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Parental Alienation, Family Court and Mothers: a discussion

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www.onefamilylaw.ca

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- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca

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Presenters

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Introduction

- The term “parental alienation” is controversial
- The term is still used in Ontario Family Courts, and Court-ordered family assessments
- It often comes up in a “high conflict” separation between parents
- It has been used against mothers:
 - as a tool of abuse by ex-partner
 - to undermine real issues of abuse against children and ex-partner

Introduction

- “Parental alienation” is used to describe a situation in which a parent contributes to a breakdown (alienation) in the otherwise healthy parent-child relationship of ex-partner
- Has serious effects on the child’s health and well-being
- Courts take the issue seriously
- Courts can order no custody or access for a parent found to be “alienating” a child from the other parent

Topics to be Covered

1. How Courts Identify “parental alienation”
2. Historic Context of the Term
3. Current Concerns for Mothers
4. Understanding a Spectrum of Child Behaviour
 - reasonable child behaviour
 - signs of “parental alienation”
5. What You Can Do
6. Conclusion
7. Additional Resources

Accurate as of the date of this webinar presentation: March 12, 2018



How Courts Identify “parental alienation”

The issue of “parental alienation” in Family Court

Court Context

- increasing number of claims of “parental alienation” (PA) in Canadian child custody cases
- from 1989-2008, 60% of PA claims were upheld
- mom was 2 times more likely to be considered the “alienating” parent (moms are more likely to have custody or most time with child)
- dad was 3 times more likely to have PA claim not upheld

Family Court

Claims of “parental alienation” come up in battles over child custody and access

- determining who should have the legal right to make the important decisions about the child’s life (custody)
- deciding how much time each parent can spend with the child (access)
- considering whether one parent should lose the right to spend any time with the child

Child Custody and Access

- The Court must decide custody and access based on what is believed to be in the “best interests of the child”
- The law says that a child should have as much contact with both parents as is consistent with the child’s best interests
- The Court thinks it is usually important for each parent to support/encourage the child’s relationship with the other parent

Important Factors

The Court has considered these factors, to decide whether there has been “parental alienation”

- if child wants to end contact with a parent, does the child also **enjoy time** with that parent
- are there reasonable explanations for the child’s rejection of a parent
- do the child’s wishes appear independent, or coached/required by an over-involved parent

M.M.B. (V.) v C.M.V., Ontario Superior Court of Justice 2017

Family Court Orders

When “parental alienation” is found, the Court has taken strong action:

- giving sole custody to the “alienated” parent
- ending all contact between child and parent causing the alienation
- asking police to enforce the Order, even if children do not want to go with a parent
- requiring parents to return and report to Court
- requiring parental counselling and evidence of changes in behaviour, before changing the sole custody and no access Order



Historic Context of the Term "parental alienation"

Historic Context

- “Parental Alienation Syndrome” is term introduced by child psychiatrist Richard Gardner (1985, United States)
- Gardner described a condition in which a child criticizes and pulls away from one parent, without reason
 - usually after parental separation
 - the other parent is blamed for influencing, indoctrinating or “poisoning” the child’s view

Historic Context

- Other descriptions of “parental alienation syndrome”:
 - child shows strong bond with one parent and rejects contact with the other parent
 - child’s reasons for rejection are “trivial, highly exaggerated, or totally untrue”
 - often involves “false allegations of sexual abuse”

(Faller, 1998)

Historic Context

Gardner's observations focused on child custody cases where:

- mothers were usually accused of “parental alienation syndrome”
- and he believed fathers were “falsely accused” of child abuse

Historic Context

- “Parental Alienation Syndrome” has **not been accepted** as a medically recognized disorder
- More recently, the term “parental alienation” is used more broadly, to describe high conflict separation, where one parent is accused of scheming with a child to exclude the other parent (Lapierre and Cote, 2016)

Current Context

- Research shows growing trend that “parental alienation” is an issue in Family Court cases
- More attention to issue among child protection (Children’s Aid Society) services
- More research, media and public discussion



Current Concerns for Mothers

Concerns for Mothers

Research in Quebec shows that during separation, an increasing number of abused women (in shelters) are:

- accused of parental alienation
- threatened to be accused of parental alienation

Concerns for Mothers

At time of separation, increased risk of violence includes:

- physical violence
- psychological violence
- using father/child relationship to control ex-partner
- undermining mother/child relationship
- attacking mother's identity and confidence as a mother

Concerns for Mothers

- Abused women who raise concerns about father-child contact have been accused of “parental alienation”
- This is true, even though research shows that false allegations of abuse are very rare (Lapierre and Cote, 2016)
- With child protection services, claims of “parental alienation” against a mother shift focus onto mother’s parenting skills and away from ex-partner’s abuse

Cases of Intimate Partner Abuse

Some researchers have argued:

- in families where there is abuse, it is reasonable for mothers to try to limit contact between child and abusive parent
- the term “parental alienation” should not be used in these cases

(Lapierre and Cote, 2016)

Presenters Questions

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Understanding a Spectrum of Child Behaviour

Focus on Child Behaviour

- More recent work focuses on the child, to understand child-parent relationships after separation
- This approach recognizes that a child may have reasons to want to limit contact with a parent, such as:
 - to adapt to the family conflict
 - to feel safe

Focus on Child Behaviour

- Most “positive” – child wants and has safe relationship with both parents
- “affinity” – child has contact with both parents but prefers to spend time with one
- “alliance” – child prefers one parent, neutral about the other
- “estranged” – child reject one parent and is neutral or dislikes that parent
- “alienated” – child rejects and has strong dislike for one parent



Reasonable Child Behaviour

Reasonable Child Behaviour

- Reasonable child behaviour should not be confused with the results of “parental alienation”
- Identifying child behaviour with a reasonable explanation may avoid misuse of the term, and related harms to:
 - child
 - parent(s)
 - chance for positive parenting

Reasonable Child Behaviour

Reasonable for a child to reject a parent because of behaviour related to abuse or neglect, such as:

- child is/was physically, sexually or emotionally abused by a parent, or by someone else while in care of the parent
- child witnessed a parent's violence or abuse against someone else (such as other parent)
- child was threatened or has a reasonable fear of harm by parent
- child's needs are or were neglected by parent
- child was abandoned by parent

Reasonable Child Behaviour

Reasonable for a child to reject a parent who:

- is controlling, has very strict rules, uses harsh discipline
- has changing and unpredictable expectations or behaviour
- is selfish, self-centred, not caring for others' feelings
- is not warm or loving
- has a substance abuse problem that affects parenting

Reasonable Child Behaviour

When separating parents fight over custody of a child, it is common for a child to feel:

- sadness
- guilt
- protective of one or both parents
- anger at one or both parents
- conflict – because of loyalty to one or both parents
- a need to reduce conflict and bad feelings

Reasonable Child Behaviour

Some common reasons for a child's positive/negative feelings towards one parent:

- greater comfort with the usual primary caregiver
- separation anxiety when leaving a comfortable environment
- identity with parent of same gender or interests
- preference for more material comforts and/or fewer demands on behaviour

Reasonable Child Behaviour

A child may have reasonable positive/negative feelings towards a parent, related to the family breakdown:

- anger at the parent who leaves
- moral judgement of a parent's behaviour
- sympathy or worry for rejected parent
- disruption in social life and routine
- dislike of a parent's new partner or step-siblings

Reasonable Child Behaviour

Signs that child's behaviour is independent:

- negative attitudes towards the rejected parent are occasional or reduce over time
- negative attitudes may be mixed with positive attitudes and affection
- negative attitudes may be directed at both parents at various times

Reasonable Child Behaviour

- When a child appears to reject one parent, but there are reasonable explanations for that behaviour, this has been called “estrangement”
- Research and some Court decisions have recognized the difference between “estrangement” and “alienation”
- A parent may do things that support estrangement, but they are not seen as trying to unreasonably break or cutoff the relationship between child and ex-partner



Signs of "Parental Alienation"

Signs of "Parental Alienation"

Negative child behaviour becomes progressively more severe, for example:

- feeling pressure and loyalty conflict between parents
 - reducing pressure by siding with one parent
- adopting more negative views of rejected parent
- resisting contact with rejected parent, even when contact has been positive in the past
- extreme anger and complete rejection of alienated parent

Signs of "Parental Alienation"

Child's rejection of a parent does not have a reasonable explanation

- View of parents is one-sided; one parent is "good" and the other is "bad"
- Child's behaviour is:
 - vicious and/or hatred to rejected parent – verbal and physical
 - negative to associated family, friends, pets, possessions
 - blaming the rejected parent for separation and current life conditions
 - based on blame and reasons that appear false, irrational, or trivial

Signs of "Parental Alienation"

One-sided view of the "good" parent includes:

- being worried about one parent
- feeling the need to care for one parent
- always defending one parent
- mimics what the parent says without an independent view
- idealizing one parent

Signs of "Parental Alienation"

One parent encourages the rejection of the other parent, such as:

- rarely talks about other parent, or says negative things
- denies other parent has any positive qualities
- interferes with child's contact with other parent
 - lets child decide if/when to visit
 - is upset if child does visit
 - discourages phone calls, email, birthday or celebrations of other parent
 - does not pass messages from other parent
 - schedules conflicting activities

Signs of "Parental Alienation"

Parent encourages the child's feelings of conflict, such as:

- discusses legal/separation issues with child
- sends messages through child, puts child in the middle
- makes child feel guilty for any positive feeling towards other parent
- threatens to withdraw affection, unless other parent is rejected
- asks child to spy on or keep secrets from other parent

Signs of "Parental Alienation"

The rejected parent's behaviour can make things worse, such as:

- says negative things about other parent
- makes child feel guilty
- ignores or rejects child's feelings
- argues with child, tries to convince, or punish child to change their behaviour
- resignation or rejection of child
- discusses legal/separation issues with child
- sends messages with child, puts child in the middle

Harm to Child

Risks to child from “Parental Alienation”

- ongoing emotional distress
- low self-esteem; belief in inadequacies like rejected parent
- ongoing dependence on favoured parent
- fear of loss of favoured parent
- rigid, black/white view of world
- self-blame
- depression
- difficulty with interpersonal relationships

Presenters Questions

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What You Can Do

Focus on Best Interests of the Child

- **safety of your child always comes first**
- avoid being negative about other parent
- do not involve child in legal or parental discussions
- not use child as messenger between parents
- use an online program to communicate with other parent
e.g. Two Houses; Our Family Wizard
- follow terms of a custody and access Court Order
 - if you want to make changes, talk to a family law lawyer
- keep personal record of:
 - your positive activities with your child
 - concerns about child and other parent's interaction
- save or copy all notes, cards, documents, email, texts, record of phone calls

What You Can Do: Out of Court

Services to Support Parents

- Talk to a lawyer
- Parenting Course
 - geared to child's age
 - to better understand child's needs and concerns
 - to respond and positively interact with child
- Conflict Resolution Course
 - specifically for separating parents
 - to improve communication, respect, trust
 - e.g. Families in Transition
- Mental Health Professional
 - expert in high conflict parental separation (social worker, psychologist)
 - more specific to the individual parents and child
 - help to reasonably respond to difficult situations

What You Can Do: Out of Court

Services to Support Child

- Parent(s) with custody have to agree
- Talk to a lawyer
- Child Therapist
 - emotional outlet and counselling
- Mental Health Expert Report
 - report on child's views and preferences; provide opinion

Caution: Children's Aid Society involvement

- CAS role is to determine if child at risk of harm and in need of protection
- can demand oversight; can apprehend child
- file can be used against a parent who is claiming abuse by other parent

What You Can Do: Out of Court

Family Counselling

- only a parent with custody can agree to involve child
- counsellor should have expertise on “estrangement” and “parental alienation”
- identify your concerns about parent/child relationships
- child, both parents, new partners, other family members should prepare to attend
- talk to a lawyer
- consider: will counselling be confidential (closed) or open, with a professional report and recommendations

Ideas: Out of Court

- Keep in mind: you may end up in Court
 - you and ex-partner can agree in advance that a document will not be used in Court and an expert will not be called as a witness
 - Court can always Order therapy and other reports be released
 - “out of Court” information could become evidence in Court
 - courses, counselling, assessments and reports may be viewed by the other parent in a Court proceeding
- Review your options with a lawyer in advance

Going to Court

- Other solutions are not working
- Court involvement may be appropriate and necessary
- Court has broad powers, can order one or several of the following:
 - caution parties about behaviour
 - “case manage” and keep case moving
 - make a Review Order: parties return to Court on a regular basis to report

Going to Court

Court can order:

- a parent or child to participate in a course or counselling, such as:
 - parenting, conflict resolution, individual or family therapy
- psychological assessment
- a very specific parenting agreement
- supervised exchanges of child
- supervised visits with child
- police enforcement

Going to Court

Court can order:

- a parent must pay the other parent's legal costs
- spousal support reduced to pay for counselling
- a parent is “in contempt” of Court and order a penalty, such as fine or jail
- a limit or increase on parental time with child
- a change in child custody
- no parental contact with child

Going to Court

Court can:

- order “Section 30 Assessment” (under Ontario *Children’s Law Reform Act*)
 - in custody/access case, Court can appoint a professional to “assess and report” on the needs of the child, and whether the parents can satisfy those needs
 - Court can order parents and child to attend assessment
 - high cost: parents pay
- Request involvement of the Office of the Children’s Lawyer

Office of the Children's Lawyer

- free, Ontario government-funded lawyers and clinical investigators who assist the Court to help children under 18
- Court, usually at one parent's request, can ask OCL to get involved in a case
- OCL may:
 - not take case
 - appoint a lawyer to report to Court on child's views and preferences and take a position on behalf of the child
 - conduct a "clinical investigation" and make recommendations to the parents and Court
- determines strength, consistency and independence of child's views and preferences

Office of the Children's Lawyer

- takes a position in Court on behalf of the child
- makes recommendations to the Court
- does not represent either parent
- does not take instructions from parents
- may speak to parents and others to get more information about the child

Conclusion

- High conflict parental separation and custody disputes may affect children and their parental relationships
- A child's reasonable withdrawal from a parent is not "parental alienation"
- In cases of family abuse, concern about child's contact with other parent is reasonable, not parental alienation
 - claim of parental alienation may be extension of abuse (usually against mother and child)
- Follow custody and access Orders – talk to a lawyer to change
- Do not involve child in legal or parental disputes
- Consider if out of Court supports may be useful
- Consult a lawyer
- Don't wait, take action sooner rather than later

Presenters Questions

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Additional Resources

Domestic Violence and Abuse

- **Family Violence Authorization Program (Legal Aid Ontario)**
 - Free 2-hour emergency meeting with a lawyer for family cases with partner abuse
 - Offered through some shelters and community legal clinics
 - Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- **Assaulted Women's Helpline** www.awhl.org
 - 24 hours/7 days; multiple languages
 - Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- **Ontario Coalition of Rape Crisis Centres** <http://www.sexualassaultsupport.ca/>
- **Network of Sexual Assault/Domestic Violence Treatment Centres**
www.sadvtreatmentcentres.net.
- **Victim Services Directory** www.justice.gc.ca/eng/pi/pcvi-cpcv/vsd-rsv/index.html
- **Barbra Schlifer Legal Clinic**
 - Toronto: 416-323-9149 x278 (legal intake) TTY: 416-3231361
 - Free counselling, referral, legal and interpreter services to survivors of violence (Family, Criminal and Immigration law)

Online Basic Information

Ministry of the Attorney General

www.attorneygeneral.jus.gov.on.ca/english/

- 1-800-518-7901 (toll free)
- 1-877-425-0575 (TTY)

Family Law Information Program (FLIP)

www.legalaid.on.ca/en/getting/flip.asp

Family Law Information Centres (FLICs)

www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

www.legalaid.on.ca/en/contact/contact.asp?type=flsc

Family Law Education for Women (FLEW)

www.onefamilylaw.ca
www.undroitdefamille.ca

Ontario Women's Justice Network (OWJN)

www.owjn.org

Parenting Resources

Co-parenting communication guides

[www.afccnet.org/Portals/0/PDF/AzAFCC%20Co
parenting%20Communication%20Guide.pdf](http://www.afccnet.org/Portals/0/PDF/AzAFCC%20Co%20parenting%20Communication%20Guide.pdf)

<https://www.2houses.com/en/>

www.ourfamilywizard.com/ofw/

[www.afccontario.ca/resourcesparentschildrenpr
ofessionals.html](http://www.afccontario.ca/resourcesparentschildrenprofessionals.html)

Looking for a Lawyer

Legal Aid Ontario

- for low income people
- 20 minutes Summary Legal Advice
- Family Court advice lawyers
 - at Family Law Information Centres (FLICs)
- Family Law Service Centres
 - help with documents
 - help to get lawyers

www.legalaid.on.ca/en/getting/default.asp

- 416-979-1446 (Toronto)(accepts collect calls)
- 1-800-668-8258 (toll free)
- 1-866-641-8867 (TTY)

Looking for a Lawyer

Legal Aid Ontario

- for low income people
- 20 minutes Summary Legal Advice
- Family Court advice lawyers
 - at Family Law Information Centres (FLICs)
- Family Law Service Centres
 - help with documents
 - help to get lawyers
- **If your partner is violent or abusive**
 - Family Violence Authorization Program
 - free 2-hour meeting with lawyer
 - offered through some shelters and community legal clinics
 - Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

Looking for a Lawyer

- ask for a free first consultation
- discuss cost of fees and disbursements

JusticeNet

- not for profit service
- reduced legal fees

www.justicenet.ca/professions

Canadian Family Law Lawyers Network (National)

www.cfln.ca

Law Society of Upper Canada Lawyer Referral Service

www.lsuc.on.ca/with.aspx?id=697

- 416-947-3330 (Toronto)
- 1-800-268-8326 (toll free)
- 416-644-4886 (TTY)

Looking for a Lawyer

Community Legal Clinics

- can refer to services; may do some family law

www.legalaid.on.ca/en/contact/contact.asp?type=cl

Toolkit for a good Client-Lawyer Relationship

schliferclinic.com/vars/legal/pblo/toolkit.htm

- Barbra Schlifer Commemorative Clinic

See FLEW Webinars:

- Where to Look for a Family Law Lawyer
- Your Day in Family Court: How to Prepare and What to Expect

www.onefamilylaw.ca/en/webinar/

Resources

Ontario Courts

www.ontariocourts.on.ca/

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
 - Superior Court of Justice www.ontariocourts.ca/scj/en/famct/
 - Ontario Court of Justice www.ontariocourts.ca/ocj/family-court/overview/

Ontario Court Locations

www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- Find court addresses across Ontario

Office of the Children's Lawyer

www.attorneygeneral.jus.gov.on.ca/english/family/ocl