

DIVERSE VOICES CONFERENCE 2019
Concurrent session: Supporting women against allegations of parental alienation

Friday November 15, 2019, 10:30 – 12 noon

SPEAKING NOTES

Good morning. I am really happy to be here to facilitate a discussion about how we can best support women whose abusive ex-partners allege they are alienating their children.

When I had a family law practice in Ontario in the 1990s, Richard Gardner and his theories about PA were still kicking around and harming women and their children who had fled abusive situations. There was a little hiatus when we did not hear so much about PA, but now it seems to be back, bigger and better than ever.

Just before I outline what I would like us to talk about this morning, I would like to get a sense of who is in the room. Who is:

- A VAW frontline worker
- A child psychologist
- A social worker/therapist
- A lawyer
- A judge
- A survivor
- Community mental health worker
- Parenting coordinator
- Mediator
- Anyone I missed?

And where from?

- Canada
- U.S.
- Other

The focus of this workshop, as I just said, is to look at how we can support women when they have to respond to an allegation of parental alienation in the context of the abuse of women within the family. I want to start by setting a framework for that discussion by talking briefly about what PA is and how it comes up in cases where women have raised allegations of abuse by their partner. I will also talk about why we need to use a gendered analysis of family violence if we are to understand and respond appropriately to PA.

We will then move into looking at what we need to do to support women, and here I hope all of you will participate by sharing your concerns, challenges and strategies. We'll consider the

intersections between legal bullying and PA, the challenges for women who do not have legal representation, the role of custody and access assessments and Voice of the Child reports as well as expert witnesses and how to present evidence that supports the woman's allegations of abuse and refutes the abuser's claims of parental alienation.

Just a couple of general points before I begin:

- This workshop is focused on PA claims in cases involving FV
- PA is a theory – and a controversial one at that – not a diagnostic condition or a scientifically or medically accepted syndrome

What is parental alienation?

Parental alienation theory was first introduced in 1985 by psychologist Richard Gardner, who labelled it a “syndrome.” His work was highly misogynist, and he claimed that PAS was a behaviour engaged in by vindictive mothers who did not want their former partners to have any contact with their children.

This theory was never granted “syndrome” status by any legitimate psychological associations, and it fell largely out of favour in the late 1990s and early 2000s.

However, it has re-emerged over the past decade, and is used particularly by fathers who make the claim against the mother of their children, especially when the mother has led evidence of family violence in child custody and access proceedings.

There are a number of significant problems with the use of PA theory:

- There is limited support for it in scientific research about children
- There is a significant gender bias
- It deflects attention away from legitimate and important family violence claims
- It implies support for a presumption in favour of shared parenting
- It does not recognize accepted research about why children sometimes prefer one parent over another
- It denies the realities of family violence, in particular, post-separation abuse and the long-term impact on survivors, especially of coercive controlling abuse

The need for a GBA

When parenting arrangements are made – whether by a judge or through negotiation or mediation – without using a gender-based analysis, outcomes often reflect neither the best interests of the children nor the safety concerns of the mother.

Absent a GBA, women's voices – including their stories of abuse – are silenced. Indeed, as cases in both Canada and the U.S. appear to indicate, those voices are silenced as soon as a father makes an allegation of parental alienation.

Without women's voices and the story of abuse, courts make orders for shared parenting, when this will only serve to give the abuser ongoing power and control over the mother and the children, thus exposing them to even further abuse and violence.

Daniel Saunders, psychologist and professor of social work at the University of Michigan, has noted that, when sexism underlies the beliefs of those making custody and access recommendations and/or decisions, certain other beliefs are part of the package:

- That mothers make false allegations about violence in the family
- DV is not important in making decisions about parenting arrangements
- The mother's mental health issues are her problem and not a symptom of abuse
- Mothers hurt their children by not being willing to co-parent with an abusive ex-partner
- Mothers alienate their children from their fathers
- The abuser's controlling behaviour is not carefully examined in any assessments

As a result, women are encouraged (or perhaps even coerced) into mediation, the perpetrator of abuse gets sole or joint/shared custody and visits are not supervised.

In this context, raising an allegation of PA has become a common-place response to an allegation of family violence, even when the FV allegation is well documented.

A finding of PA becomes, in effect, the punishment for a woman who raises the issue of abuse.

In many Canadian jurisdictions -- federal and provincial/territorial -- the relevant family law legislation includes some form of "maximum contact" provision which puts a protective mother in an unwinnable double bind: if she raises concerns about FV or child abuse she risks being labelled alienating and thus, perhaps, losing primary care of the children; if she does not raise the issue, she may be placing her children at risk of harm when in the care of their father.

What we need

1. **Evidence-based approach**

- Understanding that child resistance to parental contact is very complex and not just a case of alienation: kids resist visiting their non-primary parent for many reasons
- What might the source of the alienation be? (Kelly and Johnson)
 - Child has a positive relationship with both parents
 - Child has an affinity with one parent but enjoys time with both parents
 - Child has a preference for one parent because of an alliance with that parent or because they are estranged from the other parent, but is largely ambivalent as opposed to negative about time with the less-favoured parent
 - Child rejects one parent with no ambivalence because they are estranged from that parent (realistic estrangement) or because they have been alienated from that parent (pathological alienation)
- Impact of post-separation abuse/long term impact of abuse/trauma
- Who has the historic primary parent really been?
- What arrangement is in the best interests of the child?

2. **Family violence training for**

- Judges, assessors, parenting coordinators, mediators, lawyers
- Needs to be mandatory
- Any experts must be FV experts before they are considered experts on anything else

3. **Universal family violence screening**

<https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/p1.html>

4. **Proper use of the best interests of the child test**

- Views and preferences of the children
- Other child-focused issues such as parental warmth, child stability, parent-child attachments
- Should not start from a premise of parental rights to parenting or from a presumption in favour of shared parenting. Shared parenting can only work when the parents get along, have common values about parenting that they can implement and can put the children's best interests ahead of their own or their feelings about one another

5. **Fulsome understanding of family violence**

- Revised *Divorce Act* offers:
 - Comprehensive definition of FV, that includes coercive control, pattern of behaviour, threats to animals
 - Stipulates that criminal charges are not necessary for a family law finding of FV
 - Factors to be considered focus on impact on kids: was the violence directed towards the child or was the child directly or indirectly exposed, the physical, psychological or emotional harm or risk of harm to the child, any compromise to the safety of the child or other family member, whether the FV causes the child or other family member to fear for their safety, whether the abuser has taken any steps to prevent further violence from happening
- A proper understanding of FV will reduce the number of decisions where the court has interpreted the mother's allegation of FV itself as a form of PA
- Need to understand PA claims in the context of FV specifically: case law in both Canada and the U.S. shows clearly that this is a very effective defence by a father against an assertion of FV by his female partner – fathers win custody in these cases at an alarmingly high rate

6. **Use an abuse framework**

- Battered Women's Justice Project's 2015 Practice Guides make a good practice
- It's a four-part framework to help professionals gather, synthesize and analyze information about the context and implications of FV to lead to informed decision-making about parenting arrangements
- Steps:
 1. Identify domestic abuse: is it present? Is it an issue? (screening tool)

2. Define the nature and context of the abuse: What is actually going on?
 3. Evaluate its implications: How is the abuse related to parenting?
 4. Account for it in actions and decisions: How can we make things work for this family? What will an informed decision/action look like?
- This guide looks at process (eg mediation) as well as outcomes in the FV context

References

Gabriel Davis, Loretta Frederick, Nancy Ver Steegh: *Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters* 2015

Joan Kelly and Janet Johnston: *The Alienated Child: A Reformulation of Parental Alienation Syndrome* 2001

Joan S. Meier: *Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations* 2019

Joan S. Meier and Sean Dickson: *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation* 2017

Linda Neilson: *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* 2018

Daniel Saunders et al: *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations*, 2012

Collective memo of concern to World Health Organization:
<http://www.learningtoendabuse.ca/docs/WHO-July-10-2019.pdf>

Notes for me – not for slides

Linda Neilson's review of Canadian cases to 2017:

- 65% of PA claims made by fathers against mothers, 35% by mothers against fathers
- 42% were cases where FV had been raised, almost always by the mother – in those cases 75% of PA claims made by father against whom allegation of abuse had been made
- no explicit alienation finding made in 50% of cases
- where the court made a definitive finding of PA, it was much more often made against the mother: 95 cases vs 53 in which finding was made against father
- in the 53 cases where the finding was made against the father, 19 times kids were left in his primary care (35%). In 10 cases, the mother got primary care but the father still had unsupervised access
- in the 95 cases where the finding of PA was made against the mother, the children remained in her care just 16 times (17%), the father's access was increased and, sometimes, the mother was ordered to engage in PA therapy.
- Of the 142 PA cases LN reviewed that involved assertions of DV and/or child abuse, in 40 cases (37%) where the PA allegation was raised by the alleged FV perpetrator, the court made a finding against the parent claiming DV or child abuse and in 39 of those cases, kids were removed from the preferred primary care parent (the abuse survivor) and handed to the abuser

Joan Meier's U.S. study

- All electronically published court opinions in C&A cases involving abuse **or** PA claims from 2005- 2015
- 4,338 cases
- courts credited mothers' reports of abuse by partner less than half the time (41%)– child abuse claims even less than partner abuse
- when there is a PA cross-claim, the rate of crediting of abuse is dramatically reduced (23%)
- child abuse allegations and alienation defences == mother at high risk of losing custody
- only 1 child/51 was believed when alienation was cross-claimed
- just by raising the allegation of abuse (partner or child), mothers risked losing custody to the father: 26% of the time
- where the father counter-claims PA, the mother loses custody 44% of the time
- when fathers cross-claimed PA, they were 2.9 times more likely to take custody from mothers alleging any kind of abuse than when they do not cross-claim PA