Parenting Capacity Assessments

The Child Welfare Toolkit

A Joint initiative between the Factor-Inwentash Faculty of Social Work and the David Asper Center on Constitutional Rights, Faculty of Law, University of Toronto

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Section 1: Case Law

Parenting Capacity Assessments

The following section outlines the case law and a scan of the social science literature concerning parenting capacity assessments.

Legal Issues

1. What factors do courts consider when deciding to order a Parenting Capacity Assessment?
2. Are Parenting Capacity Assessments an effective tool to determine how child protection concerns impact a parent's ability to care for their child(ren)?
3. How does the court account for potential bias within Parenting Capacity Assessments and their implementation?
4. What is the role of Parenting Capacity Assessments in child protection proceedings that involve Indigenous parents?

Legislation

In Canada, parenting capacity assessments (PCAs) are governed by provincial and territorial child protection legislation. In Ontario, this legislation is the *Child, Youth and Family Services Act, 2017* (*CYFSA*). Under section 98 of the *CYFSA*, the court can order an assessment of individuals that are involved with children in need of protection, including the child, their parent, or any other person who is putting forward a plan for the care and custody of access to the child. Under section 98(2) of the *CYFSA*, an assessment may be ordered if it is necessary for the court to make a determination under Part V of the *CYFSA*, and the evidence from the assessment is not otherwise available to the court.

According to section 98(6), an order for assessment made under subsection (1) and the assessment required by that order must comply with requirements prescribed by the Minister pursuant to section 343(2). These requirements refer to O/Reg 155/18: *General Matters Under the Authority of the Lieutenant Governor in Council*. The timing of assessment is set out in section 34 of the Regulation. Sections 35 and 36 outline requirements regarding the content of assessment orders and assessment reports. Under section 35(2), the court may order an assessment for purposes ranging from assessing the proposed participants' parenting capabilities, their psychiatric or psychological conditions impacting their ability to care for the child, their abilities to meet the child's needs, the child's attachment and psychological functioning and developmental needs, and the need for clinical interventions. Some discretion is reserved for the person performing the assessment (the assessor) regarding methodology, the questions to be addressed and content to be included in the report.

The relevant provisions of the *CYFSA* and O/Reg 155/18 can be found in Appendix A.

Legal Findings

1. Legal Research Methods

Search for jurisprudence was conducted in Westlaw (a subscription resource) and CanLII (an open resource), using the terms: risk assessment, parenting capacity assessment, and child protection. The search was further limited to Ontario cases at all court levels. The case law review also included entries from the "Texts and Annotations" category of the search results for the search term, "parenting capacity assessment." Cases were examined to determine if they applied to the legal issues through their headnotes and excluded if they did not address section 98(1) assessments orders or parenting capacity assessments. Cases were confirmed to still be in good standing and were ranked both on their frequency of citation and level of court decision. Preference was given to cases from 2017 to 2021 in order to assess courts' response to the legislative change to the *CYFSA*, though older precedents were also included in the analysis. Case law from other provinces was at times referenced to highlight the interplay between the *CYFSA* and *An Act respecting First Nations, Inuit and Métis children, youth and families, 2019* (Federal Act).

2. The Legal Test

The court has authority under section 98 of the *CYFSA* to order a child, a parent of the child, or any other person other than a foster parent expected to be involved in the child(ren)'s plan of care to undergo an assessment.[1] PCAs, which assess a parent's ability to care for their child(ren) by drawing on expertise in social science and psychology, are considered to be one type of assessment contemplated by section 98(4) of the *CYFSA*. See, for example, *Children's Aid Society of Algoma v B(C)* at para 12 (ONCJ, 2002).

The decision to order a person to undergo an assessment is a discretionary one. In *Children's Aid Society of Algoma v M.(P.)*, [*M.P.*] Kukurin J held that both requirements in section 98(2) of the *CYFSA* are minimal criteria that must be met for each assessment before they can be ordered by the court (ONCJ, 2008). The onus of satisfying these criteria on an evidentiary basis falls on the party seeking the section 98 assessment order, even if the person to be assessed has consented to the assessment.

There is a well-established body of judicial commentary with respect to the two minimal criteria outlined in section 98(2). To satisfy the first criterion, namely, that the assessment is *necessary* for the court to make a determination under Part V of the *CYFSA*, the applicant must identify the specific Part V judicial determination that cannot be made without a section 98 assessment. According to *M.P.* and *Children's Aid Society of Algoma v P.M.*, the main determinations under Part V of the *CYFSA* are (1) a finding that a child is in need of protection on one or more grounds under section 74; (2) a determination of the protection order to be made under section 101; (3) a determination of a custody and/or access order, under section 102(1), as an alternative to a protection order; and (4) whether an order for access should be made under section 104 (ONCJ 2008; ONCJ 2008). A survey of the jurisprudence suggests that courts interpret necessity as a high threshold. Assessments, including PCAs, must be more than merely helpful to satisfy the criterion of necessity; cases such as *Children and Family Services for York Region v L.M. et al.*, *B.W.*, and *Haggerty v Haggerty* show that the court must be satisfied that it cannot decide on an appropriate disposition without the assessment (ONSC, 2018; ONCJ, 2013; ONCJ, 2007). According to the Court in *Catholic Children's Aid Society of Hamilton v S.(R.)* at para 39, a reasonably necessary assessment is one that brings "a benefit to the court of expertise and information" that is otherwise unavailable, and that benefit should outweigh the drawbacks of pursuing an assessment, notably the inherent delay (ONSC, 2009).

To satisfy the second criterion under section 98(2), the court must be satisfied that the evidence sought from an assessment is not otherwise available to it. In *S.(R.)*, (2009 CarswellOnt 5683) the Court identified consideration of clinical issues as an example of professional evidence not otherwise available to the court at para 46 (ONSC, 2009). The Court in *Children's Aid Society of Algoma v P.M.* similarly stated that the proper question is whether there already exists information of the quality and nature sought specifically by the applicant (ONCJ, 2008). In that case, while evidence of the respondent mother's functioning as a parent is already available to the Court, an assessor conducting a PCA is uniquely qualified to produce as evidence conclusions about the mother's parenting capacity that the Court cannot otherwise obtain.

The court has discretion to order or not order an assessment even if the two criteria are met. This discretion is exercised in cases such as *M.P.*, *L.M. et al.*, and *B.W.* (ONCJ, 2008; ONCJ, 2018; ONCJ 2013). The *M.P.* court elucidated the following factors relevant to the discretion: the need for a clinical issue, intrusion into privacy, a delay in reaching the final resolution, the assessor usurping the judicial function, the need to guard against assessments that resemble a "fishing expedition," the cost of the assessment, and the willingness of the subject(s) of assessment (ONCJ, 2008). In *Children's Aid Society of Hamilton v E.P., D.T., L.M., Six Nations of the Grand River*, the court emphasized that judicial discretion must be exercised carefully when a parent opposes the assessment (ONSC, 2013). As per *M.P.* and *A.(K.)*, courts will

1 It should be noted that in practice the majority of assessments are ordered on the consent of the parties because the legal test is a low threshold to meet. Parties will then negotiate the terms of the assessment rather than whether it should be ordered.

also exercise their discretion to not order an assessment where the proposed questions for the assessor are speculative, to guard against the use of assessments to merely provide a second opinion or bolster the society's position (ONCJ, 2008; ONCJ, 2008).

In *A.K.*, Zisman J observed that courts have not ordered assessments for the following reasons (para 28):

1. Where there are no clinical reasons to assess the child and a hope by a parent that the assessment would show that they had changed was deemed to not be a valid reason;
2. Where parents have not consented and there are concerns regarding the intrusive nature of the assessment; and
3. Where the assessment is premature.

The Legal Test for Admitting Expert Evidence

A PCA ordered under subsection (1) is statutorily declared to be evidence that becomes a part of the court record of the proceeding (*CYFSA* section 98(12). In *Children's Aid Society of Algoma v F.M.*, however, the court held that a PCA report may be excluded on the basis that the assessor is not qualified to provide expert opinion (ONCJ, 2021). A voir dire hearing may be held where the author of the report is called as a witness, and parties have the opportunity to cross-examine them on their expertise, but the usual practice is for this examination to be conducted at the commencement of the expert witness's testimony. The expertise may also be challenged at the Trial Management Conference stage prior to the commencement of a hearing. The governing two-test for the admissibility of expert evidence was established by the SCC in *R v Mohan* and restated in *White Burgess Langille Inman v Abbott & Haliburton* and *R v Abbey*. As the court affirmed in *Halton Children's Aid Society J.B. and D.T.*, this test applies both to expert opinion evidence generally and court-ordered expert opinion such as PCAs (ONCJ, 2018). The Court in that case further held that a voir dire should be held routinely to determine whether an expert is qualified to provide a report answering parenting capacity questions, especially when the report contains opinions that are not accepted by all the parties and that provide ready-made answers to the questions before the court.

Quoting Laskin JA in *Abbey* (para 48), Jones J outlines the test to be applied at the voir dire stage to decide whether to admit expert opinion evidence:

Expert opinion evidence is admissible when:

1. It meets the threshold requirements of admissibility, which are:
    a. The evidence must be logically relevant;
    b. The evidence must be necessary to assist the trier of fact;
    c. The evidence must not be subject to any other exclusionary rule;
    d. The expert must be properly qualified, which includes the requirement that the expert be willing and able to fulfil the expert's duty to the court to provide evidence that is:
        i. Impartial,
        ii. Independent, and
        iii. Unbiased.
    e. For opinions based on novel or contested science or science for a novel purpose, the underlying science must be reliable for that purpose,

and

2. The trial judge, in a gatekeeper role, determines that the benefits of admitting the evidence outweigh its potential risks, considering such factors as:
    a. Legal relevance,
    b. Necessity,
    c. Reliability, and
    d. Absence of bias.

1. Threshold Requirements of Admissibility

Relevance and Necessity

Reliability is central to the *Mohan* factors of relevance and necessity; according to *Children's Aid Society of Toronto v A.L.*, at para 160, expert opinion that is unreliable cannot support a fact issue and therefore cannot be necessary or relevant (ONCJ, 2021). This point is underscored in *J.B. and D.T.* and in *Children's Aid Society of Algoma v S.B.*, which stated that court's findings regarding the proper qualification of the expert witness and, if applicable, the reliability of the underlying science, directly impact its finding on the reliability of the evidence (ONCJ, 2018; ONCJ, 2022).

A Properly Qualified Expert

As per *F.M.* at para 14, a properly qualified expert should possess the appropriate academic and experiential credentials, be registered with a governing body in the area of expertise required to answer the specific referral question(s) and understand that their duty is to provide to the court evidence that is impartial, independent, and unbiased (ONCJ, 2021). While expertise and formal accreditation in clinical or forensic psychology is not strictly required, courts have inferred from the absence of such qualification that the assessment actually falls outside an assessor's area of competency for the purpose of the court proceeding. See, for example, *J.B. and D.T.*; *F.M.*; *Children's Aid Society of Algoma v S.L.*; and *S.B.* (ONCJ, 2018; ONCJ, 2021; ONCJ, 2011). In *S.L.* at para 29, the Court did not accept a witness's opinion evidence as expert opinion because her formal qualifications and experiences were not sufficiently connected to the three areas of expertise (attachment theory, developmentally handicapped persons, capacity to parent) underpinning her opinions in the PCA report (ONCJ, 2011). Similarly in *J.B. and D.T.*, an assessor was found not qualified as an expert on the basis of her lack of formal qualification in clinical psychology, notwithstanding the fact that she has prepared many PCAs and has been accepted as an expert witness by other courts in the past (ONCJ, 2018). The connection between the assessor's expertise and the subject of the assessment must also be clearly delineated; in *S.B.*, an assessor with extensive academic and experiential credentials was not qualified as an expert witness because his subject matter of the proposed assessment – parental "supervisory capacity" is not a recognized area of specialization in psychology (ONCJ, 2011). Lastly, the court in *F.M.* stated that the fact that a witness has been qualified by courts in other provincial jurisdictions does not necessarily equate to expertise sufficient to provide an opinion (ONCJ, 2021).

Impartial, Independent, and Unbiased

Also relevant to the admissibility of a PCA report is the assessor's compliance with their duty to be independent, impartial, and unbiased, as set out in *White Burgess* at para 34 (SCC, 2015). In *A.L.*, the Court found an assessor not properly qualified after finding that she failed to fully appreciate the non-partisan nature of her role (ONCJ, 2021). A PCA report was similarly excluded as evidence in *F.M.* on the basis that the assessor mistakenly believed that the PCA report is the property of the litigant society instead of the court. In the absence of an assessor's formal acknowledgement of their impartiality, courts may be inclined to exclude the evidence especially where there are other flaws in the PCA report, such as issues with the methodology, failure to comply with the regulation, and insufficient academic credentials. For example, see *S.B.* and *F.M.* (ONCJ, 2022; ONCJ, 2021).

Concerns about the assessor's choice of methodology and procedure are also raised under the inquiry into whether the witness is a "properly qualified expert." O/Reg 155/18 section 36 requires that a PCA report set out the methodology used in conducting the assessment as well as the reasons and factual basis for any conclusions drawn by the assessor. These concerns can be by experts retained by the opposing party, who are typically the parent(s). The admissibility of critique evidence produced by a retained expert is governed by the *Mohan* factors, as discussed in the threshold requirements of admissibility section. While the court in *M. v F.* stated that critique evidence is usually inadmissible or only assigned little weight (ONCA, 2015), the Ontario Court of Justice in *Halton Children's Aid Society v A.W.* and *A.L.* admitted critique evidence on account of the high stakes attached to the order sought by the applicant society – the permanent removal of the child from

the parent's care (ONCJ, 2016; ONCJ, 2021). In admitting the critique evidence, the *A.L.* court notably remarked at para 116 that courts should recognize the already significant power imbalance that exists between parents and societies when adjudicating on the admissibility of critique evidence (ONCJ, 2021). In *A.W.*, the expert retained by the respondent mother produced through an impartial process critique evidence that was found to be narrowly tailored to the assessor's choice of psychometric tests and assessment process (ONCJ, 2016). Similarly, in *A.L.*, the expert articulated concerns about the assessor's incorrect interpretation of the parent's intellectual profile, use of invalid psychological tests, and overly short observation visits (ONCJ, 2021). While the Court in both cases relied on critique evidence to exclude the PCA report, the critiques were narrowly tailored to address specific issues within the report and not designed to supplant the original findings.

The "properly qualified" criterion of the *Mohan* test further restricts who can be involved in the assessment process. In *Children's Aid Society of London and Middlesex v C.D.B.*, the court was critical of the fact that the report was co-authored by the court-appointed assessor and a social worker, who was equally and jointly involved in putting forth recommendations in the PCA report (ONSC, 2013). While the latter was designated as a co-assessor by the assessor, she was not pre-authorized by the court to conduct the PCA by the court nor found to be qualified as an expert through the *voir dire* that was later held. Jones J in *J.B. and D.T.* was similarly critical of the team approach adopted by the court-appointed assessor, whose associate was involved in the gathering of data that was merged in the final PCA report (ONCJ, 2018). Despite this flaw in the procedure, the PCA report in *J.B. and D.T.* would have been allowed if not for the separate concern regarding the assessor's professional qualifications, since the section 98 provided that the assessor may be assisted by her colleagues. Taken together, *C.D.B.* and *J.B. and D.T.* suggest that courts are critical of PCA report evidence composed with the input of non-appointed team members. Where the section 98 court order does not authorize anyone but the assessor, adopting an unauthorized team approach is likely grounds for excluding the PCA report evidence altogether.

Opinions Based on Novel or Contested Science

A PCA report that contains expert opinion based on the use of "novel science" or "science for a novel purpose" is subjected to a more rigorous threshold reliability inquiry. See *R v Abbey* at para 58 (ONCA, 2009). In *R v Mohan*, Sopinka J remarked the following with respect to the application of this criterion (SCC, 1994):

> In summary, therefore, it appears from the foregoing that expert evidence which advances a novel scientific theory or technique is subjected to special scrutiny to determine whether it meets a basic threshold of reliability and whether it is essential in the sense that the trier of fact will be unable to come to a satisfactory conclusion without the assistance of the expert. The closer the evidence approaches an opinion on an ultimate issue, the stricter the application of this principle (para 32).

The special scrutiny principle is applied more strictly the closer the proffered expert evidence bears on the ultimate issue. In *S.B.*, where the assessor was tasked with performing an assessment in the novel area of "supervisory capacity," the special scrutiny principle was triggered because the expert opinion was sought precisely on the ultimate issue before the court (ONCJ, 2022). The assessor was not qualified as an expert witness since he presented little information not already known to the court.

2. The Trial Judge's Gatekeeping Role

At the second stage of the *Mohan* test, the trial judge, as a gatekeeper, engages in a cost benefit analysis of admitting the expert evidence. The court in *J.B. and D.T.*, citing the *R v Bingley* decision, established at para 28 that a PCA report that meets the minimal threshold requirements for admissibility may nonetheless be excluded "if the prejudicial value of the evidence outweighs its probative value" (ONCJ, 2018). There is some overlap between the two stages of the *Mohan* test; the same factors of relevance, necessity, and absence of bias are considered at both the threshold admissibility stage and the gatekeeping stage. In *A.L.*, O'Connell J remarked at para 228 that even if the expert evidence did survive the threshold admissibility inquiry,

it should nonetheless be excluded because any probative value in admitting the PCA report is outweighed by the prejudicial impact on the fact-finding process (ONCJ, 2021). Flaws in the assessor's methodology and interpretation made the PCA report "inherently unreliable in its assessment parenting capacity" and therefore of limited probative value (ONCJ, 2021). The emphasis on the reliability of a PCA report is consistent with Jones J's observation in para 29 of *J.B. and D.T.* that expert evidence of questionable reliability has little probative value (ONCJ, 2018).

Weight Given to PCAs in Judicial Decisions

The weight to be given to a PCA report is a matter of judicial discretion exercised by a judge in their gatekeeping role. According to the court in *Children's Aid Society of Hamilton v E.O.*, in child protection cases, which are guided by the determination of the child's best interests, the question of the admissibility and the weight to be given to expert evidence tends to focus more on the issue of weight (ONSC, 2009). In both *J.B. v D.T.* and *Children's Aid Society of Toronto v S.C-W.*, the court stated at paras 31 and 151 respectively that the prejudicial effect of a PCA report that falls short of overwhelming its probative value will reduce the weight given to that report (ONCJ, 2018; ONCJ, 2016). In *C.D.B.*, however, where the trial and release of the report is already significantly delayed and the report found to be seriously flawed, the court rejected the report as evidence (ONSC, 2013).

In *Children's Aid Society of Halton Region v N.(R.R.)*, Zisman J stated at para 39 that courts will look to "the extent to which an assessor's observations and conclusions are supported by the totality of the evidence" (ONCJ, 2008). Zisman J also expressed significant concerns about the assessor's reliance on material not before the court by comparing the assessor's observations to those of other witnesses who worked with the parent. This suggests that the absence of expert critique evidence does not preclude the court from independently conducting its own analysis of the evidence presented in a trial.

However, the task of determining the reliability, and thus the weight to assign to a PCA report is complicated by the lack of a clear approach to conducting PCAs. In *A.L.*, O'Connell J observes at para 198 that "there seems to be no clear and standardized approach [to] what tests should be consistently administered, how should these tests be administered, [and] over what time period" (ONCJ, 2021). Despite this challenge, it is possible to identify from the jurisprudence some criteria used by courts to assess the reliability of PCA reports. In *A.W.*, for example, the court placed very little to no weight on a PCA that relied almost exclusively on society workers as collateral sources (ONCJ, 2016). In those two cases, the use of outdated or inappropriate psychological tests and overly short observation are also grounds for reducing the weight of the evidence (ONCJ, 2021; ONCJ, 2016). Due to the absence of clear criteria against which to assess the reliability and soundness of PCA reports, courts rely on other clues in the evidence, concerns identified by expert critiques, and sometimes secondary literature on PCAs.

Refusal to Participate in PCAs

Section 98(13) of the *CYFSA* enables the court to draw any inferences it considers reasonable from a person's refusal to undergo a court-ordered PCA. The constitutionality of section 98(13) was upheld in *Huron-Perth Children's Aid Society v J.B.C.L.*, where the respondent parents submitted that, given the intrusiveness of PCAs, parties should be permitted to refuse to undergo an assessment without a negative inference being drawn (ONCJ, 2015). The court found that section 98(13) did not offend section 8 of the *Charter* for two main reasons; firstly, the drawing of an inference is discretionary, not mandatory, and the legislation provides parents the opportunity to explain their refusal to undergo the assessment (para 36). Secondly, without this provision, parents would be free to ignore the court order without consequences (para 37). Given that the *CYFSA* is guided by the principle of promoting the best interests of children, section 98(13) is deemed "an appropriate potential sanction" in cases of parental refusal (ONCJ, 2015).

As the court in *S.(R.)* observed, an order for a s98 assessment has a clear element of compulsion or intimidation (ONSC, 2009). A review of the jurisprudence suggests that the drawing of such an inference is sensitive to the broader context of the case. In *North Eastern Ontario Family and Children's Services v G.(C.)*, for example, the court drew an adverse inference against the mother for her refusal to partake in the court-ordered PCA (ONCJ, 2014). This inference was supported by the totality of the evidence, including information obtained from referrals and from the children, the mother's adverse reaction to any form of inquiry, the child's refusal to see the mother, and police records (ONCJ, 2014). An adverse inference was similarly drawn against the respondent father in *Family and Children's Services of Frontenac, Lennox and Addington v. E.A.L. and J.K.J.D.*, who did not provide an explanation for his refusal (ONSC, 2021).

The Constitutionality of Section98 Assessments

The constitutionality of other provisions under section 98 were upheld in *J.B.C.L.*. In addition to challenging the constitutionality of section 98(13), the respondent parents also asserted that the section discriminates against foster parents, authorized an unlawful search and seizure, and was too vague because it gave courts unfettered discretion to order assessments (ONCJ, 2015). All three *Charter* challenges were defeated: the distinction between natural and foster parents was deemed necessary, not discriminatory; assessments do not violate section 8 of the *Charter* even if they could be construed as a search, and the court pointed out that O/Reg 155/18 provides for criteria guiding the decision to order an assessment.

The Cost of PCAs

While section 98 of the *CYFSA* does not specify which party should pay for a court-ordered assessment, the jurisprudence affirms courts' jurisdiction to make an order for cost.[2] See, for example, *Children's Aid Society of Huron-Perth v A.A.*, *Children's Aid Society of Toronto v O.(K.)*, *Children's Aid Society of Sudbury & Manitoulin (Districts) v J.(M.)* (ONCJ, 2022; ONCJ, 2003; ONCJ, 2009). In *O.K.*, Spence J cites Misener J's reasoning in coming to the decision that courts have jurisdiction to make a cost order:

> ... As such, I consider myself to be bound by the decision in *Children's Aid Society of Huron (County) v. P. (C.)*. In any event, Justice Misener's reasoning is logical, clear and persuasive. In my opinion it is also entirely consistent with the overarching purpose of the Act, as set out in subsection 1(2), namely, to make decisions that are consistent with the best interests, protection and well being of children. Accordingly, I have concluded that I do have jurisdiction to make the costs order (para 10).

In that decision, Spence J ordered the society to pay for the cost of the section 98 assessment, rejecting the society's argument that, simply because the respondent parent is seeking an assessment, she should then pay for it (ONCJ, 2003). Implicit in a section 98 order for an assessment is that it has been deemed necessary by the court, regardless of who seeks the assessment. The court also took into account the mother's limited financial means and her unsuccessful effort to secure funding from Legal Aid Ontario, who is a non-party to the proceeding. In *J.(M.)*, the parents' strained financial situation was similarly taken into account (ONCJ, 2009). Also relevant was the fact that the society was the applicant and that, since the parents could not pay, the order would be frustrated if the court did not order the society to pay (ONCJ, 2009).

Materials to be Provided to the Assessor

While O/Reg 115/18 sets out the minimum mandatory content of a PCA, neither the regulation nor the *CYFSA* provides for what information must or must not be provided to the assessor for purposes of preparing a PCA, or any other assessment. This issue was considered in *Children's Aid Society of Algoma v M.L.*, where the parties agreed to a PCA but disagreed on whether any other background information must be provided to the assessor prior to interviewing and testing the parents

2 In many jurisdictions the society tends to bear the cost of the assessment. Given the high cost of assessments, many societies have reduced or eliminated their use.

(ONCJ, 2019). The respondent father opposed the society's request out of concern that providing this information, some of which is disputed, would create confirmatory bias for the assessor. The court found that the question of what type of documentation should be provided depends on the issues that need to be addressed in the PCA. According to Kwolek at para 46, "In some cases a detailed factual background may not be required and in other cases it may be crucial in completing a comprehensive report" (ONCJ, 2019). While in this case the court did not order the material to be automatically provided to the assessor in advance, it also provided at para 60 that the assessor must be accommodated in his request for additional material once the assessment is underway (ONCJ, 2019).

Indigenous Parents

The Applicability of PCAs to Indigenous Parents

In the jurisprudence, there is very little discussion on PCAs as tools for the assessment of parenting capacity in child protection proceedings that involve Indigenous families. The limited case law shows that the issue of the applicability of PCAs to Indigenous parents is canvassed under the "properly qualified expert" inquiry in *Mohan*. See, for example, *Huron-Perth Children's Aid Society v A.C.* and *JL(Re)* (ONCJ, 2020; SKCA, 2002). *A.C.* was a case concerning an order for extended care, sought by the applicant Society, for two children of Métis heritage. The Society filed for a PCA, and the court conducted a *voir dire* on the qualifications of the assessor to give expert opinion evidence. In addition to finding the assessor to be impartial, independent, unbiased, and qualified in areas such as parenting capacity, psychometric assessment, and child witness testimony (ONCJ, 2020), the court also stated:

> Of importance is the fact that Dr. Harris has a registration as a mental health service provider with First Nations and Inuit Health Branch, Health Canada...[S]he has had some specific First Nations, Métis, Inuit Cultural training, particularly for indigenous youth (para 99).

However, there is ambiguity around the extent to which an assessor's lack of training and experience in working with Indigenous populations reduces the weight assigned to the PCA. In *JL(Re)*, the Alberta Provincial Court briefly observed that while the assessor had some background working with Indigenous clients, her experiences were limited in scope (SKCA, 2002). The court also noted at para 32 that the PCA was not tailored to the respondent mother's Indigenous culture; nor did the standardized tests used administered in the PCA include a cultural fairness component (SKCA, 2002). It is unclear how much these findings about limitations in the assessor's qualification and the psychological tests weighed in the court's decision to admit the PCA, if at all.

Given that findings from PCAs, once admitted by the court, function as one piece in 'the totality of evidence' informing the judicial determination of a disposition in the child's best interest, it is useful to turn to the statutory definition and judicial interpretation of the child's best interests.

Best Interests of the Child

In all proceedings under the *CYFSA*, courts must be guided by the overarching purpose of the *Act* in section 1(1) – to promote the best interests, protection, and well-being of children. Where Indigenous children are involved in a decision in the context of the provision of child and family services, the court must also consider *Bill C-92: An Act Respecting First Nations, Inuit and Métis children, youth, and families* (Federal Act), which took effect on January 1, 2020. The specific provisions that must be considered are outlined in *A.C.* at para 16: cultural continuity in section 9(2), the best interest test for indigenous children in section 10, and priority of placement in section 16 (ONCJ, 2020). Where a provincial Act or regulation such as the *CYFSA* conflicts with the Federal Act, the latter has paramountcy to the extent of the inconsistency (Federal Act section 22(3)).

The Interplay between Bill C-92, Provincial Legislation, and Placement Decisions

The exercise of judicial discretion in child protection proceedings involving indigenous children is guided by both section 74(3) of the *CYFSA*, section 10(3) of the Federal Act, which outline factors relevant to the determination of the child's best interests. In *A.C.*, Neill J observes at para 62 an overlap between the best interest factors outlined in the *CYFSA* and the Federal Act; both legislations consider the child's views, the importance of the child's heritage and preserving their cultural identity, the child's needs and level of development, and measures relevant to the safety, security, and well-being of the child (ONCJ, 2020). The only consideration unique to the Federal Act is 10(3)(g) the factor regarding family violence and its impact on the child (ONCJ, 2020). The placement of a child in both *Acts* is considered on a priority basis (*CYFSA* section 94(2); *Federal Act* (s. 16(1)).

Best interests of Child and Placement of Indigenous Child

In interpreting provincial child protection legislation with the Federal Act, the Ontario Superior Court of Justice and the Albert Court of Queen's Bench have both highlighted the fact that the best interests of the child is the paramount consideration in both the Federal Act and the provincial child legislation of their corresponding jurisdictions. See, for example, *CAS v K.C. and Contance Lake First Nation* and *SM v Alberta (Child, Youth and Family Enhancement Act, Director)* (ONSC, 2020; ABQB, 2019). In *K.C.*, Smith J describes at para 10 the interplay between the Federal Act and the *CYFSA* as "establishing an augmented best interests test…" that may justify overriding the hierarchy of placement for Indigenous children outlined in section 16(1) of the Federal Act (ONSC, 2020). In that case, the court found it to be in the children's best interests to be returned to the respondent mother's primary care. Even if it is wrong and it is actually in the children's best interests to be placed with the Society, the court nonetheless found, contrary to the hierarchy of placement outlined in section 16 of the Federal Act, that the children should be placed with a local, non-Indigenous foster home easily accessible to the mother instead of an Indigenous foster home located faraway (ONSC, 2020). This is to avoid a rote application of the Federal Act that "has the effect of prioritizing a statutory-driven cultural match with strangers over the parent-child relationship" (ONSC, 2020).

Best Interests of Child, Cultural Identity, and Attachment

Similarly in *SM*, an appeal at the Alberta Court of Queen's Bench regarding the application for private guardianship of two Indigenous children, Dario J found that the lower court judge did not err in finding a placement with the foster parents instead of the maternal great-aunt to be in the children's best interests (ABQB, 2019). The children's best interests were considered according to the provincial *Child, Youth and Family Enhancement Act*, the unamended version of which, at the time of the decision, posited the child's Indigenous cultural identity as a best interest factor. However, cultural identity was found at para 286 to be only "one of various factors" in determining the child's best interests (para 80). The court noted in particular that cultural identity – even as it is articulated in the Federal Act – does not trump child's bond and attachment to foster parents, which should be given more weight the longer the child has lived with the foster parents (ABQB, 2019).

Section 2: Social Science Evidence

History of Parenting Capacity Assessments in Ontario

Literature Review

The central objectives of this literature review were to:

1. Identify the evidence base for Parenting Capacity Assessments
2. Identify the range of factors considered key in completing Parenting Capacity Assessments.

A literature review was conducted to determine the breadth of information available and to identify, collect, and synthesize information relevant to the issue of **parental capacity assessments**. The search engine ProQuest was utilized for the identification and collection of relevant strategies. Sources were included in the literature scan if they were peer-reviewed and contained keywords relevant to the research objective. Data sources were limited to those published in English. The final list of keywords and search terms used in the literature scan are provided below. Throughout the search process, keywords were added, deleted, or modified as different terms were discovered to enhance the search strategy.

The title and abstracts of records retrieved from the databases were screened for key words, anything not deemed relevant was not included and any duplicates were removed. Studies that did not pertain to parenting capacity assessments were not included. A hand search of reference lists from relevant studies was also used to supplement searches. The final search result was 25 studies included in the literature scan. The results of the literature scan revealed a limited number of published studies.

Search #	Years	Keywords	Databases	Results
1)	None specified	("parenting capacity assessment" OR "parenting capacity" OR "parenting assessment" OR "parenting competence") AND ("child welfare" OR "child protection" OR "foster care")	APA PsycInfo, APA PsycArticles, and Sociological Abstracts in ProQuest	524
2)	2010–2024	*see above*	APA PsycInfo, APA PsycArticles, and Sociological Abstracts in ProQuest	345
3)	2010–2024	*see above*	APA PsycInfo, APA PsycArticles, and Sociological Abstracts in ProQuest – Scholarly Journals only	345
4) Final Search Result				25

See Appendix B for a description of the studies.

Overview of Parenting Capacity Assessments

A Parenting Capacity Assessment (PCA) is an evaluation of a parent's ability to care for their child(ren) that finds application in legal proceedings involving child protection matters, such as custody disputes or cases of suspected child maltreatment. In Canada, requests for PCAs are governed by provincial/territorial legislative frameworks (Sistovaris et al., 2022). In Ontario, the relevant legislation is the *Child, Youth, and Family Services Act* (*CYFSA*). A PCA is typically ordered by the Court at the request of a Children's Aid Society to provide information on the family situation, functioning and the mental status of the parent(s) (Sistovaris et al., 2022; Aunos & Pacheco, 2021). The central question guiding PCAs is whether the parent is "good enough to raise the child to be a functioning and autonomous adult" (Sistovaris

et al., 2022). Whereas PCAs conducted and used in divorce and custody cases measure parents against other caregivers, PCAs used in child protection cases typically ask whether the parent meets the minimally acceptable standard for parenting (Krissie & O'Donnell, 2023).

Who conducts PCAs?

PCAs are usually conducted by psychologists, social workers, and psychiatrists (Choate, 2014). Under s.98(4) of the *CYFSA*, a court may only appoint an assessor who is "qualified to perform medical, emotional, developmental, psychological, education or social assessment." Apart from this general legislative criterion, there is no specific license or criteria governing the selection or qualification of an assessor (Bala, 2008; Choate & Engstrom, 2014). In 2019, the Ontario government issued a policy directive under s.42 of the *CYFSA* requiring children's aid societies to identify all parenting capacity assessments that are in progress and all those that have been completed in cases that are still before the court, and to incorporate a process for verifying the credentials of an individual that the society has selected or agreed to conduct the PCA (*Ministry of Children, Community and Social Services, 2019*).

In the literature, there is consensus that assessors are required to have specialist knowledge to conduct PCAs (Choate, 2014; Flynn, 2020). Typically, an assessor should have expertise in child development, parental functioning, the impact of mental illness, interpersonal violence, and addiction (Choate, 2014). While an assessor is not expected to be an expert in all these areas, they should have expertise on the specific concerns of the case (Choate, 2014). Equally important is the assessor's sensitivity to the cultural background of the family being assessed and awareness of diverse cultural approaches to parenting (Bala, 2008). Since a PCA is an exercise of clinical judgment instead of an exact science, assessors need not adhere to any standardized approach, but should be familiar with the leading literature on forensic assessment in the child welfare context (Choate & Engstrom, 2014).

2. The "Good Enough" Parent

The concept of the "good enough" parent is rooted in the notion that imperfect parenting can be sufficient, or good enough to raise children who will become functional, autonomous adults (Choate & Engstrom 2014). In lieu of perfection, a parent is measured against a minimally acceptable, "good enough" standard of parenting competence (Budd, 2005). Although the "good enough" standard appears frequently in practice and in the literature (Choate & Engstrom, 2014; Eve et al., 2014; Bala et al., 2017; Budd, 2005; Krissie & O'Donnell, 2023), there is little guidance in research and in clinical literature on the practical application of this terminology (Choate & Hudson, 2014). There is also a lack of consensus on which factors are relevant to assessing whether parents are "good enough." For example, while some researchers highlight parental control and responsibility, others may emphasize the ability to respond to a child's emotional and developmental needs (Budd, 2005). Still there are others who propose a flexible definition of "good enough" comprised of an open list of elements that correspond to the context and unique challenges of each case (Choate & Engstrom, 2014).

Critiques have raised concerns about the lack of definitional consensus on "good enough" parenting, which makes PCAs vulnerable to subjective considerations and assessors' personal biases (Choate & Engstrom, 2014; Krissie, 2023; Van Der Asdonk, 2020; Flynn, 2021). Given that PCAs play a critical role in legal proceedings involving child welfare, the lack of a universal definition can be problematic and can undermine the credibility and applicability of PCAs to the legal context. A 2011 study examining Israeli court decisions (n = 130) in favour of compulsory adoption of children found that social information play a significant role in shaping judicial opinion. This is likely fuelled by the ambiguity surrounding the concept of "parental capability" and "the child's best interests" in Israeli adoption law (Ben-David, 2011), which are akin to the concept of "parenting capacity" and "the best interests, protection, and well-being of children" in the Canada context. Court decisions were coded and sorted by theme to reveal how social information presented during adoption proceedings were woven into judicial narratives. The author found that parents across the sample were most frequently

negatively depicted with respect to their (1) family or origin; (2) sexual life; and (3) functioning in normative social systems. Most of the time, courts did not explain how such information was relevant to the legal discussion on parenting incapability (Ben-David, 2011). Drawing on research on priming effect, Ben-David theorizes (2011) that social information was used to interpret the perceived parental failure as part of a general failure to conform with social norms. Findings from this study highlight how, in the absence of a clear definition of "parenting capacity" and "best interests of the child" bias can easily permeate the interpretation of these concepts.

Since PCAs can be conducted by a range of professionals, generating a uniform definition of "good enough" is a challenging task. A UK study by Eve et al. (2014) examined the variability of perspectives on "good parenting" held by different professional groups with experience in PCAs (n = 19) – including lawyers, social workers, psychologists, and magistrates – by employing semi-structured interviews and rating scales. Data was coded and analyzed using a constructivist theory method. Participants were asked open-ended questions covering broad areas of parenting designed to elicit their view on the relative importance of each area, as well as what participants considered necessary dimensions for good parenting. Results of the study suggest that professionals with experience in PCAs agreed on 6 main categories of good parenting: (1) Insight; (2) Willingness and ability, (3) Day-to-day versus complex/long-term needs; (4) Child's needs before own; (5) Fostering attachment; and (6) Consistency versus flexibility. However, individual participants disagreed on how these categories may be affected by factors such as the availability of support resources and parents' ability to ask for help.

The discrepancy in professional opinion on what makes good parenting is not surprising, given that the assessment of parenting competence is based on clinical judgments rather than actuarial methods (Choate & Engstrom, 2014; Eve et al., 2014). Discrepancies in professional opinion therefore reflect the complex nature of parenting and how individual values inevitably influence clinical judgments, even within the bounds of professional standards (Eve et al., 2014) On the other hand, the agreement between mental health and legal professionals on the main aspects of parenting, and the 6 broad areas identified in the study may provide insight into a universal understanding of "good enough" parenting. That said, the authors observe that findings are limited by the fact that the study predominantly surveyed white, middle-class viewed on good parenting that cannot be appropriately generalized to parent of different racial, ethnic, or SES (socioeconomic) backgrounds.

In addition to discrepancies between professional perspectives, the difficulty of generating a uniform definition of "good enough" parenting is elevated by the need to account for how intersecting identities such as gender, ethnicity, and disability can interact to create compounded forms of risk or perhaps relief from risk (Flynn, 2021). Drawing on Crenshaw's seminal notion of intersectionality, Flynn cautions against a preoccupation entirely with one identity and instead advocates taking an intersectional approach to assessing how a child's multiple social identities come together to form a complicated picture of risk. The author conducted a literature review to investigate the following research question: "how can intersectionality and parenting capacity assessment for disabled children be conceptualized based on existing literature?" Five domains of parenting capacity were identified: (1) Basic care; (2) Ensuring safety; (3) Emotional warmth; (4) Stimulation, guidance, and boundaries; (5) Stability. According to the literature (Aunos & Pacheco, 2021; Flynn, 2021), parental provision of all five domains for disabled children may differ from the provision of those domains to non-disabled children, and it is critical for assessors to attend to these differences.

Flynn's advocacy for an intersectionality-informed approach to assessing parenting capacity grounded in intersectionality echoes a broad concern among commentators that assessors may impose ethnocentric and oppressive views of "good enough" (Choate & Engstrom, 2014; Krissie & O'Donnell, 2023; Houston 2016). Given that social identities converge to form a highly complex picture of risk, Flynn suggests there is no single formula that can displace the need for assessors to exercise careful, informed, and individuated judgment for the child(ren) implicated in each case. However, if parenting

competency is always to be assessed on a case-by-case basis, the search for a uniform definition of "good enough" parenting would seem an exercise in futility (Choate & Engstrom, 2014). Among commentators, there is consensus that any working definition of "good enough" must recognize the life-long repercussions that may be inflicted on parents and their child(ren) once it acquires legal force as a threshold dictating parenting competence. Today, "good enough" continues to be applied as a common standard in Canadian and other jurisdictions, notwithstanding the absence of a formalized, cohesive understanding of the concept.

Assessment Process and Methods

The PCA assessment process begins with a referral question from the court, followed by a series of steps and the use of appropriate assessment methods to collect required data for the final report (Sistovaris et al., 2022). While there is no single standardized methodology, there is consensus in the literature for child protection assessments that a multi-method, multi-source, multi-session approach generates the most useful and reliable results (Costello & Mcneil, 2014; Choate & Hudson, 2014; Bala & Leschied, 2008; Zilberstein, 2016; Krissie & O'Donnell, 2023). While assessors are expected to carry out PCAs in adherence to guidelines, have relevant expertise and experience, and be familiar with the current literature and latest versions of tests (Bala et al., 2017), it is ultimately their responsibility and discretion to determine the appropriate methodology to employ to address the referral question (Bala & Leschied, 2008).

The variance in the methodology used to administer PCAs is, to some degree, a reflection of the absence of a universal definition of "good enough" parenting. The assessor's professional affiliation, the specific referral questions, and details of the case are all variables affecting the specific methodology employed (Bala & Leschied, 2008). Nonetheless, assessors can look to a pattern of PCAs that is typically followed in Canadian jurisdictions (Choate & Hudson, 2014). The typical process of a PCA is reproduced in Figure one. In a paper examining the steps in the assessment process in the United States, Budd (2005) outlines a similar approach consisting of three phases: planning, carrying out data-gathering activities, and preparing the final report.

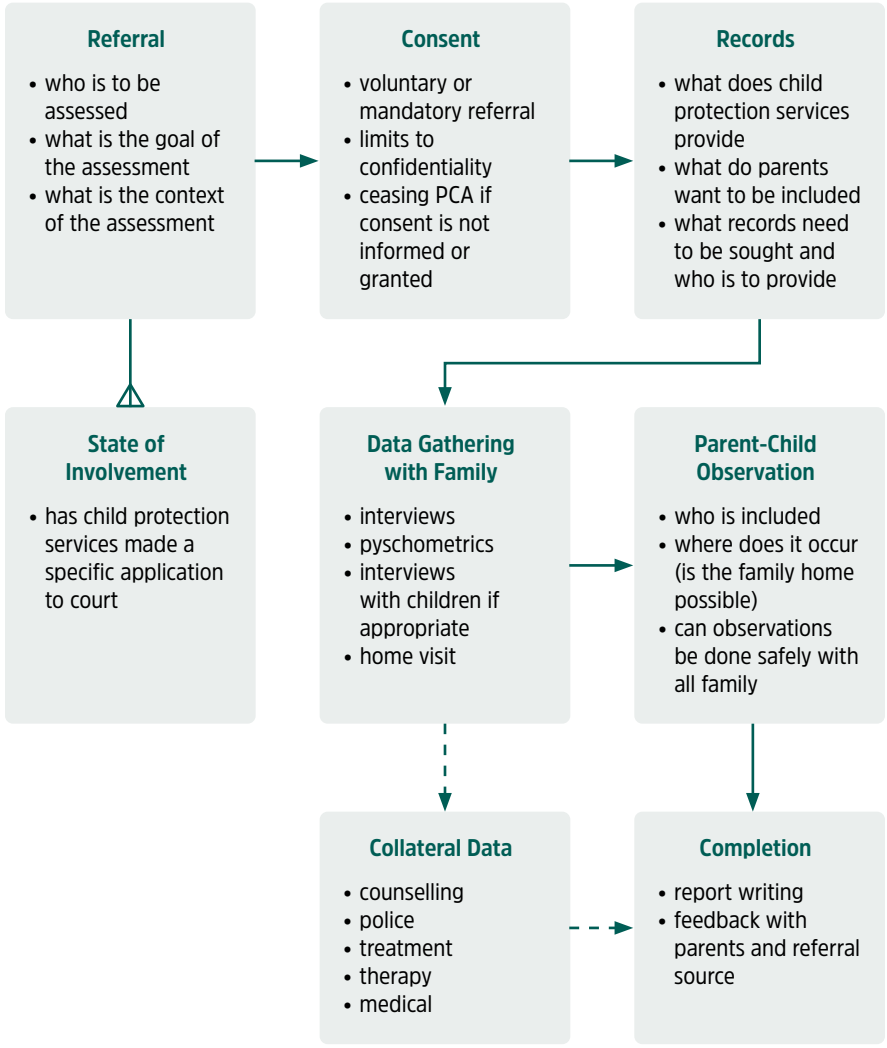

Figure 1.0 Flow chart of parenting capacity assessment process

Source: Choate, P.W. (2018). *Assessment of Parental Capacity for Child Protection: Methodological, Cultural and Ethical considerations in Respect of Indigenous Peoples.* Doctoral Dissertation. Kingston University. London, England. Page 47.

1. Planning the PCA

Referral, Consent, Records

At the early stages of conducting a PCA, or what Budd terms the planning stage (2005), the assessor must clarify the objectives of the assessment with reference to the referral questions and review background records (Bala & Leschied, 2008). PCAs cannot provide answers to questions not articulated by the referral source. Nor can PCAs provide a basis for drawing broad conclusions about an individual's parenting competence (Sistovaris et al., 2022). Referral questions should therefore be framed specifically to allow PCAs to specifically address a parent's capacity considering the needs of a particular child, within the realities of environmental supports or distractions (Choate & Hudson, 2014). Studies conducted in United States and in Australia show that most assessment of parenting capacity are limited in usefulness because the referral requests are too vague (Budd, 2005; Bala & Leschied, 2008). Writing on the challenges of conducting PCAs in Canada, Smith and Phillip recommend that assessors explain what information can and cannot be obtained through a clinical assessment and work together with the court to break down the assessment into smaller aspects of a behaviour that be reliably assessed by a mental health professional (2023).

PCAs require an informed consent process where the parent is made aware, at minimum, of details that include the procedure involved, the persons assessed, and the limits of confidentiality (Choate & Hudson, 2014). While informed consent does not mitigate the power differential that exists between the assessor and the parent, it does help the parent understand what will happen and the implications of the process (Choate & Hudson, 2014). This suggestion stems from and is consistent with the broader concern in the literature that marginalized and disadvantaged families are disproportionately involved in child protection matters (Choate & Hudson, 2014; Krissie & O'Donnell, 2023; Bala & Leschied, 2008). In the literature more generally, however, there is little discussion on issues of informed consent in PCAs in the child protection context.

Finally, the obtaining of prior records is an important part of the PCA planning process. Assessors examine records such as the child protection file, therapy and treatment programs, school records, and other relevant assessments (Budd, 2005; Krissie & O'Donnell, 2023). Although background records may be difficult to obtain and time-consuming to review, this step in the PCA process importantly allows assessors to confirm their findings against previous reports or note discrepancies (Budd, 2005). Assessors should further allow parents the opportunity to comment on major themes the assessor has identified in the record. Prior records also give assessors insight into the success of past interventions, which gives the court an idea of the case's prognosis (Choate, 2014). That said, assessors should not overly on prior records because the records themselves may not present a full picture of the case (Krissie & O'Donnell, 2023).

2. Data-Gathering Activities

Next, at the stage termed by Budd as data-gathering activities (2005), the assessor is expected to collect data from multiple sources (Choate & Hudson, 2014). To this end, assessors employ a range of measures such as clinical interviews with the parent and the child(ren), self-report assessments, observations, consulting collateral sources, and psychological tests (Sistovaris et al., 2022; Costello & Mcneil, 2014; Choate & Hudson, 2014; Aunos & Pacheco, 2021). Four of the most common assessment methods used to collect data for a PCA are checklists, observation, interviews, and psychological tests (Sistovaris et al., 2022).

Interviews

The data-gathering process typically begins with interviews with the parents(s) over two to three sessions, where the assessor communicates the assessment's purpose and the limits of confidentiality, before covering topics including the history of

allegations, services the family has received, and expectations regarding outcomes. Some commentators have drawn attention to the importance of undertaking a multicultural lens when conducting interviews (Krissie & O'Donell, 2023; Zilberstein, 2016). A parent from a low socioeconomic (SES) background may not respond to assessors in culturally expected ways (Zilberstein, 2016). Assessors must take care to not misinterpret responses that do not conform to Western normativity as a risk factor (Krissie & O'Donnell, 2023).

Comprehensive PCAs include interviews with the parent(s) and with the involved child(ren) and collateral sources (Krissie & O'Donnell, 2023). Given the large volume of data to consider and number of implicated parties in a child protection case, it is not uncommon for assessors to encounter discrepancies in the data and diverging perspectives (Krissie & O'Donell, 2023). The use of collateral sources in the form of data from caseworkers, therapists, foster parents, and extended family can help mitigate this challenge by providing assessors the opportunity to verify claims made by the parent and to manage reliability concerns inherent in data collection (Bala & Leschied, 2008).

Psychological Tests

Of the common assessment methods used in the gathering of data for a PCA, psychological tests, or psychometrics, have attracted the greatest criticism (Sistovaris et al., 2022; Bala & Lieschied, 2008). Psychological tests involve collecting and comparing variables against established norms, for variables such as personality, parenting knowledge, mental health and additional (Sistovaris et al., 2022; Choate & Engstrom, 2014). In the United States and Canada, the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), the Wechsler Adult Intelligence Scale-IV (WAIS-IV), the Personality Assessment Inventory (PAI), Child Abuse Potential Inventory (CAPI), Adult-Adolescent Parenting Inventory, AAPI), and Parenting Stress Index (PSI) are among the most commonly administered psychological tests (Terry & Lecci, 2022, Choate & McKenzie, 2015).

It is important for assessors to be well versed in the most current methods and literature on psychometrics. This point is made in a 2020 study undertaken by Key et al. to examine the effect of underreporting on scales used in the MMPI-2 test. The MMPI-2 consists of several scales; clinical scales identify symptoms associated with various forms of psychopathology while validity scales detect biases that might compromise the profile's accuracy (Key et al., 2020). Previous studies have found that elevations on validity scales are associated with underreporting of emotional or behavioural problems. This study suggests that the use of K-correction can mitigate the effects of underreporting and is therefore crucial when interpreting MMPI-2 results (Key et al., 2020).

Parent-child observation

There is a strong consensus in the literature that parent-child observations provide valuable information and should be included in the assessment process whenever possible (Choate & Hudson, 2014; Budd, 2005; Bala & Leschied, 2008). Through observations, assessor can better grasp the nature and quality of the parent-child (Zilberstein, 2016). During observations, assessors should attend to how parents structure interactions with their child, how they display (mis)understanding and convey (dis)approval of their child's behaviour, their ability to notice and attend to their child's physical needs, their response to and acceptance of their child's expressed opinions, their ability to follow through with instructions, and how their attention is divided between multiple children (Bala & Leschied, 2008).

Since each child protection case is unique in terms of the problem(s) under investigation, parent and child characteristics, and circumstance, there is no uniform approach to conducting observations (Budd, 2005). While structured methods that use systemic coding systems – such as the Dyadic Parent-Child Interaction Coding System II and the Home Observation for the Measurement of the Environment Inventory – offer precision and ease of comparison, they are limited in applicability and require substantial training (Budd, 2005). Observations are usually carried out in less than clinically ideal conditions. For example, observations may occur at a social service

agency, include several other children, and vary in length (Budd, 2005; Bala & Leschied, 2008). Faced with these practical constraints, an assessor should be able to observe informally, record behaviours of interest, and accurately interpret results based on their knowledge of the most up-to-date literature (Budd, 2005). Observed parent-child interactions should be viewed within context of the family's socio-economic reality and the neighbourhood in which they reside (Choate & Engstrom, 2014).

In response to concerns about the lack of evidence-based methods for PCAs, some researchers have proposed incorporating attachment-based interventions into the PCA protocol (Asdonk et al., 2020; Cyr et al., 2022). This recommendation is consistent with the broader suggestion in the literature that a useful definition of parenting capacity should focus on parental strengths (Eve et al., 2014; Cyr et al., 2022; Houston, 2016).

Concerns Regarding the Use of Psychological Tests

One concern regarding the use of psychological tests is the use of tests that are extraneous in inappropriate given the referral question(s). While assessors have discretion to determine which assessment measures to employ to answer the referral question, the kinds of psychological tests utilized should be appropriate to the specific referral question(s) (Choate & Hudson, 2014). This may be difficult to achieve in the absence of formal guidelines on which psychological tests are appropriate in what circumstances. In a 2015 study examining the content of Polish forensic mental health assessments (FMHAs), which play a similar role to PCAs, Freedle and Zelechoski found that around one third of FMHA reports used parenting skills questionnaires when the referral question did require such information. The sample for this study consisted of court record-obtained reports (n = 27) describing parenting capacity conducted by mental health professionals in Poland between 2006 and 2010. All reports in the sample addressed the referral question: "the emotional bond between the parents and the child," or other equivalent terms. The authors developed a standard coding protocol based on clinical and research literature on PCAs to generate 6 professional guidelines against which reports were analyzed, alongside the American Psychological Association's *Guidelines for Psychological Evaluations in Child Protection Matters*. Their findings regarding the use of questionnaires suggest that, in the absence of a standardized approach to employing psychological tests, Polish assessors may over rely on psychological tests not appropriate for child protection contexts.

To partially mitigate the above concerns, Budd (2005) recommends fully disclosing the limitations of the tests used and providing alternative explanations for the data. Assessors should be critical of the reliability of findings based on data collected through tests based on normative comparison groups that differ from the parent(s) being evaluated (Budd, 2005). On the use of psychological tests more broadly, Choate and Hudson (2014) cautions against overreliance on psychometric data and recommends using said data in a way that supplements or clarifies clinical data collected through interviews and observations. To guard against the use of extraneous tests or tests not appropriately tailored to the referral question(s), assessors should justify the relevance of each measure used (Choate & Hudson, 2014).

Challenges Associated with Data Interpretation

Faking Good Behaviour

A major challenge in the use of psychological tests is the difficulty of interpreting data. PCAs are understood as the clinical application of currently accepted science regarding parenting, as opposed to an exact science (Choate & McKenzie, 2015). However, there is no agreed upon clinical cutoff to measure minimal parenting standards (Krissie & O'Donnell, 2023; Bala & Leschied, 2008; Budd et al., 2011; Zilberstein, 2016). Put differently, these psychological tests cannot directly assess or predict parenting capacity, making data interpretation an important and challenging exercise.

In a 2014 US study examining the differences in characteristics between physically abusive parents who engaged in "faking good" behaviour versus those who didn't on the CAPI, Costello and Mcneil observed an interesting nonsignificant difference in observed parenting behaviours. The CAPI is a self-report measure covering six abuse risk domains that measures future abuse incidence rates. It also contains three validity

scales to identify confounding variables, including an elevated Lie scale that measures socially desirable responding through a Faking-good index. For the study, the CAPI was administered to parent-child dyads (n = 110) and used to divide the sample into two groups, those that may be purposefully engaging in faking-good behaviour versus those who weren't. Comparisons were then made between the two groups on characteristics such as recidivism rates. The authors found no significant difference between the two groups regarding recidivism rates (Costello & Mcneil, 2015). However, parents in the faking group differed significantly from their non-faking counterparts on IQ, which suggests that faking-good behaviour may reflect difficulty with comprehension rather than a higher propensity for risk. In other words, the evidence does not suggest that faking good behaviour is positively correlated with poorer prognosis with respect to future child abuse potential (Costello & Mcneil, 2015).

On the issue of faking good behaviour more generally, several commentators have cautioned against overinterpreting faking good behaviour (Costello & Mcneil, 2015; Krissie & O'Donell, 2023; Bala & Leschied, 2008). Specifically, faking good behaviour during pretreatment could be explained by a desire to do well in treatment, which spurs the belief that one needs to appear more competent while being assessed (Costello & Mcneil, 2015). This mindset could ultimately translate into putting more effort into treatment (Costello & Mcneil, 2015). Faking good could also be explained by external factors, such as the perceived threat of prosecution and incarceration, job loss, or ostracism from family or social connections (Bala & Leschied, 2008). The results of psychological testing may be further affected by the stress parents may feel while undergoing the court process (Krissie & O'Donell, 2023). These concerns about the interpreting of faking good behaviour underscore the importance of taking a nuanced approach to interpreting data collected during PCAs.

Challenges Associated with Data Interpretation in Different Contexts

Finally, the difficulty of accurately interpreting data is further compounded by the lack of guidance on how to interpret data on family functioning in different contexts, such as low socio-economic status (SES) and racial or ethnic minority backgrounds (Zilberstein, 2016). In his 2016 article examining how current practices in carrying out PCAs align with the literature on parenting in low SES contexts, Zilberstein finds that parent across different SES backgrounds adopt certain parenting styles to match the demands of their circumstances. These differences in parenting skills – which may, for example, prioritize obedience over cultivating the child's abstract thinking skills (Zilberstein, 2016) – may be misperceived as risk factors indicating maltreatment (Krissie & O'Donnell, 2023). In absence of structured guidance on how to interpret data in these contexts, the risk of unconscious bias increases when assessors are not directed to consider alternative explanations for the data (Zilberstein, 2016).

3. Preparing the Report

At the last stage of the PCA process, the assessor communicates the results into a legally useful report. The assessor engages with information collected and sources consulted throughout the data collection phase and uses their professional judgment, experience, and values to formulate recommendations (Bala & Leschied, 2008; Choate & Husdon, 2014; Budd, 2005). According to guidelines discussed in the literature, PCA reports should be written in plain English, emphasize descriptions of findings over interpretation, summarize the data used to formulate an opinion, and provide recommendations that are well-supported by the data (Budd, 2005; Choate & Hudson, 2014). While there is no requirement to organize PCA reports in a particular way, assessors should address limitations in the methodology used and provide alternative hypotheses (Budd, 2011). Opinions are varied on the optimal length of these reports; some commentators recommend between 12 and 20 pages while others see anywhere between 2 and 100 pages as acceptable, depending on the facts and complexity of the case (Aunos & Pacheco, 2021; Budd, 2011). Given that the audience for PCA reports is multidisciplinary, ranging from the court, lawyers, social workers, mental, and sometimes the parents themselves, assessors should take care to communicate findings in language that can be understood by the broad range of audience (Budd, 2011).

The professional background of the assessor completing the PCA can significantly influence the kinds of recommendations included in the report. In a 2021 study, Aunos and Pacheco investigated the quality and content of parenting capacity reports by comparing the conclusions and recommendations sections of reports from child welfare organizations (CW) and specialized intellectual disabilities service agencies (ID). The authors obtained reports (n = 13) provided by families who received specialized parenting services and child welfare services which were analyzed according to four grids that reflect best practices in PCAs for parents with an intellectual disability. Each report was coded and given a final score based on ratings according to the grids. The authors compared the proportion of "impediments" (a variable that can negative impact parenting) and "supports" (a variable with a positive impact on parenting) between the CW and ID group. Overall, ID reports presented more strengths-based statements and less impediments, while the converse was true for CW reports. This discrepancy between CW and ID assessors raises the broader question of who is best positioned to provide conclusions and recommendations.

There is a notable lack of consensus on whether reports should contain recommendations to the court on the dispositional outcome of the case (Bala & Leschied, 2008). While some believe that properly qualified assessors should be able to provide such recommendations, others caution against expressing opinions about legal questions that are the domain of the court (Bala & Leschied, 2008). When recommendations *are* made, it is clear that they are given great deference by the court. A 2008 Report by analyzing responses to a survey of different professionals and agencies across Ontario about court-ordered assessments found that judges self-report being influenced by court-ordered assessments in 88% of cases (Bala & Leschied, 2008). Writing in the Canadian context, Choate and Hudson (2014) suggest that, if assessors make dispositional recommendations such as terminating parental right, they must clearly delineate reasons for concluding that the child is better off in the care of the state. In the Polish context, Freedle and Zelechoski observed that the presence and type of recommendations ranged from reports that offered no recommendations to those making explicit recommendations about the legal outcome (2015). This observation with past findings that Polish and Canadians assessors may feel pressured by judges' expectation that mental health professionals take a definitive stand in child protection matters (Freedle & Zelechoski, 2015; Krissie & O'Donell, 2023).

Indigenous Parents

The Overrepresentation of Indigenous Children in Foster Care

A 2019 literature review of parenting capacity assessments and Indigenous parents in Canada identified the exclusion of Indigenous cultural considerations as the overarching theme in child welfare decisions (Sistovaris & Fallon, 2019). This problem is both complicated and explained using definitions of family and child-rearing based on Euro-centric constructs; the use of culturally inappropriate psychological tests and assessment tools; inherent biases; and the continuation of a colonial child protection narrative that fails to attend to the intergenerational trauma inflicted on Indigenous peoples (Sistovaris & Fallon, 2019).

The Legal of Colonialism

Indigenous children are vastly overrepresented in the child welfare system. According to Canada's most recent census conducted in 2021, 1,807,250 out of 36,991,981, or around five percent of Canada's total population reported an Indigenous identity. Indigenous children make up only 7.7% of all children under age 15 in the general population, but account for 53.8% of children in foster care (Statistics Canada, 2024).

Many commentators have linked the overrepresentation of Indigenous children in the child welfare system to the history of Residential Schools, the Sixties Scoop, and Canada's broader legacy of colonialism (Sistovaris & Fallon, 2019; Choate & Lindstrom, 2017; Sullivan & Charles, 2010; Ma et al., 2019; Lindstrom & Choate, 2016). In a 2021 study on the overrepresentation of First Nations children and youth involved in child welfare investigations in the Ontario child welfare system, Ma et al. examined the factors driving the high rate of investigations for First Nations children. Of note is the finding that First Nations groups were more likely to be investigated for exposure to intimate

partner violence, which the authors associate with the higher rate of risk factors including the effects of intergenerational trauma (2013). Intergenerational trauma also functions at a broader level, through the disruption of Indigenous family values and parenting patterns (Lindstrom & Choate, 2016; Sistovaris & Fallon, 2019).

Not enough attention has been devoted to the impact of intergenerational trauma and Canada's colonial legacy on Indigenous populations. Lindstrom and Choate (2016) observe that the effects of the Residential Schools – which include intergenerational trauma, community and cultural disconnects, loss of parental and caregiver modeling, and loss of cultural identity – are noticeably absent from working PCA models. One can therefore only rely on individual assessors to possess appropriate knowledge of these issues and on courts' willingness to attend to these factors in weighing the evidence (Lindstrom & Choate, 2016).

Culturally Appropriate Assessment Methods

The applicability of child protection practices – including PCAs – may be seriously jeopardized by the fact that the child welfare paradigm informing these practices is built on Euro-centric constructs such as attachment theory, the nuclear family, and development theory (Lindstrom & Choate, 2016). There is extensive evidence in the literature, particularly regarding attachment theory, that these constructs are not appropriately applicable to the context of Indigenous child-rearing (Sistovaris & Fallon, 2019; Lindstrom et al., 2016; Choate & Lindstrom 2016). In the context of child protection proceedings, attachment theory has been used to find non-familiar foster carers preferable to kinship placements by invoking the notion that the child has formed a secure attachment with the foster carers (Choate et al., 2019). There is considerable variation between Western and Indigenous philosophies of child-rearing (Sistovaris & Fallon, 2019; Lindstrom & Choate, 2016). This fact, coupled with the lack of evidence affirming the validity of attachment theory within Indigenous cultures of Canada (Choate et al., 2019), buttress the conclusion that PCA practices are not appropriate tools for evaluating the parenting competence of Indigenous parents (Sistovaris & Fallon, 2019).

The application of PCAs to Indigenous populations is further complicated by the concern that the data collection tools used in PCAs are normed on non-Indigenous populations (Sistovaris & Fallon, 2019). In their study on the degree of Aboriginal population inclusion in the norming of several tests – specifically the MMPI-2, PSI, PAI, and CAPI (2015), Choate and McKenzie found that First Nations, Métis, and Inuit populations were largely absent from the norming population for all the tests. This lack of inclusion suggests that the foundational constructs of psychometrics – which are an integral part of PCAs – are incompatible with Indigenous perspectives on parenting (Sistovaris et al., 2022).

Section 3: Case Law and Social Science Synthesis

In the jurisprudence, PCAs are generally considered within the framework governing the admissibility of expert opinion evidence. There is consensus within the legal and social science evidence that PCAs are not infallible instruments and that the lack of a standardized methodology is a serious concern.

The common law requirements of threshold admissibility govern the admission of PCA reports as evidence in ways that are generally consistent with recommendations in the social science literature. The legal inquiry into whether a PCA report is reliable, and therefore relevant or necessary, appears to align with the notion that parenting capacity assessors should prioritize reliability at all stages of the assessment. Courts' assessment of the reliability of PCA reports are consistent with the recommendation in the literature that a multi-method, multi-source, and multi-session approach generates the most reliable results. This can be seen in, for example, the *A.L.* court's critique of the assessor's choice of psychological tests and overly short observation sessions with the parent and child, as well as the *W(A)* court's critique of the assessor's failure to consult collateral sources. There is also a general expectation in both fields for assessors to have expertise in subject areas relevant to the assessment and have up-to-date knowledge about current best practices in administering PCAs. The application of the special scrutiny principle to PCA report evidence based on "novel science" is also in line with the suggestion in the literature that assessors should only adopt measures carefully tailored to and necessary for answering the referral question(s).

Although there is consensus across the legal and social science evidence with respect to best practices to be followed and pitfalls to avoid when conducting PCA, it is not fully clear how a PCA report's deviance from best practices is scaled to *how much less* weight is assigned to it by courts. In *C.(S.)* and *S.B.*, for example, the PCA report was admitted, but given less weight due to the assessors' failure to comply with requirements set out in O/Reg 25/07, which requires assessors document the materials they consulted, the methodology used, and the factual basis for their inferences. By contrast, in *N.(R.R.)*, the court decided on the weight to be attributed to a significantly flawed PCA report only after looking at the extent to which the assessor's findings are supported by the totality of the evidence (para 39). This ambiguity in the jurisprudence is perhaps a trickle-down effect of the ambiguity inherent in the notion of "good enough parenting," over which there is no formal consensus among child welfare scholars. A growing body of commentary in the social science literature advocating a contextual, intersectional approach to evaluating parenting competency only adds to the difficulty of evaluating PCAs against an already elusive definition.

There is also a disconnect with respect to the use of psychological tests and the qualifications expected of assessors. In the social science literature, many commentators have raised concerns about the applicability of psychological tests that have been normed on lower SES, racial and ethnic minority, and Indigenous communities. Embedded in this concern is a broader critique of mainstream PCA practices, which are derived from Euro-centric constructs incompatible with other cultural understandings of family, parenting, and child well-being. By contrast, judicial critiques of PCAs generally focus on whether assessors employed appropriate psychological tests and their interpretation of data, rather than the tests themselves. The concern about the applicability of psychological tests to the parent(s) under assessment is addressed through the expectation that assessors are qualified and experienced in working with individuals from a particular cultural or SES background. In *A.C.*, for example, the court did not scrutinize the assessor's use of standardized psychological tests – which presumably did not include a cultural fairness component – but highlighted instead her experience and training in working as a mental health service provider for Indigenous populations. The judicial expectation for assessors to interpret data in culturally-sensitive ways is seen again in *C.(S.)*, where the judge supplanted the assessor's interpretation of observation data with its own.

In conclusion, the analysis of the legal and social science evidence in this report reveals a shared attitude of cautiousness toward the use of PCAs in child protection contexts. The social science evidence has identified a number of limits in the way PCAs "measure" parenting competence, and the case law suggests a growing judicial awareness for many of these limits. However, the lack of consensus in the social science literature with respect to best practices – and even the question of whether there ought to be a standard approach to conducting PCAs at all – complicates courts' task of determining the admissibility and weight of PCA report evidence. This ambiguity in the social science evidence places the onus upon judges, as much as assessors, to actively scrutinize assessment protocols and guard against biases.

Appendix A

Relevant sections of the *Child, Youth and Family Services Act*, 2017 (*CYFSA*) and *O/Reg 155/18: General Matters Under the Authority of the Lieutenant Governor in Council* have been reproduced below.

Child, Youth and Family Services Act, 2017 (*CYFSA*)

Order for assessment

98 (1) In the course of a proceeding under this Part, the court may order that one or more of the following persons undergo an assessment within a specified time by a person appointed in accordance with subsections (3) and (4):

1. The child.
2. A parent of the child.
3. Any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child.

Criteria for ordering assessment

(2) An assessment may be ordered if the court is satisfied that,

(a) an assessment of one or more of the persons specified in subsection (1) is necessary for the court to make a determination under this Part; and

(b) the evidence sought from an assessment is not otherwise available to the court.

Assessor selected by parties

(3) An order under subsection (1) shall specify a time within which the parties to the proceeding may select a person to perform the assessment and submit the name of the selected person to the court.

Appointment of person selected by parties

(4) The court shall appoint the person selected by the parties to perform the assessment if the court is satisfied that the person meets the following criteria:

1. The person is qualified to perform medical, emotional, developmental, psychological, educational or social assessments.
2. The person has consented to perform the assessment.

Appointment of a person not selected by parties

(5) If the court is of the opinion that the person selected by the parties under subsection (3) does not meet the criteria set out in subsection (4), the court shall select and appoint another person who does meet the criteria.

Regulations

(6) An order under subsection (1) and the assessment required by that order shall comply with such requirements as may be prescribed.

Report

(7) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than 30 days, unless the court is of the opinion that a longer assessment period is necessary.

Copies of report

(8) At least seven days before the court considers the report at a hearing, the court or, where the assessment was requested by a party, that party, shall provide a copy of the report to,

(a) the person assessed, subject to subsections (9) and (10);

(b) the child's lawyer or agent;

(c) a parent appearing at the hearing, or the parent's lawyer;

(d) the society caring for or supervising the child;

(e) a Director, where the Director requests a copy;

(f) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b) (c), (d) and (e) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities; and

(g) any other person who, in the opinion of the court, should receive a copy of the report for the purposes of the case.

Child younger than 12

(9) Where the person assessed is a child younger than 12, the child shall not receive a copy of the report unless the court considers it desirable that the child receive a copy of the report.

Child 12 or older

(10) Where the person assessed is a child 12 or older, the child shall receive a copy of the report, except that where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm, the court may withhold all or part of the report from the child.

Conflict

(11) Subsections (9) and (10) prevail despite anything in the *Personal Health Information Protection Act, 2004*.

Assessment is evidence

(12) The report of an assessment ordered under subsection (1) is evidence and is part of the court record of the proceeding.

Inference from refusal

(13) The court may draw any inference it considers reasonable from a person's refusal to undergo an assessment ordered under subsection (1).

Report inadmissible

(14) The report of an assessment ordered under subsection (1) is not admissible into evidence in any other proceeding except,

(a) a proceeding under this Part, including an appeal under section 121;

(b) a proceeding referred to in section 138;

(c) a proceeding under Part VIII (Adoption and Adoption Licensing) respecting an application to make, vary or terminate an openness order; or

(d) a proceeding under the *Coroners Act*, without the consent of the person or persons assessed. 2017, c. 14, Sched. 1, s. 98 (14); 2017, c. 34, Sched. 4, s. 1.

O/Reg 155/18: General Matters Under the Authority of the Lieutenant Governor in Council

Timing of assessment

34. (1) A court may order an assessment under section 98 of the Act if the criteria set out in subsection 98 (2) of the Act are satisfied and,

(a) the court has received evidence, held a temporary care and custody hearing and made an order pursuant to subsection 94 (2) of the Act;

(b) the court has made a finding that a child is in need of protection pursuant to subsection 74 (2) of the Act; or

(c) all parties to the proceeding consent to the order being made.

(2) An order under clause (1) (c) may be made at any time during the proceeding.

Contents of assessment order

35. (1) In an assessment order, the court shall include the following:

1. The reason the assessment is necessary.
2. The specific questions that are to be addressed by the person performing the assessment.
3. What questions, if any, specifically require recommendations.

4. The time period for completing and filing the assessment report.

(2) Without limiting the generality of the questions that are to be addressed by the person performing the assessment under paragraph 2 of subsection (1), the court may order that some or all of the following be assessed:

1. The parenting capabilities of the proposed participants in the child's plan of care, including those attributes, skills and abilities most relevant to the child protection concerns.
2. Whether the proposed participants in the child's plan of care have any psychiatric, psychological or other disorder or condition which may impact upon their ability to care for the child.
3. The nature of the child's attachment to a proposed participant in the child's plan of care and the possible effects on the child of continuing or severing that relationship.
4. The psychological functioning and developmental needs of the child, including any vulnerabilities and special needs.
5. The current and potential abilities of the proposed participants in the child's plan of care to meet the needs of the child, including an evaluation of the relationship between the child and the proposed participants in the child's plan of care.
6. The need for and likelihood of success of clinical interventions for observed problems.

Contents of assessment report

36. Without limiting the generality of the contents of an assessment report, every assessment report shall include the following:

1. A resumé of the person performing the assessment outlining,
    i. the assessor's academic and professional qualifications and credentials, including any publications relevant to the questions being addressed, and
    ii. information regarding the type and number of assessments previously conducted by the assessor.
2. A schedule setting out,
    i. a summary of the instructions received, whether written or oral,
    ii. a list of the questions upon which an opinion is sought, and
    iii. a list of the materials provided and considered.
3. A schedule setting out the methodology used in carrying out the assessment, including the interviews, observations, measurements, examinations and tests, and whether or not they were conducted or carried out under the assessor's supervision.
4. The reasons and factual basis for any conclusions drawn by the assessor.
5. A direct response to the questions presented to the assessor in the assessment order, or an explanation of why these questions could not be addressed.
6. Recommendations where these were required of the assessor, or an explanation of why recommendations could not be made.

Appendix B

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Aunos, M., & Pacheco, L. (2021). Able or unable: How do professionals determine the parenting capacity of mothers with intellectual disabilities. *Journal of Public Child Welfare, 15*(3), 357-383.	Canada	PCA reports were analyzed qualitatively and quantitatively to explore if there was a difference between the reports mandated by child welfare versus reports mandated by specialized intellectual disabilities workers	N = 13 PCA reports	Study participants were receiving services from both Child Welfare and specialized intellectual disabilities services	Four grids were created to include elements pertaining to best-practices in PCAs for parents with an intellectual disability Each PCA report was rated according to grids
Ben-David, V. (2011). Social information in court decisions of compulsory child adoption in Israel. *Child & Youth Care Forum, 40*(3), 233-249.	Israel	A qualitative content analysis of court decisions	N = 130 court decisions of compulsory adoption cases		Content analysis was carried out through cross-case analysis Cases were coded
Budd, K. S., Connell, M., & Clark, J. (2011). Evaluation of parenting capacity in child protection. New York, NY: Oxford University Press.				Budd, K. S., Connell, M., & Clark, J. (2011). Evaluation of parenting capacity in child protection. New York, NY: Oxford University Press. doi:https://doi.org/10.1093/med:psych/9780195333602.001.0001 Retrieved from http://myaccess.library.utoronto.ca/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fbooks%2Fevaluation-parenting-capacity-child-protection%2Fdocview%2F861793931%2Fse-2%3Faccountid%3D14771	Budd, K. S., Connell, M., & Clark, J. (2011). Evaluation of parenting capacity in child protection. New York, NY: Oxford University Press. doi:https://doi.org/10.1093/med:psych/9780195333602.001.0001 Retrieved from http://myaccess.library.utoronto.ca/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fbooks%2Fevaluation-parenting-capacity-child-protection%2Fdocview%2F861793931%2Fse-2%3Faccountid%3D14771
Choate, P. W., & Engstrom, S. (2014). The 'good enough' parent: Implications for child protection. *Child Care in Practice, 20*(4), 368-382.	Canada	This articles canvasses definitions in the literature of "good enough" parenting			

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Choate, P. W., Kohler, T., Cloete, F., CrazyBull, B., Lindstrom, D., & Tatoulis, P. (2019). Rethinking Racine v Woods from a decolonizing perspective: Challenging the applicability of attachment theory to indigenous families involved with child protection. *Canadian Journal of Law and Society, 34*(1), 55–78.	Canada	This article summarizes the ongoing relevance of *Racine v Woods* in the child welfare context			
Costello, A. H., & Mcneil, C. B. (2014). Differentiating parents with faking-good profiles from parents with valid scores on the child abuse potential inventory. *Journal of Family Violence, 29*(1), 79-88.	United States (data utilized were collected through the University of Oklahoma Health Sciences Center)	Secondary data analysis examining differences between physical abusive parents with a faking or non-faking profile on the CAP by demographic information, psychopathology, behavioural observation data, and abuse recidivism	N = 110 parent-child dyads	The majority of parent participants (64.5 %) were female, and the average parent age was 32.4. The majority of children were male (60.9 %), and the average child age was 8.04. Parent participants were mostly non-Hispanic Caucasian (49.1 %), followed by African American (39.1 %), Hispanic (5.5 %), Native American (4.5 %), and Asian (1 %).	The faking-good index of the CAP was used to divide the sample into two groups
Cyr, C., Dubois-Comtois, K., Paquette, D., Lopez, L., & Bigras, M. (2022). An attachment-based parental capacity assessment to orient decision-making in child protection cases: A randomized control trial. *Child Maltreatment, 27*(1), 66-77.	Montreal, Canada	Maltreating parents and their children were randomly assigned to one of two PCA protocols (PCA-AVI or PCA-PI) Tested whether the parents' capacity to care at PCA completion is differentially associated with the four parental capacity indicators across the two PCA groups	N = 49	23% of the children were born to adolescent mothers, 80% of the caregivers did not complete high school, 28% of the families were part of ethnic minority groups, 87% were receiving social welfare or were unemployed	Evaluators of both PCA groups used the adapted French-version of the Steinhauer guidelines PCA-AVI group: evaluators conducted the *Attachment Video-feedback Intervention* PCA-PI group: evaluators conducted the *Psychoeducational Intervention activities*
Eve, P. M., Byrne, M. K., & Gagliardi, C. R. (2014). What is good parenting? The perspectives of different professionals. *Family Court Review, 52*(1), 114-127.	Australia	A mixed methods study using semi-structured interviews and a rating scale on the dimensions of parenting	N = 19 professionals	5 social workers, 5 psychologists, 5 lawyers, 4 magistrates Predominantly White, middle-class views on good parenting were surveyed	A constructivist grounded theory (GT) method was used to analyze the qualitative and quantitative data

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Flynn, S. (2021). Convergent identities, compounded risk: Intersectionality and parenting capacity assessment for disabled children. *Children and Youth Services Review, 129*, 1.	International journal	Conducted a scoping review (Lit search) Inclusion criteria: peer-reviewed and have adequate quality indicators , in English language, dated no earlier than 2008	N = 15 articles that were eligible for review		
Freedle, A., & Zelechoski, A. D. (2015). Parenting capacity evaluation in Poland: A descriptive analysis. *The International Journal of Forensic Mental Health, 14*(3), 181-192.	Poland	Descriptive study comparing the content of Polish parenting capacity evaluation reports to aggregated relevant professional guidelines	N = 27 reports	At the time of data collection, the population of the Polish province selected for this study was predominantly white and middle class	Information coded based on standard coding protocol developed based on a review of clinical and research literature on PCA
Choate, Peter W,PhD., R.S.W., & Hudson, Karen,L.L.B., Q.C. (2014). Parenting capacity assessments: When they serve and when they detract in child protection matters. *Canadian Family Law Quarterly, 33*(1), 33-48.	Canada	This article summarizes current practices and the literature on parenting capacity assessments			
Bala, N., Birnbaum, R., & Watt, C. (2017). Addressing controversies about experts in disputes over children. *Canadian Journal of Family Law, 30*(1), 71-128.	Ontario, Canada	This paper explores the role played by court-appointed experts in child-related disputes based on survey of legislation and jurisprudence in Ontario			
Budd, K. S. (2005). Assessing parenting capacity in a child welfare context. *Children and Youth Services Review, 27*(4), 429-444.	United States	This paper describes the components of a clinical practice model for mental health evaluations of parents in a child welfare context			
Houston, S. (2016). Assessing parenting capacity in child protection: Towards a knowledge-based model. *Child & Family Social Work, 21*(3), 347-357.	UK	A model for approaching the assessment of parenting capacity based on the application of three domains of knowledge in social work relating to facts, theory, and practice wisdom.			

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Key, D. J., Fisher, R. J., & Micucci, J. A. (2020). The MMPI-2 in parenting capacity evaluations: Scale elevations and effects of underreporting. *Professional Psychology: Research and Practice, 51*(6), 630-641.	Northeast United States	This study examined MMPI-2 profiles of 59 males and 217 females who completed the test as part of a parenting capacity evaluation following substantiated allegations of child abuse or neglect.	N = 230 profiles	59 males (21.4%) And 217 females (78.6%) ranging in age from 19 to 71 years old 139 (50.4%) identified as African American, 34 (12.3%) identified as European American, 20 (7.2%) identified as other ethnicity, and race or ethnicity was not reported for 83 (30.1%) cases.	Archival data were obtained from 276 individuals who had completed the MMPI-2 as part of a PCE between 2007 and 2017. The following information was collected on each individual from the case files: gender, age, race or ethnicity, educational level, and relationship to the maltreated child.
Krissie, F. S., & O'Donnell, P.,C. (2023). Practice tips for managing challenges in parenting capacity assessments in child protection court. *Family Court Review, 61*(4), 818-831.	United States	This article will provide a summary of the research in areas of human behaviour not clearly defined in the literature and highlight directions for future investigation that will help inform parenting capacity assessments in child protection court.			
Terry, C., & Lecci, L. (2022). Examining cognitive performance and psychopathology in individuals undergoing parental competency evaluations. *Professional Psychology: Research and Practice, 53*(2), 160-170.	United States	A qualitative study examining the cognitive functioning of 136 parental competency examinees who were undergoing court-ordered evaluations, as well as examined the relationship between cognitive and psychopathology.	N = 136 individuals aged 19-67	Participants were predominantly female (70.6%) and Caucasian (53.7%), African American (37.5%) , Native American (1.5%). Average education was 11.65 years (SD = 1.89) and ranged from 6 to 16 years.	Psychological evaluations were completed by a licensed clinical psychologist. Data were archivally extracted and analyzed using SPSS Statistics software.
Bala, N., & Leschied, A. (2008). Court-ordered assessments in Ontario welfare cases: review and recommendations for reform. *Canadian Journal of Family Law, 24*(1), 11-64.	Ontario, Canada	This paper is based on an unpublished Report that reviewed literature and jurisprudence on forensic child welfare assessments, and surveyed Ontario judges, lawyers, social workers and assessors on their experiences and concerns with these assessments.			

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Zilberstein, K. (2016). Parenting in Families of Low Socioeconomic Status: A Review with Implications for Child Welfare Practice. *Family Court Review*, *54*(2), 221–231.	United States	This article focuses on two aspects of child welfare practice: the evaluation of parenting capacity and service delivery. It examines, in particular, how well current practices and guidelines, as outlined in the literature, fit with more general research on families and parenting in low-SES environments and offers suggestions for improving practice			
Sistovaris, M. and Fallon, B. (2019). Parental Capacity Assessments and Indigenous Parents in Canada. *Policy Bench, Fraser Mustard Institute for Human Development*, 1–38.	Ontario, Canada	This literature review examines the applicability of PCAs to Indigenous parents [in Canada]. The review seeks to answer the following key question: are PCAs appropriate tools for evaluating the parenting competence of Indigenous parents? Electronic databases, websites and a hand search were used to identify records.			
Sullivan, R., & Charles, G. (2012). Disproportionate representation and First Nations child welfare in Canada. *Federation of Community Social Services*, 3-14.	British Columbia, Canada	This paper seeks to identify some of the patterns that may illuminate structural concomitants of disproportionality [in child welfare] and to review some approaches that go beyond the limits of traditional responses within residual social welfare systems.			
Lindstrom, G., & Choate, P. (2016). Nistawatsiman: Rethinking Assessment of Aboriginal Parents for Child Welfare Following the Truth and Reconciliation Commission. *First Peoples Child & Family Review*, *11*(2), 45–59.	Canada	The project shows the depth of disparities between present and historical practices and Aboriginal culture, using reference to the Blackfoot Confederacy in southern Alberta. The project draws upon a broad literature review as well as an expert consultation with six traditional Blackfoot Elders.	N = 6 traditional elders from the Blackfoot Confederacy in Alberta were consulted		

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Ma, J., Fallon, B., & Richard, K. (2019). The overrepresentation of First Nations children and families involved with child welfare: Findings from the Ontario incidence study of reported child abuse and neglect 2013. *Child Abuse & Neglect, 90*, 52–65.	Canada	A secondary analysis of the Ontario Incidence Study 2013 (OIS-2013) was conducted. Incidence rates were calculated and bivariate analyses were conducted, comparing investigations involving First Nations children to investigations involving White children.	N = 3,757 children who were subjects of an investigation because of maltreatment-related concerns	573 investigations involving First Nations children and 3,184 investigations involving White children	The information for the OIS-2013 was collected using a three-page data collection instrument. Child welfare workers completed the data collection form at the conclusion of an investigation that was opened or re-opened.
Choate, P., & Lindstrom, G. (2017). Parenting Capacity Assessment as a Colonial Strategy. *Canadian Family Law Quarterly*, *37*(1), 41–60.	Canada	The current project seeks to deconstruct the notion of a common assessment methodology bearing in mind data from a consultation with Blackfoot elders which the authors were privileged to conduct. The second consideration is public data made available through the Alberta Ministerial Panel on Child Intervention (Panel) on which one author (PWC) has been a member.			
Choate, P. W., & McKenzie, A. (2015). Psychometrics in Parenting Capacity Assessments: A problem for Aboriginal parents. *First Peoples Child & Family Review*, *10*(2), 31–43.	United States	A review was conducted of the test manuals for the MMPI-2, PAI, CAPI, AAPI, and PSI-4. Each was considered for the degree of Aboriginal population inclusion in the norming. A literature search, using Academic Search Complete, EBSCO and PsychInfo, was also conducted looking for studies identifying norming efforts that specifically targeted Aboriginal populations.			