When Domestic Violence & Parental Alienation Collide in Family Law, Canadian Experience

Supplementary Conference Materials

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Dr. Linda C Neilson
Professor Emerita, UNB, Muriel McQueen Fergusson Centre for Family Violence Research
Academic Orientation

- Strong belief in legal system research informing practice
- Cross Disciplinary: Law & Social Sciences
- Overriding Concerns: Gender Equality & Human Rights
- Adults & Children have a fundamental human right to live life freed from Coercive Control / Intimate Partner Violence
- Responsibility lies in services and systems not in vulnerable/traumatized people
Why Getting it Right is Important

When Courts Get it Wrong

Create Child Development Adversity

Please visit the National Scientific Council on the Developing Child, Harvard University

http://developingchild.harvard.edu/activities/council/

Read Working Papers & View Images of the Effects of Toxic Stress & Persistent Fear on Child Development
The PA Problem

- Everyone in the family law system needs to understand:
  - Verified & accepted child development / resilience principles
  - Trauma responses to domestic & family violence

- **BUT** social science can be **dangerous in legal systems when**
  It is not credible, dependable, well established and broadly accepted.

This is the reason we have admissibility rules such *R. v. Mohan*, [1994] 2 SCR 9 and *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 in Canada and *Frye* and *Daubert* in the US.
N.R.G. v. G.R.G., 2015 BCSC 1062 wherein the court states:

*Regardless of academic debate respecting labels and diagnosis, the simple fact of the matter is that alienation is a useful and important concept which is frequently at play in high-conflict separations and has been recognized as such in numerous cases before the Canadian courts.*

Changes from social science theory → legal concept.

Can no longer challenge or qualify research foundations & premises → judges apply without knowledge of limitations.
Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?

Parental Alienation: Claims of Advocates

- **Definition**
  - Only applies when “unwarranted” rejection (theoretically)
  - Occurs when legal matters are involved
  - Primary cause is a parent wishing to exclude other parent
  - Removed term ‘syndrome’ from Richard Gardner’s discredited theory
  - Original concept – almost all alienators are mothers
  - New theory – either parent can be an alienator – purports to be gender neutral

- **Tools, Checklists, Presumptions**
  - Assumption: Children seldom reject a parent unless the other parent is responsible
  - Assumption: Children who reject a parent suffer long term harm
  - Assumption: Checklists of child and adult behavior can prove parental alienation

- **Prescription**
  - Ignore child views and preferences
  - Use police power to enforce rejected parent entitlement
  - Remove children from preferred ‘alienating’ (primary) parent and force them to live with rejected parent

- **Assertions**
  - Alienated children incur long-term harm
Concerns of Critics

- Assertions not supported by research
- Gender Bias - against primary parents (mothers)
- Silences preferred parents & Children
- Re-victimizes
- Ignores safety concerns (women & children)
- Inconsistent with accepted child development & child resilience principles
- Relies on assumptions rather than on evidence
- Recommends punitive, “draconian” approaches
- Operates to enforce non-primary parent (usually father’s) ‘rights’ to parenting
Additional Concerns re the Legal System

- Deflects attention from:
  - Parenting practices
  - Parent-child relationships (quality of)
  - Best Interests of Child
- Relies on assumed primary parent fault when children resist contact
- Punitive rather than therapeutic
- Non adherence to:
  - the legal rights of children
  - legal principles associated with expert evidence
  - Best practice guidelines for parent-child evaluators
Do the Claims of Critics Have Empirical Support?

- *Is this about children or angry, rejected parents?*

- *Sheep or Wolf in false clothing?*
Published Concerns about research reliability

- Stephanie Dallam and Joyanna Silberg (2016) Recommended treatments for “parental alienation syndrome” (PAS) may cause children foreseeable and lasting psychological harm in Journal of Child Custody 13:2-3 134-143
- Dr. Scott Huff (2015) PhD dissertation titled Expanding the Relationship between Parental Alienating Behaviors and Children’s Contact Refusal Following Divorce: Testing Additional Factors and Long-Term Outcomes;
- Rebecca Thomas and James Richardson (2015) “Parental Alienation Syndrome: 30 years On and Still Junk Science” 54(3) Judge’s Journal

Partial list. Many others have published concerns about the theoretical origins of the concept in the work of Richard Gardner. His work has been heavily criticized for gender bias and for assertions supporting child sexual abuse.
How Canadian Courts are Responding

- Method
  - 357 Canadian cases (2007 - 2017)
  - Same family multiple cases counted once

Claims v Fathers 31.1%
Including 9.3% Claim by Victim Of DV

Claims v Mothers 68.9%

41.5% Domestic Violence or Child Abuse
- 76.8% Perpetrator Claimant
  - 23.2% DV Victim Claimant
General Concerns (not specific to DV)

- Gender Bias
- Non Attention to Child Best Interests
- Non Adherence to Legal Rights of Children
- Negative Impact on Evidence
- Non adherence to child development & resilience principles
Gender Bias

- Non application of PA theory by court:
  - 50.9% cases claim v fathers
  - 50.8% cases claim v mothers
  - Reasoning similar (except DV)
- Court accepts & applies PA theory (53 cases v fathers; 95 cases v mothers)
Punitive, Draconian Orders

- High, repeated use of police v children
- Children forcibly removed from preferred, primary care parents
- Children denied any and all contact with preferred parents & extended family
Children Taking Action

  - Repetitive police enforcement of custody order to repair child – father relationship
  - Children not allowed to communicate with mother
  - Ultimately children applied to be freed from parental control entirely – endorsed by the court

The evidence indicates that the two sons are closely bonded with each other, the mother, and the mother’s family. Yet the existing order puts up barriers to those contacts, attempting to isolate the sone from the maternal family while mandating an exclusive relationship with the father that has not worked... The result is they have no family.
Gendered Discourse

Judicial Discourse in cases that accept PA

- **Father’s** PA claims characterized as
  - children’s rights to two parents
- **Mother’s** concerns child safety & negative parenting
  - AND
- Children’s wish to reside with primary care mothers, characterized as
  - “unusual” parent-child closeness
  - mother’s over protection
**Best Interests of the Child Analysis?**

Starting premise children benefit from equal time M/F parenting

- Attribute blame when children resist
- Shift in focus to court repair of child relationships with rejected parents
- Absence of thorough statutory BI analysis in:
  - 2/3 (66.7 %) PA claim cases
  - 48 % cases PA plus DV or child abuse claim
What about the Legal Rights of Children?

Primarily adolescent youth: Over half 13 +

Competing explanations: PA advocates v child development experts


PA cases (when child views mentioned):

- Considered & given weight in merely 20.8 % of cases endorsing PA theory
- Discounted in 79 % of cases
Impact on Evidence

- Judges are ‘diagnosing’
- Relying on assertions & checklists from other cases

  - Assume primary care parent are at fault
  - Ignore the views and preferences of children/youth
  - Dismiss evidence of positive parenting, primary parents
  - Dismiss evidence of negative parenting, rejected parents
  - Ignore child experts unless PA advocates
  - Force children to live with rejected parents & deny them contact with preferred parents & extended family
Do Responses Get Better in Domestic Violence Cases?

- We know (eg O’Sullivan; Saunders; Bartol et al.) non-DV-specialized evaluators fail to consider negative parenting & safety.

- Guidelines for parent-child evaluators – require DV specialization or consultation with such experts.

- [Pie chart with categories: DV Expert, Parental Alienation Analysis, Not specified]
What happens in the Cross Claim Cases?

- Child Views asking to restrict contact with abuser parents
  - Considered & affected decision – 26 cases
  - Ignored or discounted – 29 cases
- 40/109 (36.7%) of cases, when PA claimed by perpetrator, the court made a PA finding against the DV or child abuse claimant
  - 39 cases children removed from targeted parent, placed with alleged abuser parent
  - 24 cases children denied contact or all but limited supervised contact with their preferred, protective parent
Evidence of DV or child abuse - dismissed as PA tactic


Uniformed Judicial discourse:
- Dismissal of DV sex abuse evidence
- Erroneous assumptions based on demeanor
- Discounting evidence on the basis absence of criminal findings
- Erroneous assumptions reflecting lack of knowledge of trauma & disclosure patterns
Strange PA Assertions -

negative parenting

Parenting Patterns caused by Rejection

- Harsh, rigid, punitive
- Strong objection to child challenge to authority
- Passivity in conflict
- Self centred relationship w child
- Loss of temper, angry, demanding
- Intimidating
- Counter rejection
- Lack of empathy
- Challenges child beliefs
- Unannounced, embarrassing visits
- Dismissive of child feelings
- May use force to reassert parental position
- Vents rage, blames alienating parent, assumes no responsibility

DV research - parenting mirrors DV behavior - See Neilson CanLII e-book at 11.1.10

- Harsh, rigid, physical punitive (child abuse)
- Highly controlling, expectation of servitude
- Role reversal, expects child to satisfy perpetrator’s needs
- Intimidates mother and child and all who support
- Attempt to alignm with child v targeted parent
- Retaliates by rejecting child
- Challenges child beliefs, non acceptance of independence of child, views as entitlement/possession
- Embarrasses child - shows up at school, uninvited, misuses police power
- Dismissive of child feelings
- Use of force or threats to reassert control
- Rage, blames other parent, assumes no responsibility
More errors in judgement in Cross Claim Cases

- Failure to identify clear evidence of negative perpetrator parenting associated with DV
  - 58 cases crystal clear evidence
  - 20 cases severe abusive & violence conduct of children v mothers targeted by DV

- Lack of understanding child development principles, trauma and fear
  - false assumptions

- A few case illustrations
  - L.T. v. S.M., 2016 BCPC 124
  - A.A. v. S.N.A., 2007 BCCA 363, 2007 BCCA 364 and related cases involving the taxation of the father’s solicitor’s accounts following the father’s successful parental alienation case (2008 BCSC 1223 and 2008 BCSC 1679
When PA claimant also DV claimant

- 33 cases
- All mothers
- *Quenville v Goodfellow*, 2017 ONSC 6549
- Despite **BOTH** DV and PA claims v fathers, father’s contact with the child severely restricted/removed in **only 21.2% of these cases.**
- Most cases fathers granted unsupervised access, joint or full custody
**PA claims → Impossible Double Bind**

- **Protective Parents** (mothers)
  - **Express concerns** DV, child abuse, child safety → evidence of attempted PA → loss of children
  - ⚠️ risk to self & children
  - **Fail to present** concerns → no protection
  - ⚠️ risk to self & children

- **Children**
  - **Ask to live with** mothers → evidence of PA
  - ⚠️ Risk removal from preferred, safe parent
  - Seek reduced time with fathers → evidence of PA
  - ⚠️ Risk removal from preferred, safe parent
This must stop Now!
Glimmers of Hope From Canada

- Courts declined to apply PA theory
  - 50% PA Claim cases
  - 60% of cases PA claim by perpetrator of DV or child abuse

- Recent Court of Appeal decisions

- Need rigorous application of *R. v. Mohan, White Burgess Langille Inman v. Abbott and Haliburton Co*
What the Legal System Needs do

- Abandon use of all PA checklists
- Educate on accepted child development & resilience principles
- Adopt National Council of Juvenile & Family Court education recommendations (both countries) on:
  - Abuse & implications children & parenting
  - Child development & resilience
  - Trauma – effect on parents & children & litigation
  - Implicit bias
Continuing Canadian research

- Simon Lappierre, Professor, Social Work, U Ottawa, Principal Investigator
- Elizabeth Sheehy, Professor, Faculty of Law, U Ottawa
- Susan Boyd, Professor Emerita, Faculty of Law, U British Columbia
- Patrick Ladouceur, research assistant

Additional research & analysis anticipated
We Need to Work Together

Research & Policy & Practice