

Here are a few extracts pertinent to woman and child disbelief issues drawn from Canada case law (these are extracts from Linda C Neilson, [*Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?*](#) (Vancouver: The FREDA Centre for Research on Violence Against Women and Children, 2018))

Throughout cases accepting and applying parental alienation concepts we see a disturbing pattern of gender-related discourse on the part of parental alienation advocates and courts. Fathers' parental alienation claims are being characterized or associated in the discourse with children's rights to maximum contact with both parents (illogically often in opposition to the perspectives of the children), while children's desires to reside primarily with primary care mothers are being characterized in negative terms as the result of 'unusual' parent-child closeness, enmeshment, or the mother's over-protection. We also see in these cases a pattern of gendered discourse that comes close to father's rights' assertions of entitlement to equal parenting along with a punishment discourse directed against primary care parents and children who resist. For example, in *A.L. v. L.W.*, 2017 BCSC 964, the parent-child assessor comments "The over arching goal is to gradually increase the daughter's time with her father and to move up to an equally divided parenting plan." In *S.D.G. v. D.K.N.*, 2017 BCPC 61 at paragraph 141 the court quotes with approval and cites extensively from an article titled "The Importance of Fathers".¹

Do such orders reflect children's rights to have maximum contact with both parents, or something else?

In short what we are seeing in these cases is a focus on assignment of blame for parenting conflict and a focus on repairing, restoring or even creating children's relationships with non resident parents (usually fathers),² rather than a child centred analysis of evidence of existing relationships, each parent's parenting, and the child's needs and interests.³

Parental alienation claim cases often involve adolescent youth. Parental alienation theorists claim this is because 'children' this age are more susceptible than younger children to parental manipulation or they assert that it can take many years for the effects of parental manipulation to consolidate in rejection of the other parent.⁴ Experts who are not involved in the parental-alienation theory movement point out that adolescent resistance to shared parenting and to orders that require appreciable alternating parenting time with non resident parents commonly reflect adolescent views that are independent of either parent⁵ and/or reflect normal child development patterns in that social life begins to revolve

1 See also the assertion in *L.C.T. v. R.K.*, 2017 BCCA 63 wherein it is reported that the expert asserted significant risks to children who do not have fathers involved in their lives. No credible child focused expert seriously disputes the value to children of contact with supportive, non abusive parents – male or female or non-gendered. Problems arise, however, when our focus shifts from a child centred focus on the best interests and safety of children to a focus on parental entitled claims associated, explicitly or implicitly, with gender.

2 See also *McClintock v. Karam*, 2017 ONSC 6633; *C.J.B. v. A.R.B.* 2017 BCSC 1682. Note also, however, the appellate court's criticism of the court's focus on parental conflict in order to assess child best interests in *N.R.G. v. G.R.G.*, 2017 BCCA 407.

3 No one, including the author, contests the importance of supporting children's relationships with both parents when those relationships are beneficial to the child. The author's concern is that parental alienation theory is deflecting court attention from scrutiny of other best interest of the child factors.

4 See, for example, comments in *M.M.B. v. C.M.V.*, 2017 ONSC 3991 at paragraph 1037. This is one of the cases in which both parents claimed parental alienation. The mother claimed to have been subjected to coercive domestic violence, emotional cruelty and stalking by the father as well as the father's manipulation and turning the children against her. The children had begun to engage in emotional abuse and physically assaults against her. The evidence clearly indicated the father's enlistment of the children in the parental conflict. The court ordered an immediate change in sole custody to the mother, family reunification therapy, the mother's right to conceal from the father the location of interventions, and a protection order prohibiting the father from being within 500 meters of the children.

5 Joan Kelly and Janet Johnston (2001) "The Alienated Child. A Reformulation of Parental Alienation Syndrome" *Family Court Review* 249-266.

around peers rather than around parents and parenting.⁶ Thus it is not surprising that adolescents begin to object to orders requiring them to be parented alternating blocks of time by each parent and seek instead to make their own decisions to reside where their friends are most comfortable. In any event, more than one half of the ‘children’ in the parental alienation claim cases, whose ages could be determined from the case reports, were 13 years of age or older.

When we examine the pattern of decisions in these cases, we find that, when child views were mentioned in the decision (not all parental alienation claim cases mention children’s views particularly when the children were young), children’s views were considered and given some degree of weight in merely 21 (20.8 %) of the cases that endorsed parental alienation theory; children’s views were not considered or were dismissed as not reflecting the genuine views of the child or their best interests in 80 (79%, the sizeable majority) of such cases. In the few cases where courts did hear direct evidence from the youth, courts were more inclined to engage in thorough child focused best interest of the child analysis and were more accepting of youth views and concerns (for example *McLaren v. McLaren*, 2016 BCSC 2458; *L. (N.) v M. (R.R.)*, 2016 ONSC 809; *N.R.G. v. G.R.G.*, 2017 BCSC 774’).

Oddly the quotation in *Bradford* suggests that emotional abuse and adverse parenting are tolerated in intact families. The quotation also implies that courts should assume that parents exaggerate such concerns after separation as an aspect of litigation. Yet one could equally argue that courts should assume the validity of such claims, given that concerns about abusive behavior, difficulty with emotional management and negative parenting commonly result in separation. The best option, however, is that recommended by the National Council of Juvenile and Family Courts in the United States in connection with judicial officer training: “overcoming implicit bias and how to view each case as a blank slate.” National Council of Juvenile and Family Courts (2017) *Custody and Visitation in Civil Protection Orders: Guiding Principles and Suggested Practices for Courts and Communities* (NCJFCJ).

As previously mentioned, 142 of the parental alienation claim cases (41.5 %, almost one half)⁸ involved assertions of domestic violence and/or child abuse. In most (76.8 %) of these cases, the parental alienation claim was advanced by the alleged perpetrator of domestic violence or child abuse, including a small minority of cases (3 cases) in which the alleged perpetrator was the mother. In 33 of the 142 cases (23.2 %), the parental alienation claims were advanced by the parent claiming domestic violence or child abuse.⁹

The National Council of Juvenile and Family Court Judges in the United States, Chris O’Sullivan et al., Daniel Saunders et al., Curt Bartol et al. tell us that, in the absence of specialized understanding of domestic violence, its effect on children and on post separation parenting practices, parent-child experts who conduct evaluations are devoting insufficient attention to child and adult safety and to parenting

6 See, for example the judicial comments in *N.R.G. v. G.R.G.*, 2015 BCSC 1062; *Chisholm v Chisholm*, 2017 NSSC 45; *Morey v. Morey*, 2009 CanLII 12117 (ON SC); *R-P T. v. D-P T.*, 2013 BCSC 732.

7 Ultimately the father ‘surrendered’ custody of the children to the mother: *N.R.G. v. G.R.G.*, 2017 BCSC 2130 following years of litigation and court mandated therapeutic intervention, presumably at enormous emotional cost to the youth and the family.

8 Fifteen cases that involved claims against assessors or professionals and that did not also include a claim against either a mother or father were removed from the total.

9 Manipulation and/or alignment of children with the perpetrator against the parent targeted by domestic violence is reported regularly in the domestic violence literature. Refer, for example, to the literature cited in Linda C Neilson (2017) chapter 6 and chapter 10.12 of [*Responding to Domestic Violence in Family Law, Civil Protection and Child Protection Cases*](#) (Ottawa: CanLII) on line.

practices that harm children.¹⁰ Best practice professional guidelines for parent-child evaluation contain warnings to the same effect.¹¹ Nonetheless evaluation of any aspect of these cross-claim cases by a domestic or family violence expert was ordered or considered in only four (2.8%) of the 142 cases. In one of these four cases, the domestic violence allegations were, unusually, against the mother.¹² We might contrast the absence of expert scrutiny of domestic violence claims and associated parenting and safety issues with the fact that in 62 of the 142 domestic/family violence cross-claim cases a parental alienation evaluation was ordered or considered by the court.¹³ Indeed in some of these cases, despite the domestic violence or child abuse claims, courts expressly ordered evaluators to restrict their evaluations to assessing for the presence of parental alienation. In only a few cases, for example *H.D.F. v. L.M.F.*, 2012 BCSC 1301, did a court comment expressly on the inappropriateness of ordering a parental alienation evaluation in a cross claim case without also ordering an evaluation of the circumstances of the child by a domestic violence or child abuse specialist.

Canada has a legal obligation pursuant to article 19 of the United Nations *Convention on the Rights of the Child* to protect children from violence and abuse. Yet, in many of these 142 cases, mothers' concerns, as a result of earlier experience of abuse and violence on the part of the father, about child well being and safety in the care of fathers, were characterized as overprotection. Claims of domestic violence and turning to experts for help were commonly cited as evidence of mothers' attempts to alienate children from fathers. Statements such as "the mother continues to see herself as the victim of violence"¹⁴ and "multiple allegations of sex abuse borders on parental alienation"¹⁵ are found throughout the cases. In some cases mothers were criticized by judges for lack of trust in violent fathers' coparenting capacity (see for example, *MacPhee v Sanford* 2008 JSSC 175; *Scott v Lloyd*, 2014 ONCJ 639). Evidence of strong attachment bonds between mothers who sought to introduce evidence of domestic violence and their children was commonly characterized by parental alienation advocates or by courts accepting the theory as 'excessive' or 'abnormal' and, as previously mentioned, mothers are also soundly criticized by courts throughout these cases if they discussed domestic violence with their children (for example, *Ottewell v Ottewell*, 2012 ONSC 5201; *L.T. v. S.M.* supra).

In other words, courts accepting parental alienation theory in cross claim cases are placing protective parents (primarily mothers) in a horrifying double bind: if the parent insists on presenting evidence of domestic violence or child abuse in order to protect the children she risks her efforts being categorized as attempts to alienate the children from the other parent. She may even face loss of primary care or even contact with her children. She thereby places her children at risk. If the protecting parent fails to present such evidence to the court, she also places the children at risk because the court making the custody and access order will have no knowledge of potential risks to children. It is likely that many

10 National Council of Juvenile and Family Court Judges (2008) (2006); Michael Davis, Chris O'Sullivan et al. (2011); Daniel Saunders et al. (2011) (2015, presentation); Linda C Neilson (2001) note Error: Reference source not found as well as Curt Bartol and Anne Bartol (eds) *Current Perspectives in Forensic Psychology and Criminal Behavior* (Thousand Oaks: Sage).

11 Donna Martinson (2013) note 21 ; (National Council of Juvenile and Family Court Judges (2004) *Navigating Custody & Visitation Evaluation in Cases with Domestic Violence: A Judge's Guide* (State Justice Institute and NCJFCJ) available on line; Association of Family and Conciliation Courts (2016) *Guidelines for Examining Intimate Partner Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation*, available on line.

12 *J.L.H. v. P.J.H.*, 2017 BCSC 561.

13 The other cases include cases in which parent-child evaluations were not specific to parental alienation, cases in which perpetrators of domestic or family violence who claimed parental alienation presented no expert evidence, and cases in which judges made parental alienation findings in the absence of expert evidence.

14 *Droit de la famille – 10936*, 2010 QCCS 1745. Refer as well to the gendered use of mental health labels and perpetrator litigation tactics in custody cases discussed in Suzanne Zaccour, "Crazy Women and Hysterical Mothers: The Gendered Use of Mental-Health Labels in Custody Disputes" (2018) 31 *Can. J. Fam. L.* 55.

15 *T.S. v. M.L.J.* [2017] NBJ 61.

protective parents are choosing the second option rather than risking loss of the children. This issue of silencing and suppression of evidence warrants additional research scrutiny.

Even worse, the judicial discourse in some of these cases suggested judicial scepticism or even bias against domestic violence evidence. Other comments reflected fallacies about such evidence. For example, the court states in *S.P. v. P.B.D.*, 2007 CanLII 31787 ONSC:

I accept Dr. Hepburn's conclusion that while there are allegations of serious domestic violence that merit scrutiny, they must be considered with great care, understanding that they may be part of the alienation strategy.....I am aware of the allegations of violence, but am also aware they they must be regarded with caution and a degree of skepticism.

Similarly, in *J.C.W. v. J.K.R.W.* 2014 BCSC 488 the court dismissed concerns of a child about domestic violence in part because:

when this kind of marital conduct is witnessed by children, it can appear that the father is the aggressor and the mother the victim.

In *Benson v Butler*, 2009 CanLII 33527 the court comments at paragraph 6:

We have seen cases, all of us who are experienced in this, of one party trying to use the Criminal Court to bolster an agenda in Family Court.

In *P.D. W. v. H.A. H.*, 2017 NBQB 110 after noting extensive police involvement with the family, the court comments, in connection with the ongoing criminal case, that the charge of assault against the father was:

*no doubt followed through by the mother because of the issue of custody.*¹⁶

In *L.C.T. v. R.K.*, 2015 BCSC 2378 at paragraph 293 we learn that the judge dismissed the testimony of the mother's expert relating to her post-traumatic stress disorder and Battered Wife Syndrome on the basis, in part, that "*If she was as traumatized by her history with the respondent as she suggests, I doubt she would have been able to sit as she did throughout the trial in what appeared to me to be a normal presentation*"¹⁷ and because the personality tests administered by two experts – not qualified as domestic violence experts - showed "*relatively normal results (barring slightly elevated anxiety levels) with no objective evidence of abuse.*" It is important to note here that psychological tests cannot prove or disprove the validity of domestic violence.¹⁸ Although the evidence in the case demonstrated the father's use of pornography and the sexualized behavior of the children, and sexual abuse is a common component of coercive domestic violence,¹⁹ the judge in this case preferred the father's denials to the mother's claims of sexual domestic violence. The mother's concerns were held to be insufficient to support her claims for supervision of the father's contact with the children. The mother's appeal was denied in *L.C.T. v. R.K.*, 2017 BCCA 64.

We also find in this collection of cases judicial comments suggesting that the seriousness or even the existence of domestic violence may be discounted on the basis of absence of police or hospital records or on the basis of lack of criminal findings (for example *Baker-Warren v Denault* 2009 NSSC 59;²⁰

16 We might contrast these comments with comprehensive analysis of coercion and control patterns and thorough assessment of parenting practices in cases such as in *Santos v. Pantelidis*, 2017 ONSC 674 (where serious domestic violence claims were made against the mother); *M.M.B. (V.) v. F.M.V.*, 2017 ONSC 3991; *Lau v IBU*, 2016 ABQB 74; *P.H. v. T.J.*, 2017 ONCJ 166 and *Mattina v Mattina*, 2017 ONSC 5704.

17 The Court of Appeal for British Columbia subsequently commented on the danger of court making conclusions on the basis of demeanour in *L.C.T. v. R.K.*, 2017 BCCA 64 at paragraph 65, although the mother's appeal was dismissed with the exception of the reduction of child support.

18 L. Neilson (2017) note 10, Chapter 7 at 7.3.1.

19 Refer to the sources cited in Neilson (2017) *ibid.*, Chapter 4 at 4.2.

20 The court does note in this case that the absence of a criminal conviction beyond a reasonable doubt does not disprove domestic violence in a civil context.

ADM v SWL, 2015 ABQB 630;²¹ *Calabrese v. Calabrese*, 2016 ONSC 3077; *Ottewell v Ottewell*, 2012 ONSC 5201). In contrast the empirical research demonstrates that patterns of domestic violence are seldom reported to medical authorities or to police and are seldom prosecuted in the criminal system.²² Instead, we know that evidence associated with some of the most serious, severe patterns of coercive domestic violence may be presented only to family courts, when parents attempt to present detailed evidence in order to try to keep children safe. In several cases, courts concluded, presumably as a result of not being made aware of how trauma affects demeanour and disclosure patterns,²³ that claims not advanced initially or claims advanced later were on that basis unreliable. And we find in this collection of cross-claim cases judicial comments suggesting or even stating expressly that domestic violence is between parents and is thus unimportant when making decisions relating to the post-separation parenting of children (*ADM v SWL*, 2016 ABQB 96; *Karar v. Abo-El Ella*, 2017 ONSC 33; *Droit de la famille – 101456*, 2010 QCCS 2786; *C.J.B. v A.R.B.*, 2017 BCSC 1682).

As previously mentioned, parental alienation advocates advise courts to excuse negative parenting on the part of parents the children resist seeing, commonly commenting that no parents are perfect. Perhaps most concerning of all in light of concerns about empirical support for the theory and the frequency of such claims being advanced by alleged abusers, is the assertion that parents who are alienated from their children typically exhibit the following behaviors:

Harsh, rigid and punitive parenting style;

Strong objection to child challenging authority (domestic violence experts identify this as an element of control);

Passivity in the face of conflict;

Immature, self-centered in relation to the child;

Loss of temper, angry, demanding;

Intimidating character traits;

Counter rejecting behavior;

Lacks empathetic connection to the child;

Inept, un-empathetic pursuit of the child;

Unannounced embarrassing visits;

Challenges child beliefs and attitudes;

Dismissive of child feelings;

Induces guilt;

May use force to reassert parental position;

*Vents rage, blames alienating parent for brainwashing child and takes no responsibility.*²⁴

Refer to *M.M.B. v. C.M.V.*, 2017 ONSC 3991 at 943. See also *W.C. v. C.E.*, 2010 ONSC 3575; *L. M. v. J. B.*, 2016 NBQB 93.

With the exception of ‘passivity in response to conflict’ these negative post-separation parenting behaviors are well documented in the research literature on the post separation parenting practices of

21 See *ADM v. SWL*, 2016 SBQB 96 in connection with costs awarded against the mother.

22 Maire Sinha (2013) “Section 4: Responses to violence against women” (85-002-X (Ottawa: Statistics Canada) available on line. The reasons can include safety concerns, intimidation or negative social and economic consequences. Repetitive recants of domestic violence in the criminal system are now being linked in research to increasing risk and danger for victims. Moreover despite the fact that coercive domestic violence is best understood as a cumulative pattern with cumulative effects – see Linda Neilson (2013) Part 5 of *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, Family, child protection)* (Ottawa: Department of Justice) on line. Canada’s criminal definitions are limited to instances of violent action, each of which must be proven. As a result serious patterned abusive behavior is seldom prosecuted in the criminal system.

23 Linda Neilson (2013) *Enhancing Safety* ibid at 4.2 “Patterns of Revealing Domestic Violence: Survivors” on line.

24 The original list lacks parallel structure.

those who engage in coercive domestic violence.²⁵ Parental alienation advocates focus attention on restoring child-parent relationships with rejected parents. Negative parenting is dismissed as a ‘normal’ reaction to a child’s rejection or is said to be of little consequence as no parent is perfect. Domestic violence experts assert, instead, that when negative post-separation parenting patterns are present in a case, courts and service providers should take action to protect children, harmed already by domestic violence, from further harm.²⁶ The scientifically supported goal is to ensure that children, particularly traumatized children, receive safe, stable, supportive parenting and services to help them recover from negative family experiences. Few parent-child evaluators and few parenting coordinators are domestic violence experts.²⁷ In the absence of expertise, evaluators and parenting coordinators may assume that domestic violence is an adult phenomenon caused by poor interpersonal relationships between parents. We see judicial discourse suggesting this assumption throughout the case law. When the assumption is accepted, a period of time without adult violence may make repetitive complaints about earlier patterns of domestic violence appear to be self serving rather than child focused. In contrast, empirical domestic violence, child development and trauma research tells us the domestic violence in the home has a, profound and potentially long lasting effect on the whole family and particularly on children. In addition, coercive domestic violence is often associated with direct forms of child abuse and with negative post-separation parenting practices. Patterns of behavior associated with coercive domestic violence, such as demeaning domination, monitoring and surveillance, isolation, excessive physical discipline, and coercive control, commonly continue against children – as well as against targeted adults – after adults separate.²⁸ Domestic violence is not a relationship problem; it is a collection of behaviors that are characteristic of perpetrators. Merely separating a perpetrator from his or her current target, does not change those characteristics nor does it prevent resort to new targets/‘victims’. Indeed the domestic violence literature tells us that risks to children increase following separation once the targeted parent is no longer available as the target or buffer between the perpetrator and the children.²⁹ Assumptions that coercive, demeaning, controlling and or violent individuals change when they no

25 L. Bancroft, J. Silverman and D. Ritchie (2012) *The Batterer as Parent Addressing the impact of Domestic Violence in Family Dynamics* (Thousand Oaks: Sage); J. Edleson et al. (2003) *Parenting in the Context of Domestic Violence* (Judicial Council of California); and O. Williams (eds.) *Parenting by men who batter: new directions for assessment and intervention* (Oxford University Press: 2006); Department for Child Protection (2013) *Perpetrator Accountability in Child Protection Practice: A Resource for child protection workers about engaging and responding to perpetrators of family and domestic violence* (Perth western Australia: Western Australia government). Linda Neilson (2001) [Spousal Abuse, Children and the Legal System Final Report for Canadian Bar Association Law for the Futures Fund](#) (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research, March 2001). Chapter 11 of Linda C Neilson (2017) [Responding to Domestic Violence in Family Law. Civil Protection and Child Protection Cases](#) (Ottawa: CanLII) on line. Chapter 11.1.10 outlines negative post-separation parenting practices and chapter 11.1.13 lists factors associated with risks to children connected to unsupervised contact with perpetrators documented on the research. It is important to note, however, that not every perpetrator of domestic violence will engage in such practices. Nonetheless, it is important to assess for their presence. The goal is ensure to the extent possible, positive, safe parenting for vulnerable children.

26 Chapters 11 and 14 of Linda C Neilson (2017) *ibid.* Bancroft and Silverman’s documentation of the parenting practices of men who engage in domestic violence in the informative publication L. Bancroft, J. Silverman and D. Ritchie (2012) *The Batterer as Parent Addressing the impact of Domestic Violence in Family Dynamics* (Thousand Oaks: Sage) is derived from clinical experience. Lundy Bancroft began his career in the domestic violence field as a therapist for abusive men. Jay Silverman is a developmental psychologist and Professor of Medicine and Global Public Health at the University of California. Both Silverman and Bancroft have considerable direct experience counselling abusive men. Nonetheless, unlike parental alienation theorists, Bancroft, Silverman and Ritchie do not make unsupported empirical claims such as “80 percent of abusive men engage in negative parenting” nor to they suggest that courts make assumptions or impose punitive outcomes based on counter-intuitive assessment tools.

27 See note Error: Reference source not found.

28 L. Bancroft, J. Silverman and D. Ritchie (2012); J. Edleson et al. (2003) ; J. Edleson and O. Williams (eds.) (2006); Department for Child Protection (2013); .Linda Neilson (2001) (2017) note Error: Reference source not found.

29 *Ibid.* See also Neilson (2017) 27, Chapter 11.

longer have access to a particular victim appear to rest on the false assumption that relationships and victims are responsible, in full or in part, for perpetrator conduct. Once we abandon the false assumption, it comes as no surprise that the characteristic patterns of behavior continue in post-separation perpetrator parenting practices, as the empirical domestic-violence research documents.³⁰

Yet, when we turn to the case law, we find that few parent-child evaluators or courts commented on clear evidence of negative parenting patterns associated with domestic violence. Fifty eight of the cases³¹ documented clear evidence of such parenting practices.³² Twenty of the cases documented severe abusive and/or violent conduct on the part of children against mothers, presumably mirroring perpetrator conduct. Nonetheless experts and courts seldom associated negative parenting with the domestic violence, probably as a result of the almost total absence of domestic violence expert testimony in these cases.

30 Notes 28 and 29.

31 Note that this does not mean that similar negative parenting practices were not present in the other cases. Courts will not necessarily comment on evidence that was not considered relevant in some way to the decision.

32 Chapter 11 of Linda C Neilson (2017) *Responding to Domestic Violence in Family Law: Civil Protection and Child Protection Cases* (Ottawa: CanLII) on line. Refer to 11.1.10 in connection with negative post-separation parenting practices and 11.1.13 in connection with the potential risks to children connected to unsupervised contact with perpetrators that have been documented in the research. It is important to note, however, that not every perpetrator of domestic violence will engage in such practices. Nonetheless, it is important to assess for and identify these practices if they are present. The goal is to ensure, to the extent possible, positive, safe parenting for vulnerable children.