Kids Come Last
The Effect of Family Law Involvement in Parental Alienation

CHRISTINE GIANCARLO AND KARA ROTTMANN
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Abstract: Parental alienation following separation or divorce, in which one parent denigrates the other in order to turn their children against that parent, is a well-documented but poorly recognized form of child abuse in Canada and globally. Children without access to both parents are more likely to be truant, drop out of school, suffer poor health, and engage in at-risk, antisocial behaviours. Though maintenance enforcement programs in western Canada address the issue of noncompliant “debtors” (i.e., payors of child maintenance), there is no organization that addresses the issue of noncompliant “creditors” (i.e., receivers of child maintenance) in providing child access. This study identifies the effect of family law when invoked by the targeted parent in parental alienation cases. The primary investigator recruited twenty-eight participants living in Alberta and British Columbia, all alienated parents or grandparents, via public internet invitation followed by a telephone screening to confirm eligibility. Using a semi-structured interview method, each participant was voice-recorded face-to-face by the primary investigator. Each interview was subsequently transcribed for analysis, which identified four core themes suggesting factors that affect the alienated parent-child relationship once family law is involved.

Keywords: Parental Alienation, Parental Alienation Syndrome, Child Abuse, Children of Divorce, Family Law

Parental Alienation

Psychiatrist William Bernet defines parental alienation as the “child’s strong alliance with one parent and rejection of a relationship with the other parent without legitimate justification” (Bernet 2010, 4). The validity of parental alienation is well-established and almost universally accepted by mental health professionals, including psychiatrists, psychologists, social workers, and family counselors who assess and treat children of high-conflict divorces. In his 2010 presentation to the European Association for Forensic Child and Adolescent Psychiatry, Psychology, and Other Involved Professions (EFCAP), with members in Europe as well as other countries, Bernet named seventy such academics and practitioners and thirty countries who confirm the reality of parental alienation.

Family courts are dealing with increasing numbers of alienation cases (Fidler et al. 2013) as a last-resort effort by targeted parents to re-establish the parent-child relationship. Many argue that legal involvement is critical for effective implementation of any treatment or intervention plan, such as in designating and enforcing parenting time and decision-making (Bala et al. 2007, Baris et al. 2000, Cartwright 2006, Everett 2006, Gardner 1998b, 2001a, Johnston et al. 2001, Lee and Olesen 2001, Lund 1995, Rand and Warshak 2008, Sullivan 2004, Sullivan and Kelly 2001, Walsh and Bone 1997, Warshak 2006). Some high-conflict cases of separation and divorce do not involve alienation (Birnbaum and Bala 2010a) and not all children exposed to conflict become alienated (Johnston et al. 2005b).

Parental alienation, whether direct or indirect, conscious or unconscious, requires the contribution of the favoured parent’s behaviour. If unconscious, mental illness or a personality disorder may be a factor (Condrell 2006). In high-conflict cases, noncompliance with court orders and separation agreements is common. This can reflect that the favoured parent has persuaded him- or herself that noncompliance is promoting the interests or protecting the rights of their children. It also reflects the high incidence of personality disorders, and the corresponding distortion in perception, in this high-conflict population (Baker 2005a, 2005b, 2006, Grych and Fincham 1999, Jenuwine and Cohler 1999). In fact, in comparison to rejected parents, favoured parents have more psychological disturbances, including histrionic, paranoid,

A main strategy used by alienating parents is to withdraw love if the child indicates affection for the rejected parent, thereby instilling fear in the child and increasing his or her dependency on the alienator (Baker and Darnall 2006). Other common strategies used by the favoured parent include noncompliance with court-ordered or agreed-to parenting time and contact; interference with mail and phone contact; seeking restrained and supervised visitation orders; failing to pass on to the child phone calls, messages, and letters from the targeted parent; interference with access to information regarding the child, such as school, medical, or social events; limited or prevented contact with the alienated parent’s extended family; and a prohibition from any reference to the alienated parent (Baker 2005b, 2006, Baker and Darnall 2006, Johnston et al. 2005b, Kelly and Johnston 2001, Vassiliou and Cartwright 2001).

An alienating parent may be of either sex (Baker 2010). Gardner originally stated in the 1980s that 85–90% of his alienation cases involved the mother as alienator, but he later found that due to increased father involvement in parenting, both mothers and fathers were involved in alienating behaviours in approximately equal proportions (Fidler et al. 2013, R.A. Gardner 2002b). That said, alienation tends to be perpetrated by the parent with custody or primary care of children, and this is most often the mother. Canadian data from 1994 shows that of 47,667 children about whom there was a custody decision, 33,164 (70%) were placed in sole custody arrangements with their mother. Kruk concluded that 16,582 (50%) of these children would eventually lose all contact with their fathers (Kruk 1998, ch. 1, sec. D). Such fathers have been wrongly labeled “deadbeat dads,” a derogatory term that suggests they are remiss in their child maintenance payments and/or are absent fathers through their own fault (Dictionary.com 2013). In fact, the vast majority of alienated dads have always paid child maintenance as dictated by the Federal Child Support Guidelines, yet these fathers have little or no access to their children (Braver and O’Connell 1998). Children who grow up without fathers in their lives are far more likely to experience school drop-out, substance abuse, and criminal and antisocial behaviours. Indeed, fatherlessness is an urgent social problem (Blankenhorn 1995, Condrell 2006, Gottlieb 2012, Lamb 2000).

Of the various risk factors and indicators related to the occurrence of alienation, two stand out: The parents’ mental health and the child’s level of involvement in the parents’ dispute (Fidler et al. 2013). Age also seems to be a factor, in that preadolescence is the most common developmental phase for the onset of alienation (Bow et al. 2009) and adolescents are more likely than younger children to become alienated from a parent (Kelly and Johnston 2001).

**Parental Alienation Syndrome**

Gardner (1985), an American psychiatrist, first conceptualized parental alienation syndrome (PAS) as a psychiatric disorder, having seen it firsthand in his practice, though debate continues over whether this is an actual “syndrome.” According to Gardner, PAS occurs when one parent in a post-custody divorce arrangement successfully manipulates the children into turning against the other parent (Gardner 2001a).

PAS is fostered when the alienating parent discourages the belief that the targeted parent can be trusted; he or she is instead portrayed to the child as unsafe, unavailable, and unworthy. The alienator also makes it clear that he or she would be less emotionally and physically available if the child pursued a positive relationship with the targeted parent (Baker 2007). Alienated children show an overarching lack of ambivalence by their rigid thinking and are more disturbed overall than other kids in high-conflict divorces (Johnston et al. 2005c). Severely alienated children appear emotionally constricted but are also likely to behave very inappropriately at
times, manifesting conduct disorders at least in the presence of the rejected parent. For example, expressions of hatred, rage, contempt, rudeness, swearing, hanging up the phone, stealing, lying, keeping secrets from, and spying on the rejected parent are all commonly reported in PAS children (Johnston et al. 2005c). In some cases, the child’s behaviour is incongruent between situations, indicating a split identity. He or she may show affection to the alienated parent when the alienator is absent, but repulsion or defiance when the alienator is present. These children practice deception to placate the favoured parent (Steinberger 2006a, Waldron and Joanis 1996). PAS children show temperament, personality, and developmental vulnerabilities: they are anxious, fearful, and passive, have low self-esteem, and lack resiliency (Kelly and Johnston 2001, Steinberger 2006a). They are angrier than non-alienated children (Lampel 1996) and more likely to develop eating disorders and sleep problems (Lowenstein 1998, 2006). Baker’s (2007a) study found that adults who were alienated as children often maintained low self-esteem into adulthood.

Children’s Rights and Family Law in Canada

Almost all countries in the world have ratified the United Nations Convention on the Rights of the Child (1990) which clearly commits to “the best interests of the child” as its primary consideration, ensuring the child such protection and care as necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and ensuring that those institutions, services, and facilities responsible for the care or protection of children conform with the standards established by competent authorities (United Nations Human Rights 1990).

Recently, the Committee on the Rights of the Child (CRC) urged the state party to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate them to public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies (United Nations 2012, 8).

In December of 1998, an exhaustive report commissioned by the Parliament of Canada, entitled For the Sake of the Children, was published by the Special Joint Committee on Child Custody and Access. The summary of recommendations for change promoted the overarching mandate of “best interests of the child” and included that the Divorce Act (1985) be amended to add a preamble alluding to: the relevant principles of the United Nations Convention on the Rights of the Child; the principle that divorced parents and their children are entitled to a close and continuous relationship with one another; and that “shared parenting” become the norm in terminology and practice, replacing “custody” and “access.” The forty-eight recommendations of the For the Sake of the Children report were never implemented (Divorce Law in Canada 2008, 22).

In Canada, maintenance orders can be registered with the Maintenance Enforcement Program (MEP) by either parent. The mandate of the MEP is to monitor and enforce court-ordered child and spousal support. In cases of default by the “debtor” (MEP’s term), the MEP has the legislative authority to take steps to enforce the support owed. There is, however, no organization that monitors and enforces parenting time, child access, or custody.
The Family Law Act of Alberta clearly states that “In all proceedings under this Part except proceedings under section 20, the court shall take into consideration only the best interests of the child” (Family Law Act, sec. 18(1), 20).

Therefore, consistent with the United Nations Convention on the Rights of the Child and Canada’s Divorce Act, both Alberta’s and British Columbia’s (Family Law Act British Columbia 2011, part 4, division 1, 37) Family Law Acts confirm that best interests of the child are the priority in legislation and in practice when dealing with children’s welfare following separation/divorce of the parents. But there is no legal provision to enforce this priority.

Invoking family law and legal intervention is a last-resort effort which undoubtedly carries enormous costs in terms of children’s involvement and distress, increased alienation tactics by the alienating parent, and emotional and financial hardship, sometimes ruin, for the targeted parent.

**Method**

The goal of this research is to understand the effect of family law involvement as a potential remedy to parental alienation and to identify factors that influence the outcome of such cases. Participants in the study were recruited via public internet invitation posted on a parental alienation website. Criteria for eligibility of participants were as follows: She or he was a separated or divorced parent or grandparent; was experiencing or had experienced parental alienation; had invoked legal assistance to remedy the alienation; had no history of abuse or neglect allegations toward his or her children or grandchildren; had a positive, loving relationship with his/her children or grandchildren prior to the separation/divorce; and resided in Alberta or British Columbia. Twenty-eight participants were thus recruited. Confidentiality was maintained throughout the study by omitting the names of participants and their children. Each participant was interviewed and voice-recorded once in-person by the first author within the period of June through October, 2012. Interviews ranged in length from 90 to 240 minutes. Using a semi-structured interview protocol (Kvale 1996), a set of seven guiding questions was developed as follows:

1. What was the quality of the parent-child relationship prior to the parents’ separation? Provide evidence.
2. Why did you decide to seek legal intervention in your case?
3. How has legal intervention affected your relationship with your children?
4. How has legal intervention affected your children’s well-being and achievement?
5. How have you been treated by the court? Give examples.
6. How has registration with the Maintenance Enforcement Program (MEP) affected your relationship with your children and your well-being?
7. How have you been treated by the MEP? Give examples.

Specific information, including age and sex of the participant’s children, was also collected during each interview (see Table 1). Data gathered during each interview were supported by documentation from court transcripts and reports of other involved professionals (e.g., therapists, physicians) for accuracy.

Key themes that affect outcomes of cases were identified by employing a three-stage process, using content analysis to sort the interview data. Steps taken in the data analysis follow a general progression from macro to micro analysis. The broadest categories were extracted first and became the four core themes. Subthemes were then identified by categorizing their myriad components as related to each core theme. Analysis followed a chronological progression as follows:
1. All transcripts were read once by each of the two researchers separately as an overview to gain a general understanding of the breadth of data.

2. Notes were taken to record tentative themes, based on the frequency of identification by participants; four themes were thus formalized.

3. The transcripts were reviewed for the second time to identify content relevant to the study but outside of the topics queried by the guiding questions.

4. A number was assigned to each theme. A comment made by a participant that corresponded to a given theme (i.e., 1–4) was given its number.

5. All numbered comments were then listed by theme number to have a summary of all points made relating to each given theme. The core themes were based on comments made by all participants.

6. The subthemes were extracted from the four theme lists by counting the frequency of comments pertaining to each theme. This provided a descending list of emphasis points; points mentioned by four or more participants became the subthemes. These subthemes were then ranked for saliency. In this way, all relevant data were made available to validate the study and its conclusions.

**Results**

According to the interview data of all twenty-eight participants (100%), at least one of each participant’s children fulfilled the eight criteria as described by Gardner (1992a) for either moderate or severe PAS. In twenty-six of those cases (93%), all of those participants’ children were alienated from them. In at least twenty-five cases (89%), PAS was congruent with the severe category. At the interviews, all participants presented as intelligent, thoughtful people who had been traumatized by the alienation from their children. The four themes are as follows:

**Invoking Legal Involvement Exacerbates the Alienation.**

Though participants sought legal involvement to remedy the parental alienation they were experiencing, none of them succeeded in achieving this goal. Instead, the legal case served as a catalyst for greater levels of alienation. Court action initiated by the targeted parent can spur the alienator on to greater levels of alienation tactics, as a means of “getting revenge” on the other parent. Legal involvement seems to reinforce the misguided belief in the children that the targeted parent is “out to get” the alienating parent. The fact that the alienated parent has pursued legal options as a desperate attempt to reunify with his or her children is not communicated to the children. Further, if the targeted parent informs his or her children that this is the case, the alienator may use the information as ammunition in her or his quest to “prove” the other parent has lied to the children or is unlawfully involving the children in court proceedings.

A court case is expensive, and since twenty-six participants (93%) hired lawyers to represent them, financial hardship on the alienated parent was an inevitable result; even the two participants who were self-represented spent a substantial amount on travel, lost work days, court application fees, and court-directed therapy and assessment fees. Due to legal and associated costs, all participants reported a loss in quality of life for themselves and their alienated children. A staggering twenty-two participants (79%) lost their homes through i) being unable to pay the mortgage or rent, ii) having a lien put on their home by a lawyer, iii) paying arrears in child maintenance or due to MEP penalties, or iv) losing his or her job due to stress-related issues or downsizing. The emotional drain on these twenty-eight alienated parents and grandparents was palpable. The pain of experiencing alienation combined with PAS behaviours of some of the children caused significant emotional damage to the participants. Three participants had been diagnosed with post-traumatic stress disorder (PTSD) symptoms. Similarly, depression was a common complaint, with twenty-one participants (75%) currently or previously prescribed anti-depressant medications.
Alienating Parents are Uncooperative in Any Potential Resolution Initiatives

In five of the interviews (8.6%), mental illness in the form of personality and mood disorders had been diagnosed in the alienating parent. Four of these individuals were diagnosed while the parents were still cohabiting, prior to the separation or divorce. The disorders mentioned were Narcissism, Borderline, and Bipolar. Since the DSM-5 (2013) descriptions of these disorders include symptoms such as impairments in personality (self and interpersonal) functioning and pathological personality traits, such as significant impairments in self (identity or self-direction) and interpersonal (empathy or intimacy) functioning, especially inflated self-esteem and grandiosity, it may be likely that these alienators have entrenched personality disorders that prevent them from cooperating in any PA interventions.

In every case, alienating parents had already demonstrated their disregard for both the targeted parent and the justice system through their noncompliance with parenting orders and other reunification efforts. A parent with an agenda to destroy his or her children’s relationships with the other parent is unable or unwilling to cease his or her campaign of alienation. Alienating parents measure success by their ability to sever the other parent from their children’s lives.

Legal Professionals Are Maximizing Their Profits by Prolonging These Cases

Stalling tactics used by lawyers were reported by twenty-two of the participants (76%). Since there is no benefit for lawyers who conclude their cases in a timely fashion, and since they are rewarded for the number of billable hours they contribute to their law firms, it is in the lawyers’ best interests to prolong their cases. Various tactics were used by lawyers, including: i) stalling and missing deadlines to return documents to the opposing party’s lawyer or the case management judge, ii) adding unnecessary and/or inappropriate actions to the case, iii) delaying follow-up court dates and case reviews, iv) suggesting additional counseling with vague expectations of timelines and outcomes, v) initiating counseling for the parents, as this is unwarranted based on the PA nature of the case and, vi) conducting unnecessary emails and other communications with clients, which had no directives or requests.

Legal and Non-legal Court-directed Professionals Are Ill-equipped to Manage Alienation Clients and Cases.

Some judges and lawyers involved in these PA cases were: i) unprepared for court, ii) refused to read affidavits, iii) failed to challenge affidavits, iv) relied on hearsay evidence from lawyers of the alienating parent, v) committed perjury in and to the court, and vi) allowed actions outside the Judge and/or Lawyer Codes of Conduct, such as allowing witnesses in the courtroom only for the alienator.

Although academic and clinical instructional resources on diagnoses, appropriate intervention, and treatment for PA have been readily available since the 1980s, twenty-four of participant cases (86%) were not argued on the basis of parental alienation. Instead, lawyers acting on behalf of targeted parents presented their cases as due to “high conflict,” “parenting style difference,” “child rebellion,” or even “jealousy.” Almost all the participants, twenty-five (89%), reported that mental health professionals had been directed by the court to provide counseling or therapy to their children and in some cases, to the parents, either with or without the children. This court-ordered intervention was too late, too vague, unenforced, or inappropriate. None of the participants were provided with a timeline for the counseling process, nor were they informed of the process and expected outcomes. In fourteen cases (50%), psychological assessment of the children was court-ordered, yet it only occurred in four (14%). Nineteen participants (68%) reported inappropriate court orders and interventions, given the state of the children’s health, ongoing or accelerated parental alienation, or confirmation bias on the part of the judge.
Sometimes the nature of the therapy ordered for the children and alienated parent was inappropriate given the entrenched PAS of the children. Five participants (18%) were ordered to and did attend counseling sessions but were instructed by the psychologist or lawyer to remain silent or to “only say positive things” to the children. These sessions appear to have been opportunities for the children to reinforce their professed hatred and disgust for the alienated parent.

Confirmation of bias on the part of judges occurred when they based their decisions about the parents on their own preconceived notions. As examples, twenty-two fathers (79%) reported the judge having used gender-biased language and comments based on the assumption of a “deadbeat dad” or “less important parent.” Twenty-four alienated parents (86%) were subjected to penalties imposed by the court as a result of the alienating parent making false accusations against or convoluting events involving the targeted parent. These penalties were of four types: restraining orders in fifteen cases (54%), supervised visits in nine cases (28%), police arrest in five cases (18%), and MEP “harassment” in sixteen cases (57%).

More than one judge presided over twenty-three of the cases (82%), and there were more than three judges involved in twelve of those (43%). Each of these participants reported judges showing a lack of background case history or inconsistency with, or ignorance of, decisions made previously by other judges in the same case.

Discussion

Perhaps the most blatant effect of legal involvement was the increase in both frequency and intensity of alienation tactics used by the favoured parent to destroy the children’s relationships with the rejected parent. In fact, the use of legal means to intervene was interpreted by the children as further evidence that the targeted parent was intentionally harming the other parent. Alienating parents offered rewards to their children who co-conspired with them in their campaign of hatred toward the targeted parent, but were also likely to punish their children who resisted alienation from their other parent. This took on the form of physical and mental abuse, including a withdrawal of love and privileges.

Diagnosed mental illness in the alienating parent was reported by several participants, and the symptomology of their ailments correlated with their alienating tactics. For example, a parent who believed he or she, not the child, was the centre of attention or desired that to be the case, was likely to act in his or her own interests, not those of the child. PAS children develop behaviours consistent with Stockholm syndrome, in which they defend and support their captor; in this case, the alienating parent (Clawar and Rivlin 1991). Children’s misguided attachment to an alienating parent, at the expense of the parent-child bond with the targeted parent, can be thus explained. The extent to which all alienators in this study promoted their campaigns of denigration and distortions of reality suggest that mental illness may actually be a common, even typical, contributor to parental alienation.

The cost of legal involvement is staggering, so only those alienated parents with substantial financial means could pursue that option. Even amongst those who had well-paying jobs and stable assets, substantial hardship was experienced over time as lawyer and counseling costs mounted. No participants were able to maintain their former quality of life due to the challenges of paying legal fees, child maintenance, traveling to see their children, and counseling or therapy costs. Interestingly, many alienating parents did maintain and even improved their quality of life, especially if they had a new life-partner. It appears that the family law system is facilitating parental alienation by rewarding the alienating parent.

Alienated parents unanimously suffer from the loss of their children and the hatred evinced by them due to PAS. Participants were depressed, anxious, and fearful, suffering from post-traumatic stress disorder or insomnia, or had a combination of these symptoms. It is unknown to what extent their physical health was compromised.
Lawyers in the family law system achieve maximum rewards when their cases are lengthy and complicated, thus facilitating more billable hours. Further, clients often perceive that expensive lawyers have greater expertise and thus are likely to hire them even at exorbitant rates. Lawyers used by participants in this study often engaged in stalling tactics in which parties exchanged unnecessary communications or disagreed on the wording of court orders, exchanging many drafts before a diluted version of the order was finally filed many months later. Since such follow-up measures are not automatically put into place, alienated parents were forced to apply to the court again and were invoiced for these additional legal hours.

This study found that legal and non-legal court-directed professionals are ill-equipped to manage alienation clients and cases, either due to ignorance of parental alienation, lack of skill in diagnosing it, or incompetence in affecting appropriate protocol. It appeared that lawyers acting on behalf of alienated parents failed to challenge affidavits in many cases, relying instead on the accuracy of the opposing party’s claims. As a result, the severity of the alienation was not revealed and judgments were made based on fraudulent information. Similarly, judges relied on hearsay evidence from lawyers of alienating parents, such as claims that the children did not want anything to do with the targeted parent, that the children were “fine,” or that the father was known to have “anger issues.”

In terms of associated court-directed interventions by mental health practitioners, the outcomes were again rarely positive. Counselors, therapists, and psychologists appeared to be, on the whole, unaware or unprepared to deal with parental alienation. Sometimes the court-ordered intervention occurred only after several years of court proceedings. By then the PAS was more entrenched in the children and there was no positive outcome. In most cases, children were given the choice of whether to show up for appointments with their therapist, even though they were highly influenced by the custodial alienator.

In some instances, judges allowed alienating parents to choose the mental health professionals they wished their children to use. This apparent lack of awareness about the cause of parental alienation, or bias in favour of the custodial parent, can only be construed as naïve or incompetent. Judges inadvertently intensified the alienation by so doing. Lawyers who wrote letters about the children’s well-being, instead of court-ordered therapists, were out of their area of expertise and jurisdiction, yet their claims were accepted by judges. Similarly, lawyers in some cases accepted poor-quality reports, or even no reports at all, from the mental health professionals or school sources ordered to report; nonetheless, the lawyers presented this information to the court as valid and reliable.

Questions arise about why judges and lawyers make orders that disadvantage both the children and the targeted parent, while exacerbating the alienation. Confirmation bias provides a possible explanation: mainstream gender stereotypes that portray men as irresponsible and women as helpless or mentally weak influence people’s perceptions of each other. It appears likely that current conceptions of dads as “deadbeats” and mothers as manipulators or “leeches” are resulting in faulty and harmful preconceptions about worthy parents. Sole custody orders, court penalties such as restraining orders and arrests, MEP harassment, and unfair or inaccurate child maintenance recalculations seem to evidence this explanation.

Conclusion

Each of the participants in this study invoked legal involvement as a last resort to help their children, but the effect of family law involvement was to make the alienation worse. Alienating parents will not cooperate and may intensify their tactics to sever the targeted parent-child bond, legal professionals are maximizing their profits by prolonging these cases, and legal and non-legal professionals are ill-equipped to manage alienation cases. The family law system is committed, at least on paper, to acting in the best interests of the child; yet this study showed that in family law, kids come last.
Acknowledgement

To the twenty-eight parents who never gave up on their children and who shared their stories and hearts with us, thank you.

REFERENCES


### APPENDIX

Table 1: Demographic of Participants and Children

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### ABOUT THE AUTHORS

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The International Journal of Interdisciplinary Social Sciences: Annual Review examines the nature of disciplinary practices and the interdisciplinary practices that arise in the context of “real world” applications. It also interrogates what constitutes “science” in a social context, and the connections between the social and other sciences.

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