

PARENTAL CONDUCT

That toxic tug-of-war

In a custody battle, making peace is more important than being right. Indeed, the very notion of 'parental alienation' glosses over whose rights are at issue - namely, the child's

HARVEY BROWNSTONE
APRIL 25, 2009

Family court judge in Toronto

Several recent court cases have focused on the serious problem of parental alienation. Although many are hearing about it for the first time, it has always been a prevalent concern in high-conflict custody litigation.

Mental-health professionals debate the definition of parental alienation, and whether it is a clinical "syndrome," but few would disagree that the problem exists. In simple terms, "parental alienation" refers to a parent's persistent campaign of denigrating the other parent to their child (sometimes called "brainwashing" or "poisoning" the child against the other parent), which causes the child to unjustifiably reject the other parent.

Alienating conduct can take many forms: badmouthing the other parent's personality and conduct; portraying the other parent as dangerous, abusive or as having abandoned or not loving the child; withdrawing love and affection from a child who expresses positive feelings about the other parent; and denying the other parent contact with the child. While some mean by "parental alienation" only the misconduct of custodial parents, we judges often see high-conflict cases where both parents badmouth each other to the children, cruelly placing them in conflicts of loyalty. Moreover, such conduct is not in the exclusive domain of mothers or fathers; both engage in it.

Print Edition - Section Front



[Enlarge Image](#)



In my view, the term "parental alienation" incorrectly identifies the target parent as the victim. The true victims are the children, who are innocent in parental break-ups. Every child has a right to enjoy a loving relationship with both parents. Since it is the child's right that is being violated by a parent's alienating behaviour, it is the child who is being alienated from the other parent. However you name it, there is no doubt that children are at risk of emotional harm when they become weapons, pawns and spies for bitter, angry, vengeance-seeking parents who turn custody disputes into battles for power and control - battles that often focus entirely on the parents' needs and not at all on the children's.

There is widespread dissatisfaction among parents with the family justice system. Among the most angry are non-custodial parents desperately seeking to enforce access to their children. Judges hear daily from heartbroken parents who say that the legal system vigorously enforces child support but does not care about enforcing access. I see their point, but it troubles me when people liken the enforcement of a parent-child relationship to the collection of a debt. Children are not pieces of property that can be "seized" or "garnisheed"; they are vulnerable human beings. Decisions affecting a child's emotional well-being must be carefully made, always with a view to making a child's life better, not worse.

Non-custodial parents routinely allege parental alienation when access is denied. The court must first decide if the allegation is valid. Family dynamics are layered and complex, and it is no simple task to find out why a child is refusing to see a non-custodial parent. What is the child's age and stage of development? Does the child have independent reasons stemming from memories of events before the break-up, or relating to the way access is occurring? Has the child been coached, bribed, threatened or manipulated to express negative views about the access parent? Family courts often require the assistance of assessments from psychologists or social workers. This can take time, which intensifies the problem if alienation is occurring.

If the court finds that alienation is causing a denial of access, what are its options? Sometimes supervised access will take place at an access centre, where trained staff observe the quality of parent-child interactions. Or a court could order police to enforce access. While this can be effective, the police exercise discretion in enforcement, and are understandably reluctant to "arrest" children and drag them kicking and screaming to visits with parents they are adamantly refusing to see. As difficult as this may be for some parents to accept, a child's negative feelings about a parent are real and true for the child, however unjustified these feelings may be.

WON THE BATTLE, LOST THE WAR

A second possibility is to find an alienating parent in contempt of court and impose a fine or jail sentence. This can be effective, but there is a serious risk of backfire. When a custodial parent conveys to an alienated child that the other parent has caused financial hardship because of the fine, the child's negative feelings toward the non-custodial parent can intensify. Even worse, a child whose custodial parent says, "Your mom/dad sent me to jail," may see the custodial parent as a martyr, and become even angrier at the non-custodial parent. Moreover, when a custodial parent goes to jail, the other parent does not automatically get custody; the children's aid society may have to intervene to determine a proper placement for the child during the parent's absence. Some children end up in foster care during this period, and are unforgiving toward the parent they believe put them there. I have seen more than my share of non-custodial parents who "won the battle but lost the war."

Court proceedings are not conducive to peacemaking; they tend to increase acrimony between parents, which is bad for children. Many non-custodial parents simply walk away from an impossible situation, devastated to lose contact with their children, but consoled to know that their children's exposure to a toxic tug-of-war is over. If this happens, custodial parents should know that their "victory" may be short-lived. Adult children often seek out estranged parents and assess the situation for themselves, with an independent mind and open heart. A custodial parent who has selfishly cut the other parent out of their child's life may end up being the excluded one when the child grows up and learns the truth.

Another option is to suspend or terminate child support. After all, if a non-custodial parent is being deprived of the right to see the child, why should he or she have to pay support? Proponents of this argument forget that access is the child's right, as is the right to be financially supported. If the child is being victimized by not getting to see a parent, it does not help the child to also be deprived of the right to be supported by that parent. The law must be child-focused. Children must be fed, clothed and housed even if they are being deprived of a relationship with an alienated parent. Two wrongs do not make a right. The only cases I am aware of where a court suspended or terminated child support for a minor child because of parental alienation, are cases where the custodial parent's financial circumstances guaranteed no reduction in the child's standard of living even without child support. Different considerations might apply for adult children seeking continued support from alienated and blameless parents, but for minor children it is highly unlikely that a child's financial lifeline will be compromised as a remedy for parental alienation.

In some alienation cases, the children's aid society intervenes to protect children from emotional harm. If the children are lucky, the parents may be amenable to counselling to overcome their emotional baggage, so they can reinvent themselves from ex-partners to co-parents. In some cases a relative will offer a suitable parenting plan that insulates the children from the toxic parental conflict. Sadly, in other cases, children end up in foster care, as this is the only way they can have peace and neutrality in their lives.

In severe cases, can the court simply change custody from the alienating to the alienated parent? Yes, but only if, in all the circumstances, it would be in the child's best interests. The alienated parent must establish that he or she can best meet all of the child's needs. This can be a very difficult hurdle for an alienated parent who has had little or no contact with the child for some time. If custody is to change, intensive counselling and therapy are almost always ordered. Some therapy programs are more intrusive, lengthy and costly than others - and there is no guarantee of success. There is no one-size-fits-all when it comes to the emotional health and well-being of parents and children.

RESPECT, FOR THE CHILD'S SAKE

Could parental alienation be avoided by ordering joint custody with 50-50 shared parenting in every case? Should courts divide up the elements of custody to create parallel parenting regimes? Many say yes. Judges say it depends on the individual circumstances of each case. Experts tell us that many alienating parents are suffering from personality disorders, and would not be amenable to a co-parenting arrangement. After 14 years on the bench, I seriously doubt a court order can make immature non-communicative parents become child-focused and treat each other with mutual respect, for their child's sake. But I have seen it happen. Judges try their best to do what is right for children, given the often incomplete and conflicting evidence we get.

I believe that family counselling and therapy are the most important resources that separated parents need to overcome their pain and anger. Parents must carefully consider the impact of their behaviour on their children - and become aware of the potentially devastating consequences to themselves and their children of high-conflict litigation. Reaching compromise and making peace for the sake of your children are more important than being right. Having healthy, well-adjusted and happy children is more important than getting revenge. Parents can have new partners, but no child gets a second childhood. Children learn about relationships and parenting from observing their own parents. No one should forget this.

Harvey Brownstone is the author of

Tug of War: A Judge's Verdict on

Separation, Custody Battles, and

the Bitter Realities of Family Court.

© Copyright 2009 CTVglobemedia Publishing Inc. All Rights Reserved.

CTVglobemedia

globeandmail.com and The Globe and Mail are divisions of CTVglobemedia Publishing Inc., 444 Front St. W., Toronto, ON Canada M5V 2S9
Phillip Crawley, Publisher