

THE MISUSE OF PARENTAL ALIENATION IN FAMILY COURT PROCEEDINGS WITH ALLEGATIONS OF INTIMATE PARTNER VIOLENCE

Part 1: Understanding the Issue

This issue is the first in a two-part series that examines the potential misuse of parental alienation (PA) claims with intimate partner violence (IPV) cases in family court proceedings in Canada. It provides an overview of what parental alienation constitutes, how its use has evolved in the family court system, and the implications of PA claims in child custody cases involving IPV for mothers and children. We recognize that a partner (e.g. female, male, nonbinary) within any type of intimate relationship (e.g. same sex, heterosexual) can be a victim of IPV and can be accused of alienation. However, we focus on mothers harmed by father figures in both issues as they face a greater likelihood of serious injury and death from IPV and are most often accused of alienation in their efforts to protect children.

The information in this issue is based on current literature on PA claims involving IPV. Though this continues to be a growing area of research, there remains a lack of intersectional analysis on the misuse of PA in cases involving parents of different identities, such as BIPOC identities, transgendered identities, and individuals with disabilities. Future research enabling an intersectional analysis is critical to accurately capture the myriad challenges and barriers women face when navigating the family court process and to design appropriate responses to meet their needs.

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WHAT IS PARENTAL ALIENATION?

Lawyers, judges, and mental health professionals agree that children benefit from an ongoing positive relationship with both parents after separation and that they need to be protected from continuing conflict between parents. Courts do not tolerate willful attempts by one parent to prevent or undermine a child's relationship with the other parent, which is often called "parental alienation." However, when a parent is concerned about their child's safety due to a history of child maltreatment or IPV, their attempts to protect their children can be mislabeled as "alienation." Parental alienation is now a common allegation in Canadian family court cases where IPV allegations are present, and there is increasing concern that this label continues to be misused in these cases and can mislead the court and endanger survivors and their children.¹

EVOLUTION OF THE TERM "ALIENATION" IN FAMILY COURT

Everyone accepts the common meaning of the word alienation found in the dictionary: "a withdrawing or separation of a person or a person's affections from an object or position of former attachment."² However, 35 years ago, a psychiatrist named Richard Gardner applied this term as a diagnosis known



as “parental alienation syndrome” (PAS) to describe parents in child custody disputes who were turning children against the other parent. He noted that this was done by “using a program of denigration” where one parent intentionally and systematically denigrates and spurns the other parent in order to cause the children to reject the maligned parent.³

Early critics of this idea pointed out that the PAS label was gender-biased and was usually applied to mothers who were accused of making false allegations of child maltreatment at a time when there was little understanding of the extent of child maltreatment in society.⁴ The terms alienation and parental alienation syndrome are now viewed as controversial and open to misuse. Importantly, PAS was not accepted by the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and has been widely discredited as a reliable and valid label by an overwhelming amount of research.⁵ Recently, the concept of “refuse/resist dynamics” has been used to describe the multiple, contributing factors that can influence a child’s refusal of postseparation contact with a parent (see box below).⁶ This is important because it illustrates that children may refuse or resist contact with a parent for reasons apart from one parent’s intentional alienation of the children from the other parent. While encouraged by the developmental and family system considerations informing “refuse/resist dynamics”, we are focusing on the continued misuse of parental alienation in family court cases and will use that term throughout this discussion.

PAS has not been accepted as a psychiatric disorder by the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and has been widely discredited as a reliable and valid label by an overwhelming amount of research.⁷

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WHY CHILDREN MAY REFUSE OR RESIST CONTACT WITH A PARENT AFTER SEPARATION⁸

There are usually multiple factors and dynamics at play when children refuse or resist contact with one parent after separation, including:

01 “Child factors (age, cognitive capacity, temperament, vulnerability, special needs and resilience);

02 Parent conflict before and after the separation;

03 Sibling relationships;

04 Favoured parent factors (parenting style and capacity, negative beliefs and behaviours, mental health, and personality, including responsiveness and willingness to change);

05 Rejected parent factors (parenting style and capacity, negative reactions, beliefs and behaviours, mental health, and personality, including willingness to change);

06 The adversarial process/litigation;

07 Third parties such as aligned professionals and extended family; and

08 Lack of functional coparenting, and poor or conflictual parental communication.”

ALIENATION CLAIMS AS A SHIELD AGAINST IPV CONCERNS

Over the past 25 years, alienation has become a common defense in situations where one parent raises concerns about violence and the other parent alleges it is a lie and that the parent making the accusation of violence is engaging in alienating behaviour.⁹ These behaviours have been described as an “ongoing pattern of observable negative attitudes, beliefs and behaviours of one parent (or agent) that denigrate, demean, vilify, malign, ridicule, or dismiss the child’s other parent.”¹⁰ However, such alienating behaviours cannot be accurately assessed when there is a history of IPV or child maltreatment and when a parent or child may rightfully be anxious or scared about contact with the parent who uses abusive behaviours.

Despite lacking credibility, parental alienation is often used in courts to divert attention away from abuse and other evidence relevant to the best interests of the child.¹¹ Little attention is paid to the negative impacts of IPV on the health and wellbeing of women and children, even though there is overwhelming evidence to support this.¹² Ironically, the creator of the alienation label, Richard Gardner, published articles decades ago that stated that the term alienation should not be used in cases of abuse.¹³

“By embracing the discourse of parental alienation, child protection services and the family court system reproduce the perpetrators’ accounts and discredit reports of abuse by women and children, and therefore undermine their core mandate.”¹⁴

HOW IPV ALLEGATIONS ARE OFTEN TREATED IN THE LITIGATION PROCESS

Survivors often face five hurdles:

1. Not being believed about the violence and abuse they have experienced.
2. Being believed, but having the violence minimized or dismissed.
3. Being told that the violence is an adult issue and not relevant to the children’s wellbeing.
4. Recognition of the impact of IPV on survivors and children but told to get over it, put the past behind, and become a co-parent.
5. Being accused of alienation when survivors or the children cannot “put the past behind.”¹⁵



This lack of concern regarding allegations of IPV may come out of the mistaken assumption that divorce or separation increases safety and ends abuse in a relationship. The reality is that stalking, harassment, threats, and emotional abuse often continue and may increase after separation.¹⁶ The risk of intimate partner homicide also increases for a period of time following separation. In fact, “a woman’s risk of being killed by a legally separated spouse was nearly 6 times higher than their risk from a legally married spouse.”¹⁷ In addition, children may be at risk for serious harm.¹⁸

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[Explaining the New Children’s Law Reform Act](#)

Though alienation has been rejected as a diagnosis, parents are still perceived by many courts to be engaging in alienating behaviours that harm children and warrant loss of custody or reduced contact.¹⁹ This has significant implications for families and children, including removal of the child from their preferred parent to placement with the parent who claims alienation (e.g. custody reversals), in order to repair the relationship between the child and rejected parent. This decision may expose children to further trauma and abuse.

WHAT IS A CUSTODY REVERSAL?

“A custody reversal is highly intrusive and generally requires suspension of contact between the child and the favoured parent, along with the threat or reality of police enforcement, contempt, and imprisonment for former spouses (or even children) who fail to comply with court order. In addition to being very intrusive and often very expensive, custody reversal does not always succeed and may further traumatize already vulnerable children. Most significantly, this process rarely results in children establishing good relationships with both parents.”²⁰



MORE FOCUS ON “FRIENDLY PARENTING”, LESS FOCUS ON PROTECTION AND SAFETY

Most cases labeled as “high-conflict” involve allegations of child abuse and IPV.²¹ Using this term can be problematic and consequential as it suggests that both parents are responsible for the conflict and disregards the potential danger of unsupervised encounters between a child and an abusive ex-partner. “*You two need to get along for the sake of the children.*” This line of thinking suggests that the protective parent is harming the child by not agreeing to the violent partner having unsupervised access to the children. In other words, instead of focusing on protection for the mother and child, the focus is turned toward which parent is providing an environment that supports a relationship with both parents.²² Ideological preferences for shared parenting has been a recurring theme in the family court system, even if IPV is brought to attention.²³ There is significant burden placed on mothers to demonstrate they are cooperating with fathers even if IPV has been established to avoid being labeled as alienating the other parent.²⁴

Read more:

[When Shared Parenting and the Safety of Women and Children Collide](#) published by Luke’s Place

[Why Can’t Everyone Just Get Along? How BC’s Family Law System Puts Survivors in Danger](#) by Rise Women’s Legal Centre

MISPERCEPTIONS THAT CAN LEAD TO GENDER-BIASED CREDIBILITY DISCOUNTING IN IPV CASES

Leaving an abusive relationship is challenging enough for survivors. Survivors who share children with a violent partner must also navigate the complexities of the family court system in order to obtain protection orders and custody arrangements. Decisions made by family court professionals may be influenced by misperceptions that can lead to a gender-bias that discounts survivors’ credibility in IPV cases and deflects attention away from experiences of abuse and back on to claims of “parental alienation.”²⁵ Below are several examples of such misperceptions.²⁶

Table starts at the next page.

The term “credibility discount” was originally introduced to describe how the criminal legal system systematically discounts women’s reports of sexual violence at every step of the process. The term has now evolved to include the experiences of female victims of IPV in legal and social service settings.²⁷ Black women and survivors of IPV by partners of the same sex, often find their credibility further discounted, particularly when they seek to resist IPV.²⁸

ASSUMPTIONS ASSOCIATED WITH CREDIBILITY DISCOUNTING	REALITIES OF LIVED EXPERIENCES OF VIOLENCE AND ABUSE
<p>“I would immediately leave a partner who abused me.”</p> 	<p>A lack of understanding of IPV leads to the belief that all credible survivors of IPV leave violent relationships and report all violence immediately.²⁹ This “exit myth” does not take into consideration the extraordinary challenges and barriers that many survivors face in leaving and/or seeking supports and services.³⁰ These include: concern for safety of children; cultural expectations; economic instability; fear; lack of secure, safe and affordable housing; immigration status; lack of social support systems; dependency for basic needs; shame and stigma; coercive control; and increased risk of escalating violence and lethality. In addition, survivors of IPV may choose not to contact police due to “lack of history of police enforcement, conflict between the police and communities of colour, and fear of triggering interactions with child protection services that could result in removal of their children.”³¹ In Canada, Indigenous women who report violence to law enforcement are “more likely to be arrested, detained, and charged than non-Indigenous women.”³²</p>
<p>“I can tell if someone experienced interpersonal violence by the way they act when discussing the abuse.”</p> 	<p>Survivors do not experience and react to abuse in the same way and there is no single accepted “normal” reaction to abuse and trauma. Responses to trauma can range widely and can include emotional dysregulation, dissociation, exhaustion, confusion, numbness, and poor memory. In addition, research indicate that survivors of IPV can face credibility discounting if they do not fit the pre-conceived notion of a victim: “sweet, blameless, scared, and helpless.”³³</p>
<p>“It is easy to detect if someone is lying based on where they are looking and what they are saying.”</p> 	<p>Survivors of abuse and trauma can sometimes make statements that seem “inconsistent” or “incomplete”. These inconsistencies can reflect typical responses to trauma and demonstrate how the brain is coping with and processing overwhelming traumatic events.³⁴ Traumatic brain injury (TBI) and strangulation is also common in survivors of IPV and can impact memory and behaviour. This can include “confusion, poor recall, inability to link parts of the story or to articulate a logical sequence of events, uncertainty about detail, and even recanting of stories.”³⁵</p>
<p>“I know what happened and the evidence supports me.”</p> 	<p>Family court professionals who have to make credibility assessments have their own beliefs and opinions about IPV that can influence the evidence they come across and the overall case assessments. They are likely to discount or ignore evidence that goes against their beliefs and place emphasize on the evidence that does.³⁶ Furthermore, women who experience forms of abuse that do not leave physical evidence (e.g. emotional and psychological abuse) face even more barriers in being viewed as “credible” survivors.³⁷</p>

Adapted from Mindthoff, A., Goldfarb, D., & Behre, K.A. (2019). How Social Science Can Help Us Understand Why Family Courts May Discount Women’s Testimony in Intimate Partner Violence Cases. *Family Law Quarterly*, 53(3), 243-264. Available at https://www.researchgate.net/profile/Amelia_Mindthoff/publication/342247787_How_Social_Science_Can_Help_Us_Understand_Why_Family_Courts_May_Discount_Women’s_Testimony_in_Intimate_Partner_Violence_Cases/links/5eea88bea6fdcc73be84e0f3/How-Social-Science-Can-Help-Us-Understand-Why-Family-Courts-May-Discount-WomensTestimony-in-Intimate-Partner-Violence-Cases.pdf

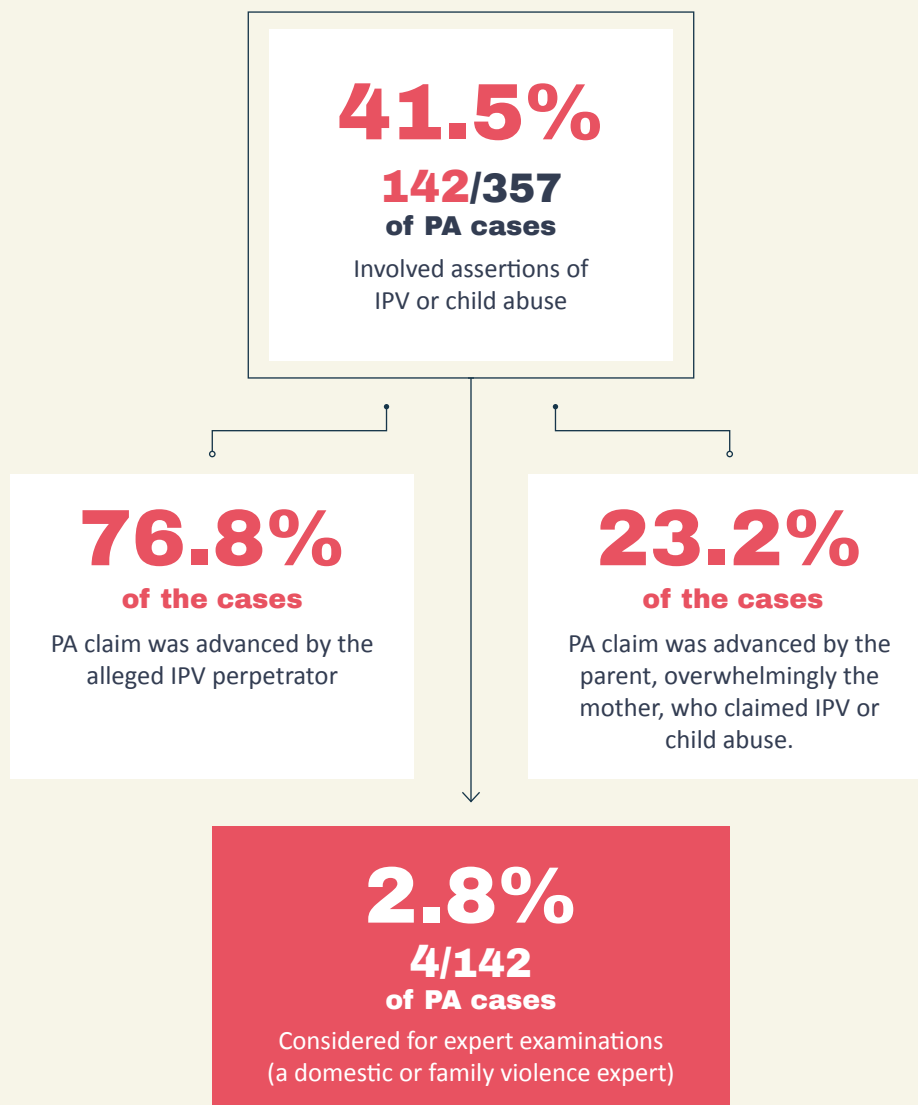
PARENTAL ALIENATION CLAIMS IN CHILD CUSTODY CASES IN CANADA

Recent studies demonstrate the growing use of parental alienation claims in the family court system across Canada.³⁸ In fact, parental alienation “is now a legitimized and institutionalized discourse in Quebec, influencing practices in family court and child protective services.”³⁹ Accusations of parental alienation are made by women’s former partners; however, they also are raised by professionals in family court (including judges) and child protective services.⁴⁰ We draw on findings from two recent Canadian studies to examine how courts are responding to claims of parental alienation.

The first study is an empirical analysis of 357 Canadian cases involving parental alienation for the period of 2008 to 2017. In this study, Neilson points out the highly gendered nature of PA allegations and adjudication. Specifically, Neilson finds considerable scepticism about IPV evidence and the more negative custody consequences for mothers as opposed to fathers who were declared alienating.⁴¹ Highlights of findings from this study are indicated in the image below.

KEY FINDINGS FROM CASE LAW STUDY EXAMINING CANADIAN CASES INVOLVING PA FROM 2008-2017

(NEILSON, 2018)



This is not a comprehensive summary of key findings from this study. See ⁴¹.

The second study examined reported Canadian cases (excluding Quebec) involving claims of PA from 2014-2018. When looking specifically at the cases involving PA and IPV (90/289), Sheehy and Boyd noted similar themes. Key findings from this study can be found in the image below.⁴²

ALIENATION AND IPV DECISIONS IN CANADIAN COURTS (SHEEHY & BOYD, 2020)



The proceedings and outcomes of cases involved in these studies reflect the overall lack of understanding of the nature of IPV and its impacts on both adults and children in the court system.⁴³ In determining custody and access, judges are more likely to bring attention to alienating behaviours than IPV.⁴⁴ Furthermore, mothers bear the responsibility of showing that they can cooperate with fathers even if IPV has been established or risk being called an alienating parenting if they do not depict fathers in a positive manner.⁴⁵

CONCLUSION

Parental alienation continues to be misused in family court proceedings involving IPV across Canada. This is fueled by a number of factors including: lack of training and education for court professionals on child development and impacts of abuse on women and children, assumptions that separation and/or divorce end abuse, misperceptions that can lead to gender-biased credibility discounting in IPV cases, and ideological preferences and support for “friendly parenting” and shared parenting arrangements.

Misuse of parental alienation claims in cases involving IPV can have significant implications for women and children who are trying to protect themselves from abuse and ensure their physical and mental well-being. In addition, court decisions that result in an imposition of equal time, joint custody presumptions, equal shared parenting responsibility, and custody reversals can have serious, sometimes lethal, outcomes for both mothers and children.

The next Issue of this two-part series will closely look at the impacts of parental alienation claims on mothers and child, safety planning strategies, and considerations for moving from “victim-blaming” to developing trauma-informed courts to better protect women and children.



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