLDE)* (1992), Abella JA stated that the purpose of supervised access is to provide “a temporary and time-limited measure designated to resolve a parental impasse over access. It should not be used as a long-term remedy”. However, supervised access is sometimes ordered over long periods of time or indefinitely until concerns about the visiting parent are addressed.

While there is significant discretion afforded to judges in making supervised access orders, courts have articulated criteria to be used by when deciding whether to make a supervised access order, or otherwise restrict the maximum contact principle. In Blishen J, in *Jennings v Garrett* (2004), acknowledged that there should be a presumption that access is in the best interest of the child, since it is the right of the child to know and visit with a non-custodial parent, and this right of unsupervised access should only be terminated in “extreme circumstances” as a remedy of last-resort. These “extreme circumstances” justifying termination of access may include:

- Long-term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress and or fear.

- History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse, which has been witnessed by the child and/or presents a risk to the child's safety and well being.
- Extreme parental alienation, which has resulted in changes of custody and, at times, no access orders to the former custodial parent.
- Ongoing severe denigration of the other parent.
- Lack of relationship or attachment between noncustodial parent and child.
- Neglect or abuse to a child on the access visits.
- Older children's wishes and preferences to terminate access.

A party must show a material change in circumstances to vary a supervision order. The test for material change was set out by the Supreme Court of Canada in *Gordon v Goertz* (1993), which requires that the court must be satisfied of:

- (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child;
- (2) which materially affects the child; and
- (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

A judicially directed transition from supervision may also occur without a finding of a material change in circumstances if there is a provision in the original order for supervision that establishes a review date or conditions that would allow review without a finding of a material change in circumstances.

In a child protection context, access may be supervised pursuant to section 37(2) of the *Child and Family Services Act*, which establishes criteria for when a child is “in need of protection”. Section 57–57.2 of the *CFSA* gives the court power to make and vary custody orders that restrict maximum contact between the parents and child. Supervision under the *CFSA* is almost always provided by the Children’s Aid Society, usually at its offices, and there is no charge to parents.

Case Law Analysis

Out of a total of 79 Ontario reported cases between January 1, 2011 and June 30, 2016 where supervised access was mentioned, some form of supervised access or exchange was ordered in 68 cases.¹ There was an order for access without supervision in the remaining 11 cases. Only a relatively small, but unknown, portion of cases where supervised access is sought are in the reported cases, as consent orders and short oral decisions dealing with this issue are not reported.

The reported Ontario supervised access cases have generally applied the *Jennings* analysis in deciding whether to order supervised access. In ordering access to be supervised, judges found one or more of the following factors present:

- Alcohol addiction or substance abuse of access parent;

¹ Cases included in this analysis were identified using Westlaw Canadian Abridgement Digests FAM.IX.8.g Supervised Access. Filters: Ontario. Date range: 2011- 2016. This included all levels of Ontario court. Case law search as of June 30, 2016.

- Inappropriate behaviour towards the child;
- Lack of parenting skills;
- Criminal charges or past criminal behaviour;
- Sexual assault (or allegations thereof) of the child of the marriage;
- Sexual assault (or allegations thereof) of a child outside the marriage;
- Allegations or record of intimate partner violence;
- Mental illness;
- Significant length of time where the parent had not seen the child (supervision usually of the alienated or rejected parent).

When an order for supervised access was made, the court most frequently ordered that it was to occur at a local Supervised Access Program funded by the Ministry of the Attorney General (43% of orders). The laying of criminal charges, often related to intimate partner violence, was the most frequently reason given by the court for considering some form of supervised access, occurring in 19 (24%) of cases. Supervision was ordered in all cases where any type of criminal charges was reported. Claims of intimate partner violence (without criminal charges) were second most frequently cited reason where supervision was considered, with 18 cases (23%), and supervision ordered in 14 of these.

Where just mental health was at issue, supervision was ordered in about half of the cases. Addiction was also a factor alone in 6 cases, and was one of several factors in 9 cases where there were multiple considerations for supervision (i.e., mental illness, criminal charges, parental alienation). Supervised access or exchange was ordered in 80% of the cases where requested if there was a chronic ongoing issue of mental health problems or addiction.

Interview Results

1. When to Order Supervised Access and What is its Value?

Judges were clear that supervision is a last resort to be used in only “extreme circumstances.” Judges generally indicated that supervision is not appropriate for certain types of cases, including those where: supervision was likely to go on indefinitely; there were severe mental health concerns; or the parents/children need clinical therapeutic support before visits can occur. There was some disagreement amongst lawyers, judges and service providers about whether sexual assault cases are appropriate for supervised access. While a few judges were willing to order supervision in these cases, lawyers expressed concern about the child giving evidence in ongoing court proceedings, and service providers report that they are often unable to provide the 1-on-1 attention and additional security measures such cases require. Lawyers, judges and service providers agreed that if the child does not benefit from supervised access it is not appropriate.

2. The Value of Supervision for Parents and Children

Lawyers and Judges suggest that visits at Supervised Access Programs occur in an unnatural environment of Supervised Access Centres and – in some cases – they questioned the benefits for children; however, in many cases where it is undertaken, supervised access is useful and the cases transition to unsupervised access. Professionals are generally aware of the limitations of

Centres, and that due to both resource and policy concerns, they do not provide any therapeutic services to help parents or children deal with the trauma that led to supervision in the first place. Service providers noted that if cases have a high risk of trauma, they may decide not to provide supervision services, and some said they suggest counseling in such cases for a few months before access begins, or refer children/parents to mental health professionals.

3. Frequency, Cost and Alternatives to Supervised Access Centres

Frequency—Frequency is determined by availability of centres, which is most commonly 2 hours, biweekly. Judges and service providers expressed desire to consider other factors such as the child’s age, nature of the conflict, or the family’s other commitments.

Cost—Even the small service fee at Ministry-funded centres is burdensome for many supervised access clients, who are often low-income. While the service fee can be waived, the cost of transportation to and from the centre can be burdensome.

Alternatives—Supervision by a relative or friend may sometimes be ordered; however, judges generally emphasize that the person must understand their role as supervisor and be prepared to take responsibility for supervising the access. This sort of supervision is less intrusive as it can occur in the home or community, and the supervised parent and child may feel more comfortable with the supervisor, but it does not provide the same level of protection and the same unbiased evidence as reports from a Supervised Access Centre. Judges sometimes use public places for exchange (i.e., fast-food, parking lot) as an alternative to supervised exchange.

4. Child Custody vs. Child Welfare Cases

Interviewees identified differences between supervision in custody and welfare cases as follows:

	Parental Dispute	Child Protection
Purpose	<ul style="list-style-type: none"> ➤ Order supervision if safety concerns to child, parent or other family ➤ Facilitate interaction between parent and child by providing safe space for parent and child to bond ➤ Do not teach parenting skills 	<ul style="list-style-type: none"> ➤ Provide safe space for children because of existing safety concern ➤ Assess parent competency ➤ Build parenting abilities through hands-on intervention ➤ Family reunification is ultimate goal
Use of Notes	<ul style="list-style-type: none"> ➤ Either party may request copy of notes ➤ Notes are more balance and factual report of visit and may be used as evidence 	<ul style="list-style-type: none"> ➤ Notes taken used for evidence gathering in ongoing litigation ➤ High level of scrutiny on parent competency
Neutrality	<ul style="list-style-type: none"> ➤ Overall confidence that staff maintain neutral position when supervising families ➤ Family signs service agreement 	<ul style="list-style-type: none"> ➤ Parents do not perceive Society as neutral because CAS staff are seen as party to litigation, which may affect quality of visits

5. Avoiding Long-Term Supervision Orders

There was some variation in views about what constitutes “long-term” supervision: answers ranged from 5+ months to 2+ years. Interviewees did share the view that parents become “long term clients” if there is an underlying inability on the part of parents under supervision to resolve the issues that initially led to access being supervised in the first place. Long-term clients are a

drain on centre resources. Further, access tends to lose benefit as children age and either become negative about visits or become involved in other community-based activities that they want to do. Supervised access may also not benefit the child if the visits escalate the conflict, or either parent consistently cancel visits.

All judges interviewed said they often include review provisions with orders for supervision; however, the case law analysis suggested that there are some judges who do not include review provisions. Review periods varied from 2-3 months to 6 months, to 1 year. Service directors noted that often families require additional services (i.e. counselling/therapy) to transition out of the program, but they are not able to provide these services as a matter of both policy and resources.

If final orders for supervised access are made, judges require evidence of a material change in circumstances, which can include the parent's improved ability to meet the child's needs, a change in the child's comfort level with the parent, or trust increasing between the parents. Evidence of this may be provided in a report by the OCL or another third party, or by notes from the Supervised Access Program. Lawyers agreed that they and their colleagues should work to gather evidence of a material change and work to move their clients away from supervision. Service providers called for lawyers to work with their clients better and promote alternative court services like mediation to avoid initial supervision orders.

6. Suggestions to Improve Supervised Access

- **Increase Resources** —Judges and Lawyers advocated for facilities to have: outdoor spaces, places where parents can interact with children by cooking a meal, activities for older children, one-on-one supervision, parent education classes on-site, additional locations in rural communities.
- **Increase Cultural Sensitivity** —Lawyers and Judges called for more diversity in: training staff to recognize different cultural practices, language/translation services, hiring staff (gender and ethnicity).
- **Use Private Services**—if they can be afforded, private services allow for more frequent and flexible supervision, including at-home or in-community supervision.
- **Develop Therapeutic Supervision**—Judges identified need for specialized resources that provide a therapeutic component.
- **Focus on the Purpose of Supervision and Consent Orders** —Lawyers and Judges suggested that courts should be wary of making supervised access orders just because they are on consent and examine the evidence in its entirety.
- **Improve Communication Between Stakeholders** —Judges wanted more communication between family and criminal courts, as well as between courts and access centres. Lawyers wanted more frequent reports from centres and standardized rules for acquiring such reports. Service directors called for Lawyers and Judges to learn the availability, purpose and rules of supervised access programs, and communicate this to their clients.
- **Separate Supervision from the Children's Aid Society** —Judges and Lawyers have concerns about supervision by the CAS because of issues about lack of neutrality.

- **Provide Training to Third-Party Supervisors** —One judge suggested that Centres could train family members to supervise visits to alleviate burden of long-term services.
- **Consider Litigants' Resources**—When orders are being made for supervised contact, there must be consideration of both transportation costs and service fees.

Recommendations

Supervised Visitation Checklist

The interviews and case law suggest that the criteria for ordering supervised access are vague and not applied consistently by different judges. Using the Supervised Visitation Checklist's weighted scoring system (Saini & Newman, 2014, See Appendix I) can provide guidance for judicial decision-making and help Lawyers to predict court outcomes. This Checklist should be made available to judges, lawyers, assessors, counselors, and self-represented litigants in Ontario.

When orders are made on consent, judges should consider: 1) whether supervision has a reasonable prospect of success for promoting the parent child relationship 2) whether there is a valid reason for supervision outside of the parent's mistrust of their ex-partner; and 3) whether additional services are needed for the family in order to address the underlining issues that brought them to the supervised service in the first place.

Consideration of Impact on Children

Lawyers and self-represented litigants should be encouraged to present evidence about the child's perspectives, views and interests for the consideration of the courts. Evidence from third-party sources, such as the Office of the Children's Lawyer, or a child's counselor or therapist, may also be helpful in determining the child's perspective on supervised contact.

Supervised access providers include children in orientation and service agreements, where appropriate given the children's age and maturity level; this is already a common practice in MAG funded centres but should occur within all supervised services.

Lawyers for custodial parents should encourage their clients to realistically assess whether supervision is needed, and if so, whether a parent or relative would be a suitable supervisor. If there are realistic concerns, clients should be encouraged to consider how to develop a plan to address them to persuade the court that supervision will not need to be indefinite. Lawyers should further be aware of high-risk situations and encourage judges to be cautious about supervised access in cases of serious intimate partner violence or child abuse, or any other case that is likely to cause trauma to the child.

Communication between Courts, Supervised Access Centres and Management of Client Expectations

Lawyers and judges should be aware of the availability and resources of local access centres, and aware of other options that may be appropriate if the client cannot afford or is unable to travel to the centre or is not a case that is suitable for the centre. Local Family Law Information Centres

(FLICs) should have current information so that they can effectively assist parents. Lawyers should communicate this information to clients where applicable and help clients to connect with services that will help them transition away from supervised visits. It would also be useful for lawyers and judges who frequently work with these types of cases to visit a centre.

All Supervised access services should provide information to local judges and lawyers about what types of cases they are able to handle, and which cases require special considerations, or simply cannot be handled. Use of template orders for supervised access or exchange is also recommended to increase communication and consistency.

A family case involving supervised visits may also be awaiting a decision or trial date in a criminal matter. There needs to be better communication between the family and criminal systems in cases that are proceeding in both courts.

Taking Cost of Supervised Access Services into Account

In making supervised access orders, lawyers and judges should take into account the cost of transportation to and from the access/exchange centre, and might make adjustments under the “undue hardship” provision of the *Child Support Guidelines*. Supervision by a relative or friend is encouraged in low-risk cases as a cost-free alternative. Where it can be afforded, privately provided services may provide a more flexible alternative to supervision at a centre. Community social services agencies should be encouraged to consider providing sliding scale supervised visitation services as part of their assistance for children whose parents lack resources and would, for example, benefit from supervised visits in the community; this might be especially useful for older children.

Avoiding Long-Term Supervision

MAG funded supervised access centres in Ontario are not well resourced to supervise access on a long-term basis. From a social perspective, having one family for a long period may delay or limit services to many other families. Further, and more significantly, there are questions about whether children benefit from access that is supervised for a long period of time.

Given the concerns long-term supervision, it will normally be appropriate for orders for supervised access to include provisions for review after a certain time period or when stipulated conditions, normally concerning the access parent, have been satisfied. When orders are made on consent in cases at a low or medium risk level, the order for supervision should be limited by either including a review provision, or by making an order for a specified number of visits accompanied by instructions for transition out of the program.

There should generally be review provisions in a supervised access order, and single judge case-management system for these cases. By including review provisions when an order is made lawyers and judges can help minimize the cost concerns from long-term ongoing supervised access. Supervised access centres should be informed of any upcoming courts dates and work to have reports prepared for those times to be used as evidence in deciding whether supervision should continue. Supervisors should further consider termination criteria (such as child

reluctance/refusal, negative interactions during visits, child unresponsive) and end supervision if appropriate.

Reports on Supervised Visits and Exchanges

Legal Aid counsel complained that they have to pay for notes, that notes were not provided in a timely fashion, and that there is often ‘administrative red-tape’ that hinders the use of supervisor notes in proceedings to review or vary terms of supervised access. The procedure for acquiring notes should be displayed at the access centre, included in the orientation, and provided in writing to visiting and custodial parents, as well as made available to lawyers and judges.

In CAS supervision cases, courts should consider the potential for unconscious bias in notes from a caseworker who may have already formed an opinion about the parent’s competency or ability to provide a safe environment for the child.

Increasing Education for Legal Professionals and Parents

It is very important for family lawyers and judges to know about the services provided by supervised access centres. This can be facilitated through continuing legal education programs, as well as better communication between supervised access centres and local family bar associations. Lawyers working in custody and access cases, particularly those working with low-income clients, should be aware of the process and criteria for use of their local supervised access centres, and be able to identify which cases will benefit from supervision and are likely be able to transition out of supervision.

Several online sources (Ministry of the Attorney General Website, Legal Aid Ontario, some law firms) have resources for the public available on their websites about supervised access centres, but there is a need for better, accessible information about these programs.

Increasing Resources and Making Better Use of Existing Resources

There is clearly a need for more supervised access centres, especially to accommodate fast-growing populations and provide better service to rural areas. It is also clear that additional funding is required to increase the variety of available facilities at existing centres, including: access to outdoor facilities and physical activities; facilities geared towards older children; and place to cook and eat a meal.

Recognition of the Importance and Challenges of Diversity

There is a need to address the cultural diversity of the families living in each service area. Workers hired should reflect the cultural, ethnic and religious diversity of the service area. If possible, there should be a gender balance as well. All service centres should be able to accommodate French and English speaking families.

Further Research and Statistics

While this report has provided information and made recommendations, there is clearly a need for further research and data, both in Ontario and more broadly. The central issues addressed in this report, how to more effectively help parents transition to unsupervised access and what are the effects of long-term supervised access, need to be studied. The views of parents and children must be considered about these and related questions.

In Ontario, the Ministry of the Attorney General should require the Supervised Visitation Programs that it funds to provide consistent, useful data and make it available to professionals, community agencies, researchers and the broader community. There should, for example, be a simple standardized file opening and closing forms that could be summarized and provide important data on the reasons for supervised access ordered, the duration of supervised access for children of various ages, and, of particular utility, the reasons supervision services are ended.

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I. Introduction

Supervised access or supervision of the exchange of a child may be necessary when there are concerns about intimate partner violence, poor parenting (including abuse or neglect), serious alienation, alcohol or drug problems, parental mental health, risk of abduction, or when a parent has had little to no relationship with their child (Saini & Birnbaum, 2015). Supervision of access or exchanges is an important service for families involved in family disputes or child protection proceedings, and is generally undertaken pursuant to a court order (Saini, Van Wert & Gofman, 2012). The Ontario government, through the Ministry of the Attorney General, funds programs in every court district in the province to provide subsidized services for supervised visitation and exchange for family disputes. There are also private services that offer supervised visitation, though relatively few parents can afford this, and in some cases a relative or friend of a parent may be a suitable supervisor. In child protection cases, the Children's Aid Societies provide supervision, without charge to parents.

Supervision of visitation can play a critical role in allowing safe contact between children and their parents for the purpose of maintaining, establishing or enhancing their relationship, and can provide an assurance of safety while allegations of abuse or other concerns are under investigation. Supervised visitation programs may also help to provide independent information about parent-child visits that can be used for court purposes (Birnbaum & Chipeur, 2010), though service providers are generally do make recommendations to the court.

These programs are usually expected to be transitional services of limited duration to allow for safe visits while the parents work on reducing the risk factors that initially necessitated the contact to be supervised. While moving to unsupervised contact is generally considered desirable, this should be done only if it can occur without risk to the child or a parent. However, once supervised visits have commenced, without an evaluation by a qualified mental health professional—which is often costly and time consuming—it can be difficult to determine whether during the course of supervised visitation parent-child relationships or parental behaviours are improving, and to determine the steps needed to move towards unsupervised contact (e.g., supervised exchanges, informal supervision, therapeutic support), or alternatively to determine that it is a situation where there should be no contact between a parent and child. Consequently, parents and children may remain in supervised access programs longer than necessary or desirable (Groysman, Saini, & Newman, 2014).

Recent research has identified factors that courts use in ordering supervised visitation (Saini & Birnbaum, 2015). However, once supervision is court-ordered, there are no clear guidelines for transitioning to less formal supervision or unsupervised access, or for terminating even supervised contact. There is a need to assess how to effectively use complementary services (i.e., parenting education, anger management, mediation, parenting coordination, etc.) to address the risk factors that led to the use of supervised visitation. There is a need for research about such issues as staff training, standardization of protocols and service delivery, and increasing consistency in judicial approaches on how to transition out of supervised settings (Saini & Birnbaum, 2015; Birnbaum & Chipeur, 2010). There is also a need for more study into the questions of whether long-term supervised contact is a viable context for the development and

maintaining of a healthy parent-child relationship (Bailey, 1999; Groysman, Saini, & Newman, 2014; Commerford & Hunter, 2015).

This research project is intended to gain and disseminate information about supervised visitation and exchange services in Ontario, with a particular focus in learning more about transitioning of families out of supervised access and exchanges in both child custody cases and in child welfare cases involving high conflict families, and making recommendations for addressing problems or limitations with service provision or policy.

Methodology

The research for this project has three parts. First, we have undertaken a review of relevant literature. Second, we identified and analyzed reported Ontario cases involving supervised access, with a particular focus on transition from supervised to unsupervised visits and exchanges. Third, we conducted interviews with professionals to explore their experiences with supervised visit and exchange services, with respondents who were Judges, Lawyers and supervised access service providers, mainly in three regions of the province: two urban areas in Southern Ontario, and one in Northern Ontario.

II. Literature Review

Over the past 30 years there has been a considerable amount of research about supervised access from legal, sociological and psychological perspectives, studying such issues as the training and attitudes of service providers, policies and programs for supervised access the impact of supervised visitation on parents and children, and its effect on the parent/child relationships. However, critical issues, especially about the long-term value and effects of supervised access, and transitioning away from supervised access, have not been addressed comprehensively.

Supervised access “involves a third party overseeing access visits between a child and his or her parent” (Kelly, 2011, p. 283). Within this broad definition, there are several types of supervision that may be ordered by a court or agreed to by parents:

- 1) Supervision at a government-funded or subsidized centre;
- 2) Supervision by a private agency or professional;
- 3) Supervision by a friend or relative; and
- 4) Supervision by the Children’s Aid Society, typically when there is an open child protection case file.

Supervision may involve supervising the whole visit, part of a visit, or just the exchange of the child between the parents.

Supervision at a Government-Supported Centre

In “high-conflict” cases² requiring a formal and structured setting, supervision can take place at a centre that provides a “safe, neutral, child focused setting for visits or exchanges” (Birnbaum & Alaggia, 2006). Supervised visitation programs have been established in North America and in other developed countries such as Great Britain, Australia and New Zealand “in response to the need of those high conflict post-separation families litigating before the courts” (Birnbaum & Alaggia, 2006 p. 121). These government-supported programs developed as an alternative to the traditional form of supervised access, which was conducted by a child welfare agency when children were “found to be in need of protection as a result of negligence or abuse and needed a safe environment to visit with their parents” (Birnbaum & Alaggia, 2006, p. 121). Thus, supervised access in child custody disputes evolved as a process parallel to that of child-welfare agencies in order to guarantee child safety following separation when there was conflicting information from the parents and no active child welfare concerns (Birnbaum & Alaggia, 2006, p. 121).

The mandate of these government-supported programs is significantly different than supervised access provided by the Children’s Aid Society acting under child welfare legislation. While the goal of access in child welfare cases is to ensure the protection of children, usually in the context of efforts at family reunification, the goal of government supported access centres is to provide a child-focused, neutral and safe environment for access to occur.

² For a discussion of the meaning of the term “high conflict”, see Birnbaum & Bala, 2010, p. 405.

The first supervised access centres for family cases opened in the United States in 1982, and these centres now operate in a number of countries, including Canada (Birnbaum & Alaggia, 2006; Johnson & Strauss, 1999; Pearson & Thoennes, 2000). In 1999, a profile of service providers in the United States and Canada found that 64% of visitation programs were housed in a private, non-profit agency. An additional 9% of respondents in the study were individual practitioners while 13% were part of a for-profit agency (Thoennes & Pearson, 1999).

In Ontario, a supervised access pilot program was established in 1992 with Ministry of the Attorney General funding. The program expanded in 1994, with 14 sites across the province. The Ministry provided additional funding in 1999 and 2003, which eventually allowed the program to expand to include (as of 2014) 104 supervised access centres operated by 37 non-profit community based organizations across the province (Newman, 2014). In 2014, Ontario's government-supported supervised access centres provided more than 70,000 visits to 3,500 families (Newman, 2014).

Standards for Practice

After the establishment of the first supervised access service centres, a study by Thoennes and Pearson (1999) found that service provision was not standardized across programs and occurred in any combination of: on-site at a supervised access centre, off-site in the community, at the home or the family or relative, or—in some cases—over the phone. Lack of funding was identified as a significant concern, along with the fact that some services were not providing the quality or availability required by the courts and litigant families. Services were often provided by volunteers, many of whom were university and college students (Thoennes & Pearson, 1999). While the first Thoennes and Pearson study asked service providers, lawyers and judges about their satisfaction with supervised access services, their second study in 2000 focused on the experiences of American parents in the programs. Their second study found that most parents reported being treated fairly and with respect, and that they valued the programs that collected information about the visit or exchange (Pearson & Thoennes, 2000). Parents also indicated that they wanted programs to play more active roles in case management, including making recommendations and conducting assessments to move the case out of supervised visitation programs. Thoennes and Pearson compared these results to a 1997 Canadian Study (Park, Peterson-Badali & Jenkins, 1997), which had also found that parents were generally satisfied with the programs, but often did not understand the legal context in which supervision was ordered (Pearson & Thoennes, 2000).

As a result of expanding service provision across North America, the Supervised Visitation Network (SVN) was founded in 1992, and now has 15 chapters across Canada and the United States. The SVN, a multinational non-profit organization, has members who include service providers, therapists, social workers, judges and lawyers interested in supervised access standards and issues. SVN has *Standards for Supervised Visitation Practice* (2006) that provide a code of ethics and guidelines for service provision that many service providers have adopted, though membership in the Network is voluntary. Despite the existence of these standards, available services and standards vary greatly depending on the service provider.

Because of this variation in service provision, much of the early literature on these programs in

Canada focused on the benefits and limitations of individual programs (see James & Gibson, 1981; Stocker, 1992; Pearson & Anhalt, 1993; Park, Peterson-Badali & Jenkins, 1997; Clement, 1998; Furniss, 2000). More recently, there have been calls for more standardized practices. Judy Newman, Manager for the Supervised Access Program, Ministry of the Attorney General of Ontario presented at a conference in 2014 and called for more accountability and tighter regulations for supervised access centres. Newman identified dual concerns for improving provision of supervised access services: 1) the need for standards for practice; and 2) more consistent judicial decision-making in supervised access cases (Newman, 2014).

A 2012 qualitative Ontario-based study (Saini & Birnbaum) emphasized the importance of the voice of children in child custody disputes. While the study did not examine supervised access specifically, it concluded that overall, children wanted to be better informed about the separation process. The study also found that children wanted to have their opinions respected regarding whether or not they wanted to participate in the decision-making process post-separation. Children in supervised visitation programs are inherently vulnerable and research shows that such children can have a profoundly negative experience in supervised visitation programs (Johnson & Campbell, 1988, 1993). However, the limited research available suggests that most children report positive experiences in supervised access (Commerford & Hunter, 2015).

Almost as soon as supervised access programs were established in North America, there were calls for supervised access centres to provide trained staff capable of responding to concerns in situations where there is ongoing family violence (Kerr & Jaffe, 1999).

From 2000–2010, there was significant scholarly research about supervised access in the context of child custody disputes. During that decade, researchers identified needs for: affordable and accessible supervised access services (Neilson, 2000; Himel, 2000); additional funding from government (Crook & Oehme, 2007); proper consideration of custodial parents who are victims of intimate partner violence in ordering supervised visits (Schnall, 2000; Shaffer, 2004); more effective consideration of the views of children about supervised access; and improved understanding of the importance of the parent-child relationship in making access orders (Bala & Bailey, 2004).

Recent research has also focused on the socioeconomic context of custodial parents in supervised access cases. Australian research suggests that supervision is often a result of multiple concerns about the access parent, and that a significant portion of all supervised access cases involve parents and children living with economic challenges; two-thirds of custodial mothers involved with Australian Child Contact Supervision Centres are living on social assistance (Commerford and Hunter, 2015).

Supervision by a Private Service

Currently, there is no regulation of private providers of supervised access services. In Ontario, companies such as Brayden Supervision and Side-by-Side Services provide access that is supervised in the community or at the home of one of the parents. While there is no regulation of private services currently, Side-by-Side services currently advertises on its website that it adheres to the Supervised Access Guidelines issued by the New Zealand Ministry of Social

Development in 2016, which provide recommendations regarding service delivery, measuring results and reporting, as well as a general overview of the purpose and core principles of supervised access. The guidelines also provide a template for reports from supervisors for the courts.

Another set of guidelines for private practice comes from the SVN (2006), which provides clear guidelines that are similar to those from the New Zealand Ministry of Social Development. However, membership in the SVN—and adoption of the Network’s *Standards for Supervised Visitation Practice* (2006)—is voluntary, and there is no assurance that its standards and requirements for training of volunteers or employees are being followed

Supervision by a Relative or Friend

In some cases—often those where safety concerns are less serious or not at issue—judges may order family members related to either the custodial or non-custodial parent may supervise access. Supervision may also be by a neutral third party (non-relative) whom both parents trust. This type of visitation may occur at the home of one of the parties, or at the home of the supervisor or somewhere in the community. While this type of supervision avoids some of the problems of supervised access programs (i.e., long wait times and costs) and allows visits to occur in a more natural setting, there are concerns with the relative-supervision model. The main concern is that a family member related to one of the parties or a friend is rarely neutral. The supervisor may lack insight into the ongoing issues between the parents—particularly intimate partner violence—and that they may not be able to provide the level of security and supervision that the situation requires. Concerns have been raised that there may be cases where supervision by a relative actually increasing the risk of harm to the victim of such violence (Schaffer & Bala, 2003; Shepard, 1992). Further, unlike supervision by an agency, there are concerns that any report provided by a supervisor who is a friend or relative will have potential bias.

There are relatively rare cases where the custodial parent supervises access. This may be appropriate as a short-term measure if the visiting parent has had little or no contact with a child for a significant period, or has never cared for an infant or young child. However, if there is significant conflict between the parents, such arrangements raise concerns for placing the custodial parent at risk for further abuse in situations involving intimate partner violence or exposing the children to parental arguments (Grant, 2005).

Supervision by the Children’s Aid Society in Protection Cases

When there is an open child protection case file and a child has been apprehended and placed in the temporary care of the Children’s Aid Society, the agency will usually provide supervised access at its office. In these cases, the Society is party to actual litigation, or will be a party to a possible future status review, and notes taken by the supervisor during visits are often used as evidence in court. The Society’s goal for its service provision, which includes supervised visits, is generally family reunification, though in some cases the agency may, in effect, be gathering evidence for a hearing to terminate parental rights. While the Children’s Aid Society usually tries address both the goals of child protection and family reunification (Smith et al, 2014), it has been suggested by researchers that there is a need for the agency to better communicate with the

parents whom are they supervise about their objectives and plans, and about the potential for use of evidence about the supervised visits in future proceedings.

Some researchers have compared supervised access in both child welfare and child custody dispute contexts and identified two distinct models of practice. One group of researchers recommended that (Saini, Van Wert & Gofman, 2012, p. 168):

1. Families receive clear information about reasons for attending supervised visits and the potential outcome of such visits in both settings;
2. Standardized training for workers providing supervision of visits in both the child custody and child welfare contexts; and
3. Clear information to parents about the differences between supervised access in child custody and child welfare disputes, underscoring the difference in purpose between both services.

A 2012 study of the experiences of Ontario child protection workers' experiences working with high conflict parents reported that child protection workers described feelings of being "trapped" in parental high-conflict child protection cases (Saini, Black, Lwin, Marshall, Fallon & Goodman, 2012). Workers explained that they feel "stuck" with supervision orders because the decision making power for moving a case out of the Society's supervision rests with the judiciary (Saini, Black, Lwin, Marshall, Fallon & Goodman, 2012). This study also recommended a collaborative approach and coordinated response to dealing with high conflict families moving through the child welfare and court system, and suggested resource sharing to help strengthen relationships between professionals in child custody and child welfare systems.

Legal Context

As will be further discussed in the case law analysis below, there is a legal presumption that parents will have contact with their children, and this will normally be unsupervised and at their homes or in the community. Supervised access is generally seen by the courts as a "last-resort" to allow contact where there are continuing safety concerns for either the child or the parent, though there are also cases in which contact between an abusive parent and child will be terminated.

Any custody or access order is premised on the determination of the child's best interests. While when initially ordered supervised access is generally regarded a temporary measure and a "stepping stone", there are cases that evolve into long-term use and there are questions about whether such an arrangement is in the best interests of the child. In 1997, Martha Bailey argued that "the issue of whether long-term supervised access is in the best interests of the child must be determined on a case by case basis, taking into consideration all circumstances relevant to the best interests of the child" (Bailey, 1999, p. 480). While courts generally seem to have adopted this case-by-case method for supervision orders, concerns have been raised about the primacy parental contact is given in judicial decisions about supervised access (Shaffer, 2004).

In evaluating the use of supervised access in child custody cases, Birnbaum and Chipeur have observed: "It would seem that the maximum contact principle has been equated with the best interest of the child. In reality, the court cannot provide 'quick fixes' to complex social-

emotional family problems” (2010, p. 93). They observed that the courts cite a number of factors in deciding whether will order supervised access in custody and access, including (Birnbaum & Chipeur, 2010, p. 93):

- Protection for the children from risk of harm;
- A mechanism to promote the parent/child relationship;
- A means to attempt to direct the access parent to engage in a program of counselling or treatment to deal with issues affecting parenting;
- The creation of a bridge for a relationship between the parent and child; and
- A means to avoid or reduce conflict between parents and on the child.

In their evaluation of the situations in which supervised access is ordered, two objectives emerged:

- 1) protection of the child, especially in intimate partner violence cases; and
- 2) promotion of the parent-child relationship.

However, Birnbaum & Chipeur noted that there was little empirical research on which to assess the extent to which supervised access is effective in achieving these goals.

Protection of Children in Intimate partner violence Cases

In 2002, as supervised access centres were being expanded in Ontario, Kathy Lynn Grant recommended a “case streaming” approach to child custody and access cases in there which there were intimate partner violence issues (Grant, 2005). Grant argued that using the “best interests of the child” test is inadequate in addressing spousal abuse issues in custody and access cases because the dynamics of spousal abuse are poorly understood by someone not specifically educated about issue (Grant, 2005, p. 91). She instead suggested a two-streamed approach to child custody and access cases, which would segregate cases involving spousal abuse, or—alternatively—addressing this problem through supportive non-legal measures such as training lawyers and the judiciary and providing additional funding to legal aid services. Most significantly, Grant suggested that government-funded supervised access centres need the necessary infrastructure for safe exercise of access in spousal abuse cases.

Grant also addressed the idea that supervised access cannot exist in a vacuum in an intimate partner violence context (Grant, 2005, p. 99):

“Women are more at risk of violence when they attempt to leave violent relationships. If legal mechanisms to protect both women and children from the harmful effects of intimate partner violence are to have any meaningful effect, support must first exist for women to safely exit these relationships safely. Social reforms must accompany protective laws. If the welfare of children is truly a societal concern, then primary care givers must be supported with adequate financial assistance and safety measures to leave violent relationships. Funding for shelters, family relocation, and more enforcement of protective orders is a place to start.”

A recent survey of family lawyers and judges from across Canada suggests that there is continued controversy and varied experience among professionals with intimate partner violence

and supervised access (Farid, Boyd & Bala, 2016). One lawyer suggested that courts may not take intimate partner violence seriously enough: “[U]nless domestic violence is severe, some courts want [the parents] to ‘get over it’ and start behaving for the sake of their child”. Another respondent complained that the courts treat male and female perpetrators of intimate partner violence very differently, taking intimate partner violence by women less seriously (Farid, Boyd & Bala, 2016). Overall, when asked how frequently the family court addresses intimate partner violence by ordering supervised access, 45% of the 120 respondents reported “occasionally”, 41% respondents said “often/ almost always” and 14% said “never/rarely”. With respect to supervised exchange in intimate partner violence, 35% of respondents said it is “often/almost always” ordered, 34% said it is “never/rarely” ordered and 31% said it was “occasionally” ordered.

Promoting the Parent-child Relationship

In the context of those cases where there are concerns about alienation and children are resisting contact with a parent, supervised access is intended to promote and repair the relationship between the child and access parent. In these cases, the decision to force reunification must weigh the potential benefits and disadvantages of the contact, “including any possible trauma that may result if the child fears the rejected parent, even if that fear is not reasonable” (Bala, Fidler, Goldberg & Houston, 2007, p. 122–123). Supervised access in such cases may “pave the way” for further intervention strategies and address either the child or custodial parent’s fear of the access parent. However, supervision is only appropriate when there are reasonable fears or—if the fears are unfounded—for a short period of time (Bala, Fidler, Goldberg & Houston, 2007). Given the unnatural context of a supervised access, long-term use of supervision may impede the development of a strong relationship between access parent and child (Bala, Fidler, Goldberg & Houston, 2007).

Development of Decision-making Criteria

Legislation and case law give imprecise direction for dealing effectively with the familial problems that may give rise to the need for supervised access. More than a decade ago, Toronto family lawyer Gene Coleman wrote about his concerns that there were significant injustices in some cases where there were orders for supervised access. He recounted one particular case where the father’s access had been reduced from twice weekly unsupervised to once a week at a supervised access at a centre. The order was made without sworn evidence and no claim for supervision in the case conference brief. The unrepresented father reportedly had no understanding of what happened, and why he would not be allowed to see his child on the regular access schedule. Coleman states that nothing in the court documents would have alerted this man to what consequences he was facing in court, there was no legally admissible evidence tendered, and no chance for him to answer the serious allegation against him before supervised access was ordered (Coleman, 2004, p. 392).

Over the past decade the Ministry of the Attorney General has a website and printed a brochure that provides information for parents about supervised access, and some Ontario law firms provide informational resources about supervised access that are publicly available on their firms’ website (see e.g. Jamal & Grover, 2012).

In the 1980's when the first supervised access programs were established, there were no standardized tools for assessing the need for and level of supervision required in a child-custody case. Using the vague guiding principle found in section 16(10) of the *Divorce Act*—that children should have as much contact with their parents as is in their best interests— judges sometimes made different orders in cases that seemed quite similar (Saini & Birnbaum, 2015). To address this inconsistency in approach, between 2007 and 2014, researchers began to develop criteria for making orders for use of supervised access programs. The “Visitation Checklist” was initially developed by Joann Murphey, and further refined as the “Supervised Visitation Checklist” by Michael Saini and Judy Newman (Saini & Birnbaum, 2015; see Appendix I). This checklist provides tools for lawyers and judges who must decide whether supervised access is appropriate (Saini & Birnbaum, 2015). Based on their study of 171 Ontario judgments on supervised access and exchange, Saini and Birnbaum proposed use of a “reliable and valid checklist” that “considers the modeling of interrelated social and legal factors such as: (1) individual factors of the parents and children; (2) family factors (e.g., conflict, violence and abuse); (3) community factors including the involvement with the courts; and, (4) factors at the societal level (e.g., case law, legislation and cultural considerations)” (Saini & Birnbaum, 2015, p. 359).

The case law review in the following section of this paper will explore how orders for supervised access are made and in what situations certain types of access orders are more likely than others.

III. Review of Leading Ontario Cases

The “Best Interests” Test and the “Maximum Contact” Principle

The primary consideration in any access case is the “best interests” test, as articulated by the Supreme Court of Canada in *Young v Young*,³ a case that dealt with restrictions on the right of a Jehovah’s Witness father to share his fundamentalist faith and strict religious practices with his children during access visits. In *Young*, McLachlin CJC concluded that “the custodial parent has no ‘right’ to limit access” and that “a judge must consider *all factors* relevant to determining what is in the child’s best interests”.⁴ Chief Justice McLachlin further stated that contact between the child and parent should be maximized “to the extent that it is in the best interests of the child”.⁵ While risk of harm to the child from contact should also be considered, it is not the “ultimate legal test,” as courts should be satisfied that access is in a child’s best interests.⁶ However, courts should give effect to the maximum contact principle, namely that “the child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child,” as required by section 16(10) of the *Divorce Act*.⁷ Since the maximum contact principle is modified by consideration of the child’s best interests, contact may be restricted if necessary to promote a child’s welfare.⁸ Chief Justice McLachlin also noted that Parliament’s intention was “to facilitate a meaningful, as well as a continuing, post-divorce relationship between the children of the marriage and the access parent”. Therefore, the child should generally have the opportunity to know the parent.⁹

Chief Justice McLachlin further clarified the maximum contact principle of s. 16(10) of the *Divorce Act* in *Gordon v Goertz*,¹⁰ a case dealing with a mother’s relocation with a child to Australia which had the effect of limiting the father’s contact with their child. In that case McLachlin CJC confirmed that maximum contact is “mandatory, but not absolute”—that is to say, if there are factors that demonstrate maximum contact would not be in the best interests of the child, the court “can and should restrict contact”.¹¹

After the decision in *Young*, courts have been challenged in applying the best interests test because of its “indeterminacy and elasticity. . . which makes it more useful as a legal aspiration than as legal analysis”.¹² It is, however, useful to examine the approach of lower courts to the best interests test in the context of the relevant factors that may prompt access to be supervised, or otherwise restrict the maximum contact principle.

³ [1993] 4 SCR 3, 49 RFL (3d) 117.

⁴ *Young* at 14.

⁵ *Young* at 14.

⁶ *Young* at 14.

⁷ *Divorce Act*, RSC 1985, c 3 2nd Supp, s 16(10).

⁸ McLachlin CJC in *Young* at para 204.

⁹ *Young* at para 205, citing the Court of Appeal decision by Wood JA, (1990) 50 BCLR (2d) 1, 74 DLR (4th) 46.

¹⁰ [1996] 2 SCR 27, 19 RFL (4th) 177.

¹¹ *Gordon* at para 24 [citation omitted].

¹² *Young* at para 124, citing *MacGyver v Richards* (1995), 22 OR (3d) 481 at para 27, 11 RFL (4th) 432, Abella J.

Restricting the Maximum Contact Principle

In Ontario, one of the first appellate decisions to consider supervised visitation was the Ontario Court of Appeal in its 1992 decision in *M(BP) v M(BLDE)*.¹³ This case involved consideration of several factors in deciding whether to order supervised access for a father, or discontinue access altogether. In *M(BP) v M(BLDE)*, the father's access was initially supervised due to his ongoing harassment of the mother after the parties' separation. After his access transitioned to unsupervised weekend visitation, the child began to exhibit behaviours characteristic of extreme stress (i.e. bedwetting, anxiety). After consulting her family doctor, the mother became concerned about the possibility of sexual abuse of the child by the father and terminated his access. The father applied to have the mother held in contempt of the access order, while she cross-applied to terminate access. At trial, the judge found there was no evidence of sexual abuse but nonetheless terminated the father's access as it was not benefitting the child. The father appealed, seeking at least supervised access, but was unsuccessful. The Ontario Court of Appeal upheld the trial judge's order on the basis that the child's behavioural changes qualified as a material change in circumstances warranting a variation and termination of the access order.

The Court of Appeal considered whether access should be supervised rather than terminated, suggesting that supervised access orders are intended to be "temporary." In *M(BP) v M(BLDE)* Abella JA cited Judge Norris Weiseman¹⁴ with approval, in stating that the purpose of supervised access is to provide "a temporary and time-limited measure designated to resolve a parental impasse over access. It should not be used as a long-term remedy".¹⁵

However, the Ontario Court of Appeal in 2003 in *M(CA) v M(D)*¹⁶ preferred a long period of supervised access to no access in a case where the mother's mental health was in question. The mother separated from the child's biological father in 1995 and became involved with another man who assumed a parental role for the child. She then separated from the stepfather in 2000, and the child remained with him. At trial, the judge ordered the mother's access to be supervised because she had consistently made false allegations that the custodial stepfather was sexually abusing the child, and had tried to convince the child of this. The mother had also disrupted the child's schooling, had inappropriate emotional responses to the child, and it was noted that the child tended to be frightened in the mother's presence. On appeal, a central issue was that the trial judge had included a provision requiring access to remain supervised until the mother had a "clean bill of health". The Court of Appeal upheld the requirement for supervision, but struck out this provision for a "clean bill of health". Instead, access would continue to be supervised indefinitely, given the concerns about the mother, which had not yet changed.

While there is a wide variety of circumstances that could lead an order to be supervised, courts have begun to articulate criteria to be used by when deciding whether to make a supervised access order, or otherwise restrict the maximum contact principle.

¹³ 1992 CarswellOnt 295, 42 RFL (3d) 349 [*M v M*].

¹⁴ "On Access after Parental Separation" (1992) 36 RFL (3d) 35 at 74.

¹⁵ *M v M* at para 33.

¹⁶ *M(CA) v M(D)* (2003), 67 OR (3d) 181, 231 DLR (4th) 479.

Judicial Articulation of Criteria for Making Supervised Access Orders

One of the most frequently cited Ontario cases regarding supervised access is the 2004 Superior Court decision in *Jennings v Garrett*,¹⁷ where Blishen J provided a comprehensive review of previous leading cases and summarized the factors that lead courts to terminate access or require access to be supervised.

Jennings involved a custodial mother and a father with a criminal record, who was accused of both intimate partner violence and sexual abuse towards his child. He had also demonstrated a lack of parenting skills and an inability to take responsibility for his decisions.¹⁸ The Children's Aid Society (CAS) had become involved to investigate the sexual abuse concerns, but the Society was not able to find conclusive evidence of sexual abuse and closed its file.¹⁹ In the divorce proceedings, the parents at first agreed that while the child abuse investigation was underway, the mother was to supervise the father's access, but the mother found this too stressful, and supervision was then taken over by her parents, the child's grandparents. The mother sought to terminate access due to the father's abusive conduct towards her and his lack of child-care skills. The Office of the Children's Lawyer became involved in the case and its clinical investigator recommended supervision at a Supervised Access Centre for six months, in addition to the father obtaining therapy. The father did not agree with these recommendations and repeatedly called the CAS to complain about the maternal grandparents, claiming the child was uncomfortable with them during their visits. The father also did not to use the local Supervised Access Centre as he thought it was "for pedophiles" and did not want his daughter around "those people."²⁰ In the end, the judge concluded that there should be supervised visits, observing:

Termination of Vanessa's right to visit with and know her father is an extreme remedy which should only be ordered in the most exceptional of circumstances. An order for supervised access also requires evidence of exceptional circumstances as it is just one small step away from a complete termination of the parent-child relationship.²¹

In considering supervision or termination of access, Blishen J acknowledged that there should be a presumption that access is in the best interest of the child, since it is the right of the child to know and visit with a non-custodial parent, and this right of access should only be terminated in "extreme circumstances" as a remedy of last-resort.²² These "extreme circumstances" justifying termination of access may include:²³

¹⁷ 2004 CarswellOnt 2159, 5 RFL (6th) 319.

¹⁸ *Jennings* at para 69.

¹⁹ *Jennings* at para 62.

²⁰ *Jennings* at para 111.

²¹ *Jennings* at para 1.

²² *Jennings* at para 128, citing *Jafari v Dadar*, 1996 CarswellNB 386 at para 29–31, 42 RFL (3d) 349. See also *Okatan v Yagiz*, [2004] OJ No 2797 (Sup Ct). Justice Mesbur concluded supervised access was unwarranted despite the father's lapses in judgment in speaking to his daughter because there was no direct danger to the child. Justice Mesbur further stated that supervised access should be reserved for exceptional cases and not used to reinforce the custodial parent's doubts about the non-custodial parent. *Ibid* at para 59–62.

²³ *Jennings* at para 135 [citations appear in subsequent footnotes].

- Long-term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress and or fear.²⁴
- History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well being.²⁵
- Extreme parental alienation which has resulted in changes of custody and, at times, no access orders to the former custodial parent.²⁶
- Ongoing severe denigration of the other parent.²⁷
- Lack of relationship or attachment between noncustodial parent and child.²⁸
- Neglect or abuse to a child on the access visits.²⁹
- Older children's wishes and preferences to terminate access.³⁰

Justice Blishen went on to consider when supervised access should occur:

In my view, supervised access, whether short, medium or long term, should always be considered as an alternative to a complete termination of the parent/child relationship. Clearly, if there has been an attempt at supervised access which has proven unworkable, such as where the child remains hostile to the father during the visits; the child reacts badly after visits; or, where the access parent continually misses visits or is inappropriate during the access then termination must be considered. . . If the purpose of supervised access is for the access parent to attend treatment or counselling and there is a refusal or unwillingness to follow through, then, to continue supervised access may not be viable option.³¹

Even when supervised visits are ordered, the courts recognize that there may be problems in ensuring compliance by the custodial parent with these orders, as children are sometimes reluctant to attend supervised access visits, especially at Centres, which are relatively institutionalized settings. In such cases, the custodial parent does not have any obligation to force the child to see the non-custodial parent;³² however, custodial parents still have an obligation to promote the relationship between the child and access parent to the best of their abilities and carry out the orders of the court.³³ In the event that supervision is unsuccessful, or conversely no

²⁴ Examples cited by the Court in *Jennings* include: See *M(BP) v M(BLDE)* (1992), 59 OAC 19, 97 DLR (4th) 437 [*M v M*]; *Stewart v Bachman*, [2003] OJ No 433 (Sup Ct J); *Studley v O'Laughlin* (2000), 188 NSR (2d) 133, 587 APR 133 (NSSC, Fam Div); *Dixon v Hinsley* (2001), 22 RFL (5th) 55, [2001] OJ No 3707.

²⁵ Cited examples include: *Jafari v Dadar*, *supra* note 21; *Maxwell v Maxwell* (1986), 75 NBR (2d) 254, 188 APR 254 (NBQB); *Abdo v Abdo* (1993), 126 NSR (2d) 1, 109 DLR (4th) 78 (NS CA), *Studley v O'Laughlin*, *supra* note 22.

²⁶ Cited examples include: See *Tremblay v Tremblay* (1987), 82 AR 24, 54 Alta LR (2d) (AB QB); *Reeves v Reeves*, 2001 CarswellOnt 277, [2001] OJ No 308 (Sup Ct).

²⁷ Cited examples include: See *Frost v Allen* (1995), 101 Man R (2d) 70, [1995] MJ No 111 (Man QB); *Gorgichuk v Gorgichuk* (1997) 154 Sask R 273, [1997] SJ No 211.

²⁸ Cited examples include: *Studley*, *supra* note 23; *M v M*, *supra* note 23.

²⁹ Cited: *Maxwell*, *supra* note 24.

³⁰ See *Gorgichuk*, *supra* note 24; *Frost*, *supra*, note 24; *Dixon v Hinsley*, 2001 CarswellOnt 3243, 22 RFL (5th) 55 (cited to WL); *Pavao v Pavao*, 2000 CarswellOnt 1002, [2000] OJ No 1010 (Sup Ct).

³¹ *Jennings* at para 140, citations omitted.

³² *Singer v Singer* (1974), 1974 CarswellOnt 146, 17 RFL 18 (Ont HC).

³³ *Tassou v Tassou*, 1976 CarswellAlta 61, 28 RFL 171 (Alta TD), Bowman J:

longer necessary, parties may apply to court to have the supervision order varied.

Transitioning Out of Supervised Access

While supervised access is intended as a temporary measure, if there is no specific provision for bringing a case back to court for review at a predetermined date or on the satisfying of specified conditions, a party must show a material change in circumstances for the order for supervised visitation to be varied. When parties are or have been married, variation of such custody orders is subject to section 17 of the *Divorce Act*, or if they were not married then section 29 of the *Children's Law Reform Act* applies. Both of these provisions require a “material change” in circumstances if an order is to be varied.³⁴ The test for material change is set out in *Gordon v Goertz*, which requires that the court must be satisfied of:

- a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child;
- which materially affects the child; and
- which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.³⁵

Recently, in applying this test in an access variation application, the Ontario Court of Appeal has ruled that the non-custodial parent's inability to set aside parental conflict and meet the needs of the child is a material change that qualifies as a material change in circumstances.³⁶ Further, the Court of Appeal specified that for an order to be varied, a motion to change is required and the parent is required to put forth their best efforts to comply with any agreements that specify the status quo.³⁷

For supervised access cases, a material change in circumstance is not always demonstrable by the time a family can and should be moving out of supervised access. In *M(BP) v M(BLDE)*, Abella JA noted that the purpose of the material change in circumstance provision in the *CLRA* is to “make custody and access orders as secure as possible in the interests of permitting a child and his or her parents to regulate their lives in accordance with clearly understood and predictable

From a practical point of view this court has no effective way of actually physically forcing the children to see their father. *I do feel, however, that the mother has a duty to do everything within her power to see that the boys see their father and to carry out the wishes of this court as contained in my original judgment.*

Ibid at 172 [emphasis added]. This decision is cited in Ontario in cases such as: *Sledzinka v Majka*, 1998 CarswellOnt 5307, [1998] OJ No 5797; *Dixon*, *supra* note 23.

³⁴ *Divorce Act*, RSC 1985, c3 2nd Supp, s 17(1). *Children's Law Reform Act*, RSO 1990 c C.12

³⁵ [1996] 2 SCR 27 at para 13, 134 DLR (4th) 321.

³⁶ *Children's Aid Society of Ottawa v V(A)*, 2016 ONCA 361 at para 10–11, 2016 CarswellOnt 7656 (evidence considered by the motion judge and upheld by the Court of Appeal demonstrated that the father had “embarked on a campaign to alienate the children from their mother”) [*CAS v VA*].

³⁷ *Forrester v Dennis*, 2016 ONCA 214 at para 12, 2016 CarswellOnt 3889 (In a case where the mother had supervised access after abuse complaints, the Court ruled that the father was not entitled to move the child from her current school without 60 days notice and without also filing a motion to change).

expectations”.³⁸ However, Abella JA also observed that the purpose is not “to create so onerous a presumption or burden in favour of the earlier order that the child’s best interests are sacrificed to it” and that “it cannot mean that finality prevails for its own sake”.³⁹ Variation therefore must include consideration of the child’s best interests, including the non-exhaustive criteria in section 24(2) of the *CLRA*. As discussed, the majority of Court of Appeal in *M (BP) v M (BLDE)* held that Wright J was entitled to conclude at trial that the stress the father caused the child and mother constituted a material change from the circumstances in the initial order.⁴⁰ Further, there was no evidence of a bond between the child and her father, and the child was openly hostile to her father during supervised visits. Therefore the Court of Appeal upheld the decision to terminate supervised visits because there was “no reason for this ongoing, relentless, unhealthy, and unconstructive stress to continue [and t]he biological link cannot be permitted to trump the child’s welfare and best interests.”⁴¹ The appeal was dismissed with costs.

Since it can be difficult to establish a material change in circumstances and ongoing supervision can be stressful for the child, many judges include a review provision in their orders for supervised visitation.⁴² These review provisions obviate the need to demonstrate a material change in circumstances and instead allow, or direct, the parties to return to the court for a review of the situation and a determination of whether the child’s best interests at that time require supervision to continue.

There are also cases where judges have specified that certain conditions should be satisfied before a review or variation of a supervised access order can occur, for example requiring a parent to engage in certain activities (i.e., attend a parenting course) before the case will be reviewed. For example, in *C(C) v W(R)*,⁴³ the judge suggested that before the father, who had supervised access, could seek variation to unsupervised access, he should obtain a report from a psychologist, attend a parenting program and come up with a plan for personal and financial stability.

Supervised Access in Child Protection Cases

Supervision in child protection cases is subject to the legislative scheme contained in the *Child and Family Services Act*.

The Children’s Aid Society is mandated to become involved pursuant to section 37(2) of the *CFSA*, which establishes criteria determining when a child is “in need of protection,” which is defined in the statute as including cases where:

³⁸ *M v M* at para 21.

³⁹ *M v M* at para 22.

⁴⁰ *M v M* at para 31.

⁴¹ *M v M* at para 35.

⁴² See e.g. *Harris v Alberta*, 2016 ONSC 1364, 2016 CarswellOnt 3251, where Sweeney J orders, “such supervised access is to continue for a period of four months. Prior to the end of the four months of access, the parties are to appear before me, at a date to be arranged with the trial co-ordinator, to review the status of the access,” at para 39.

⁴³ See e.g. *C(C) v W(R)*, 2016 ONSC 1274 at para 74–75, 2016 CarswellOnt 2636.

- The child has suffered physical harm resulting from failure to care for the child or parental neglect;
- There is a risk that the child is likely to suffer harm resulting from failure to care for the child or parental neglect;
- The child has been sexually molested or exploited by the custodial person, or with that person's knowledge where they have failed to protect the child;
- There is a risk that the child is likely to be sexually molested or exploited as described above;
- The child has demonstrated serious anxiety, depression, withdrawal, self-destructive or aggressive behaviour, delayed development, symptomatic of emotional harm, and there are reasons to believe such harm results from the parents' actions or neglect;
- The child suffers from above described symptoms of emotional harm and the parent does not provide or consent to treatment;
- There is a risk of emotional harm as described above because of the parent's actions or neglect;
- There is a risk of emotional harm and the parent does not provide or does not consent to treatment to prevent the harm; or
- The child has been abandoned, the child's parent has died, or is unavailable to exercise their custodial rights over the child, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.

If a child has been found to be in need of protection under this section and for the purposes of the *CFSA*, the court may make orders with respect to custody per section 57 of the *CFSA*. Section 57.1 grants power to the court to make an order for custody to someone other than the parent if necessary to promote the child's best interests. Section 57.2 of the *CFSA* further gives the court power to "make, vary or terminate an order respecting to a person's access to the child or the child's access to a person and may impose such terms and conditions on the order as the court considers appropriate".⁴⁴ It is also common for supervised access to be ordered if a temporary care order is made pending resolution of child protection proceedings.

Further, if there is a child protection proceeding, there will often be a court order for an assessment by an independent mental health professional under section 54 of the *CFSA*; one of the issues that is often addressed in this assessment process is whether supervised access is appropriate.

Review and restrictions on access orders are subject to sections 58, 59.1 and 59.2 of the *CFSA*. Under section 58, the court may make, vary or terminate an order respecting a person's access to the child or impose terms and conditions on the order as the court deems appropriate. When the child is in the Society's care, the child, the Society or the parent may make an application under section 58(1) for termination or variation. Where an order is made under section 57(1) to remove the child from the parent's care, the court must make an order for the parent to have access,

⁴⁴ *Child and Family Services Act*, RSO 1990 c C.11, s 57.2 [*CFSA*].

unless the court is satisfied that continued interaction would not be in the child's best interests, though it will often be for supervised access if a protection order is made.⁴⁵

For example, in the recent Ontario Superior Court case of *Children's Aid Society of the Districts of Sudbury and Manitoulin v G(C)*,⁴⁶ the Children's Aid Society apprehended a couple's newborn child after having been involved with the couple's older children for a number of years. The court found the children in need of protection pursuant to section 37(2) of the *CFSA* because of the risk that the child was likely to suffer physical harm resulting from the mother's failure to care for the children and pattern of neglect, as well as abandonment concerns. Custody of the oldest two children was awarded to the maternal grandmother, while custody of the younger two children was granted to the paternal grandparents, pursuant to section 57.1 of the *CFSA*. The mother was initially allowed access to the infant, with the Society to have discretion as to whether that access was supervised. If she wanted to vary the access order, she would have had to apply under section 58(1) and demonstrate a material change in circumstances.

⁴⁵ *CFSA*, s 59(1).

⁴⁶ 2016 ONSC 4332, 2016 CarswellOnt 10427 [*CAS v G(C)*].

IV. Analysis of Ontario Case Law from 2011–2016

Out of a total of 79 reported cases between January 1, 2011 and June 30, 2016 where supervised access was mentioned as a possible outcome, some form of supervised access or exchange was ordered in 68 cases.⁴⁷ There was an order for access without supervision in the remaining 11 cases. Only a relatively small, but unknown, portion of cases where supervised access is sought are in the reported cases; the reported cases are those which are the result of more complex or contentious cases that result in longer reasons for judgment. Consent orders and short oral decisions dealing with these cases are not reported.

The reported Ontario supervised access cases have generally applied the *Jennings* analysis in deciding whether to order supervised access. In ordering access to be supervised, judges found one or more of the following factors present:

- Alcohol addiction or substance abuse of access parent;
- Inappropriate behaviour towards the child;
- Lack of parenting skills;
- Criminal charges or past criminal behaviour;
- Sexual assault (or allegations thereof) of the child of the marriage;
- Sexual assault (or allegations thereof) of a child outside the marriage;
- Allegations or record of intimate partner violence;
- Mental illness;
- Significant length of time where the parent had not seen the child (supervision of alienated or rejected parent).

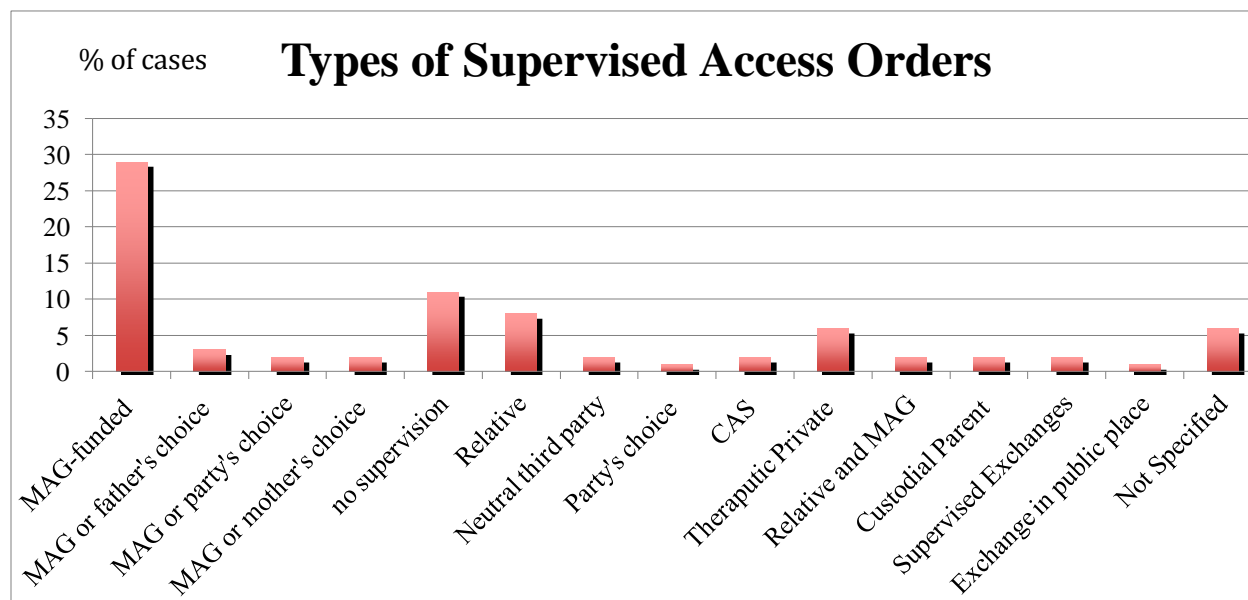
Types of Supervision Orders

When an order for supervised access was made, the court most frequently ordered that it was to occur at a local supervised access centre funded by the Ministry of the Attorney General (43% of orders). In an additional 10% of cases where supervised access was ordered, the judge specified that visitation could occur either at a specified Ministry-funded centre, or a supervised private service to be selected by the party being supervised. Supervision of access by a relative was ordered in 12% of cases, and by a neutral third party in 3% of cases. An order for supervised access with no specification as to the location or type of services was made in 9% of cases; it would seem that in most or all those cases it was expected that the local supervised access centres would provide this service.

Therapeutic supervision by a private service provider was seldom ordered, occurring in only 6 (9%) of cases; of those 6 cases, 3 (50%) involved allegations of intimate partner violence, and the remaining 3 were instances of criminal charges, mental illness and sexual assault, and parental alienation.

⁴⁷ Cases included in this analysis were identified using Westlaw Canadian Abridgement Digests FAM.IX.8.g Supervised Access. Filters: Ontario. Date range: 2011- 2016. This included all levels of Ontario court. Case law search as of June 30, 2016.

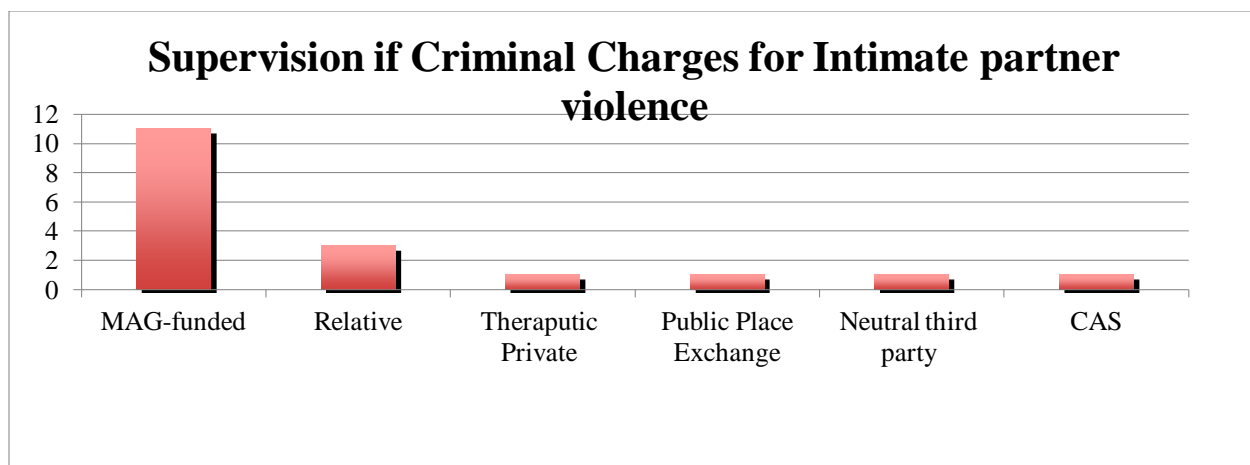
As well, it was rare for a judge to order supervision by the custodial parent, occurring in just 3% of cases. In 4% (3) of cases, orders were made for either supervised exchange at a Ministry-funded centre or in a public place. The Children's Aid Society was to supervise visits in 3% (2) of cases, and the supervisor was the either one of the party's choice in 1% (1) of cases.



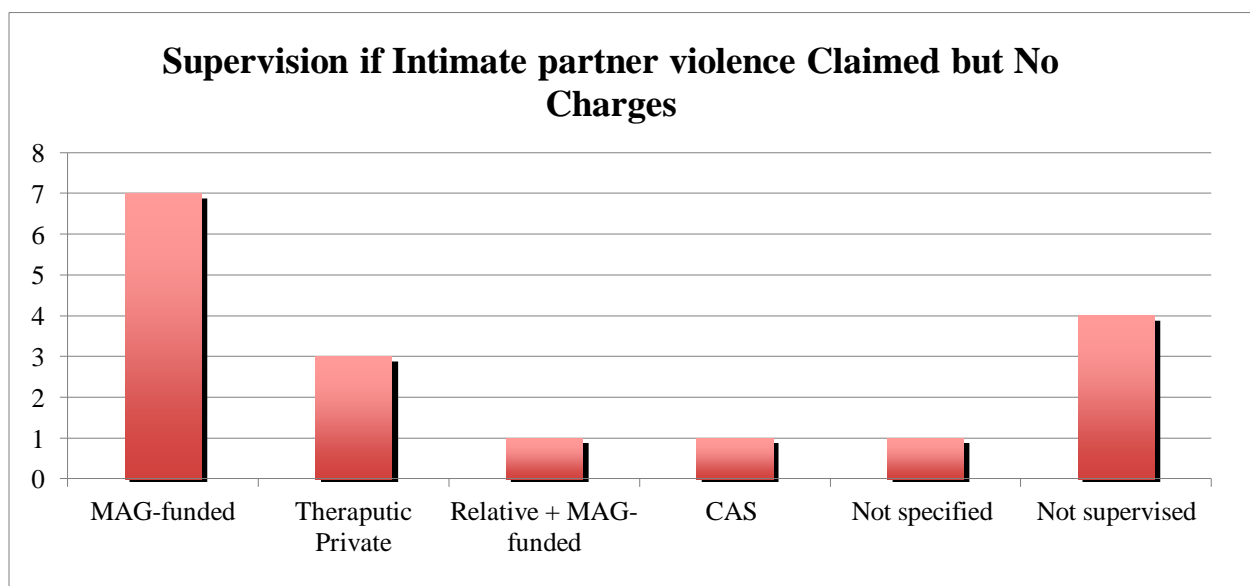
Access was permitted without supervision in 11 (14%) cases, most often due to lack of substantiation of allegations of some form of intimate partner violence. In other cases, there were either issues of mental health or addiction for which the non-custodial parent was undergoing treatment, and hence safety was not considered a sufficient concern for the court to order supervision.

Factors Associated with Type of Access Ordered

Of the cases analyzed, the most frequently reason given by the court for considering some form of supervised access was that there were criminal charges, mostly related to intimate partner violence, occurring in 19 (24%) of cases. Supervision ordered in all cases where criminal charges were reported. Of those 19 cases, an order for supervised access at a MAG funded centre was made in 11 cases. Supervision by a relative was ordered in 3 of the cases where there was an intimate partner violence charge, and there were also orders for therapeutic private supervision (1 case), public place exchange (1 case), supervision by any neutral third party (1 case) and supervision by CAS (1 case).



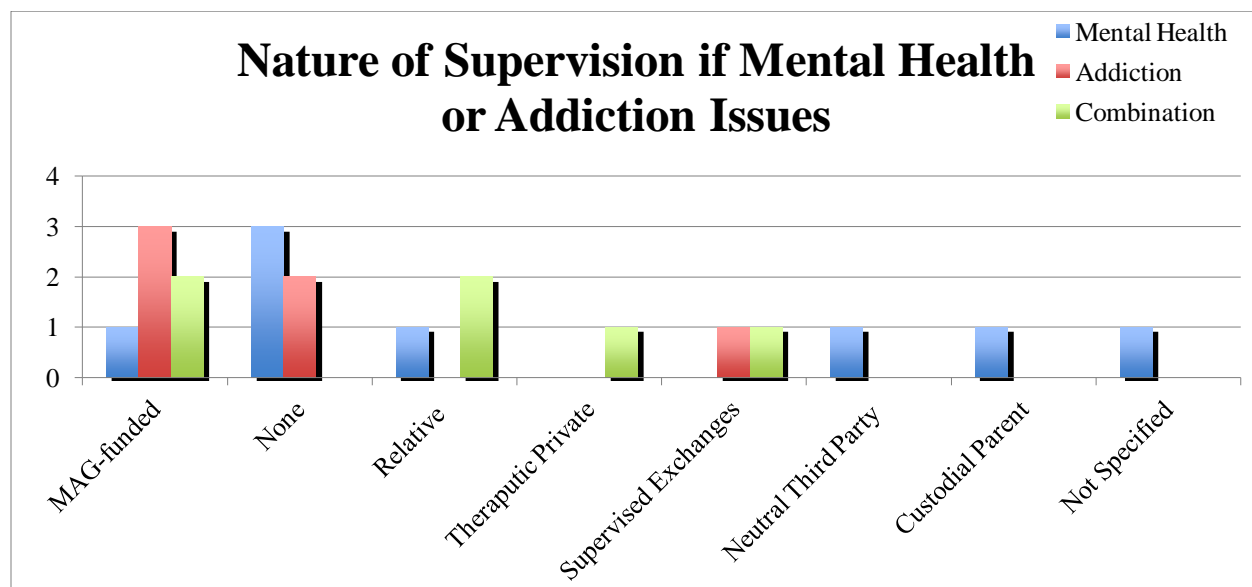
Claims of intimate partner violence (without criminal charges) were second most frequently cited reason where supervision was ordered. There were such 18 cases (23%); supervised access was ordered in 14 of these 18 cases (78%), with unsupervised access in the other 4 cases. MAG-funded centres were the most frequently ordered, but judges also ordered supervision by relatives, private service providers, and the Children’s Aid Society.



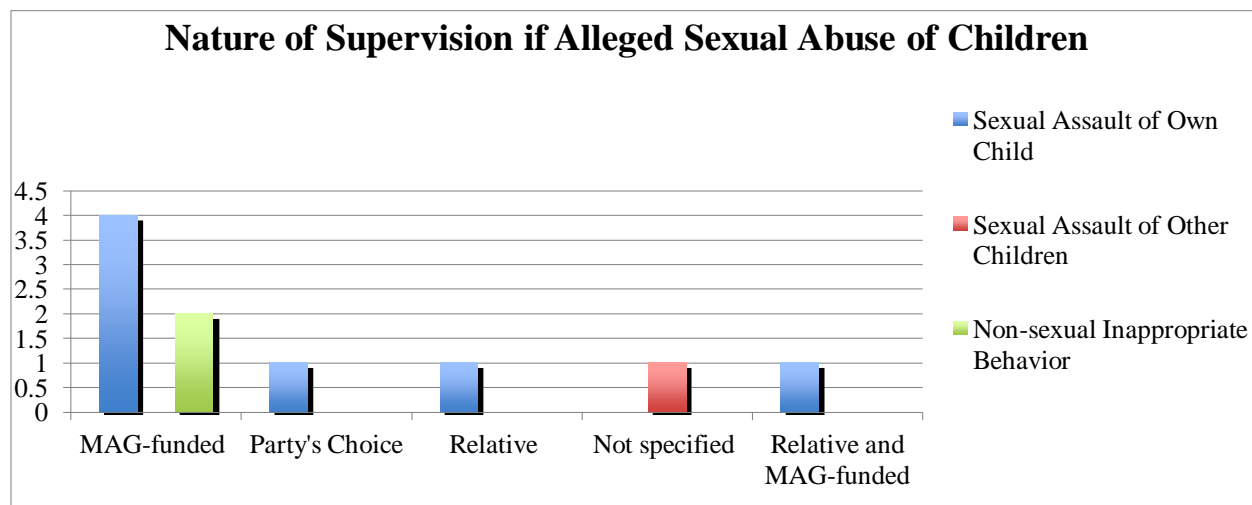
Mental health concerns alone prompted consideration of supervised access in 8 (10%) of all cases where supervision was at issue, but when considered with other factors (i.e., addiction) was a concern in 12 (15% of all cases) where supervision was at issue.

Where just mental health was at issue, supervision was ordered in about half of the cases. Where there were multiple considerations at play, supervision was ordered in all of the cases. Addiction was also a factor alone in 6 cases, and was one of several factors in 9 cases where there were multiple considerations for supervision (i.e., mental illness, criminal charges, parental alienation). In these types of cases—namely, a chronic ongoing issue of mental health problems

or addiction—supervised access or exchange orders were made in 80% of cases where it was requested.

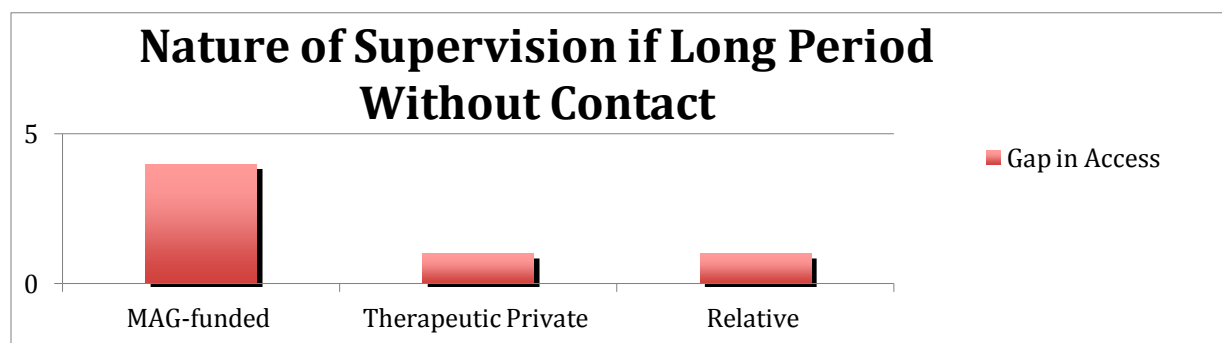


Allegations of sexual abuse of a child of the relationship was considered in 6 cases (9%), while sexual assault or inappropriate sexual conduct towards a child not of the relationship was considered in 1 case. There were also 2 cases (3%) where inappropriate but non-sexual behaviour towards the children of the relationship was considered as a factor for ordering supervised access. Some kind of supervision was ordered in all of these cases. In the chart below, “not specified,” indicates that the judge ordered “reasonable supervised access.”⁴⁸

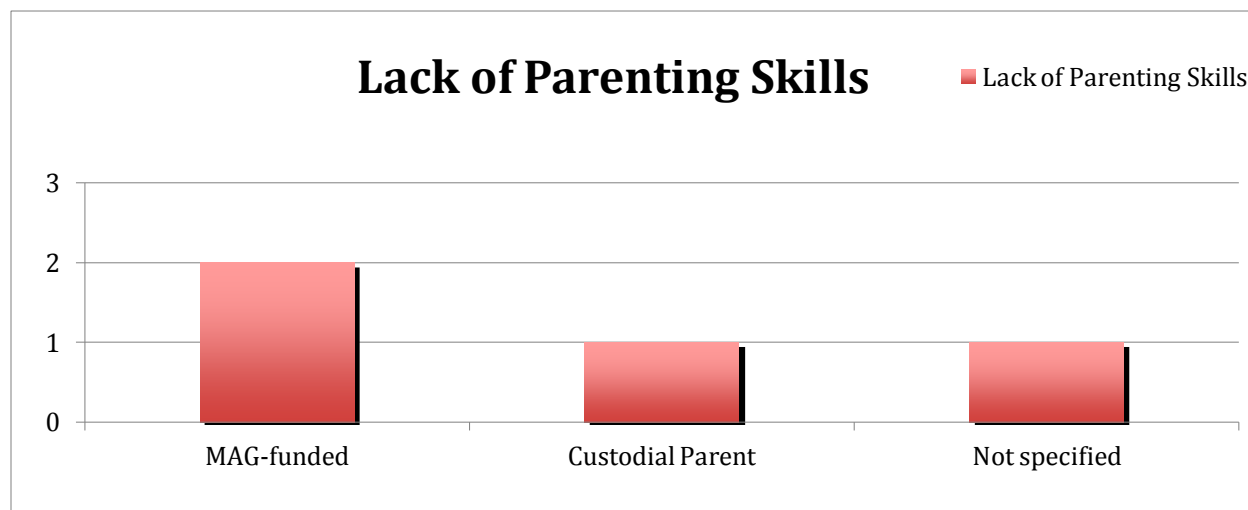


⁴⁸ *Tuttle v Tuttle*, 2014 ONSC 5011, 2014 CarswellOnt 12066 at para 64.

A long period of time without contact with a child by the parent seeking access was also a significant factor in ordering supervised access. In some cases, there had been a gap in access because the parents did not have an ongoing relationship with each other and the visiting parent did not maintain a relationship with the children. In some cases the custodial mother applied for benefits under Ontario Works, which required her to seek child support from the father; the father being asked for child support payments might then seek access to the child.⁴⁹ A gap in access may also be caused by extenuating circumstances, such as criminal matters or an inability to enter the country where the child resides,⁵⁰ or questions about the child's paternity.⁵¹ In the 6 cases where this was the main factor in deciding whether access should be supervised, supervision was ordered in all instances.



In some cases, supervision was ordered because there were concerns that the parent seeking access did not have the skills necessary to properly care for the child. Of the 4 cases where this was a factor, some form of supervised access was ordered in all of the cases, often at a Ministry-funded centre. In one case, supervision was ordered but the type of supervision was not specified by the judge, and in one case the judge ordered the custodial parent to supervise access.



⁴⁹ See e.g. *Shingarov v Shingarov*, 2014 ONSC 2428, 2014 CarswellOnt 5575.

⁵⁰ See e.g. *Masnyk v Wolff*, 2014 ONSC 1854, 2014 CarswellOnt 4079.

⁵¹ See e.g. *Phillips v Hassan*, 2012 ONSC 6197, 2012 CarswellOnt 14309.

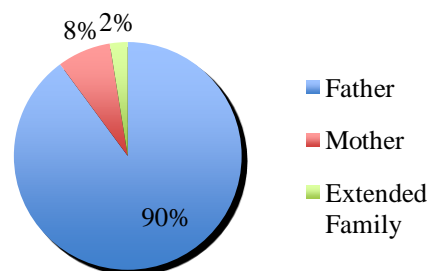
In 6 (7.5%) of cases, the judge considered a combination of factors (i.e., mental health and sexual assault, criminal record and substance abuse, mental illness and intimate partner violence, addiction and mental illness, or addiction and prior criminal record).

In 3 of the cases, the factors for ordering supervised access were not clear.

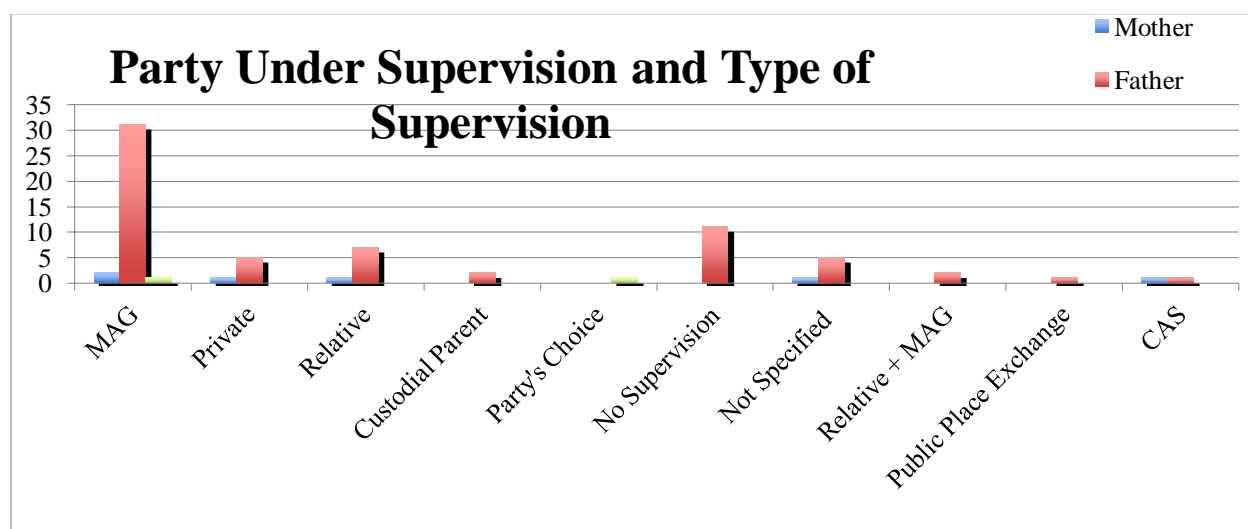
Regardless of the issue prompting supervised access to be ordered, the most frequently ordered type is supervision at a centre funded by the Ministry of the Attorney General. Generally, the Ministry is not mentioned specifically in the judgment, but a search reveals that it is among those receiving Ministry funding for supervised access and exchange services.

Party Under Supervision

In most cases, the father was the parent for whom supervision was sought. In 90% of the cases where it was ordered, the non-custodial parent being supervised was the father, while in 8% of cases the non-custodial parent was the mother. In the remaining 2% of cases, the father and/or his extended family's access was in question for supervision.



In almost all cases where the mother was the access parent under supervision, orders were made for supervision by a Ministry funded program. Members of the extended family of the father were ordered to have access supervised in 2 cases, where supervision was either by a MAG-funded service, or a service of the parties' choice. This meant that both parties would agree on a service.⁵²



⁵² See *Beatty v Sluski*, 2016 ONCJ 151, 2016 CarswellOnt 4156 at para 71: "The visits shall take place for two hours at a time at a supervised access centre agreed upon by the parties."

CAS Involvement

In complex cases where supervised access is being considered, there is often involvement from one or both of the local Children's Aid Society and the Office of the Children's Lawyer.

The Children's Aid Society (CAS) was involved in 34 of the 79 cases reviewed (43%). Involvement means that the judicial decision mentions that at some point the CAS conducted an investigation or provided services or supervision. However, often by the time a judge was making an order for supervised access, the CAS file had already been closed and none of the *CLRA* cases surveyed involved CAS supervision of access. In two cases surveyed, Children's Aid was involved on a section 37(2) *CFSA* access order. In one of these cases, the Superior Court ultimately terminated supervision because "A children's aid society is not to be used by the Court as a supervised access facility."⁵³ In the second case, supervised access was ordered at the Society's Saturday access program.⁵⁴

Of the 34 cases in which CAS had some involvement, supervised access was ordered in 30 cases. MAG-funded centres were the most frequently ordered place for such access.

Section 57.1(2) of the *CFSA* allows courts to essentially transfer child protection cases in which CAS has been involved out of the Society's responsibility and make a custody or access order under section 28 of the *CLRA*. This gives the court power to make an order with respect to custody or access, including limitations on access conditions,⁵⁵ and give directions as it considers appropriate regarding custody or access by a person, a children's aid society, or another body.⁵⁶ In practice, this means that a case in which the CAS was involved may end up with access supervised by a ministry-funded centre rather than the CAS itself.

If CAS involvement comes about per section 34(1) of the *CLRA*, which states that a court may order supervision of access by "a children's aid society or other body," the CAS or other agency must consent to act as a supervisor.⁵⁷

OCL Involvement and *CLRA* s. 30 Assessments

The Office of the Children's Lawyer often becomes involved high conflict cases as a result of the Office's response to a request in a court order, by providing a clinical investigation report, legal representation for the child, or both.⁵⁸

⁵³ *Family and Children's Services of Frontenac, Lennox and Addington v L(A)*, 2015 ONSC 4491 at para 54, 2015 CarswellOnt 10820.

⁵⁴ *Children's Aid Society of Toronto v S(S)*, 2015 ONCJ 332, 2015 CarswellOnt 8972.

⁵⁵ *CLRA*, s 28(1)(c)(i)–(vii).

⁵⁶ *CLRA*, s 34(1).

⁵⁷ *CLRA*, s 34(1)–(2).

⁵⁸ *Courts of Justice Act*, RSO 1990 c C.43, s. 89, 112.

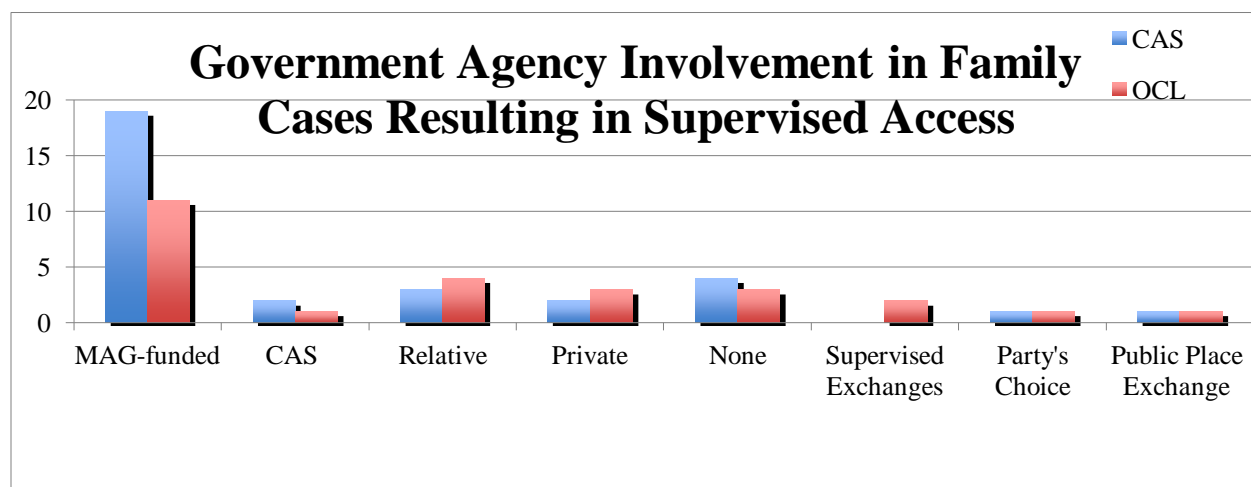
Section 30 of the *CLRA* also provides that there may be a court-ordered assessment paid for by the parents. These independent sources of information can be especially valuable for the court in high conflict cases, but due to their cost, they are not frequently ordered.

Of the 79 cases reviewed, the Office of the Children’s Lawyer (OCL) was involved, either by provision of a clinical investigator’s report or counsel for the child in 26 cases (33%). Of those cases, a report by a clinical investigator report was provided in 22 cases, one of which specifically included the clinical investigator observing a supervised visit. In the remaining four cases, in three the OCL appointed counsel for the child, and in one case the nature of OCL involvement was not clear in the decision.

In an additional 3 cases, a *CLRA* section 30 private assessment was completed.

There were 12 cases in which both CAS and the OCL were involved.

Of the 29 cases where the OCL was involved or an assessment was ordered, some form of supervised access or exchange was ordered in 26 cases. Access at MAG-funded centres was the most frequently ordered; however, there were also orders for therapeutic private access, supervision by a relative, supervision by the Children’s Aid Society and supervision of the parties’ choosing. There were also 5 cases outside of the 29 in which there was an order for no access pending an OCL investigation.



Age of Children

In the 79 cases in this study, the average age of children was 6.2 years, and there was an average of 2 children in each case.

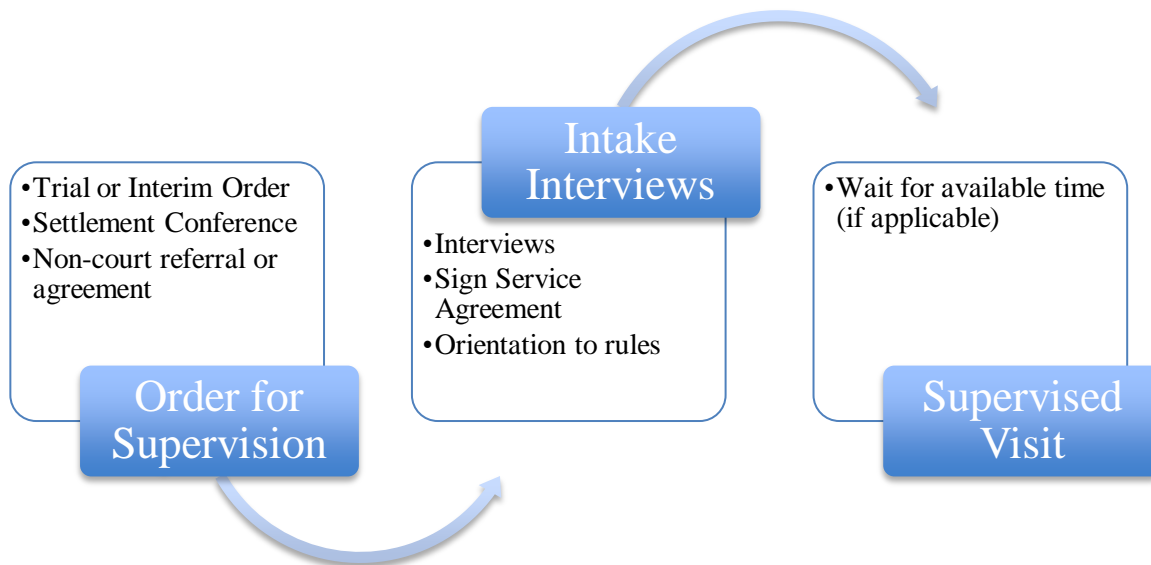
In cases where the OCL was involved, the average age of children was 7.8 years, while in cases where CAS was involved the average age of children was 7.5 years. In cases where CAS or OCL was involved, there was an average of 2 children involved in the dispute.

V. Supervised Access & Exchange in Ontario: Description of Services

Based on results of the interviews, it was clear supervised access is most often the result of an interim order, or an order on consent after a settlement conference in the course of litigation. Orders on consent may have review provisions built in to the order. Only a minority of supervised access arrangements are the result of a contested trial. According to the Ministry of the Attorney General's website, a court order is preferred but not required for supervised access centres funded by the Ministry, and parties may use supervised access pursuant to an agreement. In some cases, the agreement is negotiated by lawyers, while in others there is an agreement to supervised visitation as the result of involvement of a community agency.

Once there is an order or agreement for supervised access, the parents must contact the centre in their particular region and set up a time for an intake interview. During the interview, the service director or centre staff meet with the parents (separately), and occasionally with the children if they are mature enough to understand the policies being explained. During this meeting or soon afterwards (before visits can occur), the parents will be required to sign a service agreement detailing the rules and policies of the centre, and agreeing to follow these rules. Parents (and children if they are of the appropriate age) are given a copy of this service agreement. Once the agreement is signed, parents can sign up for a time to attend visitation. There are occasionally waiting lists depending on the region. Visits are generally available for 2 hours bi-weekly, often on the weekends, though this may vary depending on the region.

There is a fee for services at supervised access centres, though the amount varies across the province, and the fee is adjusted or waived if participants are unable to pay. If they have the resources, both parents are required to pay for the services. At many centres there is an initial administrative fee for the intake interview (such \$25 - \$50), and then an annual fee (\$150 at the Centres in Toronto); some centres charge as much as \$25 per visit for parents with higher incomes, though this is still much less than the cost of the services. One recent Ontario study found that the average annual amount paid by custodial parents using supervised access centres was \$14, and by non-custodial parents was \$26 (Saini, Newman & Christensen, 2016); this reflects the fact that many parents involved in supervised access have very low incomes or on social assistance and may pay no fees or are heavily subsidized.



Supervised Exchange

Supervised exchange generally involves the custodial bringing the child to the centre before the time of the exchange, and the access parent then arriving to take the child away for a visit, and then reversing the process when the visit ends.

In cases where there are significant intimate partner violence concerns, the process is structured so that parents are not in the building at the same time, and will not meet at entry or exit. Over time, these precautions may be reduced as the family moves towards unsupervised exchanges or exchanges at schools, public places or extracurricular activities.

Supervised Visitation Network and *Guidelines*

There are rules and policies that both parents must learn and follow. In Ontario, MAG funded centres must adhere to the Ministry standards and best practices. As well, most MAG funded programs adhere to the *Standards for Supervised Visitation Practice* (2006) established by the Supervised Visitation Network. The Network *Standards* provide direction for each parent, and establish the Centre's role and responsibilities. Membership to the Network and adherence to the *Standards* is voluntary, but 27 service providers across Ontario (both public and private) are members. A short summary of the most important elements is set out below.

Administrative Functions

- 4.1–4.3: **Records**—providers to maintain financial records, personnel policies and client records (confidential).
- 4.5: **Case Review**—Provider must review cases before court dates and follow up on outstanding issues, work with court or referring agency to consider status of case, changes needed to court order, whether participation in service will continue or terminate.

Program operations

- 5.3: **Program Policies and Procedures**—Providers must have written rules and policies governing service delivery.
- 5.4: **Premises**—physical location must be designed to protect safety and security of participants.
- 5.5: **Accessibility**—provider must have policies and procedures about accessibility to supervised visitation centre in terms of: geographic location, transportation, hours of operation, relevant *Disabilities Act*, and sensitivity to ethnic, cultural and linguistic needs of the community.

Evaluation and Recommendations

- 6.1: **Purpose**—This section “prohibits a provider from performing any mental health, custody, parenting, developmental and/or attachment assessment and evaluation that more appropriately should be provided by a licensed mental health professional. This includes drawing conclusions and/or making recommendations about future visitation arrangements or child custody determinations.”
- 6.2(4) **General Policy**— This section “does not prohibit a provider from providing factual information based on observations of clients, which may be used by others who are conducting an evaluation and/or assessment.”
- 6.3: **Risk Assessments**—Provider may review and analyze client information and behaviour to determine whether services can be provided safely and may refuse to provide service otherwise.
- 6.4: **Therapeutic Supervised Visitation Exception**—Licensed mental health professional can provide reports that give direction about parent’s readiness to enter next phase of treatment, but may not give direction or recommendation about child custody/access determinations.

Records

- 7.1–7.5—Centres keep detailed records of the client’s personal information including contact and demographic information, source or referral, relevant court orders and observation notes, reports etc. Records of parent-child contact are kept with minimum inclusions of client identifiers, who brought the child to the visit, who supervised, date/time/duration, participation, account of critical incidents, account of ending/temporary suspension of contact if necessary. There is also a provision suggestion a policy to protect client information and the staff/volunteer’s identification in the client file.

Safety and Security

- 8.2–8.4—Centres must have policies about risk management both in terms of declining cases where risks cannot be managed, and developing client relationships to reduce potential risks of harm by treating clients with respect and fairness.
- 8.5: **General Policy for Security**—Provider must make “reasonable efforts” to ensure security measures are provided, and have written procedures and policies regarding intake and case review, emergency situations, collaboration with local law enforcement, reviewing security measures, and ensuring facility itself meets municipal codes, and
- 8.6: **High Risk Situations**—If there is “risk of violent behaviour” or “highly conflicted interaction by one parent against the other or between parents,” providers must have written policies and procedures as well as a safety response plan, and plan for arrival and departure.
- 8.7: **Case Screening**—Providers can and should screen cases for risk of harm.
- 8.8: **Staff to Client Ratio**—Ratio should be tailored to each case and dependent on the number of children, duration/location of visit, level of supervision necessary for safety, and supervisor’s experience.

Provider’s Responsibility for the child

- 9.3: **Parental Responsibility**—Parent are responsible for care of child and child’s belongings during the visit, subject to any contrary order of the court. The parent is accountable for their behaviour and ensuring that it complies with the court order, centre policies and procedures, and signed service agreement.
- 9.4: **Provider Responsibility**—Provider must not leave child unattended with noncustodial parent, must have policies for parent/child contact not covered by court order or agreement of parents. Providers are responsible for care and protection of child during supervised exchange transition.
- 9.5: **Off-Site Visitation**—Providers should take safety into consideration and is responsible for working with parents/referring sources to arrange where visit will take place if off-site.

Staff

- 11.4: **General Qualifications for All Providers:** Staff must meet minimum qualifications:
 - Maintain a neutral role;
 - Have no conflict of interest;
 - Have no conviction of child molestation, child abuse, or other crimes relating to children;
 - Have no conviction of a violent crime and/or on probation or parole during the last five years;
 - Have had no civil or criminal restraining order issued against him or her within the last five years;
 - Have no current or past court order in which the provider is the person being supervised;
 - Be at least 18 years of age;

- Be in compliance with local health requirements for direct contact with children; and
- Be adequately trained to provide the supervised visitation services offered by the provider.
- There are specifications of **Special Qualifications** if a provider intends to transport a client.

Training and Education

- **12.3: Training for Visit Supervisors**—Practical training must include opportunity to shadow a trained supervisor director, co-supervision with a trained supervisor, direct supervision while a trained supervisor shadows. All supervisors must complete 24 hours of training covering: SVN Standards and Code of Ethics, provider's policies and procedures, safety, child abuse reporting, professionalism/conflict of interest and maintaining neutrality, basic stages of development, effects of separation and divorce on families, grief and loss associated with parental separation/removal from home due to abuse/neglect, cultural sensitivity and diversity, family violence and its effects on children, child abuse (including sexual) and neglect, substance abuse, mental health issues, parent introduction/reintroduction, parenting skills, conflict resolution and assertiveness, how/when to safely intervene, preparing factual notes, observing interactions, relevant laws.
- There are similar guidelines for training Exchange supervisors and provider management in sections 12.4–12.6, as well as additional training and requirements for therapeutic supervision in section 12.7

Referrals

- **13.2: Accepting Referrals:** Referrals can be from a court or appropriate professional and must include reasons for referral and information on any family issues that may impact parent/child contact or safety. If referrals do not cover frequency/duration of visits and the parents disagree, the provider must send the issue back to court or referring agency for clarification. While awaiting clarification, provider may set out temporary conditions for use of access service.
- **13.3: Declining Referrals:** Provider can refuse to accept a case if safety needs/risks cannot be managed adequately by the provider because of inadequate training/resources or safety concerns.

Intake and Orientation

- **14.3: Intake**—Intake conducted separately with each parent, follow up with parent about reasons for referral and inquire about any chronic medical conditions affecting the child, parents or supervisors/staff. Provider must also inform parent about limits of confidentiality, explain program rules and policies and have them sign a service agreement.

- **14.4 Orientation by the Provider**—Provider familiarizes each parent with staff, location, safety arrangements, plans for service, reasons for supervision and that the supervision is not the child's fault. The client is given opportunity to express concerns.
- **14.5: Child Preparation by the Parent**—Provider must give parents written information about preparing their children for supervised visitation (age/developmental specific).

Interventions and Ending a Visit or Exchange in Progress

- **16.2: General Policies**—Policies must cover situations where the provider determines the child is acutely distressed, the parent is not following the rules set out by the service agreement, or a participant is at imminent risk of physical or emotional harm. Ending a visit is temporary and different from termination of services.

Provider Functions Following Supervised Visitation

- **17.2: Feedback to Parents**—Provider must inform parents if the child has been injured during a visit or if there is an incident that presents a risk to that parent's safety. There is an exception if child protective services instruct the provider not to inform the parent.

Termination of Services

- **18.2: Reasons for Termination**—Provider must have written policies that set out reasons a visit may be terminated, including but not limited to:
 - Safety concerns or other issues that cannot be effectively managed by the provider;
 - Excessive demand on the provider's resources;
 - The parent fails to comply with conditions or rules;
 - Non-payment of program fees; or
 - Threat of or actual violence or abuse.
- **18.3: Refusal of Child to Visit**—If a child refuses to visit the provider must suspend services pending resolution of the issue.

Special Standards Involving Child Sexual Abuse and Domestic Violence

- **19.2: Child Sexual Abuse**—Provider must have special policies for this and visits must be supervised by trained individual, one-on-one where all verbal communication is heard and all physical contact is observed. Providers may not accept allegations of sexual abuse under investigation unless there is a court order to the contrary or an opinion by a sexual abuse expert.
- **19.3: Domestic Violence**—Provider must develop a safe arrival/departure plan, refer victims to external resources, develop policies so there is no shared decision making (unless court order to contrary), develop policies to make sure there is no contact between the parents (unless court order to contrary).

Reports to Courts and Referring Sources

- 20.2: **Factual Reports**—Provider must ensure all reports are limited to facts, observation and direct statements made by parents, and not personal conclusions, suggestions or opinions of the provider.
- 20.3: **Cautionary Note**—Provider must include cautionary note stating limitation on the way information should be used when submitting reports or copies of observation notes

Confidentiality

- 21.3—21.4: A provider needs client permission to release information unless there is a subpoena, reports of suspected child abuse/neglect, reporting dangerous threats of harm to self or others. Parents have a right to review provider records.
- 21.5: **Requests to Observe or Participate**—If professionals want to observe or participate in visits, they must have authorization from court or approval of both parents in writing.

VI. The Interview Study

This part of the report summarizes the responses from interviewees: 9 judges, 10 lawyers, and 4 supervised access service providers, 3 from Ministry funded centres and one from the private sector. All of these interviews were conducted on the phone by the student Research Associate (Sarah Spitz).

Judges at the three research sites were recruited through the Office of the Chief Justice of both the Superior Court of Justice and Ontario Courts of Justice.

Lawyers were recruited using several methods. The first was a search on CanadianLawList.com for lawyers who had listed ‘family law’, ‘supervised access’ or ‘custody and access’ as areas of practice at one of the three research sites. Several lawyers who do work for the Office of the Children’s Lawyer and Legal Aid Ontario in these regions were also contacted. Lawyers from prominent Ontario family law firms were also contacted using information found on firm websites.

Supervised access service providers in the three study regions were contacted on recommendation from Judy Newman, Manager for Supervised Access Program of the Ministry of the Attorney General (MAG) on Ontario. Participants who agreed to be part of the research were asked to provide suggestions of additional professionals in their regions to interview, and these people were contacted to request an interview. A number of individuals contacted, especially lawyers in private practice, did not respond to requests for an interview.

Interviewees were asked a number of questions about supervised access in child welfare cases and child custody cases, long-term supervised access and transitioning out of supervised access. They were also asked to provide recommendations for various stakeholders in a case requiring supervised access, such as lawyers, judges, service providers and the provincial government.

There were interviews with 9 judges (6 Ontario Court Judges and 3 Superior Court Judges), 10 Lawyers in public service (including OCL and Legal Aid), 2 Lawyers in private practice, 3 Public supervised access centre providers,⁵⁹ and 1 Private service provider. Interviews lasted 30 minutes to 1 hour depending on the participant’s availability and responses. Judy Newman, Manager for Supervised Access Program of the Ministry of the Attorney General (MAG) on Ontario was also interviewed to provide background information, but her responses are not included in this section of this paper.

All interviewees were asked a set of questions, with some additional questions only to judges.

⁵⁹ “Public” service provider here and throughout means a Supervised Access Program (SAP) that receives funding from the Ontario Ministry of the Attorney General.

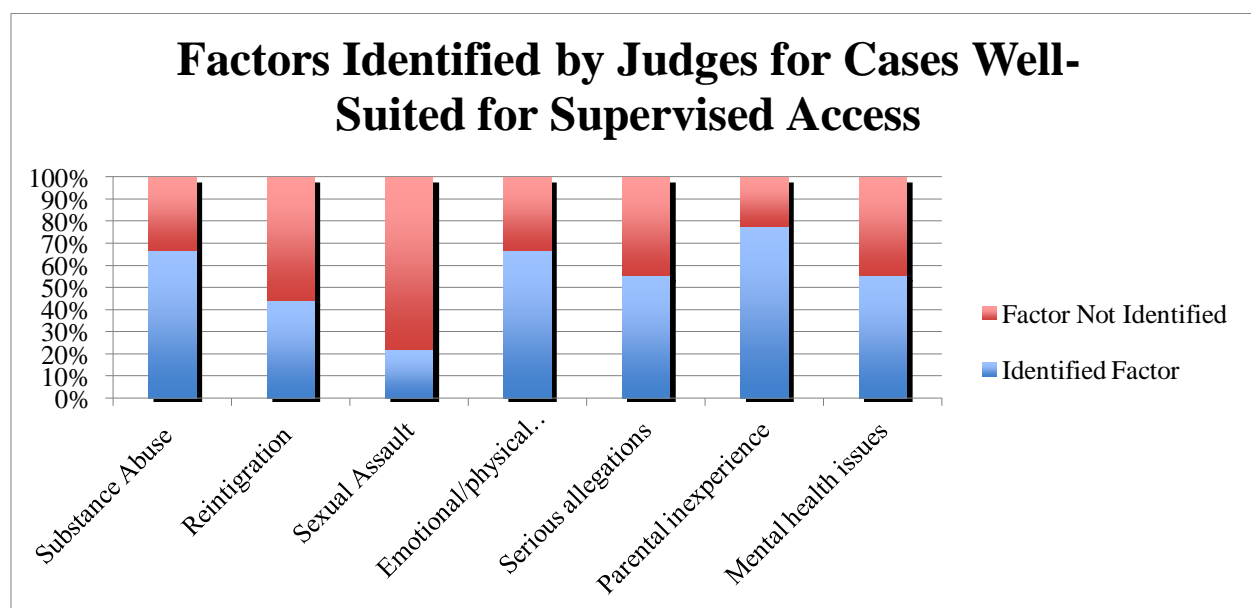
1. When to Order Supervised Access?

As widely acknowledged in the interviews, there are cases where the interests of children and parents require use of this resource, but judges ordering its use should be satisfied that this is necessary and appropriate. As one judge said: “A child should not have a life of supervised access. It is not the right of the parent to see their child, it is the child’s right.” It was widely appreciated by the interviewees that supervised access centres are an important publicly subsidized resource, but supervision is an intrusive experience for parents and children.

When considering whether to order supervised access, judges were clear that supervised access is a last resort to be used in limited circumstances. “Not every case is appropriate for it, and my first line is always to try to avoid them,” said one of the judges. “It’s not because I have a negative view of the work that they do, but it should be reserved for very high conflict situations where there are objective risks that do not reach the child protection level of hostile environment.”

Judges in the interviews were fairly consistent in their identification of cases that are well-suited for supervised access programs, identifying most if not all of the *Jennings* factors, in particular:

- Requirement for reintegration after long period of not seeing child;
- Sexual assault cases where the child is not giving evidence against the alleged perpetrator;
- Emotional or physical abuse of child or custodial parent where child is not giving evidence;
- Parental mental health issues (moderate);
- Abuse allegations against the parent that have not been resolved;
- Non-custodial parent is inexperienced with children.



One judge observed that in cases where the visiting parent is experiencing difficulties with mental health, there should be frequent monitoring and judicial evaluation because visits have

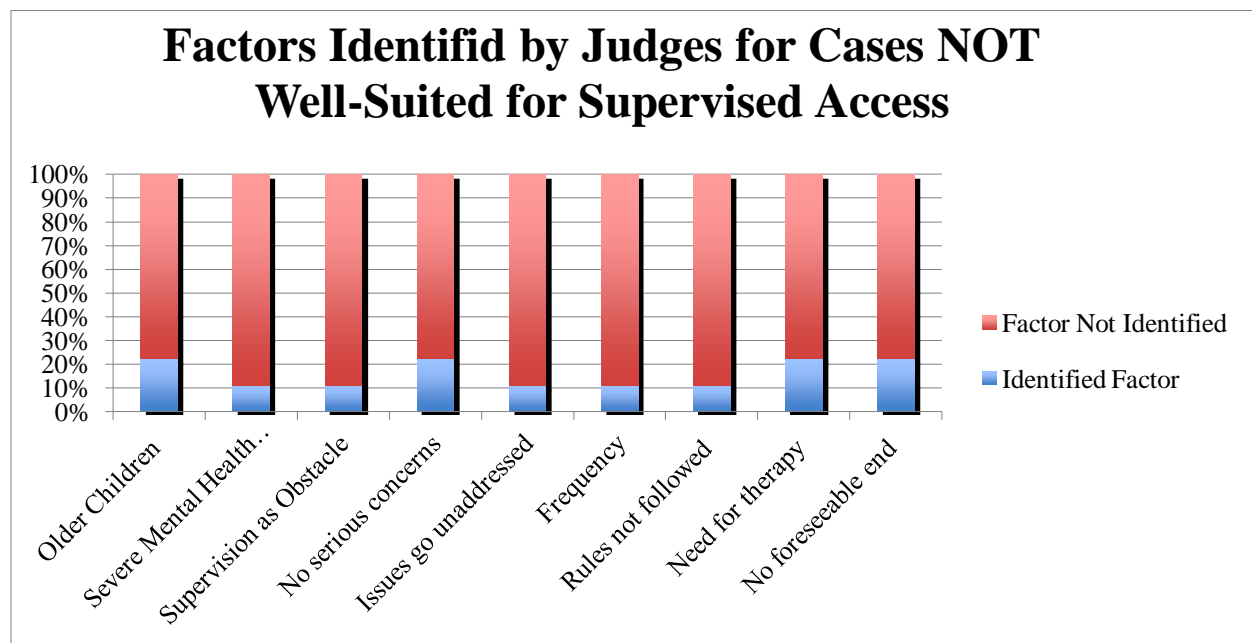
the potential to go on indefinitely, which may not be appropriate; the judge described one example where the mother had severe mental health problems, but had positive supervised visits with the children from the time they were 4–5-years-old. The supervised visits lasted until the children were 15 years old or older.

There was more variation in judges' views about which cases were *not* well-suited for supervised access. The responses identified situations where judges felt that there should not even be supervised access, including:

- Severe mental health concerns;
- The visiting parent is unable to recognize or address their own issues;
- The visiting parent does not follow rules or attend visits regularly;
- The parent or child needs clinical therapeutic support before visits can occur;
- There is no foreseeable end to supervision of access.

Judges also identified situations where it might be appropriate to have unsupervised access rather than supervised access:

- Older children who can report abusive conduct;
- Supervision is only intended to create obstacles for the other parent;
- There are no serious concerns about the other parent;
- There is a need for more frequent visits than the centre can provide.



Older children were of particular judicial concern. Many judges expressed concerns about the programs' capacity to cater to older children, and noted that past the age of 9–12 years, children may not benefit from the program. One judge noted in particular:

“I hear feedback that supervised access services are not geared to older children and that they got bored in the limited environment, which affects their willingness to participate. In some situations, parents take a board game or some other type of

activity to the visit, which can work for older children, but generally teens do not like the confined environment and the activities are not really scaled to them.”

With respect to supervised exchange, judges consistently ordered this service in cases where there was sufficient evidence of intimate partner violence, or other cases where there “is clear evidence that the parties have not been able to move forward and address their underlying issues of trust and communication”. Generally, when supervised exchange is ordered, there should be little concern with the parents as individuals or caregivers, but there may be the potential for the children to be exposed to the conflict between the parents. Supervision of the exchange minimizes the possibility of children witnessing such events, such as the police getting called to deal with parental conflict.

Overall, judges reflected positively on using supervision in the course of ongoing litigation. One judge remarked:

“Supervised access has been an incredible tool. For a lot of the cases where I make those orders, it is the only objective element in the case. There is obviously a clinical component to this, but there are less inferences for the court to draw from the notes, and more of an observation of what is taking place during the visits. Notes from the visits can help establish a material change in circumstances: when one parent is entrenched in the idea that access should continue to be supervised, it is more difficult to take this position when there are notes demonstrating that the other parent is doing well in supervised access. This does not hurt the custodial party; it reaffirms that the visiting parent is doing well”

However, supervised access “can also go very badly if it leads to the parties realizing that the fears they have about the other side are true,” as another judge said. But the same judge reiterated that “[o]verall, I have seen very positive results, and in a year of making these orders, I have only had to order it once where it was not on consent.”

Judges’ reasons for making orders for supervised access are generally consistent with the views of public and private service providers who were interviewed, and who agreed that their services were well-suited for cases where:

- There are issues of safety/violence, neglect or abuse;
- There are concerns about the parenting skills of the visiting parent;
- There are parental mental health issues; or
- There has been a long period of no contact between the parent and child.

As well, all service providers agreed that supervised exchange was appropriate where there was significant conflict between the parents but no safety concerns regarding the parent’s behaviour around the child.

There was some disagreement between service providers and other professionals with respect to the appropriateness of supervision for certain types of cases.

Contentious Cases

While there is consensus that in principle the purpose of supervised access should be a stepping-stone to unsupervised visits and it should be used “as little as possible”, some legal aid lawyers suggest that it may be used too much. As one legal aid lawyer noted, there was widespread acknowledgement that supervision is not appropriate for cases where the parents are overly cautious or have no substantiated concerns with respect to the other parent, but believed that it is still sometimes ordered in such cases, especially as part of a settlement. As one duty counsel said, “there has to be a reason for a case to be supervised.”

One legal aid lawyer noted the value of supervised access to fathers who have experienced difficulties, observing that when there are valid concerns “the other party [father] even just going to the access centre and showing up on time speaks volumes. It tells you they are at least prepared to [exercise access].” Another legal aid lawyer observed: “When parties start out [in separation proceedings] everyone is very on edge. Supervised exchange is a way of facilitating and transitioning: I find it very valuable.”

Although there is widespread support among professionals for supervised access, there are contentious issues, notably relating to cases involving child sexual abuse. Two of the nine judges in this study specifically identified this type of case as one well-suited for supervised access (provided the child was not giving evidence in court about the assault), but some of the lawyers and service providers who expressed views about sexual abuse cases had concerns about supervised access for this type of case. While some were comfortable recommending these cases for supervision, others were more cautious. One service provider commented: “If child was the victim [of sexual assault by the parent] I would proceed with much greater caution and I would want to see a report from a therapist or counsellor as to whether it would be damaging to the child to have any contact. But if the report said access is okay then we would probably go ahead.”

Some service providers at Ministry-funded centres stated that sexual assault cases are simply beyond their capacity, and they would be unwilling to provide supervision. One service provider at a Ministry-funded centre commented: “We have no ability to do any cases involving sexual abuse because it requires one-on-one supervision and we are extremely busy. We do not have a separate room to do one-on-one.” A service director in a Ministry-funded centre in a different region also expressed concern about sexual abuse cases because of the drain on centre resources, but said that the centre has provided such service in the past: “I had quite a few cases where there were sexual abuse charges and it was very difficult because we cannot provide access to any other families or other children at the same time... These people become lifers.”

Another service director expressed different concerns about visits occurring at a centre where the child has never met the parent before. “There has to be a connection between the parent and child.... I find it difficult, because I do not know that this is an appropriate setting for situations where the child does not know the parent. It is not a clinical setting and we cannot provide 1-on-1 supervision, therapy or counseling.”

Service providers also noted that supervised visits are not appropriate where the parent fails to interact positively with the child or fails to regularly attend visits. One director noted that sometimes when this happens, the child will bond with the staff at the centre instead of the parent: “If the child is not getting anything out of it, [supervision] is not appropriate”.

2. The Value of Supervised Access for Parents and Children

Service providers at the government-funded centres are generally positive about the value of their work for children and parents. Although it is ultimately up to the children and parents to determine whether the visits are beneficial, one Ministry-funded service director observed that when parents and children make that decision to develop the relationship, supervision can be successful: “I would say that 90% of cases move on to better access.” There are, however, problems and limitations to these services.

As noted earlier, one of the most significant problems with supervised access centres, especially those that are Ministry-funded, is the lack of activities for children as they get older. “The centre is an unnatural setting with limited resources to allow for bonding,” said one of the judges interviewed. Another judge commented that “there is no objective basis for needing supervision at all” once children reach a level of maturity where they would be able to call for help if necessary.

In this sense, some judges described centres as “one dimensional”, “limiting” and noted that being forced to attend visits at a centre may interfere with other activities the child is involved in, such as sports or extracurricular activities. However, another judge also noted that “supervised access is generally a positive, child-friendly environment [where] the child can be distracted from the situation by other families, toys, games and it can normalize what can be a difficult situation.”

A family lawyer in private practice, however, disagreed with the positive assessments of the publicly funded program, expressing concerns about the publicly funded centres and suggesting that the “institutional” nature of supervised access centres can be detrimental to the child. This lawyer also noted that access supervisors who make their presence known while the visit is taking place can compromise the benefit of that visit for the child. This lawyer further expressed a preference for supervision by relatives, friends, or privately retained social workers, who may have more training, and certainly have more discretion and flexibility regarding in-home or community visits.

Although judges recognize the benefit of centres for reintroducing parents to their children after long separations, one commented that “relying on it as a crutch can be dangerous”. Judges observed that prolonged supervised can become detrimental to the child when:

- The parents are pumping the children for information at or after the visits.
- The parents make derogatory comments about each other or other topics in front of the children.
- The visits are not stimulating for the child (especially if the child is older).
- The child does not benefit because the parent does not interact with the child during the visit.

- The child feels forced to see the parent (which is most common in parental alienation cases).

One judge observed: “The views of the child can be powerful...Children who are 14 and don’t want to see parents may be willing to have initial visitation, but may not want to continue. But access in that sort of case should not be immediately denied.”

“The starting point is that one has to be mindful that supervised access is not a Band-Aid solution,” said another judge. “There must be reasons as to why it is being imposed in the first place because it is not the most natural environment.”

Judges also recognize the limitations of the government-supported centres. One judge commented: “Many cases need therapeutic intervention, or basic help in soothing or caring for a child. This is not provided at these centres. We need to find a way to make supervised access safe, therapeutic and affordable.”

Lawyers also recognize the limitations of the centres: “You do risk harm to the child if trauma is not addressed in some way”, said one OCL lawyer, going on to observe: “Just having access supervised is not going to address that aspect. Sometimes when the child was traumatized in one of the last interactions [with the parent], even just seeing this person triggers the response”.

Supervised access centre staff report that they are on their guard when the child shows signs of distress, or does not want to attend a visit. One legal aid lawyer who had previous experience working at a supervised access centre as a volunteer explained that they would give resistant children code words to intervene or terminate a visit, or offer to escort the child to the bathroom if the child seemed uncomfortable with the parent.

“We get child refusal on a regular basis,” said one of the service directors interviewed, “but we always tell them that they do not have to come inside if they do not feel comfortable, and we never force them.”

Another service director said: “If I see a file that is really going to cause trauma to the child, I can refuse to take it on because we are not mandated by the court to accept all files. I do intake interviews and if the child is petrified, I will suggest counseling for 3 months. Then the child can call and tell us if they want to see their parents or not.”

“We do not want to go against the order itself, but sometimes it is really not beneficial to the child and we have to look at a way to make it work,” commented another. Often, the way to “make it work” is to involve the child in the planning for the visits to mitigate any potential discomfort and ensure that the child’s views are taken into account.

Another service director described their process:

“When the children get older I talk to them after the visit. We also do orientation for the child, where we ask the custodial parent to step aside because we want to have first-hand information from the child. If the child is struggling in the middle of

two parties, we will recommend outside counseling for the child (without disclosing a specific reason). There are some children with severe anxiety that we refer to mental health professionals.”

The same service director emphasized that sexual abuse cases are particularly difficult and visitation, even supervised, is generally not in the child’s best interests. This provider also commented that even in cases that do not involve sexual abuse, if there has been high conflict between the parents, children invariably need counseling if they are to benefit from visits.

3: Frequency, Cost, and Alternatives to Supervised Access Centres

Frequency

For judges, the “driving factor” with respect to frequency of supervised visitation is the hours offered by their region’s supervised access centre. “If anything, I have experienced the trend that I want to order more than what the facility can manage,” said one judge. Most judges interviewed echoed this sentiment.

Ideally when deciding frequency, one judge said the age of the child should be considered. “The younger the child, the more frequent and shorter the visits should be. For older children, visits should be longer but can be less frequent.”

One problem that some judges noted is that some lawyers seeking supervised access for their client or for the opposing party are not aware of the limitations of the centre’s hours. This is even more of a problem with self-represented litigants.

The lawyers interviewed expressed concern about long wait lists and lack of centre availability as primary considerations with respect to lack of frequency of visits. Several lawyers noted that the general norm is 1-2 hours biweekly, but the wait list in some larger cities can be up to 6 months.

For their part, service providers expressed desire to provide longer and more frequent visits, but said they could not do so due to inadequate funding. Another problem for them is that services cannot always be provided when parents are available to attend the visits. One service director said their centre was open Monday, Tuesday, Thursday and Friday from 5:00 p.m.–9:00 p.m., and full days on the weekend. Another region’s centre was open only Fridays and Saturday at one location, and only on the weekends at the second location.

Ideally, even with constrained resources and limited availability, one service director said the factors that should be considered when establishing the frequency and duration of visits are:

- Age of the child;
- Nature of the relationship with the visiting parent;
- Distance the family lives from the access centre;
- Child’s other commitments (i.e., sports, school clubs);
- Finances of the family; (including the cost of visits and transportation to/from the access centre);

- Work schedules of the parents;
- Parenting skill and experience of the access parent.

Another service director suggested the following scheme for considering the child's age with respect to frequency:

Age	Frequency of Visit
0 – 2	3 times per week for 45 minutes – 1 hour
2 – 4	2 times per week for 1 hour
4 – 6	1 day per week + 1 day on weekend
6 – 12	1 time per week
12+	Ask children whether they would prefer 1x/week or 2x biweekly

Cost and Alternatives to Ministry-funded Centres

Supervised access can be a financial burden for parents. At Ministry-funded centres, there is a service fee (which may be waived or reduced according to the parent's ability to pay), and transportation costs to regularly have supervised access can be overwhelming for low-income families, especially those on social assistance or not having access to public transit.

Judges, Lawyers and Service Directors all expressed concern that many families using supervised access services were not able to pay the cost of transportation to and from the centre, especially in regions where public transportation may not always be available. Where such transport is available, parents must also consider other children who may not be attending visits but cannot be left at home alone, and pay for their transportation as well, or for child care for those children.

Since costly travel and long wait times are a reality at many supervised access centres, judges consider alternatives such as supervision by a relative. In rare cases where the litigants can afford a private service, judges may order that supervision is to be provided in this way, but this is not the norm.

“It is a huge challenge [for many parents] to even pay the \$20 visit fee at the Ministry-funded centre. [So when considering supervision] the first place I look is always family, depending on the nature of the relationship,” said one judge. However, finding an appropriate family member to supervise may not be possible. It is often difficult for the parties to agree on a suitable family member or third party, and once the person is identified, many judges want the person supervising to either sign an affidavit or appear in court before the judge to certify that they are able to take on the responsibility of supervising access.

“They [the relative or friend] would have to clearly understand what is required of them and I would have to be sure of that,” explained one judge. Even if a judge is able to establish that a friend or relative understands this responsibility, they may not be an adequate supervisor for all cases. If there are allegations or risk of harm to the child, a friend or relative may not be a suitable supervisor. Judges agreed that this sort of supervision is best when the reason for

supervision is to give the child comfort when they are being reintroduced to the parent. In cases where there are concerns about abuse or sexual assault, “there is no guarantee that a family member supervising will recognize the risk the non-custodial parent poses, or have the ability or willingness to intervene,” said a different judge.

“Supervised access is a last resort,” one judge reiterated, “If there is a family member available that is trusted by both parties to do the supervising, I always prefer that, but if not I will use the centre. There have been a few times when the parties could not agree and I chose the supervisor.”

Lawyers were also comfortable with this sort of alternative in cases where that type of supervision posed little or no danger to the child. One lawyer in private practice observed:

“I am often looking for supervision by friends or family members, or someone that is trusted by the custodial parent that can do the supervision. That can be arranged as often and as long as the supervisor is willing to do it. That’s often my preferred option often when representing a non-custodial parent, but it is also advisable when representing a custodial parent.

Custodial parents will say they want the child to have a relationship with their ex-partner, but they just want to make sure the child is safe. The goal is not usually to minimize the time, but the difficulty when we’re dealing with private supervising is finding an agreeable person that is willing to do it and is acceptable to both sides.”

While relatives as supervisors can relieve some of the burden placed on supervised access centres that are overflowing with clients, the relative supervisors are not properly trained. Some interviewees suggested having one or two visits at the centre where the relative supervisor attends and can be trained or instructed by the centre’s staff. This way, the relative can what to look for and how/when to intervene appropriately.

Although service providers generally have fewer limitations on the availability, frequency and time limit for supervised exchanges, than for supervised visits, this process is inconvenient and not inexpensive for families with limited resources. Finding alternatives to supervised exchanges at Ministry-funded centres can be a challenge. Lawyers and judges may consider having unsupervised exchanges in a public place where arguments between parents may be less likely to occur, and unsupervised exchanges at fast-food parking lots, schools and third-parties may be an alternative if there are no concerns about intimate partner violence occurring. However, judges and lawyers agree that exchanges at police stations are less than ideal. As one judge explained:

“I hate police stations [as locations for exchanges]. They send a terrible message to the kids. I will make orders for public place exchange when parents have difficulty with each other, but do not want to use a centre. So I give them ideas: McDonalds is a big place, Tim Horton, subway stations (where you can have one parent drop off at the front and the other waiting inside). This type of arrangement may be good for when the parents have tension that is expressed verbally but not physically.”

4. Child Custody Cases vs. Child Welfare Cases

A Difference in Approach

A significant difference between supervised access centres and when the Children's Aid Society supervises access, is that in child welfare cases the visit usually occurs in the Society's offices and supervision is by a worker who is in effect a party to on-going litigation. While inexperienced parents may get supportive instruction about child care from child protection agency staff, this also means that any notes taken during the visit may be used as evidence in ongoing child protection litigation between the parent and the Society. If visits go well, this may help parents regain custody of children, but parents often feel that they are "under a microscope" during agency visits in an unnatural setting. As well, visits must generally occur during weekday business hours, which makes them difficult for parents who are working.

When supervised visits occur in a parental separation context, a neutral staff person who is not involved in the litigation supervises visits occurring at a supervised access centre. Supervisors still take notes, but the notes may tend to be more balanced and factual. Perspectives of interviewees on role of supervised access centres in child custody cases versus child protection cases were largely consistent for all respondents.

The interviewees broke down the difference between the two types of supervision as follows:

	Parental Dispute	Child Protection
Purpose	<ul style="list-style-type: none">• Order supervision if safety concerns to child, parent or other family• Facilitate interaction between parent and child by providing safe space for parent and child to bond• Do not teach parenting skills	<ul style="list-style-type: none">• Provide safe space for children because of existing safety concern• Assess parent competency• Build parenting abilities through hands-on intervention• Family reunification is ultimate goal
Use of Notes	<ul style="list-style-type: none">• Either party may request copy of notes• Notes are more balance and factual report of visit and may be used as evidence• 	<ul style="list-style-type: none">• Notes taken used for evidence gathering in ongoing litigation• High level of scrutiny on parent competency
Neutrality	<ul style="list-style-type: none">• Overall confidence that staff maintain neutral position when supervising families• Family signs service agreement	<ul style="list-style-type: none">• Parents do not perceive Society as neutral because CAS staff are seen as party to litigation, which may affect quality of visits

The Role of Supervision in Custody versus Protection cases

Some judges report that the Society's supervision of visits can be "deeply problematic", citing concerns about lack of neutrality. Because the Society is collecting evidence, parents feel on edge and pressurized in supervised access because they know that any apparent misstep in interacting with their children can and will be used against them. But in access supervised by a neutral centre this is less of a problem because of the Centre's position.

In the child protection context, Judges consistently identified several themes that emerge when the Society acts as the supervisor in a child protection matter:

- **Lack of Neutrality**— "The Society is essentially one of the litigants, and there is a benign view that they are there to protect children, but that is not always the case. Some workers are not able to distance themselves from their position in the litigation."
- **Therapeutic Access**— "Therapeutic access provided by the Children's Aid Society can be helpful for some parents, but they need to have the right attitude. "
- **Hands-on approach**— "Fundamentally, the approach of the Society versus the Ministry funded programs is completely different. The Ministry programs are neutral and safe locations, but they deal with issues in a different way. They will interrupt if there are severe problems, but they are not there to do any therapeutic work with the family aside from taking notes. This is a different approach entirely to the Society."
- **Safety**—"Supervision is a starting point where there is a risk or allegation of risk arising from the state. For the state to become involved, there must be justification, so the starting point is the reasons that Supervised Access is being requested."
- **Basis for Supervision** — "If the Children's Aid Society is involved, they usually have hard evidence that there was something inappropriate that put the children at risk"

Judges were also fairly consistent in identifying the role of supervision in both custody and welfare cases. With respect to custody cases, judges identified the following themes:

- **Comfort**— "Visits at supervised access centres can give the custodial parent a level of comfort they might not otherwise have".
- **Stepping Stone**— "Supervision is a stepping stone for new parents where there are questions about their experience or capacity to parent".
- **Safety**— "The role of supervised access and exchange in child custody is to ensure the safety and well-being of the child".
- **Reducing Conflict**— "It can be a buffer between the two parents when there is a separation between them, which reduces the conflict that can occur in front of the child"
- **Reintroduction**— "The role of supervised access is to facilitate reintegration or reintroduction between the parent and child".
- **Obtaining Independent Evidence**— "Notes from the visits can help establish a material change in circumstances: when one parent is entrenched in the idea that access should continue to be supervised, it is more difficult to take this position when there are notes demonstrating that the other parent is doing well in supervised access"

Like judges, most lawyers interviewed believe that the Children's Aid Society is not a neutral supervisor, and this is reflected in the notes that are taken during visits. A number of lawyers for parents said that their child protection clients feel uncomfortable in the Society offices because they feel the pressure of being watched while the opposing side gathers evidence for ongoing litigation.

As set out in Table 1, lawyers had a range of different views about the comparative roles of supervised access in child custody and child welfare cases. The table below sets out the range of views of lawyers in both the private and public sectors. Most lawyers agreed that the role of supervision in both child custody and child protection cases was to mitigate any risk to the child and ensure their safety. Lawyers generally agreed that the role of a supervisor in any context includes observation and taking notes, but concerns were raised with respect to the Society's neutrality in almost all instances where the lawyer spoke about that issue.

Table 1: What is the role of supervised access/exchange in child custody vs. welfare cases?

	Mitigate Risk/Ensure Safety		Facilitate reintroduction +contact		Transition to unsupervised		Promote Family Reunification		Observe and take notes		Neutral third party		Minimize child involvement in conflict		Gather evidence for litigation		Teach parenting skills	
	CP	CC	CP	CC	CP	CC	CP	CC	CP	CC	CP	CC	CP	CC	CP	CC	CP	CC
Private Lawyer1	☐	☐									☐	☐						
Private Lawyer 2		☐		☐						☐	☐	☐			☐		☐	
PuL1 (OCL Counsel)	☐	☐	☐			☐	☐					☐						☐
PuL2 (LAO Counsel)		☐	☐	☐		☐			☐	☐				☐	☐			
PuL3 (LAO Staff Lawyer)								☐	☐	☐	☐	☐			☐		☐	☐
PuL4 (LAO Staff Lawyer)	☐	☐							☐		☐						☐	☐
PuL5 (LAO Counsel)	Did not answer																	
PuL6 (LAO Staff Lawyer)		☐			☐				☐		☐						☐	
PuL7 (LAO Staff Lawyer)	☐	☐																
PuL8 (LAO Staff Lawyer)		☐		☐					☐		☐	☐		☐				
PuL9 (LAO Staff Lawyer)	☐	☐		☐					☐	☐		☐				☐		
PuL10 (LAO Counsel)	☐	☐		☐					☐	☐	☐	☐					☐	☐

☐☐ = Lawyer identified this role for the relevant service ☐☐ = Lawyer specifically noted that the relevant service did not serve this role
Shaded Box = Lawyer did not speak about this issue at all; CC = child custody; CW = child protection/welfare
LAO Staff Lawyers specified that often their role with clients in supervised access situations is limited to duty counsel.

Service providers at the Ministry-funded programs echoed the same perspective as judges and lawyers, clearly articulating both institutional and practical differences between the supervised access centres and the service operated by the Children's Aid Society. The focus of supervised access and exchange programs, according to service providers, is to provide a safe neutral environment where the role of the centre is facilitative. In contrast, they observe that the Children's Aid Society, in child protection proceedings, takes an active and hands-on role in family reunification as well as in the litigation itself. Part of the difference in approach stems from the fact that supervision in child protection proceedings is generally on a 1-1 ratio, while

supervision at access centres in child custody proceedings occurs with one supervisor for a few families at once, making any teaching of skills impossible. Thus supervision by child protection workers allows them to teach parenting skills to allow for possible reunification of parents and children. Teaching of parenting skills is not provided at supervised access centres in child custody proceedings, primarily for resource reasons.

At a supervised access centres, the family will need to sign a service agreement and follow certain rules. Intervention by staff only occurs if there is a risk of harm to the child, parent or other families. In a child protection context, there is no service agreement, and the child protection worker may intervene to teach parenting skills or preclude dangerous behaviour.

Service directors are clear that therapeutic intervention and the teaching of parenting skills are not part of the mandate of visitation centres, and they clearly lack the resources to do this. However, some will make referrals or suggestions to existing community resources.

Considering the viewpoints of judges, lawyers and service providers, supervision that takes place at the Society offices can be problematic for a number of reasons:

- The parents often feel on-edge at the CAS office;
- The Society is party to the litigation;
- The notes from the visit are almost automatically used as evidence in the ongoing litigation;
- Notes often reflect an unconscious bias, especially when the supervision is done by someone involved in the case.

Despite these concerns, in many cases supervision of visitation in child protection cases does promote family reunification and allow teaching of parenting skills while protecting the child from any existing safety concerns. There are, however, issues about whether the nature and quality of CAS supervision could be improved.

It should be noted that at the one Northern Ontario site in this study the Supervised Access program and the Children's Aid Society are co-located. While it was noted by some interviewees that access parents may experience some embarrassment from this, there was not enough data collected on issues related to the advantages and disadvantages of this type of arrangement to draw any conclusions.

5: Avoiding Long-Term Supervision Orders

Although there is widespread agreement that supervision is intended to be a “temporary” measure or a “stepping stone”, the reality for some families is that sometimes supervised access can go on for years. To avoid “permanent” use of the program—which is generally viewed as inconsistent to its purpose—judges, lawyers and service providers agree that review dates and transitional services are needed to help families transition out of the program in one way or another.

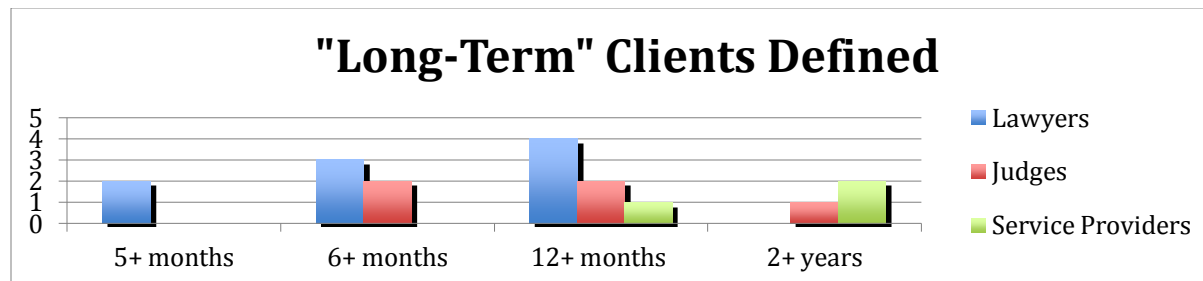
Within the ambit of preventing or at least reducing the likelihood of “long-term supervision orders,” there are a number of issues to address:

1. What is a “long-term client” of a supervised access program?
2. How does a family transition out of supervised access?
3. Who should be responsible for making the decision regarding that transition?

“Long-Term” Clients

Judges, Lawyers and Service Directors had varying ideas of what constitutes a “long-term” client of a supervised access program, reflecting their differing professional perspectives on this issue. Answers (ranged from 5-6 months to several years, showing significant disparity in the understanding of long-term supervised access both amongst different professionals and within each profession.

Generally, judges, and especially lawyers, had shorter time horizons, perhaps because most of their cases were resolved within a year of supervised access starting, and after longer periods parents with supervised access dropped from their legal caseloads; further, lawyers and judges would also count among their supervised access cases those which pose less risk, and might be supervised by relatives, often for limited periods. Supervised access service providers, however, had a longer time horizon, perhaps because a greater portion of their total caseload involves families in supervised visitation for significant periods.



Interviewees also indicated a wide range of reasons for the extended use of supervised access programs by “long-term” clients.

Despite the variation in identifying which are cases are “long-term,” it is clear that a common view that parents become “long-term clients” if there is an underlying inability on the part of parents under supervision to resolve the issues that led to access being supervised in the first place.

One judge noted that litigants in this category tend to be self-involved, emotionally charged, positional, entrenched in their beliefs, scared, frustrated, angry and unable to let go of their relationship. One lawyer suggested that this tends to lead immigrant families to stay in supervised access for longer periods because “there is a lot more bitterness that gets in the way,” and less understanding of the cultural and social components of the separation and conflict. This observation is consistent with judges’ recommendations that there be further cultural sensitivity in supervised access centres, which will be discussed further later in this paper.

The characterization of the “long-term client” may differ when faced with individuals with mental health or addiction concerns. Here, the problem is likely that the parents are not receiving

the treatment they need, or they are not responding to the treatment, and the condition is so severe that they will never be able to visit with the child unsupervised. Usually, these cases stay in the Centre if there is no family member willing and able to supervise the access externally.

Table 2: Why do families stay in supervised access long-term?

☐ = Lawyer identified this role for the relevant service ☐ = Lawyer specifically noted that the relevant service did not serve this role
 Shaded Box = Lawyer did not speak about this issue at all; CC = child custody; CW = child protection/welfare
 LAO Staff Lawyers specified that often their role with clients in supervised access situations is limited to duty counsel.

supervised access in order to avoid future allegations. The family stayed in supervised access until the girl was 14 or 15 years old.

While there are concerns about long-term supervision, service providers noted that there is also some benefit to working with clients over longer time periods, as it can help the families build trust with the program and the staff at the centre. Long-term visiting parents can also act as a role model for newer parents who may not be familiar with the setting. However, staff also warned that there is a danger of getting too comfortable. “The benefit of working with clients’ long term is that we do build a relationship, but at some point it reaches a peak,” said one of the ministry-funded service directors: “We build respect and empathy with them but we have to be cautious of not becoming overly involved.” Further, as previously noted, long-term clients are a drain on centre resources. “Cases like these take up a lot of hours long-term and are very costly. The worst are the sexual abuse cases where we can only provide one-on-one access.” said the same ministry-funded service director.

When children get “older” most participants agreed that supervised access began to lose its benefit. However, there was again widespread variation in understandings about what “older” means. Some defined it as “between 7-8 years,” while one service director defined it as “older than 12” and some said that the service loses benefit when the children reach age 14 or older.

However, there was widespread agreement that supervision loses its benefit in certain circumstances regardless of the child’s age:

- **Lack of engagement** – if there is “no parental relationship” there is no benefit to staying in supervised access – Judge
- **Children negative about visits** – “supervision starts to lose benefit when we start getting feedback from the Office of the Children’s Lawyer that the children are being very negative about visits. As the children get older, it becomes burdensome for them to be stuck in a room with the parent for an hour every week” – Judge
- **Visits escalate conflict** – “I have had situations where supervised access programs terminated service to families because they were not following the rules, either or both sides were cancelling visits constantly or were showing up late, one side was making threats, or the parents were involving the child in the conflict.” – Lawyer

When supervised access allows a parent to demonstrate the ability to care safely for a child, the case should transition out of supervised access. When supervised access loses its value to the child it should be terminated.

Transitioning Out of Supervision

Most supervised access cases go on to less restrictive access. Although some parents may simply informally agree between themselves to move to unsupervised access, generally the parents return to court for an alteration in the terms of access. Return to court can occur in two ways:

1. **Review** – At the time the order is made, the judge includes a provision, which requires the parties to come back to court at a specific date or after a specified number of visits, or after the access parent has completed a specified program, for a “review,” without

requiring a change in circumstances to be established. Decisions may be made at this point regarding the terms of access without the prior order binding the court about what is in the child's best interests.

2. **Variation** – The party seeking a change must file a motion to vary the original order and demonstrate a “material change in circumstances. The party seeking variation needs to adduce evidence to establish that there has been a material change that supports a variation in the access arrangement, and, if this is done, the court will make an order based on an assessment of the child's best interests.

Termination of Visits

It is important to note that the “endgame” for supervised access cases is not always unsupervised access. In some cases, there has been such severe degradation of the parent-child relationship or the parent is such a safety risk or so compromised by mental health or addiction issues that the case will never be suited for unsupervised access. These tend to be the cases where there are extreme safety concerns related to the parents' treatment of the child, or the parents' activities outside of the family relationship. If there are serious safety concerns, or the parent does not comply with the centre's policy, the centre may terminate visits.

One judge also noted that it is common for a court to order that visits which are being supervised should be terminated when it is onerous on the children because of extracurricular activities.

“To completely terminate visits, you are looking for evidence that the child is at risk despite any conditions the court could impose on access,” said another judge. “There is a presumption of contact, but there may be cases where the parent who seeks visitation has abused the parent or child and the challenge is that you will generally get into the family court on the access matter before the date for criminal trial. Bail conditions may preclude contact, so you can make an order to that effect. But the danger is that if there is an acquittal, you are back in the same cycle of reintroduction. There would need to be extremely significant, clear evidence that behaviour of visiting parent was directly linked to the child.”

Another judge indicated that the evidence needed to terminate even supervised access could include a report from an independent psychiatrist or other professional indicating that access is detrimental for the child. Reports from the access supervisor may also play a role in this decision.

Review

All judges interviewed said that in some cases they include review dates when making supervised access orders; however, provisions for review are not always included. Judges' practices and opinions varied considerably on the appropriate period of time for review.

“In my orders for ‘permanent’ supervision, I generally include a provision for **review within a year, maybe even 15 months**. I do not think anything changes in less than that time. It is not always necessary to look for a material change: I am a big fan of updates. In issues of extreme family violence, parental alienation or lengthy periods of no access, I will order counseling for the children and the caregivers.” – Judge 5

“If these positive visits occur for about **2-3 months or 8-10 visits**, then transition can be appropriate. If it’s been longer, the custodial parent may be comfortable with a ‘normal’ access schedule. For drug addiction or mental health cases, we have done visits where the visiting parent meets at the centre, takes the child to the park or another public place for a few hours, and comes back for the centre for the last half-hour for observation.” – Judge 7

“Sometimes the order will say “this will be reviewed in **6 months** and I remain seized of it”. This is usually in cases where the risk is minimal and the parent just needs education and counseling—the court has the onus to bring them back.” – Judge 1

Another judge noted that when case managing, court dates are generally 2-3 months apart, so that is the earliest review can occur in that particular district. Service providers strongly supported review dates, as they are unable to terminate services unless there has been a violation of the centre’s service agreement, such as frequent cancellations, broken rules or disrespect to workers.

One service director noted that their job “is not to coach families,” but the staff at the Centre do provide the families with information about community services and sit down with the families after a year of supervision to revisit the service agreement and review the goals set at the beginning of the year. This service director commented:

“To transition a family out of the program, I always suggest ‘triple P’ (positive parenting programs), which are free programs the agency offers. We also offer a program called ‘children in the middle’. Both parents attend separately, and the program explains how they can better communicate without involving the child as a pawn. There are also some resource books from the Ministry talking about transition and what to look for, as well as providing information about court orders.”

Final Orders and Variation

Even though review dates are not always used, judges use them to avoid making final or permanent orders for supervised visits. One judge said: “I hope never to make a final order for supervised access. . . Final orders [for supervised access] used to be routinely made, and people were tired of fighting about it.” While the same judge suggested that reviewing cases is easier at the Court of Justice level than it is at the Superior Court, this judge expressed support for keeping court files at both levels of court open until the supervised access part of the case is resolved. This judge also suggested that in some cases there should be a presumptive date for termination of supervision, allowing for the party wishing supervision to bring a motion to review, with the onus on at that time on the person who thinks that supervision of access should continue.

Most other judges interviewed agreed with that they generally make review orders, with the expectation that there should be an onus at the review date on the custodial parent to show that

supervision should continue, but there were a few who said that the onus at a review date should be on the access parent to show that supervision should end. Despite this consensus among the judges interviewed, reported cases in the case law analysis above did not consistently contain review provisions. There was no review provision in 30 of the 79 reported cases analyzed (38%). However, the cases analyzed do not account for orders on consent and unreported cases.

Of course, if there is a supervised access order without a review date, either parent would need to bring a motion to vary and show a change in the circumstances. The question for judges to answer, in that case, is what is a “material change in circumstances” for a supervised access case. Judges said that in order to terminate supervision and move on to “better” access they would want to see evidence, typically including notes from the access supervisor that:

- The parent visiting is able to read the child’s views, manage the child’s behaviours, and that there are no concerns with respect to the nature of the contact between the parent and child;
- The visiting parent can meet the child’s needs;
- The visiting parent come prepared for visits;
- The parent has turned their mind to using visitation time constructively and in a child focused way;
- The parent is focused on the child in an age appropriate manner during visits and shows appropriate affection to the child;
- The child has a level of comfort with the parent and reciprocates affection;
- The child’s behaviour does not raise any red flags;
- The parent gets the child ready for the end of the visit, and does not make concerning comments;
- If there are issues of drug or alcohol addiction, the parent has taken steps to get clean and is not abusing substances;
- The child has grown old enough for risk factors to be lower;
- There is another option for supervision available (i.e., a family member);
- Third party records (i.e., a report from the OCL or CAS) demonstrate a change in circumstances;
- The parents are building trust with each other (especially in parental alienation cases); and
- The parties have completed any conditions that were specified when the order was made (i.e., take a parenting class, go to therapy).

One judge explained the value process of single judge case management of supervised visitation cases with periodic conferences:

“To vary an order, we can only make decisions when we are asked by way of motion. But this is the beauty of single judge case management: I can have a dialogue with the litigants and see if they can transition. [If they can, a consent variation may be appropriate.] If not, I would indicate to the visiting parent to ask for a motion. Moving out of the program, there is usually a “stepping stone order” for visits in the community, perhaps one overnight, and they can work their way to a traditional access order. The access would increase gradually dependent on the details of the case and the age of the child.”

A different judge observed: “My objective is usually to phase supervision out. If access needs to be supervised indefinitely, unless the supervision is by a family member, I am seriously considering whether it is in the child’s best interest to have that access.”

Lawyers generally agreed with an approach of moving families out of supervision, with one saying: “Lawyers should do everything they can to move the client away from supervised access and encourage them to address concerns so they can have a more natural type of access with their children.”

Regardless of the burden of proof and process, there should be some change that addresses the concerns originally present before a case of supervised visitation transitions to unsupervised access. As one lawyer in private practice said: “At some point, you have to ask ‘What’s changed?’”

One of the problems that LAO duty counsel report in assisting with these cases was noted by one of them: “We do not really see clients when they are in the program long term” and “if there is a final order for supervised access, that would be the end of my involvement and the onus would be on them to bring it back to court.” In an area where there are so many self-represented litigants, the allocation of the responsibility to the parents to commence a court application may not be the best way to bring cases back. “It would be nice if there was some kind of mechanism for it to come back,” on a prescheduled basis, said this duty counsel.

Service providers have also noticed a problem with lawyers not bringing cases back to court. Though this may be a function of the legal aid/duty counsel system, one service provider said that “lawyers need to work with their clients better” and promote services like mediation to avoid an order for supervision in the first place. This service provider also suggested that the court make parenting programs part of any order for supervised access. “Everyone needs to work together and sit together—but it is difficult to do because the parents are fighting and they are not there yet. Ultimately, decisions for transition need to be made by the court and they should review the documented facts and evidence that we provide.”

Once families enter supervised access, sometimes the difficulty terminating the order for supervision is that the parents are unable to afford a lawyer to return to court and lack the understanding and ability to represent themselves. Another service provider noted: “Some of the situations for long-term families are financial, where they are fighting the order for supervision but cannot afford to keep going back to court and perhaps not getting a different result.”

6. Suggestions to Improve the Supervised Access

[The interviewees offered a range of suggestions for improving supervised access in Ontario.](#)
[Increasing Resources](#)

A number of judges stressed the importance of expanding the range and amount of Supervised Access supported by government.

Judge 2 stated:

“There are 4-5 service centres in Toronto with outdoor facilities, gyms or basketball courts [but these types of facilities are not available in this community]. These would be great to have because it allows parents to play with their kids. Electronics, books, toys and other activities to help stimulate the children are also helpful. These should include activities for older kids.

It would be great to have a place where the parents can have a meal with their child. Having a meal help families bond with the child through culture, by preparing food and dishes that the child likes. It can also mark relevant occasions in the family’s life (i.e., birthdays, anniversaries). In certain cultures, the extended family is important and there is no formal legal consideration of this. It would be good to bring them all into the controlled environment the centre provides and allow the child to have some relationship with their aunt or grandmother.”

Judge 4 commented:

“Because of limited resources, government-funded agencies are unable to provide one-on-one supervision. There is a supervisor floating or overseeing 3-4 visits at a time, and some cases (i.e., parental mental health cases) require more support.”

Judge 6 also made helpful resource related suggestions:

“If I could design the resources, I would have a parent education class affiliated with the supervised access centre. They could have a visit from 1:00-3:00 p.m. on Saturday, and a parent education class for an hour before or after. Then the parent has just taken a class to focus on parenting and can apply that at the visit. Ideally this would be in the same place: it would be much better than waiting 3 months and going to a classroom somewhere after not having seen the child for a while.”

Judge 7 commented on resource issues outside of large centres:

“[Our jurisdiction] is a small jurisdiction and supervised access has a huge territory to cover with limited funding. We have a lot of satellite communities that are maybe an hour away from the centre. It is unworkable and we must be creative with orders in those smaller communities to see if we can have supervision occur by a third party. It would be useful to set up a temporary centre in a satellite community perhaps one day per week so the parents there can have the benefit of supervised access.

Existing centres cannot accommodate work schedules of the parents because of the limited hours they are open. It becomes really inconvenient when you cannot schedule a time when you are actually available, and families all compete for the ‘prime time’ spots. There is also a wait list for 2-3 months before visits can even start.”

Increased Cultural Sensitivity

A number of the professionals interviewed also commented on the need for a greater range of linguistically appropriate and culturally sensitive services. One judge in an urban centre observed:

“Centres need increased sensitivity to the customs and practices of different cultures. For example, there was a family from Ghana, and it was custom for them not to hug their children in public. This would need to be considered when taking notes or making assessments about the parent’s bond with the child.

Centres also need to accommodate the language needs of different families. I have had a ministry-funded centre tell a French family that they had to speak English because there was no worker that spoke French. This is unacceptable in a bilingual country.”

Another judge in an urban area commented:

“In [this region] there is a significant population of Asian and Hindu people. To get the family to even agree to supervision, there is a need to ensure that the supervisors are reflective of the cultural environment. At the very least, supervisors should make sure that use of the family’s native language does not adversely affect the child.”

A lawyer in private practice in a large centre shared these concerns:

“We should have a lot more diversity: whether it is gender, age or ethnicity, I think all of that would be a start. My understanding is that most supervisors currently are women, in both child custody and welfare situations. This means that it is mostly women observing men, and there are often allegations of domestic violence, which can automatically put the person being supervised on the defensive. It does not have to be a situation of domestic violence, but when the father is already blaming women for his problems, it would be better to have more diversity.”

Developing Therapeutic Supervision

One judge specifically noted that it would be highly desirable for Supervised Access Centres to be able to offer some therapeutic and parenting support services:

“There is a need for a specialized resource that provides a therapeutic component. There are some private services that provide this, but private services do not exist in all regions of Ontario. For example, there was a case where the father of a five-year-old child sustained a serious brain injury in a motor-vehicle accident. The injury made it hard for him to manage anger. It was extremely appropriate for him to have access to the child, even after the family separated. I really see the value of private therapeutic access in this context. It is a specialized situation that requires a therapeutic component and one-on-one supervision.”

Use of Private Services

Private supervision services clearly have an important role for those who afford them, though lack of financial resources prevents their use for many families.

As one judge observed:

“When I was a lawyer I was very glad that there were private services, and there is a big role for private supervision services to fill. The reason we do not have more available [in this region] is because there are a lot of people who cannot afford the cost. But if 20% of children get to have a more meaningful access experience (using private services) that is better than zero. If you put aside politics and policy and look from the child’s perspective, you want the visit to be as meaningful as possible. Private services make the visit more flexible and allow the visiting parent to do what a normal access parent does.”

The Director of one Private Service commented:

“Privately provided services should always be a choice for the family. But it would be nice to have the service subsidized a bit so it is not coming out of people’s pockets.”

Focus on the Purpose of Supervision and Consent Orders

Judge 5 said:

“I think we all make a concerted effort to look at the realities of the situation and see whether a supervised access order is necessary, and ask *why* we are being asked to make the order in the first place. Most judges are good at going behind those elements to see what is there, and understand that these are not intended to be final orders. Supervision is a tool to help gather information, but it is up to the judge to determine what is necessary and appropriate in the circumstances, and examine the evidence in its entirety.

We should take a strengths focused approach with the parties as opposed to a punitive approach. When the notes come back, we need to look at how to strengthen the parenting skills and what the next steps are to do that.”

One Legal Aid Lawyer suggested:

“Judges should make [supervised access] orders less. Even if there is consent to supervised access, the judges do not have to agree to the consent. They need to look at the factors before they actually make an order. To be honest, sometimes individuals agree to supervision just for the sake of moving ahead” –

Improve Communication between all Stakeholders

Judge 6 said:

“[There has been a lot of improvement in the past few years, even since 2013. Before then, judges were making orders for early years centres because of the long wait lists, or judges were simply not ordering supervision because they thought they were not available. Now we have a supervised access committee that meets four times per year, and we get input from the Superior Court. It would be useless to try to control the supervised access centre usage if the Superior Court was making final orders. It is important in a two-jurisdiction place to have representatives from both levels of court and ensure that there are judges at both levels familiar with family court proceedings.”

Judge 7 commented:

“It would be useful for the family lawyers to look into the centre’s availability before they even ask for supervision, and come back to court with a specific schedule that is workable.”

Judge 9 said:

“It might also be helpful if the supervised access centres played a part in the decision making process by giving information about the services they offer, and perhaps providing options for shorter or more frequent visits. They could give us, for example, a form saying ‘Here are our three standard endorsements’. That would help guide us in making a decision based on what the family requires. The resources are too limited to have someone here [at the courthouse] when we are hearing motions and trying to make decisions, but that standard document would help.” [See Appendix II for an example from Peel Region of a template for an order for supervised access or exchanges]

One Lawyer who works with Legal Aid Ontario said:

“Some kind of report [from the centre] after a certain amount of time would be useful. Right now, disclosure of the notes from supervised access can take months because there is a lot of red tape to go through. There are no standardized rules across centres for providing the notes, so each one can make up their own rules. Sometimes they require a court order, sometimes they require consent.”

Another Legal Aid lawyer noted:

“With respect to the notes provided by centres, we have to pay for the notes, and it takes a while [because of administrative red tape]. It would be good to have the centres provide periodic synopsis of how access is going.”

Public Service Director 2 observed:

“In 90% of the cases that I get here, the judge does not properly understand the program. They ask us to do things that we cannot accommodate. We get an order that asks for parents to have visits once per week and access on their own in the park by themselves

once a week. But if they do not have safety issues, then why are they coming here? We also get orders asking for visits 9:00 – 11:00 a.m. on weekdays, but we have never been open during the day. So that kind of order has to go back to court. I would like for judges and lawyers to take the time to visit the centre and learn about the services being offered. We have been here for 15 years, and some lawyers still don't know the program's hours."

Separate Supervision from the Children's Aid Society

Judge 7:

"There are a lot of self-represented litigants in [region]. Our supervised access centre is in the same building as the child protection office. It is a small town, and people know and recognize everyone. I often hear comment that parents do not want to be seen going in and out of the Children's Aid building."

Public Lawyer 10 (Legal Aid):

"If I controlled the world, I would like to see child protection supervision taken out of the hands of the CAS. Because frankly, that, to me, would create a scenario where there is more reliability to the notes that you get from a visit. It has always frustrated me that when you compare child protection and child custody contexts, in the custody context, nobody can talk to my client if I'm retained. But in the protection context they can get information out of my client through the back door that I'm not willing to give out of the front (i.e., through supervised visits). This defeats the purpose of solicitor client privilege. In my mind, it shows that they are arriving with a motive other than protecting the child. And the motive is assisting their side of the litigation."

Provide Training to Third-Party Supervisors

Judge 9 proposed:

"It could be that they could make use of other family members to reduce the need for so many staff [i.e., have family members supervise access occurring at the centre]. I am not sure exactly how they proceed right now, whether it is 1 supervisor per family or per several, but training family members to see how supervision is done could help accommodate more families and also help transition into home supervision later on. This would also be a good way to determine whether the proposed family member is an adequate supervisor."

Consider the Parents' Resources

Judge 5:

“It would be nice to have more, and nice for them to be at a more reasonable price. The problem is that there is a really high burnout rate. The reality is that \$20/hour for people who have limited funds is a lot of money to spend on this service”

“[Our region] is huge: many people cannot afford the services in the first place, and then we are adding the cost of transportation. If transit is terrible and they are unable to get to the centre, having more centres would alleviate some of that pressure.”

Increased Education about Ministry Programs

Public Service Director 1:

“When dealing with the families, we share information about what time the parties would come to visits, what they can bring, what they can say, who pays and who is responsible for requesting a report.

This also extends to lawyers in family court matters. I do not want lawyers to have misconceptions about what is happening here. This is not a place for parents to come and talk about their issues: that is the wrong program.”

Public Service Director 2:

“Families will also have orders asking for access to start immediately, but we need a longer period of time to get the family into the program. I have to interview both parties, do child orientation and get in contact with the Children's Aid Society (if applicable). Parents get upset because it looks like they are not doing what they are supposed to be, but it is like buying a car. I can't buy a car in 12 hours.

As well, 90% of the clients that show up for their intake interview have no clue what they are getting themselves into. They have no instruction from the lawyers, and they have to know what the program is, what the goal is and what they can and cannot do. Even though they are court-ordered, this is still a voluntary program.”

VII. Discussion and Recommendations

Supervision as Part of the Plan Rather than Last Resort

The following discussion and recommendations are intended to allow supervised access services to be a part of an overall plan to address strained-parent-child contact problems, rather than a last resort when all other approaches have failed. Supervised access services are well suited for families when there is a risk of harm to a parent and/or a child on an interim basis to allow sufficient time for the parties to engage in other services to minimize the risk that brought them to the centre. However, failing to adequately deal with the risks (i.e. violence, substance abuse, strained parent-child relationships, etc.) through engagement with other services and agencies will result in families remaining in supervised access without a clear plan of transitioning out of this service. A clear identification of the risks involved in the family and a detailed plan for transitioning out of services can provide a more targeted approach for helping parents and children through this complex and difficult transition in a timely manner.

Supervised Visitation Checklist

While there is significant agreement about the factors that are to be taken into account in making a decision about whether to have a supervised access order, as opposed to unsupervised access or no access, the interviews and case law suggest that the criteria are vague and not applied consistently by different judges. Lawyers and service providers complain about judicial inconsistencies and hence difficulties in advising clients about cases where supervised access might be ordered.

There is research that reflects current Ontario jurisprudence and social science literature that can be used to help achieve greater consistency in making decisions about supervised access. Michael Saini and Judy Newman developed the Supervised Visitation Checklist in 2014, based on their analysis of reported Ontario case law (see Appendix I). This Checklist provides a weighted scoring system to consider factors listed by their risk level in each case. While Supervised Visitation Checklist was developed based only on reported Ontario cases, and not consent orders cases, and judges are not bound by the ratings, it has utility for both guiding judicial decisions and predicting court outcomes (Saini & Birnbaum, 2015). This Checklist should be made available to judges, lawyers, assessors counselors, and self-represented litigants in Ontario.

Even with cases where a supervised access order is on consent, there is a need to consider whether supervised access is truly appropriate in the circumstances. In some cases, parents, especially those without representation, may consent to supervised access where it is not needed, or not appropriate. To determine whether or not to make a supervision order, a judge should consider:

- **Prospects of success:** is there a reasonable likelihood that supervised access will promote a positive parent-child relationship that will eventually lead to transition out of the program to unsupervised access? If not, perhaps there should be no access.

- **Valid reasons for supervision:** does the custodial parent have concerns supported by evidence other than their own mistrust? If not, perhaps there should be unsupervised access.

Consideration of Impact on Children

Focus on the Perspectives of the Child

While it is parents who are litigants and clients, it is important for all of those involved in making plans and decisions about supervised visits to take account of the perspectives and impacts on children in making arrangements for children. Lawyers should try to obtain evidence about the child's perception of the relationship with the parents.

Lawyers and self-represented litigants should be encouraged to present evidence about the child's perspectives, views and interests for the consideration of the courts. A report from the O.C.L. prepared under section 112 of the *Courts of Justice Act* can be an important source of independent information for the courts. Evidence from third-party sources, such as a child's counselor or therapist, may also be helpful in determining the child's perspective on supervised contact. This is especially useful in cases where the child has been the victim of assault, or has witnessed other violent/traumatic events in the course of the parents' separation and the child may have fears about an access parent.

Supervised access providers should include children in orientation and service agreements, where appropriate given the children's age and maturity level; this is already a common practice among Ministry-funded centres but should occur across all services for both parents and children prior to using supervised services.

While lawyers representing parents must ultimately take instructions from their clients, they have an important role in advising parents and helping them appreciate the impact of parental conduct and different access arrangements on their children. With respect to supervised access, lawyers for custodial parents should encourage their clients to realistically assess whether supervision is needed, and if so, whether a parent or relative would be a suitable supervisor. If there are realistic concerns, clients should be encouraged to consider how to develop a plan to address them to persuade the court that supervision will not need to be indefinite. Lawyers for parents who have been abusive should encourage their clients to consider whether their children want contact with them, and will benefit from that contact in the near future. In some cases, it may be advisable for a parent who has been abusive to a partner or child to "take a break" from contact while addressing their own problems.

Courts should be wary of ordering supervised access in cases where long-term supervision is likely or the parent has limited capacity to meaningfully engage with the child. As one judge noted: "A child should not have a life of supervised access. It is not the right of the parent to see their child, it is the child's right." If there is no substantial benefit *to the child*, then supervised access should not be ordered because, as one judge noted, "relying on it as a crutch can be dangerous." It may not be in a child's long-term interests to develop a parent-child bond relationship in a Supervised Access Centre if it cannot be translated into an unsupervised setting.

Awareness of High-Risk Situations

Lawyers and judges should be cautious about supervised access in cases where there have been serious allegations of intimate partner violence or child abuse. If the child is likely to be called as a witness in proceedings, even supervised contact is not appropriate. If the child has been victimized by abuse or exposed to family violence, there should be evidence from a mental health professional to determine whether access—even supervised—will traumatize the child. In considering this evidence, judges should take into account both the assessment and the child's views.

Frequency and Duration of Supervised Access

Service providers expressed concern regarding supervised access orders that do not fully take account of their limited hours and resources. Judges interviewed recognized that the frequency of supervised access in *CLRA/Divorce Act* cases must be consistent with the policies and resources of the centres, and that ultimately the orders made may bind the parents but are not legally binding on the centres. Providers interviewed, however, expressed that many Judges and lawyers, are not always aware of current hours and availability of supervised access. This underscores the need for effective communication between service providers, judges and lawyers about the service's hours, wait lists and agency capabilities. One provider suggested communicating my email once per month to advise judges of the centre's schedule and availability. By taking the actual instead of a hypothetical schedule into account, judges can contribute to reducing wait list and parental frustration.

If the resources can be allocated to allow for it, the frequency of and duration of supervised access should take such factors as the child's age and activities such as school or extracurricular activities, the employment schedules of parents, and access to transportation. One service provider suggested age-based guidance as follows:

Age	Frequency and Duration of Visit
0 – 2	3 times per week for 45 minutes – 1 hour
2 – 4	2 times per week for 1 hour
4 – 6	1 day per week + 1 day on weekend
6 – 12	1 time per week
12+	Ask children whether they would prefer 1x/week or 2x biweekly

Frequency could be altered if there are concerns about the relationship between the parents, the parent's competency, the child's reactions or other circumstances.

Supervised Exchange

Regarding supervised exchanges, some judges are prepared to have supervision of exchanges for extended periods of time: service providers are more supportive of lengthy periods of supervised exchange since exchanges are not a drain on resources to the same extent as supervised access

visits. However, even supervision of exchange is intrusive, inconvenient and costly for those with limited means, as well as using limited resources of the centres.

In cases with lower risk of escalation of parental conflict at exchanges, judges may allow “public place exchange.” Most judges are prepared make an order for an exchange in a public place such as a school, Tim Horton’s or McDonalds’ parking lot, or a subway stop, but are reluctant to make use of a police station.

Communication between Courts, Supervised Access Centres and Lawyers: Management of Parents’ Expectations

Awareness of Services

It is important for lawyers and judges to be aware of the availability and resources of local access centres, and aware of other options that may be appropriate if a parent cannot afford or is unable to travel to the centre, or it is not a case that is suitable for the centre. As noted above, better communication is needed between supervised access centre, and lawyers, judges and self-represented litigants. Local Family Law Information Centres (FLICs) should also have current information so that they can effectively assist parents. In some court jurisdictions there are family court bench and bar committees with representation from supervised access centres; this type of initiative can improve communication.

Lawyers should help ensure that parents have reasonable expectations about the services that are available and their hours. As well, lawyers need to better educate their clients about the program expectations and limitations of supervised access, and help clients to connect with services that will help them transition away from supervised visits.

It would be useful for lawyers and judges who regularly work with these types of cases to visit a centre. Doing so, Lawyers would be able to given their clients a fuller picture of the centre, its role and what to expect. Judges would be able to gain fuller understanding of the physical location of the program, which may provide guidance about which cases are and are not suitable for supervision.

Protocol for Sexual Abuse Cases

Cases involving child sexual abuse or serious parental mental health issues are among the most challenging for supervised access centres. While many judges and lawyers identified these types of cases as appropriate for supervised access, not all supervised access centres have the resources to handle such cases.

One service director said that her centre could not accommodate sexual assault cases because they required one-on-one supervision, which the centre did not have the time or resources to provide. Some judges, however, were prepared to order supervised access for a case involving child sexual abuse case allegations, provided the child was not involved in giving evidence in court about the allegations. In some locales, there is good communication with judges and lawyers about resources and services available and about the type of cases that can be handled.

All supervised access centre should provide guidance to local judges and lawyers about what types of cases they are able to handle, and which cases require special considerations, or simply cannot be handled.

Template for Orders for Supervision of Access or Exchange

Based on earlier work by Michael Saini and Judy Newman, the Family Bar and Bench in Peel region have collaborated with the Peel Supervised Access Centre to develop a template of standardized terms for making of orders for supervised access or exchange (see Appendix II). While not binding, the use of this template is helpful for reminding lawyers and judges, and informing parents, about the issues that should be addressed in making of these orders.

We recommend that the Ontario Family Law Rules Committee use the Peel Template to develop a standardized endorsement hat can provide guidance for courts across the province.

Communication between Criminal and Family Justice Systems

A case involving supervised visits may also be awaiting a decision or trial date in a criminal matter. There needs to be better communication between the family and criminal systems in cases that are proceeding in both courts. Lawyers, including Crown prosecutors, and judges need to be cognizance of concurrent proceedings issues, and service providers should be informed if supervised access is ordered pending trial on a criminal matter as special precautions may need to be taken.

Taking Cost of Supervised Access Services into Account

Transportation and Fees for Public Services

In making supervised access orders, lawyers and judges should take into account the cost of transportation to and from the access/exchange centre, and might make adjustments under the “undue hardship” provision of the *Child Support Guidelines*⁶⁰ to support payments (if applicable) to reflect any significant costs a parent may incur in the course of coming to visits.

Lawyers should also be aware of and advise clients of the monetary costs associated with supervised access. For lawyer’s working with Legal Aid clients, the most significant costs issue may not be the service fee, which is subsidized or waived, it may be the client’s ability to afford transportation to and from the centre. Lawyers, especially those working with low-income clients, should identify this concern prior to an order or agreement being made, and attempt to arrange for some level of “support” with respect to transportation costs (i.e., bus fare for the visiting parent and the child).

⁶⁰ *Child Support Guidelines*, O Reg 391/97, s 10.

Service fees from a supervised access centre may be waived if the client cannot afford them; however, service fees present a much larger problem when faced with access to private services. While additional government funding for such services would be ideal to improve accessibility, in lieu of that funding, lawyers must consider their clients' income level when recommending duration and type of service.

Supervision by Relative or Friend

Many judges consider that in all but extreme cases, supervision by a relative should be considered as "first resort". As long as there is no significant risk of harm to the child or parent, a relative may be an appropriate supervisor and can help reduce costs associated with supervised access at a public or private centre, and markedly improve the experience for parents and children.

Lawyers should work with their clients and opposing counsel to find a suitable supervisor and provide appropriate evidence to the court about their qualifications and knowledge of the family, as well as personal references if that person is not known to and agreed by both the parents. When proposing a supervisor, Lawyers should also consider whether that the person would be able to deal with unforeseen safety concerns should they occur. Judges should normally 'vet' any proposed neutral third party supervisor by having them appear in court or swear an affidavit stating that they understand their role as the supervisor (be present in the room, watch for certain behaviours) and the responsibility that entails (safety of the child, role in the court proceedings).

Friends or relatives acting as supervisors may reduce costs, but do not produce the same level of neutral reporting evidence as a supervised access centre, or a private service. Judges should be cautious in considering their evidence upon review, and lawyers should inform their clients that this lack of objective evidence may have an effect the review process. Even so, in certain cases, Lawyers *should* advocate for supervision by a relative or mutually agreed upon third party. This sort of supervision is preferable for cases where:

- There are no concerns about ongoing intimate partner violence;
- The parent is inexperienced and trust needs to be built; or
- The child is nervous about seeing the parent after a long period of absence.

With respect to selecting an access supervisor, the custodial parent or new partner of the access parent will usually not be an appropriate choice. A friend or relative who is less likely to escalate the conflict between the parents will usually be a preferable supervisor.

Supervised Access Services outside of MAG-funded Centres

Private supervised access services are affordable by only a limited number of parents. However, for those who can afford it, this type of service may be more flexible about times and locales for visits, and allow for development of parenting skills or therapeutic interventions with parents or children

Community social services agencies should be encouraged to consider providing sliding scale supervised visitation services as part of their assistance for children whose parents lack resources

and would, for example, benefit from supervised visits in the community; this might be especially useful for older children.

Avoiding Long-Term Supervision

Supervised access centres in Ontario are not well resourced to supervise access on a long-term basis. From a social perspective, having one family for a long period may delay or limit services to many other families. Further, and more significantly, there are questions about whether child benefit from access that is supervised for a long period of time.

While all interviewees expressed concerns about long-term access supervision, there was a significant range of views about the definition of a “long-term client” of a supervised access or exchange program. Definitions ranged from more than 6 months, to 18 months, to 2 years. Although at one time it was common for courts to make “final” orders including provision for supervised access, the courts now are more reluctant to do so, recognizing that long-term supervision may not be in a child’s best interests or sustainable. One judge commented: “I would not even take consent to a final order for supervised access.”

Review Provisions

Given the concerns long-term supervision, it will normally be appropriate for orders for supervised access to include provisions for review after a certain time period or when stipulated conditions, normally concerning the access parent, have been satisfied.

When orders are made on consent in cases at a low or medium risk level where the need for supervision is not clear, the order for supervision should be limited by either including a review provision, or by making an order for a specified number of visits accompanied by instructions for transition out of the program, but subject to variation or review.

For example:

The parent will attend 6 visits at the supervised access centre. If the visits go well and there are no reported concerns from the supervised access centre, the access parent will be permitted to transition to semi-supervised visits with the first and last half-hour of the visit occurring at the centre. If there are 6 successful visits of this nature, the parent may transition to supervised exchange. If the Supervisor reports any safety concerns are raised at any point during the visits, the parents should appear in court on [date].

Preferably, there should be a single judge case-management system and review scheme that allows for frequency of review that depends on the factors that led access being supervised. While further research is required to develop guidelines for review, as starting place one might consider a scheme resembling:

Reason for Supervision	Review Time
Lack of parenting skills due to non-contact	2-3 months (at least 6-8 visits)
Intimate partner violence	4-6 months (at least 10-12 visits)
Drug/Alcohol Abuse	6 months (at least 12 visits) <i>or</i> earlier if parent

	has documented 3 months without substance abuse
Severe ongoing mental health issue	Yearly, <i>or</i> earlier if doctor reports parent has significantly improved.

Lawyers must also have an active role in advocating for review orders. Extended supervised access is not only draining on the resources of the centre, it is draining on the client's resources as well and often not in the interests of parents or children. By including review provisions when an order is made, lawyers and judges can help minimize the cost concerns and intrusiveness of long-term ongoing supervised access.

Supervised access centres should be informed of any upcoming courts dates and work to have reports prepared for those times to be used as evidence in deciding whether supervision should continue.

Variation Motions

While it is normally preferable for an order for supervised access to include review provisions, if there is no provision for review, a lawyer representing a client in supervised access should encourage the client to contact the lawyer if circumstances change and a variation seems appropriate.

In some cases, variation, especially a transition to unsupervised access, may be made on the consent of the parents, though even in these cases the court should be informed about the child's perspective.

When considering an application to end supervision of access, courts should consider such factors as whether:

- The parent visiting is able to understand the child's views, manage the child's behaviours, and that there are no concerns with respect to the nature of the contact between the parent and child;
- The access parent can meet the child's needs;
- The access parent comes prepared for visits;
- The access parent is focused on the child in an age appropriate manner during visits and shows appropriate affection to the child;
- The child has a level of comfort with the parent and reciprocates affection;
- The child's behaviour during visits does not raise concerns;
- The access parent gets the child ready for the end of the visit, and does not make concerning comments;
- If there are issues of drug or alcohol addiction, the parent has taken steps to address these concerns;
- The child is old enough for risk factors to be lower;
- There is another option for supervision available (i.e., a family member)
- Third party records (i.e., a report from the OCL or CAS) demonstrate a change in circumstances;
- The parents are building trust with each other (especially in parental alienation cases);

- The parties have completed any conditions that were specified when the order was made (i.e., take a parenting class, go to therapy).

Working with Long-Term Clients

Service providers identified challenges as well as benefits of working with long-term clients. A significant concern is that parents and children, and their counselors, may become “too comfortable” and cease to address the problems that they face. Further, if the staff members become too familiar with parents who are being supervised, they may relax standards and fail to adequately protect children from emotional harm during visits.

While it would be preferable for counseling services to be made available through a supervised access centre to provide the necessary clinical support that some families need in order to transition out of supervised access, this is not at present realistic for MAG-funded supervised access centres in Ontario. However, supervisors should be aware of locally available services, and have information about relevant community programs readily available. Perhaps most usefully, in appropriate cases they should be prepared to contact other services and make referrals.

Suspension of Supervised Access: Role of Supervisors

Ministry-funded centres have policies that require withdrawal of services if children continue to refuse services. As well, their staff have been trained regarding children’s resistance and refusal to visit with a parent at the centre. Following the lead of the Ministry’s best practices for Ministry-funded centres, if a child is reluctant to visit or demonstrates fear before or during the visit, some of the valuable techniques for staff to use include:

- Explain the programs safety procedures to the child. If the child is over the age of 9, or otherwise capable of understanding, explain the rules to the child. If the child is over the age of 12, give the child a copy of the centre’s service agreement;
- Develop a signal or code with the child that the staff will recognize as a sign the child feels uncomfortable during visits, so that a visit may be terminated;
- Have a staff member sit at the same table as or near the child during the visit;
- Do a separate orientation for the child; and
- If the child appears to be struggling or exhibiting signs of severe anxiety, consider advising the parents that the child would benefit from counseling, therapy and proper attention from a medical professional.

The last point may be contentious, as it may compromise the centre’s stated neutrality. However, as centres have begun to engage with goal setting meetings with parents and are taking a more active role in facilitating families helping themselves get out of supervised access, this sort of general suggestion to the parents does not seem out of the ambit of a centre’s role.

It may be necessary for centre to suspend even supervised access. Interviewees in this study suggested some important factors for staff to consider:

- Child is refusing to come into the centre;

- Child is apprehensive at seeing the visiting parent and speaking about past abuse (i.e., “he used to hit me”);
- Child is unresponsive to parent during visits.

Reports on Supervised Visits

Standardized Reports of Supervision

While it is a widespread requirement for supervisors at centres to take notes, there should be standardization of this practice and facilitation of their use in court.

Legal Aid counsel complain that they have to pay for notes, that notes were not provided in a timely fashion, and that there is ‘administrative red-tape’ that hinders the use in court of a supervisor’s notes in proceedings to review or vary terms of supervised access. There should be a transparent and simple process for obtaining notes to be used across all service centres in the province. The procedure for acquiring notes should be displayed clearly at the access centre, included in the orientation, and provided in writing to visiting and custodial parents, as well as made available to lawyers and judges. It may also be useful to develop a standardized form that supervised access centres can use to make reports about the details of visits.

Reports from the Children’s Aid Society about CFSA Supervised Access

Supervised visits and other services provided by a CAS often result in positive reports about parents and CAS support for reunification of parents and children. However, in cases where there are conflicts between parents and the Society about what is occurring during visits, a judge should consider making an order for a series of visits to occur with a neutral third party supervising. This would preferably be done as part of a process of a court-ordered assessment under the *CFSA* by an independent, experienced mental health professional, but could also be done at a Supervised Access Centre.

Courts should consider the potential for unconscious bias in notes from a caseworker who may have already formed an opinion about the parent’s competency or ability to provide a safe environment for the child. If the reports from the worker about the visits are consistently negative while the parents claim that they have shown progress, it might also be useful to give specific directives to the Society for notes from future visits, such as, “provide three positive and three negative interactions of the parent and child during the visit,” to ensure that the worker’s approach is balanced.

Increasing Cooperation between Children’s Aid Societies and Supervised Access Programs

As discussed in this report, in a significant number of cases (perhaps a fifth) of families at supervised access centres, the families have also been involved with the Children’s Aid Society, but the Society has closed its file. With the consent of parents or a court order for disclosure, in these cases, the Society provide the courts and staff at the supervised access centre with

information about concerns that have arisen in the past and about family dynamics, so workers at the centres will have a better idea of how to approach the situation.

There is also a duty for any person, including supervised access centre staff to report to the CAS information about situations where there are reasonable grounds to believe that a child may be in need of protection.⁶¹

While communication and co-operation between Children's Aid Societies and supervised access centres is highly desirable, there are concerns about supervision of access for cases without child protection occurring in Children's Aid Society offices. At one site in this study with a largely rural population, to make the most efficient use of resources, supervised access services for separated and divorcing parents are co-located in the same building with CAS access supervision; it was reported by some interviewees that parents may feel they stigmatized for attending visits there.

Increasing Education for Legal Professionals and Parents

Child protection and child custody cases involving supervised access are difficult for both lawyers and judges, and of course for the parents involved. It is very important for family lawyers and judges to know about the services provided by supervised access centres. This can be facilitated through continuing legal education programs, as well as better communication between supervised access centres and local family bar associations.

Lawyers, both retained and Legal Aid Duty Counsel, often have a critical role in advising litigants, both custodial and access parents, about supervised access orders. As such, there needs to be careful consideration of whether or not a case is well suited for supervised access before the service is recommended to the client. Lawyers working in custody and access cases, particularly those working with low-income clients, should be aware of the process and criteria for use of their local supervised access centre, and be able to identify which cases will benefit from supervision and are likely be able to transition out of supervision.

For litigants of limited means who do not qualify for a certificate, Legal Aid Duty Counsel may be the only source of legal advice. Duty Counsel has an especially challenging role, as they have a very short period of time to obtain information and provide advice. It is especially important for these lawyers to have education and information about their local supervised access centre.

A major problem for many long-term clients of supervised access centres is that they often have to rely on brief advice from Duty Counsel or have only limited involvement of Legal Aid lawyers, and often do not have the same lawyer following up with them while supervised access is occurring. Lawyers who provide even brief advice to parents should be aware of the potential consequences of supervision going on long term.

⁶¹ See *CFSA*, s 72(7)–(8).

Lawyers should advise clients that they will need to return to court to vary the order (if there is no specific review provision), and should encourage clients to address the issues that led access to be supervised in the first place. Lawyers should also advise access parents that judges will be likely to take a favourable approach to their case in the future if they have demonstrated a change in the behaviour that led to supervision.

Several online sources (Ministry of the Attorney General Website, Legal Aid Ontario, some law firms) have resources for the public available on their websites about Supervised Access Programs, but there is a need for better, accessible information about these programs.

Increasing Resources and Making Better Use of Existing Resources

There is clearly a need for more supervised access centres, especially to accommodate fast-growing populations and provide better service to rural areas.

It is also clear that additional funding is required to increase the variety of available facilities at existing centres, including: access to outdoor facilities and physical activities; facilities geared towards older children; or place to cook and eat a meal.

Several participants recommended a “service hub”, where a supervised access centre and therapeutic services would be located in the same building. This way supervised access parents would be able to bring their children with them to a counselor, or attend a parenting class and then immediately apply what they had learned in the visit.

There may also be ways to improve the efficiency of use existing resources. It may, for example, be useful for parental inexperience cases for centres to develop a program where supervisor attends one or two home visits to keep with the access parent to keep them out of the supervised access centre, or, a program where existing centre staff train a family member or neutral third party in how to conduct supervision, which can then occur in the community.

Some centres make use of volunteers and students in such programs as social work and child care, and they can provide valuable help as well as gaining useful experience, though from the perspective of the centre, these are not “free resources” as they require training, supervision and monitoring.

Recognition of the Importance and Challenges of Diversity

There is also a need to address the cultural diversity of the families living in each service area. Workers hired should reflect the cultural, ethnic and religious diversity of the service area. If possible, there should be a gender balance as well. All service centres should be able to accommodate French and English speaking families. For families that speak languages other than French or English, there should be translators available to allow proper use of the supervised access centres.

Further Research and Statistics

While this report had provided information and made recommendations, there is clearly a need for further research and data, both in Ontario and more broadly. The central issues addressed in this report, namely how to more effectively help parents transition to unsupervised access and what are the effects of long term supervised access, need to be studied further. The views of parents and children must be considered about these and related questions.

In Ontario, the Ministry of the Attorney General should require the supervised access centres that it funds to provide consistent, useful data and make it available to professionals, community agencies, researchers and the broader community. There should, for example, be relatively simple standardized file opening and closing forms that could be summarized and provide important data on the reasons for supervised access being ordered, the duration of supervised access for children of different ages, and, of particular utility, the reasons that supervision services are ended.

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Appendix I

Supervised Visitation Checklist

Appendix I Supervised Visitation Checklist (SVC) Saini & Newman 2014

Case Name: _____ Case Number: _____
Date Completed: _____
Name of Parent A (Applicant): _____
Name of Reporter: _____
Profession of Reporter: _____ Stage of Process: _____

Name of Parent B (Respondent): _____
Child's Name, Gender & Age _____ Age of Child _____

- (a) _____
(b) _____
(c) _____
(d) _____

Gender of Child: _____

Parents' relationship to child

Parent A:

Parent B:

- | | |
|-----------|-----------|
| (a) _____ | (a) _____ |
| (b) _____ | (b) _____ |
| (c) _____ | (c) _____ |
| (d) _____ | (d) _____ |

Special Needs of Child(ren)

- (a) _____ (b) _____
(c) _____ (d) _____

Most recent visitation/access arrangement
(at the time of completing the checklist)

Custody

Access

Eg. Sole custody, Joint custody,
Access, how frequent? Supervised? By Whom?
Exchanges supervised?

Additional Comments

1. ADULT FACTORS

1.1 Compliance with orders/agreements	Comments
No concerns regarding compliance	0 _____
Parent alleges that the other is not compliant with orders/agreements	1 _____
Verified history of noncompliance with orders/agreements	2 _____
Verified ongoing noncompliance with orders/agreements	3 _____
1.2 Substance Use	Comments
No concern regarding substance use/abuse	0 _____
A parent alleges that the other has a history of substance use/abuse	1 _____
A parent has a verified history of substance abuse problems	2 _____
A parent has ongoing verified substance abuse problems	3 _____
1.3 Mental Health	Comments
No mental health concerns of either parent	0 _____
A parent alleges that the other has an untreated mental health issue	1 _____
A parent's untreated mental health problem interferes with parenting	2 _____
A parent's untreated mental health problem is related to a history of harmful behaviours	3 _____
1.4 Sexual Offences	Comments
No history of sexual offences by a parent	0 _____
A parent alleges that the other has been involved in sexual offences	1 _____
Verified history of a sexual offence	2 _____
A parent has a verified untreated sexual disorder	3 _____

2. RISK OF HARM TO CHILD

2.1. Exposure to intimate partner violence Comments

The child has not been exposed to intimate partner violence	0	_____
A parent alleges that the child has been exposed to intimate partner violence	1	_____
Verified child exposure to domestic violence	2	_____
Verified child harmed by exposure to intimate partner violence	3	_____

2.2 Exposure to interparental conflict Comments

The child has not been a witness to parental conflict	0	_____
A parent alleges that the child has been a witness to parental conflict	1	_____
Verified child witnessed parental conflict	2	_____
Verified child continues to witness parental conflict	3	_____

2.3 Child physical abuse Comments

The child has not been physically abused	0	_____
A parent alleges the child(ren) has been maltreated by other parent	1	_____
Verified previous child physical abuse by a parent	2	_____
Current/ongoing child physical abuse by a parent	3	_____

2.4 Child sexual abuse Comments

No concerns of child sexual abuse	0	_____
A parent alleges child(ren) has been sexually abused by other parent	1	_____
Verified child sexual abuse by a parent	2	_____
Verified current/ongoing child sexual abuse by a parent	3	_____

2.5 Child abduction concerns

Comments

No concerns for child abduction	0	_____
A parent alleges that the other made threats to abduct the child	1	_____
Verified threats to abduct the child	2	_____
Verified attempt(s) to abduct the child	3	_____

2.6 Child neglect

Comments

No concerns of child neglect	0	_____
A parent alleges other parent has neglected the child	1	_____
Verified child neglect by a parent in the past	2	_____
Verified current/ongoing child neglect by a parent	3	_____

3. RISK OF HARM TO PARENT

3.1. Intimate partner violence

Comments

No concern regarding domestic violence	0	_____
A parent alleges intimate partner violence by the other parent	1	_____
Verified previous incidents of intimate partner violence	2	_____
Verified ongoing intimate partner violence	3	_____

3.2. Stalking and intimidation

Comments

No concern of stalking and/or intimidation	0	_____
A parent alleges that other parent has made threats/intimidated/stalked	1	_____
Verified historical threats/intimidation/stalking behaviours	2	_____
Verified current/ongoing threats/intimidation/stalking behaviours	3	_____

3.3. Restraining orders

Comments

No previous/current restraining orders	0	_____
Previous/current restraining orders are being followed	1	_____
Verified previous restraining orders have been breached	2	_____
Verified current/ongoing restraining orders breached	3	_____

4. PARENT-CHILD RELATIONSHIP

4.1. Parenting abilities

Comments

No concerns regarding parenting ability	0	_____
A parent alleges that the other parent lacks parenting skills	1	_____
Verified lack of parenting ability by a parent that creates risk to child	2	_____
Verified ongoing lack of parenting ability that creates risk to child	0	_____

4.2. Parent-child contact

Comments

Consistent and regular parent-child contact	0	_____
A parent has had irregular contact with the child	1	_____
There has been a substantial break in the parent-child contact	2	_____
There has been no parent-child contact in at least six months	3	_____

4.3. Parent-child contact interfering behaviours (stalling, late, etc.)

Comments

No parent-child contact interfering behaviours	0	_____
A parent alleges parent-child		

contact interfering behaviours	1	_____
Verified past parent-child contact interfering behaviours	2	_____
Verified current/ongoing parent-child contact interfering behaviours	3	_____

5. CHILD PREFERENCES

5.1. Child refusal Comments

Child expresses/displays no concerns about contact with either parent	0	_____
Child expresses/displays discomfort towards a parent	1	_____
Child has displayed/expressed resistance to contact with a parent	2	_____
Child displays/expresses not wanting to have contact with a parent	3	_____

6. SCORING

Scoring of the SVC is calculated by adding the sum of scores for each question to come up with a total SVC risk score. Each score represents the same numerical value. That is: scores of 0 = 0, Scores of 1 = 1; Scores of 2 = 4; Scores of 3 = 6. Please add up the total SVC score.

Based on low risk scores (0-6), unsupervised access or supervised exchanges may be recommended, especially if factors are limited to adult conflict during exchange.

Based on medium scores (7-17), access or exchanges supervised by a professional may be recommended, especially if the child remains fearful of the non-custodial parent. Based on high scores (18+), supervised access, no access or a temporary period of no contact may be recommended to provide time for the non-custodial to receive needed interventions to remedy the factors that are creating the child risk of harm.

Although a range of low--moderate--high is provided to consider the combination of all factors, it may take the presence of only one factor to determine the need for supervised access by a professional specializing in supervised access services. For example, the presence of a parent convicted of sexual abuse against a child may be in itself a significant factor to decide supervised access.

6.1. SVC Score Score Comments

Low Risk (0-6)

Moderate (7-17)

High (18+)

6.2 List all factors that override the risk score

--Escalating violence/abuse/threats to parent

--High probability of harm to child (sexual, emotional, physical, neglect)

--Period of no contact suggests high probability of stress for child if contact unsupervised

--High incidence of parent interference (sabotage, brainwashing, manipulation)

--Special needs of parent/child require additional support

--Criminal activity that poses a risk to the child (historical or current): Specify:

--Other, specify:

--Other, specify:

7. RECOMMENDATIONS

7.1 Custody

7.2 Access

Sole custody to Parent A	No access with Parent ()
Sole custody to Parent B supervised	Access with Parent () by professional
Joint legal custody--children supervised in Parent A's care	Access with Parent () by family member
Joint legal custody--children in Parent B's care	Exchanges supervised by professional

Joint physical custody
(split/parallel parenting)

Exchanges supervised
by family member

Other (Specify):__

Both access and exchanges
are unsupervised

7.3 Details of Custody and Access Arrangements

7.4 Services for Caregivers

Parent A

Parent B

Comments:

Parenting skills training

Parenting skills training

Anger management

Anger management

Substance abuse treatment

Substance abuse treatment

Counselling/therapy

Counselling/therapy

Psychological assessment

Psychological assessment

Parent-child therapy

Parent-child therapy

Other (Specify): _____

Other (Specify): _____

Other (Specify): _____

Other (Specify): _____

7.5 Services for Children (place numbers next to child to correspond with services)

1. Individual Counselling

Child A: _____ Comments:

2. Group therapy

Child B: _____

3. Family therapy

Child C: _____

4. Trauma assessment

Child D: _____

5. Legal services

6. Other (Specify): _____

7. Other (Specify): _____

7.6 Monitoring (Who decides when to move on/change order?)

Action	Person Responsible	Date
--------	--------------------	------

Assessment with recommendations		
---------------------------------	--	--

Return to court		
-----------------	--	--

Mediated agreed settlement		
----------------------------	--	--

No monitoring. Explain: _____		
-------------------------------	--	--

Other (Specify): _____		
------------------------	--	--

Additional Comments:		
----------------------	--	--

Supervised Visitation Checklist (SVC) User Guidebook (Saini & Newman, 2014)

SVC is a risk based tool for potential use in decision-making for access cases. It is important to note that it should not be the sole tool used to assess risks in an access case and it is not a diagnostic tool. The SVC may work best when combined with other assessment tools. It should only be used by professionals. The SVC may not be appropriate for use with all cases.

IDENTIFYING INFORMATION AND HISTORY SECTION

1. Case Name refers to the file name. For example, Smith vs. Jones. For the purposes of this Pilot, it refers to the name provided on the front page of the case study.
- 2.
- 2. Case Number refers to the file number, provided on the front page of the case study.
- 3. Date Completed refers to the current date (today) on which you have completed the Checklist.
-
- 4. Name of Reporter refers to your name, as the professional completing the Checklist.
- 5. Profession of Reporter refers to your professional designation as the person completing the Checklist (i.e., Clinical Psychologist, Custody Evaluator, Mediator, Supervised Access Coordinator, etc.).
-
- 6. Stage of Process refers to the stage of the court process at the time you have completed the Checklist (i.e., case at first appearance, in mediation, in assessment, at trial).
- 7. Parent Information refers to the legal custodians' names and their filing position as it particularly relates to the child. The term Parent is used as opposed to Party. A Parent could be a grandparent or any other adult seeking custody of and/or access to the children. If there are multiple Parents on either part, use the space below for Parent A or Parent B.
- 8. Child's Name includes first and last name.
- 9. Age of Child refers to the age in years and months (i.e., 10 yrs. 2 mo.) at the time you have completed the Checklist.
-
- 10. Gender of Child refers to the male and female demographic categories. If you indicate "other," please put alternate in the space provided for Male or Female.
- 11. Parent's Relationship to Child refers to the parental relationship of the adult to the child/ren (i.e., biological). This relationship may differ for different children within the family.

- 12. Special Needs of Child(ren) refers to any identified physical and emotional needs of child(ren), including mental health problems, behavioural issues, allergies, medications, disabilities or special scheduling issues due to appointments or lessons. In other words, any child-focused considerations that might impact on custody and access issues.
- 13. Most Recent Custodial and Visitation/Access Arrangement (at the time of completing the checklist) refers to the custodial arrangement in place and the type of contact between the child and the adult parties.

SVC SCORING

The SVC uses a weighted scoring method to indicate a situation's level of risk in order to provide recommendations for supervised or unsupervised access. For each dimension, 0 indicates the Least Amount of Risk, while 3 indicates the Most Amount of Risk.

Scores of 0 = 0

Scores of 1 = 1

Scores of 2 = 4

Scores of 3 = 6

1. ADULT FACTORS

1.1 Compliance with Orders or Agreements

Compliance refers to the parties following the terms of the order or parenting plans.

1.2 Substance Use

This category refers to the use of drugs, alcohol, prescription and non-prescription drugs.

Abuse problems could include any substance use problematic behaviours, such as drinking and driving, being intoxicated/impaired while caring for children, etc.

1.3 Mental Health

Issues around mental health can include but are not limited to diagnosed or undiagnosed mental health issues, psychiatric problems, etc.

Individuals' compliance with treatment, history of treatment, and current treatment regimen are to be considered. However, the presence of a mental health issue does not automatically indicate a problem or heightened risk. Only if such condition is left untreated, it then becomes an issue that could potentially lead to risks for the children.

1.4 Sexual Offences

This area refers to any type of sexual offence activity or history of such sexual activities, including charges of a sexual nature as well as sexual disorders.

Examples of offences may include internet pornography, public offences, sexual offences against another child, or sexual assault against other adults.

This risk assessment also aims to include any verified untreated sexual disorders as well as ongoing and substantiated sexual offences/behaviours that may or may not be

controlled.

2. RISK OF HARM TO CHILD

- 2.1 Exposure to Intimate partner violence This dimension includes witnessing, hearing, and/or being the subject of violence and/or behaviours demonstrating the likelihood of intimate partner violence (physical, emotional, financial, sexual, etc.)

-

- 2.2 Exposure to Interparental Conflict

Aims to capture the enduring interparental conflict. It refers to the child who continues to witness ongoing conflict. Interparental conflict can manifest in person, over the telephone, or through other methods.

2.3 Child Physical Abuse

This dimension refers to the harm committed by any form of maltreatment and/or physical abuse against a child by a caregiver or a person in a caregiving role, such as being hit, beaten, kicked or being hurt physically in any way. Previously verified incidents of child physical abuse refer to any reports from an organization corroborating or validating the occurrence of such an event (i.e., Children Aid Society and/or police reports).

2.4 Child Sexual Abuse

Includes any incident of child sexual abuse. Verified incidents of child sexual abuse refer to any proof of attempt(s) or prior sexual abuse by an adult, as seen in a police report, or corroborated by a neutral third party. Sexual abuse refers to all forms of sexual activities or behaviours, including penetrative and non-penetrative forms, sexual molestation/touching, unwanted sexual experiences, and/or forced intercourse.

2.5 Child Abduction Concerns

It refers to any concerns or existent threats that could potentially indicate a child abduction risk. The "Verified threat(s)/attempt(s) to abduct the child" makes reference to any prior proof of attempt(s) or abduction(s) as seen in a police report, or corroborated by a neutral third party.

2.6 Child Neglect (inability to meet child's physical needs/supervision) This

dimension aims to draw attention upon parents' inability to provide and/or satisfy child(ren)'s physical, emotional, and ongoing living needs. Examples may include an unstable living environment, neglect, lack of childcare, and subsequent lack of child(ren) supervision. Any reports from organizations, CAS and police, or corroborated evidence from a neutral third party, can validate previous claims

3. RISK OF HARM TO PARENT

3.1 Intimate partner violence

This category refers to any type of violence/abuse: physical, emotional (i.e., verbal or physically threatening behaviour, isolation, threats of harm to children and/or pets, etc.),

sexual or financial (i.e., withholding funds, funds as threat, etc.). Financial stressors created via financial abuse and ultimately leading to problems could also be considered (i.e., financial problems in getting services).

3.2 Stalking and Intimidation

Stalking and intimidation can take various forms (i.e., following another parent, waiting outside the home, turning up unexpectedly at workplace, tracking on the Internet, conducting frequent phone calls, or texting, etc.). Verified threats or intimidation and/or stalking behaviours are those documented in previous reports (i.e., police) and/or corroborated by a neutral third party.

3.3 Restraining Orders

This category refers to the presence of a restraining order or previous orders. It is important for the rater to consider how these orders are being respected, in what measure are they being followed, and if they have been breached in the past or are breached at the moment. A verified history of such agreements is an important indicator for future compliance/non-compliance

4. PARENT-CHILD RELATIONSHIP

4.1 Parenting Abilities

A dimension particularly related to adults' abilities to appropriately match the developmental needs of the child (whether it is through play, discipline, limit setting, expectations, etc.). It is important to consider culture and variations in cultural practices for this section (i.e., people play differently with children).

4.2 Parent-Child Contact

Refers to the consistency of the parent-child contact. If contact happens once a month, then contact should consistently take place once a month. Consistency within the schedule is the key factor here and not the amount of time spent together.

4.3 Parent-Child Contact Interference

This dimension mainly refers to interfering behaviours (stalling, being late, badmouthing the other parent) that may cause difficulties within the access and/or supervised exchanges arrangements. Both noncustodial and custodial parents may cause issues in parent-child(ren) contact; either party may interfere with access, thus leading to no contact. The reason behind a parent's interference is relevant within this context. For example, does the interfering parent feels that the child(ren) need to be protected from the other parent or is the parent trying to estrange the child(ren) for their own reasons.

5. CHILD PREFERENCES

5.1 Child Refusal

Aims to capture a child's preference as it particularly relates to parents' contact. The display of resistance, discomfort, or not wanting to have contact with a parent can be expressed verbally or behaviourally (i.e., a child being fearful of a parent is how the child expresses not wanting to have contact with a parent). Reasons for which the child does not want to see a parent can be described in detail within the comments section

and should be considered when recommending subsequent access and exchanges arrangements.

6. SCORING

Scoring the SVC is based on adding the scores for each question in order to come up with a total SVC Score. Although a range of low--moderate--high is provided to consider the combination of all factors, it may take the presence of only one factor to determine the need for supervised access by a professional organization or individual specializing in supervised access services. For example, the presence of a parent convicted of sexual abuse against a child may be in itself a significant factor to decide supervised access.

Supervised Access refers to both supervised visits and supervised exchanges. Supervised Visits involve the child and parent being in the presence of the neutral third party supervisor at all times when there is contact. Supervised Exchanges refer to the transfer of the child from one parent to another for unsupervised contact. The transfer only is supervised by a neutral third party.

Based on low risk scores (0-6), it is suggested you recommend unsupervised access or supervised exchanges, especially if factors are limited to adult conflict during exchange. Based on medium scores (7-17), you may recommend supervised visits, especially if the child remains fearful of the non-custodial parent. Based on high scores (18+), you may recommend no access or a temporary period of no contact. Access arrangements will provide time for the non-custodial parent to receive needed interventions to remedy the factors that are creating the child's risk of harm or for a child and/or custodial parent to receive needed interventions to facilitate contact.

There may be reasons to override the total risk score, based on specific factors. Examples of such factors may include: escalating violence/abuse/threats to parent; high probability of harm to child (sexual, emotional or physical abuse and neglect); period of no contact, which may suggest a high probability of stress for the child; high incidences of parent interference (sabotage, brainwashing, manipulation); or special needs of parent/child, which usually require additional support. When such factors are indicated as reasons to override the risk score, it is important to provide a justificatory explanation for the higher level of risk.

Special needs of adults and children are case specific. Examples may include parent(s)'s physical conditions (i.e., brain injury, AIDS, epilepsy, etc.), mental health issues, and developmental issues. The child's special needs should also be taken into account when recommending an order/access arrangement (i.e., child with asthma and parent(s) refuse(s) to stop smoking in the house, etc.). Special needs of the parent(s) and the child(ren) should be considered in relation to how they may lead to risks in each specific case. Special considerations may present additional risks of harm to the child in terms of support required to facilitate access/parenting.

OTHER OVERRIDING FACTORS TO CONSIDER

An important overriding factor to be considered is the history of/or current involvement in criminal activities, such as gang activity, access to and/or possession of weapons, household hazards, pet abuse, history or tendency for bar fights, trafficking of drugs/illegal substances, etc. Any external events posing risks to the child are to be considered in this context.

7. RECOMMENDATIONS

7.1 Custody

Custody recommendations are to be provided. Options range from sole custody to joint legal custody selections.

7.2 Access

Access recommendations are to be provided. Access and exchanges that are unsupervised include exchanges taking place in a public place such as a police station, fast food restaurants, malls, etc.

7.3 Details for Custody and Access Arrangements

In this section, the name of organization, the name of supervisor, the type of custody/access arrangement and the date/time need to be recorded. Be as specific as possible about the particulars of the access/custody arrangement at this time.

7.4 Services for Caregivers

This section refers to any programs/services that you, in your professional capacity may recommend for parents, in order to facilitate access and develop the parent/child or parent/parent relationship. Examples of such programs may include: parenting skills training, anger management, substance abuse treatment, counseling/therapy, psychological assessment and parent-child therapy.

7.5. Services for Children

In this section you are instructed to place the corresponding number of each therapeutic service or intervention, next to the child in need of s the specific service. Examples of such services may include: individual counseling, group therapy, family therapy, trauma assessment, legal services, etc.

7.6 Monitoring

Monitoring refers to the decision making process and subsequently, to the person making on-going assessments/decisions regarding an existent order and prospective changes to such orders. The person overseeing the access case should be clearly identified (i.e. parenting plan coordinator, Children's Lawyer, judge) along with the potential review/decision date.

No monitoring refers to an access plan that is about to be implemented at the discretion of the parents, with no external oversight. If this is the case, you will be prompted to briefly explain the situation.

It is important to note that this SVC tool is not a intimate partner violence screening tool, however it could be used with a valid intimate partner violence checklist to assess this type of risk. The SVC is intended as a guide for custody and access matters, and is not intended to be a diagnostic tool.

Appendix II

Template for Supervised Access and Exchange Orders (Peel Region)

Supervised Access & Exchange

Template for Orders

Tab 1: Recommended Terms

Supervised Visits & Supervised Exchanges
By the Peel Supervised Access Program,
September 2015

Tab 2: Schedule: Supervised Access Form

Tab 3: Schedule: Supervised Exchange Form

September 2015

RECOMMENDED TERMS
SUPERVISED VISITS & SUPERVISED EXCHANGES
BY THE PEEL SUPERVISED ACCESS PROGRAM

September 2015

Note

These terms have been recommended by the *Peel Supervised Access Program Advisory Committee*. They contain standard terms, as well as terms to meet a variety of needs.

Use is not mandatory. But be aware: Some provisions regarding supervision may be required, regardless of the parties' wishes. They can be necessary to the effective operation of the Program and its scarce resources.

This version contains terms for supervised access and those for supervised transfer for access. Each section can stand on its own. This version can be used for drafting Minutes, requested terms, or the Order using a word processor. (There are separate versions, to be completed by hand on paper, for supervised access and supervised transfer.)

An attempt has been made to draft the terms in a way to avoid any confusion by the parties about what is expected of them when supervision by the Program is ordered. It is also based on the principle that the involvement of the program is a transitional and temporary tool.

These terms should be used in a temporary order.

Please review the Program handout or website (at <http://www.socialenterprise.ca/supervised-access-services/>) before making a supervision plan relying on their resources.

It is recommended that you use the following process:

1. Use Microsoft Word *find* and *replace* to replace the following placeholders with the appropriate names or dates. (See list of placeholders, etc. below.)
2. Delete either the part dealing with supervised access or the part dealing with supervised transfer for visits.
3. Edit as required.
4. Copy and paste into your document

Placeholder	Replacement	Example
PartyXXX	Proceeding title and full legal name of <u>access</u> parent	The Respondent John Howard Smith
PartyYYY	Proceeding title and full legal name of <u>custody</u> parent	The Applicant Mary Ann Lewis
Children	Either "child" or "children"	

Child1	Full legal name of first child	Billy Bob Smith
Child1Birth	First child's date of birth	15 Dec 2000
Child2	Full legal name of second child	Nancy Drue Smith
Child2Birth	Second child's date of birth	05 Jun 2001
[and so forth for all the other children]		

Supervised Access

On a temporary basis:

1. PartyXXX shall have access visits with the children, namely:

- (i) Child1, a → boy/girl ← born sChild1Birth;
- (ii) Child2, a → boy/girl ← born Child2Birth;
- (iii) Child3, a → boy/girl ← born Child3Birth;
- (iv) Child4, a → boy/girl ← born Child4Birth; and
- (v) Child5, a → boy/girl ← born Child5Birth;

(hereinafter the “said children”),

supervised by the *Peel Supervised Access Program* (hereinafter the “Program”), as follows:

- (a) for a two hour visit, every two weeks, or if the Program is able to offer more frequent visits, every week;
- (b) the Program shall determine the time and dates of the visits, given service availability and the wishes of the Parties, except:
 - (i) → *restrictions or preferences – Saturday or Sunday* ←
 - (ii) → *restrictions or preferences – time of day* ←

- (c) the Program shall determine whether the visits occur at the Brampton or the Mississauga location, except *→restrictions or preferences←*
- (d) The PartyXXX shall attend for these visits regularly and on time.
- (e) The PartyYYY shall ensure that the said children attends for these visits:
 - (i) Regularly and on time
 - (ii) With *→medicine or other items←*
- (f) In addition to restrictions set by the Program, the following persons:
 - (i) MAY attend the visits: *→names and relationship to child←*; and
 - (ii) SHALL NOT be present when the said children *→is/are←* transported to and from the Program location: *→names and relationship to child←*
- (g) The PartyXXX shall:
 - (i) NOT consume alcohol during or in the twelve (12) hours prior to a visit
 - (ii) NOT be under the influence of any drug, other than medications as prescribed by a physician at a visit
 - (iii) *→any other restrictions on the access party←*
- (h) *→any other conditions to access and particularly grounds for the Program to refuse to let the visit proceed←*
- (i) The parties shall comply with the Program's rules, which may include provisions in addition to those set out in this order

- (j) The person exercising access shall communicate in English or French, unless there is a staff person present who can communicate in the language spoken, or a certified interpreter for that language is present (fees may be charged)
- 2. Neither party shall, within the said children's hearing, make or allow to be made by others,
 - (a) Any negative comment about the other Party or the other Party's friends or family; or
 - (b) Any negative comment about the access visits or the restrictions on visits.
- 3. The Parties shall cooperate fully and in a timely way with the Program's intake process, including but not limited to:
 - (a) Each party shall immediately contact the program (at 1-844-373-4515).
 - (b) →The PartyXXX //The PartyYYY← shall, within seven (7) days of this order, deliver to the Program:
 - (i) a copy of this endorsement, including any Minutes of Settlement or Schedule;
 - (ii) a copy of all Orders in effect related to custody and acces; and
 - (iii) the contact information for the parties, to the extent known by that party.
 - (c) If the intake process is not completed within 30 days from the date of this order:
 - (i) Either Party may return the matter to court for enforcement or directions.
 - (ii) The party bringing the motion shall request, serve, and file a report from the Program regarding the Parties' participation in the intake process.
- 4. As access supervised by the Program should be considered a temporary measure, this access arrangement shall be reviewed by the court, as follows:

(a) → *details of when, type of appearance, and should it be brought before the same judge who made this order*←

(b) → *timelines for filing materials*←.

(c) → The PartyXXX // The PartyYYY← (or the person bringing an early review) shall obtain observation reports for the visits,

(i) from the date of the first visit under this order, or

(ii) from the date of the last visit for which a report has been filed with the court, (whichever is later) until as close as possible to the review date.

The reports shall be served on the other party. A copy of the reports shall be filed with the court with the party's Affidavit or Brief.

(d) → Unless renewed by the court, this order for supervised access shall terminate on → *date or next court appearance // other*←

5. Subject to any further order redistributing these costs, fees charged by the Program shall be paid as follows:

(a) The annual administrative fee (\$100 per year, subject to change) shall be paid → by the PartyXXX (%) and by the PartyYYY (%)←-;

(b) The per visit fee (\$25 per visit, subject to change) shall be paid → by the PartyXXX (%) and by the PartyYYY (%)←; and

(c) Subject to any order of the court for costs, the fees for observation reports shall be paid by → the person ordering the report // the PartyXXX (%) and the PartyYYY (%)←.

6. → *any provisions for phone, video, email or mail access*←

7. The Parties may agree, in writing signed by them and witnesses, to other or further access
→, with or without supervision terms. Such agreement may including supervised
exchanges at the Program, in which case the terms for supervised visits shall apply with
any necessary adjustment←.

8. Supervision of visits by the Program cannot be extended without a court order.

Except as set out in a court order, →or written agreement signed by the parties and witnessed,←
the PartyXXX shall have no contact with the said children, →direct or indirect←

Access with Supervised Exchange

On a temporary basis:

1. The PartyXXX shall have access with the children, namely:

- (a) Child1, a → boy/girl ← born Child1Birth;
- (b) Child2, a → boy/girl ← born Child2Birth;
- (c) Child3, a → boy/girl ← born Child3Birth;
- (d) Child4, a → boy/girl ← born Child4Birth; and
- (e) Child5, a → boy/girl ← born Child5Birth;

(hereinafter the “said children”)

with the exchange of the said children through the *Peel Region Supervised Access*

Program (hereinafter the “Program”), as follows:

- (a) visit to occur →every weekend // every other weekend←,

to include, subject to the Program’s ability to facilitate the exchanges, a visit lasting:

one day for about → ← hours

one overnight, for about → ← hours

two overnights, for about → ← hours

- (b) the Program shall determine the start and end times and dates of the exchanges,

given service availability and the wishes of the Parties, except:

(iii) →*restrictions or preferences – Friday // Saturday // Sunday*←

(iv) →*restrictions or preferences – time of day*←

- (c) the Program shall determine whether the visits occur at the Brampton, the Mississauga , or the Bolton location→, except the visits – *restrictions or preferences*←
- (d) The PartyXXX shall attend for these exchanges regularly and on time and be on time in picking-up and returning the chil/ren.
- (e) The PartyYYY shall ensure that the said children attends for these exchanges:
 - (iii) Regularly and on time
 - (iv) With →medicine or other items←
- (f) In addition to restrictions set by the Program, the following persons:
 - (iii) MAY attend the visits: →*names and relationship to child*←; and
 - (iv) SHALL NOT be present when the said children →is/are← transported to and from the Program location: →*names and relationship to child*←
- (g) The PartyXXX shall:
 - (iv) NOT consume alcohol during or in the twelve (12) hours prior to a visit
 - (v) NOT be under the influence of any drug, other than medications as prescribed by a physician at a visit
 - (vi) →*any other restrictions on the access party*←
- (h) →*any other conditions to access and particularly grounds for the Program to refuse to let the visit proceed*←
- (i) The parties shall comply with the Program's rules, which may include provisions in addition to those set out in this order

- (j) The person exercising access shall communicate in English or French, unless there is a staff person present who can communicate in the language spoken, or a certified interpreter for that language is present (fees may be charged)
- 2. Neither party shall, within the said children's hearing, make or allow to be made by others,
 - (a) Any negative comment about the other Party or the other Party's friends or family; or
 - (b) Any negative comment about the access visits or the restrictions on it.
- 3. The Parties shall cooperate fully and in a timely way with the Program's intake process, including but not limited to:
 - (a) Each party shall immediately contact the program (at 1-844-373-4515).
 - (b) →The PartyXXX //The PartyYYY← shall, within seven (7) days of this order, deliver to the Program:
 - (i) a copy of this endorsement, including any Minutes of Settlement or Schedule;
 - (ii) a copy of all Orders in effect related to custody and access; and
 - (iii) the contact information for the parties, to the extent known by that party.
 - (c) If the intake process is not completed within 30 days from the date of this order:
 - (i) Either Party may return the matter to court for enforcement or directions.
 - (ii) The party bringing the motion shall request, serve, and file a report from the Program regarding the Parties' participation in the intake process.

4. As access supervised by the Program should be considered a temporary measure, this access arrangement shall be reviewed by the court, as follows:

(a) → *details of when, type of appearance, and should it be brought before the same judge who made this order*←

(b) → *timelines for filing materials*←.

(c) → *any special provisions to get an early court date for a review (e.g. without a 14B motion)*←

(d) → The PartyXXX // The PartyYYY← (or the person bringing an early review) shall obtain observation reports for the visits,

(i) from the date of the first visit under this order, or

(ii) from the date of the last visit for which a report has been filed with the court, (whichever is later) until as close as possible to the review date.

The reports shall be served on the other party. A copy of the reports shall be filed with the court with the party's Affidavit or Brief.

(e) → Unless renewed by the court, this order for supervised access shall terminate on → *date or next court appearance // other*←

5. Subject to any further order redistributing these costs, fees charged by the Program shall be paid as follows:

(a) The annual administrative fee (\$100 per year, subject to change) shall be paid → by the PartyXXX (%) and by the PartyYYY (%)←-;

(b) The per visit fee (\$10 per transfer back and forth, subject to change) shall be paid

→ by the PartyXXX (%) and by the PartyYYY (%)←; and

(c) Subject to any order of the court for costs, the fees for observation reports shall be

paid by → the person ordering the report // the PartyXXX (%) and the PartyYYY (%)
%)←.

→ any provisions for phone, video, email or mail access←

(a) The Parties may agree, in writing signed by them and witnesses, to other or further access with or without supervision exchanges.

(b) Except as set out in a court order, → or written agreement signed by the parties and witnessed,← the PartyXXX shall have no contact with the said children,
→ directly or indirectly←

Schedule: SUPERVISED ACCESS

Instructions:

- This form is intended to be attached to Minutes of Settlement or an Endorsement. It is double sided.
- The ☐ symbol indicates a choice between two options or a provision that may only be appropriate for some cases.
- Cross-off all wording that does not apply (regardless of whether you leave the ☐ blank)!
- Please re-number paragraphs in this Schedule, as appropriate!
- This Schedule is intended only as a guide. But be aware: Some provisions regarding supervision may be required, regardless the parties' wishes. They can be necessary to the effective operation of the Program and its scarce resources.
- Please review the Program handout or website (at <http://www.socialenterprise.ca/supervised-access-services/>) before making a supervision plan relying on their resources.
- In drafting the order, please replace "Residential Parent" and "Visiting Parent" with the full name of the party for each occurrence.

Court File Number:

In this Schedule,

The "Residential Parent" is the ☐ Applicant / ☐ Respondent

(full legal name)

.....

The "Visiting Parent" is the ☐ Applicant / ☐ Respondent

(full legal name)

.....

Supervised Access

On a temporary basis:

1. The Visiting Parent shall have access visits with the child/ren, namely:

(full legal name)
dd/mm/yyyy)

(boy/girl) (DOB –

(hereinafter the "said child/ren"),

supervised by the *Peel Supervised Access Program* (hereinafter the "Program"),
as follows:

- (a) for a two hour visit, every two weeks, or if the Program is able to offer more frequent visits, every week;
- (b) the Program shall determine the time and dates of the visits, given service availability and the wishes of the Parties, except:
(any restrictions or preferences, day or time)
- (c) the Program shall determine whether the visits occur at the Brampton or the Mississauga location, except (any restrictions or preferences)
- (d) The Visiting Parent shall attend for these visits regularly and on time.
- (e) The Residential Parent shall ensure that the said child/ren attends for these visits:
 - (i) regularly and on time
 - (ii) ☐ with (item – medicine, homework, etc.)
- (f) In addition to restrictions set by the Program, the following persons shall:
 - (i) ☐ NOT attend the visits: (names and relationship to the child)
 - (ii) ☐ NOT be present when the said children →is//are← transported to and from the Program location: (names and relationship to the child)
- (g) The Visiting Parent shall:
 - (i) NOT consume alcohol during or in the twelve (12) hours prior to a visit
 - (ii) NOT be under the influence of any drug, other than medications as prescribed by a physician, at a visit
 - (iii) (other restrictions if any)

- (h) (any other conditions to access or grounds for the Program to refuse the visits)

 - (i) Each Party shall comply with the Program's rules.
 - (j) ☐ The person exercising access shall communicate in English or French
 - (i) unless a staff person present who can communicate in the language; and
 - (ii) unless a certified interpreter for the language is present (fees may be charged)
2. Neither Party shall, within the said child/ren's hearing, make or allow to be made by others,
- (a) any negative comment about the other party or the other party's friends or family; or
 - (b) any negative comment about the access visits or the restrictions on visits.
3. The Parties shall cooperate fully and in a timely way with the Program's intake process, including but not limited to:
- (a) Each party shall immediately contact the Program (at 1-844-373-4515).
 - (b) ☐ The Residential Parent / ☐ The Visiting Parent shall, within seven (7) days of this order, deliver to the Program:
 - (i) a copy of this endorsement, including any Minutes of Settlement or Schedule;
 - (ii) a copy of all Orders in effect related to custody and access; and
 - (iii) the contact information for all parties, to the extent known by that party.
 - (c) If the intake process is not completed within thirty (30) days from the date of this order,
 - (i) Either Party may return the matter to court for enforcement or directions.

- (ii) The party bringing the motion shall request, serve, and file a report from the Program regarding the Parties' participation in the intake process.
4. As access supervised by the Program should be considered a temporary measure, this access arrangement shall be reviewed by the court, as follows:
- (a) (details of when, type of appearance, and judge seized)
- (b) (any timelines for filing materials)
- (c) ☐ The Residential Parent / ☐ The Visiting Parent
(or the person bringing an early review) shall obtain observation reports for the visits,
(i) from the date of the first visit under this order, or
(ii) from the date of the last visit for which a report has been filed with the court,
(whichever is later) until as close as possible to the review date. The reports shall be served on the other party. A copy of the reports shall be filed with the court with the party's Affidavit or Brief.
- (d) Unless renewed by the court, this order for supervised access shall terminate on
☐ on the next court appearance / ☐ on (date)
5. Subject to any further order redistributing these costs, fees charged by the Program shall be paid as follows:
- (a) the administrative fee (\$100 per year, subject to change) shall be paid by
☐ the Visiting Parent (%) and ☐ the Residential Parent (%);
- (b) the visit fee (\$25 per visit, subject to change) shall be paid by
☐ the Visiting Parent (%) and ☐ the Residential Parent (%); and

(c) subject to any order of the court for costs, the fees for observation reports shall be paid by

☐ the person ordering the report(s)

☐ the Visiting Parent (%) and ☐ the Residential Parent (%).

6. (any provisions for phone, video, email, or mail access)

7. The Parties may agree, in writing signed by them and witnessed, to other or further access, ☐ with or without supervision terms.

☐ Such agreement may include supervised exchanges at the Program, in which case the terms for supervised visits shall apply with any necessary adjustment.

8. ☐ Supervision of visits by the Program cannot be extended without a court order.

9. Except as set out in a court order,

☐ or written agreement signed by the parties and witnessed

the Visiting Parent shall have no contact with the said child/ren ☐ , direct or indirect

Schedule: SUPERVISED EXCHANGE FOR ACCESS

Instructions:

- This form is intended to be attached to Minutes of Settlement or an Endorsement. It is double sided.
- The ☐ symbol indicates a choice between two options or a provision that may only be appropriate for some cases.
- Cross-off all wording that does not apply (regardless of whether you leave the ☐ blank)!
- Please re-number paragraphs in this Schedule, as appropriate!
- This Schedule is intended only as a guide. But be aware: Some provisions regarding supervision may be required, regardless the parties wishes. They can be necessary to the effective operation of the Program and its scarce resources.
- Please review the Program handout or website (at <http://www.socialenterprise.ca/supervised-access-services/>) before making a supervision plan relying on their resources.
- In drafting the order, please replace "Residential Parent" and "Visiting Parent" with the full name of the party for each occurrence.

Court File Number:

In this Schedule,

The "Residential Parent" is the ☐ Applicant / ☐ Respondent

(full legal name)

.....

The "Visiting Parent" is the ☐ Applicant / ☐ Respondent

(full legal name)

.....

Access With Supervised Exchange

On a temporary basis:

10. The Visiting Parent shall have access visits with the child/ren, namely:

(full legal name)
dd/mm/yyyy)

(boy/girl) (DOB –

(hereinafter the "said child/ren"),

with the exchange of the said child/ren through the *Peel Supervised Access Program* (hereinafter the "Program"), as follows:

- (a) visits to occur ☐ every weekend / ☐ every other weekend
to include, subject to the Programs ability to facilitate the exchanges (days, times, and locations), a visit lasting:
- ☐ one day for about hours
- ☐ one overnight, for about hours
- ☐ two overnights, for about hours,
- (b) (other)
- (c) the Program shall determine the start and end times and dates of the exchanges, given service availability and the wishes of the parties, except:
(any restrictions or preferences – day or time)
- (d) the Program shall determine whether the exchanges occur at the Brampton, the Mississauga, or Bolton location, except (any restrictions or preferences)
- (e) The Visiting Parent shall attend for these exchanges regularly and be on time in picking-up and returning the child/ren.
- (f) The Residential Parent shall ensure that the said child/ren attend/s for these exchanges,
- (i) regularly and on time
- (ii) ☐ with (item – medicine, homework, etc.)
- (g) ☐ In addition to restrictions set by the Program, the following persons shall:
- (i) NOT attend the visits: (names and relationship to the child)

- (ii) NOT be present when the child/ren are transported to and from the
Program location: (names and relationship to the child)
- (h) The Visiting Parent shall:
 - (i) NOT consume alcohol during or in the twelve (12) hours prior to a visit
 - (ii) NOT be under the influence of any drug, other than medications as
prescription by a physician, at a visit
 - (iii) (other restrictions if any)
- (i) (any other conditions to access or grounds for the Program to refuse visits)
- (j) Each party shall comply with the Program's rules.
- (k) ☐ The person exercising access shall communicate in English or French at
the transfer,
 - (i) unless a staff person present who can communicate in the language;
and
 - (ii) unless a certified interpreter for the language is present (fees may be
charged)
- 2. Neither Party shall, within the said child/ren's hearing, make or allow to be made
by others,
 - (a) any negative comment about the other party or the other party's friends or
family; or
 - (b) any negative comments about the access visits or the restrictions on it.

3. The Parties shall cooperate fully and in a timely way with the Program's intake process, including but not limited to:
 - (a) Each party shall immediately contact the Program (at 1-844-373-4515).
 - (b) ☐ The Residential Parent / ☐ The Visiting Parent shall within seven (7) days of this order, deliver to the Program:
 - (i) a copy of this endorsement, including any Minutes of Settlement or Schedule;
 - (ii) a copy of all Orders in effect related to custody and access; and
 - (iii) the contact information for all parties, to the extent known by that party.
 - (c) If the intake process is not completed within thirty (30) days from the date of this order:
 - (i) Either Party may return the matter to court for enforcement or directions.
 - (ii) The party bringing the motion shall request, serve, and file a report from the Program regarding the Parties' participation in the intake process.
4. As access supervised by the Program should be considered a temporary measure, this access arrangement shall be reviewed by the court, as follows:
 - (a) (details of when, type of appearance, and judge seized)
 - (b) (any timelines for filing materials)
 - (c)
 - (d) ☐ The Residential Parent / ☐ The Visiting Parent
(or the person bringing an early review) shall obtain observation reports for the visits,
 - (i) from the date of the first visit under this order, or

- (ii) from the date of the last visit for which a report has been filed with the court,
(whichever is later) until as close as possible to the review date. The reports shall be served on the other party. A copy of the reports shall be filed with the court with the party's Affidavit or Brief.
- (e) ☐ Unless renewed by the court, this order for access with supervised transfers by Program shall terminate ☐ on the next court appearance / ☐ on (date)
5. Subject to any further order redistributing these costs, fees charged by the Program shall be paid as follows:
- (a) the administrative fee (\$100 each year, subject to change) shall be paid by ☐ the Visiting Parent (%) and ☐ the Residential Parent (%);
- (b) the visit fee (\$10 per transfer back and forth, subject to may change) shall be paid by ☐ the Visiting Parent (%) and ☐ the Residential Parent (%); and
- (c) subject to any order of the court for costs, the fees for observation reports shall be paid by ☐ the person ordering the report(s)
☐ the Visiting Parent (%) and ☐ the Residential Parent (%).
6. (any provisions for phone, video, email, or mail access)
7. The Parties may agree, in writing signed by them and witnessed, to other or further access, with or without supervision exchanges.
8. Except as set out in a court order,
☐ or written agreement signed by the parties and witnessed
the Visiting Parent shall have no contact with the said child/ren ☐ , directly or indirectly.
-

