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Judges' Ratings of the Best Interests of the Child
Custody and Access Criteria

By Isabel Mackay

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of the requirements for
the degree of Master of Arts
Department of Psychology
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The undersigned recommend to the
Faculty of Graduate Studies and Research

Acceptance of the thesis:

**“Judges’ Ratings of the Best Interests of the Child
Custody and Access Criterion”**

Submitted by Isabel Mackay
in Partial fulfillment of the requirements for
the degree of Master of Arts

Chair, Department of Psychology

Thesis Supervisor

Carleton University
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Abstract

Canadian Federal judges ($N=210$) were presented with 77 criteria related to the best interests of the child (BIC). The study examined the respondents' ratings of a range of criteria considered relevant to the BIC. The study also explored whether judges' ratings vary by demographic or personal characteristics and sought to provide support for the theoretical framework advanced by Jameson et al. (1997). On average, judges rated only 1 item as Essential, 10 items as Extremely Important and 10 items as Not Important or Marginally Important. The remaining 56 items were rated Important or Very Important. The significance of many of the criteria would appear to depend greatly upon the specific circumstances and the individuals involved in a particular case and does not vary significantly by characteristics of the respondent. The study provides additional evidence as to the reliability of the BIC questionnaire. The factor analysis did not produce groupings that coincided with the theoretical framework proposed by Jameson et al. (1997).

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Judges' Ratings of the Best Interests of the Child Custody and Access Criteria

Custody and access to children is often a major source of conflict between divorcing parents. When couples cannot agree on a parenting plan on their own, or with the help of a mediator, the decision is put into the hands of the judiciary. Studies report that, while the vast majority of custody cases are settled out of court, between 10 and 17 percent of divorces involving children become embroiled in a legal dispute over custody (Austin and Jaffe 1990; Hauser, 1985; Lowery, 1984). Legally, in making a custody and access determination judges must consider a number of factors as set out under the Divorce Act and as articulated in the Children's Law Reform Act. The goal for judges in such cases is to determine what form of custody arrangement optimally serves the best interests of the child (BIC). Yet the legal criteria for making such custody decisions is not necessarily determinative. Critics claim that the BIC standard is overly vague and it has been suggested that the lack of predictability and consistency in the application of custody and access law can have the undesired effect of leading to even higher rates of litigation and continued conflict between parents (Boyd, 1996; Hauser, 1985; Lowery, 1984; Pearson & Gallaway, 1998). Further, due to the flexibility of the BIC standard, judges have considerable discretion in making their determinations as to the BIC, and personal characteristics, moral or gender biases may often come into play (Allen & Burrell, 1996; Fraser, Fish & MacKenzie, 1995; Reidy, Silver & Carlson, 1989; Rosnes, 1997). As well, disputed custody cases often involve couples with problematic histories, and impaired functioning within the marriage (Hauser, 1985). Custody disputes often involve unresolved issues between the parents, such as power struggles, opposing beliefs, allegations of abuse, drug or alcohol problems, homosexuality, and mental illness,

which make it difficult to keep the focus on the best interests of the children (Rosnes, 1997; Sorensen, Goldman, Ward, Albanese, Graves & Chamberlain, 1995).

Therefore, increasingly, social workers and mental health professionals are being asked to perform custody assessments on behalf of the courts and, in some cases, to make recommendations as to which parent or what type of custody arrangement will best meet the BIC (Ash & Guyer, 1984). However, psychologists and judges may not always agree on the importance of certain factors in making custody decisions and even among psychologists there is no consensus as to whether and to what extent various factors relating to custody may have negative consequences on the development of children of divorcing parents (Amato & Keith, 1991; Arditti, 1992; Ash & Guyer, 1986; Clay, 1994; Lowery, 1981; Lowery, 1984; Reidy et al., 1989).

For these reasons, as noted by Reidy et al. (1989), the task of determining what is in the BIC is often a complex balancing of numerous competing factors, and there is a perception of unevenness and uncertainty in the area of custody and access law (Lowery, 1984). Research in this area has attempted to examine the process by which judges make custody and access determinations (Lowery, 1981; Lowery, 1984). Svenson (1996) notes that decision-making is often a kind of conflict resolution in which contradictory goals have to be negotiated and reconciled, yet emphasizes that the human decision maker is restricted by the amount of information that can be handled at any one time. Lowery (1981) hypothesized that, when given a multiplicity of factors to be considered, people will actually only use a few criteria. Ebbeson and Konecni (1975) suggested that the information integration theory might offer useful insights into judges decision processes. This theory deals with the process that allows people to combine or integrate social information to make decisions and suggests

that judgements are the result of a particular combination of the subjective value and relative weight assigned to different pieces of available information (Anderson, 1971). As a first step, therefore, Lowery (1981) examined the subjective value that judges attached to some sixteen criteria deemed relevant to the best interests of the child in making custody and access determinations. Building on this work, the current study examines Canadian judges' ratings of a much larger set of items believed to be related to the BIC in order to assess whether judges do attach greater importance, or value, to certain criteria than to others.

Historical Perspective

Mason (1994) suggests that the legal history of child custody is far more about the rights of fathers and mothers than it is about the welfare of children. Indeed, historically, under Roman and early English law, fathers were afforded absolute control over their children, including the natural right to custody (Derdeyn, 1976). However, as noted by Derdeyn (1976), in the mid-1800's, the courts, guided by the doctrine of 'parens patriae' (parent of the country), would intervene in child custody matters only when the children were deemed to be in need of protection.

In time, this changing emphasis from fathers' rights to the needs of the child, along with the emerging status of women in society, led to the development of the tender years presumption (Derdeyn, 1976). The tender years doctrine was based on the assumption that any mother could generally meet the needs of a young child better than the child's father could. As a result, for some time the legal decision as to what was in the best interests of a particular child was largely influenced by the child's age. As noted by Mason (1994), the tender years doctrine essentially meant that custody of children of tender years was awarded to the mother, unless the mother was considered unfit. Thus the natural law shifted in favor

of maternal custody and, since the early 1900's, custody of the children, especially younger children, was most often given to the mother (Halikias, 1994; Lester, 1978; Mason & Quirk, 1997).

In the decades that followed, as social perceptions about gender and parenting continued to evolve and with the establishment of no-fault divorce laws, custody decisions began to reflect the belief that both parents may be equally fit or unfit to care for children (Halikias, 1994). With the growth of the social and behavioral sciences in the 1960's and with a growing awareness and consideration of the potentially negative impacts of divorce on children, the BIC standard found its way into the custody and access statutes in most Western countries and states, including Canada (Charnas, 1981; Derdeyn, 1976; Stamps & Kunen, 1996). Under the BIC standard, the court is expected to evaluate the circumstances of each case and determine the best arrangements for the child (Stamps & Kunen, 1996). Gradually it became evident that there were numerous interdependent factors that needed to be considered in determining what was truly in the best interests of children of divorce. As a result, the courts began to turn to social workers and mental health professionals to assist them in assessing the psychological and developmental aspects involved in custody cases and in determining which parent or custodial arrangement would best meet the needs of the children (Keilin & Bloom, 1986; Mason, 1994).

Since the 1970's, particularly in the United States, there has been a growing movement toward the establishment of a joint custody preference in custody and access law (Stamps & Kunen, 1996). However, Charnas (1981) suggests that, in contested child custody cases, joint custody is not always a workable option due to the lack of cooperation between the parents. Further, Mason (1994) argues that changes in law do not necessarily force

changes in judicial attitudes. In this regard, Derdeyn (1976) suggests that the BIC standard has traditionally supported the mother's claim and, as reported by Boyd (1996), mothers continue to obtain sole custody in approximately 74 percent of cases decided by divorce courts in Canada.

Legal Perspective

Section 16(1) of Canada's 1985 Divorce Act empowers judges to determine where and with whom a child will live, as well as how the parents will make important decisions about the child's future. Although not specifically defined in the Divorce Act, the basic principle underlying any determination of custody and/or access is that all decisions should be made in the BIC. Section 16(8) of the Divorce Act states that in making an order under this section, the court shall take into consideration only the BIC of the marriage as determined by reference to the condition, means, needs and other circumstances of the child. The Divorce Act provides some additional guidance as to how the courts should make decisions relating to custody and/or access in such cases. For example, Section 16(9) specifies that the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child. Finally, Section 16(10) notes that the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the BIC and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact. This statement is often referred to as the friendly parent provision (Stamps & Kunen, 1996). The Divorce Act also provides for the possibility of different custodial arrangements, including joint custody.

As noted earlier, however, while the legal principle of the BIC may appear to be fairly simple and straightforward, the determination of what precisely is in the child's best interest is not. In practice, the application of this principle on a case-by-case basis has been unpredictable, in spite of the fact that the Children's Law Reform Act (the Act), R.S.O. 1980, c. 68, sets out a list of specific factors that a judge must consider when making custody and/or access determinations. The criteria are contained in Section 24(2) of the Act, which stipulates that,

- ...in determining the best interests of the child...a court shall consider all the needs and circumstances of the child including,
- a. the love, affection and emotional ties that exist between the child and
 - (i) each person entitled to or claiming custody of or access to the child,
 - (ii) other members of the child's family who reside with the child, and
 - (iii) persons involved in the care and upbringing of the child;
 - b. the views and preferences of the child, where such views and preferences can be reasonably ascertained;
 - c. the length of time the child has lived in a stable home environment;
 - d. the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
 - e. any plans proposed for the care and upbringing of the child;
 - f. the permanence and stability of the family unit with which it is proposed that the child will live; and
 - g. the relationship by blood or through an adoption order between the child and each person who is a party to the application.

Section 24(3) of the Act also goes on to note that past conduct will only be taken into consideration if it is deemed to be relevant to the person's parenting ability.

These two statutes then, provide the legal criteria that must be considered by a judge in Canada in making a determination with regards to the best interests of a child. However, Canada is currently considering a major overhaul of the Divorce Act and has appointed a special joint committee to assess the need for a more child-centered approach to family law policies that would emphasize joint parental responsibilities and child-focused parenting

arrangements based on children's needs and best interests (Pearson & Gallaway, 1998). In its recently published report, the committee presents a list of fourteen criteria that they recommend parents and judges consider in determining the BIC. Several of the items are carried over from the list specified in the Act and/or in the current Divorce Act. However, the committee's list does not include the length of time the child has lived in a stable home environment, nor the relationship by blood or through adoption between the child and each of the parties. Both of these items appear in the current list of BIC criteria. In addition, at page 45, the committee recommends that the following factors, which are not included in the current list of BIC criteria contained in the Act, should be taken into consideration when making custody and/or access determinations:

- the child's cultural ties and religious affiliation;
- the importance and benefit to the child of shared parenting, ensuring both parents' active involvement in his or her life after separation;
- the ability of the child to adjust to the proposed parenting plans;
- any proven history of family violence perpetrated by any party applying for a parenting order;
- there shall be no preference in favour of either parent solely on the basis of that parent's gender;
- the willingness shown by each parent to attend the required education session; and
- any other factor considered by the court to be relevant to a particular shared parenting dispute.

This brief review of the historical and legal perspectives on custody and/or access practices reveals that the criteria for decision making in this area have not been static in the past. As well, it suggests that they will continue to change and evolve as the concept of the best interests of the child is better understood and communicated to all parties involved in a divorce proceeding.

It is also worth noting that, while these statutes spell out the key factors that are considered legally relevant to custody decision, in addition, judges have considerable discretionary power since they are generally required to consider all relevant factors, which would compel them to consider any issue deemed to be relevant to the child's welfare by social, legal or psychological standards. As well, there is nothing in these laws that stipulates what weight each factor should be given. Critics of the BIC test claim that it is too vague and elusive; that it is merely a general principle and gives no indication of the degree of attention that should be paid to the child's needs (Derdeyn, 1976; Mason, 1994). Charnas (1981), suggests that it is not a lack of guidelines or criteria that confounds decision making in this area, but rather, the lack of consistency with which they are applied by the various professionals involved in custody cases. Charnas (1981) notes that the concept of BIC is not operationally defined; that it may have different meanings to different groups of professionals; and, in its broadest scope, includes almost every social, psychological and physical aspect of a child's life. It is for this reason that the courts have increasingly looked to mental health professionals for input in the resolution of custody and access disputes.

Psychological Perspective

One of the earliest attempts by psychologists to address the issue of child placement in custody and access disputes was the work of Goldstein, Freud and Solnit (1973). In their text, Beyond the Best Interests of the Child, they advanced a model that introduced the concept of the 'psychological parent' and set out specific guidelines for legal decision-making in custody and access cases (Goldstein et al., 1973). The psychological parent is described as the most appropriate adult to parent the child, regardless of whether that person is the natural parent, the mother, or the father. They recommended exclusive control by the

custodial parent and emphasized the importance of the psychological well being of the child. The model held that in order to protect the child's psychological health, the child must be a member of a family where he or she receives affection on a continuing basis (Goldstein et al., 1973). Any disruptions of continuity, even periodic court-ordered visitations were viewed as being detrimental to the child's psychological development (Goldstein et al., 1973).

Fundamental to the Beyond the Best Interests of the Child model was the psychological concept of bonding or 'attachment'. Attachment theory, largely attributed to the work of John Bowlby, places great importance on the effect of early parent-child relations on the child's psychological development and on their ability to form satisfying relationships later in life (Grusec & Lytton, 1988). Bowlby suggested that infants have a predisposition to form a primary attachment relationship with a single, available and responsive person, that remains more important than other relationships and enables them to develop a sense of security and confidence in the world around them (Grusec & Lytton, 1988). The Beyond the Best Interests of the Child model gained significant support in the 1970's and effected a shift in the thinking and decision-making of professionals involved in custody and access disputes, which at the time was largely guided by the tender years doctrine (Batt, 1992). However, critics of the Beyond the Best Interest of the Child model argued that it was too simplistic and had the effect of rushing the courts to making a custody determination, ignoring the larger social environment in which the family system is rooted (Batt, 1992).

Kurdek (1981) advanced a broader framework from which to view the divorce process and factors related to the impact of divorce on children's adjustment. Kurdek (1981) suggested that divorce needs to be understood in terms of a system of psychological, familial,

social and cultural contexts within which individual development occurs. Specifically, Kurdek (1981) noted that these systems involve the values and beliefs surrounding family life, the stability of the post-divorce environment, the social supports available, the nature of family interactions, the children's ability to deal with stress and to cope with change, and the interactions among these systems. However, Kurdek (1981) acknowledged that it was difficult to specify which of these systems should be given the most weight and did not offer specific guidelines for the courts to adopt in making custody and access determinations.

Other researchers began to undertake long-term clinical studies of divorced families in order to assess the impact of divorce on children's adjustment and to support emerging theoretical positions relating to the BIC (e.g. Hetherington, 1985; Wallerstein, 1991). Wallerstein (1991) argued that it is the quality of the child's relationship with each parent that is the most important factor in adjusting to divorce. Hetherington (1985) held that divorce presents a series of stressful life changes, potentially including changes in economic status, residence, child care arrangements, family and social relationships, and suggested that children's adjustment to divorce could be understood in terms of how quickly and how well the parents and children adjusted to these family reorganizations. Both Wallerstein (1991) and Hetherington (1985) emphasized the importance of minimizing hostility and conflict between the parents and of maintaining the child's relationship with the non-custodial parent. Over time, these views began to gain wide acceptance among professionals involved in custody and access determinations and there began a shift towards the joint custody preference, which has now become a legislated presumption in many of the United States.

Joint custody is seen as an attractive solution that allows the child to maintain relationships with both parents, thus helping to diminish feelings of abandonment by the non-

custodial parent and promoting greater cooperation and sharing of child care responsibilities between the parents and their larger family systems (Fidler, Saunders, Freedman & Hood, 1989). However, as noted by Fidler et al. (1989) studies of the adjustment of children in various custody arrangements have shown that certain family characteristics have negative effects on children, regardless of the form of custody. Increasingly, researchers are suggesting that the benefits of joint custody depend to a great extent on the ability of both parents to be flexible and cooperative and on their willingness to set aside their own hostilities and minimize family conflicts (Fidler et al., 1989). Unfortunately, in disputed custody cases, which often involve difficult to determine issues and complex family dynamics, these conditions are rarely met and researchers have suggested that joint custody in such situations may have detrimental effects on the children and lead to higher rates of re-litigation (Austin & Jaffe, 1990).

Effects of Divorce on Children

As discussed above, while the goal for a judge in a disputed custody and access case is to make a determination that serves the best interests of the child, there is a lack of consensus as to the potential negative impacts on children in any given divorce situation. Considerable research has been conducted examining the effects of divorce on children. Many studies have reported that children from divorced families experience lower levels of well-being in terms of scholastic achievement, conduct, psychological adjustment, self-esteem, social competence and interpersonal relations (Amato & Keith, 1991). A number theories have been advanced to explain how divorce may produce such effects in children including father absence, interparental hostility, economic distress, multiple life stresses, parental adjustment and short-term crisis (Grych & Fincham, 1992). Kalter, Kloner, Schreier

and Okla (1989) found that the parent's adjustment was the best predictor of children's adjustment following divorce. Amato and Keith (1991) conducted a meta-analysis of some 92 studies, (including the works of such well-known researchers in this area as Hetherington and Wallerstein) that compared children living in divorced single-parent families with children in intact families on various measures of adjustment. Their study focussed on three factors, which they hypothesized would account for the bulk of negative effects of divorce on children, namely parental absence, economic disadvantage and family conflict. They concluded that parental absence may be a factor in children's reaction to divorce; that differences between children from intact and divorced families are less pronounced when income is controlled; and that post-divorce conflict between parents is associated with a low level of well-being among children (Amato & Keith, 1991). Amato and Keith (1991) also suggested that the long-term consequences of parental divorce might be even more serious than the short-term emotional and social problems often seen in children of divorce. Thus, if judges are aware of this research and agree that these factors, and others that have been studied, are likely to have a negative impact on children of divorce, then one would expect that they would rate these items as being important in making a determination with respect to custody in divorce proceedings.

Unfortunately, however, there is a good deal of inconsistency in the literature relating to the consequences of divorce on children and researchers have reached quite different conclusions about issues relating to the best interests of the children of divorce (Amato & Keith, 1991). For example, as noted by Healy, Malley and Stewart (1990), researchers, Santrock and Warshak (1979) and Peterson and Zill (1986), found that children in divorcing families exhibited more behavior problems when placed with opposite-sex custodial parents,

yet Lowenstein and Koopman (1978) and Kurdek (1981) found no relationship between negative adjustment and the sex of the custodial parent (Healy, Malley & Stewart, 1990). Other researchers have questioned whether the negative effects on children typically attributed to divorce may be attributed to characteristics present in the family environment before separation occurs, such as interparental conflict and parenting skills and again, support for both sides of this hypothesis have been reported (Forehand, Armistead & David, 1997). As noted by Forehand et al. (1997) different methods of data analysis, use of small non-representative samples, lack of appropriate comparison groups, time of assessment relative to the parents' divorce and other factors contribute to the conflicting results. Thus, in the absence of any real consensus among psychologists on these issues, researchers in this area have undertaken to examine the importance that judges and other professionals involved in custody and access cases assign to various factors considered pertinent to the BIC.

Factors Considered Relevant to the BIC

It is also important to realize that not all children are affected in the same way by divorce and they may react in different ways to different forms of custody. Over the past several decades, in examining the effects of divorce on children, researchers have looked at differential child adjustment in post-divorce families from a number of perspectives (e.g. Kurdek, 1981; Wallerstein, 1991). It has become evident that there are numerous interdependent factors that should be considered in determining what is truly in the best interests of children of divorce (Wallerstein, 1991). Research has also shown that in attempting to predict the adjustment of a child of divorce it is necessary to examine and assess the nature of the parent-child and parent-parent relationships, the individual characteristics of the child, the strengths and weaknesses of each parent and the

characteristics of the larger social system in which the family is embedded (Wallerstein, 1991).

Based on this research and drawing as well from statutes setting out the legal basis for custody and access decision making, Jameson, Ehrenberg and Hunter (1997) developed a set of criteria deemed to be relevant the BIC. Jameson et al. (1997) then organized these criteria into an assessment framework, or model, consisting of four scales that incorporate each of the areas of assessment suggested by Wallerstein (1991). As well, Jameson et al. (1997) developed best interests of the child questionnaire (BICQ) as a means of assessing the relative importance that certain sample populations assign to these different areas and to the individual BIC criteria that comprise them.

Jameson et al. (1997) explain that the first scale is designed to take into account current findings regarding the importance of variables relating to the relationship between the parents, such as cooperation and low levels of conflict, in mediating the effects of divorce on children. Other examples of parent-parent relationship BIC items would include emotional abuse, physical violence in the parents' relationship and each parent's willingness to allow the child to maintain contact with the other parent (Jameson et al., 1997).

The second scale, the parent-child relationship scale, looks at characteristics of the child's relationship with each parent. Items in this scale include sexual or physical abuse at the hands of a parent, the child's affection for each parent and the extent of contact with each parent before and after the separation (Jameson et al., 1997).

According to the model, the third scale emphasizes the needs of the child and thus contains criteria often seen in legal statutes pertaining to child custody and access, such as the preferences of the child and the child's emotional, intellectual and health needs. Other

items included in this group relate to issues that have been found to be important to children's post-divorce adjustment, such as minimizing disruptions to their daily routine, education, social and recreational activities during and after the divorce period (Jameson et al., 1997).

The fourth scale, the qualities and abilities of the parents scale, looks at each parent's capacity to meet these various needs of the child. Thus items such as parenting/disciplining style, understanding of child development, the parent's history of drug, alcohol or childhood abuse are included in the list of criteria in this area (Jameson et al., 1997). This scale also encompasses the final area of assessment proposed by Wallerstein (1991), that is, the family's broader social system, and includes items such as each parent's ability to provide access to other children of the same age, a stable community environment and the child's extended family.

However, while Jameson et al. (1997) appear to have developed a comprehensive model for assessing the BIC, it is not clear whether and to what extent judges may take these factors into account in deciding on custody and access in the course of divorce proceedings.

Previous Research Involving Judges' Ratings of BIC Criteria

As noted earlier, Lowery (1981) conducted a study to examine the importance that judges assign to various criteria deemed to be pertinent to the BIC. Lowery asked eighty male U.S. judges to rate 20 items considered pertinent to the BIC and to respond to an additional 34 questions relating to these items. Lowery (1981) concluded that judges do indeed attach greater importance to some factors than to others. As well, Lowery found that the judges' ratings of the 20 items clustered around three significant factors. She described Factor 1 as representing the judge's assessment of each parent as a responsible, mature adult,

Factor 2 as reflecting the continuity and diversity of social relationships in the custodial home, and Factor 3 as representing the wishes of the child (Lowery, 1981). Lowery (1981) noted that Factors 1, 2 and 3 accounted for 47 percent, 16 percent and 15 percent of the variance in the ratings, respectively. Lowery (1981) also suggested that there may be some discrepancies between the legal standards for custody and the standards indicated by psychological theory and research, such as keeping a young child with the mother and keeping a child with the parent of the same sex, and she advocated further research to investigate the specific nature of these differences.

Charnas (1981) conducted a study in which she asked 72 judges and 109 mental health professionals to review a simulated child custody evaluation in which one parent is depicted as the 'psychological parent'. The participants were then asked to select the custodial parent and answer a number of questions relating to why and how they made that choice. The results showed that both groups of professionals were influenced by the quality of the parent-child relationship rather than by traditional doctrines of parental fitness or tender years, or by stereotyped/subjective perceptions (Charnas, 1981). However, as noted by Charnas (1981), her sample was drawn from the members of a national organization highly dedicated to issues in child custody and divorce, and may therefore not be generalizeable.

In a subsequent study conducted by Lowery (1984), 104 mental health professionals were administered the same BIC questionnaire that the judges had completed in her 1981 survey. Lowery (1984) then compared the ratings of the two groups and found that they did in fact differ in their attitudes about the importance of specific criteria, such as, the child's wishes, the need to keep a young child with the mother and/or in a two-parent home, a

parent's biological relationship to the child and temporary custody with one parent. Lowery (1984) concluded that the pattern of differences suggested that judges may tend to emphasize the objective, practical information that is available to them, such as individual characteristics of the parents and the contribution each proposes to make to the physical care and supervision of the child. Lowery (1984) suggested that the challenge for mental health professionals involved in custody and access proceedings is to educate the courts about the individual needs of the child and to assess which parent's style of relating to the child would be most beneficial to the child's development.

In 1986, Keilin and Bloom asked American mental health professionals working in the area of custody assessment to rank order a set of 21 items pertaining to the BIC. The 82 participants were also asked to identify those that they judged to be important to deciding on whether to recommend joint versus sole custody. Reidy et al. (1989) performed a similar study that compared 146 California judges' ratings of the same 21 items to those of the mental health professionals surveyed in Keilin and Bloom's 1986 study. These studies showed that, while the two groups agreed on the relative importance of many of the BIC criteria, psychologists and judges disagreed on the importance of certain factors in deciding between joint and sole custody. The discrepancies were particularly apparent where there was some question of potential moral subjectivity, such as when one parent was involved in a homosexual relationship (Keilin & Bloom, 1986; Reidy et al., 1989).

More recently, researchers have examined the influence of allegations of abuse in custodial decision-making (Ackerman & Ackerman, 1997; Clark, 1990; Jameson et al., 1997; Rosnes, 1997; Sorensen et al., 1995). In 1995, Sorensen et al. analyzed actual outcomes in 60 contested custody cases which were adjudicated between September 1988 and October

1990 throughout Florida. In 1997, Ackerman and Ackerman replicated Keilin and Bloom's earlier study with a group of some 200 American psychologists. Ackerman and Ackerman (1997) developed an expanded, 40-item survey that included items relating to sexual, physical and substance abuse by one or both parents. Rosnes (1997) reviewed the language and reasoning behind judicial decision-making in 16 Canadian child custody and access cases involving violence, during the period April 1992 and April 1994.

Although direct comparisons are not possible between these studies, the results suggest that there are discrepancies in how the different groups of judges and psychologists appear to consider allegations of abuse in custody cases. Sorensen et al. (1995) reported that 83 percent of the cases they analyzed involved at least one allegation of child abuse, spousal abuse or parental substance abuse. Further, they noted that the judges in their sample were less likely to award primary physical residence to parents against whom allegations of maltreatment have been made, when the other parent is absent from such allegations (Sorensen et al., 1995). Conversely, Ackerman and Ackerman (1997) found that 90 percent of psychologists would not recommend one parent over the other on the basis of allegations of abuse alone. Moreover, Rosnes (1997) concluded that her analysis shows that the Canadian judiciary appears to consider that a certain amount of male violence in relationships is acceptable and does not preclude a man from being a good father. Rosnes (1997) also stated that her findings deviate from the work of Clark (1990) concerning the Canadian judiciary's response to violence in child custody and access. In addition, while Sorensen et al. (1995) found no evidence that parental substance abuse reports influenced judicial decision-making, Ackerman and Ackerman (1997) reported that 81 percent of

psychologists would recommend placement with the other parent when one parent was an active alcoholic.

Building on these findings, Jameson et al. (1997) developed a list of some 60 items which were considered to be relevant to making decisions concerning the custody of children of divorcing parents, including several items that addressed the issue of abuse. Individual items were drawn from psychological literature examining the effects of divorce on children and from legal guidelines relating to the BIC (Jameson et al., 1997). As noted earlier, Jameson et al. (1997) developed the BICQ to assess the relative importance of the 60 criteria in certain sample populations. In addition, Jameson et al. (1997) proposed a theoretical framework, or model, to organize these criteria into four scales, or areas of assessment, relevant to custody and access evaluations, namely, items dealing with the parent-parent and the parent-child relationships, items dealing with developmental issues of the children, and items dealing with the abilities of each parent to meet the needs of the child.

In order to test the validity of their model and to measure the relative importance of the 60 items to psychologists, Jameson et al. (1997) conducted a survey of some 78 psychologists working in British Columbia. Jameson et al. (1997) reported high reliability estimates for the BICQ as a whole and adequate to good internal consistency for the four scales or areas of assessment. They also found that, for each area of assessment, the items reduced to two or three factors that accounted for approximately half of the total variance in the category. In addition, Jameson et al. (1997) found that psychologists rated sexual or physical abuse of the child by a parent, physical violence in the parents' relationship, and each parent's current alcohol or drug abuse, among the higher rated BIC criteria when making child custody and access recommendations (Jameson et al., 1997).

In 1994, Clay administered a slightly expanded version of Jameson's BICQ to a group of lawyers and psychologists in Alberta. Criteria added to the questionnaire included items dealing with emotional abuse, biological relationship to the child, professional recommendations and a number of items looking at certain characteristics of the parents. Some of these items had been included in Lowery's (1981) survey questionnaire and others were developed based on Clay's review of the literature in this area. Clay (1994) compared the responses of the two groups in order to assess whether there were differences in terms of their mean ratings of the importance of various criteria related to the BIC (Clay, 1994). The results showed strong agreement between the two professions on the items rated the most and the least important and substantial agreement on most other criteria, but Clay (1994) failed to provide any support for the scales or areas of assessment hypothesized by Jameson et al. (1997).

It has been nearly twenty years since Lowery (1981) conducted her original study and over ten years since Reidy et al. (1989) conducted their surveys of U.S. judges. As noted earlier, the lists of BIC criteria administered to judges in the Lowery (1981) and Reidy et al. (1989) studies did not include any items that specifically addressed the issues of sexual abuse, domestic violence and substance abuse. As well, the first two of these studies involved U.S. subjects. Finally, the studies conducted by Canadian researchers Jameson (1997) and Clay (1994) have been limited to populations composed of psychologists and lawyers in British Columbia and Alberta. Building on this previous research, the purpose of this study was therefore to conduct a broad survey of Canadian judges in order to examine the importance of an expanded list of factors relating to the BIC in determining child custody and access in disputed divorce proceedings.

Method

Research Questions

The first aim of the current research was to examine the value that judges assign to a range of criteria considered relevant to making custody and access decisions concerning children of divorcing parents. As noted earlier, the BICQ employed in the current study was initially developed by Jameson et al. (1997) and later modified by Clay (1994). It has been expanded considerably from Lowery's original 20-item scale to a list of 77 items relating to child custody issues. As suggested by Lowery (1981), it was expected that judges would rely more heavily on some items than on others, reflecting a manageable number of dimensions used to decide custody.

Second, the study explored the extent to which judges' ratings of the BIC criteria may be correlated with certain demographic and personal characteristics, such as age, gender, years of experience and province of jurisdiction.

Third, in order to examine the construct validity of Jameson's scale, upon which the BICQ was developed, this study assessed the extent to which the judges' ratings of the BIC criteria organize into factors, or clusters of items (Jameson et al., 1997).

Participants

The population for this study was all members of the Canadian federal judiciary (not including the Supreme Court). Some 997 survey packages were mailed out via the Office of the Commissioner of Federal Judicial Services on November 4, 1999. 210 completed questionnaires were returned (as of June 14, 2000) in the self-addressed, postage paid envelope included with the survey package, which represents a return rate of approximately 21 percent.

Best Interests of the Child Questionnaire (BICQ)

The questionnaire used in this study consists of two parts (see Appendix A). Part one asked judges to provide certain personal demographic information, such their age, gender, province of jurisdiction, years of experience as a judge, years of experience in the area of custody and access. Part one also included a question relating to the role of psychologists in custody and access disputes.

Part two of the questionnaire presented respondents with a list of 77 items that are considered relevant to the BIC. As discussed above, the BICQ employed in this survey was developed by Jameson et al. (1997) and was used in an earlier study that they conducted in order to examine psychologists' ratings of the BIC. Jameson et al. (1997) reported high reliability for the BCIQ as a whole ($\alpha = .94$) and moderate to high reliability for each of the four scales (Parent-Parent .78; Parent-Child .70; Needs of the Child .91; Qualities/Abilities of the Parents .89). In Jameson et al.'s (1997) study, however, the BIC items were organized a priori into the four scales or areas of assessment. Clay (1994) also employed the BICQ in a study comparing lawyers' and psychologists' ratings of the BIC. However, Clay (1994) felt that organizing the BIC items into areas of assessment might induce participants to consciously or unconsciously rate all of the items in a particular scale higher or lower than those in other sections. As such, Clay (1994) created a revised version of the BICQ, which retained all of Jameson's original questions, but presented them in random order without any headings or groupings. As noted earlier, Clay (1994) also added several additional items to the revised BICQ. Clay (1994) reported high reliability for the original BICQ ($\alpha=.94$), but only average reliability for the revised questionnaire with the additional items included ($\alpha=.67$). The estimated reliability for each of the four scales

was also moderate to high (Parent-Parent .75; Parent-Child .76; Needs of the Child .88; Qualities/Abilities of the Parents .89). The present study employed Clay's revised BICQ consisting of 77 items presented in random order. The additional items identified by Clay (1994) were included in one of the four scales/dimensions according to the nature of the criteria. Only one item, 'professional recommendations' did not fit any of the four scales, or areas of assessment.

As well, at the end of Part two, space was provided for judges to identify and rate any other items that they felt may be important to making custody/access decisions, and for respondents to include any additional comments about the study.

Procedure

Each participant was mailed a survey package containing a questionnaire, a covering letter (see Appendix B) a written debriefing sheet (see Appendix C), and a stamped envelope addressed to the principal researcher. All of these materials were provided in both French and English.

It was thought that the participants in this study would be particularly concerned that their individual responses could potentially be disclosed in the public domain. As such, in order to ensure complete anonymity to the participants in this survey, the covering letter included the details normally contained in an informed consent form and specified that receipt of the completed questionnaire would be considered as consent to participate in the study. The covering letter indicated that no identifying information was being collected as part of this study, that their participation was completely voluntary and that they could leave blank any question they did not feel comfortable answering. Participants received the survey package as part of a regular mail-out from the office of the Commissioner of Federal Judicial

Services, Mr. Guy Goulard. The package also contained a brief introductory memo from Mr. Goulard, indicating his support for the study (See Appendix D). No other incentives were offered to participants.

Results

Coefficient Alpha

Overall reliability of the BICQ, including the new items added by Clay (1994), was high ($\alpha=.95$). Reliability coefficients were also calculated for each of the four scales, or areas of assessment, proposed by Jameson et al. (1997). The analysis also showed high reliability for the Parent-Parent scale ($\alpha=.80$), the Parent-Child scale ($\alpha=.79$), the Needs of the Child scale ($\alpha=.86$) and), the Qualities/Abilities of the Parents scale ($\alpha=.88$).

Descriptive Statistics

Basic descriptive information relating to the respondent sample ($N=210$) has been summarized and is presented in Tables 1 to 5. It should be noted that a number of the judges indicated that it was difficult for them to estimate the number of cases heard in the past three years, either because they did not keep such records, or because they were unsure about whether to include motions, interlocutory applications as well as trials in the count. Indeed the estimated number of cases heard by a respondent in the past three years ranged from 0 to 1500 ($\bar{X}=109$, $SD=223$). Accordingly, this variable was dropped from the analysis as it was thought that further interpretation of this data would not be meaningful.

Table 1 provides details relating to the judges' gender, age, years of experience as a judge and years of experience in the area of custody and access. Approximately 72 percent ($N=148$) of the respondents to the survey were males and 28 percent ($N=58$) were females.

The observed distribution closely matches the actual distribution of male and female Federal judges, which is 78 percent and 22 percent, respectively, as at November 1, 1999. The respondents ranged in age from 42 to 74 years and had, on average, 11 years experience as a judge, just over 15 years experience in custody and access proceedings as a lawyer or a judge. The average number of cases heard by the judges in the past three years was approximately 109. Male respondents averaged 60 years of age, while the average age for female judges was 51. Male and female judges varied significantly in terms of years of experience as a judge ($t=5.89$, $df(1, 167)$, $p<.01$; df adjusted to reflect unequal variance, Levene's $F=23.64$, $p<.01$). Male and female judges did not in terms of years of experience in custody and access proceedings ($t=1.99$, $df(1, 196)$, $p>.05$). Female respondents had, on average, five fewer years of experience as a judge and three years less experience in custody and access proceedings than male respondents.

Table 2 displays the distribution of the respondents by province of jurisdiction. The distribution of the respondent sample by province, closely resembles the actual distribution of Federal judges by province as at November 1, 1999.

Table 1

Demographic Characteristics of Responding Judges

Variable	Males			Females			Total		
	<u>N</u>	<u>Mean</u>	<u>SD</u>	<u>N</u>	<u>Mean</u>	<u>SD</u>	<u>N</u>	<u>Mean</u>	<u>SD</u>
Age	148	60.13	(7.40)	55	50.96	(5.32)	203	57.67	(8.00)
Years of Experience as a Judge	146	12.52	(8.14)	55	7.11	(4.65)	205	11.13	(7.81)
Years of Experience in the Area of Custody and Access	143	16.42	(10.86)	55	13.09	(9.58)	200	15.52	(10.58)

Note: Some respondents did not provide information for one or more of the above variables therefore N's may not balance across gender breakdowns nor to the total N=210.

Table 2

Distribution of Responding Judges by Province of Jurisdiction

Province	<u>N</u>	% Distribution of Respondents	Actual % Distribution of Judges
British Columbia	25	11.9	12.4
Alberta	23	11.4	10.6
Saskatchewan	8	3.5	5.2
Manitoba	12	6.0	5.0
Ontario	55	27.4	32.7
Quebec	51	25.4	21.2
New Brunswick	7	3.5	3.3
Nova Scotia	10	5.0	4.9
Prince Edward Island	4	2.0	0.8
Newfoundland	8	4.0	3.1
Other (Yukon, NWT, Nunavut)	0	0.0	0.6
Total	203		

Judges' Ratings of the Role Psychologists Should Play in Custody and Access Disputes

Table 3 summarizes the judges' responses to the question regarding what role they felt psychologists should play in custody and access disputes. Many participants selected more than one of the alternatives available to respond to this question and/or included suggestions for other roles that psychologists should play in such proceedings. As such, responses were generally coded with the highest value selected by a respondent and responses were coded as other (value=5) only in cases where that was the sole response selected by a judge. Over half of the respondents selected both to gather information (value=2) and to make recommendations (value=3), thus these two categories were combined.

Overall, 95 percent of respondents felt that the role of psychologists in custody and access disputes should be to gather information and/or make recommendations. Only one respondent indicted that psychologists should not be involved at all in custody and access proceedings and, at the other end of the continuum, only three judges felt that psychologists should act as decision-makers. Male and female judges did not differ significantly in their responses to this question ($\text{Chi-Square}=10.11$, $\text{df}(2)$, $p>.05$).

Table 3

Frequency of Ratings of the Role Psychologists Should Play in Custody and Access Disputes

Responses (<u>N</u> =203)	Rating	Frequency	% Total
Should not be involved	1	1	0.5
To gather information and/or To make recommendations	2,3	194	95.5
To act as a decision maker	4	3	1.5
Other	5	5	2.5

Ratings of the Individual BIC Criteria

Frequencies, mean scores and standard deviations for the respondents' ratings of each of the individual BIC criteria are contained in Appendix E. Where a respondent left an item blank, it was coded as 9. All items were rated on a scale that ranged from 1 (irrelevant) to 7 (essential). None of the 77 items was rated, on average, as being irrelevant to making custody and access decisions. Only eleven items were rated in the two higher rating levels, that is, as being essential or extremely important, while another ten items were rated in the two lower rating levels, that is, as being either not important or marginally important. The remaining 56 items (72 percent) were rates as either important or very important.

Tables 4 and 5 present mean ratings and standard deviations for the higher and lower rated items. The highest rated item was 'sexual abuse of the child by a parent'. 'Physical abuse of the child by a parent' and 'emotional abuse of the child by a parent' were the next highest rated items. These three statements relate to the nature of parent-child relationship and, as well displayed the least amount of variability, with standard deviations well below one. One other item relating to the parent-child relationship, 'the overall quality of each parent's relationship with the child', also received a higher rating. The next three items all reflect the child's needs and preferences 'the emotional needs of the child', 'the child's views when age 15 or older', and 'the need to know both parents'). The final four higher rated items relate to the qualities and abilities of the parents ('parent's ability to understand the child's needs and separate them from their own', 'current drug/alcohol abuse', 'ability to provide a safe environment for the child', and 'willingness to allow contact with the other parent'. The mean of the highest rated item was 6.59 ($SD=0.62$) and it was the only item rated as essential by the judges. Ten other items were considered to be extremely important,

with average means ranging from 6.47 to 5.51 and, with the exception of three of the items, standard deviation of less than one.

Table 4

Mean Ratings of the Higher Rated BIC Criteria

Item	Mean	(SD)	Rank
18. Sexual abuse of the child by a parent	6.59	0.62	1
10. Physical abuse of the child by a parent	6.46	0.75	2
33. Emotional abuse of the child by a parent	6.45	0.71	3
32. The emotional needs of the child	6.22	0.87	4
45e. Child's views when child is 15 or older	5.88	1.04	5
49. Need for the child to know both parents	5.78	0.99	6
63. Each parent's ability to understand the child's needs and separate them from their own	5.76	0.90	7
29. Each parent's current drug/alcohol abuse	5.73	0.99	8
56. Each parent's ability to provide a safe physical environment for the child	5.65	0.98	9
17. Willing to allow contact with other parent	5.62	1.01	10
23. The overall quality of each parent's Relationship with the child	5.51	1.07	11

The means of the ten lower rated items ranged from 1.63 to 3.46, which corresponds to the ratings not important or marginally important. There was somewhat greater variability in the ten lower rated items than seen in the higher rated items. Nine of the lower rated items had a standard deviation greater than one. The three items rated as not important by the judges were 'a parent's admission of infidelity', 'the extent to which each parent is responsible of the marriage breaking down', and 'the child's view when age 0-5 years'. The remaining seven items were rated as marginally important and include several items related to the qualities of the parents, such as 'sexual orientation', 'religious orientation', 'financial sufficiency' and 'childhood history of physical abuse', and two reflecting the nature of the parent-child relationship ('keeping a parent and child of the same sex together' and 'biological relationship when one parent is adoptive').

Table 5

Mean Ratings of the Lower Rated BIC Criteria

Item	Mean	(SD)	Rank
22. Parent's admission of infidelity	1.63	0.88	1
7. Extent to which each parent is responsible for the marriage breaking down	2.20	1.08	2
45a. Child's views when child is age 0-5	2.33	1.20	3
13. Keeping a parent and child of the same sex together	2.54	1.06	4
54. Each parent's sexual orientation	2.96	1.27	5
46. Each parent's religious orientation	2.96	1.11	6
15. Biological relationship when one parent is an adoptive parent	3.06	1.38	7
45b. Child's views when child is 6-8	3.17	1.12	8
48. A parent's childhood history of physical abuse	3.42	1.45	9
12. Each parent's financial sufficiency	3.46	1.18	10

Additional Items Added to the List of BIC Criteria

Respondents were also asked to add any items not already included that they felt might be important in making custody and access decisions. A list of the respondents' inclusions is provided in Appendix F. In total, 58 of the 210 judges provided some 105 additional items, which represents about 28 percent of the respondents.

Differences due to Personal and Demographic Characteristics

Due to the relatively small sample size in comparison to the number of individual BIC items, rather than examine the judges' ratings of each of the criteria, correlation coefficients for the four scales, or areas of assessment, theorized by Jameson et al. (1997) were examined to determine whether judges' ratings of these scales were related to certain demographic and personal characteristics. Age, years of experience as a judge and years of experience in the area of custody and access were each analyzed and probability estimates and correlation coefficients are displayed in Table 6. None of the correlation coefficients was significant ($p > .05$). However, respondents' ratings of the Qualities/Abilities of the Parent scale appears to be somewhat correlated with the age of the judge ($p = .07$; $r = .13$).

As well, MANOVA analyses were conducted in order to determine whether judges' ratings of the four areas of assessment were related to the respondents' gender and province of jurisdiction. For purposes of this analysis, the ten provincial designations were combined into six groups as follows: British Columbia, Alberta, Saskatchewan plus Manitoba, Ontario, Quebec, and the Maritime provinces. The overall effect of gender was significant (Wilks value = .93, $F = 2.83$, $p < .05$). However, no significant effect of gender was observed for any of the four individual scales. Similarly, the overall effect of province of jurisdiction was also

significant (Wilks value=.83, $F=1.91$, $p<.05$). Again, however, no significant effect of province of jurisdiction was observed for any of the four individual scales.

Table 6

Probability Estimates and Correlation Coefficients for the Four Areas of Assessment

Scale	Age (N=203)		YrsJudge (N=203)		YrsCustody (N=200)	
	p	r	p	r	p	r
Parent-Parent Relationship	.98	.00	.08	.12	.19	-.09
Parent-Child Relationship	.89	-.01	.22	.09	.69	-.03
Abilities/Qualities of the Parent	.07	.13	.09	.12	.35	.07
Needs of the Child	.54	-.04	.87	.01	.92	-.01

Factor Analysis

Finally, the data were subjected to factor analysis in order to confirm whether the judges' ratings of the importance of the BIC criteria organized into factors, or clusters of items, as suggested by Jameson et al. (1997). A forced, four factor principal components analysis of the 77 items was conducted using varimax rotation. Cumulatively, the four factors accounted for only 37 percent of the total variance, and one factor accounted for more than 20 percent of this variance on its own. None of the factors identified coincided with the four areas of assessment theorized by Jameson et al. (1997). However, Factor 2 generally reflects the parent-child relationship and the child's needs and views, while Factor 3 appears to focus on items dealing with issues of abuse. Table 7 provides the BIC items with a loading of greater than .30 that contributed to each factor and the percent of variance attributable to each factor.

Table 7

Factor Loadings and Percent of Variance

BIC Criteria		Correlation With Factor	Percent of Variance
Factor 1			22.5
Q.1	Feelings of responsibility for the child	.43	
Q.2	Ability to cooperate on parenting matters	.37	
Q.3	Parenting style	.42	
Q.4	History of sharing parenting responsibilities	.44	
Q.5	Preferences for shared parenting plan	.39	
Q.6	Level of conflict between the parents	.46	
Q.8	Manner in which parents resolve conflict	.41	
Q.11	New partners' contribution to parenting	.51	
Q.14	Parent/child contact after separation	.49	
Q.17	Willingness to allow contact with other parent	.49	
Q.20	Child's daily routine	.58	
Q.21	Child's affection for each parent	.49	
Q.23	Overall quality of relationship with child	.55	
Q.24	Contribution to child's moral development	.53	
Q.27	Intellectual needs of child	.58	
Q.28	Ability to provide appropriate education	.58	
Q.30	Need for relationship with siblings	.53	
Q.31	Willing to allow contact with extended family	.61	
Q.32	Emotional needs of child	.42	
Q.36	Child's interests and preferences	.49	
Q.39	Access to support from family and friends	.41	
Q.40	Ability to accommodate child's health needs	.54	
Q.43	Ability to maintain child's daily routine	.65	
Q.44	Parents' desire for joint custody	.43	
Q.47	Child's desire to see extended family	.55	
Q.49	Child's need to know both parents	.47	
Q.50	Physical health of parents	.45	
Q.51	Access to stable community involvement	.52	
Q.52	Parent/child contact before separation	.49	
Q.53	Temporary custody with one parent	.39	
Q.55	Ability to maintain child's interests/activities	.59	
Q.56	Ability to provide safe physical environment	.43	
Q.57	Professional recommendations	.40	
Q.58	Parent's understanding of child development	.59	
Q.59	Ability to provide access to same-age children	.56	

Judges' Ratings of the BIC Custody and Access Criteria

Q.61	Child's special needs/physical handicaps	.45	
Q.62	Child's academic needs	.50	
Q.63	Ability to understand/separate child's needs	.52	
Q.64	Child's fears about current family situation	.39	
Q.65	Child's desire to see friends	.60	
Q.66	Child's perception of family relationships	.65	
Q.67	Ability to provide a 'family' environment	.54	
Q.68	Willingness to share parenting after separation	.56	
Factor 2			5.8
Q.9	Parent's affection for the child	.37	
Q.25a	Parent most involved in caring for child 0-7	.44	
Q.25b	Parent most involved in caring for child 8-13	.47	
Q.25c	Parent most involved in caring for child 13+	.41	
Q.34	Parent's psychological adjustment	.38	
Q.38	Nature of parental relationship prior to marriage	.41	
Q.45a	Child's views when 0-5	.62	
Q.45b	Child's views when 6-8	.70	
Q.46c	Child's views when 9-11	.76	
Q.46d	Child's views when 12-14	.73	
Q.45e	Child's views when 15+	.45	
Q.60	Child's need to be with 'psychological' parent	.52	
Factor 3			4.7
Q.10	Physical abuse of child by a parent	.61	
Q.18	Sexual abuse of child by a parent	.61	
Q.29	Current drug/alcohol abuse	.58	
Q.33	Emotional abuse of child by a parent	.67	
Q.35	Parental pressure on child to choose	.35	
Q.37	Violence in parents' relationship	.60	
Q.41	Parents' psychiatric history	.45	
Q.69	Parent's history of drug/alcohol abuse	.61	
Q.70	Parent's criminal record	.60	
Q.71	Emotional abuse of one parent by another	.54	
Factor 4			4.0
Q.7	Extent responsible for marriage breakdown	.61	
Q.12	Parents' financial sufficiency	.53	
Q.13	Keeping parent/child of same sex together	.52	
Q.15	Biological relationship when one parent adoptive	.48	
Q.16	Cultural background of the parents	.50	
Q.19	Keeping young child with mother	.43	
Q.26	History of childhood sexual abuse	.51	
Q.42	Biological relationship when one step-parent	.37	
Q.46	Parent's religious orientation	.51	
Q.48	History of physical abuse	.43	
Q.54	Parent's sexual orientation	.57	

Discussion

Coefficient Alpha

The reliability estimate obtained for the revised BICQ was high, matching the estimate reported by Jameson et al. (1997). As discussed by Clay (1994), this provides some support for the internal consistency of the BICQ as a whole. As well, the coefficient alphas for each of the four scales were also relatively high, indicating that the individual criteria in each scale generally reflect the area of assessment theorized by Jameson et al. (1997). However, such high coefficient alphas also indicate that there is little overall variability in the judges' ratings of the individual criteria. Indeed, as seen in Appendix E, the standard deviations for the 77 items ranged only from .62 to 1.71. This may be attributable to the fact that each of the 77 items was chosen on the basis that it was deemed to be relevant to the BIC and was therefore rated by the respondents as being at least somewhat important. In fact, none of the items was judged overall to be irrelevant, only one item was rated as being essential and only one item was rated as being not important, which effectively eliminates three of the seven rating scales. Further only 16 items were rated as being extremely important or marginally important. The bulk of the items were viewed as being either important or very important, which may account for the relatively small standard deviations and for the high coefficient alpha.

Judges' Ratings of the Role Psychologists Should Play in Custody and Access Disputes

The vast majority of judges indicated that, while psychologists should be involved in custody and access disputes, the role of the psychologist is to gather information and make recommendations but not to make determinations. Further, overall the respondents rated the BIC item, 'professional recommendations' (item 57), as being important ($\bar{X}=4.43$). Thus, the

respondents would appear to agree that psychologists do have an important role in disputed custody and access cases and can be of assistance to the courts by gathering information and making recommendations to aid them with the difficult task of interpreting and making a determination that serves the BIC.

As well, respondents suggested a number of other possible roles for psychologists in the custody and access arena, including: to act as an expert witness and resource person; to explain conduct; to give advice as to the strengths/weaknesses of the parties; to provide assessments of the home/family situation; to assess the child's emotional state; to ascertain the impact of the process on children. These suggestions would seem to be consistent with the role of gathering information and making recommendations. However, some judges also indicated that they looked to psychologists to explain to the parents the effects of disputes on children; to educate the parents about the children's needs and move them towards settlement; to conduct mediation; to seek resolution by teaching the parents; and to provide counseling/therapy to the parties. Thus judges appear to welcome the involvement of psychologists in educating parents and working towards bringing them towards a solution outside of the courtroom.

Ratings of the Individual BIC Criteria

The results of the survey show that judges do consider certain criteria relating to the best interests of the child to be more important than others when making custody and access decisions. On average, the judges rated only one of the items as being essential and 10 items as extremely important. No item was rated as being irrelevant, however, three of the criteria were rated as being not important. Another seven of the criteria received mean ratings of three, indicating that the judges generally considered these items to be marginally important

in terms of decision making. The remaining 56 items were rated as either important or very important. As noted by many of the respondents, while almost all of the criteria are important to consider, the degree to which any one of the items would influence a judge's decision often depends on the specific circumstances and the individuals involved in a particular case. This finding is consistent with the results of both Jameson et al. (1997) and Clay (1994) who also found that ratings for the majority of the BIC criteria fell in the important to very important range. As well, as noted by Clay (1999), the fact that the judges rated only three items as being not important would seem to suggest that, overall, the criteria in the BICQ does reflect factors that are relevant to the BIC standard.

In terms of judges' ratings of items dealing with abuse, it would appear that judges are highly sensitive to this aspect of custody and access disputes. On the one hand, the respondents rated 'sexual, physical and emotional abuse of the child by a parent' as the three highest rated items, with the least amount of variability overall. In fact, 'sexual abuse of a child by a parent' was the only item to receive a rating of essential. As well, contrary to the findings of Sorensen et al. (1995), who found no evidence that parental substance abuse reports influenced judicial decision making, in this study, current alcohol or drug abuse by a parent was included in the list of higher rated BIC criteria and was considered by the judges to be an extremely important factor in decision making in disputed custody and access cases. This is consistent with the findings of Akerman and Akerman's (1997) study involving psychologists.

On the other hand, among the lower rated BIC criteria was 'a parent's childhood history of physical abuse', and, not much farther down on the list, was 'a parent's childhood history of sexual abuse' (ranked ninth and thirteenth lowest rated items). Another item

relating to abuse that is perhaps somewhat conspicuous by its absence from the list of higher rated BIC criteria is 'parental violence in the parents' relationship'. Jameson et al. (1997) reported that psychologists rated this item among the higher rated BIC criteria, yet, while the judges rated this item as being very important, it ranked only twentieth in order of importance, just ahead of the item 'level of conflict between the parents'. However, it is important to note that several judges commented that it was difficult to rate these questions without any context, suggesting that it would depend on whether the person had received counseling or therapy, and whether it affected the parent's relationship with the child or their parenting style. Not surprisingly, these three questions had the highest amount of variability of all items in the survey and the judges' ratings ranged from not important to extremely important.

As well, several questions that may be seen to involve a moral judgement, such as a 'parent's admission of infidelity', 'parent's sexual orientation' and 'parent's religion orientation' were rated as either not important or marginally important. This is an area where discrepancies between judges' and psychologists' ratings were observed by Keilin & Bloom (1986), which might indicate that there is greater recognition among judges that such considerations are not necessarily relevant or at least not determinative in consideration of the BIC.

Finally, it is interesting to note that, although the overall mean for the item dealing with 'the child's need to be with the psychological parent' was 4.39 (important), this item was left blank by some 17 percent of respondents, whereas, on average, most items were left blank by only 2 percent of respondents. In this case however, many respondents indicated that they did not understand what was meant by the term 'psychological parent'. This would

seem to indicate that many of the respondents were not familiar with the Beyond the Best Interests of the Child model advanced by Goldstein et al. (1973) which had a significant impact in its time on legal decision-making in the field of custody and access.

Additional Items Added to the List of BIC Criteria

Content analysis of the judges' responses to the open-ended section of the questionnaire, in which respondents were asked to list and rate any other items not already included that may be important to them when making custody and access decisions, led to a number of interesting observations. As noted earlier, about 28 percent of the judges provided additional items. This, in itself, is interesting in that it indicates that nearly a third of the respondents, having just rated some 77 items considered relevant to the BIC, appear to have felt that there are other factors that they consider to be important, even essential, to custody and access decision-making in disputed divorce proceedings that were not captured by the BICQ. This would seem to suggest that the goal of developing an exhaustive list of items relevant to *judges'* determinations relating to the BIC has not been achieved, even with the revised BICQ.

Indeed, a number of the additional items noted by the respondents were clearly not included in the current BICQ. For example, the BICQ did not include an item dealing in any way with *false* allegations of abuse, which is an issue that received considerable attention in the course of the Special Joint Committee on Child Custody and Access (the Committee's) examination of issues relating to the needs and best interests of children of separation and divorce. The Committee went so far as to recommend that the government develop specific policies/sanctions to deal with intentional false accusations of abuse or neglect in family law matters and incorporated the word 'proven' in the item dealing with family violence that was

included among the list of criteria considered relevant to the BIC (Pearson & Gallaway, 1998). Obviously, this is potentially an important legal consideration for judges that has not been addressed by the BICQ.

Another group of items dealt with the 'current custody and access situation'. Items noted included 'the status quo', 'length of time *de facto* situation has existed', 'what nature has already spontaneously set out between the parties and the children', 'the clear identification of *his house* by the child', 'length of time in a stable situation', and 'whether the child has attended the same school since a young age'. While the BICQ included one item that dealt with the 'extent of contact between the parent and child since the separation', it would not appear to fully capture this element. It may be that judges are reluctant to subject a child to further upheaval and change if it would appear that they are doing well in their current environment, regardless of the parents' individual strengths or weaknesses.

As well, several items dealt with the general theme of 'mobility/geography'. Items noted include 'mobility rights', 'the geographic location of the parties', 'the distance from schooling', 'the travelling capacity of the non-custodial parent', and 'the distance between the parents' residences'. These, together with a number of other items added by the judges, such as 'the specific facts of the case', 'what I see and hear in court', 'viva voce evidence early rather than by affidavits', 'judge interviewing child', 'litigation history', 'reasons why parents were unable to arrive at a cooperative resolution', 'trial judge's discretion', 'delay in having custody and access dealt with by the courts', and 'early intervention', either refer to practical and/or legal aspects of the case, or relate to the judge's own overall assessment of the parties, rather than to specific abilities of the parents, particular needs of children, or individual family relationships. Again, this would appear to indicate that in making a

determination as to the BIC, judges might consider certain criteria that go beyond the four areas of assessment conceptualized by Jameson et al. (1997). Although these kinds of considerations could still be characterized as being legally relevant to the BIC, they may not necessarily be based on any psychological theory or findings relating to the BIC.

Researchers employing the BICQ in future studies involving judges may wish to consider expanding the BICQ to include items dealing with these issues.

Many other items added by the respondents seemed to simply re-phrase or expand on criteria that were already included in the BICQ. Some of the items added by the judges would appear to relate to existing BICQ items such as 'the level of conflict between the parents' (BICQ item 6), 'each parent's financial sufficiency' (BICQ item 12) 'parental pressure on the child to choose one parent' (BICQ item 35), the 'parent's ability to understand their child's needs and separate them from their own' (BICQ item 63), and 'willingness to allow contact with the other parent' (BICQ item 68). The respondents used phrases such as 'mutual hostility of the parents', 'does anger management effect the parties', 'lack of financial support', 'will the child be poor, comfortable, rich', 'parental alienation', 'harassment by one parent', 'parent's ability to instill respect for the other parent instead of disrespect', 'pressure on child to favour one parent', 'is one parent a control artist', 'one parent bad-mouthing the other to the child', 'involving child in the custody dispute', 'mind games with child', 'willingness to provide and encourage access', 'degree of manipulation of children by one of the parents', 'ability to put their issues aside for the sake of the children' and 'parents' ability to give priority to child's needs'. However, the fact that the respondents took the time to add such items to the list of criteria may indicate that the wording of certain items in the BICQ, which was specifically developed for administration to a population of

psychologists, may be ambiguous or unclear to judges. Indeed, one respondent noted that it would be useful to consult judges on the exact wording of items on the BICQ, which future researchers may wish to consider.

Another interesting observation is the frequency of the use of the word 'stability' in the items added by the judges. The term 'stable' is included in only one of the BICQ items (BICQ item 51 – 'each parent's ability to provide the child with access to stable community involvement'), yet six of the additional items added by the respondents used the term stability: 'stability of the child'; 'overall stability of the family absent one parent'; 'length of time in a stable environment'; 'emotional stability'; 'stability of the environment'; 'stability of the parent'. This term also appears in the first two criteria that the Committee drafted for decision makers' consideration in determining the BIC. This emphasis on stability may reflect the fact that in disputed custody cases, re-litigation is fairly common and judges and lawmakers want to implement the custody situation that is the least likely to change, thereby minimizing the likelihood of further disruption of the children's situation later on.

Differences due to Personal and Demographic Characteristics

The current study examined the effects of the various demographic and personal characteristics on the judges' ratings of the four areas of assessment (see Appendix G). None of the correlations between the four scales and respondents' age, years of experience as a judge, years of experience in custody and access, or number of cases were significant. The respondents' rating of the Abilities of the Parents scale was somewhat correlated with age, indicating that older respondents may have tended to consider the abilities/qualities of the parents to be more important than other areas of assessment. Also, as noted earlier, while the overall effects of gender and province of jurisdiction were significant, no significant effect of

gender or province of jurisdiction was observed for any of the four individual scales. It is likely that these overall effects and tendencies were attributable to a few questions that were spread across the four areas of assessment, thus no one scale showed a strong enough effect to be significant. Further analysis of each of the individual items was not conducted as it was felt that the results of so many individual t- tests would not be meaningful.

These findings may also suggest that the sample of judges who responded to the current survey tended to be, as a group, very knowledgeable about legal and psychological issues and factors that are considered relevant to the BIC. Indeed the respondents reported having an average of 15 years experience in the area of custody and access and there were no differences between male and female judges in terms of the number of years experience in the custody and access area. Although the questionnaire was not restricted only to judges who had experience or currently worked in the custody and access area, it is possible that, in general, judges who had little or no experience in this area did not respond to the survey. Also, as noted earlier, there was relatively little variance overall in the respondents' ratings of individual items and the vast majority were considered to be at least important to making a custody and access determination.

Factor Analysis

The factor analysis did not support the theoretical model proposed by Jameson et al. (1997). This study produced 4 factors accounting for approximately 37 percent of the total variance, yet these groupings of BIC criteria did not appear to organize into meaningful subgroups and none of the factors identified coincided with the four areas of assessment proposed by Jameson et al. (1997). This is likely attributable to the small sample size in conjunction with the large number of and the high correlations among the individual items

being examined in the current study. As Clay (1994) concluded, it may be that, while the model proposed by Jameson et al. (1997) presents a meaningful manner in which to discuss and assess the best interests of the child, the actual determination of what is in the best interests of a particular child in a particular custody case, is not easily categorized. Indeed, many of the respondents noted that the importance of many items would depend on the nature of the specific case.

Nonetheless, the BICQ may provide a useful starting point from which to develop a checklist for judges and other professionals involved in custody and access cases. As suggested by Ehrcke (1987), this type of checklist would give some substance and structure to the BIC standard by directing the court's attention to factors deemed relevant to the child's best interests. While the BICQ does not assign any weight that each factor should be given in decision-making, its application could, as noted by Ehrcke (1987), limit, to some extent, the court's discretion, by ensuring that this set of criteria, which the judges in the current study rated as being relevant to custody and access determinations, is given at least some consideration.

Limitations and Implications for Future Research

The current design contains a number of weaknesses and limitations. First, as noted earlier, the sample size is relatively small given the large number of criteria to be examined. The current study did not undertake to follow-up with the survey recipients due to resource and confidentiality concerns, however, this might have led to a higher participation rate. Next, it is apparent that it was difficult for the respondents to assess the importance of such a broad range of criteria in the absence of a specific case to relate to. Respondents noted that their ratings of individual items would likely vary depending on the specific issues involved

in a particular case as well as in terms of whether they were making a determination for a sole versus joint custody solution. Thus the results reflect only what the respondents deem to be important in general and could be very different from how they would assess these items in particular cases. Future research in this area, which presents one or more actual or hypothetical cases to respondents, would offer greater potential by providing an element of context.

As well, the 7-point Likert scale employed in the survey is problematic. It may be that respondents had difficulty differentiating between the degrees of 'importance' and certainly, individual respondents may have interpreted the labels differently. In this regard, future research employing the BICQ may wish to include a definition of what is meant by 'marginally important' versus 'important', 'very important', 'extremely important' and 'essential'. As well, respondents noted that, due to the nature of the items, in some cases 'importance' might reflect a positive consideration, for example, 'the parents' ability to understand the child's needs and separate them from their own'. Yet, in other cases, it might reflect a negative assessment, for example, 'a parent's criminal record'. Again, the lack of context makes it difficult for respondents to interpret and assign a value to such items.

Finally, the current study did not attempt to examine the relative weight that judges may assign to different criteria in making a determination. Again, future research, perhaps involving interviews with judges, may contribute more to our understanding of how they balance the many, often conflicting, factors that come into play in making a determination in a specific case.

Conclusion

The purpose of the current study was to examine the subjective value that judges in Canada assign to various criteria deemed to be relevant to the BIC in making custody and access determinations in disputed custody cases. The findings generally indicate that, while the judges who responded to the survey appear to consider a small number of items to be more or less important than others, the vast majority of the criteria are considered to be at least important. This would suggest that all of the items included in the BICQ do indeed reflect issues and criteria that are relevant to the BIC. As well, it indicates that the respondents possess considerable knowledge about both legal and psychological considerations concerning the best interests of the child.

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Appendix A

English Questionnaire

QUESTIONNAIRE: PART I

Please respond to the following questions by providing the information requested in the spaces provided.

Gender: _____ Male _____ Female

Your Age: _____ years

Province of Jurisdiction: _____

Years of experience as a judge: _____

Years of experience in custody/access proceedings: _____

Approximate number of custody/access cases heard in the past three years: _____

What role do you feel psychologists should play in custody/access disputes:

_____ should not be involved

_____ to act as a decision maker

_____ to gather information

_____ other (please specify)

_____ to make recommendations

---End of Part I---

QUESTIONNAIRE: PART II

Please read each statement carefully and then rate it according to how important it is to you when making custody and/or access decisions. Beside each statement you will find spaces which correspond with a 7 point numerical scale. This numerical scale corresponds to the following ratings:

1 = Irrelevant

4 = Important

2 = Not Important

5 = Very Important

3 = Marginally Important

6 = Extremely Important

7 = Essential

After reading each item, please circle the number which best represents your belief regarding the importance of that item with respect to making custody and access decisions. For example:

Each parent's ability to keep siblings together.

If you believe it is extremely important to keep siblings together, you might mark the scale this way:

Each parent's ability to keep siblings together. 1 2 3 4 5 6 7

Judges' Ratings of the BIC Custody and Access Criteria

1. Each parent's feelings of responsibility for the child.	1	2	3	4	5	6	7
2. Parents' ability to cooperate with each other on parenting matters.	1	2	3	4	5	6	7
3. Each parent's parenting style including discipline practices and beliefs.	1	2	3	4	5	6	7
4. Parents' history of sharing parenting responsibilities.	1	2	3	4	5	6	7
5. Each parent's preferences for possible shared parenting plans.	1	2	3	4	5	6	7
6. The level of conflict between the parents.	1	2	3	4	5	6	7
7. The extent to which each parent is responsible for the marriage breaking down.	1	2	3	4	5	6	7
8. The manner in which parents resolve conflict.	1	2	3	4	5	6	7
9. Each parent's affection for the child.	1	2	3	4	5	6	7
10. Physical abuse of the child by a parent.	1	2	3	4	5	6	7
11. Extent to which parents' new partners may contribute to parenting.	1	2	3	4	5	6	7
12. Each parent's financial sufficiency.	1	2	3	4	5	6	7
13. Keeping a parent and child of the same sex together.	1	2	3	4	5	6	7
14. Extent of parent/child contact after the separation.	1	2	3	4	5	6	7
15. Biological relationship when one parent is an adoptive parent.	1	2	3	4	5	6	7
16. The cultural background of the parents.	1	2	3	4	5	6	7
17. Each parent's willingness to allow the child to maintain contact with the other parent.	1	2	3	4	5	6	7
18. Sexual abuse of the child by a parent.	1	2	3	4	5	6	7
19. Keeping a young child and the mother together.	1	2	3	4	5	6	7
20. The child's daily routine.	1	2	3	4	5	6	7

Judges' Ratings of the BIC Custody and Access Criteria

21. The child's affection for each parent.	1	2	3	4	5	6	7
22. A parent's admission of infidelity.	1	2	3	4	5	6	7
23. Overall quality of each parent's relationship with the child.	1	2	3	4	5	6	7
24. Each parent's capacity to contribute to the child's moral development.	1	2	3	4	5	6	7
25. The parent most involved in feeding, disciplining, clothing, interacting with, playing with, entertaining, instructing and making arrangements for the care and education of the child:							
(a) 7 years and under	1	2	3	4	5	6	7
(b) 8-13 years	1	2	3	4	5	6	7
(c) over 13 years	1	2	3	4	5	6	7
26. A parent's history of childhood sexual abuse.	1	2	3	4	5	6	7
27. The intellectual needs of the child.	1	2	3	4	5	6	7
28. Each parent's ability to provide access to appropriate education.	1	2	3	4	5	6	7
29. Each parent' current alcohol/drug abuse.	1	2	3	4	5	6	7
30. Child's need for relationships with brothers and sisters.	1	2	3	4	5	6	7
31. Each parent's willingness to provide contact with extended family.	1	2	3	4	5	6	7
32. The emotional needs of the child.	1	2	3	4	5	6	7
33. Emotional abuse of the child by one parent.	1	2	3	4	5	6	7
34. Each parent's psychological adjustment.	1	2	3	4	5	6	7
35. Parental pressure on the child to "choose" one parent.	1	2	3	4	5	6	7
36. The child's interest and preferred activities.	1	2	3	4	5	6	7
37. Physical violence in the parent's relationship.	1	2	3	4	5	6	7
38. The nature of the parental relationship prior to divorce.	1	2	3	4	5	6	7

Judges' Ratings of the BIC Custody and Access Criteria

39. Each parent's access to support from family and friends.	1	2	3	4	5	6	7
40. Each parent's ability to accommodate the child's health needs.	1	2	3	4	5	6	7
41. A parent's psychiatric history.	1	2	3	4	5	6	7
42. Biological relationship when one parent is a step-parent.	1	2	3	4	5	6	7
43. Each parent's ability to maintain the child's daily routine.	1	2	3	4	5	6	7
44. The parents' desire for joint custody.	1	2	3	4	5	6	7
45. The child's views and preferences regarding contact with each parent and possible custody/access arrangements when the child is:							
(a) 0-5 years old	1	2	3	4	5	6	7
(b) 6-8 years old	1	2	3	4	5	6	7
(c) 9-11 years old	1	2	3	4	5	6	7
(d) 12-14 years old	1	2	3	4	5	6	7
(e) 15 years or older	1	2	3	4	5	6	7
46. Each parent's religious orientation.	1	2	3	4	5	6	7
47. The child's desire to see grandparents and extended family.	1	2	3	4	5	6	7
48. A parent's childhood history of physical abuse.	1	2	3	4	5	6	7
49. The need for the child to know both parents.	1	2	3	4	5	6	7
50. Physical health of the parents.	1	2	3	4	5	6	7
51. Each parent's ability to provide the child with access to stable community involvement.	1	2	3	4	5	6	7
52. Extent of the parent/child contact before the separation.	1	2	3	4	5	6	7
53. Temporary custody with one parent.	1	2	3	4	5	6	7
54. Each parent's sexual orientation.	1	2	3	4	5	6	7
55. Each parent's ability to maintain and encourage	1	2	3	4	5	6	7

the child's interests and preferred activities.

56. Each parent's ability to provide a safe physical environment for the child.	1	2	3	4	5	6	7
57. Professional recommendations.	1	2	3	4	5	6	7
58. Each parent's understanding of child development.	1	2	3	4	5	6	7
59. Each parent's ability to provide access to other children of the same age.	1	2	3	4	5	6	7
60. Child's need to be with the "psychological parent".	1	2	3	4	5	6	7
61. Physical handicaps or special health needs of the child.	1	2	3	4	5	6	7
62. The academic needs of the child.	1	2	3	4	5	6	7
63. Each parent's ability to understand their child's needs and separate them from their own needs.	1	2	3	4	5	6	7
64. Any fears the child has about the current family situation.	1	2	3	4	5	6	7
65. The child's desire to see his/her friends.	1	2	3	4	5	6	7
66. The child's perception of his/her relationships and involvement with family members.	1	2	3	4	5	6	7
67. Each parent's ability to provide a "family" environment.	1	2	3	4	5	6	7
68. Parent's willingness to share parenting responsibilities after separation.	1	2	3	4	5	6	7
69. A parent's history of alcohol/drug abuse.	1	2	3	4	5	6	7
70. A parent's criminal record.	1	2	3	4	5	6	7
71. Emotional abuse of one parent by another.	1	2	3	4	5	6	7

Judges' Ratings of the BIC Custody and Access Criteria

This section of the questionnaire deals with any other items not already included which may be important to you when making custody and/or access decisions. **Please write the item in the space(s) provided and circle the number which best represents your belief regarding the importance of that item.**

Other items:

1. _____	1	2	3	4	5	6	7
2. _____	1	2	3	4	5	6	7
3. _____	1	2	3	4	5	6	7
4. _____	1	2	3	4	5	6	7
5. _____	1	2	3	4	5	6	7

Other comments relating to this study:

---End of Part II---

Thank you for participating in this study. Your time and effort are greatly appreciated.
Please fold and return the questionnaire in the postage-paid, addressed envelope provided.

Appendix A

French Questionnaire

QUESTIONNAIRE – 1^{re} PARTIE

Veillez inscrire les renseignements demandés dans les espaces prévus à cette fin.

Sexe : _____ Masculin _____ Féminin

Âge : _____ ans

Province d'affectation : _____

Nbre d'années d'expérience comme juge : _____

Nbre d'années d'expérience dans des procès touchant la garde et le droit de visite : _____

Nbre approx. de causes touchant la garde et le droit
de visite entendues au cours des trois dernières années : _____

Selon vous, quel rôle devrait assumer le psychologue dans les différends portant sur la garde
ou le droit de visite des enfants:

_____ aucun	_____ élaboration des décisions
_____ constitution du dossier	_____ autre (veuillez préciser)
_____ recommandation de solutions	_____

---Fin de la 1^{re} partie---

QUESTIONNAIRE – 2^e PARTIE

Veillez lire attentivement les énoncés proposés et indiquer jusqu'à quel point ces éléments
entrent en considération dans vos recommandations touchant la garde ou le droit de visite des
enfants. À côté de chaque énoncé figure une échelle de notation de 1 à 7 correspondant à la
gradation suivante :

1 = non pertinent	4 = important
2 = sans importance	5 = très important
3 = quelque peu important	6 = extrêmement important
	7 = crucial

Après avoir lu l'énoncé, indiquez son degré d'importance dans la formulation de vos
recommandations touchant la garde ou le droit de visite des enfants. Soit l'énoncé :

La capacité du parent à maintenir l'unité de la fratrie

Si vous jugez cet élément extrêmement important, vous pouvez l'inscrire de cette façon sur
l'échelle :

La capacité du parent à maintenir l'unité de la fratrie 1 2 3 4 5 6 7

Judges' Ratings of the BIC Custody and Access Criteria

1. Le sentiment de responsabilité qu'éprouve le parent pour l'enfant.	1	2	3	4	5	6	7
2. L'aptitude du parent à collaborer avec l'autre pour les questions d'ordre parental.	1	2	3	4	5	6	7
3. Le style d'éducation donné aux enfants, notamment l'attitude face à la discipline et les mesures disciplinaires employées.	1	2	3	4	5	6	7
4. L'habitude qu'a ou non le parent de partager les responsabilités parentales.	1	2	3	4	5	6	7
5. La préférence de chaque parent à l'égard des ententes parentales partagées.	1	2	3	4	5	6	7
6. Le degré d'hostilité existant entre les parents.	1	2	3	4	5	6	7
7. La part de responsabilité du parent dans l'échec du mariage.	1	2	3	4	5	6	7
8. La façon dont les parents règlent leurs différends.	1	2	3	4	5	6	7
9. L'affection qu'éprouve le parent pour l'enfant.	1	2	3	4	5	6	7
10. Le parent a infligé de mauvais traitements à l'enfant.	1	2	3	4	5	6	7
11. L'aptitude du nouveau conjoint à partager les responsabilités parentales.	1	2	3	4	5	6	7
12. L'autonomie financière du parent.	1	2	3	4	5	6	7
13. La cohabitation de l'enfant de préférence avec le parent du même sexe.	1	2	3	4	5	6	7
14. La fréquence des contacts parent/enfant après la séparation du couple.	1	2	3	4	5	6	7
15. La préséance du lien biologique lorsqu'un parent adoptif est en cause.	1	2	3	4	5	6	7
16. L'appartenance culturelle du parent.	1	2	3	4	5	6	7
17. La disposition du parent face au maintien du contact entre l'enfant et l'autre parent.	1	2	3	4	5	6	7

18. Le parent a abusé de l'enfant sexuellement.	1	2	3	4	5	6	7
19. Le maintien du jeune enfant auprès sa mère.	1	2	3	4	5	6	7
20. L'horaire quotidien de l'enfant.	1	2	3	4	5	6	7
21. L'affection qu'a l'enfant pour le parent.	1	2	3	4	5	6	7
22. L'infidélité avouée du parent.	1	2	3	4	5	6	7
23. La qualité des rapports entre le parent et l'enfant.	1	2	3	4	5	6	7
24. L'aptitude du parent à éduquer l'enfant moralement.	1	2	3	4	5	6	7
25. Le parent qui s'investit le plus dans la préparation des repas, la discipline, l'habillage, la communication, le jeu, les divertissements, l'éducation et les démarches pour faire garder et instruire l'enfant :							
(a) de 7 ans ou moins	1	2	3	4	5	6	7
(b) de 8 à 13 ans	1	2	3	4	5	6	7
(c) de plus de 13 ans	1	2	3	4	5	6	7
26. Le parent a été victime de violence sexuelle lorsqu'il était enfant.	1	2	3	4	5	6	7
27. Le besoin de stimulation intellectuelle de l'enfant.	1	2	3	4	5	6	7
28. La capacité du parent de faciliter l'accès à l'école.	1	2	3	4	5	6	7
29. Le fait qu'un parent fasse usage de drogues ou d'alcool.	1	2	3	4	5	6	7
30. Le besoin d'un enfant de vivre à proximité de sa fratrie.	1	2	3	4	5	6	7
31. La disposition du parent de faciliter un contact avec la famille élargie.	1	2	3	4	5	6	7
32. Les besoins affectifs de l'enfant.	1	2	3	4	5	6	7
33. Le parent s'est montré violent psychologiquement envers l'enfant.	1	2	3	4	5	6	7
34. L'adaptation psychologique du parent.	1	2	3	4	5	6	7
35. Le parent exerce des pressions sur l'enfant pour le décider à rester avec lui.	1	2	3	4	5	6	7

36. Les intérêts personnels et activités préférées de l'enfant.	1	2	3	4	5	6	7
37. Le couple a des antécédents de violence physique.	1	2	3	4	5	6	7
38. La qualité des rapports du couple avant la séparation.	1	2	3	4	5	6	7
39. Le parent peut recevoir de l'aide de sa famille ou de ses amis.	1	2	3	4	5	6	7
40. La capacité du parent à prodiguer les soins que requiert l'enfant.	1	2	3	4	5	6	7
41. Les antécédents psychiatriques du parent.	1	2	3	4	5	6	7
42. La préséance du lien biologique lorsqu'un beau-parent est en cause.	1	2	3	4	5	6	7
43. L'aptitude du parent à respecter l'horaire quotidien de l'enfant.	1	2	3	4	5	6	7
44. Le désir du parent d'obtenir une garde partagée.	1	2	3	4	5	6	7
45. Les opinions et préférences de l'enfant quant au contact souhaité avec le parent et aux modalités possibles de garde ou de visite :							
(a) lorsqu'il a 5 ans ou moins	1	2	3	4	5	6	7
(b) lorsqu'il a entre 6 et 8 ans	1	2	3	4	5	6	7
(c) lorsqu'il a entre 9 et 11 ans	1	2	3	4	5	6	7
(d) lorsqu'il a entre 12 et 14 ans	1	2	3	4	5	6	7
(e) lorsqu'il a 15 ans ou plus	1	2	3	4	5	6	7
46. L'appartenance du parent à une religion.	1	2	3	4	5	6	7
47. Le désir de l'enfant de voir ses grands-parents et sa famille élargie.	1	2	3	4	5	6	7
48. Le parent a subi de mauvais traitements lorsqu'il était enfant.	1	2	3	4	5	6	7
49. Le besoin d'un enfant de connaître ses deux parents.	1	2	3	4	5	6	7
50. L'état de santé du parent.	1	2	3	4	5	6	7
51. L'aptitude du parent à favoriser l'intégration sociale à long terme de l'enfant.	1	2	3	4	5	6	7

52. La richesse des liens établis entre le parent et l'enfant avant la séparation.	1	2	3	4	5	6	7
53. Le parent a provisoirement assumé seul la garde de l'enfant.	1	2	3	4	5	6	7
54. L'orientation sexuelle du parent.	1	2	3	4	5	6	7
55. L'aptitude du parent à encourager l'enfant dans ses intérêts et activités préférées.	1	2	3	4	5	6	7
56. Le parent est capable d'offrir un cadre de vie sécuritaire pour l'enfant.	1	2	3	4	5	6	7
57. L'avis des professionnels.	1	2	3	4	5	6	7
58. Les notions qu'a le parent du développement psychologique des enfants.	1	2	3	4	5	6	7
59. La possibilité offerte à l'enfant de socialiser avec d'autres enfants de son âge.	1	2	3	4	5	6	7
60. Le besoin de contact entre l'enfant et son "parent psychologique".	1	2	3	4	5	6	7
61. Les soins de santé que requiert l'enfant ou la présence d'un handicap physique.	1	2	3	4	5	6	7
62. Les besoins de l'enfant au point de vue scolaire.	1	2	3	4	5	6	7
63. L'aptitude du parent à comprendre les besoins de l'enfant indépendamment des ses propres besoins.	1	2	3	4	5	6	7
64. Les craintes éprouvées par l'enfant à l'égard de la situation familiale.	1	2	3	4	5	6	7
65. Le désir de l'enfant de voir ses amis.	1	2	3	4	5	6	7
66. La perception qu'a l'enfant de ses relations avec les autres membres de la famille.	1	2	3	4	5	6	7
67. Le parent a la possibilité d'offrir un milieu "familial".	1	2	3	4	5	6	7
68. Le parent se dit prêt à assumer une partie des responsabilités familiales.	1	2	3	4	5	6	7

69. Le parent a des antécédents de consommation de drogues ou d'alcool.	1	2	3	4	5	6	7
70. Le parent a un casier judiciaire.	1	2	3	4	5	6	7
71. Le parent s'est montré psychologiquement violent envers l'autre parent.	1	2	3	4	5	6	7

Cette section du questionnaire est réservée à l'ajout d'éléments non mentionnés et dont vous-même tenez compte dans vos recommandations au sujet de la garde ou du droit de visite.

Veillez inscrire le ou les éléments en question dans l'espace prévu à cette fin et indiquer sur l'échelle la valeur correspondant au degré d'importance accordée à cette question.

Autres éléments :

1. _____	1	2	3	4	5	6	7
2. _____	1	2	3	4	5	6	7
3. _____	1	2	3	4	5	6	7
4. _____	1	2	3	4	5	6	7
5. _____	1	2	3	4	5	6	7

Autres commentaires::

--- Fin de la 2^{me} partie ---

Merci pour votre collaboration. Veuillez retourner le questionnaire par la poste en utilisant l'enveloppe préaffranchie incluse à cette fin.

Appendix B

English Letter to Potential Participants

I am conducting a study which I hope will contribute to a better understanding of how judges in Canada interpret and apply the best interest standard currently used as a guideline for making custody and access decisions. The purpose of this study is to examine the relative importance that Canadian judges assign to various factors relating to the best-interests-of-the-child (BIC) in determining child custody and access in divorce proceedings.

This research is being conducted under the supervision of Dr. Robert Hoge and is in partial fulfillment of the requirements of a Masters of Psychology degree at Carleton University, in Ottawa, Ontario. Approval of this study was granted by the university's Committee on Ethics. I have also had the opportunity to discuss the goals and objectives of this study with Mr. Guy Goulard, Commissioner for Federal Judicial Affairs, however, beyond distributing the survey package, Judicial Affairs is not funding or otherwise involved in this research project.

The enclosed survey is being mailed to all federal judges across Canada and, as such, represents an important and unparalleled research opportunity. Your participation in this study, which will take approximately 15-20 minutes, involves completing the enclosed questionnaire and returning it to me in the postage paid envelope provided. Please be assured that all completed questionnaires will be treated in a confidential manner and that no identifying information is being collected as part of this study.

Normally, a study of this nature would ask participants to read and sign an informed consent form, the purpose of which is to ensure that you understand the nature of the study and your involvement in it. The informed consent must provide sufficient information such that you have the opportunity to determine whether you wish to participate in the study. However, in this case, in order to ensure your anonymity, the receipt of your completed questionnaire will be understood as your consent to participate in the study. Your participation in this study is completely voluntary and you may leave blank any question(s) that you do not feel comfortable answering. Should you have any questions relating to the study, please feel free to contact me or any of the people listed below.

Thank you for taking the time to participate in this research. Your cooperation and time are greatly appreciated.

Contacts: Isabel Mackay, (613) 565-7196 or (819) 773-5884, imackay@chat.carleton.ca;
Dr. Robert Hoge, Faculty Sponsor, (613) 520-5773;
Dr. M. Gick, Chair, Psychology Ethics Committee, (613) 520-2600, ext. 2664;
Dr. K. Matheson, Chair, Dept. of Psychology, (613) 520-2600, ext. 2648.

Appendix B

French Letter to Potential Participants

Je mène actuellement une étude qui a pour but d'enrichir notre connaissance des diverses interprétations et applications données au critère de l'intérêt véritable de l'enfant (IVE), norme actuellement préconisée pour les jugements touchant la garde et le droit de visite. L'étude examine l'importance relative qu'accordent les juges de la Cour fédérale à différentes considérations liées à l'intérêt de l'enfant dans les décisions touchant la garde ou le droit de visite, lorsqu'il est en litige dans une action en divorce.

Les travaux de recherche sont supervisés par Dr Robert Hoge et font partie des conditions requises pour l'obtention d'une maîtrise en psychologie de l'Université Carleton d'Ottawa, en Ontario. L'étude a en outre été approuvée par le Comité d'éthique de l'Université. Par ailleurs, j'ai eu l'occasion de discuter des objectifs de l'étude avec M. Guy Goulard, commissaire à la magistrature fédérale. Il est toutefois à noter que le Bureau du Commissaire ne participe pas financièrement ou d'autre façon à ce projet de recherche, hormis pour la distribution du matériel du sondage.

Le sondage ci-annexé a été envoyé à tous les juges de la Cour fédérale. Il s'agit du premier projet de recherche de cette envergure dans ce champ d'étude. Votre participation consiste à répondre au questionnaire, ce qui devrait prendre entre 15 et 20 minutes, et à nous le retourner par la poste en utilisant l'enveloppe préaffranchie incluse à cette fin. Nous vous garantissons que vos réponses seront traitées en toute confidentialité et que vous n'aurez pas à donner de renseignements signalétiques personnels.

Pour ce genre d'étude, on demande habituellement aux futurs participants de lire et de signer un formulaire de consentement éclairé afin de s'assurer qu'ils comprennent bien le propos de l'étude et le rôle qu'ils sont appelés à y jouer. Le formulaire doit renseigner suffisamment les gens pour leur permettre de déterminer s'ils souhaitent ou non participer à l'étude. Toutefois, dans ce cas particulier, en vue de préserver votre anonymat, le questionnaire dûment rempli sera considéré comme votre consentement. Veuillez noter que cette participation doit se faire à titre bénévole et que vous pouvez ne pas répondre aux questions qui vous gênent. Si vous désirez obtenir plus de précisions sur l'étude, n'hésitez pas à me contacter ou à communiquer avec les autres personnes dont les noms figurent ci-dessous.

Je vous remercie du temps que vous voudrez bien consacrer à cette recherche. Soyez assuré(e) que votre collaboration est hautement appréciée.

Contacts :

Isabel Mackay au (613) 565-7196 ou (819) 773-5884, imackay@chat.carleton.ca;
Dr Robert Hoge, conseiller pédagogique de la faculté, au (613) 520-5773;
Dr M. Gick, présidente, Comité de déontologie des psychologues, au (613) 520-2600, poste 2664;
Dr K. Matheson, présidente, Département de psychologie, au (613) 520-2600, poste 2648.

Appendix C

English Debriefing

Debriefing

Thank you, again, for participating in this research. Your cooperation and time are sincerely appreciated. As noted earlier, the purpose of this study is to examine the relative importance that judges assign to a number of factors relating to the best-interests-of-the-child (BIC) when making custody and access decisions in disputed divorce proceedings. The questionnaire that you completed was specifically developed to provide an assessment framework or model that would organize specific criteria considered to be relevant to the BIC into three main areas of assessment: relational, needs-of-the-child, and abilities-of-the-parent.

Of particular interest in this survey are ratings of specific variables, many of which were not included in previous studies, which we believe have an important bearing on judicial decision-making with respect to custody of children of divorce. The BIC questionnaire which you completed included items such as physical and sexual abuse of a child by the parent, physical violence in the parents' relationship, and alcohol/drug abuse and sexual orientation of the parents. Your responses to these questions will help us to better understand the influence of such issues on custody determinations in disputed divorce proceedings.

Future research may also compare your ratings to those of psychologists on these same items in order to assess whether mental health professionals assign the same level of importance to certain factors in making custody and access recommendations to the court.

If you have any questions or comments about this study, please feel free to contact Isabel Mackay, Principal Investigator, (613) 565-7196 or (819) 773-5884, or Dr. Robert Hoge, Faculty Sponsor, (613) 520-5773. If you have any ethical concerns about this study, please contact Dr. M. Gick, Chair, Department of Psychology Ethics Committee, Carleton University, (613) 520-2600, ext. 2664, or Dr. K. Matheson, Chair, Dept. of Psychology, Carleton University, (613) 520-2600, ext. 2648.

Appendix C

French Debriefing

Notes explicatives

Encore une fois, merci d'avoir pris le temps de participer à cette étude. Soyez assuré que votre collaboration est appréciée à sa juste valeur. Comme il a déjà été mentionné, l'étude proposait d'examiner l'importance relative qu'accordent les juges de la Cour fédérale à différentes considérations liées à l'intérêt véritable de l'enfant (IVE) dans les décisions touchant la garde ou le droit de visite des enfants, lorsqu'il est en litige dans une action en divorce. Le questionnaire auquel vous avez répondu a été élaboré spécialement aux fins de l'étude par Barbara J. Jameson, de l'Université de Victoria. Il s'agit d'une grille d'évaluation qui regroupe des éléments de trois domaines jugés pertinents pour la détermination de l'IVE : l'aspect relationnel, les besoins de l'enfant et les aptitudes et possibilités des parents.

L'intérêt particulier du sondage est qu'il permettra de mesurer des variables bien précises (bon nombre desquelles n'ont pas fait l'objet d'une étude antérieure) qui, nous le croyons, influent grandement sur les décisions des tribunaux au sujet de la garde et du droit de visite des enfants. Le questionnaire vous demandait d'évaluer, entre autres, des éléments comme la violence physique ou sexuelle d'un parent envers l'enfant, la violence physique dans le couple ainsi que la consommation de drogue ou d'alcool et l'orientation sexuelle des parents. Vos réponses nous aideront à mieux comprendre la place que tiennent ces considérations dans la détermination de la garde ou du droit de visite des enfants, lorsqu'il est en litige dans une action en divorce.

Dans un futur projet de recherche, à partir de la même grille d'évaluation, nous nous proposons de comparer vos résultats avec ceux de psychologues afin d'établir quelle importance ces derniers accordent à tel ou tel élément dans leur recommandations à la cour pour ce qui touche la garde et le droit de visite des enfants.

Si vous avez des questions ou des commentaires à nous adresser à propos de cette étude, n'hésitez pas à contacter Isabel Mackay (investigatrice principale) au (613) 565-7196 ou au (819) 773-5884, ou encore Dr Robert Hoge (conseiller pédagogique) au (613) 520-5773. Pour toute question d'éthique, veuillez communiquer avec Dr M. Gick, présidente, Comité de déontologie des psychologues, Université Carleton, au (613) 520-2600, poste 2664, ou bien Dr K. Matheson, présidente, Département de psychologie, Université Carleton, au (613) 520-2600, poste 2648.

Appendix D

Introductory Note to Judges

Last fall, I was approached by Ms Isabel Mackay who is completing a Masters Degree in psychology at Carleton University in Ottawa. For the framework of her Masters program, she is writing a thesis on a subject that includes the Best Interest of the Child criteria. The purpose of her contact was to determine how she might be able to approach members of the judiciary to present them with a survey on how they deal with the criteria to determine the Best Interest of the Child in cases that appear before them.

I sent a message on our JAIN network inviting judges to comment. The comments were very supportive of this survey. Some judges have communicated with her to share their comments and others indicated that they would be willing to co-operate in the survey.

Ms Mackay asked if it would be possible to obtain a mailing list from my Office. My reply to this question is always that we do not provide this list but as this survey is very important to a large number of our judges, I have decided to offer to include her survey in one of our regular mail-outs. This will further assure total anonymity for judges who find it possible to co-operate in this survey.

As a past family court judge in the Ontario Courts, I fully support the goals of this study, dealing as it does with an important area of family law - one that is currently being debated in the public forum. I have no doubt that the vast majority of judges will be interested in the results of this work.

Signed by: Mr. Guy Goulard, Commissioner, Federal Judicial Affairs

Appendix E
Frequencies, Means and SDs of BIC Criteria

	1	2	Frequency of Response						Mean	(SD)
	3	4	5	6	7	8	9	10		
1. Each parent's feelings of responsibility for the child.	0	2	7	33	57	63	44	4	5.48	1.15
2. Parents' ability to cooperate with each other on parenting matters.	0	2	9	64	67	41	26	1	5.02	1.12
3. Each parent's parenting style including discipline practices and beliefs.	0	3	18	103	55	27	3	1	4.45	0.92
4. Parents' history of sharing parenting responsibilities.	0	4	21	66	72	39	8	0	4.69	1.06
5. Each parent's preferences for possible shared parenting plans.	0	5	39	92	45	20	5	4	4.25	1.03
6. The level of conflict between the parents.	0	1	18	50	58	62	19	2	5.05	1.14
7. The extent to which each parent is responsible for the marriage breaking down.	57	81	47	12	7	2	0	2	2.20	1.08
8. The manner in which parents resolve conflict.	1	7	28	67	69	31	6	1	4.50	1.12
9. Each parent's affection for the child.	0	1	11	40	43	66	47	2	5.46	1.21
10. Physical abuse of the child by a parent.	0	1	0	3	13	71	119	3	6.46	0.75
11. Extent to which parents' new partners may contribute to parenting.	1	2	29	76	70	28	4	0	4.49	1.01
12. Each parent's financial sufficiency.	10	35	55	78	21	9	1	1	3.46	1.18
13. Keeping a parent and child of the same sex together.	35	68	72	25	6	2	0	2	2.54	1.06
14. Extent of parent/child contact after the separation.	0	2	13	58	72	51	11	3	4.92	1.04
15. Biological relationship when one parent is an adoptive parent.	32	39	62	43	21	9	1	3	3.06	1.38
16. The cultural background of the parents.	16	20	64	67	30	8	3	2	3.53	1.27
17. Each parent's willingness to allow the child to maintain contact with the other parent.	0	1	2	28	55	82	42	0	5.62	1.01
18. Sexual abuse of the child by a parent.	0	0	0	2	8	64	134	2	6.59	0.62
19. Keeping a young child and the mother together.	7	22	79	61	23	14	1	3	3.57	1.16
20. The child's daily routine.	0	5	29	92	56	19	5	4	4.34	0.99
21. The child's affection for each parent.	0	4	12	63	62	51	15	3	4.91	1.12
22. A parent's admission of infidelity.	114	67	21	3	1	2	0	2	1.63	0.88
23. Overall quality of each parent's relationship with the child.	1	0	6	31	48	89	32	3	5.51	1.07
24. Each parent's capacity to contribute to the child's moral development.	1	1	12	50	69	58	17	2	5.05	1.10

*Note: Items left blank by respondents were coded as 9.

Judges' Ratings of the BIC Custody and Access Criteria

	Frequency of Response								Mean	(SD)
	1	2	3	4	5	6	7	9*		
25. The parent most involved in feeding, disciplining, clothing, interacting with, playing with, entertaining, instructing and making arrangements for the care and education of the child:										
(a) 7 years and under	0	1	8	27	55	86	29	4	5.48	1.04
(b) 8-13 years	0	3	9	50	82	51	11	4	4.98	1.01
(c) over 13 years	0	9	25	83	66	18	5	4	4.37	1.03
26. A parent's history of childhood sexual abuse.	18	37	55	40	19	19	18	4	3.65	1.71
27. The intellectual needs of the child.	1	0	7	56	87	47	10	2	4.97	0.95
28. Each parent's ability to provide access to appropriate education.	0	1	14	61	75	46	11	2	4.88	1.01
29. Each parent's current alcohol/drug abuse.	0	0	2	25	51	81	49	2	5.73	0.99
30. Child's need for relationships with brothers and sisters.	0	0	1	37	70	74	26	1	5.41	0.95
31. Each parent's willingness to provide contact with extended family.	0	1	10	65	76	44	13	1	4.91	1.00
32. The emotional needs of the child.	0	0	2	7	27	79	92	3	6.22	0.87
33. Emotional abuse of the child by one parent.	0	0	1	2	14	75	114	4	6.45	0.71
34. Each parent's psychological adjustment.	0	2	12	68	71	52	2	4	4.79	0.94
35. Parental pressure on the child to "choose" one parent.	2	4	11	31	52	81	27	2	5.30	1.23
36. The child's interest and preferred activities.	0	1	12	86	7	32	6	2	4.67	0.92
37. Physical violence in the parent's relationship.	2	6	18	35	56	47	39	3	5.15	1.38
38. The nature of the parental relationship prior to divorce.	8	12	39	62	56	26	4	3	4.16	1.30
39. Each parent's access to support from family and friends.	0	1	27	95	64	21	2	0	4.40	0.89
40. Each parent's ability to accommodate the child's health needs.	0	0	0	38	81	67	24	0	5.37	0.91
41. A parent's psychiatric history.	0	0	19	69	65	40	12	5	4.79	1.05
42. Biological relationship when one parent is a step-parent.	8	23	53	73	29	17	0	7	3.70	1.21
43. Each parent's ability to maintain the child's daily routine.	0	1	13	76	78	34	7	1	4.73	0.94
44. The parents' desire for joint custody.	3	10	32	76	45	37	6	1	4.36	1.24
45. The child's views and preferences regarding contact with each parent and possible custody/access arrangements when the child is:										
(a) 0-5 years old	65	54	56	24	6	3	0	2	2.33	1.20
(b) 6-8 years old	15	38	78	57	14	6	0	2	3.17	1.12
(c) 9-11 years old	1	9	53	81	48	13	3	2	4.04	1.04
(d) 12-14 years old	0	0	6	55	82	54	11	2	5.04	0.92
(e) 15 years or older	1	0	2	20	40	80	66	1	5.88	1.04
46. Each parent's religious orientation.	18	53	77	47	10	3	1	1	2.96	1.11
47. The child's desire to see grandparents and extended family.	0	5	24	89	46	37	9	0	4.54	1.11

*Note: Items left blank by respondents were coded as 9.

Judges' Ratings of the BIC Custody and Access Criteria

	Frequency of Response								Mean	(SD)
	1	2	3	4	5	6	7	9*		
48. A parent's childhood history of physical abuse.	19	30	70	49	17	13	8	4	3.42	1.45
49. The need for the child to know both parents.	0	0	1	25	48	79	56	1	5.78	0.99
50. Physical health of the parents.	1	4	51	93	43	13	1	4	4.05	0.94
51. Each parent's ability to provide the child with access to stable community involvement.	0	0	17	90	69	28	4	2	4.58	0.89
52. Extent of the parent/child contact before the separation.	0	1	17	69	72	42	8	1	4.77	1.00
53. Temporary custody with one parent.	0	16	67	71	38	10	2	6	3.83	1.04
54. Each parent's sexual orientation.	26	48	70	39	13	6	2	6	2.96	1.20
55. Each parent's ability to maintain and encourage the child's interests and preferred activities.	0	0	10	71	84	35	7	3	4.80	0.90
56. Each parent's ability to provide a safe physical environment for the child.	0	0	2	23	67	69	45	2	5.65	0.98
57. Professional recommendations.	0	1	21	97	66	21	1	2	4.43	0.84
58. Each parent's understanding of child development.	0	2	15	86	81	19	4	3	4.54	0.87
59. Each parent's ability to provide access to other children of the same age.	0	5	39	102	44	16	2	2	4.16	0.93
60. Child's need to be with the 'psychological' parent.	1	8	21	75	36	27	6	36	4.39	1.16
61. Physical handicaps or special health needs of the child.	0	0	6	49	59	69	22	5	5.25	1.03
62. The academic needs of the child.	0	0	7	53	87	52	8	3	5.00	0.99
63. Each parent's ability to understand their child's needs and separate them from their own needs.	0	0	2	14	62	86	45	1	5.76	0.90
64. Any fears the child has about the current family situation.	0	3	19	54	60	52	18	4	4.94	1.17
65. The child's desire to see his/her friends.	0	2	46	89	47	21	4	1	4.24	1.00
66. The child's perception of his/her relationships and involvement with family members.	0	5	31	108	45	16	2	3	4.20	0.91
67. Each parent's ability to provide a 'family' environment.	1	0	19	74	75	30	6	5	4.64	0.92
68. Parent's willingness to share parenting responsibilities after separation.	0	2	11	50	75	57	14	1	5.03	1.04
69. A parent's history of alcohol/drug abuse.	0	2	11	47	59	57	30	4	5.20	1.16
70. A parent's criminal record.	1	5	35	58	43	41	16	11	4.63	1.30
71. Emotional abuse of one parent by another.	1	4	24	36	64	61	19	1	5.00	1.24

*Note: Items left blank by respondents were coded as 9.

Appendix F

Other Items that may be Important to Judges when making Custody/Access Decisions

1. Parent ability to give priority to child's needs
2. Litigation history
3. Mutual hostility of the parents
4. Connection to siblings
5. Parent's decision to stay on welfare in order to have 'more time' for the children
6. Parental alienation
7. Stability of the child
8. Keeping siblings together
9. What I see and hear in court
10. Distance from schooling
11. Language of parents and child
12. Travelling capacity of the non-custodial parent
13. Seeing and hearing the parents
14. The 'religion' vs. religious orientation
15. Harassment by one parent
16. Mind games with child
17. Lack of financial support
18. Second family responsibilities
19. Intellectual capacity of parent
20. Age of parents (relates to health/longevity)
21. Willingness to encourage cultural and religious practices of other parent
22. Overall stability of the family unit absent one parent
23. Home and surroundings
24. Financial capability
25. Ability to nurture child's creativity
26. Ability to nurture the child's independence of thought
27. Length of time in a stable situation
28. Ability and willingness of parent to be flexible to child's development needs
29. Special parenting skills of parent
30. Practical solutions to particular parenting deficits
31. Parental ability to put child's needs before their own
32. Parent's ability to instill in their child respect for the other parent instead of disrespect
33. The needs of the children
34. The parent's ability to communicate
35. Ethnicity
36. Culture of the parents
37. Emotional stability
38. The geographic region where the child grew up
39. Whether child has attended the same school since a young age
40. The child's age
41. Communications between the parties
42. Geographic location of the parties

43. Wishes of one party
44. Parental alienation
45. Judge interviewing the child
46. Intellectual development of the child
47. Distance between parents' residences
48. Involvement in follow-up with school and teachers
49. What nature has already spontaneously set out between the parties and the children
50. The financial interest of the parties in custody
51. The clear identification of the authority by the children
52. The clear identification of 'his house' by the child
53. Trial judge's discretion
54. Pressure on child to favour one parent
55. Actual fitness of the parents' skills
56. Is one parent a control artist
57. Has bonding developed with the parent seeking custody
58. Does anger management effect the parties
59. Will the child be poor, comfortable, rich?
60. Ability to put their issues aside for the sake of the children
61. Distance between home and school
62. Quality of the school offered by a parent
63. For children of tender years, whether one parent can stay at home with pre-schoolers
64. Mobility rights
65. Awareness of the child's needs and ability to fulfill them
66. Career needs of either parent
67. Residence of each parent
68. Delay in having custody/access dealt with by the courts
69. Willingness to provide and encourage access
70. Discipline with compassion
71. Ability to be with child
72. Maturity of parent
73. Stability of environment
74. Ethnic/cultural/racial background of parents
75. Physical safety of the child
76. Quality of life offered, e.g. urban vs. rural
77. Child advocate (in difficult cases)
78. Early intervention
79. Viva voce evidence early rather than by affidavits
80. The extent to which one parent tries to turn the children against the other parent
81. Stability of the parent
82. Balance of the parent
83. Degree of manipulation of children by one of parents
84. Reasons why the parents were unable to arrive at a co-operative resolution
85. Bonding with one parent
86. Geographic location of parents
87. Custody and access reports
88. One parent 'bad mouthing' the other to the child

89. Involving the child in the custody dispute
90. Need for a child advocate
91. The specific facts of the case
92. Importance d'impliquer les peres
93. Permettre a l'enfant d'evoluer et de s'epanouir
94. Child's personality
95. Mobility issues generally
96. Independent evidence
97. Where will the child likely thrive the best
98. What will minimize the alienation of the child from his or her parents
99. Demonstrably false abuse allegations
100. Ethnic/racial differences between the parents
101. Length of time defacto situation has existed
102. Status quo
103. Extended family
104. Parents' capacity and desire to promote a healthy relationship between child and other parent
105. Access cooperation

Appendix G

Items by Area of Assessment Scale

Parent-Parent Scale

Item

2. Parent's ability to cooperate with each other on parenting matters
4. Parent's history of sharing parenting responsibilities
5. Each parent's preferences for possible shared parenting plans
6. The level of conflict between the parents
7. The extent to which each parent is responsible for the marriage break down
8. Manner in which parents resolve conflict
11. Extent to which parents' new partners may contribute to parenting
17. Each parent's willingness to allow the child to maintain contact with the other parent
22. Parent's admission of infidelity
37. Physical violence in the parents' relationship
44. Parents' desire for joint custody
68. Parents' willingness to share parenting responsibilities after separation
71. Emotional abuse of one parent by another

Parent-Child Scale

Item

1. Each parent's feelings of responsibility for the child
9. Each parent's affection for the child
10. Physical abuse of the child by a parent

13. Keeping a parent and child of the same sex together
14. Extent of parent/child contact after the separation
15. Biological relationship when parent is adoptive
18. Sexual abuse of the child by a parent
19. Keeping a young child/mother together
21. The child's affection for each parent
23. Overall quality of each parent's relationship with the child
- 25a) Parent most involved in caring for the child when child is < 7
- 25b) Parent most involved in caring for the child when child is 8 to 13
- 25c) Parent most involved in caring for the child when child is 13+
33. Emotional abuse of child by a parent
35. Parental pressure on the child to 'choose' one parent
42. Biological relationship when one parent is a step-parent
52. Extent of the parent/child contact before the separation
53. Temporary custody by one parent

Needs of the Child Scale

Item

20. The child's daily routine
27. The intellectual needs of the child
30. Child's need for relationships with brothers and sisters
32. The emotional needs of the child
36. The child's interests and preferred activities

- 45a) The child's views and preferences when the child is 0-5 years
- 45b) The child's views and preferences when the child is 6-8 years
- 45c) The child's views and preferences when the child is 9-11 years
- 45d) The child's views and preferences when the child is 12-14 years
- 45e) The child's views and preferences when the child is 15+ years
- 47. The child's desire to see grandparents and extended family
- 60. The child's need to be with the 'psychological parent'
- 61. Physical handicaps or special health needs of the child
- 62. The academic needs of the child
- 64. Any fears the child has about the current family situation
- 65. The child's desire to see their friends
- 66. The child's perception of their relationships and involvement with family members

Qualities/Abilities of the Parents Scale

Item

- 3. Each parent's parenting style including discipline practices and beliefs
- 12. Each parent's financial sufficiency
- 16. Cultural background of parents
- 24. Each parent's capacity to contribute to the child's moral development
- 26. A parent's history of childhood sexual abuse
- 28. Each parent's ability to provide access to appropriate education
- 29. Each parent's current alcohol/drug abuse
- 31. Each parent's willingness to provide contact with extended family

- 34. Each parent's psychological adjustment
- 39. Each parent's access to support from family and friends
- 40. Each parent's ability to accommodate the child's health needs
- 41. A parent's psychiatric history
- 43. Each parent's ability to maintain the child's daily routine
- 46. Each parent's religious orientation
- 48. Parent's childhood history of physical abuse
- 50. Physical health of parents
- 51. Each parent's ability to provide the child access to stable community involvement
- 54. Each parent's sexual orientation
- 55. Each parent's ability to maintain and encourage the child's interests and preferred activities
- 56. Each parent's ability to provide a safe physical environment for the child
- 58. Each parent's understanding of child development
- 59. Each parent's ability to provide access to other children of the same age
- 63. Parent's ability to understand their child's needs and separate them from their own
- 67. Each parent's ability to provide a "family" environment
- 69. A parent's history of alcohol/drug abuse
- 70. Parents' criminal record