

December 13, 2022

**Submission on parental alienation accusations to the United Nations' Special Rapporteur on violence against women and girls, its causes and consequences**

Canada's Centre for Research & Education on Violence Against Women & Children (CREVAWC) is a nationally and internationally recognized centre of research and knowledge mobilization on family violence ([www.learningtoendabuse.ca](http://www.learningtoendabuse.ca)). Founded in 1992, the Centre's mission is to facilitate the collaboration of individuals, groups and institutions representing the diversity of the community to pursue research questions and training opportunities to understand and prevent violence and abuse. The Learning Network, which is one part of the Centre, develops evidence-informed resources, facilitates knowledge exchanges, presents webinars and resource spotlights, and promotes resources to assist in the daily work to prevent and stop violence towards women and children and vulnerable adults.

This past year, CREVAWC's Learning Network produced and distributed a two-part series directly relevant to the work of the Special Rapporteur. Entitled "The Misuse of Parental Alienation in Family Court Proceedings with Allegations of Intimate Partner Violence", Part 1 provides an overview of what parental alienation constitutes, how its use has evolved in the family court system, and the implications of parental alienation claims in child custody cases involving intimate partner violence (IPV) for mothers and children. Part 2 examines the impacts of claims of parental alienation claims on mothers and children and offers considerations to better support them. Information in these resources is based on current literature on parental alienation involving IPV and consistent with this literature, focuses on mothers harmed by fathers, as mothers face a greater likelihood of serious injury and death from IPV and are most often accused of alienation in their efforts to protect children. We note within that there remains a lack of intersectional analysis on the misuse of parental alienation in cases involving parents of different identities, such as BIPOC identities, transgendered identities, and individuals with disabilities and that future research enabling an intersectional analysis is critical to accurately capture the myriad challenges and barriers women face when navigating the family court process and to design appropriate responses to meet their needs

We are submitting these resources to the Special Rapporteur with the hope that they are helpful in clarifying the nexus between custody and guardianship cases, violence against women and violence against children and allegations of parental alienation.

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

### Part 1: Understanding the Issue

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

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

If you need support as you read through this Issue, [please reach out](#).

### WHAT IS PARENTAL ALIENATION?

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

### EVOLUTION OF THE TERM "ALIENATION" IN FAMILY COURT

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



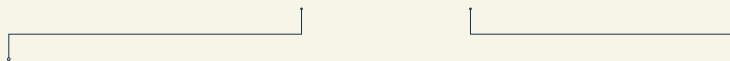
as “parental alienation syndrome” (PAS) to describe parents in child custody disputes who were turning children against the other parent. He noted that this was done by “using a program of denigration” where one parent intentionally and systematically denigrates and spurns the other parent in order to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

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

PAS has not been accepted as a psychiatric disorder by the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and has been widely discredited as a reliable and valid label by an overwhelming amount of research.<sup>7</sup>  
[Click here to learn more.](#)

## WHY CHILDREN MAY REFUSE OR RESIST CONTACT WITH A PARENT AFTER SEPARATION<sup>8</sup>

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



- 01 **“Child factors** (age, cognitive capacity, temperament, vulnerability, special needs and resilience);
- 02 **Parent conflict** before and after the separation;
- 03 **Sibling relationships**;
- 04 **Favoured parent factors** (parenting style and capacity, negative beliefs and behaviours, mental health, and personality, including responsiveness and willingness to change);

- 05 **Rejected parent factors** (parenting style and capacity, negative reactions, beliefs and behaviours, mental health, and personality, including willingness to change);
- 06 **The adversarial process/litigation**;
- 07 **Third parties** such as aligned professionals and extended family; and
- 08 **Lack of functional coparenting**, and poor or conflictual parental communication.”

## ALIENATION CLAIMS AS A SHIELD AGAINST IPV CONCERNS

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

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

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

### HOW IPV ALLEGATIONS ARE OFTEN TREATED IN THE LITIGATION PROCESS

Survivors often face five hurdles:

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



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

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[Safety Planning before, during and after separation](#)

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

## WHAT IS A CUSTODY REVERSAL?

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



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

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

### Read more:

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

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

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

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

*Table starts at the next page.*

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

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

Adapted from Mindthoff, A., Goldfarb, D., & Behre, K.A. (2019). How Social Science Can Help Us Understand Why Family Courts May Discount Women’s Testimony in Intimate Partner Violence Cases. *Family Law Quarterly*, 53(3), 243-264. Available at [https://www.researchgate.net/profile/Amelia\\_Mindthoff/publication/342247787\\_How\\_Social\\_Science\\_Can\\_Help\\_Us\\_Understand\\_Why\\_Family\\_Courts\\_May\\_Discount\\_Women’s\\_Testimony\\_in\\_Intimate\\_Partner\\_Violence\\_Cases/links/5eea88bea6fdcc73be84e0f3/How-Social-Science-Can-Help-Us-Understand-Why-Family-Courts-May-Discount-WomensTestimony-in-Intimate-Partner-Violence-Cases.pdf](https://www.researchgate.net/profile/Amelia_Mindthoff/publication/342247787_How_Social_Science_Can_Help_Us_Understand_Why_Family_Courts_May_Discount_Women’s_Testimony_in_Intimate_Partner_Violence_Cases/links/5eea88bea6fdcc73be84e0f3/How-Social-Science-Can-Help-Us-Understand-Why-Family-Courts-May-Discount-WomensTestimony-in-Intimate-Partner-Violence-Cases.pdf)

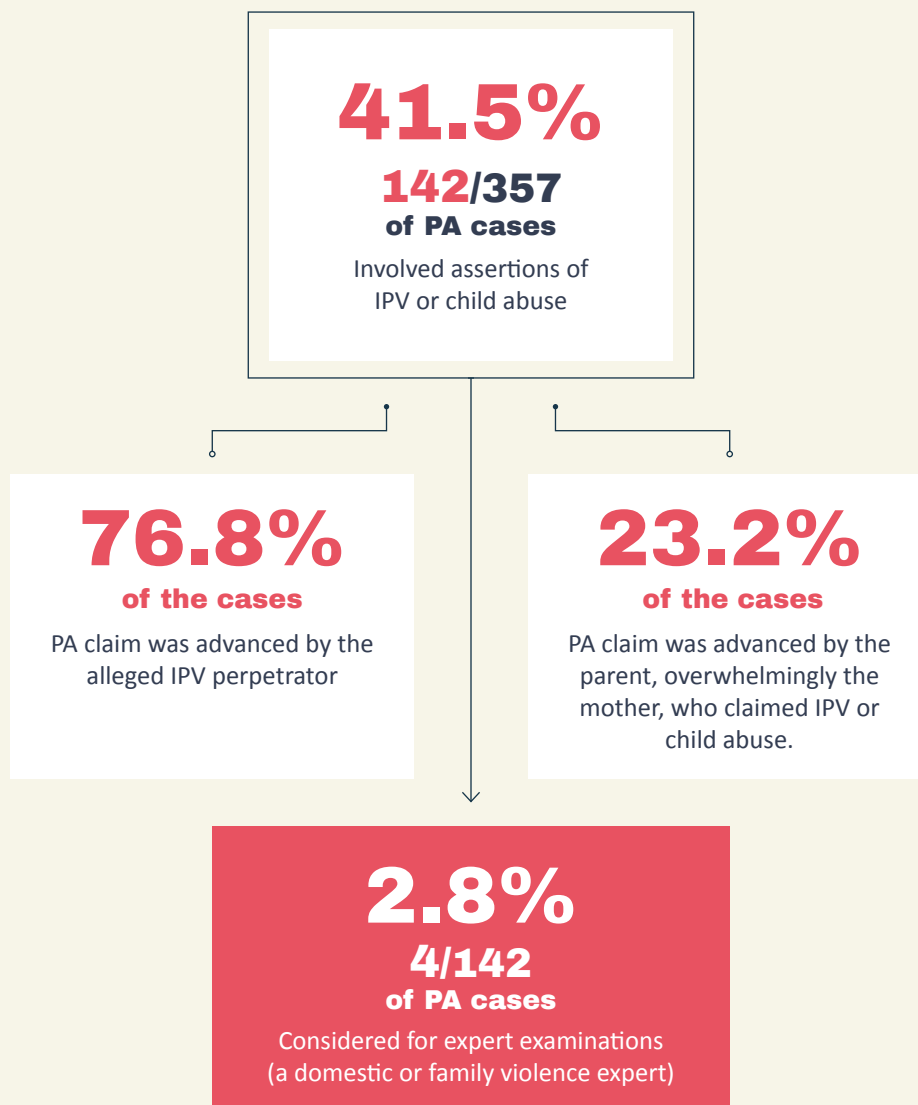
## PARENTAL ALIENATION CLAIMS IN CHILD CUSTODY CASES IN CANADA

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

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

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

(NEILSON, 2018)



This is not a comprehensive summary of key findings from this study. See <sup>41</sup>.

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

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



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



## CONCLUSION

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

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

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



**Western**

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<sup>45</sup> Ibid.

# LearningNetwork

Mobilizing knowledge to end gender-based violence

Issue 34 | March 2021

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

### Part 2: Impacts on Survivors and Children

This Issue is the second in a two-part series that examines the potential misuse of parental alienation (PA) claims with intimate partner violence (IPV) in family court proceedings in Canada. It examines the impacts of PA claims on mothers and children\* and offers considerations to better support them. We recognize that a partner (e.g., female, male, nonbinary) within any type of intimate relationship (e.g., same sex, heterosexual) can be a victim of IPV and can be accused of alienation. However, we focus on mothers harmed by father figures in both Issues as they face a greater likelihood of serious injury and death from IPV and are most often accused of alienation in their efforts to protect children.<sup>1</sup>

If you need support as you read through this Issue, [please reach out](#).

[Click here to read Part 1: Understanding the Issue](#)

It provides an overview of PA, how its use has evolved in the family court system, and the implications of PA claims in child custody cases involving IPV for mothers and children.

## CONCERNS ABOUT THE MISUSE OF PA

After separation, the ideal situation is for children to have ongoing positive relationships with both parents and to be protected from continuing conflict between parents. Children do not benefit when one parent attempts to prevent or undermine a child's relationship with the other parent, often referred to as "alienating" behaviours that can vary in severity. Courts do not tolerate these actions either. However, when a parent is concerned about their child's safety due to a history of child maltreatment or IPV, their attempts to protect their children can be mislabeled as "parental alienation." Rather than focus on the impacts of the abuse and violence that has occurred in the past or continues in the present, court professionals (e.g., judges, lawyers, and mental health professionals) turn their attention to mothers who are accused of engaging in "alienating" behaviours.



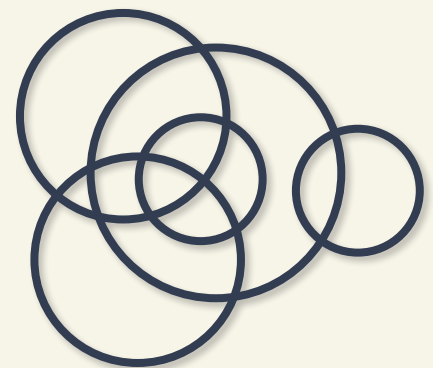
*\*We use the term 'children' in this Issue to refer to children and youth under the age of 18.*

## FAMILY AND DOMESTIC VIOLENCE EXPERTS ARE CONCERNED WITH THE MISUSE OF PARENTAL ALIENATION FOR A NUMBER OF REASONS, INCLUDING:

- There is a lack of support for parental alienation theory in scientific evidence;<sup>2</sup>
- There are multiple, contributing factors that may explain why children refuse contact with a parent post-separation (e.g., developmental preference for one parent over the other, sibling relationships, violence in the home);<sup>3</sup>
- It diverts attention away from abuse allegations and other evidence pertinent to the best interests of the child;<sup>4</sup>
  - For instance, Sheehy & Boyd (2020) found that of **90** cases involving IPV & PA, IPV was deemed irrelevant to children's best interests in **40%** of cases
- There is a significant gender bias associated with PA theory<sup>5</sup>
  - For instance, Sheehy & Boyd (2020) found that of **90** cases involving IPV & PA, Women declared alienators suffered negative changes to their custody at a rate of **48%** compared to fathers declared alienators who suffered consequences at a rate of **31%**
- It ignores the realities of IPV, specifically, coercive control post-separation and long-term impacts of abuse and trauma on survivors and children; and
  - For instance, Sheehy & Boyd (2020) found that of **90** cases involving IPV & PA, Finding of IPV is "neutralized" or dismissed in **23%** of cases
  - For instance, Neilson (2018) found in a review of **142** cases involving IPV & PA, **2.8%** of cases were considered for expert examination, such as by a domestic or family violence expert
- There is an increase in allegations of PA in the Canadian family court system and its misuse can endanger survivors and their children.<sup>6</sup>

### LACK OF INTERSECTIONALITY IN PA RESEARCH

Much of the research on PA provides little demographic information about parties involved and there is little literature on how PA claims in IPV cases impact women and children of different identities and who face intersecting systems of oppression. This gap in research is critical to address since marginalized individuals often face challenges in the family law system that contribute to "reinforcing rather than alleviating [people's] vulnerability."<sup>7</sup>





## IMPACTS OF IPV ON SURVIVORS AND CHILDREN

There is extensive literature on the negative physical and health outcomes for survivors of IPV. For adult survivors, experiencing IPV has been linked to outcomes including physical health conditions (e.g., chronic pain, migraines, and gastrointestinal problems), as well as low self-esteem, depression, anxiety, post-traumatic stress disorder (PTSD), self-harm, and suicidality.<sup>8</sup>

IPV also has significant [impacts on children](#). Even if children have not witnessed a violent incident in their home, they are usually aware of the violence that exists. They may hear the sounds of violence and/or experience its aftermath in the form of damaged objects, injuries to a parent, a parent's fear, or the tension between parents. Children interpret, predict, assess their roles in causing the violence, worry about what will happen, and engage in problem solving.

Adverse outcomes of childhood exposure to IPV include an increased risk of psychological, social, emotional and behavioural problems, including mood and anxiety problems, traumatic stress, substance use, and school-related difficulties.<sup>9</sup> When this exposure is ongoing (e.g., across developmental stages), there can be a cumulative effect which increases the emotional, physical, and social toll on children.<sup>10</sup> Current research also tells us that the influence of abuse can persist long after the violence, or exposure to violence, has stopped. For instance, exposure to IPV as a child or youth increases the probability that boys will cause harm to their future intimate partners and that girls will experience IPV later in life.<sup>11</sup>

### Read these two reports from the Learning Network to learn more:

[Links between the Maltreatment of Girls and Later Victimization or Use of Violence](#)

[The Link between Boys' Victimization & Adult Perpetration of Intimate Partner Violence: Opportunities for Prevention across the Life Course](#)

## THE ROLE OF TRAUMA IN CHILDREN INVOLVED IN CUSTODY CASES WITH PA & IPV

Children benefit from maximum contact with both parents unless this contact exposes children to high levels of stress (e.g., parental conflict or violence in the home).<sup>12</sup> Domestic and family violence experts are concerned that application of parental alienation theories can undermine children's access to the factors that can support their resilience following trauma such as parental warmth, positive parenting, and warm, safe, and stable bonds with non-abusive caregivers.<sup>13</sup>

In addition, recent research points to the failure of courts to recognize or consider the lasting effects of trauma on survivors and children in cases involving IPV and PA.<sup>14</sup> Judges may dismiss the continuing fear of a child or their protective parent in the absence of recent violent incidents and view it as "irrational, manipulative, or at minimum, had no basis."<sup>15</sup> The science tells us otherwise: children's fears associated with toxic levels of stress in the home can result in potentially long-term developmental harm to children.<sup>16</sup> At the same time, the effects of IPV on adult survivors do not cease when the violence ceases. Rather, IPV can produce long-term psychological trauma and fear responses in adults, as well as children.<sup>17</sup>

Thus, the role of trauma should be considered in any strained parent-child relationship and a comprehensive assessment is needed to determine a range of factors that may contribute to these relationships.<sup>18</sup> This screening should precede any intervention and treatment and should be required in all cases. Screening should also be completed for each member of the family where parent-child contact problems are suspected or found.



### Read this report to learn more:

[What You Don't Know Can Hurt You: The importance of family violence screening tools for family law practitioners](#) by Luke's Place



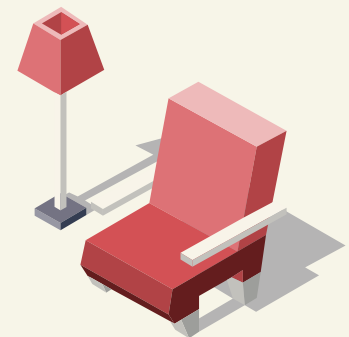
## IMPLICATIONS OF PA ALLEGATIONS FOR SURVIVORS AND CHILDREN

Parental alienation claims in child custody cases involving allegations of IPV can have detrimental impacts on survivors and children and can jeopardize their safety and well-being. For instance:

>	Women and children may be silenced so that evidence of violence and of negative parenting is not presented. <sup>19</sup>
>	Survivors who are accused of, or threatened to be accused of PA, do not feel believed, protected, or supported through family court and child protection proceedings. This can further exacerbate experiences of helplessness, stress, and anger. <sup>20</sup>
>	There may be an imposition of equal time, joint custody presumptions, or equal shared parenting responsibility in unsafe conditions.
>	Little attention paid to scrutiny of child risk and safety factors in family violence cases.
>	Re-traumatization of children and survivors during court-mandated contact or visits.
>	Interventions that may recommend a change of custody to a supposed “rejected” parent, or prolonged temporary custody with the parent a child fears during reunification programs. Both interventions result in a separation of children from the parent they associate with providing emotional and physical security.

### REUNIFICATION THERAPY

In extreme cases, judges may remove the children from the custody of the parent accused of alienating if they give the claims of PA more weight than the claims of IPV by the other parent. In these cases, judges may order the children to attend a reunification program against their will to treat their rejection of a parent. There is no evidence that these programs work as an involuntary program and they may do more harm than good.<sup>21</sup>



### THE STRUGGLE TO BE HEARD

In family court cases involving IPV and PA, there is considerable onus placed on the survivor to prove a history of violence while playing the role of a “perfect victim”. Often times, survivors lack the financial and emotional resources to prove that violence occurred. Although police, child protection workers, doctors, and other professionals can testify about their knowledge of the violence, it is important to note that many women do not report IPV or seek help for many reasons including: shame; lack of appropriate services; lack of secure, safe, accessible, and affordable housing; concern for safety of children; economic instability; and immigration status. In many family court proceedings involving allegations of IPV, the absence of an independent source of evidence can lead to a “credibility contest” between the parents.<sup>22</sup> For some women, this means a constant struggle to be believed. For instance, Black women who are often seen as “tough, strong, and psychologically dominant” face the additional hurdle of overcoming negative stereotypes in order to be perceived as an ideal victim: “sweet, blameless, scared, and helpless.”<sup>23</sup> Indigenous and racialized women also face systemic discrimination and racism, and are often not taken “seriously” with allegations of violence.<sup>24</sup>

Access to justice is also a significant problem for many survivors. For instance, over half of family court litigants can’t afford lawyers or enough legal representation for complex cases.<sup>25</sup> Family court proceedings for survivors with legal representation is already

overwhelming and daunting. For those who are “un-represented”, it can be particularly exhausting since such cases often take longer to adjudicate and require more court resources.<sup>26</sup> In addition, survivors may sometimes have to face their former partners, who have chosen to “self-represent” by choice in order to use the court proceedings to continue to terrify and harass them.

## Read this report to learn more:

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

## ENSURING CHILDREN'S SAFETY

When child maltreatment is alleged, child safety is the first priority followed by child stability and wellbeing.<sup>27</sup> In situations of partner abuse, survivor safety is the overarching priority, and children's safety is inextricably linked to the safety of adult victims, usually their mothers.<sup>28</sup> These same safety standards should be applied in cases of marital/relationship dissolution involving IPV and/or child maltreatment.

An in-depth assessment of the violence is required in order to develop an appropriate parenting plan that recognizes the violence and the impact on adult survivors and children exposed to violence.<sup>29</sup> Potential ongoing impacts of abuse on survivors and children should always be considerations in parenting plans. The abuse may have ended but its impacts often continue because of the severity, duration, and nature of the violence and trauma experienced, and for reasons that include the following factors:

### IPV does not always end with separation of partners.

In most cases, the incidence and risk of violence decreases once partners separate. However, in a small proportion of cases, especially abusive relationships, the intensity and lethality of IPV may escalate after the survivor leaves the relationship. Children may continue to experience the emotional harms of exposure to this violence.<sup>30</sup>

### Perpetrators of IPV are more likely to be abusive as parents.

Those who demonstrate abuse and coercive control of their intimate partners may behave similarly with their children. Children whose mothers have experienced IPV by their male partners are more likely to be directly abused.<sup>31</sup>

### Individuals who exhibit patterns of abuse with their partners and who use physical force to resolve conflicts are negative role models for children.

Exposure to IPV creates an emotional and psychological threat to children's wellbeing, security, and safety. In addition to this exposure, there may be harmful role modeling even after parental separation, whether or not parents mistreat their children directly. Children may continue to be exposed to abuse and poor modeling in the abusive parent's subsequent intimate relationships.

### Abusive ex-partners are likely to undermine the survivor's parenting role.

Abusive ex-partners are likely to attempt to alienate the children from the other parent's affection, disrupt family plans, and undermine parental authority by explicitly instructing the children to not listen or obey. Abusive ex-spouses may also use family court litigations as a new way to continue their coercive controlling behaviour and to harass their former partner.<sup>32</sup>

**Children may be killed in the context of IPV and ongoing custody disputes.**

Although child homicides are relatively rare events, findings from various international death review processes (e.g., Canada, U.S., Europe, Australia, and New Zealand) have revealed that many of these deaths appear predictable and preventable with hindsight. For instance, some professionals and agencies overlook warning signs that may suggest direct harm to children, even in cases where the dangers to adult survivors are clear.<sup>33</sup>

Close coordination and communication among family and criminal courts and professionals is critical to ensure children are included in safety planning for adult survivors.<sup>34</sup>

## BETTER SUPPORTS FOR WOMEN AND CHILDREN

Allegations of PA in IPV cases continue to increase across Canada with potentially serious implications for women and children. Though a comprehensive review of the family court system and opportunities for growth and change falls outside of the scope of this Issue, we highlight several key considerations to better support women and children as they navigate the family court system and seek safety and protection.



### 1. Providing Mandatory Training and Education on Family Violence

Mental health and social service professionals must be qualified to identify patterns of abuse as well as the risks of post-separation violence. As they provide a range of support to courts, these professionals must have training in IPV, child maltreatment, child development, and trauma. Such professional education opportunities must also be extended to judges, lawyers, and all court-related professionals.

Most importantly, in situations of marital/relationship breakdown, allegations of IPV need to be addressed before issues of custody and visitation can be determined. Professionals involved in child-custody decision-making (e.g., parenting coordinators) need special training to recognize, understand, and properly evaluate evidence of IPV and/or child maltreatment and claims of alienation. This comprehensive training could lead to a decrease in widely held misconceptions surrounding “high-conflict” cases involving allegations of IPV and ensure that they are truly acting in the best interests of the child or children involved.<sup>35</sup> Proper screening for abuse and trauma is essential to prevent children from continued exposure to violence and to promote safety for survivors and risk management and accountability with partners who use abusive behaviours.



### 2. Creating Trauma- and Violence-Informed Courts

The term alienation has been used for decades to blame IPV victims for being protective of children in the face of abuse. The misuse of this label needs to end and be replaced with a **trauma- and violence- informed approach** to avoid re-traumatizing mothers and children who have experienced IPV and are involved in custody and divorce litigation. Such approaches will ensure that court professionals are aware of and understand the potential impacts of current and past trauma and violence on parties in court proceedings, minimize harm and enhance safety, respect boundaries, provide culturally appropriate responses, and use language and behaviours that encourage agency and resilience.



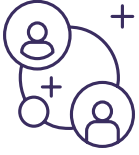
### 3. Developing and Utilizing a Structured Framework and Tools to Screen and Assess the Impact of IPV for Parenting Decisions

Judges and court-related professionals, such as custody evaluators, have to consider multiple sources of information and factors to develop a parenting plan that promotes safety for survivors and children. The **Battered Women’s Justice Project** in the United States has developed excellent tools that outline how to identify IPV in order to promote safe and informed disclosures of abuse. A key step is defining the nature and context of the abuse and who is doing what to whom, why and to what effect. The second step is to evaluate the implications of the abuse. The third step is taking informed action by accounting for abuse. The last stage of the framework focuses on making informed decisions and taking informed actions that fully account for the nature, context and implications of abuse. The framework is intended to directly address the underlying conditions that would otherwise allow the abuse – and its implications – to persist long after the family court case is officially closed.

A Framework for Identifying, Understanding, and Accounting for Abuse\*



\*Adapted from: Davis, G., Frederick, L., & Ver Steegh, N. (2015). *Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters*. Battered Women’s Justice Project. Available at: <https://www.bwjp.org/assets/documents/pdfs/practice-guides-for-family-court-decision-making-ind.pdf>



#### 4. Improving Coordination Between Agencies Involved in Multiple Legal Processes

It is important to consider that for parents involved in “high-conflict” separations and who are survivors of IPV, the lack of coordination between agencies, professionals, and court proceedings can be overwhelming and time-consuming. Parents and children may need to navigate multiple legal processes (e.g., child protection, criminal, family, immigration), recount their stories numerous times, and receive conflicting orders and outcomes from different proceedings.<sup>36</sup> Consider a potential scenario where “there is an acquittal of the alleged abuser in the criminal proceedings, a finding that the children are in need of protection resulting from exposure to violence in the child protection proceedings, and an order for joint custody in the family proceedings.”<sup>37</sup> There is clearly a need to improve communication and coordination among agencies, professionals, and judges in criminal and family law proceedings to ensure the safety and well-being of survivors and children as well as risk management and accountability with perpetrators.



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