

UNDERSTANDING SECTION 211 REPORTS

A GUIDE FOR WOMEN

This document is for women who have been told to get a “s. 211 report” (sometimes also called a “custody and access report”). You may be thinking about asking a judge to order a s. 211 report yourself, your ex-spouse may be asking for one, or a judge may have ordered one even if neither of you requested it. This document provides some basic information, but it is not legal advice. If possible, seek help from a lawyer.

WHAT IS A SECTION 211 REPORT?

Section 211 reports are ordered in difficult family law cases where the parents cannot agree about parenting issues. The reports are written by a neutral professional and provide judges with information about the children and the parties.

Section 211(1) of the *Family Law Act* reads:

211(1) A court may appoint a person to assess... one or more of the following:

- (a) the needs of a child in relation to a family law dispute;*
- (b) the views of a child in relation to a family law dispute;*
- (c) the ability and willingness of a party to a family law dispute to satisfy the needs of the child.*

This document does not contain legal advice. If you or someone you care about requires legal advice, please consult with a lawyer.



In general, s. 211 reports tend to fall into two categories:

- **“Views of the Child reports”** give information about what the child says about which parent they want to live with or spend time with. These are usually quite short.
- **“Full s. 211 reports”** are usually much longer and include information about the child’s needs as well as the child’s opinions. They will also include information about the parents and may include information about your home and parenting style.

WHO CAN PREPARE A S. 211 REPORT?

Many different people can write s. 211 reports. We can divide these “report writers” into two main groups:

- **Family justice counsellors** are provincial employees who work in Family Justice Centres around BC. They can prepare both Views of the Child reports and full s. 211 reports, and they also provide a range of services including short-term counselling, legal education, and mediation. There is no cost for any of their services, although there may be a wait time. Family justice counsellors are required to complete family violence training and they do not use psychological tests in their reports.
- **Private assessors** are other professionals (including social workers, psychologists, and clinical counsellors) who can also write s. 211 reports. Often the reports prepared by private assessors are longer than those prepared by family justice counsellors, and they may include psychological testing. These individuals charge for their services, and there may also be a wait time. While the cost will vary depending on the assessor, you can expect to pay approximately \$15,000 for a full s. 211 report. The cost may also be much higher if you have to hire a second professional to review the first assessor’s work, or if you need the assessor to come to court to testify. Most report writers will bill separately to attend court. Private assessors are paid by you, your ex, or you and your ex may share the cost of the report between you, depending on what the judge orders.

ORDERING A REPORT

Section 211 reports must be ordered by a judge. It is usually relatively easy to ask a judge to order a s. 211 report. However, once a report has been prepared, it is very likely that the judge will follow the recommendations. If the report is not favourable to you, it will be very hard to overcome.

Therefore, before you ask for or agree to a report, you should consider whether a report is really necessary or whether the information you need to put before the court can be given in some other way.

If you are going to have a s. 211 report prepared by a **family justice counsellor**, you will not be able to select which one will prepare the report.

If you are going to have a s. 211 report prepared by a **private assessor**, it is important that you or your lawyer ask lots of questions before you agree to a particular person.

IMPORTANT QUESTIONS WHEN CHOOSING AN ASSESSOR

Did you experience family violence?

In family law, the term “family violence” includes physical, emotional, sexual, and financial abuse. If you experienced family violence from your ex, you will want to make sure that the person preparing the report has training and expertise in family violence. In many cases involving family violence women believe that the assessor will identify the abuse and make recommendations to keep them and their children safe. However, assessors who do not have special training in family violence will often ignore it or misinterpret it. Even if the assessor agrees that there was violence, they may still recommend that you share parenting with the other parent.

Are you an English Language Learner?

If you are an English Language Learner, even if you are fluent, you may find it helpful to have interpretation and translation during your assessment to ensure that you understand what is being asked of you. The psychological tests that are sometimes used by private assessors are “standardized,” which means everyone who takes the test takes exactly the same test, which is written in English and is made by people who speak English.

Are you Indigenous?

It may be particularly challenging as an Indigenous person to have a s. 211 report written about you as assessors are not required to have knowledge about the impacts of colonization or to have completed training about their own biases or systemic racism. If you are having a private assessor write a s. 211 report, you may want to ask about any specific training they have completed to help them work respectfully and safely with Indigenous people.

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Can you afford the report?

You should also ask questions about the cost of the report and who will pay, and how (for example will your ex-spouse pay for the report up front and then be paid back by you later, or will you both make payments to the assessor separately?).

If you and your ex-spouse cannot agree about who the private assessor should be, the judge may choose someone.

WORKING WITH THE ASSESSOR

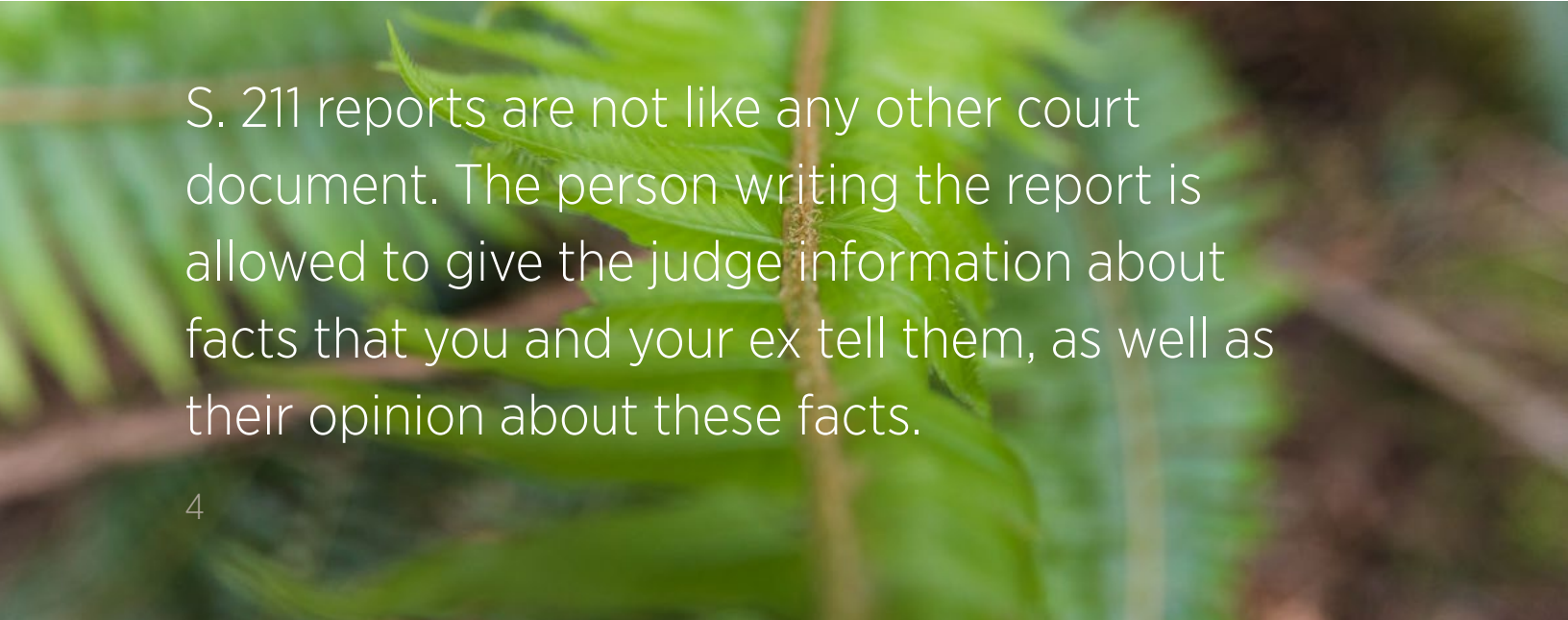
When a judge orders a s. 211 report, they will give the report writers directions about what kind of information to include in their order.

If you and your ex-spouse are hiring a private assessor, your lawyers will also send a joint agreement to the assessor that provides basic information about your case, what parenting problems you disagree about, and any other issues that the judge wants information about. This agreement will also include what documents and other information you need to share, and how payments will be made. The agreement may include rules like neither parent will give additional documents to the assessor without the other parent agreeing. If you have a lawyer, your lawyer will give you advice about this.

Report writers will usually review any documents relating to your case and may also ask for a list of other people or “collaterals” who can talk about your children. If possible, get advice from a lawyer about what information you need to provide and whose names you should give to the report writer.

HOW ARE S. 211 REPORTS USED IN COURT?

S. 211 reports are not like any other court document. The person writing the report is allowed to give the judge information about facts that you and your ex tell them, as well as their opinion about these facts. Judges tend to rely heavily on what the reports say. If you disagree with something the report writer says you may have to ask for them to come to court to be questioned (cross-examined).



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HOW SHOULD YOU PREPARE?

Here are some things you should think about when you are preparing to meet with a report writer.

- **The report writer will assess the parenting abilities** of you and the other parent by watching your children, interviewing your children, and interviewing each parent. The assessment will normally include a home visit. The assessor will ask you questions about your life. Anything that you say may be included in the report, which will be given to the other party and the judge.
- **The report writer is not a personal counsellor**, and the purpose of the meeting is not to help you feel better, but to gather information. This might be quite different from other times that you met with a counsellor.
- **The report writer will likely ask you to sign a consent form** and should explain “informed consent” to you. Once a court has ordered the report there will be limitations to your ability to withhold consent about how the information you give to the report writer is used. For example, you may not want your test results to be included in the report, but the assessor will be able to include them anyway because of the court order.
- **Try to ensure that you know how long the report writer will be meeting with you.** In some cases, the length of the meeting can be up to eight hours.
- **Bring food and water.** You may not have time to run out for a snack, and you may not be provided with water or coffee breaks. During the meeting, it is okay to ask for breaks when you need them. If the report writer will not allow you to have a break when you need one you should let your lawyer know or make a note about what happened for when you can get legal advice. During some tests you may not be allowed to leave for a break so it may be a good idea to ask for a short health break before you start any testing to have a drink, snack, or washroom break.
- **Treat the report writer professionally and be courteous.** The report writer will report about your behaviour and this information will be provided to the court. Be aware that the report writer may not be courteous or professional toward you and may even make negative remarks about your home or appearance. Again, if this occurs, tell your lawyer if you have one, or write down what happened for when you can get legal advice.
- **If the report writer is a private assessor, they may ask you to complete psychological tests**—these are often multiple choice and may be administered on a computer or with a pencil and bubble sheet. If you think there is a problem with the test results you may need to hire another private assessor to review the results since the assessor will not give your answers to your lawyer or the court, they will only give them to another qualified assessor.

- **The report writer may also ask very broad and open-ended questions.** If possible, focus on the current matter before the court. Sometimes report writers may ask questions about your personal history—if the report writer asks you questions that are not about your court case (for example if the assessor asks about your past romantic relationships) then be honest but brief.
- **The report writer may include information in the report about how you talk about the other parent.** When you are expressing your concerns, try to provide specific examples of the behaviours that worry you. Speak honestly and avoid encompassing descriptions such as ‘always’ and ‘never’; instead use ‘often’ or ‘seldom.’ Unless the opposing party has been formally diagnosed with mental illness, you should not speculate about whether your ex-spouse is mentally ill or about a diagnosis you think they may have. Even though your ex-spouse may be referred to in formal ways in the legal system (like the “opposing party” or the “respondent”), it is typically best to simply refer to them by their first name during the assessment.
- **The report writer may also ask you to talk about your children.** Try to be thoughtful and detailed. You will want to demonstrate that you understand the children’s individual needs separate from what you or the other parent might want. If you have any concerns about the children try to be specific and accurate, especially when describing something that the child did or said.
- **If you have experienced violence,** it is important to discuss what happened, the impact of the violence on you, and whether you still have safety concerns. Do not minimize your experience of violence as this is important information that the court has to consider. However, you should be aware that some assessors do not necessarily have training in understanding violence, and you may feel that they are not helpful or that they do not believe you.
- **After your appointment is over you should take notes** as soon as possible about what happened, and what was said. Include any concerns that you had. These notes may be important to help you and your lawyer prepare for court if the assessor makes mistakes about what information you provided to them when they write their report.
- **Meeting with a report writer can be a very stressful experience.** If possible, plan to meet with a friend, counsellor, or other support person after the assessment.



WHAT HAPPENS IF THE S. 211 REPORT IS NOT FAIR OR ACCURATE?

Section 211 reports are often hard to challenge in court. But it is possible.

If the report contains incorrect information you should tell the court this when you are giving your own testimony or call a witness who can say that the facts in the report are wrong. If the report writer has drawn the wrong conclusion about something you told them, you may need to explain to the judge why the report writer is wrong. For example, if your child refuses to get out of the car for their visit with your ex-spouse, the report writer might say that you are telling your child not to spend time with the other parent, but you can explain that the child is afraid of the other parent, and why.

If there are problems with the s. 211 report, including with any psychological tests that were done, you or your lawyer may have to call the report writer as a witness and ask them questions (this is called “cross-examination”). If you are working with a private assessor, you will have to pay extra money for them to come to court. You may also have to pay another private assessor to review your test results and help your lawyer prepare.

While you are allowed to cross-examine the assessor yourself if you are self-represented, you should be aware that this is very difficult and if possible you should try to get help from a lawyer, even if it is just for this one part of the trial.

You can make a complaint about private assessors to their governing bodies if you think that they have been unprofessional. The governing bodies are the BC College of Social Workers, the BC Association of Clinical Counsellors, and the College of Psychologists of BC – your report writer’s professional body will be on their report. These complaints are unlikely to impact your court case but may be relevant to your family matter in the future and they play a role in protecting the public.

If you feel that the report writer discriminated against you in your s. 211 report (for example if you were treated badly because of your gender or race), you may consider making a complaint to the BC Human Rights Tribunal. You must make the complaint within one year of the discrimination.

While you are allowed to cross-examine the assessor yourself if you are self-represented, you should be aware that this is very difficult and if possible you should try to get help from a lawyer, even if it is just for this one part of the trial.

Hundreds of women have been where you are right now, and there are many people who can help you through this challenging time.

GOING FORWARD

You may or may not have a choice about having a s. 211 report, or you may have a report that is unfair or unkind, but remember you are so much more than one report.

We encourage you to seek out support in your community. Find single parents' groups, connect with other parents online, or connect with your local women's centre or transition house to learn about help in your community. Call BC211 by dialling "211" from any phone in BC to be connected with services close to home. The family court process can be very lonely, and you might feel that no one understands what you're going through, but hundreds of women have been where you are right now, and there are many people who can help you through this challenging time.



Our office is located on unceded territory of the **Skwxwu7mesh** (Squamish), **Tsleil-Waututh** (Burrard), and **xʷməθkʷəy̓əm** (Musqueam) Nations.

516 Richards St, Vancouver, BC V6B 3A2
236-317-9000 | intake@womenslegalcentre.ca
womenslegalcentre.ca

Written by Haley Hrymak and Kim Hawkins | December 2020

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Translations of this document are available in Arabic, Chinese (Simplified), Chinese (Traditional), Filipino, French, Korean, Persian, Punjabi, Russian, Spanish, and Vietnamese, and forthcoming in Urdu.

This document does not contain legal advice. If you or someone you care about requires legal advice, please consult with a lawyer.