Parental Alienation in Ontario: What Is Parental Alienation, and What Should Be Done About It?

by

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A thesis submitted in conformity with the requirements for the degree of LL.M.,
Graduate department of Law
University of Toronto

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ABSTRACT:
This paper explores parental alienation in custody and access litigation in Ontario, examining how parental alienation has been defined by various scholars, arguing in favour of the relevance of the term, and identifying a core definition which can be utilized in court. This paper also evaluates how Ontario courts have dealt with parental alienation claims to date, and identifies areas of weakness. Specifically, identification of, and response to, parental alienation is poor in cases where there are elements suggestive of both alienation and estrangement. Additionally, cases are not generally dealt with in a timely manner. Finally, this paper considers the possible benefits of youth acting as parties in parental alienation cases.
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Parental alienation has all the features that make a great story: a heartbroken parent, an evil ex, and a victimized child. If real life were like Hollywood, the story would eventually end with the evil ex being punished (or seeing the light and repenting), and the formerly heartbroken parent re-united with their now loving and devoted child. Unfortunately, real life is not Hollywood, and such picture-perfect endings rarely occur. So what is parental alienation and what does parental alienation look like in the real world? Is there always a good guy and a bad guy? Is the fairy tale ending achievable? And if it is, what can the legal system do to help the players achieve this end?

Parental alienation is not as simple as it is depicted in the media. When parental alienation was first defined by Dr. Richard Gardner in the eighties, the theory focused on the emotionally abusive behaviour of one parent (the favoured parent) against the other parent (the alienated parent). The favoured parent was an abusive parent while the alienated parent was simply an innocent victim. More recent scholars have revised this definition somewhat, rejecting the notion that the alienated parent is always entirely innocent. While the alienated parent must not have been an abusive parent in order for alienation to be found, alienation may exist where the alienated parent engaged in behaviours which would justify some degree of estrangement between parent and child.

While some writers are strongly critical of parental alienation, believing it to be an allegation used to dismiss the lived experiences of women suffering from domestic violence, Gardner used the term “parental alienation syndrome” while others have used “parental alienation”, “the alienated child” or simply “alienation”. I will use “parental alienation” and “alienation” throughout this essay to refer to the general concept as described by Gardner and others.

1 Gardner used the term “parental alienation syndrome” while others have used “parental alienation”, “the alienated child” or simply “alienation”. I will use “parental alienation” and “alienation” throughout this essay to refer to the general concept as described by Gardner and others.

2 Richard Gardner, The Parental Alienation Syndrome and the Differentiation between Fabricated and Genuine Child Sexual Abuse, (Cresskill, Creative Therapeutics, 1987) at xix (“Fabricated and Genuine Child Sexual Abuse”)
violence, there is a general consensus held by a large number of scholars regarding the core definition of parental alienation. I believe that this core definition can be easily translated into a fact-based test that can be utilized by courts when parental alienation allegations are raised.

In fact, to date, the Ontario courts have been extremely successful in identifying cases of parental alienation, generally basing identifications on the existence of facts suggestive of the core definition of alienation. However, courts have been less successful in identifying alienation in cases where alienation and estrangement are both present, often failing to intervene appropriately in such situations. Additionally, even where there is overwhelming and clear evidence of alienation, parental alienation cases are plagued with delay. Years elapse where such cases are in court and where the alienated parent is having little to no contact with their child, and yet the court will fail to intervene. Such delays are counter-indicated by all writers who have proposed remedies for alienation. The recommended responses to parental alienation of case management and early intervention must be better implemented by the court in order to serve the best interests of the children involved in such cases.

A further issue related to parental alienation is the role of the child in such litigation. There have been two recent cases in Ontario where settlements have resulted in reconciliation between the alienated parent and the child, and where the settlements have been effected after the teenaged child has been added as a party to the litigation. Such an intervention is counter to prevailing wisdom, yet the result indicates that this is deserving of further study.

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In this paper I argue that there is a core definition of parental alienation which is accepted by the majority of social science scholars writing on the topic of parental alienation, and that this definition can be used by family law courts to identify and describe a particular subset of families who are involved in custody and access litigation. I further argue that it is crucial that such families are identified early on in the litigation process in order for appropriate interventions to be implemented, but that Ontario courts routinely fail to identify or intervene with such families in a timely manner. Moreover, I argue that Ontario courts often fail to recognize cases of parental alienation where a rejected parent has parenting deficits, and so courts require a better understanding of recent scholarship on parental alienation in order to more effectively intervene in such families. Finally, I consider how the involvement of older children as parties in parental alienation cases may affect the outcome of such cases.

**PARENTAL ALIENATION – WHAT IS IT?**

**Parental Alienation According to Dr. Richard Gardner**

Parental alienation was first described by Dr. Richard Gardner, a medical doctor and a clinical professor of child psychiatry at Columbia University. Gardner first published his description of the parental alienation syndrome in 1985⁴, and after that date, wrote several papers on the subject. He describes parental alienation syndrome as a situation where there is parental programming or brainwashing of a child causing the child to reject a relationship with the other parent, where the child actively denigrates that parent themselves, and where the parent who is being denigrated has not engaged in any

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⁴ *Fabricated and Genuine Child Sexual Abuse* at xix
behavior which would explain the ferocity of the child’s rejection. Gardner regarded the adversarial system as one of the major causes of parental alienation syndrome, arguing that it intensified conflict between parties and led to an “ever-increasing vicious cycle of vengeance”. He also critiqued contemporary custody laws for providing too little certainty as to which parent would be awarded custody of a child. He believed that this lack of certainty encouraged parents to fight, whereas the same parent in previous generations would not have entered into custody litigation, as they would have had minimal chances of success.

Gardner’s definition of parental alienation syndrome is problematic in several respects. Gardner places blame on the adversarial system for causing parental alienation syndrome, yet despite the increasing prevalence of mediation, collaborative family law, and other forms of alternative dispute resolution, allegations of parental alienation have been increasing over the past two decades. While one could fairly argue that the increase of parental alienation allegations are due to an increased public awareness of parental alienation, and not due to an increasing incidence of parental alienation, a study of cases where parental alienation is alleged does not always reveal a casual link between the litigation and the onset of the alienation. For example, in one recent Ontario case where parental alienation was found, the parents had initially tried to resolve their dispute using mediation, before proceeding to arbitration and then finally turning to the court system.

In another case, the court found that the parental alienation had begun almost

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6 *Fabricated and Genuine Child Sexual Abuse* at 50

7 *Fabricated and Genuine Child Sexual Abuse* at 68


immediately after the birth of the parent’s first child, well before any separation or custody litigation. Gardner does acknowledge that, in some cases, alienation will occur outside of an atmosphere of litigation, but appears to regard such cases as the exception to a more general rule. In doing so, Gardner fails to accurately account for the causes of parental alienation syndrome.

While not necessarily critiquing Gardner’s theory that the adversarial system leads to the development of parental alienation, other scholars have suggested numerous other causes for the development of parental alienation; the conflict and hostility caused by a relationship breakdown is a factor which is often referred to, as are mental health issues. The causes of parental alienation are likely varied, and it is reasonable to assume that the incidence of parental alienation has remained more or less steady over the past few decades, but is increasingly identified under the label of ‘parental alienation’. By blaming custody litigation for the onset of parental alienation syndrome, Dr. Gardner may be doing a disservice to alienated parents, who may shy away from pursuing, or aggressively pursuing, custody on the basis that it would serve to increase the severity of the alienation. If the best remedy for severe alienation is a change of custody, then the power of the courts is necessary in order to achieve this result. Many scholars, including Gardner, argue that parental alienation is best treated when it is caught in its early stages. Time spent in mediation, which may be beneficial in the vast majority of custody disputes, is likely doomed to be ineffective and a cause of delay in cases where
parental alienation does exist. This is not to say that parents who believe their former partner is engaged in alienating behavior should not attempt to mediate or negotiate out of court, but rather, it is to say that such parents should not delay in turning to the court system for assistance. Mediation and negotiation can, and should, occur simultaneously to litigation.

Gardner’s conception of parental alienation is also fairly critiqued for its gender biases. This is the primary criticism of parental alienation made by feminist scholars such as Joan Meier. Gardner argues that mothers are far more likely to be the alienating parent due to a variety of factors, and states that fathers are the favoured parent in only about 10 percent of cases. He believes that mothers are more likely to feel threatened by custody litigation and the break to the psychological bond shared with the child, and that women are more likely to feel angry towards their former partner. Gardner argues that men are more likely to find a new partner after a separation, and therefore will feel less frustrated, and less angry or in want of revenge. Real life examples of parental alienation show that the father is actually found to be the favoured parent in 31% of Canadian cases between 1989 and 2008, and in 34% percent of Ontario cases between 1992 and 2011. While such statistics do suggest that women are more likely to be the favoured parent than men are, the statistics are much less dramatic than suggested by Gardner. Moreover, if there is any validity to Gardner’s theory that mild-to-moderate levels of parental alienation are caused by a threatened disruption to the primary parent-child bond, then it is to be

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15 Fabricated and Genuine Child Sexual Abuse at 69
16 Fabricated and Genuine Child Sexual Abuse at 69
17 A Guide for Mental Health and Legal Professionals at 122
18 Bala, Hunt & McCarney at page 166
19 See Schedule A: Out of 51 cases of alienation, 17 alienating parents are fathers, 33 are mothers. One alienating “parent” was actually an aunt and uncle.
expected that mothers will be found to be the favoured parent more often, as mothers are significantly more likely to have been the sole stay-at-home parent prior to separation\textsuperscript{20}. Child-rearing tends to be a female dominated occupation, and so parental alienation is a gendered issue. Gardner should not be faulted for identifying that women are more likely to engage in alienating behaviours; this is a factual statement, likely related to the fact that women are more likely to have primary responsibility for child care. However, Gardner can and should be criticised for over-estimating the dominance of mothers acting as the alienating parent, and the assumptions he makes about women`s psyches. For example, Gardner`s arguments that women are more vindictive than men or are less able to find new romantic partners\textsuperscript{21} adds nothing to a discussion about the causes of parental alienation. The gendered picture of parental alienation that is used by Gardner renders parental alienation a target for feminist critique, and has led to alienation being embraced by extremist father`s rights groups\textsuperscript{22}.

Gardner`s description of parental alienation is marred by his use of gendered arguments and descriptions. It is unfortunate that Gardner`s description of parental alienation has been so sullied by gender biases, as Gardner`s core definition of parental alienation is gender neutral. Gardner`s gendered language and observations can perhaps be justified or explained by the fact that they were based on family dynamics that existed 30 years prior to today; there has been a great deal of change in the family landscape since that time, causing greater awareness of what sort of factors are biological versus situational. It may be true that parents are angrier when their new spouse has a partner

\textsuperscript{20} Chad Skelton, “Stay-at-home parents in sharp decline in Canada”, \textit{The Vancouver Sun} (October 27, 2010)
\textsuperscript{21} \textit{Fabricated and Genuine Child Sexual Abuse} at 87
\textsuperscript{22} Examples include: \url{http://www.canadacourtwatch.com}, \url{http://evilsofpa.blogspot.com/}, \url{http://angrydad.blogspot.com/}
and they do not; this can be translated from a gendered notion to a universal one. Many of the factors that Gardner discusses as contributing to parental alienation are useful. While some are problematic because of their gendered language, they can be excluded without calling the whole theory into question.

**Remedies for Parental Alienation According to Gardner**

Gardner viewed parental alienation syndrome as a form of emotional abuse which could cause lifelong psychiatric disturbance in the alienated child\(^\text{23}\). He argued that a parent who would alienate their child from the other parent had a serious parenting deficit, and that such a deficit should be considered by the court when making a custody determination\(^\text{24}\). However, Gardner did not believe that an alienating parent should necessarily lose custody of their child. Rather, he believed that alienation was often caused by custody litigation threatening the psychological bond between a child and the parent to whom they had their primary psychological connection during their formative years\(^\text{25}\). Dr. Gardner argued that custody decisions should be made based on which parent had been the child’s primary parent during the child’s formative years, regardless of the parenting structure in more recent years or the existence of parental alienation syndrome, although acknowledging that the longer it had been since the child’s formative years, the weaker the child’s bond with that parent, and therefore, the weaker the presumption in favour of granting custody to that parent\(^\text{26}\).

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\(^\text{23}\) *A Guide for Mental Health and Legal Professionals* at xviii  
\(^\text{24}\) *A Guide for Mental Health and Legal Professionals* at xix  
\(^\text{25}\) *Fabricated and Genuine Child Sexual Abuse* at 255  
\(^\text{26}\) *Fabricated and Genuine Child Sexual Abuse* at 254
In discussing remedies for alienation, Dr. Gardner placed alienating parents into two categories; in category one he placed parents who actively alienate a child against the other parent, and in category two, he placed parents who could recognize that the alienation was a problem, and who would work with the alienated parent to remedy the situation. For category one parents, he argued that the child should be removed from their care as soon as possible, and placed in the care of the alienated parent. There should then be therapy, for both the child and the alienating parent, with a period of time where the child was to have no contact with the alienating parent. If the child was to have contact with the alienating parent too soon, then the therapy was theorized to have a low likelihood of success. Gardner stated that, in his own experience, he had found that a child who was removed from the care of the favoured parent and placed in the care of the alienated parent often was able to re-develop a positive bond with that parent, but where a child stayed in the care of the favoured parent, their hostility towards the alienated parent was likely to last a lifetime. For favoured parents in category two, Gardner argued that such parents had a healthy psychological bond with their children, which was being threatened by the custody litigation, and that such parents should receive custody of their children. Dr. Gardner believed that, in such cases, the symptoms of parental alienation syndrome would disappear once the custody situation had been finalized.

27 Fabricated and Genuine Child Sexual Abuse at 257
28 Fabricated and Genuine Child Sexual Abuse at 257
29 Fabricated and Genuine Child Sexual Abuse at 258
30 Fabricated and Genuine Child Sexual Abuse at 260
31 Fabricated and Genuine Child Sexual Abuse at 263-264
Parental Alienation According to Dr. Richard Warshak

One of the more prominent scholars currently writing about parental alienation is Dr. Richard Warshak, a psychologist whose parental alienation workshop “Family Bridges” is often referred to by Canadian judges. In the past two years there have been at least three cases in Ontario where participation in Family Bridges has been specifically contemplated in the order made. Dr. Warshak’s definition of parental alienation is similar to that of Dr. Gardner’s; he describes parental alienation as existing where three essential elements are present. First, there must be a rejection or denigration of a parent which exists as a persistent response to that parent. Second, the rejection must be irrational, and not a response to the rejected parent’s actual behaviour. Finally, the rejection must exist at least partially as a result of the favoured parent’s influence. Like Gardner, Warshak also believes there is a strong link between divorce and parental alienation, describing alienation as “divorce poison”.

While Warshak’s description of parental alienation is very similar to that of Gardner’s, Warshak avoids much of the gendered analysis and descriptions that plague Gardner’s work. Indeed, Warshak observes that mothers and fathers are roughly equally likely to alienate their children from the other parent. Moreover, in discussing factors which may contribute to alienating behaviour, Warshak translates many of Gardner’s gendered observations into gender-neutral observations. For example, in observing that

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34 Divorce Poison
jealousy about a former spouse’s new partner can lead to alienating behaviour Warshak, unlike Gardner, does not assume that only women will be the jealous parties\textsuperscript{36}.

Much of Warshak’s work is meant for an audience of parents who are going through a difficult divorce, and most of his writing focuses on how to combat alienation. Perhaps as a result of this, Warshak takes a moderate and holistic view of alienation and its causes. While Gardner focuses primarily on the problematic behaviours of the alienating parent, Warshak discusses the family as a whole. Warshak identifies that not all children who are subject to alienating behaviours will become alienated; that some children, for various reasons, will be more resilient to parental conflict and will be able to maintain positive relationships with both parents even where a parent engages in alienating behaviour\textsuperscript{37}. Warshak also discusses how the attitudes and behaviours of the alienated parent can contribute to the existence and/or continuance of parental alienation. Where Gardner leaves the conduct of the alienated parent unexamined, Warshak both provides recommendations for parents who believe their children are being alienated, and recognizes that the behaviour of the alienated parent can contribute to the alienation without the estrangement between parent and child necessarily being justified. Warshak provides alienated parents with tips and techniques about how to interact with their children, reminding them of the importance of keeping their temper; of not counter-rejecting the children; of not bad-mouthing the favoured parent; and of treating the children’s professed opinions with respect rather than simply attributing them to the favoured parent’s influence\textsuperscript{38}. In doing do, Warshak reminds alienated parents that it is not only the behaviours of the favoured parent that may cause alienation, but their own

\textsuperscript{36} Family Bridges at page 112
\textsuperscript{37} Divorce Poison, at page 28-32
\textsuperscript{38} Divorce Poison, at page 235-238
behaviours as well. This encourages alienated parents to take a pro-active approach to countering the alienation, rather than simply blaming their problems on their ex-partner. Additionally, courts are reminded not to impose a standard of perfection on the alienated parent before making a finding of alienation. While Gardner’s definition of alienation recognizes that the rejection of a parent with only minor parenting flaws is not a justified estrangement, Warshak specifically identifies types of parenting flaws that are common to situations of parental alienation, and identifies them as factors which contribute to parental alienation, not as factors which lead to justified estrangement.

Overall, Warshak’s definition of parental alienation is a moderate and modernized version of Gardner’s definition. Warshak consciously relies on Gardner’s work as a basis for his own definition, while specifically rejecting gendered descriptions of alienation. Warshak provides practical advice for parents who are dealing with alienation, and believes that the behaviours of all family members, not just the favoured parent, can contribute to alienation. Nevertheless, like Gardner, Warshak regards parental alienation as a form of emotional abuse perpetrated by the favoured parent who badmouths the other parent to the child, and brainwashes the child into rejecting a previously loved parent. There are few criticisms to be made about Warshak’s definition of parental alienation, and most critics focus their critiques on his proposed remedies for parental alienation, as Warshak is a leading proponent of a change in custody as a response to severe alienation.

Remedies for Parental Alienation According to Warshak

39 Divorce Poison at page 25-28
Warshak believes that there are four possible responses to parental alienation; for the child to remain living with the favoured parent and attend therapy, for the child to be placed in the custody of the alienated parent; for the child to reside away from either parent (such as at a boarding school or with another family member) or for the child to be allowed to refuse contact with the alienated parent. However, Warshak argues that the appropriate response in most cases of parental alienation is to require contact between the child and the alienated parent, possibly combined with the reduction or elimination of contact between the child and the favoured parent for a period of time. To this end, Dr. Warshak has developed a workshop for alienated children called “Family Bridges”. The goals of the workshop include promoting the child’s ability to have a healthy relationship with both of their parents, strengthening communication, and strengthening the parents’ skills in nurturing their child. The workshop is based on education and not therapy, and children participating in the workshop are given autonomy over some aspects of the program. The workshop focuses on the present and future; children are not asked to acknowledge any wrong-doing, new positive family experiences are fostered, and conflict management strategies are taught. Warshak reports that the workshop has had some success, claiming that 78% of the 23 children who have participated in the workshop maintained a positive relationship with the previously alienated parent as of 2010. This success rate appears to be based in part on the child being denied contact with the favoured parent for a period of some months after the workshop ends, as children who

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40 Family Bridges at page 50
41 Bringing Sense to Parental Alienation at page 695-697
42 Family Bridges at page 58
43 Family Bridges at page 59
44 Family Bridges at page 59-60
45 Family Bridges at page 68
have contact with the favoured parent too early failed to maintain their relationship with the alienated parent\(^{46}\).

**Parental Alienation According to Friedlander and Walters**

Similar to Gardner and Warshak, Steven Friedlander and Marjorie Walters describe alienation as occurring where “the child's relationship with a parent has been damaged or otherwise undermined by input from the alienating parent,” and where the alienated parent had a reasonably good relationship with the child prior to separation\(^{47}\). However, Friedlander and Walters are unique in that they have developed definitions for ‘hybrid’ forms of alienation, where an enmeshed parent-child relationship and/or an estranged parent-child relationship exists in addition to that of an alienated parent-child relationship\(^{48}\). With respect to the alienation-enmeshment hybrid, Friedlander and Walters are, at a practical level, defining alienation more narrowly than Gardner.

Enmeshment, as defined by Friedlander and Walters, exists where there are insufficient psychological boundaries between parent and child; both parent and child will use the pronoun “we” to discuss their feelings, opinions and experiences, and the child will often have had developmentally inappropriate difficulties in separating from their parent (eg attending school)\(^{49}\). Friedlander and Walters regard enmeshment as a factor which exists separately from alienation, but which may interact with, and become entwined with, alienation.

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\(^{46}\) Family Bridges at page 67-68  
\(^{47}\) Steven Friedlander & Marjorie Gans Walters, “When a Child Rejects a Parent: Tailoring the Intervention to Fit the Problem”, (2010) 48:1 Family Court Review 98 at page 101  
\(^{48}\) Friedlander & Walters at page 100  
\(^{49}\) Friedlander & Walters at page 104-105
Conversely, Gardner regards an enmeshed parent-child relationship as a factor which may contribute to parental alienation; as a factor internal to alienation. Gardner includes elements suggestive of an enmeshed parent-child relationship as elements which contribute to parental alienation; specifically, the existence of a primary psychological bond between the favoured parent and the child\textsuperscript{50}, overprotectiveness\textsuperscript{51}, and a “psychological fusion” between the favoured parent and the child\textsuperscript{52}. This separation of enmeshment and alienation may be useful when developing appropriate therapeutic interventions, but does not actually result in a new or different definition of parental alienation. Gardner recognizes that there are multiple psychological elements which contribute to parental alienation. Friedlander and Walters have simply highlighted one such feature and isolated it as a separate factor, rather than as a contributing factor.

Friedlander and Walters also identify estrangement as a separate factor which may exist in tandem with parental alienation. This is similar to Warshak’s inclusion of the behaviour of the alienated parent in his discussion of alienation, but is a novel when compared to Gardner’s description of parental alienation. Gardner stresses that, for parental alienation to be found, the alienated parent must not have engaged in behaviour sufficient to justify the ferocity of the child’s rejection; the alienated parent must exhibit, at the worst, “minimal impairments in parental capacity.”\textsuperscript{53} Beyond this statement, Gardner provides little illumination as to what constitutes a minimal impairment in parenting capacity, and what constitutes behaviour sufficient to explain the child’s reaction. Yet this differentiation may be key in many cases. While it is clear that a parent

\textsuperscript{50} A Guide for Mental Health and Legal Professionals at page 121
\textsuperscript{51} A Guide for Mental Health and Legal Professionals at page 129
\textsuperscript{52} A Guide for Mental Health and Legal Professionals at page 119
\textsuperscript{53} A Guide for Mental Health and Legal Professionals at page xviii
who has been violent and abusive to the child, or to the favoured parent in the child’s presence, has engaged in behaviour sufficient to explain the child’s rejection of that parent, other behaviours may justify the child having some negative reaction, while not accounting for the child’s total rejection of the relationship. For example, it would not be surprising to find that a teenager chooses to move in with their father where their mother is overly strict and puritanical about discipline and household rules, while the father maintains a more laid back household, or for a child to have minimal enthusiasm about access visits with a parent who fails to organize age-appropriate activates or engage with them. However, it is extreme for a child to refuse all contact with such a parent, and to demonstrate intense hatred of such a parent. It is not clear where Gardner intended to draw the line on what constitutes justified estrangement versus parental alienation, which may result in courts imposing too high of a standard on the behaviour on alienated parents, refusing to intervene where the alienated parent exhibits mild to moderate parenting deficits. By recognizing that there is a large spectrum of parental behaviour between perfect-parenting and unacceptable-parenting, Friedlander and Walters more fully account for real-life family relationships. Moreover, by recognizing that the alienated parent may also be at fault for the alienation, Friedlander and Walters have both reduced the polarized good-parent/bad-parent connotations of a finding of parental alienation, and shown the need for interventions which deal with the attitudes and behaviours of all members of the family unit.
Remedies for Parental Alienation According to Friedlander and Walters

Friedlander and Walters, together with Janet Johnson, developed a Multi-Modal Family Intervention (MMFI) to respond to cases where children refuse to have contact with a parent\textsuperscript{54}. The MMFI involves a range of interventions, including “individual psychotherapy, family therapy, case management, education and coaching, all aimed at modifying feelings and beliefs as well as behaviors,” and calls for the participation of all family members in the process\textsuperscript{55}. As with Warshak’s Family Bridges program, the goals of the MMFI program go beyond the re-unification of the child and the alienated parent, and extend to teaching the child coping strategies, and changing the child’s distorted perspectives about each parent\textsuperscript{56}. In fact, the Family Bridges program can be utilized as part of the MMFI\textsuperscript{57}. Moreover, and unlike Warshak’s program, the MMFI includes interventions designed to help the favoured parent prepare for the resumption of the relationship between the child and the rejected parent. This aspect of the MMFI could render the intervention more successful than Warshak’s program, in that it may remedy the key element that Warshak has identified as leading to unsuccessful long-term reconciliations within the Family Bridges program. While reconciliations effected through Warshak’s Family Bridges program break down where there is too early contact between the child and the favoured parent, the MMFI would intervene with the favoured parent to modify the favoured parent’s attitudes and behaviours. However, actual implementation of the MMFI has not necessarily taken advantage of this strength, as the

\textsuperscript{54} Friedlander & Walters at page 98
\textsuperscript{55} Friedlander & Walters at page 98
\textsuperscript{56} Friedlander & Walters at page 99
\textsuperscript{57} Friedlander & Walters at page 103
program has often proceeded without the involvement of the favoured parent. This lack of involvement is attributed, in part, to a lack of court orders for treatment, which would define and mandate the therapy. Inasmuch, the success of the MMFI relies to some extent on court intervention.

Friedlander and Walters regard change of custody as a possible response to alienation, but stress that such a remedy is incomplete, as it only mandates a change in the child’s behaviour, and does not address the child’s negative ideas or feelings. In order to change the child’s ideas and feelings, psychotherapy may be necessary, and Friedlander and Walters underline the need that such an intervention occur as soon as possible. In cases of estrangement, the alienated parent’s behaviour must be addressed for there to be a successful reunification with the child. In cases involving enmeshment, Friedlander and Walters argue that a change in physical custody should be approached cautiously, as such a change risks thrusting the child into an internal crisis. Where there is enmeshment, the risks of the child remaining in the enmeshed relationship must be balanced against the risks of removing the child from the relationship, and the likelihood of improving the problematic behaviours through therapy for the child and the favoured parent should be considered. In all cases, Friedlander and Walters regard early intervention as being of the utmost importance, as the child’s negative attitude towards

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58 Friedlander & Walters at page 99
59 Friedlander & Walters at page 99
60 Friedlander & Walters at page 104
61 Friedlander & Walters at page 103
62 Friedlander & Walters at page 107
63 Friedlander & Walters at page 105
64 Friedlander & Walters at page 105
65 Friedlander & Walters at page 106
the alienated parent is likely to become more entrenched, and more resistant to change, as time passes.\textsuperscript{66}

**Critiques of Parental Alienation**

Joan Kelly and Janet Johnston are critical of Gardner’s conception of ‘parental alienation’, yet accept that the phenomenon described by Gardner as parental alienation exists. They argue that, while many parents engage in alienating behaviours after a divorce, only a small percentage of children become alienated; a phenomenon which, they claim, is not accounted for by Gardner\textsuperscript{67}, and moreover, that some children become alienated despite a lack of alienating behaviour by the favoured parent\textsuperscript{68}. Kelly and Johnston conclude that parental alienation needs to be reformulated, and believe that it is more appropriate to speak of the “alienated child”, such that the primary focus of any investigation begins with the child, and not with the favoured parent\textsuperscript{69}.

Despite Johnston and Kelly’s factual and methodological concerns about Gardner’s conception of parental alienation, their description of the alienated child bears a striking resemblance to Gardner’s description of the child who is a victim of parental alienation. Indeed, Gardner stressed that the child’s participation in, and independent contribution to, the denigration of the alienated parent is a key element of parental alienation; that without the child’s participation, there was not “parental alienation” but

\textsuperscript{66} Friedlander & Walters at page 109
\textsuperscript{67} This claim is not correct, as Gardner actually argues that 90% of children involved in custody and access disputes suffer from parental alienation, at varying levels of severity (A Guide for Mental Health and Legal Professionals at page 59)
\textsuperscript{69} Kelly & Johnston at page 251
rather, more simply, “parental indoctrination”\textsuperscript{70}. Kelly and Johnston’s focus on the alienated child is thereby less of a reformulation of Gardner’s parental alienation, and more simply reflects a change of terminology. Kelly and Johnston define an alienated child as “one who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child’s actual experience with that parent.”\textsuperscript{71} Once a professional concludes the child is alienated, they then assess what has caused the alienation\textsuperscript{72}. This definition is different from Gardner’s definition of parental alienation only insofar as it does not include the influence of a favoured parent as a key competent. Yet, while the reactions of the alienated child, rather than the programming of the favoured parent, may be the starting point for Kelly and Johnston, their descriptions of the alienated child feature frequent references to the behaviours of a programming parent. For example, factors which both Gardner and Kelly & Johnston identify as contributing to alienation include blurring of boundaries of parent and child (use of “he left us, he doesn’t love us”\textsuperscript{73}), inappropriate discussions with the child about financial and legal matters\textsuperscript{74}, and removal of photos and other such references of the alienated parent from the favoured parents home\textsuperscript{75}. Similarly, while Kelly and Johnston’s description of factors influencing the alienated child are more extensive than those listed by Gardner, there are factors which are identified by both; for example, both indicate that children who are emotionally dependent on the favoured parent are more likely to become alienated\textsuperscript{76}.

\textsuperscript{70} A Guide for Mental Health and Legal Professionals at page xviii
\textsuperscript{71} Kelly & Johnston at page 251
\textsuperscript{72} Kelly & Johnston at page 251
\textsuperscript{73} Kelly & Johnston at page 256; Fabricated and Genuine Child Sexual Abuse at page 77
\textsuperscript{74} Kelly & Johnston at page 256; Fabricated and Genuine Child Sexual Abuse at page 76-77
\textsuperscript{75} Kelly & Johnston at page 257; A Guide for Mental Health and Legal Professionals at page 85
\textsuperscript{76} Kelly & Johnston at page 262; A Guide for Mental Health and Legal Professionals at page 115-116
While presented as a critique and a reformulation of parental alienation, Kelly and Johnston are more accurately providing a change in terminology. This shift may have relevance in a therapeutic environment, where professionals must make subtle changes to treatment based on the child’s particular needs and history, but will have less relevance in a legal environment where remedies and responses will be blunt. For example, the court may order therapy for a child, a blunt remedy which the therapist will then narrow to craft a program responsive to the individual child’s needs.

Nevertheless, Kelly and Johnston’s reformulation may have some relevance on a legal level, as the change in terminology may assist in changing the court’s focus from the behaviour of the favoured parent to the behaviour of the alienated child. The result of such a shift may be the lessening the perceived stigma to the favoured parent of a finding of alienation, and an increased focus on the psychological and other problems suffered by the alienated child. This would be of benefit in that it would result in a greater awareness of the damage being done to the child and the need for intervention. Additionally, by focusing more intently on alienation as a feature of the child, and not as a phenomenon involving the alienated child and the favoured parent as a unit, Kelly and Johnston have room to examine the how the behaviour of both parents cause alienation to develop.

Kelly and Johnston have provided detailed descriptions of the ways in which alienated parents can contribute to their children’s reactions. This further reduces the stigma to the favoured parent of a finding of alienation, and assists alienated parents in recognizing how their behaviours can be harmful. Of course, one need not reformulate parental alienation in order to accomplish this result; Friedlander and Walters also emphasize the
contribution of the alienated parent to alienation, yet use the term ‘parental alienation’ and not ‘alienated child’.

Kelly and Johnston’s other criticisms of parental alienation have little relevance to a legal understanding of parental alienation and/or do not represent true criticisms of parental alienation. Kelly and Johnston complain that Gardner’s conception of the cause of parental alienation is unfalsifiable because it is true by definition – for parental alienation to be found, an alienating parent and a receptive child must be present. This criticism is incorrect, in that Gardner, like Kelly and Johnston, identifies multiple possible causes of alienation. For example, both Gardner and Kelly & Johnston agree that high conflict divorces contribute to the development of alienation. Additionally, this criticism is not relevant to a legal conception of parental alienation, where the courts will be more concerned about ascertaining whether alienation does exist, and what the appropriate remedy is, than with the psychological causes of the alienation. Kelly and Johnston’s third and fourth criticisms relate to whether parental alienation is a diagnostic syndrome or a non-diagnostic syndrome, and the propriety of using the terminology of a medical syndrome to describe familial relationships. Again, these criticisms of parental alienation are not particularly relevant to a legal conception of parental alienation. The courts must be concerned with whether “parental alienation” is descriptive of a type of family situation, whether intervention is recommended in such a situation, and what type of remedy is appropriate. While questioning medical definitions and other such subtleties, Kelly and Johnston do not dispute Gardner’s responses to these basic queries. Finally, Kelly and Johnston criticize the term “parental alienation” for having been used too

77 Kelly & Johnston at page 249
78 Kelly & Johnston at page 256; A Guide for Mental Health and Legal Professionals at page 56-57
79 Kelly & Johnston at page 249-250
widely and too indiscriminately; and without sufficient empirical research. Again, these criticisms are not true criticisms of Gardner’s conception of parental alienation. The (improper) use of the term in sensationalized news stories may affect the reputation of the concept, but it does not affect its validity, while the lack of empirical research and peer review is remedied by time – by more research being done. Indeed, since Kelly and Johnston’s article was published in 2001, the number of works on parental alienation published in peer reviewed journals has increased substantially.

Some critics of parental alienation reject the concept of alienation altogether. These critics include Joan Meier and Carol Bruch. Their major complaints about parental alienation include that it is biased against women and marginalizes female victims of domestic violence; that it relies on circular logic; that it lacks scientific validity; and that the remedies proposed are too extreme. The concern that parental alienation is used to refute valid claims of domestic violence, while also raised as a stand-alone aspect of the theory which is worthy of critique, is the core concern of these writers, and underlines all elements of their criticisms.

Gardner’s conception of parental alienation is accused of being gender biased because of the prevalence of the female parent as the favoured parent in examples of alienation. As discussed above, Gardner does use problematic generalizations about gender and gender roles, and his critics are correct to identify and reject the gendered arguments and theories which appear as part of his theory of parental alienation. However, the gendered assumptions utilized by Gardner do not relate to his core theories. Gardner recognizes that fathers may be the favoured parent, and does include examples of fathers who are favoured parents in his works. Moreover, parental alienation has been
refined and improved by the writers who have come after Gardner. Writers such as Warshak, Friedlander & Walters and Kelly & Johnson have developed definitions of parental alienation that do not rely on gendered arguments. Real life examples of parental alienation show that courts are aware that parents of both genders may engage in alienating behaviours; fathers have been found to be the favoured parent in over 30% of Canadian cases\(^{81}\), and in 34% percent of cases in Ontario\(^{82}\).

Feminist critics of Gardner are concerned about his gendered language because they worry that his theories will be used to discredit women who have experienced domestic violence. Indeed, while Meier acknowledges that parental alienation is descriptive of the behaviour of some abusive men, who attack their spouses by undermining their relationship with their children\(^{83}\), she rejects parental alienation as a theory because she believes it is too sullied by gender biases. Meier argues that parental alienation is used to “refute mothers’ claims of paternal abuse and almost never to recognize the emotional abuse many abusers inflict on their children.”\(^{84}\) Such concerns are worthy of note. In Ontario, 49% percent of cases where parental alienation was a live issue involved allegations of violent or abuse\(^{85}\). Moreover, 69% percent of cases where parental alienation was present involved allegations of violence or abuse\(^{86}\). It is important that allegations of alienation are not used, as Meier fears, simply to dismiss abuse allegations. In such cases, judges, assessors, psychiatrists, the children`s aid society and others must carefully investigate the family circumstances and evaluate whether there has

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81 Bala, Hunt & McCarney at page 166  
82 See Schedule A  
83 Meier at page 234  
84 Meier at page 234  
85 See Schedule A & B  
86 See Schedule A
been abuse, alienation, or both. While it may sometimes be difficult to differentiate false allegations of parental alienation from false allegations of abuse, the concern that parental alienation could be used to distract from abuse allegations does not justify dismissing parental alienation as a concept. Parental alienation is a form of emotional abuse, and should be investigated as such. Critics are correct when they state that alienation should not be used simply to dismiss abuse allegations, but in rejecting alienation, they go too far and would reject alienation where there are abuse allegations. In doing so, they fail to consider the facts of individual cases, and risk sanctioning the emotional abuse of the children involved.

A review of parental alienation literature suggests that proponents of parental alienation recognize the existence of domestic violence, and are vocal in stating that alienation should not be considered to be present when a child is rejecting an abusive parent. Ontario courts appear to be aware of this caution, and have both rejected allegations of parental alienation made by an abusive partner, and rejected claims of domestic violence only in the face of clear evidence suggestive of alienation. As well, Gardner (and others) recognize that alienation may result from a child aligning with an abusive and violent parent due to extreme fear of that parent, and in order to protect themselves from maltreatment. The “male abuser” is not ignored in parental alienation literature; rather, the emotional harm caused by their controlling and manipulative behaviour is specifically recognized and responded to. Moreover, since research has

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87 In some cases, allegations of violence or abuse were made by the alienated parent only
88 A Guide for Mental Health and Legal Professionals at page xviii
91 Fabricated and Genuine Child Sexual Abuse at page 94; Divorce Poison at page xviii-xix
suggested that alienating parents are likely to also be physically and/or sexually abusive towards their children⁹², identification of parental alienation can help identify situations where children are being physically and sexually abused. Finally, while Gardner does rely on some problematic understandings of the female psyche to explore possible causes of parental alienation (for example, that women are more likely to feel angry after a separation, less likely to find a new partner, and more likely to project sexual fantasies onto their children⁹³), Gardner’s primary explanation for the dominance of women as the favoured parent in cases of parental alienation is based on actual social trends and not on gender stereotypes. Specifically, Gardner argues that since women continue to bear the primary responsibility for child-rearing, children will generally be more bonded to their female parent, and may develop symptoms of alienation as a result of their fear of being removed from the care of their primary caregiver⁹⁴. In this description it is not mothers who are the problem, but the threat to the child’s bond with their primary caregiver, combined with the social reality that women take on a greater responsibility for childcare in Canadian society. The gendered arguments that Gardner does use can be excised from his description of parental alienation without affecting the core of his theory. Indeed, writers such as Warshak, Friedlander & Walters and Kelly & Johnston have presented theories of alienation based on Gardner’s works which do not utilize Gardner’s gendered arguments.

Meier claims that the courts routinely defeat domestic violence allegations based on parental alienation allegations, and Burch states that parental alienation findings have

⁹³ *A Guide for Mental Health and Legal Professionals* at page 122, 126
⁹⁴ *Fabricated and Genuine Child Sexual Abuse* at 263-264
resulted in children being placed with abusive parents\textsuperscript{95}. If accurate, this is a serious concern. In one example, Meier states that the father’s parental alienation allegations became the focus of a case, instead of the mother’s domestic violence concerns, despite the children having a positive relationship with their father, simply because the mother had once professed to being uncomfortable attending events that the father was also attending\textsuperscript{96}. Such a result is astounding. Where children are having regular, positive contact with their father, parental alienation is not present. Moreover, a parent’s hesitance to spend time in the company of their former partner is not a symptom of parental alienation, unless this hesitance is then communicated to the children and/or used to manipulate them. What Meier illustrates in this example is not parental alienation being used to defeat abuse allegations, but of the term `parental alienation` being misused, and misunderstood by the court. A review of Ontario cases where parental alienation has been alleged does not reveal any such judicial misunderstandings of the meaning of the term\textsuperscript{97}. Indeed, most Ontario decisions referencing the term “parental alienation” demonstrate a fairly sophisticated understanding of the term. For example, in \textit{B.(S.G.) v. L.(S.J.)}\textsuperscript{98}, Justice Mesbur describes parental alienation as existing where “a child’s reaction in completely rejecting a parent is totally out of proportion to that parent’s conduct.”\textsuperscript{99}. In \textit{C.(W.) v. E.(C.)}\textsuperscript{100}, Justice MacPherson indicates that he has reviewed Nicholas Bala’s article \textit{Children Resisting Post-Separation Contact with a Parent: Concepts}

\begin{footnotes}
\item[95] Carol S. Bruch, “Parental Alienation Syndrome and Parental Alienation: Getting It Wrong In Child Custody Cases” (2001) 35 Fam L.Q.527 at page 533
\item[96] Meier at page 240
\item[97] See Schedules A and B
\item[98] \textit{B.(S.G.) v. L.(S.J.)}, 2010 ONSC 3717, 102 O.R. (3d) 197
\item[99] Ibid. at para 31
\item[100] \textit{C.(W.) v. E.(C.)} (2010), 93 R.F.L. (6th) 279, 2010 ONSC 3575
\end{footnotes}
Controversies and Conundrums \(^{101}\) and provides an extensive checklist of behavioral signs indicative of parental alienation. A similar checklist also appeared in *L.(A.G.) v. D.(K.B.)* \(^{102}\). In *Pettenuzzo-Deschene v. Deschene* \(^{103}\), Justice Whalen refers to Gardner’s definition of parental alienation, and describes the term as referring to a child’s campaign of denigration against a parent where there is no justification for the campaign \(^{104}\). While formal definitions of parental alienation do not appear in every reported decision dealing with the topic, the cases referred to above are typical of many cases. Contrary to Meier’s fears, in Ontario case law, appropriate sources and definitions are used, and parental alienation is identified with a child rejecting a parent, and with there being no reasonable justification for the rejection, and not simply with one parent bad-mouthing another.

A further critique of parental alienation made by Meier is that it is circular. This issue was also raised by Kelly and Johnson, but it is conceptualized by Meier in a different manner. Following her primary argument that parental alienation is meant to defeat claims of abuse, Meier argues that parental alienation is circular vis a vis its relationship with allegations of child sexual assault. Meier argues that, according to Gardner, in order to determine whether allegations of child sexual assault are valid, one must evaluate whether parental alienation is present, yet to determine whether parental alienation is present, one must determine whether the assault allegations are true or false \(^{105}\). There is some truth to this claim. Gardner developed what he entitled the “sexual abuse legitimacy scale”, and one of the factors to be evaluated when using this scale is whether parental alienation is present. However, contrary to Meier’s claim that this scale

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\(^{101}\) *C.(W.) v. E.(C.)* at para 63
\(^{104}\) *Pettenuzzo-Deschene v. Deschene* at para 30
\(^{105}\) Meier at page 236
relies upon the existence of parental alienation, and subjective personality traits of the parties, Gardner’s scale utilizes a 50-point checklist querying the reactions, histories and psychological profiles of the child, accused parent, and accusing parent\textsuperscript{106}. This scale is separate from parental alienation; it is not meant for use only in contexts of divorce or where parental alienation is alleged, but in any case of parent-child sexual abuse allegations. Questions on the checklist include whether the child is afraid of the accused, whether their description of the abuse is realistic/credible, whether they exhibit regressive behaviour, and whether either parent has a history of childhood sexual abuse. The existence of parental alienation is only one factor among many to be considered on this checklist. Where medical evidence exists with respect to the abuse, such evidence is of primary importance\textsuperscript{107}.

Yet, the fact that parental alienation appears at all on the checklist is suggestive of some circularity. This critique can be responded to in three ways. Firstly, not all parental alienation cases involve child sexual assault allegations. In fact, such cases are in the minority in Ontario. Only 16\% of cases where parental alienation is a live issue involved allegations of sexual abuse\textsuperscript{108}. In cases where parental alienation does exist, 24\% involved allegations of sexual abuse\textsuperscript{109}. Therefore, any circularity that does exist will simply not be relevant in the majority of parental alienation cases. Secondly, the circularity is only apparent in a hypothetical case, divorced from the actual context of real families. In Ontario cases where sexual assault has been alleged, the case histories suggest that what happens is that initially, abuse allegations are believed by professionals

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{106} *Fabricated and Genuine Child Sexual Abuse* at 302-305
\item \textsuperscript{107} *Fabricated and Genuine Child Sexual Abuse* at 209
\item \textsuperscript{108} See Schedule A and B
\item \textsuperscript{109} See Schedule A
\end{enumerate}
\end{footnotesize}
working with the family\textsuperscript{110}. Over time, if it becomes apparent that the abuse allegations are false or exaggerated, and if other symptoms suggestive of parental alienation appear, the unverified, and apparently false, abuse allegations are used to support a finding of parental alienation. Later, if the favoured parent continues to make abuse allegations, the finding of parental alienation casts doubt on the veracity of the new allegations. While this process exhibits some circularity, each issue is evaluated separately, on its own merits. Finally, Gardner’s sexual abuse legitimacy scale does not appear to have been widely used or adopted. In that this scale is separate from parental alienation, any circularity which may exist between two of Gardner’s theories is not relevant when only one theory is being used or discussed.

The criticism that parental alienation lacks scientific validity is an argument which claims that it is impossible to scientifically prove that parental alienation is the cause of a particular family situation\textsuperscript{111}. This criticism is brought up by Kelly and Johnston\textsuperscript{112} as well as Meier\textsuperscript{113}. As mentioned above, this discussion is relevant to the question of whether parental alienation is a syndrome, and to how parental alienation is treated in the psychological community, but is less important in a legal context. Whether or not parental alienation is a “syndrome”, it is useful as a label which is descriptive of a certain type of family situation. Such a label is useful in a legal context for many reasons, including for the development of a consistent judicial treatment of cases which deal with similar issues.

\textsuperscript{111} Meier at page 239
\textsuperscript{112} Kelly & Johnston at page 249
\textsuperscript{113} Meier at page 239
Burch argues that the scientific credibility of parental alienation is relevant in a legal context, because diagnoses of parental alienation are being improperly relied upon by US courts. Essentially, the concern is that US courts are allowing experts to testify as to the existence of parental alienation (or lack thereof) without properly evaluating whether such expert evidence is admissible. In essence, the concern is that judges will defer to experts who state that parental alienation is present, and that the appropriate remedy for alienation is a change of custody, rather than evaluating the evidence and determining the appropriate response themselves. In the Canadian context, judges often rely on evidence from custody and access assessors, or from the office of the children’s lawyer, when deciding cases where parental alienation is alleged. In cases where parental alienation is present, there was involvement, or attempted involvement, of the office of the children’s lawyer, an assessor, or both, in 84% of cases. It is noteworthy that this reference to the evidence of assessors is not unique to parental alienation cases, and occurs in many custody trials. In referring to the evidence of assessors, judges are not deferring to expert opinions on parental alienation, but rather, are using the evidence gathered by such assessors, and the opinions of the assessors, in order to reach their own conclusions as to the appropriate order to be made. This is indeed the appropriate treatment of such evidence. Judges should not defer to experts to determine whether parental alienation is present, but must weigh the evidence themselves.

Finally, parental alienation is critiqued for the severity of its remedies. It is undisputed that many supporters of parental alienation recommend a change in custody, often combined with a temporary termination of contact between the child and the

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114 Burch at page 537
115 See Schedule A
favoured parent, as a remedy for alienation. Warshak’s Family Bridge’s program is based on this remedy; the workshop is frequently used by children who have been recently removed from the care of the favoured parent, and who will be thereafter living in the care of the alienated parent. Warshak’s program itself is a subject of controversy; it has been described in the media as “a U.S. facility that deprograms children who suffer from parental alienation,” a description that calls to mind a bleak, prison-like, institutional setting. In actuality, Family Bridges generally takes place in a family-vacation type setting, such as Disneyland; a setting quite different than critics, who speak of children being dragged against their will to the USA, would picture. Nevertheless, whether a change of custody is facilitated via a trip to Disneyland or in a less ideal setting, a change of custody is an extreme remedy which will be disruptive to the child involved. Where the child is asserting that they do not wish to have contact with the alienated parent, let alone live with them, this change is rendered even more difficult.

Ideally, alienation can be remedied through therapy, and the family situation remedied without a change in custody being required. Courts can and should intervene early on in cases where parental alienation appears to be present and mandate family therapy. Doing so may help to remedy alienation at its early stages, removing the necessity of more radical interventions at a later date. Yet, almost by definition, in severe cases of alienation, therapy will have been either attempted and failed, or suggested and rejected, by the time of trial. There are multiple justifications for a change in custody at that point. Firstly, where there is no order, agreement or acquiescence, neither a mother

116 Family Bridges at page 56
118 Family Bridges at page 65
nor a father automatically has a right to custody of a child\textsuperscript{119}, and pursuant to the \textit{Divorce Act} the court must consider the willingness of the person seeking custody to facilitate contact between the child and both parents when making a custody order\textsuperscript{120}. The courts need not resort to the language of parental alienation to conclude that a change in a child’s living situation is warranted when one parent is encouraging the child to reject a relationship with the other parent. Rather, the language of parental alienation gives a name to this phenomenon, and provides a more sophisticated test for when such a remedy will be appropriate. Parental alienation should not be vilified for introducing a change of custody as a remedy when children are unreasonably denigrating a parent; the Canadian legislature introduced the concept two years before Gardner’s first book on parental alienation was published. While a change of custody has always been a controversial remedy, the one study that has been conducted on the outcomes of this remedy for parental alienation cases suggests that the majority of the outcomes have been positive\textsuperscript{121}.

A second argument in favour of the appropriateness of a change in custody being a suitable remedy for parental alienation is that parental alienation indicates a problematic parent-child relationship. Amy Baker conducted a study where she interviewed 38 adults who identified as having been alienated from a parent during their childhood\textsuperscript{122}. Baker identified three major patterns of parental alienation: the narcissistic mother in a divorced family, the narcissistic mother in a non-divorced family and the cold, rejecting or abusive alienating parent. All three patterns indicated problematic parent child interactions. Narcissistic mothers withdraw love and affection from children when the children

\textsuperscript{119} \textit{Children’s Law Reform Act}, R.S.O. 1990, c. C.12, s. 20 (1)
\textsuperscript{120} \textit{Divorce Act}, RSC 1985. c 3 (2\textsuperscript{nd} Supp) s.16(10)
\textsuperscript{121} Family Bridges at page 68
\textsuperscript{122} \textit{Adult Children of Parental Alienation Syndrome}
behaved in ways that would displease them, leaving the children feeling insecure and desperate to please their mothers\textsuperscript{123}. Cold, rejecting or abusive parents were often physically, sexually and/or verbally abusive, and often had problems with alcoholism\textsuperscript{124}. This type of parent was present in 16 out of the 38 cases; approximately 42\% of cases\textsuperscript{125}. In discussing this phenomenon Baker suggests that the high correlation between parental alienation and other forms of abuse likely exists because some risk factors for parental alienation are the same as those that underlie physical or sexual abuse\textsuperscript{126}.

Amy Baker’s study provides two major insights into parental alienation; first, that there is a high rate of alienating parents being physically, sexually and verbally abusive towards their children, and secondly, that the emotionally abusive behaviour of alienating parents has a long term negative impact on the alienated child. Baker found that there was a high incidence of low self-esteem/self-hatred, depression, drug/alcohol abuse, lack of trust, alienation from their own children, and divorce among the adults she interviewed\textsuperscript{127}. They described feeling hated by both their parents\textsuperscript{128}, of feeling unlovable\textsuperscript{129}, and of feeling extreme shame and guilt over the way they had treated the alienated parent\textsuperscript{130}. Where a child is being emotionally abused by a parent, there must be a strong response from the court. Just as the courts must not tolerate a parent who is physically abusive to a child, they must not tolerate a parent who is emotionally abusive.

In Ontario, there have been at least six cases where the children’s aid society have

\textsuperscript{123} Amy Baker, “Patterns of Parental Alienation Syndrome; A Qualitative Study of Adults who were Alienated from a Parent as a Child”, (2006) 34:1 American Journal of Family Therapy 63 at page 70
\textsuperscript{124} Patterns of Parental Alienation Syndrome at page 73
\textsuperscript{125} Patterns of Parental Alienation Syndrome at page 73
\textsuperscript{126} Adult Children of Parental Alienation Syndrome at page 35
\textsuperscript{127} Amy Baker, “The Long Term Effects of Parental Alienation on Adult Children; A Qualitative Research Study” (2005) 33:4 American Journal of Family Therapy 289 at page 301
\textsuperscript{128} The Long Term Effects of Parental Alienation at page 294
\textsuperscript{129} The Long Term Effects of Parental Alienation at page 294
\textsuperscript{130} The Long Term Effects of Parental Alienation at page 295
advocated for a finding that a child is in need of protection as a result of parental alienation, and have recommended a change in custody for such children\textsuperscript{131}. Unless one would argue that the children’s aid society should not advocate for such a remedy in cases of physical violence, neglect, substance abuse, and other such issues, it is reasonable to argue that a change of physical custody is appropriate in cases of emotional abuse and, specifically, parental alienation. Nor should such a remedy require the intervention of the children’s aid society. Both a mother and a father are equally entitled to custody. Insofar as the alienated parent is a fit parent, capable of appropriately caring for the child, there is no reason to shy away from such a remedy.

While Meier and Burch are correct in identifying that a change in custody is an extreme remedy, such a remedy is justified in certain circumstances. Parental alienation is a form of child abuse\textsuperscript{132}, and often exists in tandem with other forms of child abuse\textsuperscript{133}. If courts intervene effectively early on in cases of parental alienation, hopefully the family situation can be remedied through therapy and enforcement of access orders. The concerns about change of custody and no contact orders as remedies for parental alienation can, and should, be responded to by courts taking a proactive approach to the family early on in the process, avoiding the necessity of more extreme remedies in all but the most acute cases.

\textbf{Summary & Conclusions}

\begin{itemize}
\item \textsuperscript{131} See Schedule A
\item \textsuperscript{132} \textit{A Guide for Mental Health and Legal Professionals} at xviii; Family Bridges at page 51
\item \textsuperscript{133} Baker at page 15
\end{itemize}
While there are some differences between the conceptions of parental alienation articulated by various scholars, the core definition of alienation remains the same as the definition provided by Gardner in 1987; parental programming of a child, which causes the child to reject a relationship with the alienated parent, where the child denigrates the alienated parent themselves, and where the alienated parent has not behaved in a way which would explain the ferocity of the child’s rejection\textsuperscript{134}. This core definition is a fact based query, which can be used by the court to determine whether parental alienation is present, even in the absence of expert evidence on the issue. Specifically, a court could find alienation if the answers to the following three questions were all “yes”;

1) Has the favoured parent engaged in brainwashing/programming behaviour? (ie, substantial evidence showing that the favoured parent has undermined their child’s relationship with the alienated parent)

2) Is the child rejecting and denigrating the alienated parent themselves? (ie, refusing or showing extreme reluctance to have contact with the alienated parent, and holding an extremely negative view of the alienated parent)

3) Has the alienated parent behaved in a way that would justify the child’s reaction? (ie, is there evidence of physical, sexual or emotional abuse?)

While expert evidence regarding a psychological diagnosis of, and the recommended treatment for, alienation will remain important, use of the above definition creates a legal test for parental alienation, which may be useful where there is no expert evidence on the subject. The test above deals with questions of fact and does not require the opinion of experts to be operative.

As noted above, Gardner’s definition of parental alienation forms the core of other conceptions of alienation, and courts tend to focus on Gardner’s theories when discussing alienation. However, research done more recently by scholars such as Warshak, Friedlander & Walters and Kelly & Johnson greatly enrich the concept of

\textsuperscript{134} A Guide for Mental Health and Legal Professionals at page xviii
parental alienation, especially insofar as they deal with the behaviours of the alienated parent. Courts would benefit from expanding their understanding of parental alienation to include the work of such scholars.

Recommended remedies for alienation vary only slightly between different scholars. Therapy can be attempted as an initial step, and may be effective in cases of mild or moderate alienation. Where there is severe alienation, and where therapy has not been successful, or has been rejected, a change in custody may be warranted. This remedy is generally regarded as extreme, and views on the advisability of this remedy differ slightly. For severe cases of alienation, Gardner argues that “the most potent therapeutic measure that one can utilize for PAS children is reduction of their access to the alienating parent”\textsuperscript{135} and believes that therapy has only minimal effect. Warshak believes that a change of custody can be highly effective in remedying alienation when combined with the Family Bridges workshop and a temporary termination of contact with the favoured parent\textsuperscript{136}. Friedlander and Walters regard a change in custody as a possible response to alienation, but believe that therapy is essential, and that where there is enmeshment a change of custody may be more harmful than allowing the alienation to continue\textsuperscript{137}. All agree that early intervention is of the utmost importance.

Looking at the various recommended interventions as a whole, the appropriate judicial response to alienation is clear. As soon as convincing evidence of parental alienation is provided, there should be an order for therapy for the children and for the favoured parent. If there is evidence suggestive of estrangement, the alienated parent

\textsuperscript{136} Family Bridges at page 67-68
\textsuperscript{137} Friedlander & Walters at page 104-105
should also engage in therapy. Access should be ordered so that there will be some contact between the children and the alienated parent. The access visits may be brief or even supervised, but some contact between parent and child is essential in order to begin to remedy the relationship. A court order for access is also essential in order to evaluate whether the favoured parent is at all willing to facilitate contact. If after therapy and/or access there is no improvement to the family dynamics, a change of custody should be considered. If the alienated parent is a fit parent, and if there is no evidence to suggest that the change of custody would be traumatic for the particular child at issue, then a change of custody should be ordered.

**LEGAL RESPONSES TO ALIENATION IN ONTARIO**

**Key Problems**

As of July 2011, there are 170 reported decisions using the term “parental alienation” in Ontario, based on a search using Westlaw. This represents a total of 148 unique cases, 128 of which are custody and access disputes where parental alienation has been a live issue in the case\(^\text{138}\). The court agreed that parental alienation was present in 35 cases, and in an additional 16 cases there was evidence suggestive of parental alienation although the court did not make a specific finding of same\(^\text{139}\). In the remaining 77 cases, the allegations of alienation appeared to be either baseless or, at best, indicative of a future risk of alienation\(^\text{140}\).

Generally speaking, Ontario courts appear to be successful in appropriately identifying severe forms of parental alienation. Expert evidence is often relied on in such

\(^{138}\) See Schedule A, B and C  
\(^{139}\) See Schedule A  
\(^{140}\) See Schedule B
cases, but judges have also been careful to give lengthy summaries of the factual
evidence relied upon to conclude that 1) the favoured parent engaged in inappropriate
conduct which was likely to have caused or contributed to the alienation, 2) the children
were rejecting a relationship with the alienated parent, and 3) the reaction was unjustified
in the circumstances (ie, the rationalization for the rejection was weak, and no abuse was
found). However, there are two ways in which the courts are failing to appropriately deal
with parental alienation cases. Firstly, the courts often fail to identify and/or properly
intervene in cases of hybrid alienation, and secondly, too often there are long delays
caused by the litigation process, and by judge’s lack of willingness to make changes at an
interim stage.

**Hybrid Forms of Alienation (Estrangement plus Alienation)**

In cases where there is estrangement as well as alienation (ie, where some
aversion to the alienated parent would be justified, but the level of the aversion is
extreme), courts often do not find alienation, and/or fail to intervene to repair the
relationship between the child and the alienated parent. While the alienated parent is
perhaps less sympathetic when they too have engaged in blameworthy conduct, it should
not close the door on interventions designed to restore the parent child relationship.
Greater awareness of Friedlander and Walter’s hybrid forms of alienation, especially with
respect to situations where the alienated parent has contributed to the child’s
estrangement, would greatly improve the interventions in such cases. Parental alienation
must stop being regarded as a polarized bad parent-good parent issue, and should be
understood in a more nuanced fashion.
Elements suggestive of a combination of alienation and estrangement exist in 9 out of the 51 cases where parental alienation appears to be present; in other words, in approximately 18% of such cases. Cases where alienation and estrangement are both present are less likely to be identified as cases of alienation than cases where simple alienation is present. The existence of alienation was specifically identified in only 3 out of the 9 cases of hybrid alienation (33%), as compared to 32 out of the 42 cases of non-hybrid alienation (76%)\(^{141}\). Moreover, even where alienation is identified, the courts are less likely to intervene in any significant matter in cases of hybrid alienation than in cases of simple alienation.

A lack of intervention is perhaps appropriate in simple cases involving only justified estrangement, but is problematic in cases including elements of alienation. Where there is simple estrangement, the child will avoid contact with the rejected parent because of the negative experiences that they have had with that parent, but may acknowledge some interest in a relationship with the rejected parent. Using the case of *McIntosh v. McIntosh*\(^{142}\) as an example, the son in that case had a desire to have a relationship with his father, despite the father`s violent behaviour. Moreover, the favoured parent, in cases of justified estrangement, does not want to prevent their child from having a relationship with the other parent, but rather, wants to protect their child from the possible harm associated with having contact with the rejected parent. In *McIntosh v. McIntosh*\(^{143}\), the mother was willing to facilitate contact between her son and his father, so long as that contact took place in an appropriate setting\(^{143}\). In contrast, in

\(^{141}\) See Schedule A

\(^{142}\) *McIntosh v. McIntosh*, 2006 ONCJ 344

\(^{143}\) *McIntosh v. McIntosh* at para 21
a case of alienation, the father removed all photos of the mother from the family home and failed to facilitate any access between mother and son, even such access as he had agreed to via consent orders. Where there is simple estrangement, when the children are ready to reconnect with the rejected parent, and when the rejected parent has remedied their behaviour, there may be a reconciliation; the attitudes of both the child and the favoured parent will facilitate this. Where there is alienation as well as estrangement, reconciliation will be hampered by the alienation; by the attitudes of the child and the favoured parent.

If courts fail to identify the existence of alienation in cases of hybrid alienation, it is unlikely that they will be able to craft orders that are responsive to the complete family circumstances. This is not to say that there should be a change of custody in all cases of hybrid alienation; indeed, such interventions would be contra-indicated in the vast majority of hybrid alienation cases due to the parenting deficits of the rejected parent. Instead, interventions requiring therapy for both parents, as well as for the child, should be imposed. As with all cases of alienation, such therapy should be imposed early on in the case. Ideally, such therapy will remedy both the problematic behaviours of the rejected parent, as well as the alienating behaviours of the favoured parent.

McAlister v. Jenkins is a good example of a hybrid form of alienation because it illustrates both the failure of the courts to identify the existence of alienation, and how the failure to identify alienation impacts on the ultimate remedy imposed by the court. In McAlister v. Jenkins, the children’s alienation from their mother was complicated by the fact that the mother had engaged in behaviours which would justify the children having

\[L. (J.K.) v. S. (N.C.)^{144}, \text{ a case of alienation, the father removed all photos of the mother from the family home and failed to facilitate any access between mother and son, even such access as he had agreed to via consent orders. Where there is simple estrangement, when the children are ready to reconnect with the rejected parent, and when the rejected parent has remedied their behaviour, there may be a reconciliation; the attitudes of both the child and the favoured parent will facilitate this. Where there is alienation as well as estrangement, reconciliation will be hampered by the alienation; by the attitudes of the child and the favoured parent.}

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\[145 \text{ McAlister v. Jenkins (2008), 54 R.F.L. (6th) 126 (Ont. S.C.J.)} \]
some level of negative reaction to their mother, but the level of reaction which the children displayed was excessive. In other words, the case included elements of both estrangement and alienation. Focused on the elements suggestive of estrangement, Justice Harper ultimately ordered that there be no contact between the mother and the children, but that the situation be reviewed in front of him in three months, with the mother, the father’s girlfriend, and possibly the children, to attend therapy in the meantime. Had Friedlander and Walters been responsible for crafting the order in this case, the outcome would likely have been similar in the manner in which it addressed the mother’s behaviour, but different in that it would also have addressed the father’s behaviour, and would have more forcefully attempted to change the children’s attitudes.

The children involved in McAlister v. Jenkins were aged 12 and 8 at the time of trial, were aged 10 and 6 at the time they last resided with their mother, and were 8 and 4 when their parents separated. When the parents separated in 2004, they implemented a week-on/week-off access schedule. This schedule worked well for awhile, but when the father started a new relationship, the mother began behaving inappropriately in front of the children. For example, she caused a scene in front of the children on Christmas Eve after the father returned the children late due to poor weather. When the mother came to the door to greet the children, she was crying and shouted at the father that he had ‘ruined everything’. On another occasion, the mother appeared at the children’s daycare on a day where the father had the children. When the father’s girlfriend appeared to pick the children up from daycare, the mother caused a scene, refusing to let the children leave with the girlfriend. The mother’s behavior was severe enough that the daycare worker involved wrote a report on the incident for the daycare’s records, stating that the mother

146 McAlister v. Jenkins at para 29
had been verbally attacking her. Justice Harper also found that the mother had hit the children at least once, had pulled their hair, and had yelled at them. It is noteworthy that these allegations of abuse were investigated by the Children’s Aid Society who did not verify the allegations. While such incidents show that the mother was behaving improperly, and likely was a source of embarrassment to her children, her behavior does not appear to have been at a level to justify the children’s reactions to her. Specifically, in 2006, the elder daughter ran away to her father’s house before her week with her mother was over, after an argument with her mother over her use of the phone. The younger daughter went to her father’s house as scheduled a few days later. Neither daughter ever returned to reside with their mother, nor does there appear to have been any contact between the children and their mother for the next two years. For two children to completely cut off all contact with their mother for two years is extreme. Certainly the mother’s conduct was inappropriate, but one must question why the father allowed two young children (aged 10 and 6 at the time of the argument) to so completely cut off all ties to their mother.

Approximately seven months after the children did cut off contact with their mother, a custody assessment was completed which concluded that the father had alienated the children from the mother. The report recommended that the children be placed with neutral parties, specifically, the maternal aunt and uncle, and attend therapy to normalize their relationship with their mother. The mother brought a motion to have this proposal implemented, but was unsuccessful. On the motion, Justice Harper found that the maternal aunt and uncle were not neutral parties, and rather, were hostile towards

147 *McAlister v. Jenkins* at para 53
148 *McAlister v. Jenkins* at para 84
149 *McAlister v. Jenkins* at para 88-92
the father. While such a ruling is reasonable in that it is wary of exposing the children to further conflict, it is misguided in its emphasis on the maternal aunt and uncle’s lack of neutrality. The aunt and uncle’s alignment with the mother should not be a significant concern where the children have been alienated from the mother. It is generally recommended, in the treatment of parental alienation, for the child to be insulated from contact from the favoured parent in order for therapy to be effective, but no such concern exists regarding contact between the children and the alienated parent. Indeed, contact between an alienated parent and their children is encouraged. It seems reasonable that the assessor in this case used the term ‘neutral party’ to describe the maternal aunt and uncle to signify that the aunt and uncle would be family members whom the children would feel more comfortable with, and less likely to run away from, than they would with their mother, not to signify that the maternal aunt and uncle took no position in the dispute.

At the time of trial, Justice Harper concluded that the issue of parental alienation had served as a distraction to the parties and the service providers involved with the family. However, certain facts seem to support the assessor’s finding of parental alienation, including, most obviously, the children’s abject refusal to see their mother for two years, and the children’s therapists’ report that the children interpret all of their mother’s actions, even the most innocent actions, in negative terms\(^{150}\). Additionally, the elder daughter’s insistence that she does not want to have any relationship whatsoever with her mother exactly matches Dr. Gardner’s expected response from a child suffering from parental alienation\(^{151}\). Surprisingly, the elder daughter appears to have been allowed to speak for her younger sibling, who was 8 years old at the time of the trial. While the

\(^{150}\) *McAlister v. Jenkins* at para 132

\(^{151}\) *Fabricated and Genuine Child Sexual Abuse* at 75
same ultimate order was imposed for both children, little evidence regarding the younger child’s experiences and opinions was provided in the judgment. This raises concerns about whether the younger child’s position was truly the same as her older sibling’s perspective. If the younger child had a different perspective, the judgment may encourage the younger sibling to follow her elder sibling in rejecting their mother.

Justice Harper’s impression of parental alienation was based on the work of Gardner, as described by Nicholas Bala et al in the article “Alienated Children and Parental Separation: Legal Responses in Canada’s Family Courts”152. While this is a well written article, it focuses on alienation as described by Gardner, and does not include any discussion of hybrid forms of alienation153. Justice Harper was not impressed with what he regarded to be the polarized nature of parental alienation, stating that “parental alienation creates an environment that could lead to narrow and limiting analysis of very complicated dynamics of family interaction that must be understood in order to find a solution that has the best chance of success.”154 In the context of the family situation in McAlister v. Jenkins, and based on the description of parental alienation provided by Gardner, Justice Harper’s comments are valid; Gardner’s description of alienation fails to account for situations where the alienated parent engages in problematic behaviours. Unfortunately, neither the assessor working with the family (Dr. Blake) nor Justice Harper appeared to be familiar with alternate conceptions of alienation that would include estrangement as an element of alienation. Dr. Blake identified alienation, but failed to identify the estrangement. Justice Harper correctly surmised that Dr. Blake’s description

152 McAlister v. Jenkins at para 151-158
153 Nicholas Bala, Barbara-Jo Fidler, Dan Goldberg and Claire Houston, “Alienated Children and Parental Separation: Legal Responses in Canada’s Family Courts” (2007) 33 Queens L.J. 79
154 McAlister v. Jenkins at para 166
of the family was incomplete, but in doing so *rejected* parental alienation as a diagnosis, rather than recognizing that parental alienation was only a *partial* diagnosis.

However, it is not the terms used to describe a family situation that are important, but the responses to the situation. The ultimate order made by Justice Harper contained some elements in line with what would have been recommended by Friedlander and Walters, while other elements of the order are potentially problematic. Justice Harper saw the main barrier to the children’s resumption of contact with their mother as the escalating conflict within the family\(^{155}\). Justice Harper ordered that there be no contact between mother and the children, but that the situation be reviewed in front of him in three months. While so-called “cooling-off” periods are contra-indicated in cases of alienation\(^{156}\), this requirement does at least ensure that the family situation will be case-managed and will continue to face judicial oversight. Presumably, if the father does not facilitate contact between the mother and the children, more invasive remedies will be imposed. Additionally, the mother is given the opportunity to prove to the court that she recognizes the ways in which she has been at fault for the alienation, and is given time to remedy those flaws. Indeed, during the intervening three month period, the mother was to write a letter to the children that she would not be seeing them for a while, but loves them and hopes to see them soon, and was to attend therapy regarding how to interact with the father and his girlfriend as parents. To address the father and his girlfriend’s contribution to the alienation, the father’s girlfriend was also to attend therapy, and the father was to encourage the children to have contact with their mother and to attend counseling\(^{157}\).

\(^{155}\) *McAlister v. Jenkins* at para 169

\(^{156}\) *Bala, Fidler, Goldberg & Houston* at page 136-137

\(^{157}\) *McAlister v. Jenkins* at para 187-188
While Justice Harper’s remedy does not directly reference Friedlander and Walters or their MMFI program, the order made is similar to that which would have been recommended under the MMFI; for there to be therapeutic work with each family member, and a case management component. Of course, it is unfortunate that a similar order could not have been made at the time the mother brought her original motion asking for a change of custody; this case is also an example of delay and a lack of willingness to make necessary changes at an interim stage.

While Justice Harper’s order is similar to that which would likely have been recommended by Friedlander and Walter, it differs in two important ways; there is no intervention directed at the father’s behaviour, and the children are given too much authority with respect to their counseling. These problems are directly attributable to Justice Harper’s failure to identify that the family situation had been caused by a combination of alienation and estrangement. Recognizing that alienation is descriptive provides insight into the underlying dynamics and causes of the family conflict, thereby allowing for more precise interventions, tailored to fit the needs of that family. Had Justice Harper recognized that parental alienation was an accurate, though incomplete, description of the family situation, the interventions he recommended would likely also have been more complete.

It is unclear why the father was not directed to attend counseling, when the mother, the father’s girlfriend, and the children were. Presumably Justice Harper held the father blameless, and therefore felt that the father’s behaviour did not require correction, but it is not clear from his reasons why this would be so. While Gardner believes that step-parents may participate in alienation, this participation is regarded as supplementary.

158 Friedlander and Walters at page 108
to that of the natural parent\textsuperscript{159}. Moreover, without specific evidence to the contrary, it seems unusual that only one adult in a two adult household would be engaged in alienating behaviour, with the other adult oblivious to what was occurring. Without a specific factual finding that this was so, the father should also have been required to engage in therapy to deal with his contribution to the alienation.

With respect to the children, Justice Harper stated that the father “shall promote, make available and pay for counselling for the children, having regard to the children's wishes.”\textsuperscript{160} Such an order gives significant discretion to the children as to whether or not to attend counseling, and what type of counseling they will attend. Such discretion is inappropriate in the circumstances. Where alienation is present, such an order provides the favoured parent with an opportunity to manipulate and direct the children’s choice; to state that the children chose not to attend therapy, or to ensure that the therapy not be directed towards a resumption of contact between the child and the alienated parent. Additionally, it is the children who are being most harmed by their parent’s behaviour. While mandating therapy for the parents will help to remedy this in the long-term, the children need support to deal with the conflict in the short term, and should not be given the option of opting out of therapy.

\textit{McAlister v. Jenkins} is typical of a hybrid case of alienation and estrangement in that the court failed to recognize the existence of both alienation and estrangement, but is unusual in that the court ultimately ordered a remedy similar to that which would be recommended where both alienation and estrangement are present. Like in \textit{McAlister v.

\textsuperscript{159} A Guide for Mental Health and Legal Professionals at page 139
\textsuperscript{160} McAlister v. Jenkins at para 188
in the cases of *Snider v. Laszlo*[^161], *Murphy v. Murphy*[^162], *El-Murr v. Kiameh*[^163] and *Roda v. Roda*[^164] the court failed to find alienation where there was evidence suggestive of both alienation and estrangement, but where the favoured parent’s estranging behaviour was insufficient to justify the ferocity of the child’s reaction. However, unlike in *McAlister v. Jenkins*, in these four cases the court failed to intervene in any significant way.

In *Snider v. Laszlo*, Justice Boswell found that it was clear that the mother had “conducted herself in a manner that has undoubtedly contributed in a substantial way to the dysfunctional relationship between Mr. Laszlo and his sons,” but also found that the father had contributed to the alienation[^165]. Despite plentiful evidence that the mother was engaged in alienating behaviour, Justice Bowell declined to order that access be enforced as per the existing access order, or that the children participate in reunification therapy with their father, stating that such an order was “premature” and should wait until after an ongoing custody assessment had been completed[^166]. This was done despite expert evidence from a psychiatrist that there should be intervention as soon as possible[^167].

In *Murphy v. Murphy* the court found that the father had contributed to the children’s estrangement by being vocal about his perceived experiences with parental alienation, including by setting up a blog about parental alienation, which his children may have seen, and by his obvious and extreme hostility to the mother. However, rather than intervening to respond to the problematic behaviour of both parents, the court

[^165]: *Snider v. Laszlo* at para 7
[^166]: *Snider v. Laszlo* at para 75, 81
[^167]: *Snider v. Laszlo* at para 64
simply made an order specifying that access would occur pursuant to the child’s wishes, with access to be forced only on special occasions such as Christmas and Father’s day.\(^{168}\)

In *El-Murr v. Kiameh*, the court declined to intervene when the therapy which had been ordered a year prior to address the father-child relationship had failed to effect a reconciliation. The court noted that there had never been a finding of parental alienation made, and that the child likely had negative memories of his father from his last access visit, 4 years prior, after which his father had been arrested for hitting him. While such physical abuse would usually be described as ‘justified estrangement’, I consider it to be a case of hybrid alienation for two reasons; firstly, because the father was acquitted of this charge when the criminal judge found that the father’s actions constituted reasonable discipline of a child.\(^{169}\) Secondly, the psychological assessment of the child resulted in a recommendation that the child attend therapy to address his relationship with his father.\(^{170}\) Since only a limited factual background of the case is given in the judgment, my assessment that this case is one of hybrid alienation may be incorrect.

The father in *Roda v. Roda*, had been involved in violent and criminal activities and had been abusive towards the mother while the child had been an infant. However, almost ten years prior to the date of trial the father had been rendered blind and had lost a hand, and after this accident had ceased participating in criminal activities. Justice Sachs agreed that, despite the father’s past behaviour, he no longer was a danger to his daughter.\(^{171}\) Indeed, while access visits had been ongoing, the evidence suggested that the

\(^{168}\) *Murphy v. Murphy* at para 94
\(^{169}\) *El-Murr v. Kiameh* at para 12
\(^{170}\) *El-Murr v. Kiameh* at para 6
\(^{171}\) *Roda v. Roda* at para 68
father had a positive, appropriate relationship with his daughter. Despite this, and while Justice Sachs found that the mother was orchestrating the rift between father and daughter, Justice Sachs declined to make any order for access or therapy. Instead, the father was allowed to write and send presents to his daughter on her birthday and on Christmas, with the hope that the child would eventually decide to reach out to her father on her own.

In *Murphy v. Murphy*, *El-Murr v. Kiameh* and *Roda v. Roda*, the alienated parent is much less sympathetic than the typical alienated parent. In all three cases, the fathers had engaged in behaviours which would justify their children having a negative reaction to them. However, in *Murphy v. Murphy* and *El-Murr v. Kiameh*, the children’s reactions seem extreme, and in *Roda v. Roda* the child was too young to have her own memories of the period in which her father had acted inappropriately. The facts of all three cases suggest that parental alienation may be present. If that is correct, then the court’s hands-off approach ensures that the bond between the child and the alienated parent is unlikely to ever be repaired, regardless of what improvements that the alienated parent makes to their behaviour.

In the case of *Filaber v. Filaber* there was no clear finding that parental alienation was (or was not) present. While Justice Van Melle found that the children were estranged from their mother, and that there was no valid reason for the estrangement, she did not specifically use the label of parental alienation. Justice Van Melle found that the father had socially isolated the children and empowered them to an inappropriate

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172 *Roda v. Roda* at para 58
173 *Roda v. Roda* at para 82
174 *Roda v. Roda* at para 82
176 *Filaber v. Filaber* at para 41
However, Justice Van Melle also noted that the mother did not do enough to encourage the children’s relationship with their father, and that she was too strict of a disciplinarian. After making this finding, Justice Van Melle encouraged the mother to acknowledge her failings, and to attempt to make amends with the children.

Ultimately, Justice Van Melle made an order placing the children in the care of their mother, for the children to have no contact with their father, for all family members to engage in therapy, and authorizing the mother to enroll the children in Warshak’s Family Bridges program. A review was to take place after five months. As in McAlister v. Jenkins, the order made in Filaber v. Filaber is likely similar to the order that would be recommended by Friedlander and Walters, with therapy being ordered for all family members. However, the focus of the therapy was not defined by Justice Van Melle, who directed that the therapy take place as recommended by either Dr. Vanbetlehem, who had performed an assessment and identified parental alienation as being present, or Dr. Rand, who was the mother’s contact person at Warshak’s Family Bridges program. This choice, especially in the context of the remainder of the order made, suggests that the father’s alienating behaviour was by far the dominant concern, and that the mother’s estranging behaviour was ultimately insignificant.

The three cases of hybrid alienation where the court did identify alienation as being present are Bruni v. Bruni, Savage v. Savage and S.(C.) v. S. (M.). In Bruni v. Bruni, Justice Quinn found that alienation was present according to the “ordinary

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177 Filaber v. Filaber at para 44+
178 Filaber v. Filaber at para 42-43
179 Filaber v. Filaber at para 58
dictionary meaning of the words”\textsuperscript{183}, finding that while the father was an inept parent, his daughter’s rejection of him was “disproportionate, unfair and unwarranted”\textsuperscript{184}.

Nevertheless, Justice Quinn declined to intervene to order either access or therapy.

Similarly, in \textit{Savage v. Savage}, Justice Aitken found that parental alienation was present but declined to order any significant interventions; for the two older children (age 16 and 14 at trial) who were resisting access custody was granted to the mother with access to take place according to the children’s wishes\textsuperscript{185}. In that case, the father had anger management issues during the marriage, but had successfully participated in therapy since that time\textsuperscript{186}, and the mother was engaged in alienating behaviour such as changing the children’s names, denigrating their father to the children, and making unfounded allegations against the father\textsuperscript{187}.

\textit{S. (C.) v. S. (M.)} is a unique case in that the court readily identified extreme parental alienation as being present at the time of trial, but where elements of estrangement identified by an assessor appear to have prevented early intervention. At the time of trial in 2006, interventions were put into place to prevent the father from alienating the youngest child, age 10, from his mother but the elder children, aged 19, 17 and 15, who had been successfully alienated against their mother, were regarded as beyond the reach of the court\textsuperscript{188}. In 2003, an assessment was conducted at which time the mother was having contact with her three youngest children\textsuperscript{189}. The assessment report concluded that both parents were at fault for the family situation; that the mother had

\textsuperscript{183} \textit{Bruni v. Bruni} at FN47
\textsuperscript{184} \textit{Bruni v. Bruni} at para 128
\textsuperscript{185} \textit{Savage v. Savage} at para 94
\textsuperscript{186} \textit{Savage v. Savage} at para 76
\textsuperscript{187} \textit{Savage v. Savage} at para 85
\textsuperscript{188} \textit{S. (C.) v. S. (M.)} at para 2
\textsuperscript{189} \textit{S. (C.) v. S. (M.)} at para 81
driven the children away, and the children had then been recruited by the father. Based on this finding, a recommendation was made for joint custody with approximately equal time sharing for physical custody. In June 2004 the mother consented to an order for joint custody allowing the two middle children to reside with the father but for them to have regular contact with her, and for counseling for the children. The counseling never occurred, all contact between the mother and both middle children ended shortly thereafter, and it was not until almost 3 years later that a trial was held on the issue of access to the youngest child. Perhaps if the assessor had better identified alienation in her report the mother would have taken the necessary steps to preserve her relationship with the two middle children, rather than attempting to implement the plan recommended by the assessor. Instead, the existence of elements of estrangement apparently distracted the assessor, preventing a timely identification of the presence of parental alienation.

In total, out of the nine cases of hybrid alienation, the court failed to order either access or therapy in four cases, and in an additional two cases, only ordered access in accordance with the wishes of the children. This failure to intervene occurred both in cases where alienation was identified and in cases where alienation was not identified. While it is true that courts sometimes decide not to intervene in cases of pure alienation, the occurrence of such responses is much higher in hybrid cases (67% of cases) than in cases of pure alienation (10% of cases). This is perhaps because the alienated parent is less sympathetic in such cases; where the alienated parent can be found to be at least

190 S.(C.) v. S. (M.) at para 87
191 S.(C.) v. S. (M.) at para 89
192 S.(C.) v. S. (M.) at para 29
193 S.(C.) v. S. (M.) at para 2
194 See Schedule A
partially to blame, the court is less willing to intervene to assist them, or could be because the appropriate intervention in such cases is less clear.

Better judicial responses to hybrid cases of alienation can perhaps be achieved simply by ensuring that the court is aware of the expanded definition expounded by Friedlander and Walters (and others). This would be best accomplished through the parties in individual cases ensuring expert evidence on the subject is provided. However, there is some risk that rejected parents will fail to do so, as in order for them to appreciate the relevance such evidence, they must be able to appreciate that they too have engaged in problematic behaviour. Such self-awareness is unlikely to be found in parents who, by definition, display a lack of awareness of the impact of their behaviour. Lawyers for rejected parents must be well-educated about parental alienation in order to identify situations of hybrid alienation, and to ensure that appropriate materials on the subject are before the court.

A better understanding of hybrid forms of alienation will be beneficial not only because it will help to ensure that the orders made are in the best interests of the children, but also because it will help ensure that the orders made are responsive to the concerns of both parents. No longer will courts respond to such situations by ordering a continuance of the status quo. Instead, the favoured parent’s valid concerns about the alienated parent will be addressed, while the alienated parent will be given the opportunity to move forward and reconnect with their children. Moreover, a better understanding of this issue may assist in preventing delay. When there is no longer the necessity of ensuring that the alienating parent is solely at fault for the family situation, interim intervention may become more frequent. In contrast to the approach utilized in *Snider v. Laszlo*, courts
who are aware of the dynamics of hybrid alienation can craft interim orders requiring that both parents and the children receive therapy. Such a remedy can be imposed without the courts having to reach a conclusion on whether any of the alienating parent’s concerns are valid, especially since the recommended intervention for hybrid forms of alienation is therapy, and not necessarily a change of custody.

**Delay and Lack of Intervention at Interim Stage**

More pervasive and potentially more problematic than the failure of the courts to recognize hybrid forms of alienation is the failure of the courts to respond promptly to cases where there is evidence of alienation. It is common for courts to fail to intervene in such cases at an interim stage, and delays of two years or more between the issuance of an application and a trial are not uncommon; of the 51 Ontario cases where parental alienation was present, the court intervened in 40 cases, and in 33 of these case, it was fairly clear how long the case had been in court before intervention was ordered. Based on these 33 cases, the average time between the issuance of an application and the trial (or a motion where there was substantive intervention) was approximately 39 months. Such lengthy delays run counter to the position espoused by the therapeutic community that early intervention is critical in cases of alienation. Moreover, in at least 3 cases, the courts have used the delay to justify a lack of intervention, stating that the children are too old or too entrenched in their positions for court intervention to be appropriate.

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195 See Schedule A
In extreme cases, the delay between an initial application and trial was longer than average. For example, in *Fernandes v. Vukovic* the parties had been engaged in litigation for approximately ten years. Multiple orders were made until eventually, approximately seven years into the litigation, custody was changed and the child placed with the alienated father. At the time of trial, the daughter was doing well in her father’s care, and final custody was granted to the father, with the mother to have supervised access only. It is unfortunate that it took so many years to reach this result. Courts must become more willing to set strict timelines, order therapy and mandate parent-child contact early on in the process if there is evidence of alienation. Where these interventions are clearly ineffective or not followed, an early trial date should be set.

Often it is unclear from the facts given in a written decision whether delays have been caused by the court or by the litigants; whether a long delay between the issuance of an application and intervention is due to attempts to settle outside of court, lack of financial resources to pursue the application, or whether litigants who are attempting to obtain court intervention are being frustrated by procedural issues. However, in a few cases, the cause of the delay is clearly fault of the court. One such example is the case of *B (S.G.) v. L (S.J.*)*. The case is typical with respect to the length of time between the issuance of an application and the ultimate resolution, but unusual in that the appropriate intervention had been identified prior to the issuance of the application. The parties in that case had separated in 1998 and entered into a separation agreement in 1999. The children were to live with their mother and have regular access visits with their father, but

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in the fall of 2004 the elder son, LB, (then age 13) moved in with his father. A little over a year later, in March 2006, the younger son, JB, (then age 11) also moved in with his father and both children stopped seeing their mother. In July 2007, the parents entered into a mediation/arbitration agreement. The mother was arguing that the father had alienated the children; she was seeking sole custody of the children and for authorization to take the children to Warshak’s Family Bridges program. Mediation apparently failed, and the arbitrator released his reasons a year later, in July 2008, concluding that there had been alienation; that custody of the children should be granted to the mother, who should be authorized to take the children to Warshak’s Family Bridges program.

The father immediately appealed the award, and so the change in custody was not effected. The appeal judgment was released in February 2009, and while Justice Herman found that the findings made by the arbitrator were reasonable given the evidence, she concluded that the arbitrator had made a “fundamental error” by relying on Warshak’s recommendation that Family Bridges was the best option for the children, as Warshak had not met with either child. Justice Herman stated that the arbitrator should have ordered the assessment requested by the father regarding the appropriateness of the children attending Family Bridges, and should have referred more specifically to LB and JB’s needs and circumstances when deciding that attending Family Bridges was in the children’s best interests. A second decision was then released in May 2009, concluding that the arbitrator’s whole award had to be set aside, and a new trial ordered; the mother.

200 B. (S.G.) v. L (S.J.) 2010 ONSC 3717, 102 O.R. (3d) 197 at para 3-4
201 B. (S.G.) v. L (S.J.) 2010 ONSC 3717, 102 O.R. (3d) 197 at para 6
could not be granted sole custody without the issue of attendance at Family Bridges being determined. It is perhaps noteworthy that the arbitrator did not require the children to attend Family Bridges, but simply authorized the mother to enroll them in the program as an incident of custody\textsuperscript{205}.

A new custody and access assessment was completed in April 2010, and the recommendations of the assessor essentially echoed the award of the arbitrator\textsuperscript{206}. The father refused to follow the recommendations of the assessor, and so a trial was held in May 2010, at which time Justice Mesbur found that the evidence overwhelmingly pointed to the necessity of a change in custody, and granted the mother authority to make treatment decisions for JB, including the right to decide whether to enroll JB in Family Bridges\textsuperscript{207}. The father then appealed this order, and asked for a stay of the decision pending the hearing of the appeal. After the father’s request for a stay was denied, JB himself applied for a stay, and that stay was granted in July 2010\textsuperscript{208}. At that point, it had been two years since the arbitrator had released his award finding that there had been severe parental alienation, recommending that the mother be granted sole custody and that the children attend at Family Bridges. In the five intervening court decisions, procedural issues related to the arbitrator’s decision had been raised, but the conclusions reached by the arbitrator had been affirmed over and over again; by the custody and access assessor as well as by two judges. Despite the finding of alienation made by the arbitrator in July 2008, and found at every stage to have been a reasonable conclusion, the children remained living with the father and had no meaningful contact with their

\textsuperscript{206} B.(S.G.) v. L (S.J.) 2010 ONSC 3717, 102 O.R. (3d) 197 at para 15
\textsuperscript{207} B.(S.G.) v. L (S.J.) 2010 ONSC 3717, 102 O.R. (3d) 197 at para 125-128
\textsuperscript{208} B (S.G.) v. L (S.J.), 2010 ONCA 3717, [2010] W.D.F.L. 4111
mother while the case wound its way through appeal, re-trial, and towards a second appeal. During this two year period, LB reached the age of majority and was put out of reach of the court’s intervention.

_B (S.G.) v. L (S.J.)_ is an example of procedural issues and an excess of caution doing a disservice to the children involved in the case. For over two years the court failed to intervene, or failed to put into effect the ordered intervention, to ensure that all available evidence, every possible issue, had been examined. When the mother appealed the order granting JB a stay, the court of appeal acknowledged that it was not in JB’s best interests to continue to reside with his father, but stated “[s]till, considering that the appeal is but three weeks away, we think the prudent course is to dismiss the motion for review.”

This continued inaction is incomprehensible; the factual findings were clear, and the same remedy had been recommended time and time again, yet the family situation was allowed to stagnate. Such inaction may cause alienated parents to simply give up on their case; on their hopes of reconnecting with their children, or on rescuing their children from an emotionally abusive situation. Moreover, most litigants will simply not have the financial resources to pursue their case through two trials and two appeals.

Surprisingly, _B (S.G.) v. L (S.J.)_ has a happy outcome. Sometime in the fall of 2010, the parties were able to reach an agreement on consent, and the remedy that had been recommended at every step was finally implemented; JB moved in with his mother, and attended Family Bridges.

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210 Jeffrey Wilson, Address, (Lecture presented to Children’s Law Class, January 24, 2011) [unpublished]
Litigants should not have to rely on a settlement for remedies to be ordered or enforced. In the case of *K. (D.) v. K. (M.)*\(^{211}\), the failure of the court to intervene at an early stage ultimately lead to the trial judge concluding that, while the child (“SK”) would have benefited from contact with his father, it was too late by the time of the trial in 2010 to intervene, as SK was then 17 years old. The case had been in court for approximately four years by the time of trial, and there had been ample evidence of alienation. The parties separated in July 2005, and regular contact between SK and his father ended by March 2006\(^ {212}\). The mother’s alienating behaviour had begun prior to the parties’ separation, as she had severed SK’s relationship with his paternal relatives by denigrating them in SK’s presence, and telling SK that she would stop loving him if he saw them\(^ {213}\). After the parties` separated, the mother`s alienating behaviour extended to the relationship between SK and his father. In September 2006 an order was made for the father to have access to SK\(^ {214}\), which the mother refused to follow. The mother changed her phone number to prevent the father from speaking to SK by phone\(^ {215}\), removed all photos of the father from the house\(^ {216}\), and even went so far as arrange with SK`s school to pick him up a half hour early, such that whenever the father arrived to see SK, he would find that SK had already left\(^ {217}\). The mother also attempted to remove the father as a parent from SK`s school records, and asked the school to refuse to disclose any information about SK to his father\(^ {218}\). The mother admitted to never having said anything positive about the father to SK since separation, and to actively discussing the litigation.

\(^{211}\) *K. (D.) v. K. (M.)* 2010 ONSC 4585
\(^{212}\) *K. (D.) v. K. (M.)* at para 1,45
\(^{213}\) *K. (D.) v. K. (M.)* at para 34
\(^{214}\) *K. (D.) v. K. (M.)* at para 46
\(^{215}\) *K. (D.) v. K. (M.)* at para 80
\(^{216}\) *K. (D.) v. K. (M.)* at para 96
\(^{217}\) *K. (D.) v. K. (M.)* at para 50
\(^{218}\) *K. (D.) v. K. (M.)* at para 64
with SK\textsuperscript{219}. The mother`s evidence about why SK should not see his father was unconvincing; she insisted that it was SK who did not want to see his father, and she was simply supporting SK`s decision\textsuperscript{220}. She claimed that the father had been abusive to SK, primarily in that he was impatient with SK when helping him complete his homework or when coaching him in gymnastics\textsuperscript{221} The allegations that the father had been abusive towards SK were unconvincing, and while SK professed not to be afraid of his father in November 2006, in 2008, after he had no contact with his father for two years, he professed to be afraid of his father\textsuperscript{222}. In short, there was long-standing and persuasive evidence to support the conclusion that there was parental alienation; that SK was refusing a relationship with his father, that the rejection was not reasonable in the circumstances, and that the mother was engaged in inappropriate and alienating behaviour. Moreover, by 2008 there was strong evidence that the mother`s behaviour was emotionally abusive, and was having a damaging effect on SK. The Children`s Aid Society had conducted an investigation and had verified a risk of emotional harm to SK as a result of the mother`s alienating behaviour, her difficulty in separating her own emotional needs from those of her son, and her difficulty in fostering age-appropriate and independent behaviour in SK\textsuperscript{223}.

Despite this, the courts failed to intervene. In April 2009, the father brought a motion asking for SK to receive counseling. By that point in time, SK had been refusing all contact with his father for three years, and had also been refusing to speak to the lawyer or social worker appointed to him by the Office of the Children`s Lawyer for over

\textsuperscript{219} K. (D.) v. K. (M.) at para 85-86
\textsuperscript{220} K. (D.) v. K. (M.) at para 81
\textsuperscript{221} K. (D.) v. K. (M.) at para 83
\textsuperscript{222} K. (D.) v. K. (M.) at para 84
\textsuperscript{223} K. (D.) v. K. (M.) at para 119
a year\textsuperscript{224}. Nevertheless, Justice Hourigan declined to order that SK receive counseling, stating that while it was in SK’s best interests to have a relationship with his father, an order that SK receive counseling could hinder the reconnection of SK and his father\textsuperscript{225}. Such a statement is incredible given that, at the time of the motion, there was no movement whatsoever towards a reconnection between SK and his father.

\textit{K. (D.) v. K. (M.)} is a textbook example of parental alienation, and of the harm caused to a child by alienation. The courts failed SK as a result of delay and their refusal to intervene. It is not clear what the initial source of delay in this case was; it is not clear why there was no court intervention between the time the mother began refusing to adhere to the access order in 2006 and the father’s motion in 2009. Certainly it would have been preferable for the matter to have been brought back to court before 2009. However, the ultimate failure in this case was the court’s refusal to intervene in April 2009, and again at trial in 2010. The father was not seeking a radical or disruptive remedy; he was not seeking a change in custody, or even the enforcement of the existing access order. Rather, the father was simply seeking that SK receive counseling with the hope that therapeutic intervention would eventually assist SK to have a relationship with his father. In denying this request, the court not only sanctioned the mother’s despicable behaviour, but also failed to provide SK with therapeutic intervention he clearly would have benefited from.

\textit{B (S.G.) v. L (S.J.)} and \textit{K. (D.) v. K. (M.)} are but two examples of delay and the failure of the courts to intervene in parental alienation cases. There are many other

\textsuperscript{224} \textit{K. (D.) v. K. (M.)} at para 8  
\textsuperscript{225} \textit{K. (D.) v. K. (M.)} at para 52
similar examples of this problem, including C. (W.) v. E. (C.)\textsuperscript{226}, where the father had been denied any contact with his daughter for close to three years by the time of trial. In that case there was evidence dating back at least 9 years which suggested that there was a risk of alienation, including a 2002 assessment report which stated that the mother did not respect the role the father played in the child’s life. By 2008, the Office of the Children’s Lawyer and the Children’s Aid Society had specifically identified parental alienation as a concern\textsuperscript{227}, but it was not until 2010 that an order for reunification therapy between father and daughter was made. Another such example is Tesfamariam v. Drar\textsuperscript{228} where, although the action began in 2001 and the Children’s Aid Society had raised concerns related to parental alienation by 2004, it was not until 2006 that the court intervened to limit the mother’s influence over the child. This intervention only occurred after the mother had moved to BC with the child, providing no notice or forwarding address, and in violation of an order that the father was to have access.

In contrast, the case of Demers v. Demers\textsuperscript{229} illustrates the benefit of early intervention. In that case, the mother had begun denigrating the importance of the father to their son even prior to their separation. The parents agreed to a custody and access assessment in March 1997, after they had been separated (but living under the same roof) for about 6 months. The assessment report was released in July 1997, and reported that there was an enmeshed mother-son relationship, with the mother even bathing with her six year old son. The assessor further found that the father was excluded from the family, that the son maintained a psychological distance from his father, refusing to speak or look

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{226} C. (W.) v. E. (C.), 2010 ONSC 3575
\item \textsuperscript{227} C. (W.) v. E. (C.) at para 77
\item \textsuperscript{228} Tesfamariam v. Drar, [2010] W.D.F.L. 1042 (Ont. S.C.J.)
\item \textsuperscript{229} Demers v. Demers, [1999] CarswellOnt 2621 (Ont. S.C.J.)
\end{enumerate}
\end{footnotesize}
at him, and that the son was beginning to manifest angry and aggressive behaviour towards his father. When the assessment report was released, the mother changed the locks to the matrimonial home, and began restricting the son’s contact with his father to brief visits of no longer than two hours, which she would supervise. Fortunately, when the parents attended at a motion in November 1997, an order was made that the son should reside with the father for a full week every three weeks, plus a Saturday visit once per month. These long visits with his father, away from his mother’s influence, had a positive effect on the son, who became more independent and more extroverted. At the trial in 1999, the father was granted custody of the son, with the mother to have alternate weekend access.

Similarly, in Reeves v. Reeves\(^{230}\) the court intervened early on to protect the parent-child relationship. In Reeves v. Reeves, the parties separated in January 2000, and for the first two months, their two children, aged 16 and 13, were living primarily with their mother. By March 2000, the children were spending more time at their father’s home\(^{231}\), and by June 2000, both children were residing with their father and resisting all contact with their mother\(^{232}\). The Office of the Children’s Lawyer prepared an affidavit in October 2000, and stated that the father’s parenting was extremely problematic; that the father had socially isolated the children, exposed them to his extreme hatred of the mother, and that the children were extremely distressed\(^{233}\). A second affidavit from the Office of the Children’s Lawyer in December 2000 concluded that the situation was

231 Reeves v. Reeves at para 9
232 Reeves v. Reeves at para 12
233 Reeves v. Reeves at para 15
getting worse\textsuperscript{234}. At the motion in January 2001, less than a year after the children began resisting contact with their mother, Justice Mossip ordered that the mother was to have custody of the children, with the father to have only supervised access in a therapeutic setting. Both this case and \textit{Demers v. Demers} illustrate that it is possible, within the current procedural regime, for cases to be dealt with swiftly and effectively.

Judges are often cautious when dealing with custody and access issues, and indeed, they should be cautious, as their decisions will profoundly influence children’s lives. An excess of caution, however, may be just as problematic as a lack of caution if children are left in the care of emotionally abusive parents. Too often cases of parental alienation are left to progress slowly through the court system, with years intervening between the issuance of an application and a trial date, even where there is clear evidence of alienation early on in the case. Of course, the source of the delay is not always known, and it may be the litigants themselves who fail to move their matter along promptly; perhaps due to difficulty in funding the litigation, or uncertainty about the best manner in which to proceed. What is clear, however, is that judges are often hesitant to order substantive relief at an interim step, often requiring a trial before relief is granted. Such delays must not occur where there is evidence of parental alienation. Access orders must be enforced, therapy should be ordered early on in the process, and timelines should be imposed to ensure that the matter moves forward promptly, and that more significant interventions, such as a change in custody, can be evaluated before too much time has past.

\textsuperscript{234} \textit{Reeves v. Reeves} at para 16
THE ROLE OF THE CHILD

Children rarely participate directly in custody and access proceedings; prevailing wisdom recommends that their exposure to the litigation be as limited as possible to insulate them from the family conflict. Writers such as Warshak argue that the best way to ascertain children’s opinions and interests in the context of custody and access litigation is through the use of studies which reveal the needs of children in general; studies where a group of children have reported on their wants and needs, and studies which look at children’s development given certain conditions. The individual child’s actual stated wants and needs need not be considered. Warshak thinks that this is best, as it will insulate children from being placed in the centre of their parent’s conflict, and will ensure that the court relies on what is actually best for the child, not simply what the child thinks is best for them. Warshak notes that relying on individual children to express their wants and needs is problematic for several reasons, including that children’s preferences are often unstable, may change depending on what the child believes each parent wishes to hear, and may be based on inappropriate considerations, such as a mother promising to buy her son a luxury car if he lives with her. Moreover, Warshak believes that there is a risk that giving children too much authority will burden them with an inappropriate degree of power. It should be noted that Warshak does believe there are some benefits to having children participate in decision making in the context of custody and access litigation; he believes that doing so may direct attention to factors that

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236 Payoffs and Pitfalls of Listening to Children at page 377-378
237 Payoffs and Pitfalls of Listening to Children at page 377
238 Payoffs and Pitfalls of Listening to Children at page 374
239 Payoffs and Pitfalls of Listening to Children at page 375
240 Payoffs and Pitfalls of Listening to Children at page 374
have been overlooked\textsuperscript{241}, and suggests that giving children a voice may help them feel active, rather than passive, in the conflict, which may help them to cope\textsuperscript{242}.

While Warshak is a prominent scholar in the area of parental alienation, the above concerns are meant to apply to children in any type of custody litigation; these concerns are not particular to the involvement of children in parental alienation cases. Indeed, many of the concerns he raises with respect to allowing children to participate in custody and access litigation are of little relevance when applied to a child who is a victim of parental alienation. Such a child has already been placed at the centre of his or her parents’ conflict and has already been subjected to undue pressure from the favoured parent. Limiting the child’s awareness of the litigation may often serve to leave the youth feeling more confused, powerless and anxious. Moreover, limiting the child’s awareness of the litigation may lead to the child being fed false information about the process by the favoured parent, increasing the child’s animosity towards the alienated parent.

The concern that allowing children to become directly involved in litigation will burden them with too much power and authority, and will result in decisions being made based on what a child thinks is best and not what is actually best for them appear to be of particular relevance in cases involving parental alienation. In such cases, where the child’s position will have been distorted through the emotional abuse of the favoured parent, the child’s position is unlikely to correspond with what is actually in their best interests\textsuperscript{243}. Such concerns misapprehend the role that a child could play within the litigation. Giving a child input into a decision is not the same as giving them authority to make the final decision. For young children, this input can be facilitated through the

\textsuperscript{241} Payoffs and Pitfalls of Listening to Children at page 374
\textsuperscript{242} Payoffs and Pitfalls of Listening to Children at page 374
\textsuperscript{243} A Guide for Mental Health and Legal Professionals at page xviii-xix
office of the children’s lawyer, who meet with the child, ascertain the child’s wishes, and then communicate them to the court. Youths (children age 12 and up) can also have their views communicated to the court in this fashion, but should be given greater opportunity to participate more directly in the litigation, as a party in their own right.

Giving youths the opportunity to participate as a party to the litigation raises stronger concerns that the youth will become overly empowered. However, just like adults, youth may be subject to coercive court orders, and the orders made may not adhere to the youth’s stated desires. Allowing a youth to have input into a decision that will have a major effect on their lives does not grant that youth undue power or authority, nor is it tantamount to acquiescing to the youth’s demands. If the youth is a party to the action, they will be given the opportunity to develop their own plan and present the evidence they have in support of that plan to the court. The court can then choose to reject that plan and craft an order entirely different from what was requested by the youth. Even in cases of parental alienation, where there may be significant concerns that the youth’s position has been warped by the influence of the favoured parent, it is reasonable to grant youth the ability to participate in the litigation and make their position known. Where expert evidence about parental alienation has been provided, a judge should be capable of giving the appropriate weight to the youth’s stated preference, and will be aware of the arguments against giving too much weight to the youth’s position.

Indeed, so long as there would be awareness of the nature of parental alienation, Gardner supported children being able to communicate their positions to the court through judicial interviews and guardians ad litem. It is reasonable to have concerns about granting youth sole decision making authority, but allowing youth the opportunity to participate in

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244 A Guide for Mental Health and Legal Professionals at page 190, 276
custody and access litigation is not tantamount to the grant of such authority. Arguments which would deny youth the ability to participate in such litigation on the basis that they would become overly empowered, or that their best interests would not be met, misinterpret the nature of the youth’s involvement.

Cases such as *B (S.G.) v. L (S.J.)* and *Children’s Aid Society of the Region of Peel v. F.(K.J.)* suggest that youth are aware the difference between input and authority, or at least, that their lawyers made them aware of this difference. The case of *B (S.G.) v. L (S.J.)* is discussed above; for two years, that case moved from appeal to appeal, with the intervention that had been recommended at every step never put into place. Eventually JB, the child at issue, obtained an order making him a party to the action. While he also sought, and obtained, an order staying enforcement of the intervention ordered at trial (for him to reside with his mother, participate in Warshak’s family bridges program, and have no access to his father), he eventually consented to participate in this intervention.

In the case of *Children’s Aid Society of the Region of Peel v. F.(K.J.)*, the elder brother, PF, was the first child in the family to align with his father and reject his mother. For three years the case was in court, with mother eventually obtaining an order that the children be removed from their father’s care, be placed with their mother and attend counseling. The children were extremely resistant to this, and due to their refusal to participate in counseling, were placed in the child and adolescent in-patient program of St. Joseph’s Health Centre. The children’s aid society then intervened, and the children were placed in a foster home, where they remained for the next year. Eventually, the

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246 Jeffrey Wilson, Address, (Lecture presented to Children’s Law Class, January 24, 2011) [unpublished]
247 Children’s Aid Society of the Region of Peel v. F.(K.J.) at para 14
248 Children’s Aid Society of the Region of Peel v. F.(K.J.) at para 16-17
elder brother, PF, obtained an order that he be added as a party to the proceeding\textsuperscript{249}. His position at the time of the motion was, primarily, to support his father’s position\textsuperscript{250}, but ultimately, PF organized a settlement that had himself and his younger siblings returning to live with their mother\textsuperscript{251}.

In both of these cases, a settlement was eventually reached on the basis of a youth’s involvement. Clearly the youth in these cases were aware that they would not be able to obtain an order in their favour, or in their sibling’s favour, simply by asserting that they did not want to have contact with the alienated parent. Instead, the youths were willing to participate in settlement negotiations, ultimately reaching an agreement that all parties could agree to. Given the long history of both cases, and the fact that settlements were reached shortly after the youths were added as parties, it appears that the involvement of the youths greatly facilitated such settlements. There are a variety of reasons why this might be the case. Perhaps the youths felt less empowered once they became a party to the litigation; where previously the favoured parent had only been informing them of their version of events, the youths would have been told about the actual risks and likelihood of success of the litigation by their lawyer once they were made parties in their own right. Alternatively, the youth’s adamancy not to see their alienated parent may have been weaker than that of the favoured parent’s adamancy that their children not have contact with their former spouse. The youths may have actually desired a relationship with the alienated parent, and the desirability of obtaining a settlement may have been sufficient pressure to allow the youth to agree to resume

\textsuperscript{249} Children’s Aid Society of the Region of Peel v. F.(K.J.) at para 52
\textsuperscript{250} Children’s Aid Society of the Region of Peel v. F.(K.J.) at para 24
\textsuperscript{251} Susan Pigg, “Custody War over as Boys Go Home”, Toronto Star (May 1, 2009) online: The Star <http://www.thestar.com/comment/columnists/article/627120>
contact. With the youth participating directly in settlement negotiations, the favoured parent can no longer rely on an argument that they are simply attempting to protect their child or their child’s wishes, and must concede to the settlement. A further theory is that “when teenagers feel more empowered and their autonomy respected, they are more able to distance themselves from the polarizing parental conflict and more likely to reinitiate contact with the rejected parent.” Regardless of the psychological factors which may have motivated the youth in B (S.G.) v. L (S.J.) and Children’s Aid Society of the Region of Peel v. F.(K.J.) to broker a settlement, the positive influence of the youth’s participation on the achievement of a settlement is strong evidence in favour of promoting the greater involvement of youth in parental alienation cases.

Even where the involvement of youth does not result in a timely settlement of the litigation, there are other benefits to allowing youth to participate directly in parental alienation cases. Such cases require a judge to make a determination on two key issues. The first is whether the children at issue are actually victims of parental alienation, or whether the estrangement is justified by the rejected parent’s actual behaviour. The second is where parental alienation is found, what order should be made. In cases where parental alienation has been found, judges have made widely varying orders, including orders ending the child’s access with the alienated parent, for the child to remain living with the favoured parent while attending reunification counseling with the alienated parent, reversing custody in favour of the alienated parent with therapy ordered, and

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252 Fidler & Bala at page 21
254 Bruni v. Bruni, 2010 ONSC 6568 (Ont. S.C.J.)
reversing custody and facilitating the children’s enrolment in Warshak’s Family Bridge’s program\textsuperscript{257}. Youth can provide significant assistance to the court by providing information and evidence which their parents have omitted or are not aware of. Such evidence may assist the court both in determining whether the estrangement from the rejected parent is due to parental alienation, or whether the estrangement is based on the rejected parent’s actual behaviour, and may also assist the court in determining what order would be most appropriate in all the circumstances. Moreover, the youth’s position as to what order would be most appropriate is highly relevant, as they are the persons who will be most affected by the eventual order. Even in cases of parental alienation, it should not be assumed that the youth’s position will be identical to that of the favoured parent. Indeed, Gardner stressed that a key element of parental alienation is that the alienated child is not simply parroting the thoughts and opinions of the favoured parent; they are creating their own scenarios, beyond that which the favoured parent has provided\textsuperscript{258}. Kelly and Johnson take this idea further, and argue that the alienated child should be evaluated separate from assumptions about the influence of the favoured parent\textsuperscript{259}. Even an “alienated” youth will have their own interests and their own evidence to present, and should be given the opportunity to do so.

\section*{CONCLUSIONS}

Parental alienation is a live issue in only a small percentage of custody and access cases; it has been mentioned in only 170 reported decisions in Ontario as of July 2011\textsuperscript{260}.

\begin{itemize}
\item \textsuperscript{257} \textit{L. (J.K.) v. S. (N.C.)} (2008), 54 R.F.L. (6th) 74 (Ont. S.C.J.)
\item \textsuperscript{258} \textit{A Guide for Mental Health and Legal Professionals} at page 69
\item \textsuperscript{259} Kelly & Johnston at page 251
\item \textsuperscript{260} See Schedule A, B and C
\end{itemize}
Nevertheless, it is an important issue. Children who are alienated from a parent not only lose a relationship with a potentially loving parent, but they are likely to suffer from depression and substance abuse as adults\(^{261}\). The basic definition of parental alienation, introduced by Gardner in the late 1980s, is well known and fairly well understood in Ontario courts. Gardner describes parental alienation as present where the influence of one parent causes a child to reject a relationship with the other parent, where the child actively denigrates that parent themselves, and where the parent who is being denigrated has not behaved in a way which would explain the ferocity of the child’s rejection\(^{262}\).

This definition has been considered and expanded on by scholars such as Warshak, Friedlander & Walters and Kelly & Johnson, who have extended Gardner’s focus to include an examination of the behaviour of the alienated parent. Recognizing that an alienated parent may have engaged in behaviour which would justify the children having some negative reaction, but which fails to fully account for the ferocity of the child’s rejection, Friedlander & Walters developed the term ‘hybrid alienation’, which also applies where there are elements of an enmeshed parent-child relationship as well as alienation\(^{263}\). This concept is not well used or understood by Ontario courts. Indeed, where elements of estrangement exist in combination with elements of alienation, there is a low rate of identification of parental alienation and, even where parental alienation is identified, a low rate of court intervention to improve the family situation. The court’s failure to indentify or remedy hybrid forms of alienation does a disservice to the children involved in such cases.

\(^{261}\) The Long Term Effects of Parental Alienation at page 301
\(^{262}\) A Guide for Mental Health and Legal Professionals at xviii
\(^{263}\) Friedlander & Walters at page 100
Ontario courts also routinely fail to meet the needs of the children involved in parental alienation cases by reason of the lengthiness of the litigation process, which is compounded by the court’s reluctance to intervene at an early stage. Too often cases are left to languish in litigation for years, with no effective interventions being imposed by the courts. The few cases which have been dealt with swiftly show that it is possible, and desirable, to deal with parental alienation in a timely manner. As early intervention is described as being of critical importance by the psychologists who have researched this issue, Ontario courts must do more to ensure that cases where parental alienation is identified as a live issue are dealt with swiftly.

Finally, while the direct involvement of youth in custody litigation is a controversial issue, the outcomes of two recent Ontario cases suggest that there may be some benefit to allowing youth to be more involved in the court process in parental alienation cases. This phenomenon is deserving of further study; interviews with the youth involved in these two cases, as well as with youths who were the subjects of other parental alienation cases, may be illuminative.
Parental Alienation in Ontario: What Is Parental Alienation, and What Should Be Done About It?

**SCHEDULE A**

<table>
<thead>
<tr>
<th>CASE NAME</th>
<th>CHILDRENS' AGES</th>
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<th>SEXUAL ABUSE ALLEGED</th>
<th>MONTHS SINCE CONTACT</th>
<th>MONTHS: COURT TO INTERVENE</th>
<th>MONTHS IN COURT SYSTEM</th>
<th>ASSESSMENT?</th>
<th>ORDER</th>
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264 See Schedule D for full case names and citations
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<td>No</td>
<td>Yes</td>
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<td>McAlister v. Jenkins</td>
<td>12, 8</td>
<td>Father</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<td>unclear/weak intervention</td>
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<tr>
<td>Pettenuzzo-Deschene v. Deschene</td>
<td>3, 7</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>0 // 12</td>
<td>36</td>
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<td>Sgroi v. Socci</td>
<td>12, 23</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
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<td>Yes</td>
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<td>48 (weak intervention)</td>
<td>48</td>
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<td>Savage v. Savage</td>
<td>16, 14, 10</td>
<td>Mother</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>24//0</td>
<td>no intervention</td>
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<td>El-Murr v. Kiameh</td>
<td>10</td>
<td>Mother</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<td>no intervention</td>
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</tbody>
</table>

continued

Custody to dad; no access to mom; children may attend at Warshak; review in 3 mos

McWatt J.

(2 youngest only)
Temp custody to mom; no contact with dad; kids to attend Warshak; review in 3 mos

Van Melle J.

Custody to mom; access to dad on alt weekends
Custody to dad; no access to mom; therapy for kids; review in 3 months

Karswick J.

Children placed in dad's care for one month with mom to have supervised access; matter to return to court for review after a month

Harper J.

Parallel parenting with dad to have alternate weekend access and child to have therapy

Whalen J.

Custody of two eldest to mom with access to dad as per kids’ wishes; custody of youngest to dad with week on/off schedule

Bryant J.

Aitken J.

Katarynych J.
<table>
<thead>
<tr>
<th>CASE NAME</th>
<th>CHILDREN'S AGES</th>
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<th>HYBRID?</th>
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<tr>
<td>Tock v. Tock</td>
<td>17, 14, 7</td>
<td>Father</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>0</td>
<td>20</td>
<td>30</td>
<td>Yes</td>
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<td>Herman J.</td>
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<tr>
<td>Fernandes v. Vukovic</td>
<td>12</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>na</td>
<td>84</td>
<td>120</td>
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<td>Snowie J.</td>
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<tr>
<td>Starzycka v. Wronski</td>
<td>11</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>24</td>
<td>17</td>
<td>17</td>
<td>Attempted</td>
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<td>Wolder J.</td>
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<td>Moudry v. Moudry</td>
<td>3</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>5</td>
<td>24</td>
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<td>Waterloo v. A.(B.)</td>
<td>14, 8</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>na</td>
<td>36</td>
<td>53</td>
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<td>Kent J.</td>
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<tr>
<td>Nitkin v. Nitkin</td>
<td>16, 13, 10</td>
<td>Mother</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>no intervention</td>
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<td>Yes (outdated)</td>
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<td>Wilson J.</td>
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<tr>
<td>Forte v. Forte</td>
<td>9, 8</td>
<td>Father</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>18</td>
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<td>Corbett J.</td>
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<td>Wright v. Wright</td>
<td>16, 13</td>
<td>Father</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>na</td>
<td>unclear</td>
<td>36</td>
<td>Yes (outdated)</td>
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<td>Van Melle J.</td>
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</table>

Two youngest to reside with mom and to have alt weekend access to dad. Dad to attend counseling. Eldest to remain with dad on consent.
access, which is to be reduced/eliminated if further evidence of brainwashing. Grim case - daughters claimed dad sexually assaulted them; evidence suggests allegation is false. Judge finds dad innocent and discusses PAS.

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<tr>
<td>R. v. C.(K.)</td>
<td>17, 20</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>na</td>
<td>na</td>
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<td>Sheppard J.</td>
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<tr>
<td>R. (S.) v. R. (M.)</td>
<td>9</td>
<td>adoptive parents</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>17</td>
<td>108 (weak intervention)</td>
<td>108</td>
<td>Yes</td>
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<td>Wein J.</td>
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<tr>
<td>Reeves v. Reeves</td>
<td>16, 13</td>
<td>Father</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>12</td>
<td>12</td>
<td>Yes</td>
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<td>Mossip J.</td>
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<td>Roda v. Roda</td>
<td>10</td>
<td>Mother</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>50</td>
<td>no intervention</td>
<td>108</td>
<td>Yes</td>
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<td>Sachs J.</td>
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<td>CASE NAME</td>
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<td>HYBRID?</td>
<td>ABUSE ALLEGED?</td>
<td>SEXUAL ABUSE ALLEGED?</td>
<td>MONTHS SINCE CONTACT</td>
<td>MONTHS: COURT TO INTERVENE</td>
<td>MONTHS IN COURT SYSTEM</td>
<td>ASSESSMENT?</td>
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<tr>
<td>Demers v. Demers</td>
<td>8</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>na</td>
<td>8</td>
<td>30</td>
<td>Yes</td>
<td>Custody to dad; mom to have all weekend access. Kids to live with mom but dad to make therapy decisions and have longer access visits. Therapy encouraged for both parents, especially mom. Dad to have access six weekends per year; mom must facilitate or be found in contempt.</td>
<td>Belch J.</td>
</tr>
<tr>
<td>P. (G.T.) v. P. (M.C.)</td>
<td>11, 7, 3</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>na</td>
<td>42 (weak intervention)</td>
<td>42</td>
<td>Yes</td>
<td>Marshman J.</td>
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<td>Davy v. Davy</td>
<td>13, 12</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>na</td>
<td>99 (weak intervention)</td>
<td>99</td>
<td>Yes</td>
<td>McDermid J.</td>
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<tr>
<td>Rothwell v. Kisko</td>
<td>13, 12, 9</td>
<td>Father</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>22/unknown</td>
<td>24</td>
<td>24</td>
<td>Yes</td>
<td>Sole custody to mom; no access to dad for 6 months; dad to attend therapy. Mother alienated w/o court intervening until mom abducts child to BC. Upon review, child doing well with dad.</td>
<td>Poulin J.</td>
</tr>
<tr>
<td>Tesfamaria m v. Drar</td>
<td>9</td>
<td>Mother</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<td>67</td>
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<td>No</td>
<td>Blishen J.</td>
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Parental Alienation in Ontario: What Is Parental Alienation, and What Should Be Done About It?

**SCHEDULE B**

<table>
<thead>
<tr>
<th>CASE NAME265</th>
<th>RISK OF PA?</th>
<th>PA ALLEGED?</th>
<th>ABUSE ALLEGED?</th>
<th>SEXUAL ABUSE ALLEGED?</th>
<th>SUMMARY</th>
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<tr>
<td>Paszkat v. Paszkat</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad alleges PA but makes little effort to see son; Judge concerned mom not encouraging access; order for access for 4 hours on alternate weekends, to be expanded after 3 months</td>
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<tr>
<td>Hayes v. Goodfellow</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Both parents engaged in alienating behaviour; custody to dad with mom to have alternate weekend access</td>
</tr>
<tr>
<td>I. (M.) v. W. (M.)</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad alleges PA but it is clear that it is his behaviour that has caused problems; order terminating his access upheld on appeal</td>
</tr>
<tr>
<td>Caterini v. Zaccaria</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad alleges PA in support of motion terminating child support for kids over 18; but kids had good reason for rejecting dad, and dad hasn’t made any effort to see them in years. Dad must continue to pay child support</td>
</tr>
<tr>
<td>Parks v. Barnes Valettas v. Chrissanthakopulos</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Trial judge grants custody to dad on basis on PA; reversed on appeal - judge placed too much emphasis on mom's behaviour rather than son's relationships</td>
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<tr>
<td>M. (S.) v. M. (R.)</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom does not appear at uncontested trial and is found to be on path of parental alienation; order made for an assessment Mom claims dad alienating. Mom has appeared on TV making such complaints; children say mom ignores them; mom has no evidence, assessments, etc to support her alienation claim. Order - joint custody</td>
</tr>
<tr>
<td>Dhanjal v. Bhoi</td>
<td>Possible</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad alleges PA to justify reduction in child support but is unsuccessful</td>
</tr>
<tr>
<td>Matwyko v. Matwyko</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Kids not being unduly influenced by mom, but mom isn’t respecting joint custody regime; mom's application for sole custody dismissed</td>
</tr>
</tbody>
</table>

265 See Schedule D for full case names and citations
<table>
<thead>
<tr>
<th>CASE NAME</th>
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<th>PA ALLEGED?</th>
<th>ABUSE ALLEGED?</th>
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<th>SUMMARY</th>
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<tbody>
<tr>
<td>Zinyama-Mubili v. Mubili</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Father harassing mother, abusing court process</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td>Dad has abused kids, who demonstrate genuine fear of him.</td>
</tr>
<tr>
<td>Powless v. Hill</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Father has abused kids, who demonstrate genuine fear of him.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>Dad to have no access</td>
</tr>
<tr>
<td>Cormier v. Cormier Nussbaum v. Nussbaum</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Child wants contact with mom, but has anxiety because of mom's past behaviour. Mom granted access</td>
</tr>
<tr>
<td></td>
<td>Possible</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Both parents acting inappropriately, so therapeutic access ordered.</td>
</tr>
<tr>
<td>Kong v. Kong</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom claims PA, yet fails to take advantage of opportunities to see kids &amp; has involved kids in conflict; access to be at kids' discretion</td>
</tr>
<tr>
<td>Schiefer v. Schiefer</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad to have no access because he alienated his elder kids from a prior marriage; Supervised access ordered, with dad to have counseling</td>
</tr>
<tr>
<td>McDonald v. Rzeszut</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom seeking custody of 32 year old child with brain injury; courts decline to find PA due to age of child OCL report raises PA as a concern; court continues joint custody, but if mom fails to adhere to access schedule custody could be changed to dad.</td>
</tr>
<tr>
<td>Andrade v. Kadri Islam v. Rahman</td>
<td>Possible</td>
<td>Risk alleged</td>
<td>No</td>
<td>No</td>
<td>Child refusing contact with dad; counseling ordered</td>
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<tr>
<td></td>
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<td></td>
<td>Kids caught in the middle; both parents behaved badly, but family therapy seems to have helped</td>
</tr>
<tr>
<td>Blois v Gleason</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad upset because mom is not giving him as much access as he wants; mom's position reasonable and based on the needs of an infant</td>
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<tr>
<td>Vicars v. Bessey MacDonald v. MacDonald</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Grandmother claims PA; expert says she wants access so she can ‘monitor’ mom; no access</td>
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<tr>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Both parents involved kids in conflict; one kid rejecting dad, one rejecting mom; PA considered by assessors who concluded it was not present; custody to mom; access to dad; therapy ordered</td>
</tr>
<tr>
<td>Lana v. Navarrete</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td></td>
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<tr>
<td>Morey v. Morey</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Elder daughter resisting access with dad; mom leaving access decisions to 13 yr old daughter; order - dad should focus on counseling with daughter</td>
</tr>
<tr>
<td>White v. Lavinskas</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Child wants to change from week on/off schedule; wants to live with mom and have visits with dad. So ordered.</td>
</tr>
<tr>
<td>Chartrand v. de Laat</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Justified estrangement from violent, drug addict dad; order for supervised access</td>
</tr>
<tr>
<td>Tacker v. Ingram</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom moved to USA without dad's knowledge; mom exposing kids to conflict and history of a 'risk' of PA, but kids currently have good relationship with dad; better for kids not to move, so custody to dad and access to mom</td>
</tr>
<tr>
<td>MacDonald v. Tizard</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad claims mom is alienating, but he seems to be the one creating the conflict; access occurring and child happy with visits; order specifies dad's access</td>
</tr>
<tr>
<td>Tomlinson v. Hornick</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom wants to move with daughter and dad takes rigid position against move. Child stops seeing dad and dad claims PA. Court finds dad was responsible for causing the rift in the relationship</td>
</tr>
<tr>
<td>Shelley v. Defoe</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom reasonable about access but dad complains about all restrictions and claims parental alienation. Judge says that to claim PA, dad would need expert evidence or compelling factual evidence, neither of which exists</td>
</tr>
<tr>
<td>Cojbasic v. Cojbasic</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Interim access between dad and youngest child increased Dad refuses to communicate with mom and stopped attending access visits himself, but is claiming PA. Order made that dad's access is to slowly resume</td>
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<tr>
<td>Ali v. Williams</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Bio-mom being resistant to other-mom participating in kids’ life after their break-up; order made for equal parenting time and joint custody to prevent development of PA</td>
</tr>
<tr>
<td>Trepanier v. Cadieux- Trepanier</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Dad has history of behaving badly, but mom has always promoted access; child enjoys visits with dad; dad's access increased</td>
</tr>
<tr>
<td>Coborn v. Prue</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>CASE NAME</td>
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<tr>
<td>L.(N.) v. L.(S.)</td>
<td>Possible</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Mom has made multiple unverified allegations to CAS and exposed child to conflict, but child continues to have good relationship with dad. Custody to mom and access to dad, but schedule to be changed if mom doesn’t stop discussion of sexual assault issues with daughter. Both parents behaving badly and judge notes development of PA is a concern when ordering an equal time sharing arrangement.</td>
</tr>
<tr>
<td>V. (D.T) v. G.(G.)</td>
<td>Possible</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Dad abusive; claiming PA but not taking advantage of access when offered and child loves both parents; PA allegation rejected.</td>
</tr>
<tr>
<td>Damian v. Damian</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Competing affidavits at a motion; judge orders assessment and for Christmas access as per children's wishes in the meantime.</td>
</tr>
<tr>
<td>Stewart v. Stewart</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad upset because daughter puts other life events above his access; judge says that dad needs to accept this is nature of relationship with a teenager and stop blaming mom.</td>
</tr>
<tr>
<td>Bauer v. Bauer</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Both parents have been violent and abusive; child has good relationship with both parents, but dad badmouths mom too much. Mom claims PA. Custody to mom against child's wishes with access to dad.</td>
</tr>
<tr>
<td>Rice v. Abbott</td>
<td>Possible</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Mom claims PA; dad likely badmouthing but kids see both parents; week on/off schedule to continue, OCL to investigate Dad violent; Order for no access to elder kids. Youngest son wanted to try access; but has now become fearful of dad too.</td>
</tr>
<tr>
<td>Montoya v. Bipatnath</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad alleges PA; No PA found. Order - access as per son's wishes.</td>
</tr>
<tr>
<td>McIntosh v. McIntosh</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad alleges PA; no mention of PA in main judgment; both parents behaving badly but child wants to see both parents; dad to have alt weekend access. Paternal relatives allege PA after dad dies; Kids still have some contact with paternal relatives; judge finds no evidence of PA, declines to order (interim) access.</td>
</tr>
<tr>
<td>Geremia v. Harb</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>High conflict separation; assessment report specifically says PA not present.</td>
</tr>
<tr>
<td>Parkins v. Burnke</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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</tr>
<tr>
<td>Starzycka v Wronski</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>CASE NAME</td>
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<td>SUMMARY</td>
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</tr>
<tr>
<td>Rogerson v. Tessaro</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Mom has long history of denying dad a relationship with the kids. Despite this, kids have good relationship with dad. Assessment identifies risk of PA; Order - custody to dad, access to mom</td>
</tr>
<tr>
<td>Mikkelsen v. Mikkelsen</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad makes access visits unpleasant and so kids chose to stop attending - haven’t seen dad in 2/3 years; mom hostile to dad; order that access to be at kids discretion</td>
</tr>
<tr>
<td>Sider v. Sider</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Child allowed to move in with dad pending trial; mom alleges PA but evidence of this is lacking and dad’s custody claim is strong; school starting next month and better for child to move now than midway through school year</td>
</tr>
<tr>
<td>Z.(A.) v. W.(J.)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Dad seeking joint custody (with mom to have prim res) because mom always minimizing his role with child and making access difficult; joint custody ordered</td>
</tr>
<tr>
<td>Bechler v. Bechler</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad claims mom is alienating, but he is the one negatively influencing the kids; order - mom to have custody, dad to have alternate weekend access</td>
</tr>
<tr>
<td>Coyle v. Danylikiw</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom not supportive of dad's relationship with daughter, but PA does not exist. Order - mom may move to Montreal, dad to have access</td>
</tr>
<tr>
<td>Ponzo v. Kovacs</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom claims dad is alienating, but doesn’t take up dad's offers to let her see child. Order - dad to have custody, mom to have access</td>
</tr>
<tr>
<td>Slipak v. Slipak</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Child support case; judge notes facts which suggest dad has alienated daughter from mom in giving background; child now 18 and mom no longer seeking custody/access</td>
</tr>
<tr>
<td>Tran v. Le</td>
<td>Possible</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad (unsuccesfully) pled PA to justify his past refusal to pay C/S - parents had reached consent on custody/access prior to trial - mom to have custody and to “encourage” access</td>
</tr>
<tr>
<td>Fredriksen v. Lehane</td>
<td>Possible</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Both parents have alcohol issues; judge grants custody to dad noting that if child remained with mom there would be greater risk of PA</td>
</tr>
<tr>
<td>Hart v. Hart</td>
<td>No</td>
<td>Yes</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Costs order; custody/access settled on eve of trial; dad had been pleading PA, but apparently was little merit to this</td>
</tr>
<tr>
<td>CASE NAME</td>
<td>RISK OF PA?</td>
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<tr>
<td>Vanier v. Vanier</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad alleges PA and asks for assessment; elder two kids refusing contact with dad, but youngest is attending visits; elder kids may have justification for refusal of contact; assessment ordered.</td>
</tr>
<tr>
<td>Bater v. Alessandro</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad alleges PA; Dad badmouths mom to child; No PA found; Order - mom may move to Manitoba with child, dad to have access.</td>
</tr>
<tr>
<td>Costa v. Costa</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Dad abusive and badmouths mom to kids; kids love both parents at present, but risk of PA noted because of dad’s behaviour; mom to have custody, dad to have access.</td>
</tr>
<tr>
<td>Nairn v. Lukowski</td>
<td>Possible</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Both parents allege PA; both parents have been abusive to each other and badmouth each other to kids, but kids have managed to maintain good relationship with both parents; Order: mom to have custody, dad to have access.</td>
</tr>
<tr>
<td>Sharpe v. Sharpe</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom alleges PA and opposes daughter being added as party; daughter’s party status affirmed and other issues left to trial.</td>
</tr>
<tr>
<td>Butts v. Asombrado</td>
<td>Possible</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Mom claims dad is alienating and abusive; evidence suggests both parents behaving badly but that dad more capable of caring for kids. Order - custody to dad with access to mom &amp; therapy for all.</td>
</tr>
<tr>
<td>Dixon v. Hinsley</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad claims mom is alienating; evidence shows dad is violent and trafficks drugs; order for no access.</td>
</tr>
<tr>
<td>McLean v. Vassell</td>
<td>Unknown</td>
<td>Yes</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Dad claims alienation; mom had history of denigrating dad and making access exchanges difficult, but her behaviour has improved. Order - mom to continue having child 4.5 days per week, but dad to have decision making authority.</td>
</tr>
<tr>
<td>R.(C.) v. A.(I.)</td>
<td>Possible</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Dad alleges alienation; mom has been rigid and unreasonable about limiting dad’s access; access schedule imposed with return to court in 2 months; court will consider change of custody if access not being facilitated.</td>
</tr>
<tr>
<td>Orszak v. Orszak</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<thead>
<tr>
<th>CASE NAME</th>
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<th>SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evans v. Evans</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad claims alienation; at time of separation he tried to burn down family home with himself and kids inside and has not made any attempt to see kids since he was arrested; summary judgment granted giving mom custody of kids</td>
</tr>
<tr>
<td>B.(G.) v. B. (D.)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Court admitted tapes mom had made of dad &amp; elder child encouraging middle child to misbehave around mom; order - no change made to dad’s access because of pending assessment</td>
</tr>
<tr>
<td>Matthews v.</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad claims alienation but admits to being abusive towards kids; psych assessment says dad has mental health issues; custody to mom, mom allowed to move to UK, and dad not to correspond with kids</td>
</tr>
<tr>
<td>Hughes v. McColl</td>
<td>Possible</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Both parents behaving badly causing child to resist visits with mom; mom fails to take advantage of visits that are available; dad allowed to move to California, but not for another 6 months; in the meantime there should be family therapy Mom's anger towards dad creating risk of parental alienation; joint custody ordered to reduce this risk, with kids to live primarily with mom</td>
</tr>
<tr>
<td>Mol v. Mol</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Judge concerned about mom's abuse allegations and of dad involving kids in dispute - identifies risk of PA. Interim custody to mom with alt weekend access to dad</td>
</tr>
<tr>
<td>So v. Thok</td>
<td>Possible</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Dad alleges alienation; dad allowed to use tapes of phone calls between kids and mom as evidence</td>
</tr>
<tr>
<td>Reddick v. Reddick</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Dad has had problems with access for 10+ years; child now resisting all access, but loves both parents; access to go as per child's wishes</td>
</tr>
<tr>
<td>F.(R.) v. M. (E.)</td>
<td>Possible</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Mom wants to see kids more but dad is making this difficult by giving kids too much authority about attending access and badmouthing mom. Order - access as per kids wishes</td>
</tr>
<tr>
<td>Tracey v. Tracey</td>
<td>Possible</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Mom blames dad for access problems, but doesn’t take advantage of access she could have, and brings a boyfriend she knows the kids dislike to all visits. Order - custody to dad, alternate weekend access to mom</td>
</tr>
<tr>
<td>Lewandowski v.</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>CASE NAME</td>
<td>RISK OF PA?</td>
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<tr>
<td>Theodossiadis v. Kanellakos</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Dad blames mom for son's refusal to attend access, but badmouths mom and puts pressure on son to pick between his parents while mom does her best to facilitate access. Order - access as per son's wishes</td>
</tr>
<tr>
<td>M. (C.) v. M. (G.)</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Gardner testified and indentified PA but at very low levels that shouldn't have a significant impact on custody decision; Mom to have custody, dad to have regular access</td>
</tr>
</tbody>
</table>
Parental Alienation in Ontario: What Is Parental Alienation, and What Should Be Done About It?

**SCHEDULE C**

<table>
<thead>
<tr>
<th>CASE NAME</th>
<th>ISSUE</th>
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<tbody>
<tr>
<td>B (A.C) v. B (R.)</td>
<td>Whether judge can require OCL involvement</td>
</tr>
<tr>
<td>CAS Muskoka v. M. (D.)</td>
<td>Adoption where potential adopter is alienated from his biological children</td>
</tr>
<tr>
<td>R. v. Beale</td>
<td>Criminal case -- fraud</td>
</tr>
<tr>
<td>Tessaro v. Tessaro</td>
<td>Parental alienation alleged to support reduction of child support -- failed</td>
</tr>
<tr>
<td>CAS Toronto v. L. (V.)</td>
<td>Bio-parents abducted children from CAS custody</td>
</tr>
<tr>
<td>Motiram v. Latchman</td>
<td>Child support issue where children have no contact with mom, without reason given as to why there is no contact</td>
</tr>
<tr>
<td>Foster v. Foster</td>
<td>Parental alienation alleged in email between parents but not as a serious issue at trial</td>
</tr>
<tr>
<td>May-Iannizzi v. Iannizzi</td>
<td>Parental alienation mentioned in passing in a case about joint vs sole custody</td>
</tr>
<tr>
<td>Cavanannah v. Johne</td>
<td>Parental alienation mentioned in passing while complimenting the parents on their good behaviour</td>
</tr>
<tr>
<td>Jasson v. Newlove</td>
<td>Parental alienation mentioned in passing in a custody case</td>
</tr>
<tr>
<td>Krasnyk v. Krasnyk</td>
<td>Parental alienation mentioned in discussing the facts of another case</td>
</tr>
<tr>
<td>Jennings v. Garrett</td>
<td>Dad has criminal past and is to have supervised access until therapy finishes; judge notes there is no evidence of alienation</td>
</tr>
<tr>
<td>Matwiyiw v. Matwiyiw</td>
<td>Child support case where there has been &quot;parental alienation&quot; but no details regarding alienation or custody/access issues</td>
</tr>
<tr>
<td>Pollen v. Pollen</td>
<td>Child support case; parental alienation mentioned in discussing the facts of another case</td>
</tr>
<tr>
<td>Leonardo v. Leonardo</td>
<td>Grandparent access case; Judges notes in passing that there is no evidence of alienation</td>
</tr>
<tr>
<td>Elliot v. Elliot</td>
<td>Parental alienation mentioned in discussing the facts of another case</td>
</tr>
<tr>
<td>Levine v. Levine</td>
<td>Parental alienation mentioned in annotation in reference to another case</td>
</tr>
<tr>
<td>Emiris v. Kwama-Lawu</td>
<td>Judge states that father engaged in alienation, but no evidence or discussion about this (nor is PA suggested by the facts)</td>
</tr>
<tr>
<td>McCarthy v. McCarthy</td>
<td>Costs order; custody and access settled before trial, but PA mentioned in discussing mom's bad faith behaviour on that issue</td>
</tr>
<tr>
<td>B. (A.) v. D. (C.)</td>
<td>Parental alienation mentioned in reference to another case</td>
</tr>
</tbody>
</table>

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**SCHEDULE D**


Arangov. Botero, 2010 ONSC 3633


B. (A.) v. D. (C.) 2011 ONSC 1056

B (A.C) v. B (R.) (2010 ONCA 714)


- B. (S.G.) v. L (S.J.) 2010 ONSC 3717, 102 O.R. (3d) 197


Caterini v. Zaccaria 2011 ONSC 946

- Caterini v. Zaccaria 2010 ONSC 6473


Children’s Aid Society of Dufferin (County) v. T. (A.) 2011 ONCJ 52

Children’s Aid Society of the Region of Peel v. F.(K.J.) (2009), 72 R.F.L. (6th) 448

Children’s Aid Society of Toronto v. L. (V.) (2010 ONSC 143)

Children’s Aid Society of Waterloo v. A.(B.), 2005 ONCJ 220, 141 A.C.W.S. (3d) 63

Children’s Aid Society of Waterloo (Regional Municipality) v. L (K.A.), 2010 ONCJ 80, 92 R.F.L. (6th) 363

Children and Family Services for York Region v. S.(A.), 2011 ONSC 1732


Catholic Children’s Aid Society of Toronto v. H. (L), 2011 ONCA 385

- Catholic Children’s Aid Society of Toronto v. H. (L.) 2010 CarswellOnt 10772
  - Catholic Children’s Aid Society v. H. (L.D.), 2010 ONCJ 25


Corbyn v. Corbyn, 2008 ONCJ 390

Cormier v. Cormier, 2010 ONSC 870

Costa v. Costa [2002] CarswellOnt 2778

Cox v. Cox, 2010 ONSC 1959


C. (W.) v. E. (C.), 2010 ONSC 4564


Dhanjal v. Bhoi (2010 ONSC 5552)


El-Murr v. Kiameh, 2006 ONCJ 125


Emiris v. Kwama-Lawu 2011 ONSC 1693


Family, Youth & Child Services of Muskoka v. M. (D.) 2010 ONSC 6018


Hayes v. Goodfellow 2011 ONSC 2476
  • Hayes v. Goodfellow 2011 ONSC 1270


Hughes v. McColl. [1997] CarswellOnt 5633 (OCJ)


Jenkins v. Jenkins, 2010 ONSC 6


K. (D.) v. K. (M.) 2010 ONSC 4585

Kong v. Kong (2010 W.D.F.L. 1321)


Matwyko v. Matwyko (2010 ONSC 5108)


May-Iannizzi v. Iannizzi (2009) CarswellOnt 9259


McCarthy v. McCarthy 2011 ONSC 1572

McIntosh v. McIntosh 2006 ONCJ 344


Mikkelsen v. Mikkelsen (2004), CarswellOnt 5212 (Ont. S.C.J.)


Moudry v. Moudry (2005), 140 A.C.W.S. (3d) 505 (Ont. S.C.J.)

M. (S.) v. M. (R.) 2010 ONSC 5963

Murphy v. Murphy [2010] W.D.F.L. 5016

• Nairn v. Lukowski, [2002] CarswellOnt 1119 (Ont. S.C.J.)


Paszkat v. Paszkat 2011 CarswellOnt 3060 (Ont. S.C.J.)


P. (G.T.) v. P. (M.C.), [1997] CarswellOnt 6070 (OCJ)


Powless v. Hill (2010 ONSC 3210)

R. v. Beale (2010 ONSC 5547)


Shelley v. Defoe, [2008] ONCJ 131


So v. Thok, [1997] CarswellOnt 4733 (OCJ)
  • Spears v. Spears, 2010 ONSC 2941


Tessaro v. Tessaro (2010 ONSC 5342)


Tran v. Le, [2003] CarswellOnt 5926 (Ont. S.C.J.)


Valettas v. Chrissanthakopoulos 2010 CarswellOnt 8666

  • Vanier v. Vanier, [2002] CarswellOnt 4873 (Ont. S.C.J.)


Wright v. Wright, [2004] CarswellOnt 1823 (Ont. S.C.J.)


Zacconi v. Mahdavi, 2010 ONSC 3294
Zinyama-Mubili v. Mubili (2010 ONSC 3928)