

## The politics of parental alienation

By **Gary S. Joseph**

Law360 Canada (February 26, 2026, 3:31 PM EST) -- Why is everything we do politicalized? Family law is on the cusp of social change, and we have seen many positive developments as a result of meaningful debate. However, I object to the latest attempt to politicalize a frequent issue arising in family law matters by the introduction of a private member's bill in the House of Commons to banish parental alienation as a matter to be considered in high-conflict parenting disputes.

For me this is a "bridge too far." It is cancel culture in its worse form. Bill C-223 would ultimately deny a judge in such cases from taking into consideration any allegation that a parent has deliberately manipulated a child into estrangement from the other parent (see s. 4(4) of the bill). Thus, the court would be robbed of its ability to craft remedies for actions that have long been the subject of denunciation in such matters.

Somehow this issue — parental alienation — has become a playoff between feminist groups and men's rights organization. To me this is a silly, harmful and unnecessary battle, but a battle that, in my view, must be won by those opposed to this legislation.



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I have witnessed the evolution of the concept of child estrangement over my legal career. The term "parental alienation" was introduced into our legal lexicon by the long dead American psychiatrist Dr. Richard Gardner (in about 1985 I believe) who wrote 41 books on the subject. The concept has spawned endless academic attacks and debate. Gardner's ultimate death by suicide had nothing to do with the debate, and the debate has raged on since his death in 2003.

I welcome vigorous debate, and I condemn unwarranted attempts to silence it. For me, from a practical perspective, from my long professional life in "the pits" of family law conflict, alienation — or whatever word you wish to ascribe to it — is a gender-neutral concept that at times occurs in high-conflict parenting disputes. It owes no allegiance to one gender or another. Judges of our family courts should be able to consider the allegations of estrangement, alienation or whatever you wish to call in the cauldron of issues that call for evidence and determination in these matters. Over the last 20 years (approximately), our judges have wrestled with this issue and have produced a body of jurisprudence that spans the gambit of alleged "alienators" of all genders and judges of all genders

who have written decisions in these cases. A sample of judicial comment appears below.

### **Parental alienation, judicial comments**

Justice S.R. Clark defined the concept of parental alienation in *N.M. v. D.S.M.*, 2013 ONCJ 71 as follows at para. 68:

[Parental alienation] is a situation where one parent, consciously or unconsciously, attempts to keep the children from the other. This can occur where one parent has a negative or unsupportive attitude toward the other. This can also occur where one's conduct and words in the presence of the children demonstrates one's anger and bitterness toward the other. In circumstances where one consistently denigrates the other, this could tip the balance in favour of such an order [terminating access].

Justice David Price in *Lopez v. Dotzko*, 2011 ONSC 6778 at para. 109, stated the following:

Parental alienation results from a combination of programming of indoctrinations by one parent adding to and/or colouring a child's own feelings toward the other parent causing a negative emotional atmosphere between the child and the parent victim.

In *Blois v. Gleason*, [2009] O.J. No. 1884, at paras. 122-124, Justice Jennifer Blishen referred to *Alienated Children and Parental Separation: Legal Responses in Canada's Family Courts* (2007) 33 Queen's L.J. 79, authored by (my comment: no less than noted authorities) Nicholas Bala, Dr. Barbara-Jo Fidler, Dan Goldberg and Claire Houston, to assist with understanding the parental alienation dynamic. The pertinent excerpts from the article that Justice Blishen refers to are as follows:

In considering the nature of alienating parental behaviour, the authors note that alienation can be either direct or indirect. They state:

Some parental conduct directly fosters a negative attitude in the child towards the other parent, while other parental conduct indirectly undermines a positive relationship between the child and the rejected parent. In many cases there is both direct and indirect alienating conduct.

Direct alienation occurs when one parent actively undermines the relationship between the child and the other parent. One of the most common forms of direct alienating behaviour is the making of derogatory comments about the other parent to the child. (p. 90)

The authors give a number of examples of indirect alienation as follows:

1. when one parent fails to support access or contact with the other parent;
2. when one parent gives tacit approval of a child's negative behaviour or comments towards the other parent;
3. when the child is engaged in activities that have the effect of impeding or competing with access visits;
4. when a parent is consistently late for access drop offs or shows up early for pick ups;
5. when children are told that it is up to them whether or not access occurs;
6. when a child sides with one parent and that parent does not try to dissuade the child from that position; and
7. when the custodial parent expresses sadness that the child is going on an access visit thereby placing the child in a conflicted position just prior to the visit. (p. 91)

In *X. v. Y.*, 2016 ONSC 545, paras 104-105, the court accepted the definition of parental alienation as a child's complete rejection of a parent and uncritical favouring of the other, without justification. The favoured parent encourages the child's behaviour. Where there is justification for the rejection and no involvement by the other parent in creating or fostering the rejection, the case is one of justified estrangement. Cases of alienation often involve some aspect of justified estrangement. The favoured parent either creates the child's view of the rejected parent, and/or facilitates or encourages

it, or does nothing effective to counteract the rejection.

Courts have concluded that expert evidence is not necessary to ascertain whether "alienating" behaviours are taking place. It is a factual finding to be made by the court. *A.M. v. C.H.*, 2019 ONCA 764, para. 32; *Bouchard v. Sgovio*, 2021 ONCA 709, paras. 73-75; *J.R.D. v. S.B.*, 2023 ONSC 46, para. 228; the clinical literature and clinical and academic research have matured so that one can firmly conclude that alienation of children from a parent is emotional abuse of such a magnitude that it can invoke child protection statutes and must be dealt with forcefully and immediately. *N.S. v. C.N.*, 2013 ONSC 556, at para. 123.

In *Children's Aid Society of Waterloo (Regional Municipality) v. K.A.L.*, 2010 ONCJ 80, paras. 113(12) and 126, Justice Margaret McSorley found that the emotional harm to the child as a result of the mother's alienation was more severe than the risk of physical harm to the child in her father's care. Justice McSorley stated:

The risk of any physical harm from the father is far less than the emotional harm N.L. has suffered and will continue to suffer in her mother's care.

The court is also aware of the issue regarding use of physical discipline. No form of physical discipline should be used on N.L. by any person. In comparing the harm caused by the use of physical redirection used by Mr. R.W.L. (slapping and grabbing of N.L.'s arm) with the emotional harm caused by the mother, I believe the greater risk is due to emotional harm.

In *W.C. v. C.E.*, 2010 ONSC 3575, at paras. 136-138, the court relied on statements made by Dr. Barbara-Jo Fidler with respect to the long-term impact of parental alienation on a child:

The literature also confirms that there are additional negative impacts of severe alienation which include: the loss of one-half of the child's family; poor interpersonal relationships; a distorted view of reality; low self-esteem (arising from the belief that if one parent is bad and the child is made up of both parents, the child must also be bad); and self-doubt about their perceptions.

Dr. Fidler also noted that in the research conducted by Clawar and Rivlin, which studied 400 cases of alienated children, the large majority of the children reported that they wished that someone would have "called their bluff" and that deep down they wanted someone to make the decision for them and were relieved when someone else like the Judge made the decision for them.

In *Fiorito v. Wiggins*, 2011 ONSC 1868 at para. 62 and 185, Justice R. John Harper was faced with a family in which an alienation dynamic was present. With respect to the damage that alienation can have on a child, Justice Harper stated:

It is most disturbing that there was a continuum of what I refer to as reality distortions that absorbed the children over almost three years. ... I find that the emotional abuse of these children cannot continue. There must be an order that stops their reality distortion...

Some may argue I have curated this sample in favour of my position. There are indeed hundreds of cases, some writers and some judges have indeed attacked the very existence of the concept of parental alienation. I have read some and understand their views. I leave that debate for those much smarter than me and those more engaged in the true academic review of these matters. My argument is against the ever presence, in our world, of silencing those with whom we disagree.

The cancel culture lives and the end result, perhaps after my time, scares me to death. The cancel movement is real and unrelenting. My feeble attempts to push back will have little result but I will continue to speak out. I strongly object to the efforts to prohibit judges in all family courts from considering allegations of alienation. To me, in the hundreds of parenting trials I have done, it is a cross-gender reality that ultimately destroys families and damages children.

Our hard-working judiciary (an incredibly difficult job) must be permitted to shine the light of evidentiary inquiry on these allegations and determine their veracity and their place in the matrix of a fair and just result in the best interests of the child(ren). I rail against any attempt to block these

inquiries.

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