Parental Alienation in Quebec Custody Litigation

by

Suzanne Zaccour

A thesis submitted in conformity with the requirements for the degree of Master of Laws
Graduate Department of Law
University of Toronto

© Copyright by Suzanne Zaccour 2017
Parental Alienation in Quebec Custody Litigation

Suzanne Zaccour

Master of Laws
Graduate Department of Law
University of Toronto

2017

Abstract

This thesis is a study of all Quebec custody cases dealing with parental alienation in 2016. It explores the definitions, findings and implications of parental alienation in legal disputes, in light of the models of parental alienation and parental alienation syndrome described in the academic literature. This research confirms feminists’ scepticism towards the use of parental alienation in custody litigation. It concludes that alienation has varying and inconsistent definitions in law, that there is a considerable disconnect between the state of the research in science and judges’ knowledge on alienation, and that the concept of parental alienation in law is ambiguous and over-inclusive, seemingly to the detriment of mothers. There is a dire need for clearer and stricter guidelines on the use of parental alienation in Quebec jurisprudence to ensure its accuracy, coherence, and fairness.
Acknowledgments

I would like to thank Professor Martha Shaffer, my supervisor, for her precious comments and suggestions, as well as for her guidance and patience. Thank you to Michèle Breton and Sajeda Hedaraly for their valuable insights, and to Ashmeet Siali, Brittany Williams and Natacha Ngo for their precious help.
# Table of Contents

## Contents

Acknowledgments ............................................................................................................................ iii
Table of Contents ............................................................................................................................. iv
List of Figures ................................................................................................................................. vi

Introduction ........................................................................................................................................ 1

Chapter 1 Parental Alienation: Definitions and Controversies ......................................................... 3
  1 Parental Alienation Syndrome ......................................................................................................... 3
  2 Redefining PAS ............................................................................................................................... 8
  3 Enduring Controversies .................................................................................................................. 10

Chapter 2 The Study .......................................................................................................................... 13

Chapter 3 Results .............................................................................................................................. 15
  1 General observations .................................................................................................................... 15
    1.1 Allegations and findings ............................................................................................................ 16
    1.2 The Gender of Parental Alienation .......................................................................................... 22
    1.3 The Normalization of Parental Alienation ................................................................................. 28
    1.4 The Science of Parental Alienation .......................................................................................... 31
      1.4.1 Models and Definitions ....................................................................................................... 31
      1.4.2 Expert Testimony ............................................................................................................... 35
  2 PA Cases ......................................................................................................................................... 40
    2.1 The Parent-focused Perspective ............................................................................................... 40
      2.1.1 Discussion ......................................................................................................................... 44
    2.2 The Role of the Alienated Parent ............................................................................................. 51
    2.3 The Child-focused Perspective ............................................................................................... 53
      2.3.1 Discussion ......................................................................................................................... 55
2.4 Consequences of a Finding of Alienation.................................................................58
  2.4.1 Reasoning........................................................................................................59
  2.4.2 Outcome...........................................................................................................62
3 Quasi-PA Cases........................................................................................................66
  3.1 The Parent-focused Perspective ..........................................................................66
    3.1.1 Discussion......................................................................................................69
  3.2 The Child-focused Perspective ...........................................................................71
    3.2.1 Discussion......................................................................................................73
  3.3 Consequences of a Quasi-PA Finding .................................................................74
    3.3.1 Reasoning......................................................................................................74
    3.3.2 Outcome........................................................................................................76
4 No-PA Cases .............................................................................................................77
  4.1 Parent-focused and Child-focused Perspectives................................................78
    4.1.1 Discussion......................................................................................................81
Chapter 4 Conclusion..................................................................................................84
Bibliography ................................................................................................................86
Cases ............................................................................................................................86
Other Sources ..............................................................................................................90
List of Figures

Figure 1: Potential Alienator ................................................................. 18
Figure 2: Findings ............................................................................... 20
Figure 3: Findings (Explicit and Implicit) ............................................. 21
Figure 4: Findings ............................................................................... 22
Figure 5: Potential Alienator ................................................................. 24
Figure 6: Findings by Alienating Parent ............................................... 25
Figure 7: Proportionality of Findings on Mothers' Alienation ............... 26
Figure 8: Proportionality of Findings on Fathers' Alienation .................. 27
Figure 9: Reasons for Finding No Parental Alienation ............................ 81
Introduction

In the last thirty years, the concept of parent-child alienation has generated significant interest in the legal, psychological, and political spheres. Every aspect of this concept, from its name to its definition, prevalence, and remedies, is deeply contested. As controversies rage in the academic sphere and political arena, parental alienation (“PA”) and parental alienation syndrome (“PAS”) have made their way into custody litigation. The use – or misuse – of alienation evidence in United States courts has been documented.\(^1\) However, research on PA litigation in Canada is still scarce. This research paper attempts to fill this gap in the literature by providing a snapshot of PA jurisprudence in Quebec. The empirical study of all PA decisions rendered in 2016 will allow for an exploration of the repercussions of PA’s polysemy in the jurisprudence.

How is PA defined and proven in law? How does the legal translation of alienation interact with academic controversies?

This study concludes that PA is poorly defined and weakly delimited in Quebec custody decisions, causing PA jurisprudence to appear incoherent, blurry and over-inclusive. Moreover, the case law suggests that the lack of precision and the over-incisiveness of PA often work to the detriment of mothers. After an introduction to PA and PAS, this text provides a descriptive and normative analysis of PA jurisprudence in Quebec in 2016. Chapter 3, Part 1 offers an overview of PA jurisprudence, noting the gendered distribution of PA allegations and findings,

the normalization of PA and the lack of rigor in the integration of extralegal knowledge in the judges’ analyses. **Chapter 4, Parts 2 to 4** focus on the definition, proof, and implications of alienation in each category of findings on PA. The study concludes that the parent-focused, broad, inconsistent and ambiguous definitions of PA justify preoccupations about the quality, fairness, and accuracy of PA jurisprudence. This situation calls for clearer guidelines and stricter delimitations of the use of PA in legal disputes.
Chapter 1
Parental Alienation: Definitions and Controversies

Clinicians have developed different models to explain a child’s resistance to contact with a parent. These models have generated heated litigation and debates in the legal sphere. The concept of the alienation of a child from a parent has “a rich history with varying redefinitions” and unresolved controversies. This section outlines its two most important definitions as well as the main controversies relevant to custody disputes.

1 Parental Alienation Syndrome

In the 1980s, Richard Gardner observed from his practice as a psychiatrist that an increasing number of children were rejecting their father in the context of custody disputes. He called “parental alienation syndrome” the diagnosable disorder resulting from the programming of a child by the preferred parent, coupled with the child’s own contributions to the vilification of the rejected parent. He observed that most alienators were mothers who, seeing that courts were increasingly granting custody to fathers, engaged in the sometimes relentless brainwashing of their child to gain an advantage in the custody dispute. Among the alienating techniques that ranged from sophisticated subterfuges to the passive or even unconscious reprobation of the child’s affection for the father, he emphasised the frequency and power of false allegations of

---


He described the syndrome as ranging in severity, with severely alienated children exhibiting most of the eight symptoms of PAS:

1) Denigration: the child denigrates the alienated parent;

2) Frivolous rationalization: the child has no reasonable explanation for her rejection of the alienated parent;

3) Lack of ambivalence: “[t]he hated parent is viewed as ‘all bad’ and the loved parent is ‘all good’”;5

4) The “independent-thinker” phenomenon: the child insists that she is not influenced by the alienating parent;

5) Reflexive support: the child constantly sides with the alienator in the parental conflict;

6) Absence of guilt: the child feels no guilt for rejecting or being cruel towards the alienated parent;

7) Borrowed scenarios: the child describes her grievances towards the alienated parent using adult vocabulary; her discourse mirrors the alienator’s;

8) Spread of animosity: the child rejects the alienated parent’s extended family, friends, and even pets.6

Gardner’s PAS started being used in court as an explanation for a child’s refusal to see a parent, generally the father. In cases of severe alienation, Gardner exhorted judges to proceed to


5 Gardner, supra note 4.

6 Ibid; Gardner, supra note 3; Gardner, supra note 4.
the “immediate transfer [of the child] to the home of the so-called hated parent”\(^7\) or to residential therapeutic programs where the child could be “deprogrammed.”\(^8\) In cases where violence by the father was alleged, PAS could be used to disprove these allegations and conclude to the indoctrination of the child by the mother.\(^9\) This finding called for “a concerted brainwashing effort to change the child’s beliefs that they have been abused.”\(^10\) Courts also adopted punitive interventions that included jailing recalcitrant alienators and alienated children.\(^11\)

Gardner’s theory attracted considerable critique, specifically regarding its lack of scientific validity.\(^12\) PAS is not recognised in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).\(^13\) Many experts reject the qualification of parental alienation as a

---

7 Gardner, supra note 4.
10 Ibid at 238.
13 William O’Donohue, Lorraine T Benuto & Natalie Bennett, “Examining the validity of parental alienation syndrome” (2016) 13:2–3 Journal of Child Custody 113; According to Warshak, supra note 12 at 290: “this is one of the weaker criticisms of the use of PAS in court. The DSM is not a test of whether a disorder exists.”
“syndrome” because PAS is a “relationship problem,” not a mental disorder. PAS is not, as a syndrome should be, “characterized by a cluster of symptoms appearing together which form a disease with ‘commonly recognized, or empirically verified pathogenesis, course, familial pattern or treatment selection.’” Labelling PAS as a syndrome conflicts with its very definition: determining whether the child’s rejection of a parent is unjustified or frivolous requires not “a clinical diagnosis, but rather a factual determination.” Critics also point to inconsistent definitions of PAS and to Gardner’s lack of academic rigor, as his “anecdotal findings were largely self-published, generally outside the context of peer review.” The prevalence of PAS is no less controversial. While Gardner first asserted that 90% of children whose parents where litigating on custody suffered from PAS, he later revised his estimates to under 40%. The description of PAS as a form of child abuse with serious long-term consequences is also contested. While some researchers find that adults who were alienated children suffer from depression, low self-esteem, and identity issues, others assert that “there are no reliable or valid measures of what type of and how much marital conflict will reliably cause such harm in which

15 Nicholas Bala et al, “Alienated children and parental separation: Legal responses in Canada’s family courts” (2007) 33 Queen’s LJ 79; Kelly & Johnston, supra note 11.
16 Bala et al, supra note 15.
17 Thomas & Richardson, supra note 14; Bruch, supra note 1.
20 Ibid.
children. Nor are there reliable data to suggest that substitution of one parent (the target parent) for the other parent (the ‘alienator’) will produce a healthy child.” 22 These disagreements have led legal commentators to suggest that judges should “close the gate” on PAS 23 or that courts admitting PAS evidence are using “junk science.” 24

As much as Gardner’s PAS was positively received by the fathers’ rights community, the feminist community and domestic violence advocates strongly opposed his theory. Gardner’s infamous misogynistic statements on rape, pedophilia, and family violence did not help his cause. 25 Lenore Walker and David Shapiro summarize that “[a]lthough written in gender-neutral terms, PAS often has been seen within the feminist community as simply one more attempt to blame mothers without considering fathers’ abuse of power and control.” 26 The idea that evil mothers program children to fear their father reinforces myths around family violence. Gardner specifies that “[w]hen true parental abuse and/or neglect is present, the child’s animosity may be justified, and the parental-alienation-syndrome explanation for the child’s hostility is not applicable.” 27 Nonetheless, the difficulty in distinguishing true abuse from false allegations remains, 28 especially when allegations of family violence are simply assumed to be false. 29

---

22 Walker, Brantley & Rigsbee, supra note 1 at 58.
24 Bruch, supra note 12.
25 For example, he has stated that mothers should respond to their daughter disclosing sexual abuse by her father by saying: “I don’t believe you. I’m going to beat you for saying it. Don’t you ever talk that way again about your father”: G Waller, “Small justice: Little justice in America’s family courts (Motion picture)” (2001) United States: Intermedia Inc.
26 Walker & Shapiro, supra note 12 at 275.
27 Gardner, supra note 8 at xx.
29 Kelly & Johnston, supra note 11; Meier, supra note 9.
threat of alienation allegations puts domestic violence victims in a difficult position, as denouncing the father’s violence is a double-edged sword. Domestic violence experts also point out that protective parenting or behaviours that result from being subjected to domestic violence intersect with what is defined as alienating behaviour. Feminist literature on PAS is interspersed with horror stories of children entrusted to abusive fathers wrongly identified as “alienated,” often with dramatic consequences.

2 Redefining PAS

Several researchers have redefined PAS to make it more scientifically sound and less gender-biased. Among the models that have been proposed, Joan Kelly and Janet Johnston’s reformulation is the most significant. They propose a family systems approach that places parent-child relationships on a continuum, ranging from positive relationships with both parents to “parental alienation.”

Kelly and Johnston define the 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.” Alienated children “express their rejection of that parent stridently and without

31 Walker, Brantley & Rigsbee, supra note 1; Meier, supra note 28.
32 See for example Amy Neustein & Michael Lesher, From madness to mutiny: Why mothers are running from the family courts–and what can be done about it (UPNE, 2005); Walker, Brantley & Rigsbee, supra note 1.
33 Kelly & Johnston, supra note 11.
34 Ibid.
apparent guilt or ambivalence, and […] strongly resist or completely refuse any contact with that rejected parent.”35 Despite resemblances with Gardner’s PAS, the researchers explicitly reject his model as well as the qualification of alienation as a syndrome. They suggest two crucial changes: distinguishing parental alienation from other forms of rejection and dropping the figure of the “evil alienator” to focus on the child.

Kelly and Johnston observe that “the indiscriminate use of PAS terminology has led to widespread confusion and misunderstanding.”36 As a result, children resisting contact with a parent for normal or realistic reasons have often been improperly labeled as “alienated.”37 They explain that “[t]here are multiple reasons that children resist visitation, and only in very specific circumstances does this behaviour qualify as alienation.”38 Moving away from Gardner’s model that “focuses almost exclusively on the alienating parent as the etiological agent of the child’s alienation,”39 Kelly and Johnston consider a variety of factors that play out in the child’s reaction, including the child’s age, vulnerabilities, and temperament. Both parents, as well as people outside of the nuclear family, contribute to the family dynamic. This new approach affects not only the definition, but also the prevalence of alienation. Indeed, alienating or indoctrinating behaviours are the norm in high-conflict custody-litigating families, but only a small proportion of children reject a parent and become alienated.40 The researchers conclude

35 Ibid at 254.
36 Ibid at 250.
37 Ibid at 251.
38 Ibid.
39 Ibid at 249.
40 Janet R Johnston, “Children of divorce who reject a parent and refuse visitation: Recent research and social policy implications for the alienated child” (2005) 38:4 Family Law Quarterly 757 In her study, one fifth of the children of high-conflict, litigating couples rejected a parent.
that “alienating behaviour by a parent is neither a sufficient nor a necessary condition for a child to become alienated.”  

Kelly and Johnston acknowledge that the extent to which alienated children spontaneously recover and reconnect with the alienated parent is unknown and that “there are no systematic long-term data on the adjustment and well-being of alienated children so that long-term prognostications are merely speculative.” They are more cautious than Gardner in their proposed interventions. The normalization of the parent-child relationship is “not necessarily an appropriate or achievable goal.” While Gardner recommends changes in custody, they explain that: “[o]nly in those relatively rare situations where the aligned parent is found to be psychotic or severely character-disordered, a serious abduction risk, and has corresponding serious parenting deficits do we consider a change of custody warranted. Even then, to obtain custody the rejected parent should be assessed as providing a better alternative.”

3 Enduring Controversies

Although Kelly and Johnston’s model generates less resistance than Gardner’s syndrome, controversies are far from settled. Despite this reformulation and other researchers’ additional contributions, some feminist commentators argue that the fundamental flaws of PAS have not

41 Kelly & Johnston, supra note 11 at 249.
42 Johnston & Kelly, supra note 12 at 87.
43 Ibid at 84.
44 Ibid at 86–87.
45 Ibid at 87.
been eliminated. While “[t]he new approach to alienation blunts some of the more extreme elements of Gardner’s theory and places the problem of alienation in a more moderate and reasonable light,”46 PA and PAS remain “more similar than different.”47 “Hybrid” cases where allegations of violence and alienation coexist continue to raise concerns. For example, Joan Meier finds that Leslie Drozd and Nancy Olesen’s decision tree to assess abuse, alienation and estrangement48 “implicitly privilege[s] alienation over abuse, and unintentionally, but inevitably, contribute[s] to the marginalizing or hiding of credible abuse and risk to children.”49 Peter Jaffe, Dan Ashbourne and Alfred Mamo emphasise the risks associated with misdiagnoses and, in cases of real alienation, the trauma caused by the abrupt termination of the child’s relationship with her main parental figure. They call for prudence and for the “serious consideration” of non-intervention in severe alienation cases “to protect the children from the ongoing litigation and uncertainty.”50 To add to this complexity, Michael Saini, Janet Johnston, Barbara Jo Fidler, and Nicholas Bala conclude, from a review of empirical studies of alienation, to a persisting lack of consensus on the definition of alienation and to a dire need for reliable instruments to identify and assess alienation.51

46 Meier, supra note 9 at 246.
47 Ibid. The author qualifies PA as “old wine in new bottles”; Newer models of PA are also described as “improved science but more bad policy”: Bruch, supra note 19 at 541; or as successive heads of the PAS hydra that keep spouting up every time one is chopped: Amy Neustein & Michael Lesher, “Evaluating PAS: A Critique of Elizabeth Ellis’s ‘A Stepwise Approach to Evaluating Children for PAS’” (2009) 6:3–4 Journal of Child Custody 322 at 322.
49 Meier, supra note 28 at 219.
This overview of the controversies, contested definitions and unresolved issues in dealing with alienation raises the question of PA’s definition and use in legal disputes. Canadian research in this area is still limited. In 2010, Nicholas Bala, Suzanne Hunt, and Carolyn McCarney published the first empirically based study of the responses of the Canadian family justice system to allegations of parental alienation. From the study of 175 cases between 1989 and 2008, the authors observe the increasing popularity of allegations of alienation, the role of experts and children’s lawyers in resolving alienation cases, and the legal responses to findings of alienation. They find allegations of alienation to most often be substantiated and supported by expert evidence. They furthermore explain that gender differences in findings of allegation result from the fact that mothers are generally the custodial parent. John-Paul Boyd in turn conducted a study of 115 parental alienation cases published between mid-2008 and mid-2015 in British Columbia. The author finds alienation claims to be most often inflammatory and unsubstantiated. He observes that mothers’ claims of PA by the father are more often substantiated than fathers’ allegations. He calls on legal actors to resist caricatures of evil alienators and avoid references to parents’ rights, to the benefit of more nuanced and child-centered approaches. No published study describes the use or definition of parental alienation in Quebec jurisprudence.

---

Chapter 2  
The Study

This research provides a snapshot of the use of alienation theories and concepts in Quebec jurisprudence in 2016, and observes how models and controversies interact with courts’ definitions and understandings of parental alienation. The study is based on decisions identified, in the database SOQUIJ,\(^{54}\) with the following search words: “alienation OR aliéné OR aliénant OR alienated OR alienating” AND “garde OR custody” AND “child OR enfant.”\(^{55}\) Results were filtered by date (January 1\(^{st}\) 2016 to December 31\(^{st}\) 2016) and by classification (results marked as “family” cases).

The search returned 105 results. Decisions using “alienation” is another sense (such as “alienation of property”) or that were not family disputes were eliminated, for a total of 89 relevant cases. These cases were divided into two categories. The first category supports the observations, quantitative analysis, and arguments presented throughout this paper. It includes 63 decisions where PA was alleged, found or discussed in the context of a decision on custody. The remaining 26 cases are decisions mentioning PA only in a quote from a previous judgment, or cases tackling purely financial questions,\(^{56}\) procedural matters,\(^{57}\) contempt of court,\(^{58}\) or

\(^{54}\) SOQUIJ is the most complete database for Quebec jurisprudence.

\(^{55}\) SOQUIJ automatically considers variants such as plurals, masculine and feminine forms and conjugations.

\(^{56}\) For example, Droit de la famille — 162650, 2016 QCCS 5239; Droit de la famille — 163040, 2016 QCCS 6101.

\(^{57}\) For example, Droit de la famille — 163332, 2016 QCCS 6617; Droit de la famille — 161687, 2016 QCCS 3278.

\(^{58}\) Droit de la famille — 161598, 2016 QCCS 3104.
appeals.\textsuperscript{59} This second category is excluded from the statistics presented below, but is part of a complete portrayal of PA jurisprudence and therefore informs some of the qualitative observations made in \textbf{Chapter 3, Part 1} (“General Observations”).

The study of alienation cases is both descriptive and critical. It starts from the assumption that parental alienation exists, but that models that define it may be imperfect, biased against mothers, or misunderstood. The analysis focuses on the judge’s reasoning, method and approach, rather than the outcome in any given case. Therefore, a critique of a judge’s finding on alienation does not imply a disagreement with the custody arrangement ultimately chosen. The exploration of the jurisprudence is guided by the following research questions:

- How is PA defined in PA jurisprudence? Does its definition in law correspond to one or several definitions in the literature? Do judges focus on the child or on the alienator?

- Is PAS still used in Quebec jurisprudence, or has it been entirely replaced by PA? Are there disputes over the admissibility and the scientific validity of PA or PAS evidence?

- How do the controversies regarding the consequences of PA and the required interventions translate into the jurisprudence?

- How is PA proven in court? Do alienators exhibit relentless programming or trivial flaws? Which type of threshold is used to distinguish conflict from alienation? What is the role of false sexual assault allegations or allegations of violence in proving PA?

\textsuperscript{59} \textit{Droit de la famille} — 161960, 2016 QCCA 1300; \textit{Droit de la famille} — 162708, 2016 QCCA 1816; \textit{Droit de la famille} — 162895, 2016 QCCA 1914.
Chapter 3
Results

This study reveals three crucial flaws in parental alienation jurisprudence. First, the cases show an excessive use of the concept of alienation. PA is used in situations that do not fit the basic definitions developed in the academic literature. In fact, judges sanction problematic behaviours with little consideration of whether the child presents the signs of being alienated. Second, broad, incoherent and parent-focused definitions of PA lead to contradictions and confusion in the jurisprudence. Finally, the ambiguity and over-inclusiveness of PA appears to specifically penalize mothers. These three arguments are built simultaneously through the study of the alienation cases, sorted by outcome of the allegation of PA.

Part 1 presents an overview of PA jurisprudence in terms of allegations, findings, and their gender dimensions. It reveals the popularity of PA and its disconnect from science and psychology. Part 2 focuses on how PA is defined, assessed and addressed in cases with a positive finding of alienation. Part 3 turns to ambiguous, “quasi-alienation” cases, while Part 4 explores the process by which judges arrive to the finding that there is no parental alienation in a case. Throughout these sections, critical observations point out the wide net cast by the concept of PA, the ambiguity in assessing PA, and the inconsistencies in defining alienation.

1 General observations

This section touches on the context in which PA allegations arise, discusses the identity of alienators and the gender dimension of PA findings, observes the normalisation of the concept of PA in Quebec family law jurisprudence, and assesses the role of science and expert testimony
in making a finding on PA. These observations show that the realm of parental alienation in law is large, unconstrained by the use of precise models of alienation or by the reliance on expert evidence, and that mothers are faced with more ambiguous findings on their alleged alienation.

1.1 Allegations and findings

Alienation allegations arise in the context of “high conflict” families: parents are frequent litigators, and courts have to intervene or reassess the situation repeatedly. Parties often disagree not only on custody, but also on financial issues, accusing each other of not paying child support or demanding custody for financial reasons. Although financial disputes rarely interact with the analysis on custody and PA, they inform on the extent of the conflict that often exists in these families. The same can be said about domestic and child violence, most often by the father, mentioned in about a quarter of the cases. Discussions of violence interact with the

---

60 See for example Droit de la famille — 161887, 2016 QCCS 3642; Droit de la famille — 16735, 2016 QCCS 1426; Droit de la famille — 1660, 2016 QCCS 143; Droit de la famille — 161232, 2016 QQCS 2417; Droit de la famille — 161167, 2016 QCCS 2289.
61 See for example Droit de la famille — 161518, 2016 QCCS 2933; Droit de la famille — 16531, 2016 QQCS 1036; Droit de la famille — 16735, supra note 60.
62 See for example Droit de la famille — 16757, 2015 QCCS 1466; Droit de la famille — 163385, 2016 QCCS 6709; Droit de la famille — 16531, supra note 61.
63 For a counter-example, see Droit de la famille — 16531, supra note 61.
64 See for example Droit de la famille — 162271, 2016 QCCS 4308: “Father insistence that the Court address his claim for the Fido telephone accounts dating back to 2011 indicates the degree of animosity he continues to feel towards Mother. The Court shall not deal with such a trivial claim in light of the serious nature of these proceedings.”
65 See however ibid; Droit de la famille — 16761, 2016 QCCS 1470; and Droit de la famille — 161749, 2016 QCCS 3390 where accusations of violence target the mother or are reciprocal.
66 This estimation can only be imperfect, as Courts frequently fail to distinguish domestic violence from family conflict.
PA analysis in different ways. Domestic violence can partly justify the child’s rejection of the father\textsuperscript{67} or the mother’s seemingly alienating actions.\textsuperscript{68} On the contrary, abuse allegations can constitute potential evidence of alienation if found unsubstantiated.\textsuperscript{69} Finally, a parent can argue that the other one is both violent and alienating.\textsuperscript{70} Most often, however, the issue of violence is isolated from that of alienation. It can inform other issues such as parental capacity\textsuperscript{71} or the viability of shared custody,\textsuperscript{72} although it is often simply mentioned in the “context” section of the decision, defining the parties’ conflictual relationship or the reason for their separation without further relevance to the case. Overall, the role of family violence in PA cases is defined by the courts’ ambiguity and euphemisms in describing violence,\textsuperscript{73} the frequent failure to make a finding or act on violence allegations and the usual isolation of violence concerns from the issue of alienation. This lack of engagement is unfortunate, as it limits the study of cases where both alienation and violence are alleged (“hybrid cases”) – the type of cases generating the most controversy in the literature.

Turning to the identity of potential alienators, in most cases, one parent alleges that the other is alienating. In seven cases, the PA allegation is reciprocal (or both parents are considered

\textsuperscript{67} See Droit de la famille — 16192, 2016 QCCS 331; Droit de la famille — 161167, supra note.

\textsuperscript{68} Droit de la famille — 16621, 2016 QCCS 1224.

\textsuperscript{69} Droit de la famille — 16221, 2016 QCCS 378; Droit de la famille — 162891, 2016 QCCS 5798; Droit de la famille — 16531, supra note 61; Droit de la famille — 162271, supra note 64.

\textsuperscript{70} Droit de la famille — 162271, supra note 64; Droit de la famille — 16761, supra note 65; Droit de la famille — 161749, supra note 65.

\textsuperscript{71} Droit de la famille — 16896, 2016 QCCS 1771; Droit de la famille — 16473, 2016 QCCS 908; Droit de la famille — 163326, 2016 QCCS 6611; Droit de la famille — 161518, supra note 61.

\textsuperscript{72} Droit de la famille — 163385, supra note.

\textsuperscript{73} Droit de la famille — 163326, supra note.
potentially alienating), either of the same or of different children. In four cases, the potential alienator is another family member: the paternal aunt or the custodial grandmother, who has raised the child and is involved in a dispute against the child’s father, grandfather or mother.

![Figure 1: Potential Alienator](image)

---

74 Droit de la famille — 16735, supra note 60; Droit de la famille — 162271, supra note 64; Droit de la famille — 161486, 2016 QCCS 2906; Droit de la famille — 16899, 2016 QCCS 1789; Droit de la famille — 16506, 2016 QCCS 988; Droit de la famille — 161136, 2016 QCCS 2244; Droit de la famille — 16987, 2016 QCCS 1972. When discussing these cases, a note will indicate whether the observation applies to the mother’s alleged alienation or rather the father’s.

75 Droit de la famille — 163385, supra note 62.

76 Droit de la famille — 16923, 2016 QCCS 1868.

77 Droit de la famille — 16622, 2016 QCCS 1223.

78 Droit de la famille — 161556, 2016 QCCS 3017.
An allegation of PA is neither a sufficient nor a necessary condition for a finding of PA: some cases involve allegations with no finding, and in others PA is considered without it being alleged. Because seven cases involve two potential alienators, where one, both or neither parent can be found alienating, there are 70 potential findings on alienation. These results fall under one of four possible categories of findings:

- **Positive finding of PA (“PA cases”):** cases where the Court states that the child is alienated and/or that the parent is alienating.

- **Negative finding of PA (“no-PA cases”):** cases where the Court finds that there is no alienation.

- **“Quasi-PA cases:”** cases that fall somewhere between the two previous categories, with no finding of PA “strictly speaking.” This category includes cases where the Court finds a situation resembling PA, signs of PA, or a risk of PA.

- **Unclear/no finding:** cases where there is no explicit finding on PA. This category includes cases where the parent’s PA allegation is not addressed.

The 70 results are distributed among these four categories in the following manner:
Figure 2: Findings

Considering the important proportion of cases with no explicit finding, unclear cases can be reclassified, looking for an implicit finding.\(^7^9\) The new classification, although somewhat subjective, allows for a clearer and more complete picture of what happens when PA is considered. Five cases remain with no finding, even implicit.\(^8^0\)

\(^{7^9}\) For example, a judge stating that the alleged alienator is an excellent mother suggests that there is no parental alienation.

\(^{8^0}\) *Droit de la famille* — 161162, 2016 QCCS 2284; *Droit de la famille* — 162424, 2016 QCCS 4722; *Droit de la famille* — 162225, 2016 QCCS 4148; *Droit de la famille* — 16761, supra note 65; *Droit de la famille* — 163326, *supra* note 71.
Among cases with a finding, the most frequent result is the absence of PA (44%). Quasi-PA cases represent 25% of the findings on alienation. This proportion signals the lack of strict boundaries to the applicability of PA theories: PA rhetoric and concepts often impact cases where there is no PA strictly speaking. These numbers can also signal early interventions and preventive measures taken by courts, a type of reasoning that will be explored in Part 3 and found to concern a minority of quasi-PA cases.

**Figure 3: Findings (Explicit and Implicit)**

Among cases with a finding, the most frequent result is the absence of PA (44%). Quasi-PA cases represent 25% of the findings on alienation. This proportion signals the lack of strict boundaries to the applicability of PA theories: PA rhetoric and concepts often impact cases where there is no PA strictly speaking. These numbers can also signal early interventions and preventive measures taken by courts, a type of reasoning that will be explored in Part 3 and found to concern a minority of quasi-PA cases.
This brief overview of allegations and findings hints towards the complexity of PA jurisprudence. On the one hand, PA allegations coexist with other concerns, such as financial matters or family violence. On the other hand, PA findings reveal ambiguity, as judges often fail to make an explicit, clear, or binary finding on the issue.

1.2 The Gender of Parental Alienation

One of the most important preoccupations regarding PA is its gendered nature. This study confirms that PA allegations are gendered, and finds that judges make more ambiguous findings regarding mothers’ alienation. It goes without saying that PA cases are not exempt from the gender dynamics that can intervene in any custody dispute and that have been extensively
documented.\textsuperscript{81} Judges and experts can, for example, invoke stereotypes on fathers’ and mothers’ roles and abilities,\textsuperscript{82} rely on essentialist conceptions of gender expression,\textsuperscript{83} or use euphemisms to discuss domestic violence.\textsuperscript{84} However, this study focuses on gender issues that directly relate to the question of PA.

Comparing how often mothers and fathers are alleged or considered as potentially alienating reveals a clear gender imbalance, with the mother-figure\textsuperscript{85} being the potential alienator in 68\% of the cases, compared to 32\% for fathers.

\begin{flushright}
\end{flushright}

\begin{flushright}
82 See for example \textit{Droit de la famille} — 161170, 2016 QQCS 2290, para 3 and 6; \textit{Droit de la famille} — 162450, 2016 QCCS 4765, para 71; \textit{Droit de la famille} — 161887, supra note 60; \textit{Droit de la famille} — 16896, supra note 71.
\end{flushright}

\begin{flushright}
83 See for example \textit{Droit de la famille} — 161912, 2016 QCCS 3681, para 28.
\end{flushright}

\begin{flushright}
84 \textit{Droit de la famille} — 16896, supra note 71.
\end{flushright}

\begin{flushright}
85 The mother or grandmother, excluding one case where both parties are women.
\end{flushright}
The gender dimension of PA allegations is transposed to the findings: mothers are more likely to be found alienating.

Figure 5: Potential Alienator
These differences are often explained by reference to the gendered assignation of the roles of custodial and non-custodial parents. Indeed, the programming of a child is facilitated by frequent contact, rather than occasional access, to the child. Furthermore, it is the access parent who benefits from an allegation of PA that can support a demand for a change in custody. Still, not all alienators are custodial parents. In this sample, alienators had full custody in 65% of the cases, access in 15%, and shared custody in 20% of the cases. The custody-arrangement

---

86 See for example Bala, Hunt & McCarney, supra note 52 at 166: “In order to be alienated by one parent, a child must identify very closely with that parent. This close identification generally only occurs if the child is living primarily or exclusively with that parent.”; Richard A Gardner, “Parental Alienation Syndrome vs. parental alienation: which diagnosis should evaluators use in child-custody disputes?” (2002) 30:2 American Journal of Family Therapy 93 at 105: “Since the mid-1990s, I have noted an increase in the number of men who induce PAS in their children [...]. I believe one reason for this change relates to the fact that men are now more likely to be primary caretakers, have greater access to the children, and so have more time and opportunity to program them.”
Explanation is, however, not particularly informative; it says nothing of the role of experts and judges in legitimizing fathers’ and mothers’ allegations of PA. Do judges more frequently believe fathers, or does the disproportion in PA findings simply reflect the disproportion in PA allegations? The comparison between the proportion of allegations and the proportion of findings against a parent can begin to answer this question.

Figure 7: Proportionality of Findings on Mothers' Alienation
The disproportion between allegations and findings reveals a small underrepresentation of mothers both in findings of PA and in findings of no PA: they represent 68% of potential alienators, but only 63% of these findings. Fathers are in turn slightly overrepresented in these two categories. This difference is not significant. It does not indicate that, among parents alleged as alienators, mothers are more likely to be found alienating; nor does it confirm that fathers make more unsubstantiated allegations of PA than mothers. However, mothers are more clearly overrepresented in ambiguous categories: cases with no finding and quasi-PA cases. This disproportion suggests that findings on mothers’ alienation are less clear-cut. Women are more often faced with an intervention based on a PA concern without quite being alienators. While a general overview of allegations and findings on PA reveals ambiguity, a gender-sensitive analysis suggests that this ambiguity is to the detriment of mothers.
1.3 The Normalization of Parental Alienation

PA and PAS are contested theories that give rise to heated debates regarding whether and how PA should be used in court. Nonetheless, the cases studied here provide five indications that PA has been normalized and popularized in Quebec jurisprudence. First, the number of alienation cases – 63 – is important for a 12-month period. By contrast, Bala, Hunt and McCarney found 175 PA cases between 1989 and 2008 across Canada, with 36 cases in 2008. This difference suggests a rapid increase in the popularity of PA (or a previous under-estimation of the prevalence of PA cases).\(^{87}\) Boyd’s study corroborates this trend, as he finds, in British Columbia alone, 22 alienation cases in 2014 and 35 (projected) cases in 2015.\(^{88}\) Although differences in methodologies, databases, and time and geographic periods limit any definitive comparison, the three studies point towards a popularization of PA across Canada and in Quebec. As PA is mentioned in approximately 3 to 8\% of custody decisions,\(^{89}\) the concept is not marginal. Second, the Quebec Court of Appeal’s engagement with PA also testifies to its normalisation. Not only did the Court of Appeal mention PA three times in 2016,\(^ {90}\) it also engaged with PA in 60 custody decisions, starting in 1974 (first mention of “alienation” of a

\(^{87}\) Bala, Hunt & McCarney, supra note 52 appear to have searched for cases only in English. They also used more restrictive search words, requiring that a word derived from “alienation” be used within 10 words of “parent” or “child,” even though these people can be designated by their name in a judgment. The authors also excluded cases with no finding, a choice that risks artificially inflating the proportion of substantiated allegations by ignoring cases where the judge disregards a frivolous PA allegation. Nonetheless, even excluding cases without an explicit finding, there are more alienation cases in Quebec in 2016 than in Canada in 2008.

\(^{88}\) Boyd & Canadian Research Institute for Law and the Family, supra note 53.

\(^{89}\) The 89 cases with a mention of PA represent approximately 3\% of decisions on SOQUIJ that are classified as “family” cases and include the words “enfant” (or “child”) and “garde” (or “custody”). The cases from this study classified by SOQUIJ as custody decisions represent 8\% of this category.

\(^{90}\) Droit de la famille — 161960, supra note 59; Droit de la famille — 162895, supra note 59; Droit de la famille — 162708, supra note 59. In these cases, PA is mentioned in the background; the Court of appeal is not making general statements on PA law.
child)\textsuperscript{91} or 1992 (first mention of “parental alienation”).\textsuperscript{92} Third, in appeal and trial cases alike, PA is never presented as a contested theory, concept, or legal tool. There are no apparent disputes over the admissibility of PA evidence, and no judge questions the reliability of expert evidence on PA on a principled basis. Fourth, judges demonstrate their awareness of PA theories by occasionally raising the issue on their own initiative, expressing their concerns regarding PA without it being alleged or mentioned by an expert.\textsuperscript{93} Finally, a clear sign of the popularization and normalization of PA is its mention in cases without any PA allegation or concern, as one of the general criteria to evaluate whether a shared custody arrangement is possible; for example:

Les principaux critères qui doivent guider l’analyse du tribunal en matière demande de garde partagée sont les suivants :

a) l’âge des enfants, ainsi que leurs besoins particuliers et désirs;

b) la capacité parentale à voir au bien-être et au développement des enfants;

c) les valeurs éducatives, morales et spirituelles dans chacun des milieux de vie;

d) la capacité des parents d’offrir un environnement stable;

e) la disponibilité des parents pour consacrer le temps et les ressources nécessaires au mieux-être des enfants;

f) la capacité des parents à communiquer ensemble;

\textsuperscript{91} Bockler \textit{c} Bockler, [1974] CA 41.

\textsuperscript{92} \textit{Droit de la famille} — 1549, [1992] RJQ 855.

\textsuperscript{93} See for example \textit{Droit de la famille} — 161724, 2016 QCCS 3334, para 55; \textit{Droit de la famille} — 162587, 2016 QCCS 5063, paras 26–27; \textit{Droit de la famille} — 16622, supra note 77.
g) la proximité géographique des résidences de chaque parent;

h) *l’absence de syndrome d’aliénation parentale* et la reconnaissance de l’importance des contacts de l’enfant avec chacun des parents.\(^9_4\)

A similar formulation is used in two other cases.\(^9_5\) Although these three decisions are authored by the same judge, the normalisation of PA as a general factor in considering shared custody is not limited to her. A search on CanLII identifies 39 Quebec decisions by various judges who, citing a precedent or a doctrinal author, present either “la presence d’un syndrome d’aliénation parentale” or “l’absence d’un syndrome d’aliénation parentale” as a factor to be considered in evaluating the possibility of shared custody. These 39 decisions, rendered between 2003 and 2016, do not dominate the jurisprudence. However, the fact that there is even a marginal trend granting PA the status of a general criterion to be evaluated in every case where shared custody is envisioned, no more controversial than the proximity between the parents’ residences or functional communication, is yet another sign of the normalisation of PA in Quebec family law jurisprudence. These five indicators of the popularization of parental alienation only partially validate the hypothesis that alienation is used too frequently. The realm of alienation is large; to determine if it is *too* large – if alienation is defined *too* broadly –, this text now turns to observing whether and how alienation findings are constrained by scientific knowledge.

\(^9_4\) *Droit de la famille* — 161294, 2016 QCCS 2521, para 19 (references omitted, emphasis added).

\(^9_5\) *Droit de la famille* — 162615, 2016 QCCS 5148, para 110; *Droit de la famille* — 16749, 2016 QCCS 1437, para 19.
1.4 The Science of Parental Alienation

PA is a legal argument, but it originates from the fields of psychology and psychiatry. What role(s) do science and experts have in defining PA and constraining the judge’s finding? The cases studied here suggest a limited and inconsistent use of PA models, theories, and definitions. Moreover, while expert evidence plays a crucial role in several cases, it is not required for judges to make a finding of PA. The science of parental alienation law is ambiguous and filled with confusion and inconsistencies.

1.4.1 Models and Definitions

The cases show that judges rarely choose a model of PA, or even define the concept. Although the label “PA” dominates, some cases refer to “PA” and “PAS” interchangeably. The influence of Gardner’s model is mostly felt in the few cases that define PA: the case may name him, use the label “PAS,” borrow from his eight symptoms in defining the common signs of PA, or use vocabulary associated with his work, such as “indoctrination” or “programming” of the child. Judges engage with Gardner’s work only indirectly, through other cases and legal materials. For example, in Droit de la famille — 16192, the judge draws from a previous court decision to define PA as “une situation dans laquelle un parent, consciemment ou inconsciemment, programme et endoctrine négativement son enfant au détriment de l’autre.

---

96 Droit de la famille — 162621, 2016 QCCS 5162; Droit de la famille — 163175, 2016 QCCS 6403; Droit de la famille — 16192, supra note 67; Droit de la famille — 16899, supra note 74.
97 Droit de la famille — 16192, supra note 67.
Turning to the demonstration of PA, the Court continues, quoting from the same decision:

Il est possible de reprendre les critères établis par le docteur Richard Gardner, une sommité en matière d'aliénation parentale, pour démontrer l'existence d'un syndrome d'aliénation parentale. Ces éléments ont été repris par la juge Hélène Langlois dans l'affaire précitée de Droit de la famille – 14822. En voici l'énumération:

‘[100] (…) 

1. the child denigrates the parent;

2. the child provides absurd or frivolous reasons to explain the denigration of the Father;

3. the child lacks any ambivalence or nuance;

4. the child affirms being influenced by the alienating parent;

5. the child supports the alienating parent;

6. there is no sense of guilt from the child;

7. the child takes on language and develops adult scenarios;

8. the children’s animosity extends to the alienated parent’s fami[y] and friends;’

98 Ibid.

99 Ibid, para 133; citing Droit de la famille — 122229, 2012 QCCS 3906, para 52 (emphasis added).
This 2016 case cites Gardner as a preeminent expert on PA/PAS without any reference to the controversial nature of Gardner’s theory, especially regarding the qualification of PA as a “syndrome.”¹⁰⁰ Other cases use a similar jurisprudential approach,¹⁰¹ with one case going as far as to cite Gardner’s eight symptoms almost textually, while saying that they are criteria developed in the jurisprudence:

L’aliénation parentale, quant à elle, peut se constater de différentes façons. Au fil du temps certains critères se sont dégagés de la jurisprudence. Le Tribunal fait siens les propos du juge De Wever, pour évaluer la présence d’une aliénation parentale modérée ou sévère.

1) une campagne de dénigrement de l'enfant à l'égard du parent rejeté;

2) l’enfant parle du rejet du parent en utilisant des raisons qui ne tiennent pas la route;

3) un manque d'ambivalence chez l’enfant;

4) un manque de culpabilité chez l’enfant qui se croit justifié de dénigrer son parent;

5) l'animosité de l’enfant s'étend à l'entourage du parent aliéné;

6) l’enfant se présente comme l'allié du parent aliénant;

7) l’emprunt par l’enfant de propos tenus par le parent aliénant;

¹⁰⁰ This controversy does not appear to have been argued at trial.

¹⁰¹ Droit de la famille — 162621, supra note 96, para 90; Droit de la famille — 163175, supra note 96.
8) l’enfant se présente comme penseur indépendant à l’abri de toute influence.”

This jurisprudential approach affects the accuracy of the knowledge that judges have at their disposal when applying PA theories to a case. When they cite a previous case that cites a doctrinal text that in turn cites Gardner, the original source of the extralegal knowledge is quickly lost, disengaging judges from debates and controversies regarding the validity of PA and especially PAS. PA acquires an ambiguous position between a scientific fact and a legal test. This equivocal position seems to exempt PA from the necessity of an expert diagnosis (as discussed below). At the same time, the criteria are not systematically applied like the branches of a legal test, nor do judges state how many should be found to support a finding of PA. In fact, the criteria proving PA are cited but not engaged with, and there is rarely any dialogue between stated definitions of PA and the judge’s analysis of the case before her. This disconnect seems to make room for errors. For example, the abovementioned case *Droit de la famille* — 16192 misstates the signs of PA. While it cites that an alienated child “affirms being influenced by the alienating parent,” the opposite is true: alienated children *deny* being influenced by the preferred parent (the “independent-thinker” phenomenon). This error may not impact the outcome of the case, but is illustrative of the little importance, in the jurisprudence, of consistently defining PA.

---

102 *Droit de la famille* — 163175, *supra* note 96, para 37 (emphasis added).

1.4.2 Expert Testimony

The limited role of science in PA cases and the ambiguous position of PA as a half-scientific, half-legal hybrid is confirmed by the role of expert testimony. Expert testimony, when available, is often determinative. However, judges frequently make findings of PA in the absence of expert evidence.

When experts – social workers and psychologists – testify on PA, judges generally express deference\(^{104}\) and adopt their finding and proposed solution. Nonetheless, they remain critical of experts who seem partial towards a parent,\(^{105}\) biased towards shared custody,\(^{106}\) or unqualified to diagnose PA.\(^{107}\) When judges hesitate on whether there is alienation, they may grant or order an expert evaluation despite the foreseeable costs, delays and disruption to the child’s life.\(^{108}\) On the contrary, an expert evaluation is deemed unnecessary in a few cases where the judge rather renders a temporary order to see how the situation evolves in a month,\(^{109}\) suggests that the child consult a psychologist outside of the legal process,\(^{110}\) or finds that PA is irrelevant to the custody determination of a 13-year-old.\(^{111}\) In addition to testifying on whether they see PA, experts can also define its gravity with general assertions regarding the long-term

\(^{104}\) See for example *Droit de la famille* — 16592, 2016 QCCS 1151, para 95.

\(^{105}\) *Droit de la famille* — 16757, supra note 62.

\(^{106}\) *Droit de la famille* — 161188, 2016 QCCS 2336, para 53.

\(^{107}\) *Droit de la famille* — 162891, supra note 69.

\(^{108}\) *Droit de la famille* — 163308, 2016 QCCS 6595; *Droit de la famille* — 162708, supra note 59; *Droit de la famille* — 162587, supra note 93; *Droit de la famille* — 162424, supra note 80.

\(^{109}\) *Droit de la famille* — 162651, 2016 QCCS 5240.

\(^{110}\) *Droit de la famille* — 16761, supra note 65, para 23.

\(^{111}\) *Droit de la famille* — 163196, 2016 QCCS 6433, paras 19–21.
consequences of PA on children, particularly regarding their future romantic relationships. For example, in one case, “[un] changement de garde s’avère nécessaire afin d’éviter un avenir perturbé à l’enfant. L’expert rapporte que les enfants victimes d’aliénation parentale sévère ont tendance à entrer en relation avec des conjoints violents ou à s’adonner aux drogues dures. Ils deviennent des êtres fortement carencés avec un grand mal de vivre.”112 In another case, the expert emphasises the importance of changing the child’s perception of her father: “Sinon, dit-elle ‘nous pouvons craindre pour Y de grosses difficultés dans l’établissement futur de toute relation affective, et notamment dans son futur couple ou dans son rôle éventuel de future mère.’”113 Considering the lack of reliable data on the long-term consequences of PA on children, these experts seem to contribute to a dramatization of PA concerns in the jurisprudence.

Cases finding PA, quasi-PA, and no PA have different relationships to expert evidence, and there are inconsistencies regarding whether a judge can find PA absent an expert evaluation. In PA cases, an expert testifies that there is alienation in nine cases (leading to 10 findings of alienation, out of a total of 20).114 An expert testifies without commenting on PA in five cases (six findings),115 leaving the judge to extrapolate, for example, from the expert’s description of a conflict of loyalty to a finding of PA.116 Three cases (four findings) make findings of PA with no

112 Droit de la famille — 162621, supra note 96, paras 84–85 (emphasis added).
113 Droit de la famille — 161887, supra note 60 (emphasis added).
114 Droit de la famille — 16592, supra note 104; Droit de la famille — 161472, 2016 QCCS 2863; Droit de la famille — 16428, 2016 QCCS 827; Droit de la famille — 162541, 2016 QCCS 4922; Droit de la famille — 162621, supra note 96; Droit de la famille — 163175, supra note 96; Droit de la famille — 161232, supra note 60; Droit de la famille — 161167, supra note 60; Droit de la famille — 16987, supra note 74.
115 Droit de la famille — 162450, supra note 82; Droit de la famille — 161556, supra note 78; Droit de la famille — 16899, supra note 74; Droit de la famille — 162271, supra note 64; Droit de la famille — 161887, supra note 60.
116 Droit de la famille — 162450, supra note 82; Droit de la famille — 161556, supra note 78.
expert evidence whatsoever. In one case, the judge notes the need for an expert report but concludes on PA nonetheless by referring to Gardner’s criteria:

[132] Bien entendu, habituellement ce sont les experts auxquels une situation vraisemblable d'aliénation parentale est présentée qui posent le diagnostic. Or, dans la présente affaire ni les parties ni le Tribunal bénéficient d'une telle expertise. […]

[133] Par contre, il est possible de reprendre les critères établis par le docteur Richard Gardner, une sommité en matière d'aliénation parentale, pour démontrer l'existence d'un syndrome d'aliénation parentale. In short, half of the findings of PA are not supported by an expert diagnosis.

Turning to quasi-PA cases, the judge may order an expert evaluation to confirm a suspicion of PA (three cases). Among the 13 remaining decisions, there is no expert testimony in seven cases. The finding of quasi-PA is supported by an expert report in four cases, while the two remaining cases include an expert report that either does not comment on PA, or

117 Droit de la famille — 16506, 2016 QCCS 988 (both parents’ alienation); Droit de la famille — 16192, supra note; Droit de la famille — 16531, supra note.
118 Droit de la famille — 16192, supra note 67.
119 Droit de la famille — 161642, 2016 QCCS 3183; Droit de la famille — 162587, supra note 93; Droit de la famille — 163308, supra note 108.
120 Droit de la famille — 16920, 2016 QCCS 1854; Droit de la famille — 162769, 2016 QCCS 5528; Droit de la famille — 163070, 2016 QCCS 6131; Droit de la famille — 161591, 2016 QCCS 3069; Droit de la famille — 161724, supra note 93; Droit de la famille — 16622, supra note 77; Droit de la famille — 16621, supra note 68.
121 Droit de la famille — 162295, 2016 QCCS 4399; Droit de la famille — 161518, supra note 61; Droit de la famille — 161912, supra note 83; Droit de la famille — 1660, supra note 60.
122 Droit de la famille — 16735, supra note 60.
finds that there is no PA. In sum, excluding cases where an expert evaluation is ordered, the finding of quasi-PA is supported by expert evidence in only 31% of the cases. This proportion suggests the less scientific, more ambiguous nature of quasi-PA cases. In these cases, judges grant themselves more flexibility to extrapolate and make findings without an expert evaluation on the matter, and present PA as a more common-sense, less technical matter, as will be explored in Part 3 on quasi-PA cases.

Finally, in no-PA cases, all findings are coherent with the state of the expert evidence, either because an expert makes the finding that there is no PA (six cases, eight findings), because an expert testifies without commenting on PA (six cases), or because there is no expert evaluation (13 cases). Two cases state that there can be no finding of PA absent an expert report. One judge comments: “La preuve, par contre, n'établit pas l'existence d'une situation d'aliénation parentale [...] à tout événement, la démonstration de la présence d'aliénation parentale relève d'une preuve d'expert qui n'a pas été faite.” Another judge

123 Droit de la famille — 16757, supra note 62.
124 Droit de la famille — 161486, supra note 74 (both parents’ alleged alienation); Droit de la famille — 161583, 2016 QCCS 3067; Droit de la famille — 161136, supra note 74 (both parents’ alleged alienation); Droit de la famille — 162437, 2016 QCCS 4734; Droit de la famille — 16844, 2016 QCCS 1620; Droit de la famille — 16923, supra note 76.
125 Droit de la famille — 161956, 2016 QCCS 3779; Droit de la famille — 161929, 2016 QCCS 3707; Droit de la famille — 16735, supra note 60; Droit de la famille — 163385, supra note 62; Droit de la famille — 161188, supra note 106; Droit de la famille — 162271, supra note 64.
126 Droit de la famille — 161575, 2016 QCCS 3055; Droit de la famille — 162622, 2016 QCCS 5163; Droit de la famille — 162698, 2016 QCCS 5375; Droit de la famille — 162424, 2016 QCCS 4722; Droit de la famille — 161542, 2016 QCCS 1990; Droit de la famille — 16593, 2016 QCCS 1152; Droit de la famille — 161303, 2016 QCCS 2548; Droit de la famille — 162282, 2016 QCCS 4333; Droit de la famille — 16756, 2016 QCCS 1465; Droit de la famille — 16221, supra note 69; Droit de la famille — 16896, supra note 71; Droit de la famille — 161170, supra note 82; Droit de la famille — 16473, supra note 71.
127 Droit de la famille — 161929, supra note 125 (emphasis added).
appears tempted to make a finding of PA, but is reminded by counsel of a previous decision where he determined that an expert evaluation was necessary. The judge concludes: “Je ne me dédierai pas. Je pense que si on plaide l’aliénation parentale et qu’on veut un jugement fondé sur l’aliénation parentale, ça prend en principe une preuve d’expert.”\(^\text{128}\) These cases contradict half of the PA cases and 69% of the quasi-PA cases, which make a finding of PA or quasi-PA unsupported by expert evidence. Interestingly, these findings markedly differ from Bala, Hunt and McCarney’s observations that PA cases rely heavily on expert evidence:\(^\text{129}\) the optional nature of expert evaluations to decide on PA may be particularly strong in Quebec, of PA may have become more “common knowledge” in the last decade.

In short, the necessity of an expert testimony to diagnose a situation of PA or quasi-PA is an area of uncertainties and contradictions in the jurisprudence, as is the fact that judges oscillate between PA and PAS without generally defining which model is used. Expert evidence fails to ensure clarity, consistency, and distinct boundaries in PA jurisprudence. To better understand what determines the outcome of PA cases, it is necessary to look beyond expert reports, hunting for implicit definitions in cases finding PA, quasi-PA or no PA. This exploration will confirm that judges’ understanding of parental alienation is inconsistent, over-inclusive, and seemingly gender-biased.

\(^\text{128}\) Droit de la famille — 162282, supra note 126 (emphasis added).

\(^\text{129}\) Bala, Hunt & McCarney, supra note 52 at 169: “Expert opinion from an independent expert was provided in 149 of the 175 cases (85 percent) in this study, and in a further 3 cases (2 percent) the court ordered an assessment for later use. […] In 132 of the cases, it was clear that the independent expert(s) expressed an opinion about alienation.”
2 PA Cases

This section explores the definition and proof of alienation, as well as its implications, in the 17 cases making a finding of alienation. Three of these cases find that both parents are alienators, either of the same or of different children, for a total of 20 results. The study of PA cases reveal two approaches to alienation: a parent-focused and a child-focused perspective. Under the parent-focused perspective, the alienating parent’s actions and behaviour are considered, while the child-focused approach looks for symptoms or signs of alienation within the child. Although both perspectives coexist, the parent-focused approach dominates: there can be alienation in cases where the child does not present signs of being alienated. This view amplifies the prevalence of PA in custody disputes, as the threshold for what qualifies as alienating behaviour is low, especially for custodial mothers. The study of PA cases confirms the over-inclusiveness and inconsistency of definitions of alienation in law, as well as its gendered consequences.

2.1 The Parent-focused Perspective

Alienation can be proved by reference to the preferred parent’s actions, remarks and behaviour. These signs of alienation are varied. The most frequent alienating actions are: interfering with the other parent’s time with the child, not communicating information regarding the child, involving the child in the adults’ conflict, and denigrating the rejected parent.

130 Droit de la famille — 16506, supra note 74.
131 Droit de la famille — 16987, supra note 74; Droit de la famille — 16899, supra note 74; Droit de la famille — 162541, supra note 114.
Alienation can be done unconsciously and without malice. Behaviours that are found alienating can be sorted into four categories:

A) Active alienation: interfering with the other parent’s access, custody or parental authority;

B) Active alienation: interfering with the emotional relationship between the child and the other parent;

C) Behaviour at trial;

D) Passive alienation and other residual behaviours.

The first two categories are the most important in terms of number of cases. Category A defines the relationship between the two parents. The alienator often poses deliberate actions to interfere with the length or quality of the other parent’s time with the child, such as calling constantly or making repeated intrusions to control or monitor the alienated parent, telling the child to ignore what the father’s girlfriend says, and being late or not respecting court-ordered access. Moving or wanting to move away from the father is also problematic. In one case, the mother’s move put an end to shared custody and reduced the father’s access to the children, although merely planning to move and asking the court for its permission can also be
The alienating parent frequently refuses to communicate information about the child, such as his or her whereabouts or extracurricular activities. Other examples include refusing the other’s calls, not informing them of the child’s medical appointments or presence in the hospital, and refusing to use a “communication notebook” despite court orders. Finally, falsely reporting the other parent to the authorities is the basis for the finding of alienation in one case, where the Court finds that the mother fabricated a sexual abuse accusation against the father and subjected the child to frequent medical examinations following the father’s access periods.

Behaviours in Category B affect the emotional relationship between the child and the alienated parent. The alienating parent often insults or denigrates the other parent and/or the step-parent in the presence of the child, or involves the child in the separation conflict by discussing “adult topics” such as custody or child support. Encouraging or allowing the child

---

139 Droit de la famille — 162450, supra note 82.
140 Droit de la famille — 161167, supra note 60; Droit de la famille — 162271, supra note 64.
141 Droit de la famille — 161556, supra note 78.
142 Droit de la famille — 161167, supra note 60.
143 Droit de la famille — 161887, supra note 60.
144 Droit de la famille — 162450, supra note 82.
145 Droit de la famille — 161887, supra note 60.
146 Droit de la famille — 162271, supra note 64.
147 Droit de la famille — 161472, supra note 114; Droit de la famille — 162271, supra note 64; Droit de la famille — 16506, supra note 74; Droit de la famille — 161232, supra note 60; Droit de la famille — 161556, supra note 78; Droit de la famille — 162450, supra note 82; Droit de la famille — 16889, supra note 74; Droit de la famille — 16592, supra note 104; Droit de la famille — 163175, supra note 96.
148 Droit de la famille — 16192, supra note 67; Droit de la famille — 161472, supra note 114; Droit de la famille — 161232, supra note 60; Droit de la famille — 16506, supra note 74; Droit de la famille — 16428, supra note 114; Droit de la famille — 162271, supra note 64; Droit de la famille — 161556, supra note 78; Droit de la famille — 161887, supra note 60; Droit de la famille — 163175, supra note 96; Droit de la famille — 16531, supra note 61.
to call the step-parent “dad” or “mom” is also alienating,\textsuperscript{149} as is interrogating the child on what happened during the other parent’s access.\textsuperscript{150} The alienator can coach the child to express preference for him or her,\textsuperscript{151} reward bad behaviour with the alienated parent,\textsuperscript{152} or engage in sentimental manipulation.\textsuperscript{153} Several cases imply other unspecified deliberate actions to interfere with the alienated parent’s relationship with the child.\textsuperscript{154}

Behaviours in Category C are rarer and relate to what is said or argued in Court. Alienation can be found in the denigration of the other’s parental capacity before the Court.\textsuperscript{155} It can also be alienating to ask the court to reduce or revoke the other parent’s access to the child.\textsuperscript{156}

Residual behaviours in Category D include passive or unconscious alienation, as well as behaviours that do not directly affect the alienated parent. Not encouraging the child to see the other parent or not telling the child that the other parent loves them,\textsuperscript{157} accepting the child’s rejection of the alienated parent,\textsuperscript{158} not increasing the other parent’s access instead of paying for a babysitter,\textsuperscript{159} and not having the development of the children’s relationship with the other

\textsuperscript{149} Droit de la famille — 161167, supra note 60; Droit de la famille — 162621, supra note 96.
\textsuperscript{150} Droit de la famille — 161232, supra note 60; Droit de la famille — 162271, supra note 64.
\textsuperscript{151} Droit de la famille — 162271, supra note 64.
\textsuperscript{152} Droit de la famille — 162621, supra note 96.
\textsuperscript{153} Droit de la famille — 161556, supra note 78.
\textsuperscript{154} Droit de la famille — 16428, supra note 114; Droit de la famille — 16506, supra note 74; Droit de la famille — 161167, supra note 60; Droit de la famille — 162621, supra note 96.
\textsuperscript{155} Droit de la famille — 16592, supra note 104; Droit de la famille — 163175, supra note 96.
\textsuperscript{156} Droit de la famille — 161167, supra note 60; Droit de la famille — 161556, supra note 78.
\textsuperscript{157} Droit de la famille — 162621, supra note 96.
\textsuperscript{158} Droit de la famille — 161887, supra note 60.
\textsuperscript{159} Droit de la famille — 162450, supra note 82.
parent as a priority\textsuperscript{160} are forms of alienation. Alienation also lies in a fusional relationship between the alienating parent and the child, evidenced by too much emotional or physical proximity between the parent and the child\textsuperscript{161} and an “abnormal” degree of involvement in the child’s life, such as homeschooling,\textsuperscript{162} coaching and supervising the child’s extracurricular activities,\textsuperscript{163} and being a stay-at-home father despite a shared custody arrangement.\textsuperscript{164} The alienating parent’s feelings are discussed: having a negative perception of the other parent,\textsuperscript{165} not liking them or resenting them\textsuperscript{166} and thinking that the other parent is not important\textsuperscript{167} are signs of alienation. Finally, one case also finds alienation in the fact that the mother, who was victimized by the father, is overprotective and transmits her anxiety to the child.\textsuperscript{168}

2.1.1 Discussion

From a parent-focused perspective, alienation covers a broad range of behaviours in terms frequency, maliciousness, deliberateness, and gravity. PA appears useful to sanction shocking behaviours by both fathers and mothers. Moreover, judges do not automatically read unproven allegations of abuse as alienation. Indeed, only one case bases the finding of PA on

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{160} \textit{Ibid.}
\item \textsuperscript{161} \textit{Droit de la famille} — 161887, supra note 60; \textit{Droit de la famille} — 16192, supra note 67.
\item \textsuperscript{162} \textit{Droit de la famille} — 16192, supra note 67.
\item \textsuperscript{163} \textit{Droit de la famille} — 161556, supra note 78.
\item \textsuperscript{164} \textit{Droit de la famille} — 163175, supra note 96.
\item \textsuperscript{165} \textit{Droit de la famille} — 161167, supra note 60; \textit{Droit de la famille} — 162450, supra note 82.
\item \textsuperscript{166} \textit{Droit de la famille} — 162271, supra note 64; \textit{Droit de la famille} — 16987, supra note 74.
\item \textsuperscript{167} \textit{Droit de la famille} — 161887, supra note 60; \textit{Droit de la famille} — 161556, supra note 78.
\item \textsuperscript{168} \textit{Droit de la famille} — 16192, supra note 67.
\end{itemize}
\end{footnotesize}
false abuse allegations, in a context where the judge finds the mother’s denunciations to be malicious, repeated, and detrimental to the child. Unproven allegations of violence do not lead to a finding of PA in the absence of additional evidence of alienation or maliciousness.\(^{169}\) However, despite these positive observations, several cases suggest that the threshold on alienation is too low, and that findings on mothers’ alienation rely on more passive behaviours that those targeting male alienators.

A few cases set a very low standard for alienating behaviour. In *Droit de la famille* — 16899, both parents are found alienating, despite a nuanced portrayal of the mother by the expert: “la Mère reconnaît l’importance de la présence paternelle et les qualités parentales du Père. Par le passé, elle a toutefois eu de la difficulté à respecter le lien d’attachement entre les enfants et leur Père. Elle a donc pu avoir un discours dénigrant envers le Père.”\(^{170}\) A parent-focused approach to PA defines this case: past denigration suffices to find alienation even if the children want frequent contact with both parents and prefer a shared custody arrangement. In *Droit de la famille* — 16531, the finding of PA by the father rests on only one action: telling the children that the mother is suing him. Although it is not hard to agree with the judge’s decision to leave custody with the mother (the father only wants custody to avoid paying child support\(^{171}\)), his finding that there is severe alienation\(^{172}\) based on only one interaction is problematic. Not only is there no expert evidence to support this finding, but here again no

\(^{169}\) *Droit de la famille* — 162891, *supra* note 69; *Droit de la famille* — 16221, *supra* note 69, para 55.

\(^{170}\) *Droit de la famille* — 16899, *supra* note 74.

\(^{171}\) *Ibid*.

\(^{172}\) *Ibid*.
information regarding the children complements the parent-based definition of PA.\textsuperscript{173} The concern with these cases is not only one of over-inclusiveness, but also of incoherence; a similar case leads to a finding that there is no PA.\textsuperscript{174} In fact, countless examples can be found of worse “alienating” behaviour by parents who are not even considered as potential alienators. In one case, an alienated father denigrates the mother and influences the child to demand the supervision of her access.\textsuperscript{175} In another one, the alienated father kidnapped the children and seriously damaged the mother-daughter relationship by telling the daughter that the mother could harm her.\textsuperscript{176} It is not hard to imagine that the vast majority of high-conflict families engage in at least some form of denigration or alienating behaviour, broadly speaking. This intuition is confirmed by Janet Johnston, who finds that while most parents adopt alienating behaviours, few children are actually alienated.\textsuperscript{177} A definition of alienation that is both parent-centered and of low threshold is problematic in several respects. It contradicts the basic definition of alienation put forward by most models of PA or PAS.\textsuperscript{178} It also favours the parent who thinks to allege alienation (generally the father) by focusing on behaviours by the potential alienator that are likely reciprocal. It creates inconsistencies between cases where PA is considered and those where it is not. Finally, if applied consistently, this definition could lead to a finding of PA in

\textsuperscript{173} Droit de la famille — 16531, supra note 61, para 10: "Ensuite, le désir des enfants n’est pas ici considéré, vu leur âge et le fait qu’aucune preuve n’a été présentée à cet égard.”.
\textsuperscript{174} Droit de la famille — 162437, supra note 124.
\textsuperscript{175} Droit de la famille — 161232, supra note 60.
\textsuperscript{176} Droit de la famille — 16473, supra note 71.
\textsuperscript{177} Johnston, supra note 40.
\textsuperscript{178} Contra: Douglas Darnall, “Three Types of Parental Alienators” (1997), online: <http://www.parentalalienation.org/articles/types-alienators.html>. Darnall defines alienation broadly, finding that “[a]ll parents will occasionally be naïve alienators.”
most, if not all, cases, leaving the label of PA to be of little use or specific relevance in any given case.

Apart from the PA threshold that is both low and variable, the kind of behaviours that are found alienating can also be problematic. While active forms of alienation are equally found in cases targeting either parent, behaviours from categories C and D all involve female alienators. The most questionable cases raise concerns for the situation of victims of domestic violence.

In Category C behaviours, the court does not rely on the parties’ testimony to deduce alienating behaviour outside of the courtroom: rather, the argument made in court is the alienating behaviour. Courts judge harshly the parent who asks for a reduction or revocation of the rights of access of the other parent. Clearly, unilaterally deciding to reduce access or disrespecting previous decisions or agreements is viewed as very problematic. However, going through the courts is not acceptable either – even if the alienator’s demand is understandable. In Droit de la famille — 161167, the mother’s alienating behaviours are few: there is a reciprocal lack of communication, and the Court makes no finding on whether the mother incited or simply allowed the child to call the stepfather “dad” like her half-brother. The finding of PA mainly rests on the mother’s opposition to the father’s demand for access: “La mère ne semble aucunement reconnaître les changements au mode de vie du père, ni sa bonne volonté à rétablir les contacts avec X par des visites supervisées. La mère s’oppose à toute reprise de droit d’accès.” The Court’s framing of the mother’s position is questionable. The Court blames the mother for believing that the father hasn’t changed and is the same as 10 years

179 Droit de la famille — 161472, supra note 114; Droit de la famille — 161556, supra note 78.
180 Droit de la famille — 161167, supra note 60, paras 42–43.
ago, whereas the father says that he has redefined himself in the last year. Moreover, instead of saying that the mother’s concerns are understandable and even, to some extent, admitted by the father who only demands supervised access, the Court finds that the mother is rigid, while the father’s acceptance of supervision demonstrates his good faith. The father’s violence towards the mother and his alcohol problem, which contributed to the child’s rejection, do not lead the Court to conclude that the child’s rejection is justified or that the mother’s distrust is understandable. Rather, even if the father is partly to blame, it is the mother’s position that is unacceptable as it prevents the child from getting to know her “new” father. Ironically, the mother’s alienating behaviour (i.e. her asking for no access) plays an important role in the Court granting access.

Category D in turn emphasizes mothers’ feelings and resentment, without necessarily considering whether these emotions are justified or understandable. One can wonder about the interaction between Category C and Category D behaviours in contexts of domestic violence. In addition to keeping the father’s violence a secret from the child, even years after the separation, mothers may have to appear, in the judge’s eyes, to accept, ignore or forgive the father’s violence to avoid being flagged as potentially alienating. An exaggerated emphasis on the mother’s emotions and arguments, rather than on deliberate alienating actions or on the child’s behaviour, raises the question not only of whether the standard is fair, but also of how realistic it is in the context of high conflict families where animosity is the norm.

Furthermore, courts draw questionable deductions from mothers’ demand for the permission to move. Moving without consulting the father, unilaterally reducing his access, is

---

181 Droit de la famille — 161167, supra note 60.
182 See Droit de la famille — 16192, supra note 67.
alienating.\textsuperscript{183} However, even asking for the permission to move can be read as actively interfering with the father’s access. In \textit{Droit de la famille} — 162450, the Court rejects the mother’s concrete professional reasons for wanting to move. Her decision is presented as selfish and against the children’s interest, ultimately making her a bad mother.\textsuperscript{184} The Court even implies that she should not want a higher salary because she earns as much as the father.\textsuperscript{185} Without going into whether the Court was right in granting custody to the father, the association that is made between wanting to move for insufficient (in the Court’s eyes) professional reasons and alienation is dubious. Although more cases should be studied before drawing definitive conclusions, this decision raises concerns regarding mothers’ autonomy and mobility post-separation under the threat of PA allegations.

Finally, mothers’ rigidity in dealing with fathers’ access time also appears to take a disproportionate place in the judges’ analyses. While not respecting the father’s access and going against court orders are alienating actions,\textsuperscript{186} following the judgment to the letter is presented as similarly alienating, rather than being framed as within the custodial parent’s rights or even as passive alienation. Although the mother’s plan to move is determinative in \textit{Droit de la famille} — 162450, the fact that she did not voluntarily agree to shared custody when the father moved closer to the children is also important to the judge’s reasoning. The Court is very critical of the fact that the mother hired a babysitter instead of saving money by granting the father more access. Although out-of-court collaboration is certainly preferable, the fact that adhering to a

\begin{footnotes}
\footnote{183 \textit{Droit de la famille} — 161472, supra note 114.}
\footnote{184 \textit{Droit de la famille} — 162450, supra note 82, paras 3–4.}
\footnote{185 \textit{Ibid.}, para 46.}
\footnote{186 \textit{Droit de la famille} — 161556, supra note 78.}
\end{footnotes}
judgment on custody can amount to alienation again sets the bar quite low. It does not help that
the only information cited from the expert report is that the mother “perçoit son rôle comme une
aide au père dans son propre rôle, sans constituer une quelconque menace pour la mère dans le
maintien du lien significatif qui l’unit aux enfants. De tempérament [calme] et réservé, elle
contribue au maintien d’un dialogue fluide entre le père et les enfants. Bref, sa contribution est
discrète et positive.”

In short, some of the cases finding alienation set the threshold for alienating behavior so
too broadly. A standard of friendliness, good communication, and generous collaboration may be
ideal, but it is not realistic in high-conflict cases, and expects too much of custodial mothers.

Focusing on behaviours that are voluntary, repeated, or malicious, considering whether a
parent’s animosity is justified, and being sensitive to the risk of disproportionately dissecting
mothers’ emotions would improve the overall coherence, persuasiveness and fairness of adult-
centered PA decisions.

\[187\] Droit de la famille — 162450, supra note 82.
2.2 The Role of the Alienated Parent

A parent-focused perspective on PA does not only consider the alienating parent. When relevant, judges and experts also consider the role of the alienated parent’s behaviour in fragilizing the relationship with the child. This approach is coherent with Kelly and Johnston’s family systems model that looks beyond the alienator’s actions. The alienated parent’s contribution to the rejection is a relevant factor in a third of PA cases. Often, the alienated parent’s responsibility is acknowledged but pardoned in light of his or her behaviour modifications or commitment to improve.\textsuperscript{188} The persistence of a desire to see the child despite the difficulties can go a long way in compensating for the alienated parent’s flaws or past mistakes.\textsuperscript{189} In two cases, the parent’s more serious role in the child’s rejection is subject to a deeper analysis. In Droit de la famille — 16192, the father was mostly absent from the child’s early life, and later rushed the situation with aggressive litigation rather than respecting the child’s rhythm. This behaviour contributed to the child’s alienation.\textsuperscript{190} Instead of evaluating whether the child is estranged rather than alienated, the Court finds that the alienated parent’s responsibility is coherent with, and even necessary to, a finding of PA: “Une attitude aliénante n’influencera l’enfant que si le parent aliéné y contribue par son propre comportement.”\textsuperscript{191} The alienated parent’s important contributing role in the child’s rejection does not put into question the finding of PA.

\textsuperscript{188} Droit de la famille — 161556, supra note 78; Droit de la famille — 16899, supra note 74; Droit de la famille — 162621, supra note 96.

\textsuperscript{189} See for example Droit de la famille — 162621, supra note 96, para 68.

\textsuperscript{190} Droit de la famille — 16192, supra note 67, para 139.

\textsuperscript{191} Droit de la famille — 16192, supra note 67.
In *Droit de la famille — 161167*, the child witnessed the father’s domestic violence and abusive alcohol consumption. However, the expert finds that the child’s rejection is exaggerated:

> Il comprend que X soit troublée par des scènes de violence conjugale et se sente déconcertée par la consommation de drogue ou d’alcool d’un parent. Il observe toutefois que généralement, la solution à de telles situations est moins drastique que la suppression de tout contact parent-enfant. Il constate que dans le cas de X, le rejet radical et définitif de son père “s’est fait de façon fulgurante”

Paradoxically, the severity of the father’s contributing behaviour ends up playing to the father’s advantage. The father’s “way of life” made him a better “target” for PA, reinforcing rather than putting into question the PA diagnosis: “Quant au père, M. Vidal écrit dans son rapport qu’il a pu être *une cible idéale* dans un processus d’aliénation parentale. Son mode de vie a préjudicié sa relation avec sa fille.” Moreover, the father’s recognition of his flaws shows good faith, while the mother’s insistence on them shows rigidity and animosity. Finally, the fact that the father has changed leads the judge to conclude that the child has a false perception of the father. This deduction once again confirms rather than challenges the finding of PA, even though the child’s negative experiences with the father are real.

> In summary, judges are sensitive to the role of the alienated parent in the conflictual situation and do not conduct the one-sided analysis penalizing the preferred parent that defines Gardner’s model. However, this contributing role does not put into question the finding of PA,

---

192 *Droit de la famille — 161167*, supra note 60.
and PA cases are not delimited by the concurrent explanation of realistic estrangement. The lack of awareness or consideration of realistic estrangement as a concurrent explanation for the child’s rejection of a parent increases the risks of misdiagnosis or inaccurate findings and reinforces the far-reaching nature of PA allegations.

2.3 The Child-focused Perspective

In addition to describing the parents’ actions, judges and experts may base their finding of PA on the child’s behaviour. Although the child’s symptoms are discussed in several cases, the child-focused perspective is less important than the parent-focused one, with fewer and less developed examples of children’s reactions and behaviours. Nonetheless, eight kinds of symptoms or signs of alienation are discussed in PA cases.

First, judges note the child’s refusal to see or have a normal relationship with the alienated parent. For example, one judge writes: “Le désir exprimé à plusieurs reprises par l’enfant de ne plus voir son père et de ne pas entretenir avec lui une relation normale fait également partie des symptômes que l’on peut retrouver chez un enfant faisant l’objet d’aliénation parentale.”

Second, alienated children may have unreasonable or unfounded reproaches against the alienated parent: an adolescent demonises her father, while another child is contaminated by the mother’s anxiety regarding the father. Third, the child can have

---

194 Droit de la famille — 161167, supra note 60; Droit de la famille — 16987, supra note 74.
195 Droit de la famille — 16192, supra note 67.
196 Droit de la famille — 161887, supra note 60.
197 Droit de la famille — 16192, supra note 67.
adult recriminations against the alienated parent or share the same recriminations as the alienating parent. For example, in one case the child’s recriminations are based on the father’s domestic violence of which he should not have been aware. In another, the child adopts the discourse of a “betrayed wife.” Experts may note other similarities between the child and the alienator’s discourse. Fourth, the child may appear coached or reject a parent to please the other. For example, one child fears the mother’s reaction if he says that he likes the father’s partner. Another child pretends the visits with the alienated mother are going badly to please the father. In several cases, the judge or evaluator notes that the child appears to recite a text or tries to give the “right” answer. Fifth, an alliance with the preferred parent also indicates that the child has been alienated, for example if the child wants to avenge the mother or unconditionally supports the father. Sixth, the child’s disengagement is noted: the child is distant and cold, reads a sad letter about the alienated parent with no apparent emotion, or

---

198 Ibid.
199 Droit de la famille — 161887, supra note 60.
200 Droit de la famille — 16428, supra note 114; Droit de la famille — 16987, supra note 74.
201 Droit de la famille — 161472, supra note 114.
202 Droit de la famille — 162621, supra note 96.
203 Droit de la famille — 16592, supra note 104; Droit de la famille — 16428, supra note 114; Droit de la famille — 162271, supra note 64.
204 Droit de la famille — 16192, supra note 67; Droit de la famille — 16592, supra note 104; Droit de la famille — 16506, supra note 74.
205 Droit de la famille — 161887, supra note 60.
206 Droit de la famille — 162621, supra note 96.
207 Droit de la famille — 16592, supra note 104.
208 Droit de la famille — 162621, supra note 96.
acts passively during her activities with her father.\textsuperscript{209} Seventh, in one case, the child rejects her paternal uncle and aunt.\textsuperscript{210} Finally, some elements previously discussed from the perspective of the parent also apply to the child, namely having a fusional relationship with the alienating parent,\textsuperscript{211} and calling the stepfather “dad.”\textsuperscript{212}

In more than a third of the cases, the child demonstrates no sign of alienation.\textsuperscript{213} A conflict of loyalty may be observed, or the child’s behaviour may not be discussed at all. In most of the remaining cases, the child presents one to three of the signs discussed, with only two cases falling within, respectively, half and all but one of these categories of signs.

### 2.3.1 Discussion

The signs of alienation discussed from a child-focused perspective inform the inquiry into PA’s definitions in law. The influence of Gardner’s model is felt in the descriptions of children’s signs of being alienated. Six of his eight symptoms come up in at least one case (denigration, frivolous rationalization, lack of ambivalence, automatic support of the alienating parent, borrowed discourse and animosity towards the alienated parent’s family); two, in turn, are not referred to (independent-thinker phenomenon and absence of guilt). Some confusion remains

\[\text{\textsuperscript{209} Droit de la famille — 161887, supra note 60.}\]
\[\text{\textsuperscript{210} Ibid.}\]
\[\text{\textsuperscript{211} Droit de la famille — 16192, supra note 67; Droit de la famille — 16428, supra note 114; Droit de la famille — 161887, supra note 60; Droit de la famille — 161556, supra note 78.}\]
\[\text{\textsuperscript{212} Droit de la famille — 161167, supra note 60.}\]
\[\text{\textsuperscript{213} Droit de la famille — 161232, supra note 60; Droit de la famille — 16531, supra note 61; Droit de la famille — 16899, supra note 74; Droit de la famille — 162541, supra note 114; Droit de la famille — 162271, supra note 64; Droit de la famille — 162450, supra note 82; Droit de la famille — 16506, supra note 74.}\]
regarding what defines the alienated child. Both being emotional\textsuperscript{214} and showing no emotion,\textsuperscript{215} or being ambivalent\textsuperscript{216} and having a lack of ambivalence\textsuperscript{217} are presented as signs of alienation, while Gardner as well as Kelly and Johnston’s models discuss the child’s lack of guilt and ambivalence. The problem is not that children react differently to being alienated – it may be that these children are simply at different stages in the process. Rather, it is that judges rarely define PA or state which and how many signs of alienation they are looking for to make a finding. The shifting and generally implicit definition of PA not only causes contradictions and uncertainties, but also leaves them unaddressed.

Both leading models of PA(S) rely on the child: Gardner diagnoses PAS based on eight symptoms found in the child and assumes the alienating parent’s responsibility, while Kelly and Johnston adopt a multivariant and holistic perspective that still defines alienation as a child’s unjustified rejection of a parent. Given the importance of the child’s denigration, refusal to see the access parent and unjustified reproaches as the starting point to an inquiry into whether a child is alienated, it is surprising that so few cases base the finding of PA on the child’s behaviour. One of these elements is present in only six cases:\textsuperscript{218} in most cases, these basic

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{214} \textit{Droit de la famille} — 161887, supra note 60.
\item \textsuperscript{215} \textit{Droit de la famille} — 16592, supra note 104; \textit{Droit de la famille} — 162621, supra note 96.
\item \textsuperscript{216} \textit{Droit de la famille} — 161472, supra note 114; \textit{Droit de la famille} — 161556, supra note 78.
\item \textsuperscript{217} \textit{Droit de la famille} — 16192, supra note 67; \textit{Droit de la famille} — 161887, supra note 60.
\item \textsuperscript{218} \textit{Droit de la famille} — 16192, supra note 67; \textit{Droit de la famille} — 16592, supra note 104; \textit{Droit de la famille} — 162621, supra note 96; \textit{Droit de la famille} — 161167, supra note 60; \textit{Droit de la famille} — 161887, supra note 60; \textit{Droit de la famille} — 16987, supra note 74.
\end{itemize}
\end{footnotesize}
indicators of alienation are either not discussed or not present.\textsuperscript{219} For example, in one case, the Court emphasises that the children “have an excellent relationship with their [alienated] father”\textsuperscript{220}. In another case, where each parent is found to have alienated a child, both children prefer a shared custody arrangement.\textsuperscript{221} In *Droit de la famille* — 161472, the child’s only symptom is ambivalence and hesitation to express love towards the step-mother.\textsuperscript{222} In one case, paradoxically, the child sides with the “alienated” parent,\textsuperscript{223} while in another, the child who has been alienated by both parents does not seem to reject either.\textsuperscript{224} These children have little in common with the child who “expresses, freely and persistently, unreasonable negative feelings and beliefs […] toward a parent”\textsuperscript{225} or is “obsessed with depreciation and criticism of a parent.”\textsuperscript{226} This contrast confirms the prevalence of the parent-focused approach to PA, in contradiction with prevailing models in the literature, and shows that PA overreaches in the jurisprudence.

There is important support in the literature for the proposition that courts need to intervene early, before a child becomes fully alienated and repairing the parent-child relationship

\textsuperscript{219} *Droit de la famille* — 162450, supra note 82; *Droit de la famille* — 163175, supra note 96; *Droit de la famille* — 161472, supra note 114; *Droit de la famille* — 161232, supra note 60; *Droit de la famille* — 16506, supra note 74; *Droit de la famille* — 16531, supra note 61; *Droit de la famille* — 16899, supra note 74.

\textsuperscript{220} *Droit de la famille* — 162450, supra note 82.

\textsuperscript{221} *Droit de la famille* — 16899, supra note 74.

\textsuperscript{222} *Droit de la famille* — 161472, supra note 114.

\textsuperscript{223} *Droit de la famille* — 161232, supra note 60.

\textsuperscript{224} *Droit de la famille* — 16506, supra note 74.

\textsuperscript{225} Kelly & Johnston, *supra* note 11.

\textsuperscript{226} Gardner, *supra* note 4.
becomes difficult, if not impossible, to achieve by legal means.\textsuperscript{227} It is worth emphasizing that the critique of the findings of PA in the cases discussed does not imply that the Court should have declined to intervene to attempt to improve the family dynamics. However, the cases described here are not “quasi-PA cases” where courts state that they are acting preventively, or cases where judges intervene based on parental capacity, the friendly parent rule or other uncontentious legal concepts. These are cases where judges find PA, sometimes in the absence of persuasive indicators from either the child’s or the parent’s perspective. A desire to intervene in the child’s best interest should not justify the use of a controversial concept that manifestly does not fit the situation at hand. As PA is used in more and more diverse and wide-ranging situations, it can only lose its specificity, precision, and ultimately usefulness to the judge’s analysis. At the same time, it retains its powerful consequences: the Court’s intervention can then be attached to a questionable finding of PA rather than justified on a more solid basis.

2.4 Consequences of a Finding of Alienation

What consequences flow from a finding of PA? In terms of the judge’s reasoning, the child’s desire to live with the alienating parent can be put aside; in terms of outcome, the alienated parent almost always wins the case.

\textsuperscript{227} Johnston & Kelly, \textit{supra} note 12 at 87; Jaffe, Ashbourne & Mamo, \textit{supra} note 2.
2.4.1 Reasoning

A finding of PA can have different implications, such as affecting the alienator’s parental capacity or demonstrating a change in circumstances justifying the revaluation of the child’s custody. The most important consequence is allowing the judge to disregard the child’s desire to live with the alienating parent. Typically, the court observes that the child wants to live with the alienator, but finds that this desire is not freely expressed and must be distinguished from the child’s best interest.\textsuperscript{228} For example, the judge in \textit{Droit de la famille} — 162621 writes: “Malgré la préférence nette de X de continuer à habiter avec son père et de visiter sa mère à sa convenance, le Tribunal estime ne pas être lié par cette préférence et qu’en \textit{présence d’une aliénation parentale sévère, le désir de l’enfant compte peu ou pas du tout} en raison de l’influence indue du parent aliénant.”\textsuperscript{229} In another case, the Court states: “il y a lieu de distinguer entre le désir manifesté par une enfant de 14 ans, victime d’aliénation parentale, et son intérêt.”\textsuperscript{230}

The child’s desire is only determinative in two extreme cases: one where the child is 16 years old,\textsuperscript{231} and one where repeated attempts to force contact with the alienated parent have failed:

\begin{itemize}
\item \textsuperscript{228} \textit{Droit de la famille} — 161556, supra note 78; \textit{Droit de la famille} — 16592, supra note 104; \textit{Droit de la famille} — 162621, supra note 96; \textit{Droit de la famille} — 163175, supra note 96; \textit{Droit de la famille} — 16428, supra note 114; \textit{Droit de la famille} — 161167, supra note 60.
\item \textsuperscript{229} \textit{Droit de la famille} — 162621, supra note 96, para 94 (emphasis added).
\item \textsuperscript{230} \textit{Droit de la famille} — 16428, supra note 114.
\item \textsuperscript{231} \textit{Droit de la famille} — 16506, supra note 74.
\end{itemize}
[157] Les effets pervers de l’aliénation parentale dont il est victime et l’absence
du père dans la vie de X pendant de longues périodes sont malheureusement
irrémédiables. […]

[158] Accorder au père des accès à l’enfant dans le cadre de la présente requête
ne favorise pas l’intérêt supérieur de X. Sa capacité à faire des choix matures et
nuancés viendra avec le temps et non pas avec la contrainte.

[159] Dans le cadre d’une affaire familiale, il n’appartient pas au Tribunal de
rendre des ordonnances qui n’ont aucune chance d’être respectées ou d’ordonner
des thérapies auxquelles l’enfant ne participera pas.232

Alienated children’s ages range between 5 and 16 years old, most of them falling within
the 11–13 range. Aside from the abovementioned exceptions, judges impose contact, even
against the wishes of children aged 12 or older. This practice is difficult to reconcile with general
statements of law putting forward a consensus that contact will rarely be forced on children of
that age. In fact, cases where there is no PA or where the judge does not go against the child’s
wishes express the state of the law differently than PA cases where contact is imposed.233
Judges enjoy the flexibility granted by general statements of law that can support either finding
the child’s desire determinant, or disregarding it entirely. In practice, the latter option is preferred

_____

232 Droit de la famille — 16192, supra note 67, paras 157–159 (emphasis added).
233 Compare ibid, para 149; with Droit de la famille — 16592, supra note 104, para 102.
in PA cases, while in theory, the determinative nature of the teenager’s choice is put forward.\footnote{234}{See for example \textit{Droit de la famille} — 16946, 2016 QCCS 1907, para 28; \textit{Droit de la famille} — 161821, 2016 QCCS 3528, para 39.}

For example, one case, citing the Court of Appeal, presents the state of the law as follows:

Dans \textit{Droit de la famille} — 103545, la juge Bich de la Cour d’appel écrit en 2010 :

\begin{quote}
[26] En décidant ainsi, le juge s'est conformé à une jurisprudence qui reconnaît que la volonté de l'enfant, plus ou moins à partir de l'âge de 12-13 ans, a, le plus souvent et sauf exception, une valeur déterminante ou quasi-déterminante. […]
\end{quote}

\begin{quote}
[27] Michel Tétrault offre par ailleurs la synthèse suivante de l’état du droit sur la question :

La jurisprudence situe à environ treize ans l’âge où l'opinion de l'enfant devient \textit{determinante} (chaque cas en étant un d'espèce et une moyenne étant difficile à établir), que l'on soit ou pas en \textit{présence d'un syndrome d'aliénation parentale}.\footnote{235}{\textit{Droit de la famille} — 16946, supra note 234, para 28 (emphasis added).}
\end{quote}

Another interesting statement, at odds with several PA cases, comes from \textit{Droit de la famille} — 163196, where the judge, in deciding not to order an expert evaluation, finds the issue of PA to be irrelevant:

\begin{quote}
\end{quote}
jurisprudence unanime est à l’effet qu’en matière de garde et d’accès, l’opinion d’un enfant de 13 ans ou plus est déterminante, que l’on soit ou pas en présence d’un syndrome d’aliénation parentale.

[21] Autrement dit, même si l’aliénation parentale était prouvée, l’opinion de l’enfant serait quand même déterminante, de sorte que le Tribunal conclut qu’il n’est pas nécessaire d’avoir une expertise psychosociale pour savoir quelle est la portée de l’aliénation parentale ici.236

The description of the jurisprudence as “unanimous” to the effect that the child’s wishes must be respected starkly contrasts with Droit de la famille — 162621, cited above, where the judge finds that the desires of the alienated child have little to no weight.237 While different schools of thoughts on the appropriateness of intervention in severe alienation cases could explain the inconsistencies, the lack of justification for adopting one approach over the other and the lack of acknowledgement of, and engagement with, the controversial nature of PA interventions only adds more confusion to the jurisprudence.

2.4.2 Outcome

Despite strong controversies on the appropriate legal responses to PA, judges rarely hesitate to intervene, often with detailed orders and significant changes to the custody arrangement favoring the alienated parent. Defining a victory as getting what was asked for in

236 Droit de la famille — 163196, supra note 111, paras 20–21 (emphasis added).
237 Droit de la famille — 162621, supra note 96, para 94.
terms of custody or access, the alienated parent wins in 11 cases (12 results).\textsuperscript{238} There is a compromise or an agreement between the parents in four cases (six results).\textsuperscript{239} The alienating parent only wins in one case,\textsuperscript{240} with a partial victory (for one of the children) in one other case.\textsuperscript{241} Finally, there is one case with insufficient information to draw conclusions on who wins.\textsuperscript{242}

These wins for the alienated parent often involve a significant change in the custody arrangement. In four cases, the alienated parent goes from access to full custody,\textsuperscript{243} and in one case, from shared to full custody.\textsuperscript{244} In two cases (three results), there is a change from full custody for the alienator to shared custody,\textsuperscript{245} even though PA is said to be a counter-indication to shared custody.\textsuperscript{246} In other cases, there are minor changes in the custody arrangement, such as an increase in access rights for the alienated parent.

\textsuperscript{238} Droit de la famille — 16592, supra note 104; Droit de la famille — 162621, supra note 96; Droit de la famille — 163175, supra note 96; Droit de la famille — 161472, supra note 114; Droit de la famille — 16428, supra note 114; Droit de la famille — 16531, supra note 61; Droit de la famille — 16899, supra note 74; Droit de la famille — 161167, supra note 60; Droit de la famille — 162271, supra note 64; Droit de la famille — 161556, supra note 78; Droit de la famille — 162450, supra note 82.
\textsuperscript{239} Droit de la famille — 161232, supra note 60; Droit de la famille — 16987, supra note 74; Droit de la famille — 16506, supra note 74; Droit de la famille — 161887, supra note 60.
\textsuperscript{240} Droit de la famille — 16192, supra note 67.
\textsuperscript{241} Droit de la famille — 16506, supra note 74.
\textsuperscript{242} Droit de la famille — 162541, supra note 114.
\textsuperscript{243} Droit de la famille — 161472, supra note 114; Droit de la famille — 16428, supra note 114; Droit de la famille — 161556, supra note 78; Droit de la famille — 162450, supra note 82; Droit de la famille — 162621, supra note 96.
\textsuperscript{244} Droit de la famille — 163175, supra note 96.
\textsuperscript{245} Droit de la famille — 161887, supra note 60; Droit de la famille — 16899, supra note 74.
\textsuperscript{246} Droit de la famille — 16899, supra note 74; Droit de la famille — 161188, supra note 106.
In addition to changes in custody, courts often make detailed orders to attempt to reduce friction and litigation between the parties or to improve the child’s well-being. The Court may recommend or order that the child receive or have access to therapy; recommend to the alienating mother to get or continue therapy, or order therapy for all family members. The Court may also recommend that one or both parents receive professional help to improve their parenting abilities. To respond to the communication problems, courts may have to order parents to communicate information regarding the child’s health, school, activities and contact information, and may order or suggest that the parents communicate through a communication notebook or by text messages. Parents are also directed to make decisions together regarding the child’s extracurricular activities, education, and health. In an attempt to prevent more alienating behaviour, parents are often ordered not to denigrate each other.

---

247 Droit de la famille — 161556, supra note 78; Droit de la famille — 16428, supra note 114.
248 Droit de la famille — 162450, supra note 82; Droit de la famille — 16192, supra note 67; Droit de la famille — 162621, supra note 96; Droit de la famille — 161167, supra note 60.
249 Droit de la famille — 161472, supra note 114; Droit de la famille — 161887, supra note 60.
250 Droit de la famille — 162621, supra note 96.
251 Droit de la famille — 16531, supra note 61; Droit de la famille — 161167, supra note 60; Droit de la famille — 162271, supra note 64; Droit de la famille — 161887, supra note 60; Droit de la famille — 162621, supra note 96.
252 Droit de la famille — 162450, supra note 82; Droit de la famille — 16192, supra note 67; Droit de la famille — 163175, supra note 96; Droit de la famille — 161232, supra note 60.
253 Droit de la famille — 16592, supra note 104; Droit de la famille — 161887, supra note 60.
254 Droit de la famille — 163175, supra note 96; Droit de la famille — 16899, supra note 74.
255 Droit de la famille — 161887, supra note 60.
256 Droit de la famille — 162450, supra note 82; Droit de la famille — 163175, supra note 96.
257 Droit de la famille — 163175, supra note 96; Droit de la famille — 16899, supra note 74.
258 Droit de la famille — 16192, supra note 67; Droit de la famille — 161887, supra note 60; Droit de la famille — 16899, supra note 74; Droit de la famille — 162271, supra note 64; Droit de la famille — 161167, supra note 60;
and the Court may even limit whether and how the child will be informed of its decision. In two cases, the Court explicitly allows the parents to ask for a reassessment in seven or nine months. Finally, other orders such as authorizing the mother to travel with the child without the father’s consent, forbidding a parent from listening to the other’s phone calls with the child, ordering the parents to give the children access to a phone to call the other parent at will, forbidding the mother from moving out of the province without the father’s or the court’s authorization, and authorizing the parents to attend the child’s medical appointments or soccer practices show the extent to which the relationships between the parents in these high-conflict families much be managed by the Court.

Overall, the study of the implications of a finding of PA shows that, despite controversies – and without judges engaging with these controversies –, a radical change in custody against the child’s wishes is not an exceptional measure. The observation that judges intervene heavily in PA cases, combined with the critique that PA findings are not always justified, reinforces the preoccupation that PA may be going too far in Quebec jurisprudence.

---

259 [Droit de la famille — 16592, supra note 104; Droit de la famille — 163175, supra note 96; Droit de la famille — 161232, supra note 60.]
260 [Droit de la famille — 162450, supra note 82; Droit de la famille — 161167, supra note 60.]
261 [Droit de la famille — 161232, supra note 60; Droit de la famille — 161167, supra note 60.]
262 [Droit de la famille — 161167, supra note 60.]
263 [Droit de la famille — 161232, supra note 60.]
264 [Droit de la famille — 16192, supra note 67.]
265 [Droit de la famille — 161232, supra note 60.]
266 [Droit de la famille — 163175, supra note 96.]
3 Quasi-PA Cases

This section analyses the 16 cases with a finding falling between “PA” and “no PA.” In quasi-PA cases, like in PA cases, the child-focused and parent-focused perspectives co-occur, although the parent-focused approach strongly dominates. Indeed, these cases often sanction behaviours that resemble alienation or risk causing alienation, without the child actually being alienated. The observation of quasi-PA cases reinforces the arguments regarding the inconsistency, over-inclusiveness, and gendered nature of PA jurisprudence that flow from the study of PA cases. Instead of being limited to preventive cases where judges judiciously intervene to spare the child from becoming alienated, quasi-PA cases show judges intervening heavily based on approximative and ambiguous understandings of PA that mostly impact female “quasi-alienators.”

3.1 The Parent-focused Perspective

Quasi-PA cases are less detailed than PA cases. In four cases, there is either no information on the alienating behaviour, or only a general finding that the parent seems alienating. Like in PA cases, alienation ranges from repeated, intentional and malicious actions to simple overprotectiveness and anxiety.

---

267 Droit de la famille — 161642, supra note 119.
268 Droit de la famille — 161518, supra note 61; Droit de la famille — 163308, supra note 108; Droit de la famille — 16920, supra note 120.
269 Droit de la famille — 16757, supra note 62.
270 Droit de la famille — 1660, supra note 60.
The actions of alienating parents fall under the same four categories as those found in PA cases. First, alienating parents mainly interfere with the other parent’s access or parental authority with deliberate actions to hinder the length or quality of the other’s time with the child,\textsuperscript{271} for example by illegally taking the child away.\textsuperscript{272} In one case, the mother moved with the children just after the father granted her custody in exchange for generous accesses that became impossible to exercise.\textsuperscript{273} Refusing to communicate information or taking unilateral decisions on the child’s care, school or activities is noted in several cases.\textsuperscript{274} There are no cases of false abuse allegations, although in one case, where the father burned the child by accident, the alienating mother implies that the injury was voluntary and that the father is dangerous.\textsuperscript{275} Second, parents also interfere with the emotional relationship between the other parent and the child by denigrating the alienated parent,\textsuperscript{276} involving the child in the separation conflict,\textsuperscript{277} or allowing another man to play the “father figure.”\textsuperscript{278} Third, the argument before the Court is even more relevant in quasi-PA cases. Offering no or little access, or asking the Court to put an end to
the father’s access, is an important factor in three cases.\textsuperscript{279} Painting a dark portrait of the other’s parental capacity is also problematic.\textsuperscript{280} This includes describing the father as an abusive husband, for example:

Essentially, the parties both appear to have adopted a scorch-the-earth approach in this matter. Madam describes Mister as having become a monster during the marriage, inflicting verbal and financial abuse on her. She testified as often being scared of him, and on one occasion she had to “\textit{run for my life}”. As well, she is unable to recognize any good fatherly qualities in Mister, other than he loves the children. Otherwise, she describes his behaviour as erratic, with bad choices for the children.\textsuperscript{281}

Finally, a residual category includes more passive behaviours, such as not encouraging contacts with the other parent,\textsuperscript{282} sleeping with the child,\textsuperscript{283} or being too present and too friendly with the child.\textsuperscript{284} Emotions take an important role in defining mothers’ alienation, as they are blamed for holding a negative vision of the father,\textsuperscript{285} showing resentment and anger,\textsuperscript{286} blaming

\textsuperscript{279} Droit de la famille — 16622, supra note 77; Droit de la famille — 162587, supra note 93; Droit de la famille — 16735, supra note 60.
\textsuperscript{280} Droit de la famille — 162769, supra note 120; Droit de la famille — 163070, supra note 120; Droit de la famille — 162587, supra note 93.
\textsuperscript{281} Droit de la famille — 162587, supra note 93.
\textsuperscript{282} Droit de la famille — 162295, supra note 121; Droit de la famille — 161591, supra note 120.
\textsuperscript{283} Droit de la famille — 162587, supra note 93.
\textsuperscript{284} Droit de la famille — 16735, supra note 60.
\textsuperscript{285} \textit{Ibid}.
\textsuperscript{286} Droit de la famille — 162769, supra note 120.
the father for the family’s problems, \textsuperscript{287} being curt and seeing the father as only good to play with children, \textsuperscript{288} and being bitter. \textsuperscript{289} Being overprotective or anxious \textsuperscript{290} are also signs of alienation.

As for the role of the alienated parent, judges may formulate reproaches towards him or her. \textsuperscript{291} However, like in PA cases, realistic estrangement is never considered, and the alienator’s behaviour is generally at the center of the analysis.

\subsection{3.1.1 Discussion}

Quasi-alienation cases confirm and reinforce the preoccupations that arose in the study of PA cases. Refusing to increase access beyond the scope of the previous judgment or agreement is judged as harshly as interfering with access, even though the mother is technically within her right. The mother’s rigidity is emphasised in several cases. \textsuperscript{292} More importantly, the argument made in court is taken as very relevant, sometimes more than what happens outside of the courtroom. In a case where the father is a good father who has never abused or neglected the mother or the child, it is unsurprising that the mother’s petition that he be granted no access, an exceptional custodial arrangement, would be worrisome to the Court. \textsuperscript{293} More problematic are the cases where the mother’s reticence is understandable. Paradoxically, when both parents agree

\begin{footnotes}
\textsuperscript{287} Droit de la famille — 161912, supra note 83.
\textsuperscript{288} Droit de la famille — 163070, supra note 120.
\textsuperscript{289} Droit de la famille — 16622, supra note 77.
\textsuperscript{290} Droit de la famille — 16735, supra note 60; Droit de la famille — 1660, supra note 60.
\textsuperscript{291} See for example Droit de la famille — 161912, supra note 83, para 52.
\textsuperscript{292} Droit de la famille — 163070, supra note 120; Droit de la famille — 161912, supra note 83; Droit de la famille — 162587, supra note 93.
\textsuperscript{293} Droit de la famille — 16735, supra note 60.
\end{footnotes}
that the father has been inadequate and that the mother is a good mother, it is the father who can be presented in a more positive light: “À l’audience, Madame et sa mère ont complètement dénigré Monsieur. Monsieur, au contraire, reconnaît les capacités parentales de Madame. Il reconnaît son comportement irresponsable, immature et inopportun dans sa prime jeunesse et la relation malsaine qu’il a eu avec la mère de ses garçons.”

The decision in Droit de la famille — 16222 is particularly problematic, and mirrors concerns raised by the PA case Droit de la famille — 161167. The custody dispute opposes the child’s grandmother and her grandfather, who have acted as the girl’s parents since she was a baby. The parties separated because the grandfather was physically violent, jealous, possessive and denigrating towards the grandmother and had alcohol abuse problems. The grandfather used his contacts with the child to insult and spy on the grandmother, provided no supervision or guidance to the child, was drunk during the visits, and sometimes called the child ten times a day to ask intrusive questions about the grandmother’s life, babble incoherently, and exhort the child to hurt her grandmother. The Court finds that the girl, who has developmental problems and needs stability and structure, is doing better since the access stopped. The grandmother asks for the grandfather to have no access to the child. The only reasons supporting the Court’s finding that there may be alienation is that the grandmother is bitter towards the grandfather and has a rigid position on access, in the context of a conflictual relationship. The Court finds the grandmother’s rigidity unacceptable – an important factor in rejecting her request. However, as the Court rejects the grandmother’s position as too harsh, it also proves her right by finding that it would be risky to impose contacts before the end of the school year. The Court suspends all

294 Droit de la famille — 162769, supra note 120.
295 Droit de la famille — 16622, supra note 77.
access for the next four and a half months, only authorizes supervised contacts and phone calls, and grants the supervisors and the grandmother the unilateral power to put an end to the access if the grandfather’s problematic behaviour persists. This case raises several questions, such as what kind of friendliness to their abusive ex-husbands women must demonstrate to avoid raising the suspicion of PA, whether the Court was only prepared to consider interrupting all access by the grandfather if the grandmother argued for access, and if the grandmother is, in some way, sanctioned for being right in her evaluation of the grandfather’s character and parental capacity.

A final concern is that, like in PA cases, emotions, resentment, overprotectiveness, arguing for no contact, and similar forms of passive alienation only target female alienators. It is problematic that courts do not evaluate whether the mother’s (or grandmother’s) distrust or resentment is warranted, especially when she experienced domestic violence. It is also unrealistic to expect mothers in high-conflict cases taking place in an adversarial legal system to present a friendly or even neutral portrayal of the father figure, especially when he has serious flaws confirmed by the Court. In short, like in PA cases, the parent-focused perspective in quasi-PA cases supports the concern that PA reaches too far, and that custodial mothers are sometimes faced with unrealistic standards of friendliness and good cooperation.

3.2 The Child-focused Perspective

A child-focused definition, that can reduce the prevalence of alienation, is uncommon in quasi-PA cases. Nonetheless, while most quasi-PA cases are adult-centered, some focus on the child. For example, a case can state that the mother inappropriately involves the children in the
parental conflict,²⁹⁶ while another describes the same problem from the other perspective, saying that the child knows too much about the parents’ dispute.²⁹⁷ There are important variations in the degree to which the child presents signs of alienation, ranging from a boy living in shared custody without speaking to his father²⁹⁸ to a 4-year-old who does not appear to reject the alienated father.²⁹⁹

The signs of PA mostly correspond to those discussed in PA cases. The most important sign is resisting contact with the alienated parent,³⁰⁰ although some children are rather afraid to tell the custodial parent that they want to spend more time with the alienated parent.³⁰¹ In two cases, the children unreasonably fear or despise the father and present a borrowed discourse, indicating that their negative feelings towards the alienated parent comes from the alienator.³⁰² A fusional relationship between the child and the mother is problematic in one case, despite the mother’s good intentions.³⁰³ In another case, the child considers the mother’s partner as her

²⁹⁶ Droit de la famille — 16735, supra note 60.
²⁹⁷ Droit de la famille — 162295, supra note 121.
²⁹⁸ Droit de la famille — 16757, supra note 62.
²⁹⁹ Droit de la famille — 16920, supra note 120.
³⁰⁰ Droit de la famille — 162769, supra note 120; Droit de la famille — 16757, supra note 62; Droit de la famille — 161642, supra note 119; Droit de la famille — 161591, supra note 120.
³⁰¹ Droit de la famille — 161912, supra note 83; Droit de la famille — 16621, supra note 68.
³⁰² Droit de la famille — 162295, supra note 121; Droit de la famille — 161591, supra note 120.
³⁰³ Droit de la famille — 161912, supra note 83.
father. Finally, one young child uses elaborate subterfuges to interfere with the father’s access.

3.2.1 Discussion

Signs of alienation are less visible and less numerous here than in PA cases. In several cases, there is either no information on the child’s feelings towards the alienated parent, or information that contradicts habitual signs of PA. For example, the children may love both parents and have a good relationship with them, or be as young as two years old – too young to be alienated. In one case, the child even prefers to live with the alienated mother.

These contradictions are not as problematic as in PA cases, as judges may find a situation “resembling” PA or “risks” of PA. Nonetheless, quasi-PA findings still lead to important consequences for the alienated parent. Some judges explain why they act on PA allegations even though the child is not alienated; for example, they observe that even though the children have a good relationship with both parents, the conflict of loyalty compromises their wellbeing and

304 Droit de la famille — 162769, supra note 120.
305 Droit de la famille — 1660, supra note 60.
306 Droit de la famille — 162587, supra note 93; Droit de la famille — 162769, supra note 120.
307 Droit de la famille — 161642, supra note 119; Droit de la famille — 16622, supra note 77; Droit de la famille — 161724, supra note 93.
308 Droit de la famille — 16735, supra note 60.
309 Droit de la famille — 161518, supra note 61.
310 Kelly & Johnston, supra note 11 at 260.
311 Droit de la famille — 16621, supra note 68.
must stop.\textsuperscript{312} However, not all cases engage in this justification, and the lack of expertise, coupled with the scarce signs of alienation in some cases, extends even more the realm of PA.\textsuperscript{313} Like in PA cases, more explicit definitions of PA could reduce contradictions and improve the coherence (between cases as well as in relation to the literature) of PA jurisprudence.

### 3.3 Consequences of a Quasi-PA Finding

#### 3.3.1 Reasoning

The 16 findings of quasi-PA, made against the mother or grandmother in 12 cases and against the father in four, involve judges acting on alienation concerns without finding a real situation of PA. The quasi-PA finding justifies disregarding the child’s choice, when s/he wants to remain with the alienating parent. The contradictions regarding the importance of the alienated child’s wishes noted in PA cases remain relevant, as judges occasionally go against the clearly states desires of children older than 12.\textsuperscript{314}

Quasi-PA cases fall under three categories based on the reasoning that is put forward. First, there are “preventive” cases where the judge acts before a situation of PA develops or to evaluate if there is PA. In two cases, the judge orders an expert evaluation to verify the presence

---

\textsuperscript{312} Droit de la famille — 161912, supra note 83; Droit de la famille — 16735, supra note 60.

\textsuperscript{313} See for example Droit de la famille — 16622, supra note 77.

\textsuperscript{314} See Droit de la famille — 161912, supra note 83; Droit de la famille — 162295, supra note 121.
of PA, and increases the access parent’s time in the meantime as a measure of precaution. In three cases, the risk of PA suffices to justify a change in custody, two of these cases not relying on any expert testimony on either the risk of PA or the need for a change in custody.

Second, “common sense” cases involve a finding of PA despite the recognised lack of scientific proof. For example, one judge writes: “Malgré le fait que seule une expertise psychologique puisse véritablement démontrer la présence d’aliénation parentale, les témoignages entendus pendant le procès donne la nette impression de la présence d’une telle aliénation véhiculée dans le milieu maternel de façon consciente ou inconsciente et affectant le vécu de X.” By contrast, in Droit de la famille — 16757, there is an expert report saying that there is no PA, but the judge rejects it by putting into question its impartiality and accuracy.

The remaining cases involve conclusions that resemble a PA finding; the possibility of PA cannot be discarded, there are signs of alienating behaviour, there is no PA “as defined in the literature” but an intervention is required, or the father attempts to cause PA. In one

\[315\] Droit de la famille — 162587, supra note 93; Droit de la famille — 161642, supra note 119.
\[316\] Droit de la famille — 161724, supra note 93; Droit de la famille — 16920, supra note 120; Droit de la famille — 161518, supra note 61.
\[317\] Droit de la famille — 162769, supra note 120; Droit de la famille — 163070, supra note 120.
\[318\] Droit de la famille — 16757, supra note 62.
\[319\] Droit de la famille — 16622, supra note 77; Droit de la famille — 1660, supra note 60; Droit de la famille — 16735, supra note 60; Droit de la famille — 162295, supra note 121; Droit de la famille — 161591, supra note 120; Droit de la famille — 161912, supra note 83; Droit de la famille — 16621, supra note 68.
\[320\] Droit de la famille — 16622, supra note 77.
\[321\] Droit de la famille — 161591, supra note 120.
\[322\] Droit de la famille — 161912, supra note 83.
\[323\] Droit de la famille — 16621, supra note 68.
case, the risk that the mother will adopt alienation-like behaviours suffices to reject her petition for custody, with the risk that the children will be sexually assaulted by her partner intervening as a secondary reason for the decision:

[27] Dans ces conditions, le Tribunal estime que les mentions de l’experte Archambault-Héroux, concernant ses appréhensions quant à la capacité de la demanderesse de favoriser la relation père/enfants et les risques qu’elle maintienne une attitude qui s’apparente à de l’aliénation parentale, demeurent fort pertinentes.

[28] Ce constat, à lui seul, suffit à conclure que le changement de garde recherché par la demanderesse ne répond pas à l’intérêt des enfants en cause, malgré le refus de l’aînée de retourner auprès de son père.\(^3\)

In short, the need for judges to intervene before a situation of PA crystallizes, described by some PA experts, finds echo in a few quasi-PA cases. Nonetheless, most cases rather rely on “common sense” assertions regarding alienation and on ambiguous findings that indicate that this category of cases is no more in tune with the literature than cases with a PA finding.

3.3.2 Outcome

A quasi-PA finding is almost as advantageous to the parent who alleges alienation as a finding of PA. The alienated parent wins in 10 of the 16 cases,\(^4\) with three of these cases

\(^3\) Droit de la famille — 162295, supra note 121, paras 27–28 (emphasis added).

\(^4\) Droit de la famille — 16735, supra note 60 (mother’s alienation); Droit de la famille — 162295, supra note 121; Droit de la famille — 161724, supra note 93; Droit de la famille — 163308, supra note 108; Droit de la famille —
involving a change of custody from access or shared custody to full custody for the alienated parent.\textsuperscript{326} Five cases show a situation of compromise, where both parents fail to get their main ask or end up agreeing on most parameters of custody and access.\textsuperscript{327} The alienating parent wins in only one case, where the child is too old (almost 14) for the situation to be corrected. The judge comments that the current shared custody arrangement is “unbearable and traumatising”\textsuperscript{328} for the child. In conclusion, although PA findings have important consequences, the quasi-PA findings, supported by less evidence of alienating behaviour or signs of child alienation, also allow the parent who alleges PA (generally the father) to win the case. A mere risk of PA can support a radical intervention such as a change in custody. As quasi-PA cases are the least gender-balanced, the least supported by evidence (including expert evidence), and the most ambiguous, they call for clearer guidelines, explicit justifications for acting on a PA allegation, and precise delimitations of what defines a PA.

\section{4 No-PA Cases}

This study includes 27 explicit or implicit findings of no PA (25 cases, with two cases where neither parent is found to be alienating). No-PA cases do not necessarily correspond to

\textsuperscript{161591, supra note 120; Droit de la famille — 16621, supra note 68; Droit de la famille — 161518, supra note 61; Droit de la famille — 16920, supra note 120; Droit de la famille — 163070, supra note 120; Droit de la famille — 161912, supra note 83.}
\textsuperscript{326} Droit de la famille — 161724, supra note 93; Droit de la famille — 163308, supra note 108; Droit de la famille — 161912, supra note 83.}
\textsuperscript{327} Droit de la famille — 16622, supra note 77; Droit de la famille — 161642, supra note 119; Droit de la famille — 162587, supra note 93; Droit de la famille — 1660, supra note 60; Droit de la famille — 162769, supra note 120.}
\textsuperscript{328} Droit de la famille — 16757, supra note 62.
cases with less evidence of alienating behavior or signs of being alienated. Rather, judges in these cases adopt narrower definitions of PA that often require the consideration of the parents’ and the child’s behaviors. The definition of PA as a situation that causes the child to reject a parent is more consistent with Kelly and Johnston’s model (and even with Gardner’s PAS, diagnosed based on the child’s symptoms) than definitions implied in PA and quasi-PA cases. While no-PA cases are not the ones to demonstrate the over-inclusiveness of PA in the jurisprudence to the detriment of mothers, they reveal profound inconsistencies in PA law that can lead to incoherent findings in similar situations. Therefore, the broad and over-inclusive definitions of alienation that transpire from PA and quasi-PA cases are not unanimously adopted. This dissidence suggests that clearer guidelines, possibly from the Court of Appeal, could be effective in addressing the flaws in PA law that have been observed throughout this text.

4.1 Parent-focused and Child-focused Perspectives

Reasons for finding that there is no PA can relate to the child (the child has a good relationship with the allegedly alienated parent), to the preferred parent (he or she does not act in alienating ways), or to the rejected parent (the estrangement is justified). An example on the child’s side is a case in which the paternal aunt is alleged as alienating, but the Court finds that her badmouthing of the mother will not alienate the child, considering the strong mother-child relationship.\footnote{Droit de la famille — 163385, supra note 62.} In two other cases, the Court comments that the children have a good relationship with their father and that there is, therefore, no alienation.\footnote{Droit de la famille — 162591, 2016 QCCS 5070; Droit de la famille — 161170, supra note 82.}
parent’s side, the finding of no PA is based on a lack of evidence of alienating behaviours (not on principled assertions that a behaviour cannot constitute alienation). Judges comment that there is no evidence that the preferred parent obstructs access or attempts to alienate the child, or that the custodial parent is open to the other’s involvement in the child’s life. These types of reasons can serve to cancel a previous finding of PA in cases, when a former alienator wants to resume or normalize contacts with the child. They may have stopped denigrating the other parent or started recognising their importance, or, if the problematic behaviours continue, the child is no longer alienated. The former alienator can therefore gain unsupervised access to the child or access every other weekend.

In some cases, the parent alleging alienation is rather the one to blame – s/he has caused or contributed to the child’s rejection. These cases can be read as “realistic estrangement” cases, although this label is not used. The rejected parent has provoked the deterioration of the relationship by making insufficient efforts to see the children, being physically absent because of immigration problems, or being too prompt to litigate. It is surprising that these

---

331 Droit de la famille — 161575, supra note 126; Droit de la famille — 161188, supra note 106.
332 Droit de la famille — 16923, supra note 76.
333 Droit de la famille — 16896, supra note 71.
334 Droit de la famille — 161303, supra note 126.
335 Droit de la famille — 16844, supra note 124.
336 Droit de la famille — 16896, supra note 71.
337 Droit de la famille — 161303, supra note 126; Droit de la famille — 16844, supra note 124.
338 Droit de la famille — 16593, supra note 126.
339 Droit de la famille — 162437, supra note 124.
340 Droit de la famille — 162424, supra note 126.
behaviours can support a finding of no PA, while in PA and quasi-PA cases, the fact that the father was absent,\textsuperscript{341} litigated aggressively,\textsuperscript{342} abused alcohol,\textsuperscript{343} or was violent towards the mother\textsuperscript{344} did not impede findings of PA.

Finally, a finding of no PA can be supported by more than one reason. In one case, the children do not exhibit the symptoms of alienation, the father encourages them to see their mother, and the mother is ill-tempered, justifying the children’s rejection.\textsuperscript{345} In other cases, the Court finds that the child does not reject the father and that the mother is not alienating,\textsuperscript{346} or that the mother encourages the father-child relationship despite the father’s behaviour causing the estrangement.\textsuperscript{347} The following Venn diagram summarizes the reasons for finding that there is no parental alienation, with the number of cases falling under each situation inscribed within the corresponding circle(s), excluding cases that provide no reason for the finding.\textsuperscript{348}

\begin{footnotes}
\footnote{Droit de la famille — 16192, supra note 67.}
\footnote{Ibid.}
\footnote{Droit de la famille — 161642, supra note 119; Droit de la famille — 16622, supra note 77.}
\footnote{Droit de la famille — 161167, supra note 60.}
\footnote{Droit de la famille — 16735, supra note 60.}
\footnote{Droit de la famille — 16221, supra note 69.}
\footnote{Droit de la famille — 16473, supra note 71.}
\footnote{Droit de la famille — 16756, supra note 126; Droit de la famille — 161486, supra note 74; Droit de la famille — 161136, supra note 74.}
\end{footnotes}
4.1.1 Discussion

This distribution of cases by reason for finding that there is no PA informs the study of the implicit definitions of PA in the jurisprudence. Fourteen cases find an absence of PA because the child is not alienated or because the parent is not alienating, implying that PA is proven when both conditions are fulfilled. By contrast, only three cases support the proposition that either alienating behaviour or an alienated child suffices for a finding of PA. This reveals one more
inconsistency in PA jurisprudence, as PA and quasi-PA findings are often made based solely on the parent’s behaviour. The lack of standardization as to what defines and proves PA is verified.

The narrower definition of PA in no-PA cases is confirmed by two cases where the father is alleged as alienating. In Droit de la famille — 162271, the court finds that there is no alienation because the child has a good relationship with the mother, even though the father denigrates her.\textsuperscript{349} In Droit de la famille — 162437, on the other hand, there is no evidence of denigration, so there is no alienation even though the child appears to have a borrowed discourse.\textsuperscript{350} In the absence of problematic parental behaviour, the child’s reaction is explained by the mother’s absence due to immigration problems. Another case even states that PA is defined first and foremost in relation to the child’s relationship with the allegedly alienated parent, contradicting the secondary place that the child’s behaviour takes in several PA and most quasi-PA cases that focus on the alienator:

Le Père croit que l’enfant a peur de lui démontrer son affection lorsqu’elle est en présence de la Mère. Selon le Père, l’enfant a aussi certains propos qui l’inquiètent. X rapporte que "papa est une monstre", "papa a volé X à maman". \textit{Ce ne sont pas des indices d’aliénation parentale. Le concept d’aliénation parentale est déterminé en fonction de la relation entre parents et enfant.} La preuve non contestée démontre clairement que la relation entre le Père et X est chaleureuse et attachante.\textsuperscript{351}

\textsuperscript{349} Droit de la famille — 162271, supra note 64.
\textsuperscript{350} Droit de la famille — 162437, supra note 124.
\textsuperscript{351} Droit de la famille — 162591, supra note 330, para 14 (emphasis added).
In short, several reasons can support a finding that there is no PA. Most no-PA cases contradict the PA and quasi-PA cases where the finding is based solely on the alienator’s behaviour. Different definitions of PA and different understandings of how it must be proved lead judges to make opposite findings in similar cases. More clarity and standardization are needed to ensure fairness for litigants and coherence for the jurisprudence.
Chapter 4
Conclusion

In high-conflict custody disputes, judges are often faced with complicated family
dynamics and reprehensible parental behaviours. In this context, they may be tempted to use the
powerful tool that is parental alienation, even when it does not fit the situation at hand. This
inappropriate use of alienation leads to a legal definition of PA that conflicts with definitions of
PA in the literature and generates inconsistencies. Indeed, this study has found that judges often
adopt a parent-focused definition of PA that fails to meet even the most basic criteria for
alienation used in either Gardner’s model or Kelly and Johnston’s reformulation. Judges define a
low threshold for parental alienation that, if applied consistently, could justify a finding of
alienation in most conflictual custody cases. Women appear to be particularly vulnerable to PA’s
over-inclusiveness, as they are the ones who are most often found alienating based on passive
behaviours or pleadings in Court, or in “quasi-PA” cases where children are not, in fact,
“alienated” from the other parent. To add to the confusion, the failure to define PA prevents
judges from achieving internal consistency between the definition of PA and its proof in any
given case, in addition to the lack of consistency regarding what constitutes alienation from one
case to another. Moreover, the oscillation of PA between a scientific diagnosis requiring an
expert testimony and a legal test falling within the judge’s knowledge raises the question of how
much PA jurisprudence has to do with science, and how much it has to do with “pop-
psychology” or “pseudoscience.” Although PA is useful to explain the unjustified rejection of a
parent and sanction unacceptable behaviours by mothers and fathers, there is significant room for
improvement to make PA jurisprudence coherent, intelligible and fair, stating with:

- More awareness of concurrent models of PA and the explicit choice of one of them;
• A clear articulation of the relationship between expert evidence and a legal finding of PA;

• A coherent definition of PA that requires the child to present specific signs of being alienated and distinguishes PA from realistic estrangement;

• A higher threshold for alienating behaviours, to exclude actions, feelings and minor flaws common to every conflictual separating family;

• A close watch on ambiguous findings and findings of alienation based on passive behaviours, and the awareness that these findings seem to disproportionately affect mothers.

All in all, a controversial concept that is ambiguous, poorly delimited, incoherently defined and detached from scientific debates is of little assistance in custody decisions if it can mean whatever the judge wants it to mean.

This study presented a snapshot of parental alienation jurisprudence in Quebec in 2016. Further research is necessary to explore how the case law has evolved over time, how it compares to jurisprudence in other Canadian provinces, and how PA cases compare to similar factual situations where the label is not used. A systematic comparison of similar cases with different potential alienators would be useful to confirm the signs of gender bias found in this study. Moreover, the addition of interviews to the study of legal materials could allow a deeper understanding of the cases that would not be limited to facts deemed relevant by the judge. While research on PA flourishes in the fields of psychiatry and mental health, there is still much to learn regarding the articulation of this concept in law.
Bibliography

Cases

*Bockler c Bockler,* [1974] CA 41.


*Droit de la famille* — 122229, 2012 QCCS 3906.

*Droit de la famille* — 162650, 2016 QCCS 5239.

*Droit de la famille* — 163040, 2016 QCCS 6101.

*Droit de la famille* — 163332, 2016 QCCS 6617.

*Droit de la famille* — 161687, 2016 QCCS 3278.

*Droit de la famille* — 161598, 2016 QCCS 3104.

*Droit de la famille* — 161960, 2016 QCCA 1300.

*Droit de la famille* — 162708, 2016 QCCA 1816.

*Droit de la famille* — 162895, 2016 QCCA 1914.

*Droit de la famille* — 161887, 2016 QCCS 3642.

*Droit de la famille* — 16735, 2016 QCCS 1426.

*Droit de la famille* — 1660, 2016 QCCS 143.

*Droit de la famille* — 161232, 2016 QQCS 2417.

*Droit de la famille* — 161167, 2016 QCCS 2289.

*Droit de la famille* — 161518, 2016 QCCS 2933.

*Droit de la famille* — 16531, 2016 QCCS 1036.
Droit de la famille — 16757, 2015 QCCS 1466.

Droit de la famille — 163385, 2016 QCCS 6709.

Droit de la famille — 162271, 2016 QCCS 4308.

Droit de la famille — 16761, 2016 QCCS 1470.

Droit de la famille — 161749, 2016 QCCS 3390.

Droit de la famille — 16192, 2016 QCCS 331.

Droit de la famille — 16621, 2016 QCCS 1224.

Droit de la famille — 16221, 2016 QCCS 378.

Droit de la famille — 162891, 2016 QCCS 5798.

Droit de la famille — 16896, 2016 QCCS 1771.

Droit de la famille — 16473, 2016 QCCS 908.

Droit de la famille — 163326, 2016 QCCS 6611.

Droit de la famille — 161486, 2016 QCCS 2906.

Droit de la famille — 16899, 2016 QCCS 1789.

Droit de la famille — 16506, 2016 QCCS 988.

Droit de la famille — 161136, 2016 QCCS 2244.

Droit de la famille — 16987, 2016 QCCS 1972.

Droit de la famille — 16923, 2016 QCCS 1868.

Droit de la famille — 16622, 2016 QCCS 1223.

Droit de la famille — 161556, 2016 QCCS 3017.
Droit de la famille — 161162, 2016 QCCS 2284.

Droit de la famille — 162424, 2016 QCCS 4722.

Droit de la famille — 162225, 2016 QCCS 4148.

Droit de la famille — 161170, 2016 QCCS 2290.

Droit de la famille — 162450, 2016 QCCS 4765.

Droit de la famille — 161912, 2016 QCCS 3681.

Droit de la famille — 161724, 2016 QCCS 3334.

Droit de la famille — 162587, 2016 QCCS 5063.

Droit de la famille — 161294, 2016 QCCS 2521.

Droit de la famille — 162615, 2016 QCCS 5148.

Droit de la famille — 16749, 2016 QCCS 1437.

Droit de la famille — 162621, 2016 QCCS 5162.

Droit de la famille — 163175, 2016 QCCS 6403.

Droit de la famille — 16592, 2016 QCCS 1151.

Droit de la famille — 161188, 2016 QCCS 2336.

Droit de la famille — 163308, 2016 QCCS 6595.

Droit de la famille — 162651, 2016 QCCS 5240.

Droit de la famille — 163196, 2016 QCCS 6433.

Droit de la famille — 161472, 2016 QCCS 2863.

Droit de la famille — 16428, 2016 QCCS 827.
Droit de la famille — 162541, 2016 QCCS 4922.
Droit de la famille — 161642, 2016 QCCS 3183.
Droit de la famille — 16920, 2016 QCCS 1854.
Droit de la famille — 162769, 2016 QCCS 5528.
Droit de la famille — 163070, 2016 QCCS 6131.
Droit de la famille — 161591, 2016 QCCS 3069.
Droit de la famille — 162295, 2016 QCCS 4399.
Droit de la famille — 161583, 2016 QCCS 3067.
Droit de la famille — 162437, 2016 QCCS 4734.
Droit de la famille — 16844, 2016 QCCS 1620.
Droit de la famille — 161956, 2016 QCCS 3779.
Droit de la famille — 161929, 2016 QCCS 3707.
Droit de la famille — 161575, 2016 QCCS 3055.
Droit de la famille — 162622, 2016 QCCS 5163.
Droit de la famille — 162698, 2016 QCCS 5375.
Droit de la famille — 162424, 2016 QCCS 4722.
Droit de la famille — 161542, 2016 QCCS 1990.
Droit de la famille — 16593, 2016 QCCS 1152.
Droit de la famille — 161303, 2016 QCCS 2548.
Droit de la famille — 162282, 2016 QCCS 4333.
Droit de la famille — 16756, 2016 QCCS 1465.

Droit de la famille — 16946, 2016 QCCS 1907.

Droit de la famille — 161821, 2016 QCCS 3528.

Droit de la famille — 162591, 2016 QCCS 5070.

Other Sources


Bala, Nicholas et al. “Alienated children and parental separation: Legal responses in Canada’s family courts” (2007) 33 Queen’s LJ 79.


Boyd, Susan B. Child custody, law, and women’s work (Oxford University Press Don Mills, ON, 2003).


Bruch, Carol S. “Parental alienation syndrome and parental alienation: Getting it wrong in child custody cases” (2001) 35:3 Family law quarterly 527.


Neustein, Amy & Michael Lesher. From madness to mutiny: Why mothers are running from the family courts–and what can be done about it (UPNE, 2005).


