

2.4 - COURT ORDERS/MUTUAL AGREEMENTS

RATIONALE: To make Centres aware of any terms or conditions for access as ordered by the Court or as agreed upon by the parties in writing.

STANDARD:

- Centres obtain a copy of the Family Court Order or the endorsement, if one exists, before making final arrangements to provide Supervised Parenting Time services.
- SEC must obtain copies of any other types of Court Orders such as Bail conditions, Peace Bonds, or Restraining Orders before making final arrangements to provide Supervised Parenting Time services.
- In cases where there is no Court Order for Supervised Parenting Time, the parties provide the Centre with a formal, written, mutual agreement (e.g., Separation Agreement, Minutes of Settlement, SEC agreement of terms for visit or exchange form, or a letter signed by both parties) that sets out the basic terms for use of the Centre, such as the type of service required, proposed hours and the payment of fees.
- The Centre does not negotiate the use of the service with the parties or facilitate the writing of the agreement.
- The Centre Coordinator does not authorize changes to Court Orders or agreements. The Centre Coordinator may suggest or ask for changes to terms of an order or agreement with regards to hours and days for access, if agreed upon by both parties and their lawyers, if they are represented.
- Centres do not direct court as to what must be included in their orders, in written publications or otherwise
- Note: **Only** Court Orders can be enforced by the police or the courts. Police will accept official stamped orders, not endorsements. In some instances, police will only enforce the Order if they are specifically designated in the Order to do so. The Centre should ensure that participants with mutual agreements understand that their agreements are not legally enforceable.

POLICY: Where a Court Order specifies that a party be granted access to a child, SEC endeavours to honour such a judgement to the best of its ability, subject to the available resources and the agency's discretion.

PROCEDURES: In order to ensure the smooth operation of the Supervised Parenting Time Centre and minimize any difficulties for children, SEC will:

- Explain to the residential and visiting party that their patience and flexibility may be required if dates/times do not correspond with SEC's hours of operation
- Never agree with a party who contacts SEC to say that a child does not want a visit/exchange. Explain to the party that a Court Order expects that the

parent assist/encourage the child in following through with the intent clearly established in the document

- Request that any changes to the Court Order be brought to the attention of the Centre Coordinator or designate immediately
- Investigate “unusual requests” and/or “uncertainties” with the lawyers representing each party prior to offering an answer about access.
- Suggest that the parties obtain professional advice when there are issues that cannot be resolved between the parties. Centre staff are not lawyers and cannot give legal advice
- Reaches out to the bench and bar to explain the purpose of supervised services and refers them to the Information for Court Orders or Agreements and the Suggested Wording for Court Orders and Agreements documents found on the Ministry website
- Makes sure that crown attorneys, police, victim services personnel and any other persons with the power to make orders or set conditions in the Centre’s local community are aware of the Supervised Parenting Time Program’s mandate and scope of service.
- Explain to all parties that any behaviour which undermines the neutral, safe use of the SEC centre will be reason to discuss the possibility with the parties and parties’ referring sources of termination of service (NOTE: a court order specifying the use of the Supervised Parenting Time centre is not grounds to tolerate inappropriate behaviours).

Cases Where There is No Formal Determination of Custody:

- The fact that access might be delayed while parties return to court or find lawyers to obtain orders or formal, written, mutual agreements is not a reason for the Centre to provide service.
- If there is no formal determination of custody, then the Centre may have to refuse service until there is a Family Court Order, formal separation agreement, or Minutes of Settlement that specify custody, access or residence. Particularly in cases where there are restraining orders or safety issues, there should be concern about the absence of an access order.
- For separating and divorcing families, the CLRA Section 20 (4) states that:

“Where parents separate”

(4) Where the parents of a child live separate and apart and the child lives with one of them with the consent, implied consent or acquiescence of the other of them, the right of the other to exercise the entitlement of custody and the incidents of custody, but not the entitlement to access, is suspended until a separation agreement or order otherwise provides. R.S.O. 1990, c. C.12, s. 20 (4).”

BEST PRACTICES:

- Court Orders are followed according to the spirit of the law, as well as the availability of facilities and the training of staff. Consequently, the need to alter

days or times of service may be unavoidable in order to accommodate a family's use of the service.

- Where there is no determination of custody, the Centre should request that the lawyers or the parties provide written confirmation that might include the following wording: "*without prejudice 'someone' has interim custody*" or "*without prejudice the person agrees that the child lives with one parent and the other parent agrees to Supervised Parenting Time until the time when custody is decided.*"