4 Degrees of Separation: Affinity, Alignment, Alienation and Estrangement

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INTRODUCTION

In determining access and contact between a child and a non-custodial parent, the court must give effect to the principle that a child should have as much contact with each parent that is consistent with the best interests of the child, and for that purpose, take into consideration the willingness of the person for whom access is sought to facilitate such contact.\(^1\) One of the most challenging situations in family law involves high-conflict separations with difficulties in enforcing parenting time. Although these cases are relatively small in proportion to all other cases before the Court, they take up a significant amount of court time. The Court struggles to find answers and solutions in light of the negative attitudes and behaviors of the children, as well as the attitude of the parents.\(^2\)

Judges and lawyers have begun to use the phrase “parental alienation” to describe the most troublesome of cases involving high conflict separations. This paper addresses affinity, alignment and estrangement, with a focus on the concepts behind parental alienation, the warning signs that alienation might exist, and what lawyers and judges can do to address parental alienation.

WHAT IS PARENTAL ALIENATION?

Medical Definition

Parental alienation is a “tag attached to an ill-described grab-bag of actions and relationships between parent and child”.\(^3\) The term parental alienation was first introduced in 1985 by Dr. Richard

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\(^*\) The views expressed herein are those of the authors and not those of, or binding on, any member of the Court of Queen’s Bench of Alberta or the Court itself.

\(^1\) Divorce Act, RSC 1985, c 3 (2nd Supp), s 16(10). This principle reflects a significant body of literature which establishes that children have better outcomes after parental separation if they have contact with both parents. See Nicholas Bala, Suzanne Hunt & Carolyn McCarney, “Parental Alienation: Canadian Court Cases 1989-2008” (2010) 48 :1 Family Court Review 164 at 164 [Bala, Hunt & McCarney].


Gardner, a medical doctor and a clinical professor of child psychiatry at Columbia University. Dr. Gardner described parental alienation as a syndrome that existed where:

I) there is parental programming or brainwashing of a child causing the child to reject a relationship with the other parent;

II) the child actively denigrates that parent; and

III) the parent who is being denigrated has not engaged in any behavior which would explain the extent of the child’s rejection.⁴

Dr. Richard Warshak, a psychologist, describes parental alienation as existing when three elements are present:

I) a persistent rejection or denigration of a parent by a child;

II) the rejection is not a response to the rejected parent’s actual behavior and the rejection is irrational; and

III) the favored parent’s influence is at least a partial cause of the rejection.⁵

Not all negative reactions by a child are the result of parental alienation. There is a wide spectrum of parental behavior and complex reasons why a child may refuse to see a non-custodial parent. The indiscriminate use of the phrase parental alienation has led to confusion and misunderstanding.⁶ It is therefore important for both lawyers and judges to differentiate the alienated child from other children who resist contact or express favoritism toward one parent.⁷

Parental alienation is not affinity, alignment, or realistic estrangement. Affinity occurs when a child prefers or feels more comfortable with one parent, but still seeks to maintain a relationship with the other.⁸ Children may feel closer to one parent than the other by reason of “temperament, gender, age, shared interests, sibling preferences of parents, and parenting practices”.⁹ In cases of alignment, a child may take the same position or viewpoint as one parent and resist spending time with the other parent, but that child is neither alienated nor acting under the influence of the other parent.¹⁰ When alignment occurs, the apparent rejection of the parent is occasional, temporary,