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CONSIDERATIONS FOR CROWNS IN RECOMMENDING BAIL AND PROBATION ORDERS WHERE CHILD CONTACT MAY BE AN ISSUE

SUPERVISED ACCESS PROGRAM MINISTRY OF THE ATTORNEY GENERAL FAMILY JUSTICE SERVICES DIVISION

The purpose of supervised access centres that are part of MAG's Supervised Access Program is to provide a safe, neutral and child-focused place for supervised visits and exchanges between children and a non-custodial parent or other person, such as a grandparent where there is a concern for the safety of the child and/or the parent.

The divorce and separation process can be a very stressful time for children and their families. Criminal proceedings that stem from incidents of domestic violence increase the stress on children and parents. Supervised Access Centres do not get involved in the issues or positions of the respective parties. By remaining neutral, workers are better able to facilitate safe contact without undue stress on the child.

LEGISLATIVE FRAMEWORK OF SUPERVISED ACCESS

Supervised access is not regulated by statute. Therefore, when Judges order supervised access they are not able to ensure the adequacy or quality of supervision that is occurring. The Ministry of the Attorney General in response to this issue set up the Supervised Access Program to ensure safe supervised access in appropriate cases. Only centres that are part of the Supervised access Program are accountable to the Ministry of the Attorney to ensure an appropriate standard of service.

The Children's Law Reform Act (CLRA) provides the legislative framework for the provision of supervised access by the Supervised Access Program as follows:

Supervision of custody or access

34. (1) Where an order is made for custody of or access to a child, a court may give such directions as it considers appropriate for the supervision of the custody or access by a person, a children's aid society or other body. R.S.O. 1990, c. C.12, s. 34 (1).

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Consent to act

(2) A court shall not direct a person, a children's aid society or other body to supervise custody or access as mentioned in subsection (1) unless the person, society or body has consented to act as supervisor. R.S.O. 1990, c. C.12, s. 34 (2).

Therefore, a Court must be satisfied that a supervised access provider is prepared to assume the supervisory role in the particular matter before it makes an order pursuant to Section 32 (1). This requirement protects the service provider's ability to ensure that the integrity of its program is not compromised by clients who require services beyond what it can safely provide.

Centres cannot consent to provide service until the centre has conducted a complete intake process.

CONSIDERATIONS FOR "NO CONTACT" ORDERS

An Assistant Crown Attorney may wish to recommend to the Court a "no contact" provision in a bail or probation order in circumstances where it is clear that a Children's Aid Society (CAS) investigation will occur. The Supervised Access Program cannot provide services to a family where there is a child protection investigation ongoing. For example, if the nature of the allegation is an assault by an accused against a child, or one of his/her siblings, or any charge where the Crown Attorney is of the view that the CAS should be notified of a possible child protection concern that the CAS should explore, the Supervised Access Program cannot provide services. Once the child protection concern has been addressed to the satisfaction of the CAS, The Supervised Access Program may in fact be able to assist. It may make most sense in this type of case for an accused person to bring an application to vary an existing bail order or probation order to address that change of circumstance rather than try to build it into the initial bail or probation order.

CONSIDERATIONS FOR FRAMING EXCEPTIONS TO A "NO CONTACT DIRECTLY OR INDIRECTLY WITH THE COMPLAINANT AND CERTAIN NAMED CHILDREN" ORDERS

A number of bail and probation conditions meant to ensure that an accused have no contact with a complainant while facilitating appropriate contact with his children **DO NOT ENSURE SAFE FACILITATION OF CONTACT FOR THE COMPLAINANT OR SAFE VISITS FOR THE CHILDREN.**

An Assistant Crown Attorney may wish to consider the following in drafting careful conditions for those accused who wish to see their children and are not being investigated by the CAS:

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- If the incident is the precipitating factor for the separation, there is probably no Family Court Order that addresses custody and access.
- Supervised Access Centres do not enforce orders or agreements. They facilitate implementation by providing the safe location and supervision.
- If there is an existing Family Court Order:
 - The existing Family Court Order almost assuredly does not address the criminal offence that gives rise to the necessity of no contact with the complainant and supervised contact with the children. It is unlikely to include a supervised access regime, and even if it does, that supervised access regime may no longer be suitable given the intervening criminal offence.
 - Such wording as, “no contact directly or indirectly with the complainant and the children except in accordance with a Family Court Order” is ineffective because it assumes most often incorrectly that the index offence has been considered by the Family Law Court in addressing custody and access.
 - Such wording as “no contact directly or indirectly with the complainant or the children except for the purpose of carrying out an order of the Family Court for access” carries the substantial risk that the complainant will allow the abuser to attend the home to pick up the children. **The act of transferring the children is potentially the most dangerous time of all.**
 - Do not assume that the victim will go to court for a variation of an existing order. The experience of the Supervised Access Program is that complainants often do not and then feel pressured to comply with the existing order even when they feel it is dangerous to do so.

Why the Supervised Access Program?

- As stated above, the Supervised Access Program provides a stable, accountable service for safe supervised access.

* Note: There are some private supervised access programs in existence. If drafting conditions for an accused to use such a program, one should ensure there is careful consideration of how factually such a program addresses a complainant’s safety and that of her children.

- Family members and/or friends, even if well-intentioned, may well not be able to ensure safety or enforce no contact between the parties.

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- Fast food outlets are not necessarily safe places for access or exchanges just because they are “public.”

Suggested Wording

If there is no Family Court Order or the existing order does not address supervised contact, an Assistant Crown Attorney may wish to suggest that an accused:

“have no contact directly or indirectly with the children until there is a Family Court Order for access to the children by the accused that takes into consideration:

- a) the index offence; and**
- b) whether there should be contact between the accused and the children;**

and if contact with the children is contemplated,

- c) how to ensure that there is no contact with the complainant when the accused has access to the children, and**
- d) whether the contact by the accused with the children should be supervised by a Supervised Access Program.**

IF MAKING CONDITIONS FOR ACCESS USING A SUPERVISED ACCESS CENTRE

As an alternative to the Family Court route, an Assistant Crown Attorney may craft conditions that permit exchanges or supervised access at a Children’s Law Reform Act Supervised Access Centre if an accused is accepted by such a Program. For example, an Assistant Crown Attorney may suggest that an accused:

“have no contact directly or indirectly with his/her children except through supervised access at a Ministry of the Attorney General-funded Supervised Access Program with the consent of the complainant and if the accused is accepted at such a Program,”

“have no contact directly or indirectly with his/her children except access facilitated by a Ministry of the Attorney General-funded Supervised Access Program by way of an exchange at such a Program, with the consent of the complainant and if the accused is accepted at such a Program.”

GENERAL INFORMATION

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The above conditions will in and of themselves not suffice. An Assistant Crown Attorney will have to suggest some further specific conditions having regard to the specific family situation the Crown is addressing:

- Centres cannot determine whether a family should have supervised visits or supervised exchanges. Therefore an order must include whether the contact is to be by way of supervised visits or exchanges.
- Centres cannot determine whether the visits/exchanges are to occur weekly, bi-weekly etc. An order should specify frequency of contact.
- The duration and frequency of a visit should reflect the age and emotional state of the children and the level of conflict or violence between the parties.
- Centres cannot determine whether a family can discontinue use of the service or change from supervised visits to exchanges. Therefore, it is important to include a mechanism for review of the use of the service after a period of time.

Other Considerations

- Centres cannot provide service while there is an on-going CAS investigation.
- A specific Centre cannot be named in the order
- Centres limit visits to 2 to 2.5 hours duration.

Intake

- Appointments are required for intake interviews. Please do not send someone from the court to the centre expecting an interview or immediate access to the child/ren. A list of all centres and their contact numbers is available on the Attorney General's web site.

<http://www.attorneygeneral.jus.gov.on.ca/english/family/supcentres.asp>

- Centres cannot contact the complainant to inform her/him that the accused has an order for Supervised Access Program services. An Assistant Crown Attorney should consider how the complainant will be given the contact information for the centre and instructions about how to call.

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- Centres conduct separate intake interviews with each party using the service. No service can be arranged until both parties have completed the intake process.
- Each party is required at intake to sign an agreement for service and a release of information form.
- The centre will require a copy of any bail or probation conditions.

Reports

- Centres make notes of factual observations of the interaction between parents and children at the centre but do not provide reports with recommendations. Reports are available on request with the written consent of both parties. There are fees for reports payable in advance.
- If a client is legally aided, Legal Aid will pay for reports.

Fees and Hours of Operation

- Centre hours of operation for administration and visits/exchanges vary according to each centre.
- Fees for reports and fees for service are based on Ministry guidelines but vary according to each centre.
- Best suggestion: contact the Coordinator of the Centre for details pertaining to the centre.