

MANAGING THE PARENTAL ALIENATION CASE

Brian Ludmer,
B.Comm., LLB.,
(416) 781-0334
brian@ludmerlaw.com

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A SECURITIES LAWYER IN FAMILY-LAW-LAND

Quote from "The Matrix"

Morpheus opens a container which holds two pills: a blue one, and a red one. He puts one in each hand, and holds them out to Neo.

Morpheus: *This is your last chance. After this, there is no turning back.....You take the blue pill, the story ends. You wake up and believe...whatever you want to believe. You take the red pill.....you stay in wonderland...and I show you just how deep the rabbit hole goes.*

Neo pauses for an instant, then reaches for the red pill. He swallows it down with a glass of water, and looks at Morpheus.

Morpheus: *Remember...all I'm offering you is the truth: nothing more.*

Morpheus half smiles at Neo.

Morpheus: *Follow me.....*

TOPICS FOR TODAY (if time allows)

- **The Role of Counsel**
- **Strategy in a PAS case**
- **Managing the Case**
- **Working with the Targeted Parent (“TP”)**
- **Working with the Aligned Parent (“AP”)**
- **Therapy – How to Structure**
- **Tribal Warfare**
- **Expert Evidence Issues**
- **Rhetoric Concerning the Rights of the Child**

THE ROLE OF COUNSEL

Acting for the Targeted Parent

- **Requires a multi-faceted skill-set**
 - ❖ Substantive law of custody and access
 - ❖ Procedural law
 - ❖ Mental health literature
 - ❖ Social sciences literature
 - ❖ Parenting capacity and best practices literature
 - ❖ Mental health practitioner professional standards and best practices for forensic investigations
- **Empathy, yet emotional objectivity**
 - ❖ Desperate, frustrated, suffering, consumed parents caught in a dynamic that no parent could ever anticipate or be prepared for make mistakes - counsel needs to be the objective consult and avoid emotional entrapment
- **Leadership skills and The Warrior Ethos**
 - ❖ *I will always place the mission first. I will never accept defeat. I will never quit. I will never leave a fallen comrade*

Acting for the Targeted Parent

▪ Empathy, yet emotional objectivity

- ❖ Desperate, frustrated, suffering, consumed parents caught in a dynamic that no parent could ever anticipate or be prepared for make mistakes - counsel needs to be the objective consult and avoid emotional entrapment
- ❖ The Lonely Parent Blog (Claire Brett-Moran)
 - Do not expect your lawyer to be able to save the day
 - Do not depend on your lawyer for emotional support
 - Do not expect your lawyer to crusade for the Justice of your case
 - Help your lawyer help you:
 - Document; Be Well Organized; Educate Yourself; Be Persistent and Proactive; Take care of yourself and enlist help and support

Acting for the Aligned parent

▪ Blind advocate?

- ❖ The adversarial system, rightly or wrongly, holds that the struggle of the parties will lead to the truth emerging and requires the lawyer's partiality as much as the judge's impartiality.
- ❖ In a famous 1820 case from England (*Queen Caroline's Case*, (1820), 129 E.R. 976), the role is described as follows:
 - *"... an advocate, by the sacred duty which he owes his client, knows in the discharge of that office but one person in the world – [the] client and no other ... Nay, separating even the duties of a patriot from those of an advocate, and casting them if need be to the wind, he must go on reckless of the consequences, if his fate it should unhappily be to involve his country in confusion for his client's protection"*.

Acting for the Aligned Parent

▪ Limitations on blind advocacy?

❖ LSUC Rules of Professional Conduct

- Cannot mislead the Court
- Cannot allow a statement of the client that Counsel KNOWS to be incorrect to stand on the record
- **Cannot counsel breach of law or Court Order**
- Cannot counsel destruction of evidence (spoliation)
- A lawyer shall advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and shall discourage the client from commencing useless legal proceedings.
- On family law files where children are involved (Rule 4.01(1) commentary):
 - *In adversary proceedings that will likely affect the health, welfare, or security of a child, a lawyer should advise the client to take into account the best interests of the child, where this can be done without prejudicing the legitimate interests of the client.*

❖ American Academy of Matrimonial Lawyers - Boundaries of Advocacy

Acting for Either Parent

▪ **Duty to Report Under Child Protection Legislation**

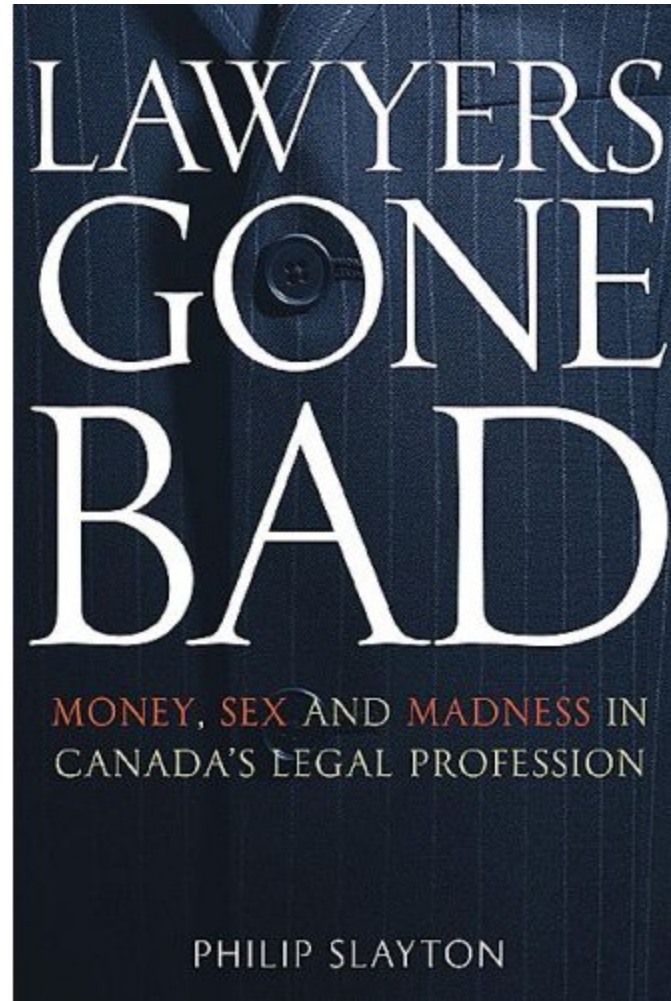
❖ Child and Family Services Act (Ontario) s.37(2)

▪ “a child in need of protection”

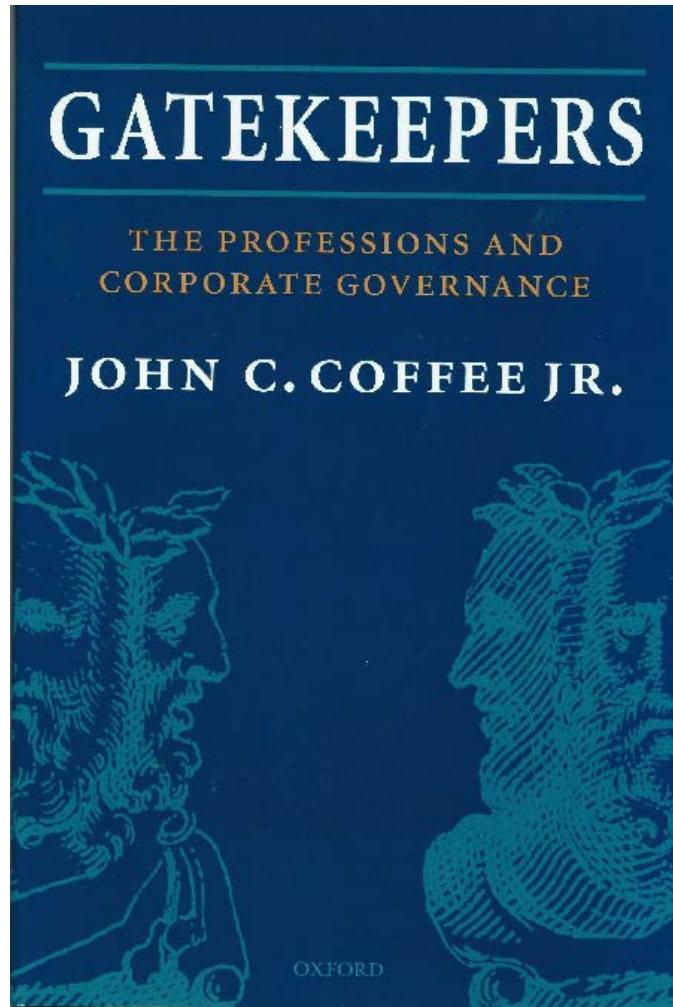
❖ Duty to Report to a CAS under Section 72 if reasonable grounds to suspect:

- **(g) there is a risk that the child is likely to suffer emotional harm or the child has suffered emotional harm, demonstrated by serious: (i) anxiety, (ii) depression, (iii) withdrawal, (iv) self-destructive or aggressive behaviour, or (v) delayed development, resulting from the actions, failure to act or pattern of neglect on the part of the child’s parent or the person having charge of the child;**
- **(g.1) there is a risk that the child is likely to suffer emotional harm [as above] and that the child’s parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;**

Touch points for the Legal Practitioner



Touch Points for the Legal Practitioner



Children's Counsel

- **Seeking counsel for a child is a common tactic of AP in PAS cases**
 - ❖ Pits the child against the targeted parent
 - Child will state to assessor or targeted parent: *“When do I get my own lawyer. I don’t want to talk to you – you need to talk to my lawyer”*
 - A key indicator of aligned parent manipulation
 - ❖ Office of the Children’s Lawyer – Courts of Justice Act (Ontario)
 - Intake criteria
 - Assess for independence, rather than mere advocate
 - Social workers and counsel often don't understand PA dynamics and are often confused over the actual role of the OCL
 - ❖ Private counsel
 - Advocate; not guardian; no requirement to advance best interests
 - However, need capacity assessment to determine whether can rely on instructions (e.g. false allegations cases)
 - Lawyers not equipped for this

CHILDREN'S COUNSEL ISSUES

- **Budget and independence**
- **Guidance vs. getting involved on a granular level**
 - ❖ Negotiate access
 - ❖ Negotiate parenting decisions
 - ❖ Overrule decisions of school vs. hockey?
 - ❖ Accepting/validating complaints
- **Transparency vs. going behind the parent's back**
- **Contesting – bringing Motions**
- **Aligning with one party**
- **Undermining Court Orders**
- **Sole voice of the child or just one of many (assessment, parents, therapist, Judicial interview)**

STRATEGY IN A PAS CASE

Sun Tzu On The Art of War (approx. c. 700 – 500 BCE)

- *Now the general who wins a battle makes many calculations in his temple ere the battle is fought.*
- *The general who loses a battle makes but few calculations beforehand.*
- *Thus do many calculations lead to victory, and few calculations to defeat: how much more no calculation at all!*
- *It is by attention to this point that I can foresee who is likely to win or lose.*

Sun Tzu On The Art of War (approx. c. 700 – 500 BCE)

- **Assessment of the relative strength of the two sides informs the strategy**
- **All warfare is based on deception**
 - ❖ Build case quietly
 - ❖ *“Let your plans be dark and impenetrable as night, and when you move, fall like a thunderbolt*
 - Act quickly and decisively and with overwhelming force
 - ❖ *“If you’re going to shoot, then shoot; don’t talk”*
(Eli Wallach, as Tuco in: *The Good the Bad and the Ugly*)

Strategy in a PAS Case

- **Delay is the major risk**

- ❖ Psychologically and Emotionally
- ❖ Financially
- ❖ Entrenchment of the child's disposition (neurobiology)
- ❖ Judicial boldness vs. timidity

- **Focus on disrupting the aligned parent's plans**

- ❖ PAS is a disease meant to be suffered in silence

- Third parties – schools, camps, extra-curricular activities
- Stay involved and visible; get all information; be registered

- ❖ Name changes go to the child's identity

- It is irrelevant that the AP cannot change the legal name; children's self concept is driven by what they call themselves at school, with friends and on sports teams

Strategy in a PAS Case

- **Manage your client's financial and emotional resources**
 - ❖ Stay calm in the face of provocative behaviour and keep asking the other side to do the right thing
- **Engage with AP and counsel at all times and document all of the suggestions and peace offerings**
- **Respond to all AP proposals, even if obviously diversionary and tactical**
 - ❖ You can try their “suggestions” while at the same time advancing the case
- **Make lots of proposals to advance the reconciliation**
 - ❖ Parental coordinator with mediation/arbitration powers
 - ❖ Reconciliation therapy
- **Ensure that the next Court appearance is always pending**

Strategy in a PAS Case – Avoid Delay

- **The overburdened family law system tries to foster diversion instead of tackling the dynamic**
 - ❖ Mediation – contra indicated in these cases
 - ❖ Parental coordination – helpful but not a panacea
 - ❖ “light” therapy, instead of “reconciliation therapy”
 - ❖ Appoint a children’s counsel and wait for their “report”
 - A “clinical assist” is not an assessment
 - tiny budget and not a full investigation
 - ❖ Assertions by AP to try a “go slow” approach and “*just give it time and let the child figure it out*”
 - ❖ Motions, Long Motions and Trial Lists – Delays
- **Instead: Apply for Case Management**
 - ❖ Streamlined out of the regular track and actively managed by a single Judge

“Light” therapy vs. “Reconciliation Therapy”

- **Open vs. closed**

- ❖ Privacy laws (such as The Personal Health Information Privacy Act) allow “competent” estranged children to prohibit the sharing of their file with the TP, even though AP gets it

- **Child therapist vs. multi-client**

- **Goal oriented: “reconciliation” – or not**

- **Timeline after which return to Court**

- **Avoid the “therapeutic alliance” regarding each of therapist/coach for AP and therapist for children**

- **Children told that if they are nice to TP in therapy it will be used against AP in Court – instead they actively try to justify their estrangement**

- **Court-Ordered or not – forcing AP to cooperate**

- ❖ Note that *Healthcare Consent Act / Child and Family Services Act* allow adults and children of 16 years to refuse therapy

- ❖ Court Order re therapy as a condition of custody/access

“Light” therapy vs. “Reconciliation Therapy”

- **Chose the therapist or team carefully – you want people who are not afraid to take a stand**
 - ❖ Wishy-washy or inconsistent statements are not helpful in solving the dynamic
 - ❖ Avoid “individual therapy” and instead chose/specify Strategic/Structural Family Systems Therapy

- **Some early therapeutic input can be useful so long as the case itself is moving inexorably towards trial**
 - ❖ Insight into what the children are saying
 - ❖ Exposes the numerous “complaints” that are outright fabrications or distorted out of all proportion
 - ❖ Creates a fixed “moment in time” snapshot that can help identify PAS if new complaints arise afterwards
 - ❖ Forces the AP to get involved in solving the situation or to expose that they have no interest in actually solving the situation

AVOID THERAPIST FRAGMENTATION

- **What does that mean?**
 - ❖ Securities Law Root
- **Individual therapists can work at cross purposes or there can be gaps and not all oars pulling in the same direction**

Structuring Reconciliation Therapy

1. **Multi-party**
2. **Fully-Open**
3. **Goal-oriented**
4. **Time-Limited (6 months)**
5. **Milestones (monthly)**
6. **Active Case Management by a CM Judge**
7. **Everyone on the Same Page Premises**
 - ❖ Mea Culpa; acceptance of TP as safe, loving competent and available
8. **Must have parallel non-therapeutic access**

Judicial Case Management During the Process

- **Ability to convene Case Conferences for Directions and to deal with non-compliance**
- **Finding of Contempt and Suspension of Sentence**
- **\$500 per missed visit with TP or therapist**
- **Order involvement of CAS/CPS**
 - ❖ Generally not helpful
 - ❖ JW v AF experience
- **Process to deal with early insights from the reconciliation therapy**

Perseverance

- **Manage your client's financial and emotional resources**

Kelly's Heroes (1970) - a classic late night movie

(Other character – frustrated voice):

“Where are we gonna come up with another bridge?”

(Oddball's reply - the character played by Canada's own Donald Sutherland):

There you go, more negative waves! Have a little faith, baby. Have a little faith.

- **Accelerate the process and get to trial as fast as possible**

- ❖ The vast majority of TP give up before trial as they are exhausted emotionally, physically, financially
- ❖ At trial, the AP's “theory of the case” typically falls apart – and they know it – most AP's will fold rather than expose themselves to cross examination

Strategy in a PAS Case

- **Build your evidentiary case and educate TP to be able to relate his or her story, in light of the Diagnostic**
 - ❖ Needed for Custody/Access Assessment; Needed for Motions; Needed for therapy, Needed for Trial
- **Diagnostic**
 - ❖ Gardner; Ellis; Baker; Fidler & Bala; Childress, others
 - ❖ Watch for symbolism: allegations of “us vs. him/her”; locked gates, “no go zones”, name changes, disclosure of biological paternity, police involvement and complaints to CAS/CPS which invoke “**attachment theory**” – **make the TP seem: (I) unsafe; (II) unavailable; and/or (III) unemotive or unloving**
 - ❖ Essentially:
 - Aspects of the psychological makeup of the aligned parent
 - Aspects of the behaviour of the children before, during and after separation
 - Compilation of the tactics being used

Strategy in a PAS Case

- **Understand the opponent (aligned parent and lawyer)**
- **Understand the case to be made**
 - ❖ Mental health and social sciences literature
 - ❖ Parenting literature (including step-parent boundaries)
 - ❖ Legal jurisprudence
 - ❖ Custody/access assessment methodologies and professional standards
- **Assemble an evidentiary record related to Diagnostic**
 - ❖ Third party affidavits (extended family; acquaintances; friends; nannies; teachers, therapists, coaches)
 - ❖ Historical and current pictures, videos, emails, documents, albums, cards
 - Cards lauding parenting;
 - Letters re breakup unrelated to parenting

Strategy in a PAS Case

- **Prepare a detailed Timeline document meant to show historical psychologically-bonded relationship and rapid onset of PAS after separation or historical roots**
 - ❖ Will show the decline and fall and absence of precipitous events which constitute *“justified estrangement”*
 - ❖ Will tie in to admissions and evidence of the *“deep narcissistic injury”* on the part of the aligned parent
 - ❖ Will help build the “theory of the case”
- **Engage with friends and extended family of client**
 - ❖ Targeted parent may not be thinking clearly and may not have all the key memories and key records
 - ❖ Impairment of those other relationships cannot be the fault of the targeted parent
- **Compile and Maintain a Full Daily Diary**
 - ❖ Full details of all touch points with the aligned parent and the children and extent of compliance with Court Orders

Strategy in a PAS Case

- **Maintain accessible and indexed records of all emails and correspondence**
 - ❖ By topic; By date; By sender
- **Maintain telephone contact logs to show attempts to reach out and how frequently there is any response**
 - ❖ AP won't accept or respond to calls or emails
 - ❖ AP demands that all future contact be through counsel
- **Bring a Motion for Live Questioning as a prelude for a Motion for Contempt of Court**
 - ❖ Often many admissions obtained because AP doesn't understand that their thinking is delusional and reflective of marginalization
 - ❖ Will inform Courts and Mental Health Experts

Strategy in a PAS Case

■ Analysis of the Aligned Parent

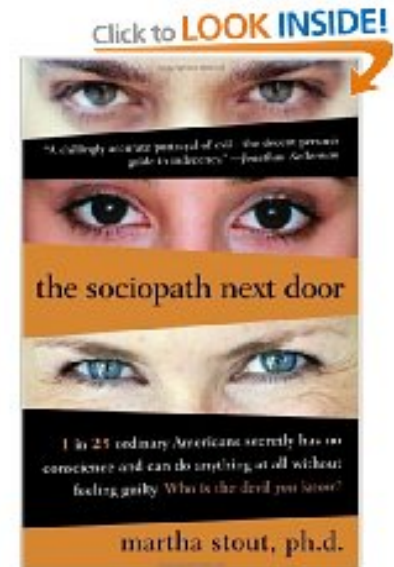
- ❖ What is the “*deep narcissistic injury*” (or is it a money play)
 - Informs theory of the case and strategy and remedies
- ❖ What is the psychological makeup (even if short of a disorder)
 - **Fear of Loss of Control (intrusive parent):** education
 - **Histrionic:** (propose safe zone and engage opposing counsel)
 - **Narcissistic or borderline or fixated or hate-filled:** contain and threaten; impose consequences; expose parenting marginalization
 - **Professional Victim:** move past the rhetoric into facts
 - **Cult-like exclusion (e.g. extreme religions):** parallel parenting
- ❖ Financial, emotional and familial resources
- ❖ Weaknesses, openings, influencers
- ❖ Fear of reputational damage?
- ❖ Difficult to change their perception of the targeted parent as weak, passive and easily manipulated and fooled
 - so make the lawyer the threat

Strategy in a PAS Case

- **Never base the strategy on “getting through” to the aligned parent – they are resistant to change; Rather – attempt to constrain behaviour by forcing them to fear consequences**
 - ❖ Locked into belief systems - Will disagree with any contrary conclusions of an assessor or therapist - no epiphany
 - ❖ View their own actions as in the best interests of the children – the AP has no more use for the TP, so why should the children? *“They have lost nothing – TP argues all the time”*.
 - ❖ Will be immune to therapy, education, persuasion, morality
 - ❖ Will never accept responsibility for their actions or change
 - ❖ Ego-centric/narcissist; child-like self-absorption
 - ❖ Cognitively blind to effects on the children or on targeted parent and extended family
 - ❖ Parenting Style Issues:
 - Moralistic, rigid and blaming
 - Permissive of over-empowerment
 - Need to validate all children’s perceptions and “feelings” (AF v JW)

Strategy in a PAS Case

- **Aligned parents often have the characteristics of a sociopath**
 - ❖ NOTE: standard custody/access assessment methodology is not focused on a full psychological evaluation of the parents; you need to build the case inferentially for the assessor and for cross-examination at trial
 - ❖ Glibness and Superficial Charm; Manipulative and Conning; Grandiose Sense of Self; Pathological Lying; Lack of Remorse, Shame or Guilt; Callousness/Lack of Empathy, etc.
 - ❖ Psychopathy checklists of H. Cleckley and R. Hare
 - ❖ Antisocial personality disorder (DSM-IV)

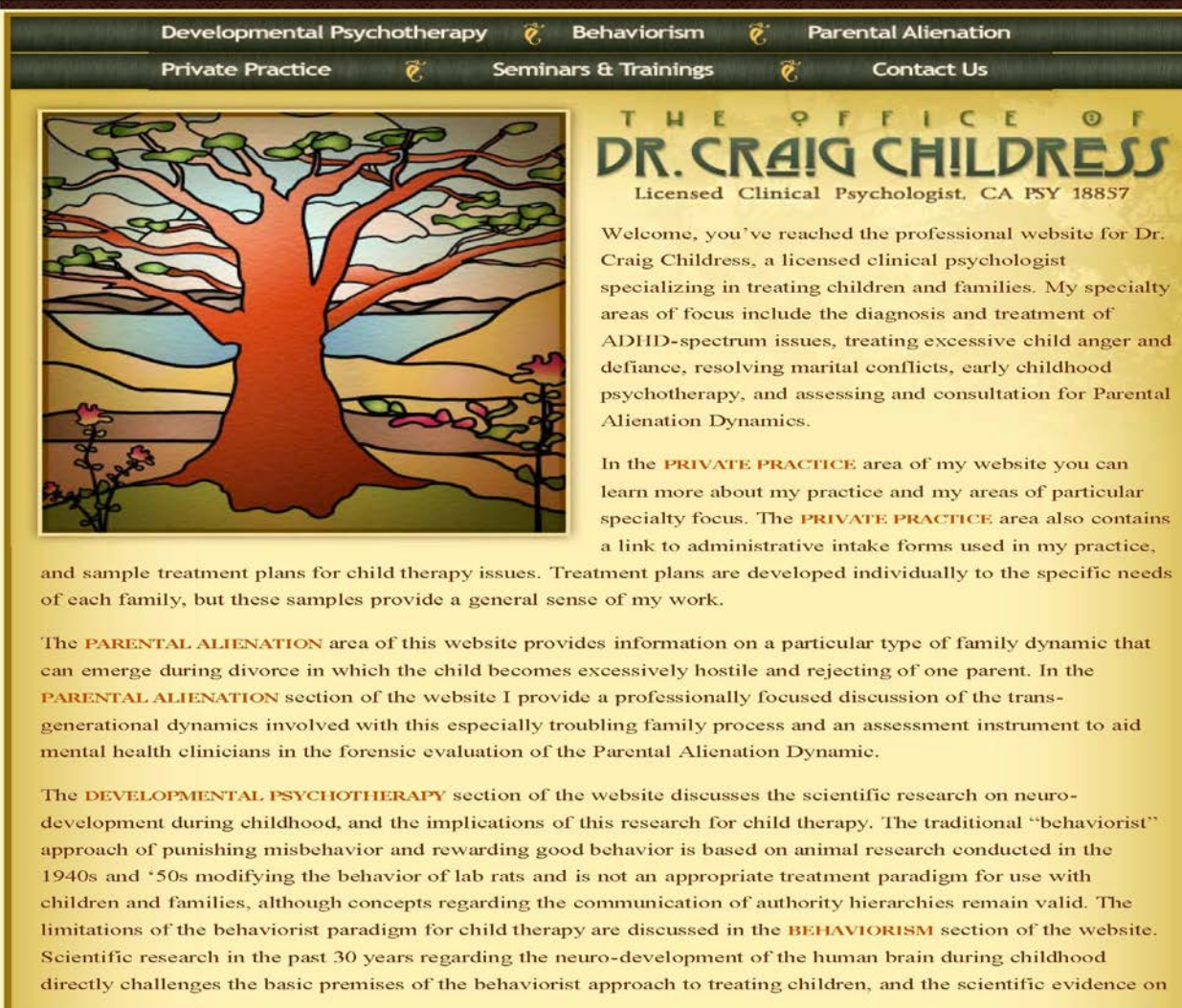




William A. Eddy, LCSW, ESQ.



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THE OFFICE OF DR. CRAIG CHILDRESS

Licensed Clinical Psychologist, CA PSY 18857

Welcome, you've reached the professional website for Dr. Craig Childress, a licensed clinical psychologist specializing in treating children and families. My specialty areas of focus include the diagnosis and treatment of ADHD-spectrum issues, treating excessive child anger and defiance, resolving marital conflicts, early childhood psychotherapy, and assessing and consultation for Parental Alienation Dynamics.

In the **PRIVATE PRACTICE** area of my website you can learn more about my practice and my areas of particular specialty focus. The **PRIVATE PRACTICE** area also contains a link to administrative intake forms used in my practice, and sample treatment plans for child therapy issues. Treatment plans are developed individually to the specific needs of each family, but these samples provide a general sense of my work.

The **PARENTAL ALIENATION** area of this website provides information on a particular type of family dynamic that can emerge during divorce in which the child becomes excessively hostile and rejecting of one parent. In the **PARENTAL ALIENATION** section of the website I provide a professionally focused discussion of the trans-generational dynamics involved with this especially troubling family process and an assessment instrument to aid mental health clinicians in the forensic evaluation of the Parental Alienation Dynamic.

The **DEVELOPMENTAL PSYCHOTHERAPY** section of the website discusses the scientific research on neuro-development during childhood, and the implications of this research for child therapy. The traditional "behaviorist" approach of punishing misbehavior and rewarding good behavior is based on animal research conducted in the 1940s and '50s modifying the behavior of lab rats and is not an appropriate treatment paradigm for use with children and families, although concepts regarding the communication of authority hierarchies remain valid. The limitations of the behaviorist paradigm for child therapy are discussed in the **BEHAVIORISM** section of the website. Scientific research in the past 30 years regarding the neuro-development of the human brain during childhood directly challenges the basic premises of the behaviorist approach to treating children, and the scientific evidence on

<http://www.dreatchildress.org/>[29/06/2012 10:18:57 AM]

Strategy in a PAS Case

- A quote from the 1984 movie, “*The Terminator*”,
(*staring the former Governor of “Cali-flor-nia”*)

Kyle Reece trying to explain to a doubtful and panic-stricken Sarah Connor about how much danger she is in (*slow, but intense*):

Listen.... Understand.... That Terminator is out there. It can't be reasoned with, it can't be bargained with...it doesn't feel pity or remorse or fear...and it absolutely will .. not.. stop. Ever....Until you are dead.

Sarah slumps in utter resignation.

(quietly) Can you stop it?

Kyle doesn't look at her.

Maybe. With these weapons?...I don't know.

Can the Case be Won? – Most Definitely Yes

- **The law is evolving in favour of strong interventions**
- **Logic, mental health community and societal values (Canada's Divorce Act 16(10)) are on the side of reconciliation in the best interests of the children**
- **Arguments blaming the targeted parent are usually illogical, blown out of all proportion or cannot be linked to the change of behaviour of the children from pre-separation or pre-estrangement**
- **The tools and knowledge are there, but family law counsel have generally been ill-equipped to bring the multi-dimensional approach to the case that is required**

WINNING STRATEGY IN A PAS CASE

- **The dysfunctional family dynamic frequently settles into a “comfortable” stagnation (homeostasis) which plays to the AP’s goal of exclusion**
 - ❖ AP, TP, both counsel, children’s lawyer and therapists all have a role in perpetuating this “comfortable” stagnation
 - ❖ Removing AP’s Time and Space and ability to hide behind enablers and their own correspondence
 - ❖ Apply legal, practical and therapeutic stressors to the dysfunctional family dynamic – create crises for AP
- **Get an assessment; win the assessment**
- **Get structured reconciliation therapy**
- **Get collateral expert reports and witnesses**
- **Build your evidentiary basis for your “theory of the case” in light of recognized diagnostics**

We hold these truths to be self-evident,

1. PA is emotional abuse

- ❖ A Pattern of behaviour that conveys to child that they are only of value in meeting the aligned parent's needs and whose behaviour and thought processes are controlled, like a cult, through coercion and manipulation – fits the *APA (1998) Guidelines for Psychological Evaluations in Child Protection Matters*
- ❖ *Children's Aid Society of Waterloo v. A(B)* 2005 ONCJ 220 (CanLII); *Ampuero v. Ampuero*, [2007] W.D.F.L. 37, 34 R.F.L. (6th) 208; *JKL v. NCS*, 2008 CanLII 47477 (ON S.C.); *Pettenuzzo-Deschene v. Deschene*, 2007 WL 2298464 (Ont. S.C.J.), 2007 CarswellOnt 5095; *Rogerson v. Tessaro*, 2006 CanLII 15126 (ON C.A.); *Orszak v. Orszak*, 2000 CanLII 22529 (ON SC) A.F. V. J.W., 2011 ONSC 1868 (ON SC)

2. Targeted parent parenting capacity impairments rarely rise to the level of material causes, particularly given the high standard for what is emotional abuse and the wide range of parenting styles that are within acceptable norms

We hold these truths to be self-evident,

- 3. There are no perfect parents, but there are proficient alienators - the child's negative attitudes and behaviour toward the parent is not a reasonable and proportionate response to that parent's behaviour towards the child.**
- 4. The primary goal of the required legal and therapeutic interventions is to foster full reconciliation in the shortest possible time.**
- 5. Delay works to the advantage of the alienator and is harmful to the children**
- 6. Only at a full trial can the truth be fully explored; but in the interim there must be meaningful roles for both parents in the children's lives. Motions for access, Contempt and Trial must be scheduled quickly.**

We hold these truths to be self-evident,

- 7. Highly detailed and clear Court Orders are required to delineate parental behavioural expectations, both on an interim basis and a final basis**
- 8. These Court Orders must be multi-directional – i.e. binding directives on schools, camps, extra-curricular activities, extended families, etc.**
- 9. Court interventions must be immediate and these cases need to be identified for special treatment, case managed if possible; or one Judge seizing the case for as long as possible**

We hold these truths to be self-evident,

10. A combination of legal, therapeutic and practical interventions is required and the children must pursue counselling with the entire family

11. Traditional therapy does not work with severe estrangement

- ❖ Structural/Strategic family therapy with some period of disengagement/restraint on the aligned parent is required

12. It is irrelevant that alienated children do well in other areas of life

- ❖ Their actions toward a formerly psychologically-bonded parent show they are suffering from impaired reality-testing and critical thinking skills, as well as diminished empathy

We hold these truths to be self-evident,

13. Informal name-changes are fatal to reconciliation

- ❖ That includes calling the step-parent mom/dad and the estranged parent by their first name
- ❖ First name and/or last name changed; regardless of gender of AP and TP

14. Step-parents who do not observe appropriate boundaries are part of the problem – become part of a system where the children are informally “adopted” as part of the remarriage

15. Women are victims too: Mothers; grandmothers; step-mothers; sisters; aunts; cousins; TP friends

We hold these truths to be self-evident,

16. We are asking parents to be at their best, when they are likely to be at their worst: AP – consumed with deep narcissistic injury; TP – PTSD, depression, confusion, hurt, anger, frustration
17. Give weight to teenage and pre-teen children’s “expressed views”, but recognize that people mature enough to have a say in their future are mature enough to accept the responsibilities that go along with that:
 - ❖ to not take sides in the divorce;
 - ❖ to respect and love and honour both parents
 - ❖ to help the family adjust and make the necessary changes to deal with the impact of the divorce.

Otherwise, the process of interviewing the children and impulsively accepting every word they say fosters the over-empowerment and skewed thinking that is a hallmark of PAS cases.

We hold these truths to be self-evident,

18. While the parents' mutual hostility is directed at each other, children from high-conflict separations tend to suffer more from parental separation than other children: they are three times more likely to develop psychological distress than children of low-conflict separating parents. Children of high-conflict parents are also more likely to suffer from behavioural problems as they are growing up. (Bala and Bailey, 2004)

- ❖ Therefore need immediate and detailed Court Orders and a final resolution at trial ASAP.

ALIENATORS ALWAYS MAKE KEY MISTAKES

- **The perfect alienation campaign is based on the adage that the opposite of love is indifference, not hate**
 - ❖ Children would see the targeted parent for 1 day out of 14; out of respect but not affection; would not denigrate, just not have anything in common and not admit to any emotional connection
- **However, alienators are worried that any exposure gives the targeted parent and his/her extended family and friends, an opening to rejuvenate the formerly loving relationship based on the historical psychological bonding between the ages of 3 and 7**

ALIENATORS ALWAYS MAKE KEY MISTAKES

- **Therefore, they always go too far and their tactics and the resultant behaviour of the children is fairly easy to relate to a proper diagnostic for PAS**
- **The exclusionary behaviour and tactics will, because of their nature and the AP's refusal to accept responsibility for their actions, continue even in the face of judicial admonishments. Ultimately, this is held to justify reversal of custody:**
 - ❖ CAS Waterloo 2005 ONCJ 220 (CanLII) (didn't accept responsibility)
 - ❖ A.G.L. V. K.B. D., 2009 CanLII 943 (ON S.C.) ("given several opportunities to change")
 - ❖ Ampuero ("no capacity to change"; "has not taken responsibility")
 - ❖ See also: Penetuzo; Rogerson; and Filaber v. Filaber, 2008 CarswellOnt 6548
 - ❖ S.G.B. v. S.J.L., 2010 ONSC 3717
 - ❖ C.S. v. M.S., 2010 ONCA 196

ALIENATORS ALWAYS MAKE KEY MISTAKES

- **Alienators “*never miss an opportunity to miss an opportunity*”** (paraphrasing the late Israeli Foreign Minister, Abba Eban)
 - ❖ **Challenge them daily to intervene to foster better and more frequent telephone and email contact between children and the TP**
 - ❖ **Call them on abusive behaviours they exhibit or which they foster in the children**
 - ❖ **Have grandparents and aunts, uncles and cousins calling and asking for time with the children**
 - **The AP’s false accusations against the TP are irrelevant to those relationships**
 - ❖ **Highlight, with significant advance notice to AP and their counsel, important dates and pending holidays and expected involvement and equal treatment in graduations, Bar/Bat Mitzvah’s etc.**

ALIENATORS ALWAYS MAKE KEY MISTAKES

■ Admissions

- ❖ Captured audio and video
 - Criminal law issues; civil law issues
- ❖ Emails, IM and 3rd party sourced statements from the children
- ❖ “Read-Notify” program
- ❖ Actions captured in the Diary maintained by TP
- ❖ Statements to therapists and third parties and in Affidavits
 - E.g. Defending an informal name change because otherwise the child would refuse to play sports
- ❖ Hateful Affidavits – such attitude cannot be kept from children
- ❖ Letters and other statements prior to separation, or after separation but prior to estrangement from children
 - E.g. Letter re marriage breakdown that says nothing about children; cards praising parenting abilities; separation agreements acknowledging that both are great parents
 - Statements to Marriage Counsellor privileged under the Divorce Act

ALIENATORS ALWAYS MAKE KEY MISTAKES

▪ Logical Flaws in Their Theory of the Case

- ❖ Their allegations would never have lead to a complete rupture in the first place – no child abuse or unsubstantiated
- ❖ Refuse interim family reconciliation therapy yet unilaterally take the child to an “aligned therapist” who then cannot speak with the TP
- ❖ Refuse to engage a parental coordinator with arbitral powers
- ❖ Refuse any interim contact they don’t control/supervise; Don’t share cell phone numbers, etc.
- ❖ Offer no solution other than that the TP “get therapy and change” but then offer no ability for the TP to demonstrate to the children that they “have changed” or “never needed to change” in the first place
- ❖ Refuse to consider why the children's attitudes don’t soften with time
- ❖ Everything is a priority for the children other than reconciliation

ALIENATORS ALWAYS MAKE KEY MISTAKES

▪ Logical Flaws in Their Theory of the Case

- ❖ Cannot demonstrate the use of appropriate guidance, boundaries, incentives and consequences regarding the children
- ❖ Refuse to present a “united front” to the children
- ❖ Refuse to change their parenting practices as the estrangement drags on from month to month
 - We should see an escalation of guidance, boundaries, incentives and consequences as previous parenting doesn't procure the change in the children's behaviour
 - No sense of urgency
- ❖ No ability to admit that the children are wrong and over-empowered – will just validate their “feelings” (AF v JW)
- ❖ Cannot explain why the children refuse to open up and embrace the TP even after the TP makes requested compromises (Childress)

ALIENATORS ALWAYS MAKE KEY MISTAKES

- **Key Cross Examination at Trial or in Pre-Trial Depositions**
 - ❖ Guidance, Boundaries, Incentives and Consequences
 - ❖ Escalation/Urgency
 - ❖ Cannot Reconcile their hate-filled affidavits with their statements that they nonetheless “encourage” the children to see the TP
 - ❖ United Front
 - ❖ Missed Opportunities
 - ❖ Choices at each interaction (hockey analogy)
 - ❖ If the Judge doesn’t agree with you, how will your parenting change? Why not now?

MANAGING THE CASE

Managing the Case - Tactics

- **Anticipate and defuse the delay tactics of the aligned parent's counsel**
 - ❖ Motions; undertakings; adjournments; refusal to advance the case to trial
 - ❖ Trial lists and case management
- **Intelligence and counter-intelligence**
- **Use of Rhetoric and Visuals**
 - ❖ “alienator”; “wiped out”; “existential conflict and not number of days”; “unsupportive and undermining”; “emotional abuse”; “inevitable future mental damage to children”
 - ❖ Neuroscience
 - ❖ Marginalization as a first stage towards elimination

Managing the Case - Speed and Intensity

- **George C. Scott in “Patton” (1970):**

You're a very good man, Lucian. [But] You want to guard against being too conservative.

Remember what Frederick the Great said: "L'audace, l'audace! Toujours l'audace!"

- **[Historical Note: The quote was actually: "*Il faut de l'audace, encore de l'audace, toujours de l'audace*" and should have been attributed to Georges Danton, during The French Revolution]**

Delay tactics and “Status Quo”

- **“Status Quo” as a principle of law**
 - ❖ See for e.g.: *N.T.H. V. P.J.H.*, 2007 CanLII 51337 (ON S.C.);
McKinnon v. Vandrish, 2007 CanLII 36825 (ON S.C.)
- **A dishonestly engineered “status quo” is no status quo at all:**
 - ❖ *LiSanti v. LiSanti* , 1990 CarswellOnt 219, 24 R.F.L. (3d) 174 (Ont. Fam. Ct.)
 - ❖ *Hsu v. Liu*, 1999 CarswellOnt 2651 (Ont. S.C.J.);
 - ❖ *(D.L.) v. L. (D.J.)*, 2009 Carswell-PEI 9 (P.E.I. C.A.).
 - ❖ *Shaw v. Shaw*, 2008 ONCJ 130, [2008] W.D.F.L. 2322, [2008] W.D.F.L. 2323, 62 R.F.L. (6th) 100
- **Implications for who moves out of the matrimonial home and whether an interim Court Order in effect; Watch out for the “midnight run”**
 - ❖ Recent sanctions imposed in: *Anatoly Tulchinsky v.. Elena Shuster*, 2009 CanLII 2927 (ON S.C.)
- **No substantive motions before the first Case Conference, unless “urgency” – lack of access held to constitute “urgency” in *Hurd v. Hurd*, 2006 CanLII 15312 (ON S.C.)**

Tactics to Avoid “Status Quo”

▪ Enforce interim access Orders vigorously

- ❖ There is no requirement for a trial of an issue in the case of a mere compliance order, as opposed to a motion for contempt
- ❖ Be prepared to lose – send a message by fighting; create a record
- ❖ *Young v. Young* (SCC 1993) held that: (I) Section 16(10) stands as the only specific factor which Parliament has seen fit to single out as being something which the judge must consider and that, by mentioning this factor, Parliament has expressed its opinion that contact with each parent is valuable; and (II) expert evidence is not always necessary to establish the best interests of the child
- ❖ The SCC in 1996 in *Gordon v. Goertz* clarified that the parent applying for a change in the custody or access order [**i.e. A non-decision is actually a variation**] must meet the threshold requirement of demonstrating a material change in circumstances affecting the child – query application to Interim Orders

▪ Move the case along toward trial vigorously through use of scheduling orders; Conferences and parallel tracks for financial and child-related parts of the file

Cautions

▪ Beware of “dirty tactics”

- ❖ Hacking – change all passwords and control physical access
- ❖ Audio and video recording
- ❖ Theft of documents from home and car/Use of children as spies
- ❖ Children taping parents
- ❖ “set-ups and staging” (witnesses?) for restraining Orders
 - If necessary, call the Police yourself to supervise confrontations re access and re sharing the home
- ❖ Watch out for the “midnight run”
 - Sanctions imposed in: *Anatoly Tulchinsky v. Elena Shuster*, 2009 CanLII 2927 (ON S.C.)

▪ Control legal privilege and inadvertent waiver

- ❖ Accountants; third parties; therapists; social workers; advisers
- ❖ Medical and psychological files
- ❖ Admissions in emails, documents, pleadings, discoveries, Affidavits of Documents (Schedule B)
- ❖ Family members and partners who participate in the file

AP Dirty Tactics – Misuse of Criminal Law

- Zero tolerance domestic abuse enforcement being misused
- Police required to charge and then bail conditions create separation from children which is misused in the family law forum
 - ❖ Recognized by Justice Pugsley in 2008 *Shaw v. Shaw*
 - ❖ Civil restraining orders more likely given recent legislation
 - ❖ AP then moves ex parte or on notice for custody, restraining Order and exclusive possession of home - Leaving home is a total loss of leverage for the TP re the children
 - ❖ **Subsequent risk of Breach of Bail at children's events (S v S)**
 - ❖ Criminal charges can take a year to resolve and very expensive – yet TP forced to pay support as no custody
 - ❖ Police do not issue warnings except for shouting match; the discretion is at the Police station re release vs. bail hearing
 - ❖ Police can charge either parent, including the one who phoned, or both
 - ❖ Damage done to children's view of TP due to Police and CAS interviews of them

AP Dirty Tactics – Misuse of Criminal Law

▪ Responding to panicked call from TP

- ❖ Almost impossible to protect TP from being charged over minor events that Judges see every day in criminal court
- ❖ Have witnesses and tape recordings and video to create a record
- ❖ Disengage and move to basement; Conflict reduction strategies
- ❖ Engage criminal law counsel on standby for arrest/bail issues and subsequent coordination of evidence between the criminal and family law cases – need to get release of all Police files for family law litigation
- ❖ Quickly negotiate an interim access and support Order on a without prejudice (i.e. “interim-interim”) basis and get out of the house
- ❖ If already arrested: (I) negotiate bail terms to protect access to children and to house to collect belongings and notes and memorabilia needed for custody assessment and litigation and evidence and to permit family law mediations and co-parenting; (II) move for interim custody/access order that will kick in as soon as charges resolved; (III) get counselling and parenting courses going to show intent to learn and change

AP Dirty Tactics - CAS

- **False allegations – often put forth by child using age-inappropriate language**
- **CAS forced to freeze access until investigation resolved or no risk determination**
- **What to do if left hanging by CAS - *“no action because the child isn’t seeing that parent at the present time”***
- **Need to have counsel present at interviews and follow-up with supervisors and CAS counsel**
- **Need access to CAS file (AP counsel will object and Motion required)**

Tactics Related to Credibility

- The aligned parent offers the Court no real answer – therapy without living with and experiencing life with the formerly psychologically-bonded parent can't work. They accept no responsibility, over-empower the children and refuse to abide by Court Orders
- Typical “logical traps” used by aligned parents:
 - **TP “won’t listen to the children”** (when all the children are saying is “get out of my life” or just minor complaints)
 - **TP “won’t change”** (without articulating the issue or explaining why it wasn’t an issue before separation or how the TP is supposed to demonstrate change to the children when they don’t see him/her)
 - **I can’t/won’t force them to visit** - They are old enough to decide for themselves
 - The children just need peace and not more therapy

Tactics Related to Credibility

- Typical “logical traps” used by aligned parents:
 - **I can’t/won’t force them to visit** - They are old enough to decide for themselves
- ❖ Fortune Magazine March 30, 2009 article on Ray Dalio (manager of the world’s largest hedge fund):
 - *“The thing that makes him different is an intolerance for the inadequate answer. He’ll just keep peeling back layer after layer to get at the essential truth”*
- **THE ANSWER: You are either lying about your good faith efforts or you are completely ineffective as a parent – either way you are not an appropriate trustee for the children’s right to have a relationship with the other parent. (resulting in custody reversal as per *Rogerson v. Tessaro – Ont. CA 2006*)**

Tactics Related to Credibility

- Typical “logical traps” used by aligned parents:
 - **I can’t/won’t force them to visit** - They are old enough to decide for themselves
- **FURTHER ANSWERS:**
 - ❖ Regardless, Court Orders are to be respected and the children must be taught to respect the law – a matter of “guidance and boundaries”, an essential part of any parenting capacity assessment
 - ❖ It’s in the children’s best interests to have a strong relationship with both parents and they are far too young and far too conflicted to make a decision to wipe a parent out of their lives – indeed their lack of ambivalence and lack of a sense of loss at all is a key diagnostic (even abused children do not present in this fashion)
 - ❖ You’re actually acting contrary to reconciliation

MORE INSIGHT FROM THE MOVIES

- Another quote from the 1984 movie, “*The Terminator*”, (starring the former Governor of “Cali-flor-nia”), which yields some great insight into the AP’s and children’s typical twisted and bizarre stories justifying their anger and hatred toward the targeted parent:
- Criminal Psychologist Silberman on interviewing Kyle Reece and hearing his story about the war between the machines and mankind and how he is from the future:

“This is great stuff. I could make a career out of this guy. You see how clever this part is...how it doesn't require a shred of proof. Most paranoid delusions are intricate...but this is brilliant.”

Difficulties in Enforcing Access

- **Great summary in: “*Enforcement of Access & Alienation of Children: Conflict reduction Strategies & Legal Responses*, Bala, N. And Bailey, N., (2004), 23 Cdn. Family Law Quarterly, p.1**
 - ❖ Accepted premise in Canadian law that children benefit from strong relationships with both parents
 - ❖ Extra-legal and legal responses needed
 - ❖ Contempt Orders issues and remedies
- **Civil damages remedy prohibited in Canada (*Frame v. Smith*, SCC 1987) because of CLRA statutory remedy for harassment – but then lawyers forget to use it**
 - ❖ *Still available in some US states: see e.g. Lynch v. Segal*, SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-0805-08T2
 - ❖ It’s a double-edged sword re making the TP the victim in the eyes of the children
- **Informational Access issues & Multi-directional Orders**
- **Schools/Camps/Clubs are Confused & Conflicted**

The Law of Contempt of Court and Compliance Orders

- **Trial of an issue is a right of the accused only re civil contempt – but they must ask for it at the time of the Motion. Key conclusions from the jurisprudence:**
 - ❖ You cannot leave the decision up to the children; You must offer incentives and impose consequences; An order is an order and is valid and deemed in the best interests of the children until varied; There is a broader societal issue at stake – respect for the law; Remedies cannot wait until trial; Court-ordered therapy for parents can be ordered as a condition of custody and access; Use of children to demand travel consents is not acceptable; The job of a parent is to parent. Children must be compelled; A parent cannot hide behind the expressed position of the children; It is not up to the parent with the children to determine whether reasons exist for them not to comply with a Court Order; Even a benign motive for disobeying a Court Order is no defence; The length of denial of access by Contempt is irrelevant to the need to comply; Parents have a duty to shield their children from their own poisonous attitudes towards the other parent; Judicial Notice of long term harm to children estranged from a parent; Parent-child bonds are fostered by frequency of access and avoidance anxiety sets in the longer the extended absence; The burden of proof to satisfy that all reasonable efforts have been taken to comply is on the defendant once the Clear Court Order and fact of non-compliance is established; Even a 15 year old child is compellable

The Law of Contempt and Compliance Orders

- **Technical Requirements Differ**
- **Compliance Orders must request some remedies and specific guidance for the family beyond mere an Order to comply with an Order`.**
- **The Contempt Remedy offers the Court extensive powers over the family, including ongoing oversight**
 - ❖ See A.F. v. J.W., 2011 ONSC 1868
 - ❖ BS v. KR - \$500 per missed visit
 - ❖ However, major confusion fostered by the Nova Scotia Court of Appeal in Godin v. Godin, 2012 NSCA 54

Working With the Custody/Access Assessor

- **Make sure to stay in contact as counsel and that the full Court file is provided**
- **Make supplemental submissions where appropriate:**
 - ❖ Summaries of admissions and transcript of live questioning
 - ❖ Summaries of telephone calls and compliance/non-compliance with Court Orders
 - ❖ Submissions on particular issues that the assessor is struggling with
 - ❖ Position statements on particular incidents to head-off the assessor being misled by AP
 - ❖ Ensure collateral interviews
- **Children's behaviour will get more extreme during the assessment process due to AP using them as a tool and "positioning" them for AP's advantage**

WORKING WITH THE TARGETED PARENT

Mistakes in Targeted Parent Strategy

▪ **Overplaying your hand**

- ❖ If some flaws in the case, such as TP contribution to the estrangement, take a softer approach regarding the rhetoric and the remedy requested
- ❖ Blustering about going to Trial knowing that the money is not there
- ❖ Not having the logistical arrangements to care for the children full-time even if custody awarded
- ❖ Living out of town
- ❖ Reversal of custody after years of no or limited contact is not likely. Better is to ask for return to the very Court order that has been violated, with additional protections and remedies

▪ **Not having the work schedule and/or logistical and family support to properly parent the children even if you got more time with them**

- ❖ Assessors want to know your Plan of Care
- ❖ Come in prepared with a fully-developed Plan

Working With the Targeted Parent

- **Epiphany once hears of PAS – but don't become a public evangelist about it – solve your own case first**
- **Assessment coaching – manage carefully to avoid artificiality but ensure presentation ties in to Diagnostic and “theory of the case”**
- **Parenting skills (you need a license to drive a car but ...)**
 - ❖ Gould text re state-of-the-art parenting capacity
 - ❖ Jayne Major's “Breakthrough Parenting” course
 - ❖ Other courses and books – influential with Judges
 - ❖ Give up activities; make choices; delay new relationships
learn to compromise and pick your spots
- **Dealing with alienated children through unconditional love, no guilt, move forward and a thick skin**
- **Educate TP and extended family – often they are counter-rejecting or too eager to make up for lost time**

Working With the Targeted Parent

- Monitor their emotional and financial resources and their support from family and friends – can they stay the course: (I) before reconciliation; (II) during reconciliation
- Another quote from *The Terminator* (1984):

SARAH (angry): *“Look, Reese, I didn't ask for this honour and I don't want it. Any of it.”*

KYLE REESE: *“John gave me a message for you. Made me memorize it. 'Sarah'...this is the message... 'Sarah, thank you. For your courage through the dark years. I can't help you with what you must soon face, except to tell you that the future is not set... there is no such thing as Fate, but what we make for ourselves by our own will. You must be stronger than you imagine you can be. You must survive, or I will never exist.' That's all.”*

WORKING WITH THE ALIGNED PARENT

ALIGNED PARENTS WHO ARE NOT ALIENATORS – OR, WHEN IS IT NOT PAS

- **Traumatic separation due to TP who then proceeds to not follow TP advice above**
- **Few parents are prepared or skilled or knowledgeable enough to sooth the children's feelings towards the rejected parent while at the same time dealing with their own emotional trauma from the marriage breakdown**
- **Sometimes there is not hate-mongering but just a refusal to invest the required time and emotional energy on the part of the AP and children**
- **Sometimes they are just histrionic or unjustifiably fearful of ex-spouse, so that if given the confidence that they can co-parent while being protected by their lawyer, they will settle down**
 - ❖ **Counsel must avoid pouring oil-on-the-fire (as many attorneys do)**

ALIGNED PARENTS WHO ARE NOT ALIENATORS – OR, WHEN IS IT NOT PAS

- **Therapists on the outside looking in may see a case of PAS, because the children’s “angry fires” or rejection have not cooled.**
- **There is a certain humbleness that is required when you are not “in the tent”.**
- **These cases get solved by:**
 - ❖ **educating the AP, who is open to acquiring new skills and new discourse to use in the home**
 - ❖ **finding appropriate motivations for the AP and the other children to invest the time and emotional energy in solving the TP’s problem for him/her**
 - ❖ **Working with the TP on their difficulties in relating to the children**

TRIBAL WARFARE

TRIBAL WARFARE

- **Aligned friends, family, neighbours – all divided, conflicted and turncoats**
- **Step parents who fail to observe appropriate boundaries**
- **Schools and extra-curricular activities get drawn in and demanded that they not share information**
- **Many can be successfully cross-examined about prior favourable relationship with the TP**
- **Make sure assessor discounts blindly-aligned collaterals**

Tribal Warfare #2 – The Aligned Therapist

- See: *“Is the Child’s Therapist Part of the Problem”*, 37 Fam. L.Q. 241 2003-2004
- The “rent-a-therapist” - lessons learned (DD; BS; JC; JW)
- Certain assertions by them or on their behalf by AP’s counsel arguably involve a breach of the *Regulated Health Professions Act* (Ontario). Under that statute, only licensed psychologists, licensed social workers, medical doctors and [pending amendment – licensed practitioners under the *Psychotherapy Act, 2007*] from:
 - “Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis”.

Tribal Warfare #2 – The Aligned Therapist

- **If there has been an assessment report by a psychologist or a psychiatrist, then the “therapist” cannot make any statement or diagnosis on which the AP relies conflicting with the diagnosis and recommendations in the Report – or else this would breach the Court Order under section 30 of the CLRA.**
- **Watch out for “dual role” issues – therapist to children and potential witness of the AP at trial; assessor turned therapist**
- **Get them off the file immediately – whether in capacity as a joint custodial parent or by Court Order and cease and desist letter.**
- **Civil claim and complaint to their professional body or association should be considered.**

Tribal Warfare #3 – Other Aligned Professionals and Third Parties

- **The family doctor is also the AP's doctor (BC)**
- **Aligned professional is part of a practice group – bad referrals**
- **School administrator**
- **Coaches, piano teachers, daycare provider**

EXPERT EVIDENCE ISSUES

Expert Evidence in Court

- It's irrelevant that PAS is not yet not in the DSM (see California CA 2012 in McRoberts v Lesserson)
- That being said – PA has passed the Mohan test (and the related US jurisprudence) time after time in the past 10 years and is unquestionably admissible through expert evidence and is not “junk science”
- Maximum contact of both parents is a societal value enshrined in Divorce Act 16(10) and related provincial legislation
- Mental health and social sciences literature is firm in finding better outcomes resulting from enduring relationships with both parents
- Divorce Act 16(10) and related provincial legislation and jurisprudence supports the “friendly parent” principle

EXPERTS RETAINED BY ONE PARTY

- **Must nonetheless retain independence in terms of professional opinion**
 - ❖ Professional standards
 - ❖ Ontario Rules of Civil Procedure and Form 20.1/53
- **Experts retained to give an opinion on interim Motions might be conflicted regarding expert report for Trial**
- **Independence of thought regarding work done; avoidance of advocacy**
- **Balanced opinion and more persuasive opinion if the expert has access to and reviews the opposite party's materials**
- **Litigation privilege vs. communications and working papers**

ASSESSMENTS

- **Ontario CLRA, sec. 30**
- **Ontario CJA – OCL (the “poor man’s assessment”?)**
- **An assessment can always help in a PAS case provided it is conducted by a professional with specific expertise and is commenced immediately and the assessor is chosen at the very time the assessment is Ordered.**
- **When Ordered?**
 - ❖ “clinical issue”
 - ❖ Opinion evidence beyond the normal knowledge of the Court

ASSESSMENTS

- **Sufficient qualifications for a PA - focussed assessment: Psychiatrist; Psychologist; Social worker**
 - ❖ Tax deductibility; benefit plan coverage; complexity of assignment
- **Personal knowledge of the assessor, methodologies used, diagnostic used**
 - ❖ Court Order specifically directing an inquiry into PAS
 - ❖ AFCC Standards
 - ❖ Gould and other texts
 - ❖ Pay attention – practices vary as to collateral interviews and document reviews
- **Professional regulation and rules of conduct**
 - ❖ Psychological Association ethical rules
 - ❖ College of Physicians and Surgeons rules for third party reports

EXPERTS

- **New Rules of Civil Procedure in Ontario as of January 1, 2010**
 - ❖ Overriding duty to the Court
 - ❖ Court can require experts to meet and narrow issues
 - ❖ Scope of disclosure obligation re information relied on narrowed
 - ❖ Expert reports must now include more information establishing qualifications, more substance on opinions and an acknowledgement of the expert's overriding duty to the Court
 - ❖ Earlier report delivery deadlines (Family Law Rules still say 14 days before trial)

ASSESSMENTS

- **Set the agenda and demonstrate thorough knowledge and intention to hold assessor to high standards in initial meeting with counsel and assessor**
 - ❖ Know the issues and the rules and make it clear that thoroughness is required and will be reviewed
- **Critiques and supplemental experts**
 - ❖ Allowed by CLRA sec. 30
 - ❖ *Mayfield v. Mayfield (2001), 18 R.F.L. (5th) 328, [2001] O.J. No. 2212, [2001] O.T.C. 429, 2001 CarswellOnt 2036 (Ont. Sup. Ct.)* is an anomalie
 - ❖ Transference; Bias; methodology errors;
 - ❖ Failure to comply with standards
 - ❖ Best to avoid by ensuring the assessor gets it right in the first place with timeline; collaterals; fact synthesis; responses to other side; audio and visual evidence
- **Updates vs trial preparation**

Experts

▪ Mohan/Frye Test

- ❖ PAS as a concept is well-established in Canada even if an accepted diagnostic is not yet in DSM
- ❖ It is similarly beyond challenge in the US
 - Jennifer Hoult article is easily refutable (Rand article; Warshak website; various chapters of The International Handbook of Parental Alienation Syndrome)
- ❖ Not even necessary as per Calif CA 2012 McRoberts v Lesserson

▪ **Make sure that each expert's role in the overall case is clearly delineated so that you meet the basic test for admissibility of opinion evidence – *Dulong v. Merrill Lynch Canada Inc.* 2006 CanLII 9146 (ON S.C.)**

▪ **Comply with formalities:**

- ❖ summary report filing with CV 90 days in advance
- ❖ Canada/Ontario Evidence Act Max #

Experts

- **Ensure they can be qualified as an expert in the area of their opinion evidence**
 - ❖ Key distinctions between theory and clinical experience
- **Other challenges at the “qualifying stage” at trial**
 - ❖ History of relationship with client or counsel
 - ❖ Bias based on prior publications
 - ❖ Comments by judges in other cases
- **Draft report issues – avoid influencing or tainting**
- **Expert’s file – privilege vs. Production**
- **Questioning of the expert before trial on their report**
- **Challenges during testimony:**
 - ❖ Expert opinion vs. Advocacy
 - ❖ Based on hearsay
 - ❖ Inconsistent with expert report they issued
- **Reg 105 and GST issues for US experts**

RHETORIC CONCERNING THE CHILD

RHETORIC CONCERNING THE CHILD

- **The “right of the child”; the “voice of the child”, the “best interests of the child”**
- **UN Convention on the Rights of the Child (1990) protects the right of the child to maintain relationship with his/her parents; not the right of the child to reject a parent**
- **The voice of the child can be put before the Court in a sensitive, age-appropriate way through an assessment or OCL investigation or “open mediation” rather than by appointing counsel and making a child a party to the private custody/access litigation**

RHETORIC CONCERNING THE CHILD

- **The Best interests of the child are governed by the *Divorce Act* s. 16, including:**
 - (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
 - (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage **should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.**
 - ❖ The custodial parent, in effect, becomes the interim trustee of the child's right to a relationship with the other parent

RHETORIC CONCERNING THE CHILD

- **The best interests of the child are also defined in s. 24 the *Children's Law Reform Act (Ontario)* for common law relationships**
 - ❖ This is a list of factors for which support for the other parent's relationship with the children has been inferred (*Rogerson v. Tessaro Ont. CA 2006*)
 - ❖ The expressed wishes of the children is one factor
 - ❖ The challenge is to ascertain the child's capacity to make this expression or whether free will is lacking as a result of the PAS dynamic.
 - Need to ensure that the child is not subject to a loyalty-bind and has the freedom to express love for both parents

RHETORIC CONCERNING THE CHILD

- **Supreme Court of Canada in *Young v. Young* (1993) clarified that access is the “right of the child” rather than a “parental right” and so heightened the importance of becoming at least a joint custodial parent.**
- **However, “custody” issues are generally related to: health, education, religion and mobility issues**
 - ❖ Most parental disputes relate to the living arrangements and day-to-day decisions
 - ❖ But the rhetoric and “label” are important regarding the parent and child’s views of the nature of their relationship. Nobody wants to be a “visitor”. There should be “two [equal] healthy happy homes”.
- **The child used to have a 100% living arrangement with both parents – why should the child lose out as a result of the separation**

How to Hear the Voice of the Child

- **Child Representation**
- **Assessments**
- **Judicial Interviews**
- **Therapists**
- **Child testimony**

A SECURITIES LAWYER IN FAMILY-LAW- LAND PART 2

Quote from "The Matrix"

Cypher pours Neo a drink from a large jug. He hands it to him.

Cypher (to Neo): You know,... I know what you're thinking; because right now I'm thinking the same thing. Actually, I've been thinking it ever since I got here.....

Why, oh why, didn't I take the blue pill?

MANAGING THE PARENTAL ALIENATION CASE

Brian Ludmer,
B.Comm., LLB.,
(416) 781-0334
brian@ludmerlaw.com

Presentation to
ISNAF

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