

**Parental Alienation:
The New Zealand Approach**

Lee A. James

A thesis submitted for the degree of Master of Laws at the
University of Otago, Dunedin, New Zealand

April 2018

Abstract

Parental alienation involves a child being influenced by a parent to reject or resist contact with the other parent for no good reason. It can occur in intact families; however, this thesis focuses on its occurrence in separated families. The most significant challenge for experts dealing with parental alienation is identifying whether the cause of a child rejecting or resisting contact with a parent is a result of the alienating behaviour of one parent, or a result of justified estrangement. There is a large body of international research available in relation to alienation, but the researchers disagree on some aspects associated with alienation, and, in particular, about the specific means of identifying alienation (or a so-called “diagnosis”). However, the currently available research is extensive and reliable enough to be utilised by professionals and the court to address parental alienation and to deal the alienation where it is present. There is, to date, little research on how parental alienation is identified or dealt with in New Zealand.

This thesis considers the empirical research evidence and analyses how the New Zealand courts identify parental alienation. The two most significant challenges for the courts are; identifying where alienation is present (and whether there is any justified estrangement) and how to minimise the detrimental impact on children. Analysis of the case law in New Zealand, Canada and in the England/Wales courts established that there are some common parental behaviours identified by these courts that result in children becoming alienated from a parent. These include false or exaggerated allegations regarding risk to the child (safety allegations), certain personality traits (or possible psychopathology) of the alienating parent, high parental conflict, passive and/or dysfunctional parenting, and the making of unilateral decisions by the alienating parent. There were, however, alienating behaviours identified in the empirical research which did not feature in the cases analysed.

Variations in the outcomes of the New Zealand case law was evident when punitive measures were imposed to reduce or reverse alienation in some cases, but not others, despite similar elements of alienation being present in the family dynamics. A comparison of the international case law with the New Zealand case law regarding case outcomes found that these jurisdictions all order punitive measures, including a change of care in

situations of severe alienation, but that the Canadian courts also impose specific therapeutic measures to redress alienation.

New Zealand currently lacks resources to enable early intervention in alienation cases outside of the court system. A review of various resources available in other jurisdictions identified that some could be of benefit if utilised in New Zealand.

Limitations in the New Zealand legislation include the courts' inability to i) obtain specific evidence of parental psychopathology where alienating behaviour is suspected (an indicator of the risk or presence of severe alienation); and ii) to impose specific therapeutic interventions when alienation is identified, partly due to the lack of specific therapeutic programmes in this jurisdiction.

Acknowledgements

The consistent support, direction, and editing assistance, all given with smiles, hugs and genuine faith in my ability to complete this work by my supervisors, Professor Mark Henaghan and Associate Professor Nicola Taylor, have been genuinely appreciated. Even in my moments of exhaustion and self-doubt, their faith in my ability to complete this work has been unfaltering.

My thanks also go to Dr Sarah Calvert for her helpful feedback on my research.

To the partners in my practice, Margot Harkness and Jane Duncan, I wish to express my appreciation for their understanding and support in my commitment to completing this work. And to all my friends whom I have neglected for the past two years.

I extend my appreciation to my cherished sons for their understanding of my commitment to completing this postgraduate research.

Finally, my appreciation goes to my husband, Mark, for tolerating long absences and providing his absolute love, support and understanding for both the long hours and effort involved, and for his steadfast support and understanding of the journey that has led to my undertaking of this research.

Table of Contents

Abstract.....	i
Acknowledgements.....	iii
Table of Contents.....	iv
Chapter One.....	1
1. Introduction.....	1
1.1. Historical Context.....	1
1.2. General Overview.....	2
1.3. The Challenges with Alienation.....	2
1.4. The New Zealand Judicial Approach.....	3
1.5. The Importance of the Alienation Study.....	3
1.6. Thesis Overview.....	4
Chapter Two.....	6
2. Introduction.....	6
2.1. Relevant Legislative History.....	6
2.2. Current Legislation.....	7
2.3. Application of the Current Legislative Provisions.....	8
2.3.1. Family Dispute Resolution.....	8
2.3.2. Parenting Through Separation.....	9
2.3.3. Jurisdiction to Make Parenting Orders.....	10
2.3.4. The Child’s Best Interests.....	10
2.3.5. Safety Considerations.....	10
2.3.6. Ongoing Relationships with Parents.....	11
2.3.7. Children’s Views.....	11
2.3.8. Conduct of the Parent.....	12
2.3.9. Expert Reports.....	12
2.3.10. Therapeutic Intervention.....	13
2.3.11. Compliance Provisions.....	14
2.4. Summary.....	14
Chapter Three.....	16
3. Introduction.....	16
3.1. An Overview of the Research.....	17
3.2. Defining Alienation.....	21
3.2.1. Identifying Alienation - the BSQ and the Five Point Scale.....	23

3.2.2.	A Recognised Diagnosis?.....	27
3.2.2.1.	The Proposed Definition for the DSM-V and ICD-11	27
3.2.2.2.	The Proposed Term.....	28
3.2.2.3.	Benefits of Having Alienation Defined	29
3.2.2.4.	Inclusion in the DSM-V and ICD-11 Premature	29
3.3.	Prevalence of Alienation	30
3.4.	Alienation by Gender.....	32
3.5.	Alienating Behaviours.....	32
3.5.1.	The Most Prevalent Alienating Behaviours	33
3.5.2.	Intention to Alienate.....	34
3.5.3.	The Child’s Reaction to Alienating Behaviour	35
3.5.4.	An Alienation Spectrum?	37
3.6.	Justified Estrangement.....	38
3.6.1.	How to Differentiate Alienation from Justified Estrangement.....	39
3.6.2.	The Importance of Maintaining Attachment.....	41
3.6.3.	The Detrimental Impact of Violence vs Alienation	42
3.7.	Categorisation of Alienation.....	43
3.7.1.	Intentionality of Alienation.....	44
3.8.	Is Psychopathology Present in Alienating Parents?.....	46
3.9.	Other Causes of Child Rejection – The Loyalty Bind.....	47
3.10.	The Need for Early Intervention.....	47
3.11.	Consequences of Alienation	48
3.11.1.	Self Esteem	50
3.11.2.	Depression.....	51
3.11.3.	Adult Attachment Style.....	52
3.11.4.	Self-Directedness	52
3.11.5.	Cooperativeness	52
3.11.6.	Alcohol Abuse.....	53
3.11.7.	Other Implications for Children	54
3.12.	The Need for Therapeutic Intervention.....	55
3.12.1.	Intervention Options	56
3.13.	Care Reversal in Severe Cases of Alienation	57
3.13.1.	Temporary Care Reversal.....	57
3.13.2.	Full Care Reversal.....	58

3.13.3. Spontaneous Reunification	60
3.14. Summary	62
Chapter Four	63
4. Introduction	63
4.1. Interpretation by the New Zealand Courts	63
4.2. Cases Reviewed	63
4.3. Safety Allegations	65
4.3.1. Allegations by One Parent Against the Other	65
4.3.2. Prior Alienating Behaviour Rectified	70
4.3.3. Summary Regarding Safety Allegations	71
4.4. Psychopathology	71
4.4.1. Psychological Abuse	72
4.4.2. Manipulation	74
4.4.3. Personality Differences	75
4.4.4. Distress	75
4.4.5. Anxiety/Negative Inferences	78
4.5. High Conflict	80
4.6. Passive (Dysfunctional) Parenting Approach	81
4.7. Failure to Work Through Alienation Issues	83
4.8. Unilateral Relocation/Guardianship Decisions	85
4.8.1. Unilateral Relocation	85
4.8.2. Unilateral Guardianship Decisions	86
4.9. Options for Outcomes	87
4.10. Summary	91
Chapter Five	94
5. Introduction	94
5.1. Cases Reviewed	94
5.2. Safety Allegations	95
5.2.1. Allegations by One Parent Against the Other	95
5.2.1.1 <i>B v B</i> – Family Court at Norwich, England	95
5.2.1.2 <i>Re S (Children)</i> – Family Court at Oxford, England	99
5.2.1.3 <i>Re D (A Child)</i> – Court of Appeal England and Wales	102
5.2.1.4 <i>DCP v J.B. & K. J.</i> – Prince Edward Island Supreme Court, Canada	103
5.2.1.5 <i>K.M.H. v P.S.W.</i> – British Columbia Supreme Court, Canada	106
5.2.2. Summary	108
5.3. Psychopathology/Personality Traits	109

5.3.1.	Anxiety	109
5.3.1.1	<i>Re S (Children)</i> – Family Court at Oxford, England.....	109
5.3.1.2	<i>DCP v J.B. & D.J.</i> – Prince Edward Island Supreme Court, Canada	110
5.3.2.	Summary	110
5.4.	High Conflict.....	111
5.4.1.	High Conflict Cases.....	111
5.4.1.1.	<i>Re D (A child)</i> – Court of Appeal England and Wales.....	111
5.4.1.2.	<i>B v B</i> – Family Court at Norwich and <i>Re S</i> – Family Court at Oxford	112
5.4.1.3	<i>Delichte v Rogers</i> - Manitoba Court of Queen’s Bench, Canada	112
5.4.1.4.	<i>K.M.H. v. P.S.W.</i> – British Columbia Supreme Court, Canada	114
5.5.	Failure to Work Through Alienation Issues	115
5.5.1.	Apathy	115
5.5.1.1.	<i>Re S (Children)</i> – Family Court at Oxford, England.....	115
5.6.	Unilateral Guardianship Decisions	117
5.6.1.	Unilateral Relocation.....	117
5.6.1.1	<i>Delichte v. Rogers</i> – Manitoba Court of Queen’s Bench, Canada.....	117
5.7.	Implications of Alienation.....	120
5.7.1.	Outcomes for Children.....	120
5.7.1.1	<i>DCP v J.B. & D.J.</i> – Prince Edward Island Supreme Court, Canada.....	120
5.7.2.	Summary	122
5.8.	Comparative Analysis of Cases Reviewed.....	122
5.9.	Conclusion.....	123
Chapter Six	125
6.	Introduction.....	125
6.1.	The Diagnostic Approach by the Courts	125
6.1.1.	An Assessment of the Possible Presence of Alienation.....	125
6.1.2.	Is Justified Estrangement Present?	126
6.1.3.	Severity of Alienation.....	127
6.1.4.	Therapeutic Intervention for Mild & Moderate Alienation.....	127
6.1.5.	Intervention Necessary for Severe Alienation.....	127
6.1.6.	Is a Change of Care Warranted?.....	128
6.2.	How the New Zealand Courts Can Manage Alienation Cases.....	129
6.2.1.	Identifying Alienation	129
6.2.2.	Measures Available to Enforce Shared Care or Contact Where Alienation Present	130
6.2.3.	Steps for the Courts Where Safety Allegations Are Made.....	131
6.2.4.	Provisions Required to Implement Such Steps	133

6.3.	The Court's Role in Therapeutic Intervention.....	136
6.4.	The Need for Case Management.....	137
6.5.	Summary.....	138
Chapter Seven		141
7.	Introduction.....	141
7.1.	The Legislative Framework	141
7.1.1.	Expert Evidence About the Parent	142
7.1.2.	Specific Therapeutic Intervention Where Alienation Is Identified	142
7.2.	The Case Law	143
7.3.	Identification of Alienation	143
7.4.	Justified Estrangement.....	144
7.5.	Management of Alienation and High Conflict Cases	144
7.6.	Outcomes.....	145
7.7.	Summary.....	145
Appendix A.....		148
Appendix B.....		160

List of Abbreviations

APSAC – American Professional Society on the Abuse of Children

BAQ – Baker Alienation Questionnaire

BSQ – Baker Strategy Questionnaire

Cafcass - Children and Family Court Advisory and Support Service

COCA – Care of Children Act 2004

FDR – Family Dispute Resolution

NBOAI - Not Based on Actual Interactions

OT – Oranga Tamariki - Ministry for Children

PA – Parental Alienation

PAD – Parental Alienation Disorder

PAS – Parental Alienation Syndrome

PTS – Parenting Through Separation

List of Tables

	Page
Table One: New Zealand Cases Reviewed Involving Parental Alienation	63
Table Two: England & Wales and Canadian Cases Reviewed Involving Parental Alienation	93
Table Three: Comparison of Alienating Behaviours in Cases Reviewed from New Zealand, England & Wales and Canada	121

List of Figures

	Page
Figure One: The Alienation Spectrum	37
Figure Two: Alienation Assessment Flow Chart	130

List of Appendices

	Page
Appendix A: Legislation Relevant to Parental Alienation	146
Appendix B: Diagnostic Criteria for Parental Alienation Disorder and Parental Alienation Relational Problem	161

Chapter One

Introduction

1. Introduction

1.1. Historical Context

Parental alienation is not a new concept. Myths and stories date back through the centuries illustrating the antagonism of revengeful parents using their children to avenge their estranged spouses. Sarmet,¹ for example, reviews the myth of Medea (who killed her children in revenge against their father) and draws an analogy with parental alienation.²

The concept, and definition, of parental alienation has been researched extensively since the 1970s and has been considered by a number of researchers. Richard Gardner proposed the concept of parental alienation syndrome (PAS) as:

A childhood disorder that arises almost exclusively in the context of child custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified and so the PAS explanation for the child's hostility is not applicable.³

In 1980, Wallerstein and Kelly⁴ undertook a long term study from which they recognised that some children of divorced parents became aligned with one parent against the other. These children vehemently refused contact with one parent and appeared to be

¹ Yvanna Aires Gadelha Sarmet, "Medea's Children and the Parental Alienation Syndrome" http://www.scielo.br/scielo.php?pid=S0103-65642016000300482&script=sci_arttext&tlng=en.>

² *The syndrome demonstrates the family suffering and the psychic blows suffered by the child when entangled in feelings of revenge, hatred and rejection. The child is disrespected and used as a tool to punish and cause pain in the alienated parent. As in Medea's myth, in which a mother kills her children, in parental alienation, the alienating parents suffocate and kill their children's ability to perceive, feel, and judge freely. The children become an extension of the alienator, prevented from thinking, discriminate and choose for themselves.* At 1.

³ Richard A Gardner "Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?" *The American Journal of Family Therapy* (2002) 30:2 93-115 at 95.

⁴ J S Wallerstein and J B Kelly *Surviving the Breakup* (New York, Basic Books, Inc., 1980).

unreasonably allied with the other. The authors referred to an alliance between a “narcissistically enraged parent”⁵ and a particularly vulnerable older child or adolescent, who “were faithful and valuable battle allies in efforts to hurt and punish the other parent. Not infrequently, they turned on the parent they had loved and been very close to prior to the marital separation”.⁶

1.2. General Overview

A review of historical and current research on parental alienation is considered in this thesis. How the New Zealand courts interpret and respond to parental alienation is also addressed along with the approach of the Canadian and UK courts. This case law review has been undertaken as a detailed analysis of a limited number of cases to provide a more comprehensive picture of the complexity of issues and subjective nature of alienation.

Because parental alienation is subject to extensive ongoing research, our understanding of it is growing and evolving. However, there is currently no agreed upon definition of parental alienation, and further research is required to determine the extent of its detrimental impact on children.

1.3. The Challenges with Alienation

A consistent definition, or diagnostic criteria, would assist professionals dealing with alienation situations, as well as the courts, to determine where alienation is present. As yet, there is no agreement as to a specific set of diagnostic criteria. Research has been conducted recently into defining a “Parental Alienation Disorder”⁷ as a recognised mental health disorder, but as yet this has not been formally recognised.

Uncertainty also surrounds the impact alienation has on children. Therefore, with no specific definition of alienation and uncertainty regarding outcomes for children the courts face significant challenges in both identifying where alienation is present and imposing outcomes that minimise the detrimental impact on children.

⁵ At 77.

⁶ At 77.

⁷ William Bernet, Wilfrid von Boch-Galhau, Amy JL Baker and Stephen L Morrison "Parental Alienation, DSM-V, and ICD-11" (2010) *The American Journal of Family Therapy* 38:2 76-187.

1.4. The New Zealand Judicial Approach

This research is undertaken to consider how the New Zealand courts have recently recognised where parental alienation is present and what outcomes have been imposed. Consideration must also be given to reasons other than alienation causing a child to reject a parent or resist contact such as the presence of violence or neglect. This “justified estrangement” is a factor which the courts must also identify and consider as part of the overall assessment. It is recognised that many such cases may, in fact, involve a “hybrid” situation where some alienating behaviour is present, but that there are also elements of justified estrangement.

Identifying these issues is only the first step. The courts are then responsible for imposing outcomes that are in the best interests of the child which includes minimising the detrimental effects of any alienating behaviour and act to ensure that a child can maintain a meaningful relationship with both parents.

The aim of this thesis is to identify how the New Zealand courts can adopt consistent identification strategies and implement effective outcomes, in terms of the welfare and best interests of children, in a manner consistent with the empirical research, where alienation is present.

1.5. The Importance of the Alienation Study

One of the important goals of our society is to protect children. Within the family law framework, the specific legislation enacted for this purpose prescribes that where children are involved in disputes, the outcome that the court imposes must be to serve the welfare and best interests of the *child*. Because alienation has been determined to have a significant detrimental effect on children⁸ and, in fact, been described as child abuse by some researchers⁹, it is imperative that the courts respond appropriately in such cases. For that reason, the examination of the empirical research and an assessment of whether the courts are using an appropriate application of this knowledge are essential to determine whether the courts are adequately responding in respect of outcomes for children. A review of the case law involving alienation issues provides insight into the

⁸ For example as reviewed by Bernet and others “Parental Alienation, DSM-V and ICD-11”, above n 7 from 132 to 137.

⁹ For example, Amy JL Baker and Trudy Festinger “Adult Recall of Children Psychological Maltreatment: A Comparison of Five Scales” (2011) 20 Journal of Aggression Maltreatment and Trauma 1 70-89.

appropriateness of the current legislative framework. Therefore, any limitations within the current laws will be evident, and assessment can be made as to how the legislation may be amended to improve the courts' ability to apply better outcomes.

This issue is addressed in terms of the methods used by the courts to identify alienation and the outcomes that the NZ courts have imposed where alienation has been identified. The comparison of cases reviewed in the Canadian and UK jurisdictions gives useful insight into the application of their relevant laws.

1.6. Thesis Overview

In Chapter Two the legislative context relevant to the consideration of parental alienation in New Zealand is outlined. This primarily involves consideration of the Care of Children Act 2004 and the specific provisions that are relevant to the identification of parental alienation and those which provide the court with jurisdiction as to the application of specific outcomes.

The empirical research evidence on parental alienation is reviewed in Chapter Three. This involves consideration of the relevant findings relating to the frequency and gender issues relating to parents who engage in alienating behaviours. Most significantly there is a detailed analysis of what constitutes alienation, i.e. the specific behaviours and how such behaviours can be identified. This assists with building a picture as to what may constitute a specific "diagnosis" of parental alienation. The question of whether a parent's alienating behaviours are intentional is a relevant question in terms of both the impact on children and identifying the best outcomes. This is also relevant to questions of identifying the various categories of alienation and whether psychopathy may be present in an alienating parent.

The impact of alienation on children is one of the most significant parts of the research. The empirical research is reviewed in terms of what potential detrimental impacts children may suffer and the reasons why. The review of the case law provides insight into how the courts impose outcomes in such cases that are in the welfare and best interests of children. Consideration of whether such outcomes are consistent with the empirical research is important in determining whether legislative change and/or a different approach by the courts is required.

Within the review of the case law in Chapters Four and Five, an analysis of the specific parental behaviours identified as alienating by the courts in New Zealand, but also Canada and England/Wales, has been considered. High conflict is closely linked to alienation, so the courts' identification, but more importantly management, of high conflict cases is considered. The relationship between a parent who makes unilateral guardianship decisions and whether this can constitute, or lead to, alienation is also reviewed. There is also some consideration of the question of whether the alienating parent may have some psychopathology as this bears relevance, particularly where severe alienation is present. A review of the outcomes imposed by the courts in such cases has been undertaken. This gives insight into whether the courts utilise all of the available legislative options and apply these consistently.

In Chapter Six an analysis of the consistency between the findings in the empirical research and how the New Zealand courts approach the issue, both in terms of the identification of parental alienation and the application of outcomes, is undertaken. The approach taken by the Canadian and England/Wales courts is also considered by comparison, particularly in relation to the application of therapeutic measures. The New Zealand courts' application of the current legislation, and amendments that could be enacted to give the courts the opportunity to better identify alienation and to impose better outcomes, is also discussed.

The thesis concludes in Chapter Seven with a review of the findings and, in particular, considerations regarding the issues relating to the legislative provisions available to assess the presence of parental alienation and to impose appropriate outcomes. This Chapter also summarises both further systemic and legislative measures that could be implemented in order to improve the New Zealand courts' ability to deal with alienation cases generally.

Chapter Two

The New Zealand Legislative Context

2. Introduction

2.1. Relevant Legislative History

The law relevant to parenting disputes has been reviewed over the past five decades and has evolved over that period. Consideration of the specific issues that relate to parental alienation have been addressed in the legislative reviews over that period. This Chapter considers the evolution of the relevant legislative provisions over that period and specifically the provisions that are relevant to the manner in which the court can both identify and deal with parental alienation under the current legislative framework.

Alienation can be present in intact, separated or divorced families.¹⁰ However, the social phenomenon of separation and divorce, and its growing prevalence over the decades, dictated that law-makers respond by protecting children whose parents separated. The purpose of the Guardianship Act 1968 was “to define and regulate the authority of parents as guardians of their children, their power to appoint guardians, and the powers of the courts in relation to the custody and guardianship of children”. In 2004, policy makers undertook a review of this Act¹¹ and the resulting Care of Children Bill was intended to modernise the law on guardianship and care of children.

In the context of parental alienation, the 2004 review identified that the concept of shared parenting was an ambiguous term, sometimes used with reference to a 50/50 shared care arrangement and at other times referring to unequal shared care.¹² However, it was clear that the submitters to the Bill largely emphasised the importance of both parents having an equal role in sharing both the parenting and decision making in respect of their children.¹³ It was recognised that the new Bill was an opportunity to “remedy the serious flaw in family law that has resulted in thousands of New Zealand children losing all

¹⁰ Amy JL Baker, "Patterns of Parental Alienation Syndrome: A Qualitative Study of Adults Who Were Alienated from a Parent as a Child" (2006) 34 American Journal of Family Therapy 34(1) 63-78.

¹¹ Justice and Electoral Committee, "Care of Children Bill (54-2) as Reported from the Justice and Electoral Committee," 2004, New Zealand Parliament Select Committee Report, https://www.parliament.nz/resource/en-NZ/47DBSCH_SCR2788_1/57d7cf72946b9a1b9e7468a511ec0f336fc27820.>

¹² At 13.

¹³ At 13.

effective contact with their non-custodial parent.”¹⁴ Furthermore, it recognised that “this flaw has been the cause of greater heartache, disadvantage, and grief – not only to the child and their alienated parent, but to grandparents and wider family as well.”¹⁵ New Zealand, at that time, was considered to have one of the developed world’s worst rates of “fatherlessness”.¹⁶ On that basis, the Justice and Electoral Committee considered the appropriate way to address this issue was to have a notion of “rebuttable shared parenting”¹⁷. However, the Government rejected the opportunity to legislate to ensure this occurred.

The current legislation allows for primary or exclusive care arrangements which can result in the child having minimal or no contact with a parent in situations where alienation is present. As stated in the Justice and Electoral Committee Report, the rebuttable shared parenting “would send the clear signal to all parties in custody and access disputes – including lawyers, Judges and advocates – that the key area of focus is no longer which parent will gain advantage either (sic) by winning the custody of the child, but what arrangements are in the child’s best interests.”¹⁸ The imposition of shared care (provided there was no significant detrimental impact on the child which may give rise to an exception under the rebuttable presumption rule) would minimise the effectiveness of any alienating parent’s deliberate attempts to reduce the contact between the child and the other parent.

2.2. Current Legislation

The Care of Children Act 2004, which took effect on 1 July 2005, was largely derived from the Guardianship Act but contained some notable inclusions which were directly relevant to parental alienation relating to the best interests of the child. The Justice and Electoral Committee Report Review¹⁹ noted that the new legislation was intended to modernise the law on guardianship and the care of children. Specifically, it stated that “child’s welfare and best interests are to be ‘the first and paramount consideration’”.²⁰ The new provisions included; a definition of the specific principles relevant to the child’s best

¹⁴ At 21.

¹⁵ At 21.

¹⁶ At 21.

¹⁷ At 21.

¹⁸ At 21.

¹⁹ Above n 11.

²⁰ Above n 11 at 1.

interests, the requirement to take into account the child's views, the right of the court to appoint a lawyer to represent the child if appropriate, the power of the court to request a psychological or psychiatric report in relation to the child and penalties for contravening a parenting order. The effect of these was to require the court to take into account the views of the child to a greater extent, to obtain expert evidence to establish the psychological impact on the child and in an overall sense to make decisions that would be in the best interests of the child. The right of the child to continue to have a relationship with both his or her parents remained following the reforms in s5(e) of the Care of Children Act 2004 as did both parents having the responsibility for the child's care, development and upbringing (s5(b)). There were no specific provisions that related to parental alienation, but the penalty provision gave the courts the ability to impose punitive measure if a parenting order was breached.

The purpose of the 2014 reform was to "create a modern, accessible family justice system that meets the needs of children and vulnerable people."²¹

2.3. Application of the Current Legislative Provisions

The Care of Children Act 2004 (which includes the amendments arising from the 2014 reforms) contains the relevant current provisions in situations where parents are in dispute regarding parenting arrangements. There are a number of provisions within the Act that are relevant to the question of alienation (see Appendix A). Those most relevant are summarised below.

2.3.1. Family Dispute Resolution

The reforms intended to move family disputes out of court, where appropriate, and into alternative dispute resolution through the FDR process.²²

The primary purpose of the 2014 reforms was to require more parents in dispute to use out of court processes to resolve matters. The FDR process can be used if there are no violence or safety concerns and where no family violence or power imbalances were present.²³ Screening processes are undertaken to assess for these.

²¹ Ministry of Justice, *Family Court Proceedings Reform Bill Departmental Report*, ed. Ministry of Justice (Hansard: Ministry of Justice, 2013), at 6.

²² Family Dispute Resolution Act 2013.

²³ Ministry of Justice, *Family Court Proceedings Reform Bill Departmental Report* above n 21, at 27.

In terms specific to alienation, the question is whether the FDR process is appropriate. Alienation may not be evident at the early stage of the FDR process or may be at a mild level and still potentially suitable for mediation, however, such cases generally involve a “naïve” rather than an “active” or “obsessed” alienator.²⁴ Moderate or severe alienation cases are likely to involve serious power imbalances and should, therefore, be considered inappropriate for mediation. Moderate or severe alienation is frequently associated with active or obsessed alienators who bear intention to deliberately alienate the child from the other parent.²⁵ Such behaviour arguably constitutes a power imbalance.

This question of the power imbalance was considered by the Ministry.²⁶ However, because the provisions in the Act provide for multiple screening assessments, it is anticipated that such dynamics are likely to be assessed as a power imbalance and deemed unsuitable for mediation.

On that basis, most cases involving alienation are likely to be litigated.

2.3.2. Parenting Through Separation

Under the current legislative provisions where proceedings are filed the parties applying for a parenting order,²⁷ or variation of a parenting order,²⁸ must provide a statement that they have completed a PTS programme²⁹ (except where the application is made without notice). This programme is prescribed pursuant to s3 Care of Children (Parenting Information Programme) Regulations 2014 and is designed to provide information about the effects of a relationship breakdown. While this can be useful in terms of early intervention for mild or “naïve” alienation (not uncommon in parenting disputes) these programmes are not designed to specifically deal with alienation.

²⁴ Douglas Darnall *Divorce Casualties: Protecting Your Children from Parental Alienation* (ed. Taylor Trade Publishing, Dallas TX, 1998).

²⁵ Above n 24.

²⁶ Above n 21, at 34-35. The Ministry of Justice Departmental Report considered that “A power imbalance might arise because the parties have different levels of confidence, education, emotional control or financial support. It could also arise where one party is violence towards, or intimidates, the other party. A significant power imbalance could lead to one party to agree to arrangements that are unsatisfactory or unsafe. A dispute might not be appropriate for Family Dispute Resolution if there is a significant power imbalance.”

²⁷ Care of Children Act 2004, s48.

²⁸ Section 56.

²⁹ Section 47B.

2.3.3. Jurisdiction to Make Parenting Orders

Section 48 provides the court with the jurisdiction to make parenting orders defining the day-to-day care and contact arrangements for the child, including shared parenting arrangements. While the legislation does not contain a rebuttable presumption of equal sharing of care, the application of the provision by the courts can result in shared care outcomes (equal and unequal) pursuant to this provision. A parent may also apply to the court for a variation of an existing order pursuant to s56.

2.3.4. The Child's Best Interests

Pursuant to s4 “the welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration”. Considering this, the court will rely on both the established case law and, as required, the evidence of experts. The effect of this principle, in utilising the paramountcy terminology, is that the best interests of the child override all other considerations. One well established consideration, directly relevant to the issue of alienation, is the importance for the child to have a meaningful relationship with both parents (subject to safety considerations). It is also well established, as traversed below, that a child being alienated from a parent can have a significant detrimental effect on the child.

2.3.5. Safety Considerations

Sections 61 and s61A of the Care of Children Act 2004 (in force prior to the 2014 review) required that the court make a number of assessments prior to allowing any party alleged to have been violent to have day-to-day care or contact (other than supervised contact). A hearing was generally required for the court to complete this assessment, which resulted in delays. This, in turn, had an impact on the ability of the children to maintain the relationship (or attachment) to the parent against whom the allegations were made, particularly where the child was young.

During the 2014 court review, consideration was given to how the court should deal with safety allegations. The Christchurch Family Court Judges submitted, in relation to the proposed amendments, that the provisions in force were a “clumsy and wasteful approach to the issue of parenting disputes where violence is an issue”.³⁰ The Justice and Electoral Committee noted that “because they fail to distinguish between the various

³⁰ Above n 21 at 40.

levels and contexts of violence, were based on a simplistic perspective of domestic violence, and the process contributed significantly to delay.”³¹ The provisions were also criticised for failing to protect children, as the applicants (often women) were sometimes unable to provide adequate evidence to prove that violence had occurred.

The Act already contained provisions relevant to the question of protecting children from violence. Section 4 provides for the child’s welfare and best interests to be the paramount consideration, and s5(e) recognised that children must be protected from all forms of violence. Therefore, the Justice and Electoral Committee determined that those existing provisions, with the inclusion of a new provision, s5A, to deal with situations where a protection order had been or was in force, were adequate to deal with the safety issues. Therefore sections 61 and 61A of the earlier Act were repealed.

Section 5 defines the principles that relate to the child’s welfare and best interests, and s5(a) specifically requires that the court’s application of the principles include that the child is to be protected from all forms of violence. As stated above, safety allegations (sometimes unfounded) are not uncommon in alienation disputes, and this provision enables the court to first assess the safety issues for a child without necessarily requiring supervised contact (which may limit the time the child has with that parent).

Where there are allegations of abuse or neglect (or any matters impacting the child), the court has the jurisdiction, pursuant to sections 131A and 132, to obtain evidence from a social worker from the OT in relation to those matters.

2.3.6. Ongoing Relationships with Parents

The other principle that is directly relevant to the alienation question is that in s5(e), which provides that the child should have a relationship with both their parents (and that the relationships with the other family members be preserved and strengthened). This is relevant to the child’s wellbeing and is consistent with the empirical research and established case law.

2.3.7. Children’s Views

The court must take the child’s views into account, pursuant to s6. Alienation typically involves a parent attempting (and sometimes succeeding) in influencing the child’s views,

³¹ Above n 21 at 40.

so this is a relevant consideration. While there are many subjective factors relating to the child's views such as personality differences, practical considerations (especially with older children), et cetera, influence is also a consideration. The court, therefore, has a challenge in ensuring that the best interests requirement is met in alienation cases where a child may be resisting or refusing contact with a parent. The court may appoint a lawyer to represent the child, pursuant to s7, where there are safety concerns, or the appointment is necessary. Part of that lawyer's role is to represent the child's expressed views.

2.3.8. Conduct of the Parent

The 2004 reforms included a provision for a parent's conduct to be considered, but only to the extent that it was relevant to the child's welfare and best interests.³²

One of the proposals in the 2014 reform was to include a provision to take into account a parent's obstructive conduct. The proposed s4 was drafted as follows:³³

Any person considering the welfare and best interests of a child in his or her particular circumstances ... may take into account the conduct of the person who is seeking to have a role in the upbringing of the child if that conduct—

- (i) unnecessarily delays the making of decisions; or
- (ii) is obstructive toward any person who has, or who is seeking to have, a role in the upbringing of the child; or is otherwise relevant.

However, the amendments failed to include the additional specific provision regarding the parent being obstructive (or alienating). This inclusion, if enacted, would have given the courts specific authority to address such behaviour.

2.3.9. Expert Reports

Section 133 of the Care of Children Act 2004 provides the court with the ability to appoint a psychologist or psychiatrist (or other expert) to provide reports in relation to children. In terms of alienation cases, psychological reports can be of use in assessing the circumstances relating to the child. A psychological report must be about the child who is the subject of a parenting application and may cover matters pertaining to the current

³² Justice and Electoral Committee, "Care of Children Bill (54-2) as Reported from the Justice and Electoral Committee," s4(3) above n 11.

³³ Above n 21, as referred to in (s4 at 9).

arrangements for the child care, the child's relationship and attachment to each party and other significant persons in the child's life, the effect on the child of each party's parenting skills and their ability to cooperate in the parenting of the child, the advantages and disadvantages for the child of the options for the care of the child and any other matter the court considers relevant. The Justice and Electoral Committee considered various submissions regarding amendments to this provision, including whether a child's views are reality-based or influenced by others. However, the Committee considered that a report completed pursuant to this provision "did not need to address parental alienation issues in every case, although it was appropriate for the court to specify it as an additional matter".³⁴ One matter that was considered during the reforms was whether such reports should consider matters pertaining to the *parent* which may have assisted the court to make an early identification of alienation. The New Zealand Law Society submitted that a s133 report should be able to include an assessment of the parent, with that person's consent; however, this provision was not included.³⁵ Given that research indicates that alienation may be associated with psychopathology in the alienating parent,³⁶ this would have been a useful inclusion.

The ability to direct the expert to consider "any other matter" does enable the court to seek specific expert evidence regarding alienation issues but only insofar as they relate to the child.

2.3.10. Therapeutic Intervention

The requirement of parties applying to court (except when done on a without notice basis) to complete a PTS programme is clearly beneficial. The court may also direct any party to complete the programme at any time during proceedings, pursuant to s460.

The court also has the ability to direct the parties to communication counselling, pursuant to s46G, to improve the relationship between the parties or to encourage compliance with any direction or order made by the court. Again, while useful in terms of mild or "naïve" alienation, such counselling is not likely to be effective where more serious alienation is present.

³⁴ Above n 21 at 66.

³⁵ Above n 21 at 67.

³⁶ Demosthenes Lornados, William Bernet and S Richard Sauber *Parental Alienation: The Handbook for Mental Health and Legal Professionals* (Springfield, IL, Charles C. Thomas, 2013).

2.3.11. Compliance Provisions

In recognising that orders may not be complied with in cases where alienation is present, the legislation does offer provisions to assist the court in ensuring compliance with orders.

The court may direct a hearing pursuant to s69 in order to admonish (reprimand) a party who fails to comply with a parenting order pursuant to s68.

Pursuant to s70, the court can impose a bond on a parent which can be forfeited if a parent breaches a parenting order. Further, the court may award costs against a party who has breached an order in favour of the party against whom the breach was made, pursuant to s71.

Sections 72 and 73 enable the court to issue a warrant to enforce contact with a child.

In addition, for any contravention of a parenting order, the court may impose a fine (up to \$2,500) or a sentence of imprisonment (up to 3 months), pursuant to s78.

2.4. Summary

The current legislative provisions provide a comprehensive framework within which the court can deal with alienation cases. While mediation, which is now available as a result of the family dispute resolution provisions enacted in the 2014 reforms, is a useful tool for dealing with parenting disputes in the early stages, it unlikely to be successfully utilised to assist with situations where severe alienation is present. The PTS programmes are also a useful educational facility to assist parents in dealing with parenting arrangements following separation, but, again, these are not specifically designed to address alienation issues.

Two of the most significant omissions in the current legislation, however, are that it fails to provide for the court:

1. To obtain expert evidence to establish any psychopathology of a party to the proceedings (which may indicate a serious risk that alienation is present or will result); and
2. To require specific “reunification” therapy where alienation is present.

Should the the current legislation be reformed at any time then the specific inclusion of such provisions would assist with both the identification of alienation and as to the

options for outcomes. Specific programmes would need to be developed if inclusion of provision for reunification therapy were to be included.

Chapter Three

Review of Parental Alienation Research

3. Introduction

There has been a significant amount of research, including both qualitative and quantitative studies, involving children who reject a parent internationally, although little undertaken in New Zealand. The research focus has been primarily around what constitutes alienation, how it is identified and what impact it has on children. In all parenting disputes, including those involving alienation, it is the court's role to determine, as the primary factor, outcomes that are in the best interests of the child. Clearly, safety issues also play a significant role in parenting disputes, and both the physical and psychological safety of a child is relevant. It is well recognised that there may be serious psychological impacts on a child where alienation is present. The court must, therefore, determine if alienation is present and, if it is, impose an outcome that will minimise risk to the child. Consistency in the approach to alienation is important, and the court must establish:

1. The risks for a child exposed to behaviour which could, or has already, led to alienation from one parent; and
2. The options available to the court in minimising such risk.

To date there has been insufficient research on parental alienation undertaken in New Zealand to provide the courts with clear direction in identifying and dealing with alienation disputes. Therefore, in order to identify and deal with disputes where alienation is present it is necessary for the New Zealand courts to look to the international research available. An overview of the methods and findings in the international research (undertaken across various countries), and the consistencies that are present has been reviewed in this chapter. Given the detrimental impact of alienation, until such time as specific qualitative and quantitative research is completed in New Zealand, the extensive international research available can be utilised to assist the courts. This chapter now turns to examine a large body of international research over a lengthy period on the identification or "diagnosis" of parental alienation and the impact of this on children.

3.1. An Overview of the Research

One of the earliest researchers of alienation issues was Barry Bricklin, who undertook research from the mid-1960s. His research included thousands of children and parents and in some cases evaluated with up to 7 years of follow-up data. His study focused on children who voiced strongly worded verbal opinions about parents that were inconsistent with other information. Bricklin considered that such expressions were as a result of a child being manipulated, bribed, or coerced into saying and possibly believing such opinions. He called this phenomenon Not Based on Actual Interactions (NBOAI), which included that (1) the child expressed a strong favourable verbal opinion of the parent he or she wished to live with and a strong negative verbal opinion of the parent he or she did not want to see again. (2) When tested on endorsing certain test items where the child was consciously aware whom he or she would be endorsing, all or almost all of the endorsements were for the favoured parent by huge and statistically rare margins. (3) When tested on a nonverbal test where the child was also consciously aware of what the statistically based responses meant, the child made several endorsements for the non-favoured parent. (4) When the child was asked to give logical and real-life examples of negative endorsements, such examples were mostly trivial or downright irrelevant to the issues supposedly involved.³⁷ While Bricklin's conclusions focused on the reaction of the child, his research demonstrated an early recognition of a pattern of parental behaviour consistent with parental alienation.

Richard Gardner, who defined PAS (see page 1), was a child and adolescent psychiatrist who undertook custody evaluations in New York City and started publishing his work as early as 1985. In the course of this process he was conducting qualitative research on parental alienation. He considered PAS to be a type of emotional child abuse almost exclusively seen in separated and divorced families engaged in custody disputes. He defined eight behavioural symptoms exhibited by children as indicating the presence of PAS, including:³⁸

1. The campaign of denigration;
2. Weak, frivolous, and absurd rationalisations for the deprecation;

³⁷ Barry Bricklin *The custody evaluation handbook, research-based solutions and applications* (New York: Brunner/Mazel, 1995).

³⁸ Richard A Gardner *The Parental Alienation Syndrome, a Guide for Mental Health and Legal Professionals* Cresskill (2nd ed, New Jersey, Creative Therapeutics, 1998b). (p. 63 – 82).

3. Lack of ambivalence;
4. The “independent thinker” phenomenon;
5. Reflexive support of the preferred parent in the parental conflict;
6. Absence of guilt over cruelty to and/or exploitation of the alienating parent;
7. Presence of borrowed scenarios; and
8. Spread of animosity to the extended family of the alienating parent.

Gardner’s view was that the primary manifestation of PAS was a child’s campaign of denigration of a parent which had no justification. He considered that it resulted from the combined indoctrination by the alienating parent and the child’s own contributions to the vilification of that parent.³⁹

Over the period that Gardner was researching alienation, there were also a number of other researchers undertaking similar research. In 2010 a significant review of the historical and current research was undertaken⁴⁰ for the purpose of making a case for the inclusion of a diagnosis of parental alienation in the DSM-V⁴¹ and proposed ICD-11 (the next edition from the ICD-10).⁴² The researchers considered Gardner’s definition of PAS, and also reviewed the research of a number of other authors.⁴³ They concluded that Gardner’s definition (which had also been recognised and utilised in research in a number of other countries including; Argentina, Australia, Belgium, Brazil, Canada, Czech Republic, Denmark, Finland, France, Germany, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Poland, Portugal, South Africa, Spain, Sweden, Switzerland, United Kingdom and the United States) could be used to identify groups of children who fulfilled the diagnostic criteria of PAS.⁴⁴

³⁹ Richard A Gardner “Recent Trends in Divorce and Custody Litigation” (1985) *Academy Forum* 29 3-7.

⁴⁰ Bernet and others "Parental Alienation, DSM-V, and ICD-11," above n 7.

⁴¹ American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (5th ed, Washington, DC, 2013)

⁴² World Health Organisation *ICD-10 Classifications of Mental and Behavioural Disorder: Clinical Descriptions and Diagnostic Guidelines* (10th ed, Geneva, 1992)

⁴³ John Dunne MD and Marcia Hedrick PhD, Larry Nicholas PhD, Jeffrey Siegal PhD and Joseph Langford PhD, Jodi Stoner-Moskowitz PsyD, Jean-Guy Bellerose MSW, Despina Vassiliou PsyD, Janelle Burrell PhD, Kristin Marie Carey PsyD, Jean Andrew Deters PsyD, Cynthia Ruso MA, Luisa Pederson Machuca MS, Amy Baker PhD and colleagues, Kathleen Reay PhD, Melissa Colarossi MA, Robert Gordon PhD and colleagues, James Bow PhD and colleagues, Frank Williams MD, Glenn Cartwright PhD, Ira Turkat PhD, Carla Garrity PhD and Mitchell Baris PhD, William Bernet MD, Michael Bone PhD and Michael Walsh, Douglas Darnell PhD, Elizabeth Ellis PhD, Richard Warshak PhD, Diana Mercer JD and Marcia Pruett PhD, Philip Stahl PhD and Michael Brock and Samuel Saks JD

⁴⁴ Bernet and others, "Parental Alienation, DSM-V, and ICD-11" above n 7.

However, what Gardner's criteria did not consider was if there were justifiable reasons for the child's rejection of a parent, for example, because of abuse or neglect. Gardner considered that "when true parental abuse and/or neglect are present, the child's animosity may be justified, and so the PAS explanation for the child's hostility is not applicable".⁴⁵ This was an early recognition that a child's rejection of a parent may not necessarily be as a result of "alienation". At this stage, Gardner appeared to take a polarised view that the cause of such rejection was either "alienation" or that the rejection was "justified" and not necessarily because of a combination of factors.

Around the same time that Gardner was undertaking his early research, Leona Kopetski, a social worker, conducted child custody evaluations in Colorado. She considered that an alienating parent (who should know better) and children (who cannot be expected to know better) sometimes shared a common delusion that only the alienating parent could provide the child with the necessities for psychological survival. Kopetski also considered that alienation did not have a gender basis.⁴⁶ Her conclusions were remarkably similar to Gardner's conclusions regarding the characteristics of the syndrome.

Over a 12-year period between the 1970s and 1980s two other researchers, Clarwar and Rivlin, followed 700 counselling cases relating to parental disputes, primarily in Pennsylvania. In about 80% of these cases, there was an element of parental programming in an effort to implant false or negative ideas about the other parent with the intention of turning the child against that other parent. Their work focused on emotional issues, persistent programming, and brainwashing, which sometimes resulted in severe parental alienation.⁴⁷

In 1985, a group of other researchers undertook research in relation to the behaviour of 44 children, aged six to 12 years, who were the subject of post separation and divorce disputes over the custody and care. They found that 16% of the children formed a strong alliance with one parent, and had both verbal and behavioural preference for one parent

⁴⁵ Richard A. Gardner *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* above n 38.

⁴⁶ Leona Kopetski "Identifying Cases of Parent Alienation Syndrome: Part I" (1998a) *The Colorado Lawyer* 27:2 65-68.

⁴⁷ SS Clarwar and BV Rivlin *Children Held Hostage: Dealing with Programmed and Brainwashed Children* (Chicago IL American Bar Association, 1991).

and rejection of the other, demonstrated both consistently and overtly.⁴⁸ This research was undertaken in the same year that Gardner had described PAS. In a later study, Johnston concluded that children's strong alignments were probably closely related to PAS, as described by Gardner.⁴⁹ Kelly and Johnston⁵⁰ defined an alienated child as one who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection or fear) towards a parent that are disproportionate to the child's actual experience with that parent.

While Gardner took an approach that focused on the behaviour of the parent, Kelly and Johnston's approach focused on the reaction of the child. In their analysis of the prior research, Bernet et al. considered that both Gardner, and Kelly and Johnston, appeared to have respectively identified the same group of children. They state:⁵¹

For example, Gardner thought that PAS consisted of eight specific symptoms. In the alternative framework, Kelly and Johnston listed almost the identical symptoms as features of what they called the "alienated child". For instance, Gardner's list included "weak, absurd, or frivolous rationalisations for the deprecation" of a parent; Kelly and Johnston's list included "trivial or false reasons used to justify hatred". Also, Kelly and Johnston defined an alienated child as "one who expresses freely and persistently unreasonable negative feelings and beliefs (such as anger, hatred, rejection and/or fear) toward a parent that are significantly disproportionately to the child's actual experience of that parent.

Although these authors do not agree with the concept of parental alienation *syndrome*, they endorse the basic premise of parental alienation, i.e. that some children ally with one parent against the other parent in the absence of abuse or neglect.

⁴⁸ Janet R. Johnston, Linda E.G. Campbell and Sharon S. Mayes "Latency Children in Post Separation and Divorce Disputes" (1985) *Journal of American Academy of Child and Adolescent Psychiatry* 24 563-74

⁴⁹ Janet R. Johnston "Children of Divorce Who Refuse Visitation" (1993) *Non-Residential Parenting, New Vistas in Family Living* Sage 109-35

⁵⁰ Joan B Kelly and Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 3.

⁵¹ William Bernet and others, "Parental Alienation, DSM-V, and ICD-11" above n 6 at 90 (referring to Richard A. Gardner (1985) "Recent Trends in Divorce and Custody Litigation" *Academy Forum* 29 3-7 and Janet R. Johnston (2001) "The Alienated Child: A Reformulation of Parental Alienation Syndrome" *Family Court Review* 39(3).

In 2001, Warshak identified three components he considered must be present for a *bona fide* identification of parental alienation:⁵²

1. A persistent, not occasional, rejection or denigration of a parent that reaches the level of a campaign;
2. An unjustified (unreasonable) or a rational rejection by the child; and
3. Rejection by a child that is a *partial* result of the alienating parent's influence.

Warshak's definition identifies two critical aspects:

1. A change from a previously good relationship where the child had a warm and healthy attachment or would have been expected to develop a good relationship; and
2. The possibility that the aversion may also be applied to others (such as other family members), and not only to parents.

The reference to the rejection being a "partial" result, identified by Warshak, is helpful as it considers not only the role of the child but also the role of the alienating parent. This aids the assessment of whether alienation is present because it recognises that the child previously had a secure attachment to the now rejected parent, notwithstanding that the parent undoubtedly was not a "perfect" parent.

3.2. Defining Alienation

There is no clear generally recognised definition of alienation. In a 2016 analysis of the research⁵³ inconsistencies in findings were recognised as a significant challenge for those trying to identify alienation. The authors noted, "there is a lack of reliable evidence on which to form a clear basis for individual decisions or policy about cases where children are rejecting a parent".⁵⁴

From their analysis of the research, the following conclusions were drawn:⁵⁵

⁵² Richard A Warshak "Current controversies regarding parental alienation syndrome" (2001b) *American Journal of Forensic Psychology*, 19(3), 29-59

⁵³ Michael Saini, Janet R. Johnston, Barbara Jo Fidler, and Nicholas Bala "Empirical Studies of Alienation" in Leslie Drozd, Michael Saini and Nancy Olesen (ed) *Parenting Plan Evaluations – Applied Research for the Family Court* (2nd ed, Oxford University Press, 2016) 374-381.

⁵⁴ Above n 53 at 378.

⁵⁵ Above n 53 at 381.

1. There is general agreement parental alienation occurs regardless of gender of parent⁵⁶ or child (i.e., sons and daughters can become alienated from either their fathers or mothers).
2. The phenomenon can occur within intact, separated, and divorced or custody litigating families. However, parental alienation occurs more frequently in disrupted families and litigating cases⁵⁷ suggesting parental conflict is a formative factor.
3. In litigated custody cases, fathers are more likely to be the rejected parent, but this may be in part because mothers are more often the primary custody and/or have the major share of residential care of the children;⁵⁸ and
4. The problem of parental alienation is being raised increasingly more often in custody litigation cases during the past decade (possibly because of growing professional and public awareness and widespread use of this terminology to describe the problem).⁵⁹

⁵⁶ Aaron J Hands and Richard A Warshak, "Parental Alienation among College Students" (2011) *The American Journal of Family Therapy* 39:5 431-43, Teresa L Lopez, Victoria EN Iglesia and Paula F Garcia "Parental alienation gradient: Strategies for a syndrome" (2014) 42:3 217-231. AL Lavadera, S Ferracuti and MM Togliatti "Parental Alienation Syndrome in Italian Legal Judgments: An Exploratory Study"(2012) *Int J Law Psychiatry* 35:4 334-42.

⁵⁷ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" (2010) *Legal Resource Index* 48:1 *Family Court Review* 10-47; SJ Braver, D Coatsworth and K Peralta, nd "Alienating Behaviour Within Divorced and Intact Families: Matched Parents' and Now-Young Adult Children's Reports" (Retrieved December 2010) http://www.uea.ac.uk/swp/iccd2006/Presentations/tues_pmpl2%20High%20conflict%20&%20Enforcement/Braver%20summary.pdf.>; AJ Hands and RA Warshak "Parental Alienation among College Students" (2011) *American Journal of Family Therapy* 39:5 431-443; JR Johnston "Parental alignment and rejection: An empirical study of alienation in children of divorce" (2003) *Journal of American Academy of Psychiatry and the Law* 31 158-170; Jennifer Gerber Monè and Zeynep Biringen "Perceived Parent-Child Alienation" (2006) *Journal of Divorce & Remarriage* 45(3-4) 131-56.

⁵⁸ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57. Teresa L Lopez, Victoria EN Iglesia and Paula F Garcia (2014) Parental alienation gradient: Strategies for a syndrome above n 56. Janet R Johnston "Parental Alignments and Rejection: An Empirical Study of Alienation in Children of Divorce" (2003) *Journal of the American Academy of Psychiatry and the Law*, 31(2), 158-170; Janet R Johnston, Marjorie G Walters and Nancy W Olesen "Clinical Ratings of Parenting Capacity and Rorschach Protocols of Custody-Disputing Parents: An Exploratory Study" (2005) *Journal of Child Custody* 2(1-2) 159-78. AL Lavadera, S Ferracuti and MM Togliatti "Parental Alienation Syndrome in Italian Legal Judgments: An Exploratory Study." Above n 56. DC Rand, R Rand and L Kopetski "The Spectrum of Parental Alienation Syndrome, Part III the Kopetski follow up study" (2005) *American Journal of Forensic Psychology* 23 15-43

⁵⁹ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

However, there are some specific studies which are helpful in defining what constitutes alienation.

3.2.1. Identifying Alienation - the BSQ and the Five Point Scale

Amy Baker undertook significant qualitative and quantitative research into alienation between 2005 and 2013. Generally, Baker's research is focused on the behaviour of the adults. She developed the Baker Strategy Questionnaire ("BSQ")⁶⁰ to undertake qualitative studies. The BSQ (and Baker Alienation Questionnaire or BAQ⁶¹) have since been used in many studies for researching the most common parental alienation strategies as it assesses the perception of the frequency of various alienation tactics undertaken by one, or both, parents. Initially, Baker proposed 17 tactics utilised by a parent towards a child but, in the evolution of her research, these expanded to 19 tactics posed as questions for survey participants. The questions included:⁶²

1. Made comments to me that fabricated or exaggerated the other parent's negative qualities while rarely saying anything positive about that parent;
2. Limited or interfered with my contact with the other parent such that I spent less time with him/her than I was supposed to or could have;
3. Withheld or blocked phone messages, letters, cards, or gifts from the other parent meant for me;
4. Made it difficult for me and the other parent to reach and communicate with each other;
5. Indicated discomfort/displeasure when I spoke/asked about or had pictures of the other parent;
6. Became upset, cold, or detached when I showed affection for or spoke positively about the other parent;
7. Said and/or implied that the other parent did not really love me;

⁶⁰ Amy JL Baker "Knowledge and Attitudes About Parental Alienation Syndrome: A Survey of Custody Evaluators" (2007a) *American Journal of Family Therapy* 35 1-19; Amy JL Baker and Jaclyn Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" (2011) *Journal of Divorce & Remarriage* 52 55-76; Amy JL Baker "Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences" (2006) *Journal of Divorce & Remarriage* 45 97-124.

⁶¹ Amy JL Baker, Barbara Burkhard & Jane Albertson-Kelly "Differentiating Alienated From Not Alienated Children: A Pilot Study" (2012) *Journal of Divorce & Remarriage* 53:3 178-193 at 189.

⁶² Above n 61.

8. Created situations in which it was likely or expected that I choose him/her and reject the other parent;
9. Said things that indicated that the other parent was dangerous or unsafe;
10. Confided in me about "adult matters" that I probably should not have been told about (such as marital concerns or financial disputes), which led me to feel protective of him/her or angry at the other parent;
11. Created situations in which I felt obliged to show favouritism towards him/her or reject or rebuff/ignore the other parent;
12. Asked me to spy on or secretly obtain information from or about the other parent and report back to him/her;
13. Asked me to keep secrets from the other parent about the things the other parent should have been informed about (e.g. upcoming plans, my whereabouts, et cetera);
14. Referred to the other parent by his/her first name and appeared to want me to do the same;
15. Referred to his/her new spouse as mum/dad and appeared to want me to do the same;
16. Encouraged me to rely on his/her opinion and approval above all else;
17. Encouraged me to disregard/think less of the other parent's rules, values, and authority;
18. Made it hard for me or made me feel bad about spending time with the other parent's extended family; and
19. Created situations in which it was likely that I would be angry with or hurt by the other parent.

Studies utilising the BSQ were analysed by Saini and others⁶³ in relation to the identification of the presence of alienation⁶⁴, prevalence of alienation⁶⁵ and diagnosis and

⁶³ Michael Saini, Janet R. Johnston, Barbara Jo Fidler, and Nicholas Bala "Empirical Studies of Alienation" above n 53.

⁶⁴ Amy JL Baker and Douglas Darnall "Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences" (2006) *Journal of Divorce & Remarriage* 45:1-2 97-124 and Amy JL Baker (2006) "Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences" *Journal of Divorce & Remarriage* 45 97-124.

⁶⁵ Amy Baker and Jaclyn Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" (2011) *Journal of Divorce & Remarriage* 52:1 55-76.

assessment.⁶⁶ The studies were recognised as reliable, provided certain methodological criteria were met.⁶⁷

Baker and Festinger also developed a five-item scale⁶⁸ which contained one item for each type of psychological maltreatment included in the definition endorsed by the American Professional Society on the Abuse of Children (“APSAC”). These items are:⁶⁹

1. Spurning: was hostile, rejecting, degrading or humiliating; belittled you, or singled you out for unfair treatment;
2. Terrorising: behaved in a way that threatened or was likely to harm you or loved ones, placed you in dangerous situations, threatened punishment for not meeting unrealistic expectations;
3. Isolating: restricted social interactions without good reason, confined you, or placed unreasonable limitations on freedom of movement;
4. Exploited/corrupted, encouraged/modelled, or permitted you to be self-destructive, antisocial, criminal, deviant, or much older or younger than your age; was overinvolved, intrusive, or domineering;
5. Denying emotional responsiveness: ignored your needs to interact; was detached, uninvolved, and interacted only when necessary; failed to express affection.

The item description presented to participants for research relating to alienation was taken directly from the APSAC Handbook.⁷⁰

⁶⁶ Amy JL Baker, Barbara Burkhard & Jane Albertson-Kelly “Differentiating Alienated From Not Alienated Children: A Pilot Study” (2012) above n 61 at 189.

⁶⁷ Above n 61 at 380, summarised as (1) Study used a comparison or control group, (2) Use of standardised measures, (3) Data gathered from multiple sources or informants, (4) Systematically control for extraneous variables, (5) Study design established a temporal order between dependent and independent variables, (6) Selection and exclusion criteria, response rates and subject attrition explicitly defined, (7) Use of random selection of population and (8) Sufficient sample power.

⁶⁸ Amy JL Baker and Trudy Festinger “Adult Recall of Children Psychological Maltreatment: A Comparison of Five Scales” (2011) 20 *Journal of Aggression Maltreatment and Trauma* 1 70-89.

⁶⁹ Amy JL Baker and Naomi Ben-Ami, “To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being” (2011) *Journal of Divorce & Remarriage* 52:7 472-89 at 479.

⁷⁰ John EB Myers (ed) *The APSAC Handbook on Child Maltreatment* (3rd ed, American Professional Society on the Abuse of Children, Sage, 2002). (pages 7-104).

Each item is rated on a scale ranging from 0 (never) to 4 (very often). In relation to their alienation research, Baker and Festinger found that the measure had excellent reliability and high correlations with other measures of psychological maltreatment.⁷¹

Using the methods she had developed, Baker undertook further research, including a 2011 study with Naomi Ben-Ami.⁷² They concluded that denigration of a parent (the targeted parent) by the alienating parent was the most commonly cited parental alienation strategy. The alienating parent was thought to do this in a consistent and total expression of negativity:⁷³

An alienating parent will consider every aspect of the targeted parent's personality and characteristics as worthy of criticism and critique and even characteristics not inherently negative are depicted as problematic and worthy of concern if not outright contempt.

They concluded that because every parent is imperfect, there is usually a kernel of truth to some of the complaints, lending veracity to the overall message that the alienating parent is conveying to the child. Baker argues that:⁷⁴

The negative statements made by an alienating parent in relation to the targeted parent are consistently that the parent is unsafe, unloving and unavailable. Other strategies engaged by the alienating parent served to reassert the message to the child by limiting the opportunities for the targeted parent counter the message, creating the appearance that the targeted parent has rejected the child, and citing conflict between the child in the targeted parent, psychologically cementing the child to the parent exhibiting these behaviours, and creating an unhealthy dependency in that relationship.

Both the BSQ and the five point scale can provide some assistance in terms of assessing whether a child is being alienated.

⁷¹ Amy JL Baker and Trudy Festinger "Adult Recall of Children Psychological Maltreatment: A Comparison of Five Scales" above n 68.

⁷² Amy JL Baker and Naomi Ben-Ami, "To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being" (2011) *Journal of Divorce & Remarriage* 52:7 472-89.

⁷³ Above n 72 at 473.

⁷⁴ Above n 72 at 474.

3.2.2. *A Recognised Diagnosis?*

In a further bid to define or “diagnose” parental alienation, Bernet and others⁷⁵ studied the relationship between parental alienation and mental health diagnoses, with particular reference to whether the phenomenon of PAS should be included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) and the International Classification of Diseases, Eleventh Edition (ICD-11). The inclusion of “Parental Alienation Disorder”, as they suggest, would clearly be of assistance to the judiciary (as well as therapists) in determining whether alienation is present.

In undertaking their research, they considered in excess of 630 articles on the topic, including qualitative and quantitative research. The authors consider it to be the largest bibliography ever developed regarding parental alienation.

3.2.2.1. *The Proposed Definition for the DSM-V and ICD-11*

Bernet and others’ definition is stated as follows:⁷⁶

We define parental alienation as a mental condition in which a child – usually one whose parents are engaged in a high conflict divorce – allies himself or herself strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification.

The authors were of the view that it is a tragic outcome for a child who previously had a loving and mutually satisfying relationship to lose the nurture and joy of that relationship for many years and perhaps their lifetime. They considered alienation a serious mental condition with the child’s “maladaptive behaviour”⁷⁷ being driven by the false belief that the alienating parent is a dangerous or unworthy person.

One of the issues with defining alienation lies in its distinction from justified estrangement. The authors do differentiate between “parental alienation” and “parental alienation syndrome”. They define parental alienation is the “child’s strong alliance with one parent and rejection of a relationship with the other parent without legitimate

⁷⁵ Bernet and others “Parental Alienation, DSM-V, and ICD-11” above n 7.

⁷⁶ Bernet and others “Parental Alienation, DSM-V, and ICD-11” above n 7 at 76.

⁷⁷ Bernet and others “Parental Alienation, DSM-V, and ICD-11” above n 7 at 77.

justification”.⁷⁸ By contrast, PAS as defined by Gardner⁷⁹ included the eight characteristic behaviours (referred to above at page 17) and is a more complex criterion for defining alienation. However, the majority of children who experienced parental alienation suffer some or all of those characteristics.

3.2.2.2. *The Proposed Term*

Bernet and others⁸⁰ coined the specific phrase “*Parental Alienation Disorder*” or “*parental alienation relational problem*” (particularly because those terms are consistent with the terminology used in the DSM-V). They use the term “*contact refusal*” for the behaviour of a child or adolescent who adamantly avoids spending time with one of the parents as a result of a number of possible causes including parental alienation and justified estrangement and suggest that such consistency would be advantageous for all professionals working in legal procedures where alienation may be present.⁸¹

To use consistent terms as defined in the DSM-V and ICD-11 would lead to an elimination of the current conflicting terminology and definitions. In addition, because the definitions include a broad approach to the causes of a child’s rejection of a parent, it would ensure that any professional considering whether alienation is present would have to consider a number of explanations for the child’s refusal of contact, including justified estrangement. The authors state “we believe that when everybody involved in the legal procedures (the parents, the child protection investigators, the mental health professionals, the attorneys, and the Judge) has a clear, uniform understanding of the definition of parental alienation, there will be fewer opportunities for rogue expert witnesses and lawyers to misuse the concept in court.”⁸²

The proposed criterion for inclusion in the DSM-V and ICD-11 is attached as *Appendix B*.

⁷⁸ At 79.

⁷⁹ Richard A. Gardner (1992b) *True and False Allegations of Child Sex Abuse* (Creative Therapeutics).

⁸⁰ Bernet and others "Parental Alienation, DSM-V, and ICD-11 above n 7.

⁸¹ Bernet and others "Parental Alienation, DSM-V, and ICD-11 above n 7 state: “*We believe that when everybody involved in the legal procedures (the parents, the child protection investigators, the mental health professionals, the attorneys, and the Judge) has a clear, uniform understanding of the definition of parental alienation, there will be fewer opportunities for rogue expert witnesses and lawyers to misuse the concept in court.* At 142.

⁸² Bernet and others "Parental Alienation, DSM-V, and ICD-11" above n 7 at 142.

3.2.2.3. *Benefits of Having Alienation Defined*

If parental alienation were an official diagnosis, counsellors and therapists from all disciplines would become more familiar with the condition, which would improve the ability of professionals to assist with “diagnosing” the issue. It is also likely that it would assist with targeting specific therapeutic intervention. This would give the courts the opportunity to obtain an earlier and more reliable and consistent recognition of alienation. Earlier intervention would lead to more effective treatment or “cure”.⁸³

3.2.2.4. *Inclusion in the DSM-V and ICD-11 Premature*

However, the diagnosis was not included in the DSM-V or the ICD-11, largely as a result of the lack of reliable empirical research. While this research made a strong case for inclusion, others suggest this is inappropriate, or at best, premature. At this point, it is considered that there is insufficient qualitative and quantitative research for a certain diagnosis to be included. Saini and others⁸⁴ also concluded that there are many limitations to the current research. They state:⁸⁵

1. There remains no consensus for a single definition for alienation (parental alienation, child alienation, parental alienation syndrome, et cetera);
2. The existing research on the etiology, prevalence, characteristics, and interventions for alienation has significant methodological limitations, and much of the writing on the subject is based on clinical opinions or personal impressions;
3. High-conflict separations may be characterised in part by parental alienating behaviours, and this conduct may be harmful to children and their long-term development;
4. Although the literature uses the concept of the “severity” of abuse, there are no reliable instruments to classify or establish the severity of alienation.
5. Research also supports the recognition that a child’s rejection of a parent or resistance to contact may be “justified estrangement” due to parental abuse or neglect, though there are no validated and reliable instruments to distinguish these from alienation cases.

⁸³ Bernet and others “Parental Alienation, DSM-V, and ICD-11” above n 7 at 141.

⁸⁴ Michael Saini, Janet R. Johnston, Barbara Jo Fidler, and Nicholas Bala “Empirical Studies of Alienation” above n 53.

⁸⁵ At 375-376.

One of the other arguments that has been put forward against a diagnosis is that abusive parents may hide their behaviour. However, Bernet and others⁸⁶ argued that this does not mean that it should be denied its place as a recognised diagnosis for mainstream psychology and psychiatry. They say:⁸⁷

The psychiatric diagnosis that is most misused in legal settings is post-traumatic stress disorder. In personal injury lawsuits, the diagnosis of post-traumatic stress disorder in an alleged victim may be used improperly or misused by inept evaluators. Also, military veterans and workers compensation claimants sometimes malingering post-traumatic stress disorder in order to receive disability benefits. However, we are not aware that anyone has proposed that post-traumatic stress disorder should be deleted from the DSM because it is sometimes misused.

Further research is needed to reliably distinguish alienation from other types of strained parent-child relationships, and to determine the most appropriate responses to individual cases. However, a significant body of research undertaken over a lengthy period of time is already available. The extensive revision of this research, undertaken by Bernet and others,⁸⁸ provides thorough and comprehensive insight into the issues and a proposed diagnostic criterion. Until there is a universally agreed definition or diagnostic criterion, the definition of parental alienation disorder and parental alienation relational problem (referred to at page 29 above) provide a useful resource that can be utilised by the courts, and psychologists assisting the courts, for diagnostic purposes.

3.3. Prevalence of Alienation

There has been insufficient qualitative research undertaken to provide definitive statistics on the prevalence of alienation.⁸⁹ What is of interest is that researchers have concluded that even children who are found to have been abused are likely to want to maintain a relationship with their abusive parent and, conversely, in situations of high conflict, where parents frequently make negative comments about the other, not all

⁸⁶ Bernet and others "Parental Alienation, DSM-V, and ICD-11" above n 7 at 142.

⁸⁷ At 141.

⁸⁸ Bernet and others "Parental Alienation, DSM-V, and ICD-11" above n 7.

⁸⁹ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

children become alienated.⁹⁰ What distinguishes children who do become alienated really is at the heart of the challenge for those seeking to “diagnose” alienated children.

Janet Johnston found in one study that 7% of children had a “strong alignment” with one parent and rejection of the other, and 27% in a second study. In subsequent research she found that 15% of children in a community sample of divorcing families and 21% in contested custody cases experienced either “some” or “much” alignment with one parent or the other, which was defined as the “child’s behavioural and verbal preference for one parent with varying degrees of overt or covert negativity towards other parent”.⁹¹

Other researchers have made more generalised findings. Leona Kopetski found that 20% of families involved in custody disputes manifested PAS.⁹²

Larry Nicholas undertook a survey of 21 custody evaluators and found that approximately one third of them had a parent engaging and identifiable alienating behaviour.⁹³

Amy Baker surveyed 106 mental health professionals who conducted custody evaluations as to their beliefs and attitudes about PAS. The study results were that the average number of the mental health professionals’ cases in which PAS was determined to have occurred was 11.2% with a range of 0% and 55% .⁹⁴

James Bow and colleagues surveyed 448 mental health and legal professionals who were experienced with parental alienation. They stated, “when respondents were asked [in

⁹⁰ Janet R Johnston, Marjorie G Walters and Nancy W Olesen "Clinical Ratings of Parenting Capacity and Rorschach Protocols of Custody-Disputing Parents: An Exploratory Study" (2005) *Journal of Child Custody* 2(1-2) 159-78.

⁹¹ Janet R Johnston "Parental Alignments and Rejection: An Empirical Study of Alienation in Children of Divorce" (2003) *Journal of the American Academy of Psychiatry and the Law*, 31(2), 158-170; Johnston, Walters, and Olesen, "Clinical Ratings of Parenting Capacity and Rorschach Protocols of Custody-Disputing Parents: An Exploratory Study" above n 90.

⁹² Leona M Kopetski "Identifying Cases of Parent Alienation Syndrome—Part I" (1998) *The Colorado Lawyer* 27:2 65-68.

⁹³ L Nicolas "Does Parental Alienation Syndrome Exist? Preliminary Empirical Study of the Phenomenon in Custody and Visitation Disputes" (paper presented at the Proceedings of Thirteenth Annual Symposium of the American College of Forensic Psychology, Vancouver, British Columbia, 1997).

⁹⁴ Amy JL Baker "Knowledge and Attitudes About Parental Alienation Syndrome: A Survey of Custody Evaluators" (2007a) *American Journal of Family Therapy* 35:1 1-19 at 9.

what percentage of child custody cases was parental alienation an issue, the mean reported was 26% (SD = 22), with a median of 20".⁹⁵

Based on data obtained from the United States Census Bureau,⁹⁶ Bernet⁹⁷ estimated a 1% prevalence of parental alienation among the approximately 20% of children under 18 years of age who live with separated or divorced parents.

No consistent assessment criteria are given in these studies as to either how alienation is identified (or a distinction between an alienated child or one rejecting a parent as a result of a justified estrangement) or as to the severity of the alienation. It is perhaps understandable, therefore, that the estimates of children who do become alienated in these studies vary.

3.4. Alienation by Gender

Boys and girls experience alienation about equally, but adolescents are more likely to become alienated from a parent than younger children;⁹⁸ and both mothers and fathers can be alienated from the children.⁹⁹

3.5. Alienating Behaviours

In terms of defining specific alienating behaviours, Amy Baker concluded that the alienating parent behaves in a way which reinforces compliance, obedience and adherence to their "worldview", rather than promoting independent thinking and self-determination in their children¹⁰⁰. She theorised that the intention behind this behaviour was to reduce the risk that the child would question the assumptions about the targeted parent. The intention of the alienating parent to undermine the child's self-sufficiency

⁹⁵ James N Bow, Jonathan W Gould and James R Flens "Examining Parental Alienation in Child Custody Cases: A Survey of Mental Health and Legal Professionals" (2009) *The American Journal of Family Therapy* 37(2) 127-145.

⁹⁶ U.S. Census Bureau "Living Arrangements of Children: 2009"
<https://www.census.gov/prod/2011pubs/p70-126.pdf>.

⁹⁷ Bernet and others "Parental Alienation, DSM-V, and ICD-11" above n 7.

⁹⁸ Joan B Kelly and Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" above n 50.

⁹⁹ Nicholas Bala, Suzanne Hunt and Carolyn McCarney "Parental Alienation Canadian Court Cases 1989-2008" (2010) *Family Court Review* 48:1 164-79.

¹⁰⁰ Amy JL Baker and Naomi Ben-Ami, "To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being" above n 69 at 79.

may be the desire to prolong the child's dependency on the parent, gratifying that parent's ego as the preferred, needed, and beloved parent.¹⁰¹

3.5.1. *The Most Prevalent Alienating Behaviours*

A later survey conducted by Baker and Verrocchio involving 257 undergraduate psychology students at the University in Chieti, Italy, and utilising the 20-item measure of the BSQ, (see Appendix B) found the following parental alienating behaviours:¹⁰²

- made negative comments – 61.5%
- confided – 34.4%
- encouraged reliance on himself/herself – 33.2%
- required favouritism – 32%
- asked to keep secrets – 21.9%
- upset if I was affectionate with other parent – 19.8%
- discomfort if I looked at picture – 18.2%
- tried to turn against other parent – 15%
- fostered anger/hurt at other parent – 14.2%
- made child choose – 13.8%
- encouraged disregard for other parent – 13.4%
- said parent was unsafe – 12.1%
- asked me to spy – 11.7%
- limited contact – 9.3%
- said parent was unloving – 9.3%
- made communication difficult – 8.5%
- called other parent by first name – 6.1%
- hard to be with extended family – 4.9%
- withheld or blocked messages – 1.6%
- referred to new spouse as mum/dad – 1.6%

In 2011, Baker and Chambers undertook a later survey of 105 undergraduate or graduate students using the 19-question BSQ but with the addition of “tried to turn against the

¹⁰¹ Amy JL Baker, "Patterns of Parental Alienation Syndrome: A Qualitative Study of Adults Who Were Alienated from a Parent as a Child" above n 10.

¹⁰² Amy JL Baker and Maria Christina Verrocchio, "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" (2013) *Journal of Divorce & Remarriage* 54:8 609-28.

other parent”.¹⁰³ The two parental alienation behaviours that were endorsed by the highest percentage of respondents as having ever occurred (*confided in child and made negative comments*) were also the two that were endorsed by the highest percentage of respondents as having ever occurred always.

Baker’s research concluded that the most significant prevalence of the BSQ questions in the “divorce” group were “required favouritism of child, upset child affectionate with other parent, made child choose, encouraged reliance, encouraged disregard of other parent, hard to be with extended family, and fostered anger”.¹⁰⁴

However, while those items were the most prevalent Baker noted, with regards to the question of gifts, that the child may not ever know they have received gifts or mail if the alienating parent withholds them, unless the child is told by the targeted parent about the undelivered items. In her 2006 research with Darnell, Baker¹⁰⁵ found that this could be the cause of chronic frustration and therefore considered it possible that lack of knowledge, as opposed to lack of occurrence, was a factor contributing to the low level of endorsement of this item by participants in the study.¹⁰⁶

3.5.2. *Intention to Alienate*

Darnall’s earlier research¹⁰⁷ considered the notion of a “naïve alienator”, i.e., a parent who intermittently engaged in some alienating behaviours, but with no real intention to damage the child’s relationship with the other parent.

In the Baker and Chambers study there were also other items which were not reported highly. One interpretation of this was that although the parents did engage in some of these behaviours, they did not represent, and were not perceived to be part of a larger effort on the part of one parent to turn the child against the other parent. Baker and Chambers considered it possible that the child still felt supported by one parent in having

¹⁰³ Amy JL Baker and Jaclyn Chambers “Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation” (2011) above n 65 at 62.

¹⁰⁴ Amy JL Baker and Jaclyn Chambers “Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation” (2011) above n 65 at 70.

¹⁰⁵ Amy JL Baker and Douglas Darnall “Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences” above n 64.

¹⁰⁶ Amy JL Baker and Jaclyn Chambers “Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation” above n 65.

¹⁰⁷ Douglas Darnall, *Divorce Casualties: Protecting Your Children from Parental Alienation* above n 24.

a relationship with the other, despite some denigration or confiding.¹⁰⁸ Their second explanation was that some respondents were able to acknowledge exposure to specific behaviours but did not acknowledge or understand the intention behind those behaviours (i.e., one parent was trying to turn them against the other parent). On that basis, their conclusion was that, as with other forms of abuse, assessment of parental alienation might require asking about specific behaviours rather than asking about general construction. They considered that it may be simply too threatening for the child to admit the poor intentions of a parent.¹⁰⁹

3.5.3. *The Child's Reaction to Alienating Behaviour*

Fidler and Bala reported that "divorce and parental conflict related alignments, which may not be unjustified initially, may, if not remedied early on, develop into alienation if the child's reaction becomes disproportionate to the reality of the experience with the rejected parent."¹¹⁰ The reasoning for this is that:

As children mature cognitively, they move from egocentric and concrete reasoning to being able to consider the perspective of others. While younger children can take the perspective of the parent they are with at the time, they are unable, at least initially, to consider discrepant perspectives simultaneously. Accordingly, loyalty conflicts initially manifest with the child demonstrating a shifting allegiance.¹¹¹

Children also acquire the capacity for reflexive thought as they mature ("I know that you know that I know")¹¹² and can then partially begin to retain more than one perspective at a time. Fidler and Bala consider that in order to cope with persistent and contradictory

¹⁰⁸ Amy JL Baker and Jaclyn Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" above n 65.

¹⁰⁹ Amy JL Baker and Jaclyn Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" above n 65.

¹¹⁰ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

¹¹¹ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 and Johnston, J. R., & Roseby, V. (1997). *In the name of the child: A developmental approach to understanding and helping children of conflicted and violence divorce*. New York: The Free Press.

¹¹² Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 15.

information, distress and confusion, the child may move from shifting allegiances with each change in care to an alignment with one parent, accompanied by either resistance or refusal to spend time with the other parent. To rationalise this behaviour, the child tends to see the situation in black and white terms, believing that one parent is all (or mostly) good and the other is all (or mostly) bad. They conclude that this “reasoning” can become fixed and inflexible and grow to have a life of its own; it persists within the evident influence of the aligned parent:¹¹³

In child alienation, the aligned parent puts a spin on the rejected parent’s flaws, which are exaggerated and repeated. “Legends” develop and the child is influenced to believe the rejected parent is unworthy and in some cases abusive. The child develops an anxious and phobic-like response. Like other phobias, the continued avoidance of the anxiety-provoking circumstances (parental conflict, loyalty bind), or feared object (the rejected parent), known as “anticipatory anxiety”, reinforces the child’s avoidance and rejection. The child’s resistance or refusal is reinforced by the aligned parent’s approval and extra attention. Further, a mutually escalating cycle of fear and anxiety develops between the child and the alienating parent; the more upset the child is, the more protective and concerned the parent is, which in turn escalates the child’s reactions, and so on (separated high conflict parents often have no direct contact with each other and rely on second-hand information, including from the child, to form opinions about each other). Learning theory demonstrates that the correction (extinction) of the avoidance is extremely difficult and requires exposure and systematic desensitisation to the avoided circumstance or feared object.¹¹⁴

Fidler and Bala also noted the parent’s often inconsistent attitude towards the way in which the child is encouraged to view the other parent compared with, for example, the child’s friend, teacher or coach. The alienating parent will encourage the child to view the targeted parent as bad, whereas they may encourage the child to see the positive and the

¹¹³ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

¹¹⁴ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

negative in another person with whom the child has a relationship. This may result in the child viewing his or her relationship with others as more important than the relationship with the other parent:

When difficulties occur between the aligned parent and the child (all with the relative of that parent), the parent is likely to expect and require the child to sort out those difficulties, not avoid them or sever ties with the people with whom the child experienced the conflict. Instead, the alienating parent exploits the rejected parent's common foibles and shortcomings, and purports to "leave the decision" about whether to have contact or even making efforts to resolve conflicts, to the child, thereby sending a strong message that the relationship is not that important. Interestingly, it is not uncommon for this parent who is noncommittal or lenient when it comes to the child seeing the other parent, to assert firm expectations and sometimes be intrusive and overly controlling when it comes to the child's behaviour in other respects, such as homework, being polite with relatives and neighbours, chores, extracurricular activities and listen and so on. Good parenting includes not only listening and validating a child's feelings, but also helping them to see things from another person's perspective, resolving not avoiding conflicts, having expectations, and modelling compassion, empathy and forgiveness; practices that are not part of the truly alienating parent's repertoire when it comes to the rejected parent.¹¹⁵

Clearly, there are many tactics employed by an alienating parent to "brainwash" a child into rejecting the other parent. However, identifying such behaviours in isolation is difficult, and there can be other reasons for a child's rejection of a parent.

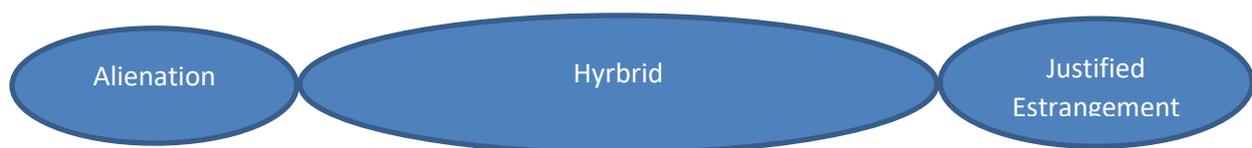
3.5.4. An Alienation Spectrum?

One of the most significant difficulties relating to parental alienation is determining how much influence the alienating behaviour of one parent has on a child's resistance to contact or rejection of a parent and how much is because of that other parent's behaviour (such as abuse or neglect). The subjective nature of parenting and family dynamics

¹¹⁵ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 17.

generally suggests that there may be a combination of factors at play in alienation cases. *Figure One* depicts a spectrum, with alienation (where the primary or sole cause of a child's resistance to contact or rejection of a parent is a result of the alienating parent's behaviour) at one end and justified estrangement (where a child's resistance to contact or rejection of a parent is solely a result of that parent's behaviour, such as violence or neglect) at the other. The "hybrid" cases (those that involve some behaviour by an alienating parent and some behaviour by the other parent (e.g. violence or neglect), which each contributes to the child's resistance to contact or rejection of a parent) may, in fact, be the most prevalent.

Figure One: An Alienation Spectrum



Viewing alienation as a spectrum between alienation and justified estrangement may be a more simplified way to categorise such cases.

3.6. Justified Estrangement

As set out above, one of the major difficulties with identifying alienation is where there are other factors at play, in particular, a "justified estrangement" of a child from a parent. In 2001, Kelly and Johnston undertook research to consider why some children resist contact or reject a parent and remain aligned with the other parent. The factors they identified to be taken into consideration include:¹¹⁶

1. The alienating behaviour and motivation of the aligned parent;
2. The rejected parent's inept parenting and counter rejecting behaviour (before or after the rejection);
3. Domestic violence/abuse and child/neglect;

¹¹⁶ Joan B Kelly and Janet R Johnston "The Alienated Child: A Reformulation of Parental Alienation Syndrome" above n 50.

4. Chronic litigation that typically includes “tribal warfare” (involvement of family, friends and new partners);
5. Sibling dynamics and pressures;
6. A vulnerable child (dependent, anxious, fearful, emotionally troubled and with poor coping and reality testing); and
7. Developmental factors (e.g. age-appropriate separation anxiety, response to separation or conflict consistent with the cognitive development of children aged 8 to 15 years).

As Kelly and Johnston state, it is the role of the court to differentiate the truly alienated child, consequent to a parent’s pernicious influence, from the child who resists or refuses contact with a parent for reasons not primarily due to the alienating parent’s campaign, either overt or covert, against the other parent.¹¹⁷ The model they developed, and which was subsequently reformulated,¹¹⁸ suggests that a child’s rejection of a parent can occur in the absence of an alienating parent and that even if alienating behaviour is present, it is equally important to consider these other factors.

Fidler and Bala¹¹⁹ state that alignments between the child and the preferred parent may develop before, during or after the separation not only as a result of abuse or neglect but also because of the nonpreferred parent’s minimal involvement in parenting, inexperience or poor parenting. Such alignments can also occur in the case of separations, when a child becomes angry or upset with a parent who leaves the family or leaves the other parent feeling hurt, upset, or angry or starts a new relationship.

3.6.1. How to Differentiate Alienation from Justified Estrangement

The courts must, therefore, determine the source of the rejection of the parent by the child. Baker, Burkhard & Albertson-Kelly stated that:¹²⁰

¹¹⁷ Joan B Kelly and Janet R Johnston "The Alienated Child: A Reformulation of Parental Alienation Syndrome" above n 50.

¹¹⁸ Michael Saini, Janet R. Johnston, Barbara Jo Fidler, and Nicholas Bala "Empirical Studies of Alienation" above n 53. Steven Friedlander and Marjorie Gans Walters "When a Child Rejects a Parent: Tailoring the Intervention to Fit the Problem" (2010) Family Court Review 48:1 98-111.

¹¹⁹ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

¹²⁰ Amy JL Baker, Barbara Burkhard and Jane Albertson-Kelly "Differentiating Alienated From Not Alienated Children: A Pilot Study" above n 61 at 90.

The resolution of these cases from the standpoint of the court can be better facilitated if the court is able to determine an appropriate disposition. In meeting the treatment needs of these children, it is imperative that the genesis of the relationship problem be determined. An unsuitable disposition of these cases, for example, ordering supervised visitation for a child who has been alienated from a parent by the preferred parent, might reinforce the delusional system, which essentially created the conflict. Likewise, the court would seek to avoid mandating reunification between a child and an abusive or extremely incompetent parent.

They suggested a four point assessment process:¹²¹

1. Is there evidence of a positive relationship between the child and the now rejected parent prior to the divorce (or separation)?
2. Is there a lack of substantiated findings of abuse or other credible information about abuse or neglectful behaviours of the now rejected parent?
3. Is there evidence that the favoured parent employed many of the 17 primary parental alienation strategies as identified in Baker and Fine?¹²²
4. Does the child exhibit behavioural characteristics or report ideas and feelings characteristic of alienation (e.g., A score of seven or above on the BAQ)?

They considered that if the answer was affirmative to all four questions, then alienation was more likely than justified estrangement. They also noted that “even children with extreme responses to the BAQ can very quickly warm up to the rejected parent once within the confines of a therapeutic setting and outside the viewing range of the favoured parent.” Furthermore, “it appears that for some children there remains an apparent discrepancy between what they say and how they behave.”¹²³

¹²¹ Amy JL Baker, Barbara Burkhard and Jane Albertson-Kelly “Differentiating Alienated From Not Alienated Children: A Pilot Study” above n 61.

¹²² Amy JK Baker and Paul R Fine "Beyond the High Road: Responding to 17 Parental Alienation Strategies without Compromising Your Morals or Harming Your Child"
https://www.researchgate.net/profile/Amy_Baker9/publication/265450917_Beyond_the_High_Road_Responding_to_17_Parental_Alienation_Strategies_without_Compromising_Your_Morals_or_Harming_Your_Child/links/56a8b07e08ae0fd8b4000ead/Beyond-the-High-Road-Responding-to-17-Parental-Alienation-Strategies-without-Compromising-Your-Morals-or-Harming-Your-Child.pdf.

¹²³ Amy JL Baker, Barbara Burkhard and Jane Albertson-Kelly “Differentiating Alienated From Not Alienated Children: A Pilot Study” above n 61 at 191.

3.6.2. *The Importance of Maintaining Attachment*

There may be contributing factors resulting in the relationship between the parent and the child becoming estranged, i.e. the “hybrid” cases. Justified estrangement, as a cause, or partial cause, of a child’s resistance to contact or rejection of a parent can result from many factors. Frequently, these cases involve allegations of violence with the child either being exposed to or the subject of physical violence. To ensure positive outcomes for children, it is important to both protect them from violence and abuse and also ensure they maintain a meaningful relationship, or attachment, with both parents. Bowlby¹²⁴ first researched attachment theory as it related to the lasting psychological connectedness between human beings. With regards to children he suggested that attachment plays a critical role and impacts on the child’s relationships with others later in life.

Greenberg and Armsden¹²⁵ state that the child having more trust and communication, and lower scores of alienation (irrespective of the cause of the alienation between the parent and child) translates to stronger overall attachment. Adolescents more securely attached to their parents had higher scores of wellbeing, including self esteem and life satisfaction. Insecure attachments to parents, in contrast, were linked to higher scores of adolescent depression, anxiety, and resentment/alienation.

Kelly and Lamb¹²⁶ state that the relationship between a child and both of his or her parents plays a crucial role in shaping the child’s social, emotional, personal, and cognitive development. They indicate that if a child is deprived of a meaningful relationship with one of his or her parents, he or she is at greater risk psychosocially, even when that child is able to maintain a relationship with the other parent.

Where this becomes particularly relevant in relation to parenting disputes is where there are allegations relating to the child’s safety coupled with alienating behaviour, i.e. a hybrid situation. The risk to the child in a situation where a parent has been violent or

¹²⁴ John Bowlby *Attachment and loss* (Basic Books, New York 1969).

¹²⁵ GC Greenberg and MT Armsden "The Inventory of Parent and Peer Attachment: Individual Differences and Their Relationship to Psychological Well-Being in Adolescence" (1987) *Journal of Youth and Adolescence* 16:5 427-54.

¹²⁶ Joan B. Kelly and Michael E. Lamb "Using Child Development Research To Make Appropriate Custody And Access Decisions For Young Children" (2000) *Family and Conciliation Courts Review* 38:3 297-311 at 303.

abusive must be balanced with the impact on the child of a loss of attachment with that parent (in particular where the other parent is exhibiting alienating behaviour).

3.6.3. *The Detrimental Impact of Violence vs Alienation*

In a study into the combined effects of child abuse and children's exposure to domestic violence, Sousa and others¹²⁷ sought to ascertain what impact this may have on later attachment to parents and youth outcomes. Children dually exposed to (direct) abuse and (witnessing) domestic violence were less attached to parents in adolescence than those who were not exposed at all. However, for those children who were abused only, and those who were exposed only to domestic violence, the relationship between exposure types and youth outcomes did not differ by level of attachment to parents. Stronger bonds of attachment to parents in adolescence predicted a lower risk of antisocial behaviour independent of the exposure status. They concluded, therefore, that preventing child abuse and children's exposure to domestic violence could lessen the risk of antisocial behaviours during adolescence, as could strengthening parent-child attachments in adolescence.

The importance of this study, with reference to alienation, is the strength of the attachment between the child and the parent. Clearly, it is important to prevent children's exposure to violence and abuse, but the findings support the best outcomes for children as being when the attachment to both parents is maintained.

Violence and abuse clearly have a detrimental impact on children.¹²⁸ The relationship between justified estrangement (relating to abuse or neglect) and alienation must, therefore, be considered in terms of minimising the consequences of each where both are present. The level of or exposure to violence must clearly be considered in terms of the impact on a child. However, given the research findings, assuming the risk of further abuse or violence could be prevented (where this had previously occurred), the research suggests the best outcomes for children is where he or she has an attachment to both parents even when there has been exposure to violence or abuse.

¹²⁷ C Sousa, TI Herrenkohl, CA Moylan, EA Tajima, JB Klika, RC Herrenkohl and MJ Russo "Longitudinal study on the effects of child abuse and children's exposure to domestic violence, parent-child attachments, and antisocial behavior in adolescence" (2011) *Journal of Interpersonal Violence*, 26(1), 111-136.

¹²⁸ Gayla Margolin and Elana B. Gordis "The Effects Of Family And Community Violence On Children" (2004) *Current Directions in Psychological Science* 13(4) 152-155

3.7. Categorisation of Alienation

Where alienation is present, either at the extreme end of the spectrum or in a “hybrid” situation, a further question for consideration is that of the extent of the alienation. Berne et al. categorise three types of alienation to assist clinicians in treating families where alienation is present:¹²⁹

Mild

This is where the alienation is identified early when the symptoms are mild (that is, the child resists contact with the targeted parent, but enjoys his relationship with that parent once the parenting time is underway).

Moderate

The alienation has reached a moderate degree of severity (the child strongly resists contact and is persistently oppositional with the alienated parent).

Severe

In severe alienation cases the child adamantly refuses contact and may run away to avoid being with the alienated parent. By this stage, the authors consider that with the effluxion of time, children with parental alienation become intractable in their false beliefs and their mental condition resembles that of individuals with a delusional disorder.

Fidler, Bala and Kavassalis likewise categorise alienation into mild, moderate or severe.¹³⁰ In Fidler and Bala’s 2010 paper they state:¹³¹

Children will exhibit all or none thinking, idealising the favoured parent and devaluing the rejected parent. They will likely deny having ever experienced any good times with the rejected parent when this is clearly not the case; if shown video or photographs depicting otherwise, they will claim the images have been doctored or they were just pretending. Often, complaints are presented in a litany, some of these being trivial, false or irrational. The child’s

¹²⁹ Bernet and others "Parental Alienation, DSM-V, and ICD-11" above n 7.

¹³⁰ Barbara Fidler, Nicolas Bala, Rachel Birnbaum and Katherine Kavassalis *In Challenging Issues in Child Custody Disputes: A Guide for Legal and Mental Health Professionals* (Toronto, Thomson Carswell, 2008) (Table 15 page 249 – 252).

¹³¹ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 17.

tone and description of the relationship with the alienated parent is often brittle, repetitive, has an artificial, rehearsed quality, and is lacking in detail. The child's words are often adult-like. The child's reaction of hatred or disdain is unjustified and disproportionate to the deed. The negative feelings are expressed with little if any ambivalence. They can be rude and disrespectful, even violent, without guilt. Feelings and hatred often include the extended family or friends of the parent, even when the child has had little or no contact with them for some time. The hatred may even extend to pets of the rejected parent.

Clearly, the child's behaviour will be relevant to the level of alienation; the more severe the alienation, the more extreme the behaviour. At this point, there is less ability to remedy the alienation and thereby reduce the long term impacts of the alienation.

3.7.1. *Intentionality of Alienation*

In addition to categorising the severity of alienation, some researchers have also categorised the intentionality of the behaviour of the alienating parent. Fidler and others stated that the behaviour can be conceptualised on at least two dimensions; *conscious, malicious and direct, or more unconscious, manipulative and indirect*.¹³² On a similar theme, Darnall¹³³ identifies three types of alienators:

1. *Naïve alienators*; passive about the relationship with the other parent and occasionally say or do something to alienate or reinforce alienation;
2. *Active alienators*; know what they are doing is wrong but, in an effort to cope with hurt and anger, alienate as a result of emotional vulnerability or poor impulse control; and
3. *Obsessed alienators*; feeling justified: this parent wants to hurt the target parent and destroy the child's relationship with that parent, rarely showing self-control insight.

¹³² Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

¹³³ Douglas Darnall, *Divorce Casualties: Protecting Your Children from Parental Alienation* above n 24.

Baker and Darnall¹³⁴ identify as many as 1300 intentional actions by alienating parents, categorised into 66 strategies. They summarised these strategies into seven groups, plus a catch-all miscellaneous group:

1. Bad mouthing (e.g. qualities, portrayed as dangerous, mean, abandoning; using the rejected parent's first name with the child instead of "mum" or "dad", et cetera);
2. Limiting/interfering with parenting time (e.g. moving away, arranging activities during scheduled time with rejected parent, calling during contact; giving child "choice" about whether to have contact, et cetera);
3. Limiting/interfering with mail or phone contact (blocking, intercepting, or monitoring calls and mail, et cetera);
4. Limiting/interfering with symbolic contact (limiting mentioning, no photographs, having child call someone else "mum" or "dad"; changing the child's name, et cetera);
5. Interfering with information (e.g. refusing to communicate, using child as messenger, not giving important school and medical information, et cetera);
6. Emotional manipulation (e.g. withdrawing love, inducing guilt, interrogating child, forcing child to choose/express loyalty or reject, rewarding for rejection, et cetera);
7. Unhealthy alliance (e.g. fostering dependency, and child having to spy, keep secrets, et cetera); and
8. Miscellaneous (e.g. bad mouthing to friends, teachers, doctors, interfering with child's counselling, creating conflict between child and the rejected parent, et cetera).

Essentially, any of these types of behaviours create the loyalty bind. Fidler and Bala note that the alienating parent creates an environment of neediness and dependency on the child for love and acceptance, and the child comes to realise that it is not possible to show love for both parents as this is interpreted by the alienating parent as a rejection. The reward for the child in giving that parent the loyalty they expect comes in the form of warmth, attention, love and even material goods. Disloyal behaviour is negatively

¹³⁴ Amy JL Baker and Douglas Darnall (2006) "Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences" above n 64.

reinforced with punishing looks, anger, withdrawal and abandonment, a risk the child cannot take having already “lost” a once loving and loved parent.¹³⁵

3.8. Is Psychopathology Present in Alienating Parents?

A number of researchers have found that psychopathology is common among alienating parents (in particular where severe alienation is present).¹³⁶ The 2013 *Parental Alienation: The Handbook For Mental Health and Legal Professionals*¹³⁷ also supported this contention, referring to the research as demonstrating that parents of severely alienated children have a very high incidence of Axis II personality disorder, specifically Borderline and Narcissistic Personality Disorder. The authors explained the characteristics as the individual having a deficit in their ability to critique or to even view their own behaviour as a consequence. They consider wrongdoing being due to the actions of others, and, therefore, they fail to recognise the behaviour as problematic or that such behaviour will influence the child. As a result, often when confronted with it they deny with great credibility what they have just said.

¹³⁵ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 19.

¹³⁶ Amy JL Baker and Douglas Darnall "Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences" above n 64; SS Clarwar and BV Rivlin *Children Held Hostage: Dealing with Programmed and Brainwashed Children* above n 47; Richard A Gardner *True and False Allegations of Child Sex Abuse* (NJ Cresskill Creative Therapeutics, 1992b); Leona M Kopetski (1998) "Identifying Cases of Parent Alienation Syndrome—Part I" *The Colorado Lawyer* 27:2 65-68; Janet R Johnston and Linda EG Campbell *Impasses of Divorce: The Dynamics and Resolution of Family Conflict* (Free Press, New York, 1998); Anita K Lampel "Children's Alignment with Parents in High Conflicted Custody Cases" (1996) *Family & Conciliation Courts Review* 34:2 229-39., Anita K Lampel "Children's Alignment with Parents in High Conflicted Custody Cases" (1996) *Family & Conciliation Courts Review* 34:2 229-39; Janet R Johnston "Parental Alignments and Rejection: An Empirical Study of Alienation in Children of Divorce" (2003) *Journal of the American Academy of Psychiatry and the Law*, 31(2), 158-170; Johnston, Walters, and Olesen, "Clinical Ratings of Parenting Capacity and Rorschach Protocols of Custody-Disputing Parents: An Exploratory Study" above n 69; DC Rand, R Rand and L Kopetski "The Spectrum of Parental Alienation Syndrome, Part III the Kopetski follow up study" (2005) *American Journal of Forensic Psychology* 23 15-43; R Racusan, SA Copans and P Mills "Characteristics of Children of Families Who Refuse Post-Divorce Visits" (1994) *Journal of Clinical Psychology* 50 792-801; ID Turkat "Child Visitation Interference in Divorce" (1994) 14 *Clinical Psychology Review* 737-42, 1999; Richard A Warshak "Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children" (2010a) 48 *Family Court Review* 48-80.

¹³⁷ Demosthenes Lornados, William Bernet and S Richard Sauber *Parental Alienation: The Handbook for Mental Health and Legal Professionals* (Springfield, IL, Charles C. Thomas, 2013).

3.9. Other Causes of Child Rejection – The Loyalty Bind

Conflict alone, according to Gardner,¹³⁸ can be harmful and can represent a form of parental alienation. However, he does consider that this is more likely to occur where a parent uses intentional efforts to turn a child against the other parent. He considers that when children are involved in conflict the alienating parent is explicitly or implicitly creating an expectation that the child will agree with that parent and see him or her as right, while regarding the other parent as flawed and problematic. The loyalty conflict that follows can cause some children to become allied with one parent against the other to cope with being torn between opposing and mutually exclusive polarities.

Baker and Chambers¹³⁹ consider that a child may resist contact or reject a parent as a result of factors other than a parent's intentional alienating behaviour (such as abuse or poor parenting). However, they also consider that a psychological distance created between a child and a parent who is "targeted" can become conflict ridden and ultimately non-existent.¹⁴⁰ While both Gardner and Baker and Chambers indicate that some degree of intent or targeting may be necessary for the child to become allied with one parent high levels of conflict without specific alienating behaviour by one parent has also been recognised as causing alienation in some children, as a result of the loyalty bind.¹⁴¹

3.10. The Need for Early Intervention

Regardless of the cause of the alignment, early intervention is vital to ensure better outcomes for children where alignments become evident. However, it is still necessary to determine the cause of the alignment or alienation before appropriate intervention can be implemented. This can pose a challenge for the courts where safety issues are present as the protective response of a parent (in alleging safety concerns) in a case of realistic estrangement can look like alienating behaviour.¹⁴²

¹³⁸ Richard A. Gardner (1998b) *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (2nd Ed Creative Therapeutics).

¹³⁹ Baker and Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" (2011) *Journal of Divorce & Remarriage* 52 55-76.

¹⁴⁰ At 57.

¹⁴¹ Bernet and others "Parental Alienation, DSM-V, and ICD-11" above n 7.

¹⁴² Steven Friedlander and Marjorie Gans Walters (2010) "When a Child Rejects a Parent: Tailoring the Intervention to Fit the Problem" *Family Court Review* 48. 98 – 111; Janet R Johnston, Vivienne Roseby and Kathryn Kuehnle *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (2nd ed New York, Springer, 2009).

Where these cases come before the court, this issue calls for an early safety assessment to determine the cause of the child rejecting the parent. The Baker 4-point assessment could be used for this, first by applying point 2 (is there a lack of substantiated findings of abuse or other credible information about abuse or neglectful behaviours of the now rejected parent?).¹⁴³ Once that assessment was undertaken, the other three points would need to be considered, where necessary with the assistance of an appropriately experienced psychologist appointed to specifically consider those items. Without the timely assessment of whether alienation is present, the delays could potentially lead to irreparable damage and long-term consequences for the alienated child.

3.11. Consequences of Alienation

What is the impact of alienation on the child? Research on this has been undertaken by many prominent researchers in the field¹⁴⁴ including Gardner, who considers alienated children as having bleak prospects for their future psychosocial wellbeing.¹⁴⁵

In 2013, Amy Baker and Maria Verrocchio undertook a survey involving 257 undergraduate psychology students in Chieti, Italy regarding their childhood exposure to parental alienation.¹⁴⁶ Those students identified as having been exposed to parental alienation reported higher rates of parental psychological maltreatment, lower rates of parental caring, as well as poor functioning with respect to self esteem, depression, adult attachment styles, alcohol abuse, self-direction, and cooperation. The survey concluded that the findings supported the theory that parental alienation represents a risk factor for compromised outcomes across the lifespan. The findings in relation to reported

¹⁴³ Amy JL Baker, Barbara Burkhard and Jane Albertson-Kelly "Differentiating Alienated From Not Alienated Children: A Pilot Study" above n 61 at 190.

¹⁴⁴ Demosthenes Lornados, William Bernet and S Richard Sauber *Parental Alienation: The Handbook for Mental Health and Legal Professionals* above n 137; DC Rand, R Rand and L Kopetski "The Spectrum of Parental Alienation Syndrome, Part III the Kopetski follow up study" (2005) *American Journal of Forensic Psychology* 23 15-43; Amy JL Baker and Naomi Ben-Ami, "To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being" above n 80 at 58; Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" (2013) 54:8 609-28; Amy JL Baker "Knowledge and Attitudes About Parental Alienation Syndrome: A Survey of Custody Evaluators" (2007a) *American Journal of Family Therapy* 35:1 1-19"; Richard A Warshak "Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children" (2010) *Family Court Review* 48 81-90

¹⁴⁵ Richard A Gardner *The Parental Alienation Syndrome, a Guide for Mental Health and Legal Professionals* above n 38.

¹⁴⁶ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102.

exposure to parental alienation were true for ratings of mothers as well as fathers. The authors concluded that:¹⁴⁷

The findings strengthen the argument that engagement and parental conflict is damaging to children and that these specific acts (denigrating the other parent, interfering with contact and communication, et cetera.) are not benign but rather are associated with decreased wellbeing into at least the young adult years.

A definition used in relation to the effects of psychological maltreatment of children, endorsed by the APSAC is that the child feels “worthless, flawed, unloved, unwanted, endangered, or only of value in meeting another’s needs”¹⁴⁸. In an earlier study undertaken by Baker and Ben-Ami, the results indicated that a parent engaging in intentional parental alienation exhibits a “lack of empathy and inability to tolerate the child’s separate needs and perceptions,”¹⁴⁹ which, they concluded, is also the foundation of psychological maltreatment (and other forms of child maltreatment more generally).

Therefore, they considered that parents who exhibit parental alienation strategies could be seen as psychologically maltreating the children (who they also considered were likely to behave in other ways that result in the child feeling psychologically maltreated). They reasoned that the expression of these strategies inevitably and directly results in the effects of the child feeling “worthless, flawed, unloved, unwanted, endangered, or only of value in meeting another’s needs”¹⁵⁰ and, further, that it was likely to result in the diminished self esteem in such children.

¹⁴⁷ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102 at 623.

¹⁴⁸ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102 at 610.

¹⁴⁹ Amy JL Baker and Naomi Ben-Ami, "To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being" above n 69 at 473.

¹⁵⁰ Amy JL Baker and Naomi Ben-Ami, "To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being" above n 69 at 473.

3.11.1. Self Esteem

From this research they concluded that the cause of the diminished self esteem arose for four related reasons:¹⁵¹

1. The essence of the bad mouthing message is that the targeted parent does not love the child, from which the child extrapolates that he or she is not lovable. They surmise that children interpret this as being the child's own fault because they are inherently egocentric and want to believe their parents are fair.
2. The child will internalise the negative messages about the targeted parent (i.e. that he or she is fundamentally damaged, flawed, and contemptible). Therefore, the child concludes that if one parent is "no good" that he or she is also, at least in part, "no good".
3. The alienating parent is conveying to the child (intentionally or otherwise) that his or her love for the child is contingent on the child's acceptance of the bad mouthing message and rejection of the targeted parent. That is, the child experiences that the alienating parent hates the targeted parent more than the parent loves him or her, a message that is also internalised by the child as "I am not lovable".
4. The alienating parent promotes an excessive dependency between the alienating parent and the child. Based on her earlier research, Baker considered that "alienating parents use many of the same thought reform and emotional manipulation techniques that cult leaders use to undermine the critical thinking skills of members and indoctrinate them into a cult. The child exposed to alienation strategies is similarly encouraged to believe that the alienating parent knows the child's thoughts, feelings, and needs better than the child himself or herself. The child is encouraged to rely exclusively on the opinions and guidance from that parent in such a

¹⁵¹ Amy JL Baker and Naomi Ben-Ami, "To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being" above n 69 at 474 – 475.

way as to reduce the child's trust and respect in others, including himself or herself."¹⁵²

The basis of these conclusions arose from a qualitative study undertaken by Baker in 2007¹⁵³ of 40 adults who had experienced alienation as a child. Baker considers that these four dynamics together explain how exposure to parental alienation strategies can result in compromised self esteem.

3.11.2. Depression

The DSM-V defines the environmental causes for depression under the risk and prognostic factors as "adverse childhood experiences, particularly when there are multiple experiences of diverse types, constitute a set of potent risk factors for major depressive disorder."¹⁵⁴ Alienation has also been linked to the incidence of depression in adults who had experienced alienation as a child. Baker and Chambers¹⁵⁵ found that depression was a significant feature in relation to those surveyed and proposed that the depression in their sample resulted from the "children's inability to make sense of and mourn the loss of the targeted parent, as the parent exhibiting the alienation behaviours failed to recognise the child's grief and stifled any expression of the child's mourning for the other parent."¹⁵⁶

In her earlier research,¹⁵⁷ Baker indicated that parents who engage in parental alienation behaviours require a child to relinquish his or her autonomy and subjugate his or her needs to those of the parent, thus creating a heightened sensitivity towards disapproval and fear of rejection. She also proposed that an alienating parent might induce a fear of abandonment by threatening to withdraw love if the child fails to reject the other parent. And, in a bid for approval and attachment with that parent, the child learns to meet the

¹⁵² Amy AJ Baker "The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study" (2005b) 33 *American Journal of Family Therapy* 289-302; Amy AJ Baker *Adult Children of Parental Alienation Syndrome* (New York, NY, Norton, 2007).

¹⁵³ Amy AJ Baker *Adult Children of Parental Alienation Syndrome* above n 152.

¹⁵⁴ American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (5th ed Washington, DC, 2013) above n 41 at 166.

¹⁵⁵ Amy JL Baker and Jaclyn Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" above n 65.

¹⁵⁶ Amy JL Baker and Jaclyn Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" above n 65 at 58.

¹⁵⁷ Amy AJ Baker *Adult Children of Parental Alienation Syndrome* above n 152.

needs of the parent before his or her own. Consequently, these children might be vulnerable to resentment, approval seeking, and dependency.

3.11.3. Adult Attachment Style

The child's relationship with his or her parents contributes to the child's own perception of relationships and impacts on his or her behaviours and beliefs through his or her lifespan. The parent's ability to provide attentive and sensitive responsiveness to the infant and child's needs creates a secure attachment in the child, whereas inconsistent or negligent parenting can result in an insecure attachment.¹⁵⁸ On the relationship between attachment and alienation, Baker states:¹⁵⁹

The parental alienation behaviours the child is exposed to – especially those that involve overriding the child's own needs for safety and security and those that emphasise the other parent's rejection of the child – contribute to the child's understanding of himself or herself as unlovable and of others is unable to provide love and care for him or her.

3.11.4. Self-Directedness

Self-directedness, or self-sufficiency, is an important part of a child's development. An alienating parent will often require obedience from the child, which, in the view of Baker and Ben-Ami,¹⁶⁰ can interfere with the child's ability to make independent decisions and become instrumentally competent. They state as a result parents who engage in parental alienation could induce in the child immaturity, weakness, fragility, guilt, and efficacy, and irresponsibility. They go on to suggest that these children might be unable to develop an internal organisational principle, which renders them unable to define, affect, and pursue meaningful goals.

3.11.5. Cooperativeness

Cooperativeness is another key characteristic that can be detrimentally affected by the alienating behaviour of a parent, stating that "cooperativeness accounts for individual

¹⁵⁸ John Bowlby "Attachment and Loss: Retrospect and Prospect" (1982) American Journal of Orthopsychiatry 52 664-78.

¹⁵⁹ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102 at 613.

¹⁶⁰ Amy JL Baker and Naomi Ben-Ami, "To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being" above n 69.

differences in identification with and acceptance of other people”, and that “highly cooperative individuals are empathetic, tolerant, compassionate, supportive and fair. They understand and respect the preferences and needs of other as well as their own.”¹⁶¹

Baker’s finding in her 2013 qualitative survey of Italian College Students¹⁶² supported her contention that exposure to parental alienation can result in reduced cooperativeness in at least two ways:¹⁶³

1. The behaviours discourage self esteem and reduce a sense of competence in social interactions; and
2. Parental alienation behaviours encourage children to falsely believe that the other parent has rejected and harmed them, which might lead to a deep sense of mistrust towards others.

On that basis, Baker concluded that “due to a sense of unlovability combined with an expectation that others will be negatively disposed towards them, these children are likely to avoid close involvement with others”.¹⁶⁴

3.11.6. Alcohol Abuse

Baker found that specific associations between parental alienation behaviours and alcohol problems were reported in qualitative research in 2007¹⁶⁵ but not in quantitative research¹⁶⁶ and not in a student population nor outside of the US.¹⁶⁷

However, given her research findings in relation to self esteem, depression and attachment issues, she proposed a correlation between alienation and the likely risk of

¹⁶¹ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102 referring to RC Cloninger, TR Przybeck, DR Svrakic, and RD Wetzell *The Temperament and Character Inventory (Tci): A Guide to It's Development and Use* (Washington University, St. Louis, Missouri, Center for Psychobiology of Personality, 1994) at 614.

¹⁶² Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102.

¹⁶³ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102 at 614.

¹⁶⁴ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102 at 614.

¹⁶⁵ Amy AJ Baker *Adult Children of Parental Alienation Syndrome* above n 152.

¹⁶⁶ Amy JL Baker and Naomi Ben-Ami, "To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being" above n 80.

¹⁶⁷ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102.

alcohol abuse on the basis of its self-medication model of addiction where such issues are present.¹⁶⁸

3.11.7. Other Implications for Children

Fidler and Bala¹⁶⁹ concluded that alienated children are at risk of emotional distress and adjustment difficulties and at greater risk than children from litigating families who are not alienated. Their assessment of the clinical observations, case reviews and both qualitative and empirical studies was that they uniformly indicated that alienated children may exhibit:¹⁷⁰

1. Poor reality testing;
2. Illogical cognitive operations;
3. Simplistic and rigid information processing;
4. Inaccurate or distorted interpersonal perceptions;
5. Disturbed and compromised interpersonal functioning;
6. Self-hatred;
7. Low self esteem (internalise negative parts of rejected parent, self-doubt about their own perceptions, self-blame for rejecting parent or abandoning siblings, mistrust, feel unworthy or unloved, feel abandoned) or inflated self esteem or omnipotence;
8. Pseudo-maturity;
9. Gender identity problems;
10. Poor differentiation of self (enmeshment);
11. Aggression and conduct disorders;
12. Disregard for social norms and authority;
13. Poor impulse control;
14. Emotional constriction, passivity or dependency; and
15. Lack of remorse or guilt.

¹⁶⁸ Amy JL Baker and Maria Christina Verrocchio "Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being" above n 102.

¹⁶⁹ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

¹⁷⁰ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 20-21.

While, ideally, future research will be undertaken into the effects of alienation on children throughout their lifespan, sufficient information is already available to indicate that there are significant risks and consequences for children, even when they appear to be well-functioning in other areas.

Warshak¹⁷¹ suggests that the child's psychological problems associated with the irrational rejection of a loving parent support the need for therapeutic intervention.

3.12. The Need for Therapeutic Intervention

Given the court's obligation to make decisions in the best interests of the children, it is vital to consider the potential repercussions for children of not having the opportunity for reunification with a rejected parent. Research indicates that children of divorce generally do best when they have relationships with two involved and effective parents.¹⁷² In addition, research has indicated that both alienated children and adults who were alienated as children, despite protests otherwise, indicated that they secretly longed for more contact with the rejected parent and wished someone would have insisted they have contact.¹⁷³

Warshak's view is that any argument that an alienated child who appears to be otherwise thriving, and, therefore, requires no intervention, lacks consideration of the potentially significant outcomes for children who do not have the opportunity to have a meaningful relationship with both parents. He argues that intervention is necessary for three reasons:¹⁷⁴

1. The child's apparent good adjustment may be superficial or coexist with significant psychosocial problems;
2. Regardless of adjustment and other spheres, the state of being rationally alienated from a loving parent is a significant problem in its own right and is accompanied by other indices of psychological impairment; and

¹⁷¹ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" (2015) *Professional Psychology: Research and Practice* 46:4 235-249 at 236.

¹⁷² Joan B Kelly "Children's Living Arrangements Following Separation and Divorce: Insights from Empirical and Clinical Research" (2007) 46 *Family Process* 35-52.

¹⁷³ Amy AJ Baker "The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study" above n 134; Amy AJ Baker *Adult Children of Parental Alienation Syndrome* above n 152.

¹⁷⁴ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" above n 171.

3. Growing up apart from and in severe conflict with an able parent risks compromising children's future psychological development and interpersonal relationships.

3.12.1. Intervention Options

Interventions imposed while children remain in the care of an alienating parent are unlikely to repair the damaged relationship with the rejected parent or may, in fact, make things worse.¹⁷⁵ Warshak states that "no study has demonstrated the effectiveness of any form of psychotherapy and overcoming severe alienation on children who have no regular contact with the rejected parent".¹⁷⁶

On that basis, in addition to therapeutic or educational intervention, it will also be necessary for the courts to ensure that contact in some form continues between the child and the rejected parent. Warshak¹⁷⁷ suggests that where an evaluation finds the child is severely and irrationally alienated from a parent, and that it is in the child's best interest to repair the damaged relationship, the recommendations for therapy should include advice to the court about imposing (a) a timeframe after which the impact of treatment will be assessed, (b) explicit criteria for evaluating the progress and success of treatment, and (c) contingency plans in the event that the treatment is ineffective. He further states:¹⁷⁸

¹⁷⁵ John Dunne and Marsha Hedrick (1994) "The Parental Alienation Syndrome" An Analysis of Sixteen Selected Cases" *Journal Of Divorce & Remarriage* 21 (21-38); Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 52; BD Garber "Cognitive-Behavioural Methods in High-Conflict Divorce: Systematic Desensitization Adapted to Parent-Child Reunification Interventions" (2015) 53 *Family Court Review* 96-112; Anita K Lampel "Children's Alignment with Parents in High Conflicted Custody Cases" above n 136; LF Lowenstein "The Psychological Effects and Treatment of The Parental Alienation Syndrome" in *The International Handbook of Parental Alienation Syndrome: Conceptual, Clinical and Legal Considerations* (ed RA Gardner, SR Sauber and D Lorandos (Eds) (Springfield, IL: Charles C. Thomas, 2006); DC Rand, R Rand and L Kopetski "The Spectrum of Parental Alienation Syndrome, Part III the Kopetski follow up study" (2005) *Americal Journal of Forsenic Psychology* 23 15-43; Richard A Warshak "Bringing Sense to Parental Alienation: A Look at the Disputes and the Evidence" (2003a) 37 *Family Law Quarterly* 2 273-301; K Weir and C Sturge "Cinical Advice to Courts on Children's Contact with Their Parents Following Parental Separation" (2006) 11 *Child and Adult Mental Health* 40-46.

¹⁷⁶ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" above n 171 at 243.

¹⁷⁷ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" above n 171.

¹⁷⁸ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" above n 171 at 244.

The court should be informed that psychotherapy is most likely to be effective if (a) there have been no prior failed attempts, (b) the parent with whom the child is aligned is likely to cooperate and support the child's treatment and progress, and (c) the child has ample time to experience care and nurturing from the rejected parent ... In circumstances where treatment failure is highly likely and may aggravate problems, a court-appointed therapist should not unnecessarily prolong the treatment.

The specific types of therapeutic intervention options available specifically for alienation cases are not traversed in this paper. There are, however, many programs and models of intervention available overseas, a number of which are detailed in *Working with Alienated Children and Families, A Clinical Guidebook*.¹⁷⁹

However, even specific alienation therapeutic intervention may not always be successful.¹⁸⁰

Not all parents who engage in these behaviours will or can stop should they be identified and asked to do so, especially those involved in protracted custody disputes. There appears to be a portion of parents who – probably due to personality disorders – are unable to respect the child's need for a positive relationship with the other parent.

On that basis, where specific alienation therapeutic intervention is unsuccessful, or not available as an option, a care reversal should be considered.

3.13. Care Reversal in Severe Cases of Alienation

3.13.1. Temporary Care Reversal

Where therapeutic intervention is not likely to be successful or has failed, a temporary care reversal may assist with the reunification between the targeted parent and the child. The court may order a prolonged period of residence with the rejected parent, such as during the summer holiday. Coupled with appropriate therapy and restricted or suspended contact with the alienating parent, this option may provide less disruption and greater continuity of care. Provided this is successful in allowing the targeted parent and

¹⁷⁹ Amy JK Baker and S Richard Sauber *Working with Alienated Children and Families, A Clinical Guidebook* (Routledge, NY 2013).

¹⁸⁰ Amy JL Baker and Jaclyn Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" above n 65 at 74.

child to repair and rebuild the relationship, it is a less extreme outcome than reversing custody permanently.

In considering the care reversal options, Fidler and Bala state that:¹⁸¹

In our view, the question is not whether or not there should ever be a custody reversal, but rather, in which circumstances is it the most appropriate remedy and how and under what legal conditions it should be implemented. In more severe cases, it may be the least detrimental option for the child.

3.13.2. Full Care Reversal

Where severe alienation is present, one of the remedies available to the court is to consider a full care reversal. Irrespective of the strong resistance or “wishes” of the child, research supports this as being a valid option and indeed the best solution where a child is severely alienated from a loving parent without any justified estrangement (abuse or neglect) and where therapeutic intervention has failed. Warshak, referring to Baker’s study,¹⁸² states that:¹⁸³

No peer-reviewed study has documented harm to severely alienated children from the reversal of custody. No study has reported that adults, who as children complied with expectations to repair a damaged relationship with a parent, later regretted having been obliged to do so. On the other hand, studies of adults who were allowed to disown a parent find that they regretted that decision and reported long term problems with guilt and depression that they attributed to having been allowed to reject one of their parents.

He also emphasises that a care reversal will not always be the best option, but that it should not be dismissed merely on the fallacy that a child will be traumatised or expected to have contact with the good parent whom the child irrationally claims to hate or fear.¹⁸⁴

¹⁸¹ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 29.

¹⁸² Amy AJ Baker "The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study" (2005) *American Journal of Family Therapy* 33(4):289-302; Amy AJ Baker *Adult Children of Parental Alienation Syndrome* above n 152.

¹⁸³ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" above n 171 at 224.

¹⁸⁴ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" above n 171.

To determine where care reversal may be appropriate, Fidler and Bala¹⁸⁵ pose the following questions for consideration:¹⁸⁶

1. Is the alienation emotionally abusive?
2. Is custody reversal more likely to cause more harm than good? That is, do the short or long-term benefits of placing the child with the once loved, now rejected parent outweigh the risks (trauma or harm) of temporarily separating the child from the alienating parent? Stated differently, which risk is greater: separation from an unhealthy or enmeshed relationship or remaining in that relationship?
3. What are the capacities of the rejected parent?
4. More general questions also arise, such as will older children have sufficient maturity to make decisions about attending counselling or severing ties with the rejected parent?
5. Most broadly, does custody reversal work?

Consideration of these questions will give insight into whether a full care reversal is justified, although the identification of whether the alienation is severe enough to warrant a change of care is a subjective one. However, given the negative short-term and long term effects of alienation, including intrusive parenting, are well documented,¹⁸⁷ this supports care reversal in cases where the alienation is determined to be severe enough.

Identifying which cases are appropriate for care or custody reversal is a challenge. It is generally accepted that reversal of custody may be warranted in severe cases.¹⁸⁸

¹⁸⁵ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

¹⁸⁶ At 29.

¹⁸⁷ Barbara J. Fidler and Nicolas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums" (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 referring to Amy JL Baker "Knowledge and Attitudes About Parental Alienation Syndrome: A Survey of Custody Evaluators" (2007a) *American Journal of Family Therapy* 35 1-19, B.K. Barber (2002) "Reintroducing parental psychological control" in B.K. Barber (ed) *Intrusive parenting* Washington, DC: American Psychological Association 33-14, Janet R. Johnston "Children of divorce who reject a parent and refuse visitation: Recent research and social policy implications for the alienated child" (2005a) *Family Law Quarterly* 38 757-775, Janet R. Johnston, Vivienne Roseby and Kathryn Kuehnle *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (2nd ed New York, Springer, 2009) and Janet R Johnston, Margorie G Walters and Nancy W Olesen "The psychological functioning of alienated children in custody disputing families: An exploratory study." (2005c) *American Journal of Forensic Psychology* 23(3) 39-64

¹⁸⁸ Leslie Drozd and Nancy W Olesen "When a Child Rejects a Parent" (46th Annual Conference Association of Family and Conciliation Courts, New Orleans, LA, May 2009); Richard A Gardner

There is also a correlation between severe cases of alienation and psychopathology in the alienating parent according to some of the researchers.¹⁸⁹ The alienating parent may be psychotic, sociopathic or severely character disordered, often involving either malicious or strongly believed allegations of abuse by the rejected parent that have not been substantiated after repeated investigations.¹⁹⁰

In such situations, i.e. where alienating behaviour continues in situations where there has been some judicial and/or therapeutic intervention, that assessment in terms of the psychopathology of the alienating parent should be considered. This approach would assist the courts to determine, at a relatively early stage, whether there is a risk of severe alienation possibly warranting a care reversal.

3.13.3. Spontaneous Reunification

Fidler and Bala¹⁹¹ suggest that some legal and mental health professionals advise rejected parents to give up on trying to enforce visitation in cases of severe alienation. They surmise that the advice is given on the basis that this is the least detrimental alternative for the child to reduce exposure to conflict and badmouthing. However, even where a parent elects to take this option, even where the child claims to hate or fear the rejected parent, they say that the child is still likely to feel some sense of abandonment.

"Recommendations for Dealing with Parents Who Induce a Parental Alienation Syndrome in Their Children" (1998a) 28 *Journal of Divorce & Remarriage* 1-21; Janet R Johnston and Judith Roth Goldman "Outcomes of Family Counselling Interventions with Children Who Resist Visitation an Addendum to Friedlander and Walters" (2010) 48 *Family Court Review* 112-15; Janet R Johnston, Vivienne Roseby and Kathryn Kuehnle *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (2nd ed New York, Springer, 2009).; Matthew J Sullivan and Joan B Kelly "Legal and Psychological Management of Cases with an Alienated Child" (2001) 39 *Family Court Review* 299-315; Richard A Warshak, "Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children" (2010b) 48 *Family Court Review* 48-80.

¹⁸⁹ SS Clarwar and BV Rivlin *Children Held Hostage: Dealing with Programmed and Brainwashed Children* above n 47; Richard A Gardner *True and False Allegations of Child Sex Abuse* (NJ Cresskill Creative Therapeutics, 1992b); Janet R Johnston and Judith Roth Goldman "Outcomes of Family Counselling Interventions with Children Who Resist Visitation an Addendum to Friedlander and Walters" (2010) 48 *Family Court Review* 112-15; Janet R Johnston, Vivienne Roseby and Kathryn Kuehnle *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (2nd ed New York, Springer, 2009); Janet R Johnston, Margorie G Walters and Nancy W Olesen "The psychological functioning of alienated children in custody disputing families: An exploratory study" (2005c) *American Journal of Forensic Psychology* 23(3) 39-64.

¹⁹⁰ Barbara J. Fidler and Nicolas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums" (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 29.

¹⁹¹ Above n 193 at 23.

Regardless of whether a parent chooses to “walk away” or the court is involved in ongoing dispute regarding alienation, research suggests that spontaneous reunification can occur. On a review of case examples undertaken by Darnall and Steinberg,¹⁹² Fidler and Bala¹⁹³ concluded that all the case examples studied had one or more of the following in common:¹⁹⁴

1. The favoured parent had eventually come to support the reunification in some way, either for his or her own self-interest or by following the child’s lead;
2. The court became involved, in effect threatening a crisis for the parents, such as a third party caring for the child;
3. The alienated child was influenced by siblings who had continued to have contact with the rejected parent;
4. The child had found a way to appease the favoured parent by claiming it was the court who made the reunification happen or by showing that the favoured parent would benefit (e.g. not have to pay for college).

While some of these cases involved spontaneous reunification, some involved court sanctions. Given that only one third of these reunifications were sustained, Fidler and Bala noted¹⁹⁵ that these cases are often extremely complex and that intervention, or the lack of it, must be determined on a case by case basis. However, given the recognised importance for children in maintaining a secure attachment to both parents¹⁹⁶ this supports the court enforcing reunification unless there is a significant detrimental effect of not doing so.

¹⁹² D. Darnall and B. F. Steinberg “Motivational models for spontaneous reunification with the alienated child: Part I” (2008a) *The American Journal of Family Therapy* 36 107-115 and D. Darnall and B. F. Steinberg “Motivational models for spontaneous reunification with the alienated child: Part II” (2008b) *The American Journal of Family Therapy* 36 253-261.

¹⁹³ Barbara J. Fidler and Nicolas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums" (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

¹⁹⁴ At 24.

¹⁹⁵ Barbara J. Fidler and Nicolas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums" (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 24.

¹⁹⁶ Joan B. Kelly and Michael E. Lamb “Using Child Development Research To Make Appropriate Custody And Access Decisions For Young Children” (2000) *Family and Conciliation Courts Review* 38:3 297-311 at 303

3.14. Summary

Parental alienation has been researched for over four decades, and while there is no agreed definition or diagnosis, there is a significant body of reliable research to give those dealing with alienation situations clear guidelines as to how to identify its presence. The BSQ and the 5-point scale both point to specific behaviours which may be exhibited by an alienating parent. The recognition that many situations involving a child resisting contact with, or rejecting a parent, may be the result (or partial result) of justified estrangement is a further challenge.

The identification of both the severity of alienation and the degree of intention of the alienating parent are relevant factors in determining the approach that should be taken where alienation is present. Regardless of whether any justified estrangement is present, if alienating behaviours are being used by a parent and, particularly, if there are such tactics that demonstrate some intent to alienate the child (i.e. an actively or obsessed alienator), then it is clear that early and proactive steps must be taken to minimise such behaviour and its impact on the child.

While more research is required, particularly if Parental Alienation Disorder (or the like) is to be included in the DSM-V and ICD 11, the research currently available can be utilised to assist in dealing with cases where alienation is present in order to reduce the detrimental impact on children. There is sufficient prevalence, the estimates lie between 1% and 27%, to indicate a need for intervention.

However, there are significant detrimental impacts on children where there is a loss of attachment of the child to either parent, even where there has been exposure to violence or abuse.

There is clearly a need for the availability of therapeutic intervention. However, where the alienation is severe, the more significant steps (such as a change of care) may need to be taken to ensure positive outcomes for children (particularly in light of the link between severe alienation and psychopathology in the alienating parent). It is the court's role, where parents are disputing the role of the care of children, and, in particular, where alienation is present, to ensure that all necessary steps are taken to both identify alienation and protect children from the consequences of alienation.

Chapter Four

The New Zealand Courts

4. Introduction

Parents disputing the care of their children often rely on the courts to determine the outcome of the parenting arrangements. Some of these cases involve either resistance towards or rejection of a parent by a child, or behaviour of a parent that may be alienating. As many of these cases involve allegations of violence, abuse or neglect, it is incumbent on the court to determine care arrangements that are in the best interests of the child. The cases reviewed in this chapter include many circumstances and behaviours that the courts have identified as causing children to become alienated from a parent. This includes behaviours that are deemed “alienating” and situations or behaviours that are deemed “justified estrangement”.

High conflict among parents has been identified as a factor contributing to alienation. Its general, or overall, presence tends to be an overriding theme in alienation cases as these are commonly marked by lengthy disputes, often involving multiple hearings. It is evident from the case analysis that other family members may also have an impact on a child becoming alienated.

4.1. Interpretation by the New Zealand Courts

Inconsistencies in the empirical evidence on alienation pose a challenge for the courts to consistently interpret and apply this knowledge base in parenting disputes. It is incumbent on the courts to determine the factual situation and to determine if alienation is present by utilising the research available.

4.2. Cases Reviewed

The cases that have been reviewed are primarily those decided between January 2013 and December 2017 in the New Zealand Family Court pursuant to the Care of Children Act 2004 that are reported in Westlaw under the search text “alienation” but also including appeal cases dating from 2009. In total, 11 cases were reviewed, (including 3 appeal decisions) five of which were heard in the Family Court, eight in the High Court

and one each in the Court of Appeal and the Supreme Court. These are set out in Table One below:

Table One: New Zealand Cases Reviewed Involving Parental Alienation

Family Court	Year	High Court	Year	Court of Appeal	Year	Supreme Court	Year
		<i>K v B</i>	2009	<i>B v K</i>	2010	<i>K v B (Kacem v Bashir)</i>	2010
		<i>ALX v FLK</i>	2011				
		<i>F v F</i>	2011				
<i>Garrett v Garrett</i>	2013						
<i>Belford v Belford</i>	2014	<i>McInnes v McInnes</i>	2014				
<i>Secrest v Axley</i>	2014						
<i>Gebrien v Todd</i>	2015						
		<i>Palmer v Holm</i>	2014				
		<i>ASM v DPM</i>	2014				
		<i>MR v CR</i>	2014				
<i>M v N</i>	2017						

Five of the cases involved the same parties on appeal (one being a decision of the Family Court appealed to the High Court and one being an appeal to the High Court then appealed to both the Court of Appeal and the Supreme Court).

The purpose of the analysis is to ascertain whether the New Zealand courts approach the question of parental alienation consistently with the current research both in terms of what constitutes parental alienation and as to outcomes.

The first consideration is as to the specific behaviours of a parent highlighted by Judges as contributing to a child becoming alienated, or being exposed to a risk of alienation. False allegations of safety concerns and the denigration of one parent by another are

among the common alienating tactics. The question of whether psychopathology has a presence in these disputes is also relevant.

4.3. Safety Allegations

4.3.1. *Allegations by One Parent Against the Other*

Part of the challenge for the courts is in the subjective nature of such cases and the seemingly infinite range of circumstances influencing children's relationships with their parents. To ascertain whether alienation is present, the court must consider all circumstances of the case and, where alienation is alleged or a child is resisting contact with one parent, consider what behaviours are being exhibited by the parent who is alleged or suspected of influencing the children. The court must also determine whether such behaviour is causing or contributing to the child's resistance or refusal of contact with the other parent and if there are any other factors that should be considered.

In six of the cases analysed¹⁹⁷ (one being a decision at first instance in the Family Court then appealed to the High Court) one, or both, parent(s) made allegations against the other in relation to safety issues directly relating to the child. The challenge in such cases for the courts is to determine the safety issues quickly and to identify and then minimise any potential alienation issues. While any justified estrangement can be considered as a part of this early enquiry, so too can an intent to alienate on the part of the parent making the allegations.

In *Gebrien v Todd*,¹⁹⁸ a decision of the Family Court, Judge Moss considered that the four-year-old child (M) at the centre of the parenting proceedings was at risk of being alienated. The mother (Y) sought a protection order and parenting orders and specifically sought that contact between M and the father (E) should be excluded. Her Honour found that Y was psychologically abusive towards the father in relation to various allegations made by her against him. The psychologist appointed to complete a s133 report, Mrs Orr, concluded that Y's behaviour was likely to lead to "pathological alienation"¹⁹⁹ of M. The behaviour that led the Judge to this conclusion included the mother's false allegations

¹⁹⁷ *Gebrien v Todd* [2015] NZFC 4949, *Belford v Belford* [2014] NZFC 4530, *Secret v Axley* [2014] NZFC 493, *Palmer v Holm* [2014] NZHC 2268, *McInnes v McInnes* [2014] NZHC 2822 and *ASM v DSM* [2016] NZHC 137.

¹⁹⁸ *Gebrien v Todd* above n 197.

¹⁹⁹ At [166].

against the father that the child was conceived by rape and also that he had been violent and psychologically abusive.

By way of background, in that case, Y was married at the time M was born (and at the time of the hearing) to A, who for all intents and purposes was M's father figure. The court determined that Y had embarked on a consensual sexual relationship with E from which M was conceived, but had made the false allegation of rape so as to conceal this detail from her husband.

Judge Moss found that the mother had fabricated evidence that M was conceived as a result of rape and considered that she had embarked on a "web of deception."²⁰⁰ Y had told Mrs Orr that the biological father (E) had promised he would have nothing to do with M until she grew up. However, Mrs Orr had recorded in her report that the biological father stated to the psychologist that the mother promised he could have a role in M's life and that at times she said she would leave her husband and they could live together. Judge Moss considered that it was likely that both statements made by Y, about wanting to leave her husband and about her saying that the biological father said he would have nothing to do with M until she was grown up, were true. The Judge also found that Y had lied to E about the nature of the relationship between herself and her husband (A), the sleeping arrangements in the home she shared with him, her relationship with her two other children (to whom she had told the biological father she was the nanny of). Given the Judge's determination of the biological father's own values and standards, she concluded that this concealing of that status was emotionally abusive to the biological father.

The court's assessment of the factual situation was that the safety allegations were not made out, but, in fact, the lies told by the mother (to the father, her husband and the omission in telling the child the true situation) resulted in emotional abuse. This evidence, and reliance on the opinion of the psychologist, resulted in a decision that this was "emotional abuse," which then led to the risk of pathological alienation.

In another Family Court decision, *Belford v Belford*²⁰¹ the mother had made numerous allegations against the father and sought a protection and parenting order in 2011. Then in 2014 the matter again came before the Family Court. Between the 2011 and 2014

²⁰⁰ At [137].

²⁰¹ *Belford v Belford* above n 197.

hearings, the mother had made no less than nine notifications to CYFS, including in relation to both physical and sexual abuse.

An investigation of the allegations by both the police and CYFS, and a police report completed on 25 June 2013, found that no sexual or physical abuse had been perpetrated against the girls by their father.

In considering the issue, the court had to make a finding in relation to the safety issues to establish if there was justified estrangement. Judge Neal (in the 2014 decision) determined that, on the balance of probabilities, the alleged abuse by the father towards the girls had not occurred. He also considered that there were clearly elements of alienation in the behaviour of the mother. Judge Neal considered that the children's views (including the changing views of one of the children) were not consistent with the evidence of the psychologist, Ms Wali, as to her observations of the children when with their father.

*Secrest v Axley*²⁰² involved allegations of abuse, and the court had to consider the source of the children's rejection of their father. This case was one of several Family Court decisions between these parties. The mother had made allegations against the father regarding the children's safety which were dealt with in a 2011 hearing. In the 2014 hearing, the mother acknowledged that there had been no further reports from the children of being smacked or harmed by their father and agreed that the two youngest girls, M and L, were enjoying time with their father. However, the mother continued to believe that the girls had previously been physically abused by their father, despite findings to the contrary in the earlier hearing and this was having a bearing on the children's willingness to have contact with him.

In determining the question of the mother's belief regarding the prior safety concerns, Judge Druce considered that there was a clear functional benefit to the mother in maintaining her beliefs and approach. He considered that she was motivated by ensuring she retained sole care of the children and her behaviour and beliefs had a clear impact on the relationship between the girls and their father. The specific matters the Judge took into consideration were that she had retained sole parental care and control of J and R (the oldest two girls) and had retained the greater part of the day-to-day care of M and L

²⁰² *Secrest v Axley* above n 197.

(the younger two), she was not in paid employment and her primary role was as a parent to her children. Further, the Judge considered that one of the identified contextual factors was that she and the father had struggled for power and influence over parenting arrangements ever since their separation in 2007.

It was on this basis that the Judge considered parental alienation, as opposed to justified estrangement, was the primary influencing factor on the children's resistance to contact with their father.

In *Palmer v Holm*²⁰³ in the High Court on appeal, Gilbert J found that there were alleged incidents, of a minor nature (that had previously been litigated), which were not bordering on being serious enough to stand in the way of a normal relationship between the parties' nine-year-old son and his father. The Judge considered that the mother's thinking had become distorted by her own distress and that the proceedings had overwhelmed her to the point of "exhaustion and imbalanced thinking".²⁰⁴ He considered that those behaviours were not the child's fault and that Ms Holm's perceived sense of a need to protect the boy from his father robbed the boy of a relationship with his father.

While the Judge expressed concern that the child's lack of ability to have a meaningful relationship with this father would cause ongoing psychological harm to the child, in his analysis of the evidence he considered that there was no solution which would reduce the harm to the child. This case is an illustration of the court's ability to analyse the evidential issues and consider the psychological impact, but to not take any proactive intervention steps to reverse the alienation.

*McInnes v McInnes*²⁰⁵ was the appeal decision of *Belford v Belford*.²⁰⁶ Moore J found, following a police investigation, that the numerous notifications to CYFS of abuse (including allegations of emotional, physical and sexual abuse by the father and that the father had supplied the girls with alcohol) were unfounded. However, there had been no contact between the children and their father during the investigation. Given that the outcome of a thorough police investigation was that the complaints were unsubstantiated, the task of the court was to consider whether the "false" allegations

²⁰³ *Palmer v Holm* above n 197.

²⁰⁴ At [82] per Gilbert J.

²⁰⁵ *McInnes v McInnes* above n 197.

²⁰⁶ *Belford v Belford* above n 197.

constituted behaviour which was alienating in its nature. The court's assessment, given the girls' age (five and six, respectively), was that there was a risk of "potential" alienation rather than actual alienation (which by its nature requires the child's rejection of the targeted parent).

In another High Court decision on appeal, *ASM v DPM*,²⁰⁷ both the mother and father were refugees from Bulgaria (the case also involved a relocation). They each made serious cross allegations against the other as to behaviour by the other which would pose a risk for the children's safety.

Venning J made no finding as to the allegations and did not address the question of alienation with regards to the determination. He did, however, specifically refer to a report completed by the Bulgarian Social Assistance Agency, which stated:²⁰⁸

That there existed a risk of manipulation on the part of the father in order to change the attitudes of [A], deliberate alienation from the mother and replacement of the mother with another person performing this role, such behaviour demonstrating [the father's] reduced parental capacity and responsibility to the children.

However, this case was illustrative of the fact that both parents can make allegations regarding safety issues, and careful consideration is required to determine whether either or both are exhibiting alienating behaviours.

All of these cases involved allegations relating to safety issues for the child or children. The common themes being:

- That the allegations made were false, and the inaccurate allegations themselves constituted alienation;
- The prior safety issues were no longer a risk, but the ongoing allegations of the prior behaviour were alienating, and this was motivated by the alienating parent's wish or desire to remain the primary caregiver;
- That the safety allegations were of a minor nature and not an ongoing safety issue, and that the alienating behaviour resulted from that parent's distress and imbalanced thinking; and

²⁰⁷ *ASM v DPM* above n 197.

²⁰⁸ At [28].

- That both parents can make cross safety allegations and it is incumbent on the court to consider the veracity of the allegations and whether either (or both) are exhibiting alienating behaviour.

4.3.2. Prior Alienating Behaviour Rectified

Sometimes alienation is initially present but reduces or resolves following the effluxion of time or therapeutic intervention. *ALZ v FLZ*²⁰⁹ involved an appeal where the mother was initially considered to be engaging in alienating behaviour, but which she later remedied. The father had relocated to Australia with the intention that the mother and four children would follow him. However, the mother decided not to move to Australia and the parties separated. A lengthy period of high conflict ensued, with a long and protracted litigation history, in which the mother was found to have engaged in alienating behaviour. In the earlier decision, *FLZ v ALZ*²¹⁰ in the Family Court, involving both protection and parenting matters, the mother had made allegations of physical, sexual and psychological abuse by the father, claiming that he had a violent and controlling nature. She set out a number of historical allegations but also alleged various events to have occurred in July and August 2007. At that time, she stated that she remained deeply concerned about the father continuing to play psychological games with her and the children and trying to control their lives. She stated that, at times, she feared for the safety of herself and the children, claiming on occasions she feared for her life.

The parties did manage to resolve parenting matters by consent after that, but, subsequently, the matter again came before the court in 2010 with the father seeking a change of care. He was unsuccessful in the Family Court, and on appeal to the High Court Brewer J considered that the children's views of their father had improved. He indicated that this tended to suggest that the mother was making the positive changes in her behaviour (which were reported by the Clinical Psychologist, Kathy Orr, and accepted by Judge Callinicos in the hearing at first instance). Therefore, the overall conclusion of the High Court was that while the mother's behaviour, including in relation to her earlier allegations as to safety, was alienating, she had rectified this situation. Therefore, it was

²⁰⁹ *ALZ v FLZ* [2013] NZFLR 145.

²¹⁰ *FLZ v ALZ* FAMC Wellington FAM-2007-085-725, 14 December 2007.

considered that there was no justification for a change of care for the children from the mother to the father.

4.3.3. *Summary Regarding Safety Allegations*

In each of these cases, alienation was found to be present, and the safety allegations were either fabricated, minor or historical and no longer posed safety risks for the children. It is clear, from Judge Callinicos' decision in *ALZ v FLZ*²¹¹ that in some instances a parent may be capable of remedying their alienating behaviour.

The critical issue for the courts in any case where there are safety allegations is to determine what risk may be present. If there is an assessed risk to the child, then steps should immediately be taken to ensure ongoing contact that is safe for the child. However, it is important for the court to ensure that this parent has the opportunity to continue to have a meaningful relationship in a manner which protects the child from harm. However, where an early determination indicates there are no safety issues (either due to unsubstantiated allegations or that the safety issues will not be an ongoing issue), then steps must be taken at the earliest possible opportunity to implement shared care and minimise the risk of alienating behaviour. However, where the child is rejecting the parent, immediate and proactive steps must be taken by the court to assess what alienating behaviour might be present and to minimise the risk.

4.4. Psychopathology

There are also cases where the New Zealand courts have identified certain behaviours by a parent as alienating and as psychologically abusive. These include threats of self-harm, and tendencies to undermine, estrange or deliberately alienate the child from the other parent. The question for consideration by the court must be as to the possible psychopathology²¹² of one of the alienating parents. While the responsibility for identifying such issues lies with the "expert", the court's ability to direct a psychological or psychiatric report is limited the expert reporting about the child (not the parent) pursuant to s133 of the Care of Children Act 2004. While the parties could produce expert

²¹¹ *FLZ v ALZ* above n 210.

²¹² Psychopathology generally referring to personality disorders and specifically narcissistic and antisocial personality disorder; Christopher J. Patrick (ed), *Handbook of Psychopathy* (2007) Guilford Press

evidence as to their personality traits, it is unlikely that any party would adduce evidence if it is detrimental to their case.

As a result, this challenges the court's ability to obtain specific evidence in relation to attributes that the parent may exhibit that are precursors or indicators of the potential (or presence) of alienating behaviour. However, despite the limitations in obtaining such evidence, there are many cases where the courts have identified personality traits that contribute to the alienation of the child and as such are considered "abusive".

4.4.1. Psychological Abuse

In *Gebrien v Todd*,²¹³ Judge Moss found that the mother had been psychologically (and physically) abusive to the father (for example threatening to topple off a balcony while holding the child after the father threatened to leave the relationship) and that evidence of the mother shouting at the father amounted to psychological abuse of the child. There was also an incident that occurred at a time when the parties were living with the father's mother. The mother alleged the father had tried to strangle her (this allegation was not accepted by the Judge). To defuse the situation the paternal mother had sent her son (the child's father) to stay with his brother. Evidence had been given that the mother had refused to breastfeed the baby (M) until the father had returned to the home (although the mother gave evidence that she was unable to as her milk would not flow). Judge Moss found that this would have been "profoundly disturbing to M and also emotionally abusive of the biological father."²¹⁴

The Family Court had appointed a psychologist, Mrs Orr, to complete a psychological report. Mrs Orr pointed out that M, at 4 years of age, was too young to fulfil the diagnosis of the pathological alienation but concluded that alienation was a significant risk. The reason for this being that the child, at the age for 4, was not old enough to express a clear resistance to, or rejection of, the father as a result of the mother's alienating behaviour.

In her conclusions, Mrs Orr considered that the behaviour of both the child's mother and her husband (Mr Todd, who was not the child's biological parent but whom had played the role of father to the child) and the child's biological father, Mr Gebrien, all had a role in the assessment. However, it was clear that the mother's behaviour was a significant

²¹³ *Gebrien v Todd* above n 197.

²¹⁴ At [146].

contributor to what Mrs Orr said posed a significant risk of pathological alienation. Specifically, with regards to the mother's behaviour, Mrs Orr stated:²¹⁵

Mrs Todd has a clear psychological problem including emotional dysregulation and significant anxiety being displayed, which she attributed to Post-Traumatic Stress Disorder (PTSD) for which her childhood (father was reportedly violent) made her vulnerable to Mr Gebrien's incursion. However, an alternative explanation is that she had a consensual relationship with Mr Gebrien, which she cannot admit. Thus, her cognitions have become distorted and she is defending her right to continue her relationship with M and her husband. To maintain this line has been highly stressful as it would have required her to create more narratives on top of previous ones. The Court will need to make a finding of fact in terms of these hypotheses.

According to the Todd's reports and my observations, Mrs Todd becomes emotionally dysregulated and is unable to self-soothe. She cannot continue to interact. She spoke of disrupted sleep and constant anxiety which is currently focused on the current assessment.

Mrs Orr also included in her report that the child's psychological needs were not being met. She concluded that there was a risk, based on the current state of relationships and dynamics, that the child would become pathologically alienated from her biological father. In her report she concluded that if this were a risk, then that would constitute psychological abuse. In oral evidence she amplified that conclusion, noting that the psychological abuse was at the upper end of extremity. In describing the phenomena that Mrs Orr saw, and acknowledging that the child was too young to fulfil the diagnosis of the pathological alienation, Mrs Orr stated that the contributors to possible alienation include:²¹⁶

- a) Mr and Mrs Todd's refusal to allow Mr Gebrien (the father) and his family to be a part of M's (the child's) life;
- b) Mr and Mrs Todd's (the mother and her husband's) parenting of M;

²¹⁵ Above n 197 at [160] referring to paragraphs 89 and 90.

²¹⁶ Above n 197 at [166] referring to paragraph 148.

- c) Mr and Mrs Todd's lack of insight into M's psychological needs and their promotion of their needs over hers;
- d) Mr and Mrs Todd's previous involvement with the system and their lack of insight into their contribution to Jeremy's (M's sibling's) death. They have a lack of trust and inability to adjust their thinking about their family to take on new information;
- e) Mr Gebrien's lack of parenting knowledge and experience;
- f) Mr Gebrien's personality style including lack of insight;
- g) Mr Gebrien's passiveness about seeking contact between January 2012 and January 2014;
- h) The geographical distance between the biological parents emphasises the psychological distance.

Mrs Orr's report painted a picture of worrying inadequate psychological functioning by the mother in terms of meeting the child's needs and the risk that she would become enmeshed with her mother, which would, in turn, contribute to the alienation. She considered if this occurred it would deprive her (M) of the opportunity to have a relationship with her biological father.

On consideration of the evidence Judge Moss decided that the child should be removed from the care of the mother (and the mother's husband's) and placed in foster care. The court considered there was insufficient evidence before it to assess the ability of the father to adequately parent the child at that time. Judge Moss stated that there was a risk of "pathological alienation" to the child, who was, at that time, too young to be capable of actually becoming alienated (i.e. to reject the targeted parent, her biological father).

4.4.2. Manipulation

As referred to above, in *ASM v DPM*²¹⁷ the report from the Social Assistance Agency in Bulgaria indicated that manipulation was present, and the court considered this could result in alienation.

²¹⁷ *ASM v DPM* above at n 197.

Expert evidence would be required to determine if such psychological abuse and/or manipulation constituted psychopathology. While the courts have not specifically identified psychopathology as a feature in these alienation cases, potentially such evidence, at an early stage, could be an indicator of risk of ongoing or increasing alienation.

4.4.3. *Personality Differences*

In *Belford v Belford*²¹⁸ there had been an extensive litigation history. Judge Neal referred to the earlier decision of Judge Burns where the mother had been identified as being “highly anxious”, “very black and white in her views” and “highly communicative”.²¹⁹

In the 2014 decision, Judge Neal was required to determine on the balance of probabilities whether the abuse that the mother had alleged was perpetrated by the father towards the girls had occurred. He determined that it had not and concluded that there were clearly elements of alienation in the behaviour of the mother.

Again, expert evidence of both parent’s contributions to the difficulties would be required, but perhaps importantly to whether the mother’s behaviour constituted psychopathology. Given the extensive litigation history of this particular case, it is possible that such evidence, at an early stage, would have identified the risk of continuing or escalating alienation and enabled the court to take proactive steps to limit this risk.

4.4.4. *Distress*

In *Palmer v Holm*,²²⁰ on the question of the mother’s behaviour, Gilbert J referred to the decision of Judge Maude in the Family Court decision, *Holm v Palmer*²²¹ where it was stated:²²²

... these proceedings have overwhelmed her to the point of exhaustion and imbalanced thinking ... those behaviours are not [M] (the child) fault and [Ms Holm’s] sense of a need to protect [M] from [Mr Palmer] does impact

²¹⁸ *Belford v Belford* above at n 197.

²¹⁹ At [9].

²²⁰ *Palmer v Holm* above n 197.

²²¹ *Holm v Palmer* [2013] NZFC 10376

²²² At [82].

adversely on [M]. The situation robs [M] of a relationship with his father who now seeks [a] relationship.

[Ms Holm's] thinking has become, in my view, distorted by her own distress, magnified by incidents (already litigated and not the subject of the hearing before me) which were not bordering on serious enough to stand in the way of a normal relationship between [M] and his father. Sadly, both parents have become embroiled in this downward spiral. [M] cannot progress as a successful human being into adulthood until freed from his mother's distress and his father's engagement in the downhill spiral that I have described.

Gilbert J, in quoting the earlier decision, accepted the statement that:

It simply defies common sense to think that a child being raised by a mother as distressed as [she] displayed herself to be in the Courtroom, clearly alienated from his father, has not downloaded into his psychological being damage.²²³

It was found that M was alienated from his father and that this alienation was not justified by M's life experiences of his father (i.e. it was not justified estrangement) and was primarily the result of Ms Holm's behaviour. This case, if defined, would fit into the "hybrid" category, there being clear references to the behaviour of both parents contributing to the issues. However, an earlier identification of the extent of the mother's "distress" and "imbalanced thinking" may have given the court more insight into the risks of alienation.

*F v F*²²⁴ was also an appeal of the High Court of a decision of Judge Boshier delivered in the Family Court on 6 August 2010. The High Court considered the mother was not aware of and not supportive of the children having a relationship with their father because of her own distress and needs.

The mother had initially had the care of the children; the father had then been awarded care, with school holiday contact to the mother. Then in the 2011 hearing, the mother had again applied for primary care. A section 133 report was completed by Dr Staite, who in his 2008 assessment of the mother, described an "enmeshment between the mother and

²²³ At [83].

²²⁴ *F v F* High Court, Invercargill, Fogarty J, 11 February 2011, CIV 2010-425-000440.

the girl” and considered that “this enmeshment is of concern because it can cause long term emotional problems, hampering the development of the child into an emotionally autonomous person”.²²⁵

Dr Staite considered the mother was “distressed and desperately needing the children emotionally” and that “as a result the children continue to feel the burden of carrying their mother’s distress at her daily agony of not having them in her primary care”. The children wanted to reside with their mother, and Dr Staite considered that the children would have a burden of anger and frustration that their express wish to live with their mother continued to be “thwarted by unfeeling, uncaring pro-father professionals”.²²⁶ The daughter’s emotional state was said to have been such that she had gone even without food for lengthy periods out of stress.

Dr Staite identified co-dependency, synergism and enmeshment between the mother and the children which appeared to place pressure on them. The Judge considered that this pressure was manifesting itself in the deterioration of the children’s mental health. Dr Staite also considered that the mother’s degree and intensity of emotional involvement with the children were causing the children at times to become detached from their father and his partner. He also had concerns that intrusiveness (by way of texting) on the part of the mother, while they are staying with the father, was putting pressure on the children.²²⁷

Fogarty J noted that two prior decisions of Judge Boshier in the Family Court (delivered on 17 July 2009 and 6 August 2010) were “redolent in the lack of confidence in the conduct of the mother”.²²⁸ Fogarty J also considered that Dr Staite’s views were similar in that had identified that the mother had “an impaired capacity to promote and support the children’s relationship”. When asked about each parent’s ability to promote and support the children’s relationship with the other parent he responded:²²⁹

Of these two parents, [the mother] is weaker than [the father] in her ability to promote/support their relationship with the other parent. This relates to [the mother’s] neediness of and for her children to meet her own emotional

²²⁵ At [21].

²²⁶ At [43].

²²⁷ At [45].

²²⁸ At [67].

²²⁹ At [70].

and psychological needs. An impaired capacity to promote and support the children's relationship with [the father] and his partner is reflected in [the mother's] intrusiveness into the children's time with their father and a text to [the father] asking him not to bring his [partner], to the changeover.

In this case, with the benefit of expert evidence of the s133 report writer at an early stage in the proceedings, the court was able to implement steps (a change of care) to minimise the risk of the mother's behaviour. While there were ongoing difficulties, it is likely this step had a significant impact on preserving the children's relationship with their father given the mother's identified behavioural or psychological challenges.

4.4.5. *Anxiety/Negative Inferences*

Anxiety and negative inferences have also been considered relevant to alienation. In *Belford v Belford*,²³⁰ Ms Wali was the psychologist who was appointed by the court to undertake the s133 report. She identified the following concerns as follows:²³¹

V (the mother's) anxiety and strongly held negative views about the children's father (and extended family), as well as interpretation of S's "behaviours" (as discussed in para 6.10) places the children's relationship with their father at risk. It also heightens the risk to V's own relationship with S over time. In addition, there may be an exacerbation of the behaviour problems as a result of how V interprets and reacts to such behaviour when it occurs.

Later in her report she stated:²³²

The extent and intensity of V's negative views about R (the father) and his family, raises strong concern about the children's mother being able to genuinely support the children's relationship with their father and extended family; ... there is also a high risk that their mother's anxiety could be transferred across to the children (if it has not already), and add to their psychological stress of going between the two homes. This heightens the risk to the children of developing adjustment problems and of their mother's concerns (of psychological disturbance) becoming self-fulfilling. There is also the potential

²³⁰ *Belford v Belford* above n 197.

²³¹ Above at [13] referring to paragraph 6.18.iii.

²³² Above at [14] referring to paragraph 7.6.

risk to the quality of the relationship with their father (and extended family) becoming eroded over time, and at the extreme end is the risk of becoming completely alienated as they get older.

Of the behaviours noted, Ms Wali considered that the mother's negative views about their father and her anxiety being transferred across to the children had a direct correlation to the risk of alienation of the children.

Ms Wali had also raised the question of the mother's ongoing allegations of abuse by the father. Given that the court had already dealt with this issue, and considered that the children were safe in the father's care, Ms Wali considered that "this remains an area of significant concern and with the passage of time the risks associated with this appear to be heightened rather than reducing." She went on to state that "if abuse has not occurred, that the mother is exhibiting elements of alienating behaviour and there is a need for prominent intervention to protect the children from the potential risk."²³³

On appeal to the High Court on Appeal (*McInnes v McInnes*²³⁴) Moore J referred to the decision of Judge de Jong in the Family Court where he commented about the starkly different personalities of the parties and described the mother as "articulate, intense, direct, anxious and protective" and at times "insistent and persistent in her endeavours to communicate [with the father]". In contrast, he described the father as less articulate and more likely "to shut down when faced with the prospect of having to communicate with his wife".²³⁵

Moore J also referred to Judge de Jong's comment:²³⁶

The court was left very concerned at the conclusion of the mother's evidence about how she presented. It may be that the mother's past health issues have affected her functioning and outlook on life. When asked to describe herself the mother said she was not an anxious person. However, the reality is quite different. She presents as a very anxious person about a range of matters.

²³³ At [32].

²³⁴ *McInnes v McInnes* above n 197.

²³⁵ At [5].

²³⁶ At [5].

The level of anxiety extends to a fear she says she has about the father. Although she says she lives in fear of the father she is not really able to explain to the court what that fear is.

The presence of anxiety in *McInnes v McInnes*,²³⁷ emotional abuse in *Gebrien v Todd*,²³⁸ “distress” in *Palmer v Holm*²³⁹ and *F v F*²⁴⁰ and “manipulation” in *ASM v DPM*²⁴¹ would suggest that these types of behaviours may be an indicator of a risk that a parent will exhibit alienating behaviour. While the court can assess and make findings on the factual issues, there is limited ability within the current legislative framework for the court to take a step further and make a finding of psychopathology. The ability to make such findings, particularly at an early stage, may be useful in terms of preventing or reversing alienation.

4.5. High Conflict

High conflict is a hallmark of alienation cases. Many have a lengthy history of court proceedings and often multiple hearings. High conflict may lead to a risk of a “loyalty bind” for the child. Alienation in these cases potentially involves complex issues and multiple causes. The identification of such cases as “alienation”, “justified estrangement” or “hybrid” can become more difficult as time passes.

It is conceivable and, in fact, likely, that the rejection of a parent by a child can lead to multiple attempts by the alienated parent to improve the contact, and, therefore, relationship. This can lead to extensive litigation and “high conflict”. However, there are also other causes for the high conflict, which may include aspects of one (or both) party’s personality traits.

In the Court of Appeal decision of *K v B*,²⁴² the dispute between the parties regarding care and conflict had been ongoing since 2006. The parents were said to be loving and devoted parents of their two girls and both capable of providing a good standard of care for their daughters. However, their relationship was marked by mistrust and hostility, which resulted in serious difficulties in resolving the issues relating to day-to-day care.

²³⁷ *McInnes v McInnes* above n 197.

²³⁸ *Gebrien v Todd* above n 197.

²³⁹ *Palmer v Holm* above n 197.

²⁴⁰ *F v F* above n 224.

²⁴¹ *ASM v DPM* above n 197.

²⁴² *B v K* [2010] NZCA 96, [2010] NZFLR 865.

The Court of Appeal considered that “high conflict separations can affect the quality of parenting provided to children by individual parents and can impede the ability of parents to achieve cooperative outcomes for their children”.²⁴³ In making this statement, the court relied on Courtney J’s comment in the High Court decision *K v B*,²⁴⁴ where she considered, based on the psychologist’s evidence, there was a significant risk of parental alienation arising from the degree of conflict between the parents.²⁴⁵ A further appeal to the Supreme Court was dismissed (*Kacem v Bashir*)²⁴⁶. The Supreme Court was silent on the references made by the Court of Appeal regarding high conflict and by the High Court regarding the risk of parental alienation arising from high conflict.

Judge Boshier, as referred to by Fogarty J, considered that high conflict was also present, and relevant to the question of alienation, in *F v F*.²⁴⁷ There was an extensive dispute between the parents before the father was granted day-to-day care and the mother, who then relocated to Australia, had school holiday contact. She returned to NZ and once again sought day-to-day care of the children.

While the majority of cases referred to herein have an extensive litigation history, the fact that the court made specific reference to the issue of high conflict and the relationship with alienation in *K v B*²⁴⁸ and *F v F*²⁴⁹ identifies this as a feature in itself contributing to alienation.

4.6. Passive (Dysfunctional) Parenting Approach

While a parent can act in a way that alienates the child from the other parent, the courts have also recognised a parent’s failure to encourage or enforce contact with the rejected parent as contributing to alienation.

In *Secrest v Axley*,²⁵⁰ the mother had made allegations that the children had previously been physically abused by their father, but the court had determined that these allegations were not made out. However, despite the findings, the mother continued to believe that behaviour had occurred. The court considered that she indicated no change

²⁴³ At [59b].

²⁴⁴ *K v B* (2009) 27 FRNZ 417

²⁴⁵ At [21]

²⁴⁶ [2010] NZSC 112, [2011] 2 NZLR 1, [2010] NZFLR 884, (2010) 28 FRNZ 483

²⁴⁷ *F v F* above n 224.

²⁴⁸ *K v B* above n 242.

²⁴⁹ *F v F* above n 224.

²⁵⁰ *Secrest v Axley* above n 197.

or development in her approach to parenting of the two oldest girls, adopting “the passive (and dysfunctional) parenting approach of simply supporting whatever (the girls) want in relation to contact with their father.”²⁵¹ Judge Druce considered that these beliefs (and a range of other factors) had proved not to be amenable to sufficient change to enable any breakthrough in the relationships between the girls and their father.

Another case where the parent, this time the father, was considered to use passive dysfunctional parenting is *Garrett v Garrett*.²⁵² The parties had separated, and the mother had entered a relationship with another man. When the children were on contact visits with the father, he had made direct comments to them about the mother, implicating her as causing the relationship breakdown. He was also significantly “hurt” by the separation and drew the children into his grief. He had stopped his relationship with the mother’s parents when they provided some support to her. As a result, ultimately, the children rejected all contact with their mother, to the point where they became rude and abusive towards her. They also rejected all contact with their grandparents, describing them as untrustworthy (based on comments by their father). On the children’s refusal to visit their mother, the father adopted a permissive role, despite being an otherwise authoritative parent. The girls became enmeshed in the conflict and adopted the view that their mother was “all bad” and their father was “all good”.²⁵³

Evidence was presented of letters sent by the girls to their mother, which were endorsed by their father, denouncing their mother as “false and untrustworthy”, the object of their “hate” and solely responsible for the breakup of their parents’ marriage. They had only been in their father’s care for three months when they started rejecting any form of familiar address or term of endearment, referring instead to their mother by her Christian name. Even then they were professing hatred and rejection towards her.²⁵⁴

Judge Murfitt considered that the father’s unwillingness to reprimand the children nor correct them for their discourteous, disrespectful and unsympathetic conduct towards their mother and their aunt and maternal grandparents constituted psychological abuse of the children, as defined in DSM-V.²⁵⁵

²⁵¹ At [6].

²⁵² *Garrett v Garrett* [2013] NZFC 6314.

²⁵³ At [74].

²⁵⁴ *Garrett v Garrett* above n 252.

²⁵⁵ At [88]

The Judge considered that both girls, but the older girl in particular, distorted the truth in reciting complaints about their mother's behaviour. Shelley Zintl, the psychologist who had completed a s133 report, "identified (this) as indicators that the children consistently disregard any evidence which conflicts with their views, and exaggerate any evidence which supports them".²⁵⁶

Judge Murfitt considered that it was "very clear that the girls have been placed in a position of medicating their father's grief".²⁵⁷

While alienating behaviour was clearly evident, and clearly the primary cause of the girls' rejection of their mother, the court held that there were other factors that contributed to that rejection. These included the personality of the older daughter, who, it was reported by Shelley Zintl, was "black and white" in her thinking and "prone to inflexible thinking and unable to accommodate alternative points of view, or uncertainty in life."²⁵⁸ This also influenced the younger daughter, according to Shelly Zintl, as the older daughter also had a powerful influence on her younger sister.²⁵⁹

Again, the child with a loyalty bind may indicate a rejection of a parent. The failure of the alienating parent to encourage the relationship or enforce contact with the other parent is clearly a contributing factor to the alienation. The fact that the court was able to identify that the father in *Garrett v Garrett*²⁶⁰ was an otherwise authoritative parent, but not so in regard to the relationship with their mother, was a clear contradiction in his parenting style. This was identified by the court as a factor (in addition to his behaviours, which contributed to the alienation in the first place) in contributing to the girls' rejection (and portrayed hatred) of their mother.

4.7. Failure to Work Through Alienation Issues

If alienation is identified, then the court's expectation is that parents will comply with strategies implemented to reduce or reverse the alienating behaviour. Again, in *Secrest v Axley*²⁶¹ the court had determined that alienation was present and that the mother would need to modify her attitude and behaviour for the children to improve their relationship

²⁵⁶ At [78].

²⁵⁷ At [79].

²⁵⁸ At [90].

²⁵⁹ At [92].

²⁶⁰ *Garrett v Garrett* above n 252.

²⁶¹ *Secrest v Axley* above n 197.

with their father. Judge Druce stated that while he considered the mother loved and cared deeply for each of her daughters, she had failed at an intellectual and psychological level to accept the court's findings in relation to the children's originally expressed anxieties and allegations to her about their father and his behaviour. The court also considered that, at the time of the hearing, she had not provided any evidence that she had worked through the various dynamics and factors that had so adversely affected the children's family lives. The Judge considered that she had given no sign that she had sorted out "the wood from the trees" in understanding what had troubled her children.²⁶² On that basis, he found that she remained very largely stuck in the same views and perceptions as she did at the earlier 2011 hearing.

As a result, Judge Druce considered that there was a clear functional benefit to the mother in maintaining her beliefs and approach. She had retained sole parental care and control of the oldest two girls, and she retained the greater part of the day-to-day care of the younger two. She was not in paid employment, and her primary role was as a parent to her children. Further, the Judge considered that one of the identified contextual factors was that she and the children's father had struggled for power and influence over parenting arrangements ever since their separation in 2007. Therefore, the refusal or failure of the mother to modify her behaviour was effectively considered to be a cause of alienation in itself.

The case, as with many alienation cases, was marked by high conflict. However, the court had the opportunity to assess the situation in the earlier hearing. The ability to enforce remedial outcomes could potentially prevent or reduce the alienation from becoming entrenched. The opportunity to continue to behave in a manner that is alienating, without consequence, may lead to continuing alienation such as in *Secrest v Axley*.²⁶³ This case is in distinct contrast to the approach taken, for example, in *F v F*,²⁶⁴ where the alienation risk was managed and minimised by the change of care.

²⁶² *Secrest v Axley* above n 197 at [32].

²⁶³ *Secrest v Axley* above n 197.

²⁶⁴ *F v F* above n 224.

4.8. Unilateral Relocation/Guardianship Decisions

4.8.1. *Unilateral Relocation*

The court has a duty to recognise the importance of the child's right to have a relationship with both parents. Therefore, any unilateral action by one parent that can have a detrimental impact on the relationship between the child and the other parent can potentially be a risk of alienation. On the face of it, the desire of one parent to relocate with a child, or children, to another region or country may not be alienating behaviour. However, a review of the case law does appear to indicate some relationship between these two separate issues. This is particularly so when the relocation is unilateral, and the moving parent relocating prior to obtaining the consent of the other parent, and often without their knowledge.

In *MR v CR*,²⁶⁵ a High Court decision on appeal, Chisholm J agreed with Judge Smith's earlier findings in the Family Court regarding the nature of the relocation and its relationship with alienation. The case followed the Christchurch earthquakes when the mother had unilaterally relocated the children to the North Island. The court considered that the mother's behaviour (primarily the unilateral relocation) had tendencies to undermine, estrange or even alienate the children's relationships with their father. On that basis, she had ordered the relocation of the children back to Christchurch. Judge Smith, in the earlier decision, stated that there was some inherent wrongness in a unilateral relocation and that while the immediate relocation at the time of the earthquakes may have been acceptable from a safety perspective for the children, seeking to rely on the new environment they established by claiming it was the status quo was not permissible in the longer-term.

The mother appealed the decision to the High Court, and Chisholm J stated, with regards to the wider risk to the safety of the children, that there was still some risk but that needed to be kept in perspective and weighed against all other relevant considerations. On that basis, he agreed with Judge Smith and stated that he had no sound reason to differ from the Judge's view that the risk arising from a return to Christchurch were outweighed by other factors, especially the risk of alienation from the father.

²⁶⁵ *MR v CR* High Court, Christchurch, Chisholm J, 8 August 2011, CIV 2011-409-001281.

Chisholm J referred to the reasoning of Judge Smith:²⁶⁶

The real concern for me under section 5(e) is that these children need to be protected from psychological violence from both of their parents. In particular, I am most concerned that mother's current behaviour has tendencies to undermine, estrange or even alienate the children's relationship with their father in the ways I described above.

The relationship between relocation and alienation was considered in the High Court Appeal of *K v B*²⁶⁷. While not involving unilateral relocation the court concluded that there was a significant risk of alienation whether the children remained in New Zealand or relocated to Australia (with their mother). The High Court allowed the appeal by the mother to relocate to Australia but that was later overturned by the Court of Appeal in *B v K*²⁶⁸ (later upheld by the Supreme Court in *Kacem v Bashir*²⁶⁹)

It does not necessarily follow that a desire by one parent to relocate children away will be as a result of an intention to alienate a child from the other parent. However, certain aspects of relocation may indicate behaviours that are alienating, particularly where that parent demonstrates in other ways a lack of importance placed on the relationship between the child and the parent from whom they are relocating away from. However, where relocation is coupled with the presence of high conflict, this may be an indicator of deliberate alienating behaviour or the potential for alienation.

4.8.2. Unilateral Guardianship Decisions

The willingness of a parent to comply with his or her guardianship obligations is also a relevant factor in terms of the alienating behaviour of either parent. In *K v B*²⁷⁰ the court considered that the mother held an openly negative view of the father and his role in the children's lives. Judge de Jong, in the Family Court hearing, expressed concern that this meant the mother would not recognise the father had an important part in their daughters' lives. However, he did consider that the mother had reasons for this because the father had not consulted her appropriately about schooling arrangements for the

²⁶⁶ *MR v CR* above n 265 at [19].

²⁶⁷ *K v B* above n 244

²⁶⁸ Above n 242

²⁶⁹ Above n 242.

²⁷⁰ *K v B* above n 244.

older daughter, nor about issues relating to her medical care. Again, this was considered by the court to be alienating behaviour. The children were young and had not rejected their father, and the court, therefore, identified this behaviour as being a “risk” of alienation of the children (rather than alienation having already occurred).

There are a significant number of relocation cases where alienation does not feature as an issue identified by the courts. However, these two cases demonstrate that a relocation application (prior to the actual relocation) coupled with high conflict may have alienating features.

4.9. Options for Outcomes

The courts are limited in terms of the options for ensuring compliance with orders where alienation is present. If alienating behaviour, or personality traits that might lead to a risk of alienation, is identified at an early stage then this gives the court the option of taking proactive steps to minimise the risk or reduce the effect of alienation. There are a number of steps that can be taken by the court, including giving a clear warning to an alienating parent as to the consequences of their behaviour and a punitive measure if the behaviour does not cease, imposing a bond, directing one (or both) parents to counselling or therapeutic intervention or referring the matter to CYFS.

Once the alienation was identified (and was clearly in the severe category) in *Garrett v Garrett*,²⁷¹ Judge Murfitt made contact orders, but, in addition, imposed various other orders and directions to ensure compliance with the contact arrangements as follows:²⁷²

1. That a bond of \$500 be paid into the trust account of the children’s lawyer pursuant to s48(5) and s70 of the Act said to “act both as an incentive for compliance (both by the father and the girls), and as a restorative device to compensate the rejected parent for losses associated with the non-compliance, to be forfeited to the other parent in the event of breach by either of them”;²⁷³
2. That the parties undertake counselling. Judge Murfitt considered “the girls need quite intensive therapy with their mother to repair the damage done to their relationship, and achieve some form of normality. Their father needs to be incorporated in this, partly to continue the process of his recovery from the

²⁷¹ *Garrett v Garrett* above n 252.

²⁷² At [114].

²⁷³ At [100].

traumatic event of the breakdown of his marriage, and to continue his education as to how best he can help repair the damage to his children's development";²⁷⁴

3. As to the costs of the report writers and three lawyers engaged by the courts in the proceeding (amounting to a total of \$28,000), Judge Murfitt stated "I indicate now that my discretion to order a substantial contribution towards the payment of those costs will be guided by the success or the lack of success of the orders I am about to make. If, for any reason, the orders are not successfully complied with, then I will apportion responsibility and make an order for costs accordingly";²⁷⁵
4. The issue of a Warrant to Enforce, pursuant to s73, in respect of the orders to lie in court unless required;
5. A warning that the court had the ability to make a s19 referral to CYF to investigate and hold a Family Group Conference or to make the children wards of the court if there was non-compliance with the orders; and
6. Ongoing monitoring and case management by Judge Murfitt with a review in one year.

Sadly, the dispute between these parties had continued for three years before this matter came before Judge Murfitt in this 2013 decision. There were no allegations of violence or abuse, and there were many aspects of the case which indicated that the circumstances fitted clearly into the alienation category. Had significant proactive steps been taken earlier in the proceedings the risk for the girls to become so entrenched in the rejection of their mother may well have been significantly reduced.

However, Judge Murfitt took proactive steps, utilising the remedies available within the legislative framework, to ensure compliance.

Fogarty J, in *F v F*,²⁷⁶ also recognised that it was necessary to take proactive steps to reduce the consequences of alienation and directed therapeutic intervention for the alienating mother. While the court had previously taken a proactive step of placing the children in their father's care in previous proceedings, there was evidence given that the children had fallen into depression while in the care of their father, and the mother sought a change of care back to her on this basis. The court was faced with the dilemma that if

²⁷⁴ At [103].

²⁷⁵ At [105].

²⁷⁶ *F v F* above n 224.

the children went into the care of their mother she would damage their relationship with their father but if they stayed with their father, they would suffer a state of distress at not being with their mother. Dr Staite, the s133 report writer, identified these as the issues, but was unable to give the court guidance as to which option would be in the best interests of the children.²⁷⁷

Fogarty J stated:²⁷⁸

I am left with similar reservations to those held by Judge Boshier and Dr Staite. If the appeal is allowed by placing the children in the day-to-day care of their mother I do not think there will be any incentive on the mother to participate in therapy designed to make her aware of her neediness, of the way she is enmeshing the children in her needs and potentially crippling their autonomous development and to practise measures which enable her to let them go adequately to develop and foster healthy relationship with their father in another household.

He went on to state “There is a serious risk, in my view a very serious risk, that if the children are placed in the day-to-day care of their mother now that that placement cannot be easily reversed”.²⁷⁹

And finally:

In all probability, such a placement will result in an immediate improvement in the mental wellbeing of the children by reason of eliminating the current reasons for their signs of depression. However, that is at the very serious risk of their long term relationship with their father being severely compromised and diminished. In turn that would promote the risks of a dysfunctional adulthood.²⁸⁰

On that basis, he affirmed the prior decision that the children remain in the care of their father but with some contact with their mother. The decision included a requirement that the mother, at her expense, undergoes therapy during the term of this Interim Order

²⁷⁷ At [41].

²⁷⁸ At [73].

²⁷⁹ At [74].

²⁸⁰ At [75].

aimed at “(a) reducing the enmeshment between her and the children; and (b) Strengthening the children’s relationship with their father”.²⁸¹

In *M v N*,²⁸² Judge Black had determined there were no safety concerns in relation to either parent in respect of their 5-year-old boy. Because the parties lived some considerable geographical distance apart, initially the father had sought only school holiday contact with the boy, but later sought a change in care due to the ongoing difficulties he was having with the mother relating to such contact. Judge Black expressed a concern that there was a risk to the boy’s psychological wellbeing due to “alienating dynamics”.²⁸³

Through the course of the hearing, the parties were able to reach a partial agreement as to the care arrangements. This gave Judge Black the opportunity to make specific warnings, backed up by appropriate directions, that would ensure the contact arrangements were complied with and the relationship between the child and his father supported. These warnings included:²⁸⁴

- The mother would provide information to the father fortnightly regarding the boy’s progress; neither party would denigrate the other publicly, including to the school, and each of them would use their best endeavours to prevent others speaking negatively about the other parent;
- The mother complete a Parenting Through Separation Course;
- The child’s lawyer and s133 report writer to prepare a brief required for an appropriate intervention for the mother to address the issues identified. That intervention may involve an element of family therapy and, if appropriate, involve the father in sessions at a future time and that the child’s lawyer then brief an appropriate person to undertake that intervention;
- For the parties to undertake communication counseling pursuant to s46G;
- That the proceedings (being complex) be assigned to Judge Black to oversee and monitor; and
- That if there were any breaches of the various Orders and Directions imposed that the matter could be brought back to court prior to the commencement of the next

²⁸¹ At [55].

²⁸² *M v N* [2017] NZFC 2358.

²⁸³ At [21].

²⁸⁴ At [47].

school year and that the “almost certain outcome is that (Judge Black) will make an order providing for (the boy) to be in his father’s day-to-day care from the beginning of the 2018 school year, with contact reserved to (the mother) on the same basis as it is reserved to (the father) under the interim Order

Prior to the partial agreement, Judge Black had made it clear to the parties that he considered the child’s best interests may well be served by changing his day-to-day care to the father, based on the mother’s view of being more important in the boy’s life than his father and her failure to place appropriate value on the boy’s relationship with his father.²⁸⁵ As a result, he was concerned her mindset would pass on to the boy, and the alienating dynamics would affect his relationship with his father.²⁸⁶ On the basis that the mother indicated that she would do anything to retain the care of the child, he gave the mother the opportunity redress the underlying causes of her mindset.²⁸⁷

The ability of the court to reduce the effects of alienation by punitive or therapeutic means, using the methods outlined above, is important. The limitations on the extent to which that is possible within the legislative framework pose a challenge to Judges in effectively dealing with the issue.

4.10. Summary

All the cases reviewed involved “high conflict”, generally marked by a lengthy litigation history. Six of the 12 cases involved allegations by a parent of safety concerns involving the child (all of which were found to be unfounded or not to pose a risk to the child). Six of the cases also contained evidence of psychological traits or behaviours that were associated with the alienating behaviour, although these were not necessarily found to constitute psychopathology within the alienating parent. This raises an issue regarding the court’s ability to make this association without having explicit jurisdiction to direct such expert assessment.

Passive (dysfunctional) parenting was evident and explicitly contributed to the alienation in two of the cases. The refusal of a parent to encourage or insist on contact with the other parent (when they are otherwise an authoritative parent), was found to be an alienating

²⁸⁵ At [28].

²⁸⁶ At [35].

²⁸⁷ At [36].

behaviour. Unilateral relocation and guardianship decisions were found to have a correlation with alienating behaviour in two of the cases.

The reality is that some of these behaviours such as particular personality traits or passive parenting, for example, may be present in many more of the cases, but that it may not have been possible to bring evidence of this. Many such behaviours are “invisible” (i.e. occur between the alienating parent and the child behind closed doors).

*ALZ v FLZ*²⁸⁸ was illustrative of the fact that the prior, and clear, warning of a Judge regarding continued alienating behaviour can be effective in reversing that behaviour in the alienating parent. However, in *Secrest v Axley*,²⁸⁹ the alienating parent failed or refused to work through alienation issues (or reverse the alienating behaviour) despite a clear directive from the court in prior hearings. This would suggest that while warnings may be sufficient in some cases, they will not be in all cases. However, the steps taken by the courts in *Garrett v Garrett*,²⁹⁰ *F v F*²⁹¹ and *M v N*²⁹² are considered proactive and have the potential to pose as a sufficient deterrent for all but the most obsessed of alienators.

The list of alienating behaviours canvassed above is by no means exhaustive, as only a limited number of cases were reviewed. The judicial interpretation of behaviour contributing to, or causing, the alienation of a child from a parent is clearly subjective, complex and frequently involves several different types of parental behaviour. The behaviours identified in the New Zealand case law are consistent with those identified in the empirical research. The cases illustrate the relationship between safety allegations and alienation, a point that is considered in detail by the research in terms of the justified estrangement situation. The cases reviewed include “hybrid” cases, i.e. with alienation present but with the court also having to assess the safety allegations as to whether this has caused any element of any alienating influence on the child. *ALZ v FLZ*²⁹³ was also an example of a situation where the court took early steps when alienation was recognised and the alienating behaviour was remedied. This was perhaps a situation where the alienation was “naïve” or “moderate”.

²⁸⁸ *ALZ v FLZ* above n 209.

²⁸⁹ *Secrest v Axley* above n 197.

²⁹⁰ *Garrett v Garrett* above n 252.

²⁹¹ *F v F* above n 224.

²⁹² *M v N* above n 282.

²⁹³ *ALZ v FLZ* above n 209.

While the courts did not specifically refer to the presence of psychopathology in any of the alienating parents, specific reference was made to their various behaviour traits, which is also identified as a significant factor in the research. High conflict was identified by the courts as a factor leading to potential alienation, and this is also identified in the research as a significant feature of alienation.

The courts also identified the making of unilateral decisions by a parent as a factor relevant to alienation. While the research does not specifically address this as an alienating behaviour (for example, it is not a factor identified in the BSQ in Appendix B or defined in the diagnostic criteria set out in Appendix C) this does appear consistent with the general theme of behaviour exhibited by an alienating parent. The making of decisions relating to the children without the other parent's knowledge or consent appears consistent with the behaviour of a parent who considers his or her role in the child's life as more important than the other parent's role in the child's life.

The legislative provisions available to minimise the impact of alienation by ensuring compliance, such as imposing a bond, the ability to issue a warrant, et cetera, which were utilised by the courts, are consistent with the identified need to take early steps. However, not all of the cases utilised the steps available.

Chapter Five

International Case Law

5. Introduction

This chapter reviews six recent cases from the UK and Canada (three from each jurisdiction), to enable comparison with the approach of the New Zealand courts regarding the nature of alienating behaviours and the judicial outcomes reached in each jurisdiction.

5.1. Cases Reviewed

The cases reviewed were identified using the search text “parental alienation” in Westlaw and Lexis Nexis. The cases selected for review were done so on the basis that they are recent and, therefore, reflect the most recent law and contain detailed discussion regarding the alienation issues. The search criterion used in each jurisdiction was slightly different because there were significantly more cases relating to parental alienation in Canada and England/Wales than in New Zealand. The cases reviewed are referred to in Table Two below:

Table Two: England & Wales & Canadian Cases Reviewed Involving Parental Alienation

Jurisdiction	Family Court	Year	Court of Appeal	Year	Supreme Court	Year
Reviewed Cases						
UK	<i>B v B</i>	2017				
UK	<i>Re S(Children)</i>	2017				
UK			<i>Re D (A Child)</i>	2015		
Canada					<i>DCP v. J.B. & D.J. The Director of Child Protection</i>	2017
Canada					<i>K.M.H. v. P.S.W.</i>	2017
Canada	<i>Delichte v Rogers</i>	2017				

This review addresses the issues of alienation and justified estrangement. As with the analysis of the New Zealand cases, the questions of safety and neglect must first be considered.

5.2. Safety Allegations

5.2.1. *Allegations by One Parent Against the Other*

Of the six cases analysed, five (three UK and two Canadian) included one or both parents making safety allegations against the other. Like the New Zealand cases, these allegations were generally in relation to safety issues directly related to the child.

5.2.1.1. *B v B* – Family Court at Norwich, England

In *B v B*,²⁹⁴ the mother made allegations of an assault by the father relating to the daughter, IB, who was nine years old. The proceedings had been before the court for three years before coming before the Family Court for a final hearing in March 2017. The court had to assess the issues relating to alienation and justified estrangement because IB, by this stage, did not want to have contact with her father.

The mother's primary safety allegation was that on 13 September 2013 IB had come into her parent's room at 6am wanting her father to read or play with her he had asked her to go back to bed. She then stamped her feet, so he picked her up and put her into bed. She struggled, and, at some point, her leg was scratched. When the mother had gone in the room in response to IB shouting, she had asked the father to leave, and he had called her a "horrible woman". She also alleged that IB was cowering, that the father was angry and gripped her arms and was shouting at her.

The mother's grounds for resisting contact between the father and IB were based around this allegation and other statements by her that the father was controlling and abusive and a disinterested father; however, Judge Gordon-Saker did not accept this. He stated ²⁹⁵

I cannot accept (the mother's) account of 13th September 2013 not least because she begins by saying IB went into their room to get permission to go and read quietly, which seems unlikely and is contradicted by IB's account. She

²⁹⁴ *B v B* [2017] WL 01946919

²⁹⁵ At [37].

herself gave a different account to Mr Spooner. She also accepts that (the father) would get up when IB awoke in the early hours of the morning and spend time reading with her, which is not the mark of a father who is not interested. It seems to me he has also been very patient during these proceedings and accepted her proposals for years, and I do not see evidence of a man who is controlling or abusive.

Based on the Judge's reasoning in the balance of the Judgment, this comment appears to be an indication that she did not accept that there was any justified estrangement.

As to IB's wish not to see her father, the Judge considered that what had occurred since the time her parents separated affected her understanding and that her positive experiences of her father were being eroded by her mother. She stated "in my judgment, if she had a true picture of her father and was allowed by her mother to enjoy contact, she would wish to spend time with him. She has become entrenched in her mother's views, but her anxiety continues".²⁹⁶

The Judge concluded that Mrs B wanted to control every detail of contact and that she had created the idea in IB's mind that any contact needed to be supervised. The Judge also felt that Mrs B had worked hard to bring professionals, such as the school nurse, into her view of things. Judge Gordon-Saker concluded that the mother's actions had created the worries IB had and that this was emotionally harmful to IB.

IB had previously had positive contact with her father when she was six years old, and the Judge noted this. Regarding the supervised contact that had followed, it was reported that IB also enjoyed this time with her father. However, things changed, and IB had become progressively unsettled in her father's contact. The Judge concluded this was as a result of the mother telling IB that her father was trying to get her back to get back at her. In addition, it came to light that Mrs B had told IB that if she was present during the contact between IB and her father that she (Mrs B) would not feel safe. The Judge concluded that this was giving IB the idea that her father was a threat to her safety.

The Judge referred to a psychological report provided to the court by Mr Spooner, which had concluded:²⁹⁷

²⁹⁶ At [28].

²⁹⁷ At [57].

My opinion is that the distress and emotional disturbance that this child is experiencing is a result of having a relationship, and I suspect secure attachment, with her father eroded away and finding herself in a situation in which she feels she has no choice but to reject him and align herself with her mother.

The psychologist also went on to say:²⁹⁸

The contact session I observed between IB and her father was one of the saddest things I've seen in over 15 years of clinical practice and in over 1500 public and private law cases, and I have never seen a child ever go to such lengths to avoid interacting with a parent. I felt quite upset afterwards in a way I seldom do when I am doing this sort of work anymore, and so what on earth must it have been like for this child and her dad?

I have seen countless children who have been abused and neglected in every way imaginable, yet they will more often than not engage with their parents in a supervised contact setting, enjoy their company, seek physical proximity and attention and respond to the parents' overtures. I have observed contact in prisons where parents have been incarcerated for their abuse and neglect, yet children still generally engage with them.

IB made every effort to avoid interacting with her father largely the whole time I observed them.

Finally, the Judge referred to one further quote by Mr Spooner:²⁹⁹

I think IB has been thrust into a position where she has felt she had no choice, probably with the avid support/encouragement/influence of her other family members, but to reject her father and align herself with her mother because of the intolerable anguish of divided loyalty.

It is very telling reading the contact records, which suggest this child is so bewildered about how she should and should not behave when she is with her father that she oscillates between extremes. The pictures and videos of her

²⁹⁸ At [63].

²⁹⁹ At [65].

with her father, and several direct observations by Cafcass, show a child who is at ease with her father and who clearly adores him and his company at times. We would not see this in a child who was traumatised by that parent. That I am quite sure of." H concluded that "IB presents with features of an alienated child".

In her conclusion, Judge Gordon-Saker stated:³⁰⁰

It seems to me there will be harm continuing for IB in her mother's care from the distorted narrative that she has been given by her mother and that distorted narrative, from those pieces of information via the school, is continuing. The lack of contact, which it was hoped would bring about change, has not changed. Sadly, IB appears to know deep down that the story her mother is giving her is not true and I simply cannot leave her in that situation.

She considered that Mr B was capable of meeting all of IB's needs and that while a change of care entailed risk, IB did have a positive history and memories to build on. She considered that if the child remained in her mother's care she would continue to suffer harm. Because the court considered that the risk of harm in IB not seeing her father were clear and that if she stayed with her mother she would not be afforded the opportunity to have a relationship with her father, the change of care was necessary. On that basis, she ordered an immediate change of care for IB to her father but limited the contact with her mother initially. The hearing occurred in March 2017, but the decision was issued in May 2017, and in a postscript the Judge stated "IB managed to move to her father by the next hearing on third May, she was also having contact with her mother."³⁰¹

The Court's assessment was that the safety allegations were not made out and that it was the mother's behaviour that was causing the child's rejection of contact with her father. This case appears to be one in which it was easier for the court to make an assessment as to alienation being the primary cause of the rejection, and, therefore, one that would sit on the far end of the alienation spectrum rather than being categorised as a "hybrid" case.

³⁰⁰ At [83].

³⁰¹ At [159].

5.2.1.2. *Re S (Children)* – Family Court at Oxford, England

In *Re S (Children)*³⁰² the mother also alleged the father had been violent. This case involved two boys aged 12 (S) and eight (T) whose parents had been engaged in proceedings for nearly five years. During that time, they had seen very little of their father, and it was their clear wish that they did not wish to see him.

The incident alleged by the mother was said to have occurred in 2007. Her evidence was that the father had punched her in the face, knocking teeth out and necessitating plastic surgery. He was subsequently convicted in relation to the assault and given a suspended jail sentence. At that time, he had supervised contact with S for a time (T was not yet born).

Again, there had been multiple hearings, and this was clearly a high conflict case. As a result of a hearing in 2012, the children had overnight contact with the father on alternate weekends.

Then, in 2013, the children apparently alleged their father had smacked them and, as a result, supervised contact was imposed. Following this, the mother refused to make the children available for contact; however, the court again ordered supervised contact. This was reported to have been positive, with the children running to their father and giving him kisses and cuddles on the first occasion.

What then followed was a number of allegations made by the mother ranging from one relating to the father shaving the boys' heads to an allegation that he had attempted to strangle S (apparently reported by T). S denied that he had been hurt, and said that he did not want to go home to his mother, and no marks or injuries were seen. S attended contact on 10th September 2013, but T refused to attend. It was reported that S ran to his father and hugged him. However, during the next week, following a conversation between the mother and a social worker in which she reported that S was very distressed, the local authority then said it could no longer support current contact arrangements.

Despite the various allegations, when spoken to in October 2013, both boys clearly said that they wanted to see their father and, as a result, supervised contact recommenced. In

³⁰² *S (Children), Re*, [2017] WL 02844309

addition, at this time, the court directed a psychological assessment be undertaken and this was completed by Dr Morgan.

In November 2013 the children saw their father again and reportedly ran to greet him on arrival. The notes recording the contact were very positive and included a reference that the boys and their father were affectionate with one another. It was reported that the boys and their father were laughing and joking together and appeared entirely comfortable and relaxed. The boys were reported as seeming pleased at the prospect of seeing him at the next session.

The father was later arrested in relation to the alleged “strangling” incident; his bail conditions prevented him from having any contact with his children.

When the matter came before the court on 11th November 2015, the court ordered Dr Misch, a child and adolescent psychiatrist, to be jointly instructed. Dr Misch agreed with Dr Morgan's assessment, “that the mother was implacably opposed to contact”. He noted that the children spoke in a “matter of fact way”, and were not “emotionally distressed” when talking about their father. He noted that negatively biased views of a parent result in emotional harm to a child.³⁰³

The father was still seeking contact with the children every alternate weekend and on holidays. Judge Vincent considered that the mother genuinely believed that the father did pose a threat to the children. She concluded that from the mother's evidence she considered herself a protective mother in that she listened to their fears and acknowledged them. She considered it was her role to listen to the children and if they said they were scared of their father or that he had strangled them then she believed it. The mother did not accept the court's previous findings that this did not happen.

Judge Vincent referred to the evidence of Dr Misch where he considered that there was “no question in his mind of the father strangling or being physically violent to his children.” He acknowledged S may have developed that perception, but said perception and memory were different, and in this type of case where there is “so much rehearsal by parents” it was difficult to say what was learnt or what remembered.³⁰⁴ However, despite the court's findings, the mother continued to report that the father strangled S and she

³⁰³ At [48].

³⁰⁴ At [84].

described to the Judge conversations she had with the children where they expressed fears of their father based on S's having been strangled, but she did nothing to put them right. The Judge considered that by doing so, she reinforced in them an idea that the father was dangerous and to be feared. Both Dr Morgan and Dr Misch were clear that the boys would be safe with their father, but she would not accept it.

The mother defended a disclosure made by S, recalling that when he was seven his father had knocked his mother's teeth out (when in fact he was only two at the time), stating her son had a good memory of the event. She also stated that since then every time an ambulance had gone past she and S shared the memory of them travelling together in an ambulance to the hospital after the assault. Judge Vincent stated:³⁰⁵

This was in my judgment evidence of her creating and reinforcing a memory in her child from a very young age that was founded on fear. Her actions have not been to reassure but to build a picture in her son's mind that his father is violent and dangerous. This assault was horrendous, no doubt terrifying and no doubt a valid reason for the mother to feel profoundly mistrustful of the father. I do not doubt it has had lifelong effects. I would accept, also, the evidence of Dr Morgan that the father, who is a practical, not emotional, man was unable to acknowledge the emotional not just the physical impact of the incident. However, it was ten years ago; the mother lived with the father for another three years afterwards. It should not have disqualified this father from having a relationship with his children nor them from having a relationship with him. The mother plainly feels that it should.

While it is clear that there was serious violence between the mother and father prior to their separation, there was no violence found in respect of the father against the children. The mother, perhaps somewhat understandably, had developed what she considered to be a protective stance in relation to the boys' contact with their father. However, safety allegations relating to the children were considered unfounded and that there were, therefore, no grounds for justified estrangement. Therefore, the mother's inability to accept that there were no safety issues relating to the boys was a significant cause of her alienating behaviour.

³⁰⁵ At [85].

5.2.1.3. *Re D (A Child)* – Court of Appeal England and Wales

*Re D (A Child)*³⁰⁶ involved a six-year-old boy, OD. The proceedings had been going since OD was one year old. Dr Lucy Turner, a psychologist, had undertaken an assessment in relation to the father and concluded that he had no mental health or personality disorder issues, but his profile included "experiencing uncontrollable anger, being impulsive and having a tendency to be controlling"; she also said that he had "poor self-understanding".³⁰⁷ As a result of this, the father had agreed to undergo anger management and parenting classes.

The father had contact on alternating weekends with OD until an allegation was made by the child to his teacher in 2012 that his father had slapped him. Contact ceased. An investigation was conducted by Cafcass (Children and Family Court Advisory and Support Service), with the officer conducting the investigation having been impressed by the quality of contact between OD and his father. A further contact arrangement during weekends was implemented. Then, another allegation was made in 2013 and a further assessment was undertaken. The assessment recorded that OD had told the social worker his father had hit him and "sometimes pokes him in the eye".³⁰⁸ He had asked not to be sent to his father's place.

Ms Barratt, in her report, recorded some extremely disturbed behaviour on the part of OD. On 15 January 2014 when his father was mentioned, he made a fist and punched himself and stated that "Daddy hurts him", he said that if his father was put in a family picture, he would "rub him out".³⁰⁹ On another occasion, Ms Barrett reported that OD was drawing carefully and meticulously; when his father was mentioned he went to rip up the picture, to draw a black line on it and then to draw black marks on the sitting room walls. Ms Barratt described what happened as follows:³¹⁰

OD's presentation indicated anger, distress and fear. He then pulled at my clothes quite anxiously and aggressively. When his mother came into the room, he kicked his mother in the stomach when she reprimanded him for his behaviour. OD threw his crayons over the floor in anger and determination to

³⁰⁶ *Re D (A Child)* [2015] EWCA Civ 829.

³⁰⁷ At [3].

³⁰⁸ At [8].

³⁰⁹ At [11].

³¹⁰ At [11].

try and rip the picture he had worked hard to draw previously. The distress OD seems to be in when his father is mentioned is very concerning. The anxious and aggressive behaviours he displays are also very worrying. Such behaviour seems to occur only when his father is mentioned. OD appears to be communicating that he really does not wish to see his father. To do so would cause him further heightened levels of distress.

Ms Barratt recommended no contact between OD and his father. The court ultimately found that the father had not injured OD and considered that the mother too readily accepted "the literality" of what OD said.³¹¹ Again, this appears to be a hybrid case in that the court considered that while the father had anger issues, the allegations made by the boy were unfounded and the mother's acceptance, as well as the presentation of the boy, indicated her behaviour was alienating.

5.2.1.4. *DCP v J.B. & K. J.* – Prince Edward Island Supreme Court, Canada

In *DCP v J.B. & D.J.*³¹² the mother had alleged physical and emotional abuse by the father against the child. This case was slightly unusual in that it involved an application by the Director of Child Protection that the child in question was in need of protection. In this case, the reason for the application was based primarily on the issues relating to parental alienation.

The decision involved a 13-year-old child whose parents had been separated since the child's birth. The case was heard in the Supreme Court, and the application was made on the basis that the parents had not been able to work amicably together. The report completed on behalf of the Director referred to the mother "giving inappropriate and harmful messaging" to the child³¹³ and also referred to the possibility of parental alienation. He considered that the child was in need of protection from the mother due to the risk of emotional harm as a result of her views but also from the father due to a risk of emotional harm and a risk of physical abuse. The case could, therefore, be categorised as a hybrid one, involving both elements of alienation and justified estrangement.

The specific grounds on which the Director considered the child was in need of protection was on the basis that there was a significant risk of emotional harm as a result of the

³¹¹ At [27].

³¹² *DCP v. J.B. & D.J.* 2017 PESC 16

³¹³ At [32].

challenging relationship between her parents and the extremely negative view they held of each other.

There were a number of contributing factors considered relevant to the child's need for protection, in addition to those involving allegations of psychological and physical abuse. A Social Worker, Mr Oftedahl, appeared as a witness and was accepted by the court as an expert, as he had a Master's degree in clinical Social Work. He was also a clinician with the Family Court Counsellors' Office and the acting Coordinator. His experience included dealing with family dynamics, including high conflict cases, and he had prepared well over 100 home studies and testified in family court matters. At paragraphs 50 and 51 of his report, he identified ten "major factors influencing these complex family interactions". There were:³¹⁴

1. The extremely high conflict between [the parents];
2. The dysfunctional communication between the parents, and between [the Child] and [the Father];
3. The confusing inconsistencies in [the Child's] narratives regarding his wake-up routine, his homework compliance, his interactions with his father and other issues;
4. [The Mother's] persistent unsubstantiated allegations of physical and emotional abuse by [the Father] against [the Child];
5. [The Child's] reportedly extreme and maladaptive behaviours at school and at his father's home;
6. [The Child's] display of blunted and emotionally distant affect outside of his mother's home;
7. [The Mother's] contentious relationship with [the Child's] school and her opposition to reasonable school behavioural expectations;
8. [The Father's] conflicts with [the Child] over homework issues;
9. [The Mother's] reported dismissal of strong recommendations by Child Protection for individual counselling for herself; and
10. Whether a referral for a psycho-social evaluation for [the Child] is warranted.

³¹⁴ At [49].

However, one thing that was noted by Mr Oftedahl was the “inconsistent narratives” as relayed by the child regarding a number of matters, including allegations in relation to his father.³¹⁵

Alienation was a significant feature of the case but was not determinative given these were protection proceedings as opposed to care and contact proceedings. Like many alienation cases, the numerous allegations by the mother were found to be unsubstantiated either by Child Protection or the child’s doctor. In considering the question of alienation, Mr Oftedahl had referred specifically to the child’s expression of hostility and disgust towards his father but without any indication of fear of his father or rejection by his father. He considered that this was untypical of realistic (or justified) estrangement.

The Judge referred to the report of a social worker, Ms MacEachern, who was a witness on behalf of the Director. When considering the question of the alleged abuse she stated:³¹⁶

I found the testimony of Ms MacEachern on this point to be quite compelling. She relayed her observations of the child as she was exploring with him the allegations of physical abuse. She describes that the child would simply repeat the allegations over and over; however, his affect was very flat and robotic. She notes that he “couldn’t or wouldn’t” provide any details or context of what had happened before or after the alleged abuse. She describes that he seemed vacant and in fact even bored as he was describing the events. In summary, he was flat, robotic, bored, vacant, essentially shut down and his affect did not change.

This type of affect in a child in such situations is common with alienation. An interesting point of note, in particular, is the hostility and disgust the child expressed but without any apparent fear. As a result, it was clear to the court that alienation was a significant factor in the case and the Director was granted the Order for protection of the child.

³¹⁵ At [52].

³¹⁶ At [93].

5.2.1.5. *K.M.H. v P.S.W.* – British Columbia Supreme Court, Canada

In the case of *K.M.H. v. P.S.W.*³¹⁷ the mother had alleged father had been physically abusive, but this was not accepted by the court. This case primarily involved a 13-year-old girl whose mother had a Master's degree in counselling psychology (and whom had commenced a PhD) and whose father was a psychiatrist. There were two children, CW, aged 13, who was the subject of the proceedings, and MW, who was 11 years old.

Prior to the commencement of the hearing, a parenting order was already in place stipulating a weekly alternating parenting regime. MW had transitioned to the 50-50 shared care, but CW had not and resisted all contact with her father.

Following their separation, the couple had engaged a team of professionals, referred to throughout the case as the "Therapeutic Team". They included:

- Doctor Lisa Ferrari, a psychologist engaged to work with CW;
- Leslie Braun, a therapist working with MW;
- Greg Daily, a therapist working with CW;
- Stephanie Fabbro, the parties' parenting coordinator;
- Doctor Nicole Aube to prepare a report for the court.

The mother's evidence was that the father was abusive and that the child's resistance to contact resulted from this. However, Dr Ferrari's evidence indicated that while this was one contributing factor, there were a number of other factors that also impacted on CW's rejection of her father. Those factors included:³¹⁸

- a) CW's anxiety, which is responded to inconsistently by the claimant (mother);
- b) interference in the children's counselling sessions by the claimant;
- c) minimisation of the respondent's role as a parent;
- d) a narrative that the respondent is an abuser;
- e) minimisation by the respondent of the impact of his anger on CW;
- f) continuation of parental conflict and lack of co-parenting;

³¹⁷ *K.M.H. v. P.S.W.*, 2017 BCSC 1284

³¹⁸ At [19]

- g) a need on the part of CW to protect the claimant;
- h) a parenting style of the claimant that reinforces dependence and alignment;
- i) uncontained intense emotional expression by the claimant about the parental conflict; and
- j) inconsistent messages to CW from the claimant about CW's relationship with the respondent.

As a result of the conflict, Dr Aube had diagnosed both children as having General Anxiety Disorder. She further considered that there were multi-dimensional factors contributing to the refusal, including:³¹⁹

- alignment between CW and her mother;
- some degree of justification based on CW's sense of betrayal about the respondent's actions;
- aspects of parental alienation; and
- "mild level" of estrangement as a result of the absence of any close contact between CW and her father since 2014.

Dr Aube recommended both parents share equally in the parenting and guardianship responsibilities and time in relation to the children, preferably week about. She noted the difficulties in the relationship between CW and her father and recommended a progressive schedule of contact between them be implemented.

However, Judge Skolrood was unable to conclude that the mother was engaged in parental alienation, or that allegations of family violence made by the mother against the father were established. He went on to outline, what appears to be a reasonably succinct formula required to be applied by the Canadian courts in order to make a finding of parental alienation. He referred specifically to the decision in *Williamson v. Williamson*³²⁰ where the Court of Appeal stated:³²¹

Alienation is a serious allegation ... (and) should be proved. Proposed responses should be supported with admissible expert evidence. In determining whether

³¹⁹ At [19].

³²⁰ *Williamson v Williamson* 2016 B.C.J. No. 343; 2016 BCCA 87; 2016 B.C.C.

³²¹ At [47] and [48].

the particular evidence is admissible, a court must follow the steps outlined in *White Burgess Langille Inman v. Abbott and Haliburton Co.*³²² First, a court must examine the threshold admissibility of such evidence in accordance with the well established factors in *R. v. Mohan*³²³, (relevance, necessity, absence of an exclusionary rule and a properly qualified expert). Then, if the evidence meets the threshold requirements of admissibility, the court must exercise its gatekeeper function and balance the potential risks and benefits of admitting the evidence.

The analysis of the decisions resulted in a precedent that the court must not make a finding without considering the particular expert's qualifications before a finding of alienation can be made. On that basis, Judge Skolrood, in the *K.M.H. v P.S.W.*,³²⁴ considered that there was no expert evidence sufficient to support a finding of alienation. He referred specifically to the report of Dr Aube had stated there were some "aspects of parental alienation" on the part of the mother. However, he considered that this fell short of the type of evidence mandated by the Court of Appeal to support a finding of parental alienation, but, more importantly, did not warrant the extreme measures often implemented when a finding of alienation is made.

The question, therefore, of whether the alleged behaviour of the father constituted a justified estrangement, was not specifically considered. Such a finding, realistically, would not be possible without first finding alienation to be present. Because the Judge ultimately made a finding that CW should be in the shared care of both her parents, the conclusion can be drawn that even where there was some merit to the allegations this did not pose a risk to the children (the younger child already being in a 50-50 shared care arrangement with both of her parents).

5.2.2. Summary

Of the six cases reviewed, four of them involved safety allegations by one parent against the other (two of the UK cases and two of the Canadian cases). In all of these cases, the allegations were either considered unfounded or not relevant to the safety of the child in

³²² *White Burgess Langille Inman V. Abbott and Haliburton Co.* 2015 Can. Sup. Ct. LEXIS 25; 2015 SCC 23; [2015] A.C.S. no 23; [2015] S.C.J. No. 23 ,at paras. 22-23.

³²³ *R V Mohan.* [1994] 2 S.C.R. 9; 1994 S.C.R. LEXIS 771

³²⁴ *K.M.H. v. P.S.W.*, above n 317.

having contact with the other parent. In *Re S (Children)*³²⁵ (UK) the court considered there were no safety issues in relation to the children and, therefore, no justified estrangement such that supported the mother's behaviour, which, as a result, was alienating. *DCP v. J.B. & D.J.*³²⁶ (Canada) was different in that the Director of Child Protection considered there were potential issues regarding the child's safety with the father, as well as alienation by the mother. This then likely explains why the application was made by the Director. Had there been no safety issues in respect of the father, the court would likely have dealt with the issue of the alienation as between the parents. The other two cases involved no finding of risk to the child but may still sit, if categorised, in the "hybrid" category. If considered as a spectrum, they would, however, be on the "alienation" end of the spectrum. These findings are largely consistent with the New Zealand case law.

5.3. Psychopathology/Personality Traits

As with the New Zealand cases, one of the UK cases considered the question of the mother's anxiety, and one of the Canadian cases also referred to the issue of psychopathology.

5.3.1. *Anxiety*

5.3.1.1. *Re S (Children)* – Family Court at Oxford, England

In *Re S (Children)*³²⁷ the alienating mother was assessed by two psychologists. The question was whether she suffered from anxiety, and, therefore, whether that impacted on her behaviour. The Judge considered the reports of the experts and stated:³²⁸

The professionals who have assessed her (the mother) have concluded that she is not primarily motivated by anxiety. Dr Morgan did not identify her as suffering from anxiety. Dr Misch said in evidence to me that he "did not think her reluctance for contact is a consequence of her anxiety I think it is a consequence of her dislike of their father." I accept the expert analysis and my experience of the mother's evidence chimed with his that her view of the father is one of extreme negativity. If she were worried about the potential risk to the children, she would ask for supervised contact, for the risk to be properly

³²⁵ *Re S (Children)* above n 302.

³²⁶ *DCP v. J.B. & D.J.* above n 312.

³²⁷ *Re S (Children)* above n 302.

³²⁸ At [96].

assessed, and she would be looking for ways in which she and the boys might be reassured. However, even though a body of professional opinion has provided this reassurance, she will not accept it. She does not recognise any benefit at all to her children of having a relationship with their father and genuinely believes they are better off without them.

While anxiety was not considered to be present, it was clear that the mother's particular negativity towards the father was a significant factor. The question of whether this might have been because of an underlying psychopathological issue was not considered.

5.3.1.2. *DCP v J.B. & D.J.* – Prince Edward Island Supreme Court, Canada

In the Canadian case of *DCP v. J.B. & D.J.*,³²⁹ some of the concerns raised in relation to the mother by social workers included concerns regarding her “irrational thoughts, erratic thought process, accusation towards workers, defensiveness, desperation and lack of ownership”.³³⁰

While there were other considerations for the safety and wellbeing of the child, this was clearly a significant consideration in terms of the question of whether the child was in need of protection (and placed into alternative care). Because of the serious concerns held for the safety and wellbeing of the child, which focused largely around the significant impact of the conflict and alienating behaviours, the court concluded that the child was in fact in need of care and protection.

5.3.2. *Summary*

In both cases, the mother's personality traits were addressed but without concluding whether there was any psychopathology as an underlying cause. However, the Canadian court in *DCP v. J.B. & D.J.*³³¹ has given a clear mandate for a child to be taken out of the care of both parents where this type of alienating behaviour is present (and there may be safety concerns for the child in the care of the other parent), and the child is seriously adversely affected as a result.

³²⁹ *DCP v. J.B. & D.J.* above n 312.

³³⁰ At [97] referred to in paragraph 33 of Ms Farrell's affidavit.

³³¹ *DCP v. J.B. & D.J.* above n 312.

5.4. High Conflict

All of the cases referred to above appear to fit the “high conflict” criteria in that the parties had a history, often lengthy, of litigation with multiple hearings and safety allegations. However, the UK and Canadian courts also identified situations where high conflict was a significant factor in the alienation.

5.4.1. *High Conflict Cases*

5.4.1.1. *Re D (A child)* – Court of Appeal England and Wales

In *Re D (A child)*³³² Elias and King LJ stated that:³³³

It is undoubtedly the case that the inability of parents to behave in a civilised and cooperative manner towards each other for the sake of their children is not in itself a reason to refuse contact to an absent parent. Equally, however, there are cases, (fortunately for the children concerned, relatively few and far between), where the level of animosity between the parents and their consequent behaviour, either one towards the other, or to each other, is such that it has had a serious and deleterious effect on the child at the centre of the dispute. In the most extreme cases, the harm caused to the child by the behaviour of their parents is such that the intervention of the local authority becomes necessary; in other cases, a Judge, with the child's welfare as his or her paramount consideration, may, no matter how reluctantly, feel obligated to call a halt to contact for a period of time in order to relieve the child from the maelstrom of his parent's destructive relationship.

This is a clear identification, apart from the other issues including the safety concerns, that the high conflict was a significant feature of the case and cause of significant impact on the child.

On appeal, the court was not willing to grant an order for contact by the father despite the alienating behaviour. The appeal Judge noted that the hearing Judge had the opportunity of seeing for himself the continuing acrimony between the parents and had reluctantly concluded that the case was one where contact could not work for OD "largely because their relationship between the parents is so obviously acrimonious and so clearly

³³² *Re D (A Child)* above n 306.

³³³ At [31].

permeates all their dealings with each other".³³⁴ The decision was made primarily on the basis of the effect the high conflict between the parents was having on their son.

5.4.1.2. *B v B* – Family Court at Norwich and *Re S* – Family Court at Oxford

In *B v B*,³³⁵ the Judge ordered a change of care as a result of the child being alienated. This contrasts with the outcomes in *Re S (Children)*³³⁶ and *Re D (A Child)*³³⁷ where, despite considering it was in the best interests in respect of the children having a relationship with both parents, the court considered it would be detrimental to the children to make such an order. Clearly, every case is subjective, and the court must decide what is in the children's best interests. Generally, the reasoning for each decision will be based on expert evidence, but when Judges give well-reasoned decisions, this provides greater certainty.

5.4.1.3. *Delichte v Rogers* - Manitoba Court of Queen's Bench, Canada

*Delichte v Rogers*³³⁸ was a Canadian case where high conflict was present, but there was no reference to safety allegations. The case was slightly unusual in that it involved a contempt application by the children's father, for breach of a parenting order that related directly and specifically to alienating behaviour by the mother. The high conflict was evident in the long history of litigation, including an earlier contempt proceeding where the mother was sentenced to 45 days imprisonment in 2008, which was suspended on condition that she does not breach an order of the court for a period of three years. Judge Doyle described the proceeding as "one more step in an intensely hostile family litigation marathon that, sadly, does not appear to be at its completion".³³⁹

The proceeding involved two children, at the time the final orders, granting the parties joint custody, were made (by consent) the daughter was aged 10 and the son aged six. The orders also contained guardianship provisions including that the parties communicate and consult on all major decisions and where they could not agree that the

³³⁴ *Re D (A Child)* above n 306 at [32].

³³⁵ *B v B* above n 294.

³³⁶ *Re S (Children)* above 302.

³³⁷ *Re D (A Child)* above n 306.

³³⁸ *Delichte v. Rogers* (2017) MBQB 117 (Winnipeg Centre).

³³⁹ At [3].

father had the final decision making authority in relation to the son's extracurricular activities and that the parties would register for the "Our Family Wizard Program".³⁴⁰

The father, in his application, alleged that the mother breached several provisions contained in the Order. The mother had moved to California (from Winnipeg), and the parents were unable to agree where the children would continue their education. Despite no agreement being reached, the mother enrolled the children in a private school under her surname rather than the father's, which was the legal surname of the children. She also failed to provide the father with ongoing information regarding the children.

The father and daughter were estranged prior to the mother relocating the children to California. The father was unable to obtain any information regarding the children other than what was publicly available, as the mother failed to disclose information to him in breach of the Order. In addition, she failed to ensure the son had a passport when travelling to visit his father.

At the date of the proceedings the son was 16 years of age. Upon the relocation to California the father had decided to suspend his care and contact with the son stating, "This is heart-breaking for me, but I do not want to cause my son any emotional pain from the pressure and coaching exercised by [the mother] that I understand he experiences because of our time together".³⁴¹

The father had stated that upon informing his son of his decision "... [the son] cried but agreed it would take a lot of pressure off him if we did not see each other for an indefinite period. This was one of the most agonizing things I have ever done in my life."³⁴²

The high conflict in this case was the primary cause of the children becoming alienated from their father. The daughter having been completely alienated and the son clearly suffering significant emotional distress as a result of the situation.

³⁴⁰ <https://www.ourfamilywizard.com/>>

³⁴¹ *Delichte v. Rogers* above n 338 at [37].

³⁴² At [38].

5.4.1.4. *K.M.H. v. P.S.W.* – British Columbia Supreme Court, Canada

*K.M.H. v. P.S.W.*³⁴³ was also a high conflict dispute. Considering appropriate outcomes in such cases, Dr Aube, a member of the “Therapeutic Team,” made the following observation regarding these particular children:³⁴⁴

Some literature on parental alienation proposes to sever ties with the parent that has promoted dissension while others promote a substantial change to guardianship, parenting time and parenting responsibilities; I do not believe these approaches would assist [CW and MW]. Depriving them from regular parenting time with one parent would be ill-advised. It would be contraindicated not to respect the children’s attachment to their biological parents. I am of the opinion that one needs to persuade both parents to work together and to entice [the claimant] to find a healthier emotional balance.

The outcome of the case was that the Judge concluded that all of the terms of the current parenting order (of equal shared care) should remain in effect. He stressed the importance of both parties having a responsibility to cooperate to ensure the best interests of the children were being met. He did, however, order that the parents enrol in the Reconnect Families Program or, alternatively, in one of the other family reunification programs identified by the Therapeutic Team. As to which program, this was to be a decision made by both parents or, failing agreement, to be made by the father.

Finally, he determined that if the parenting time between CW and her father had not increased by 31 December 2017, or such other date as recommended by the reunification team, either party could apply to the court for further directions, such application supported by a report from the reunification team in parenting coordinator.

In her recommendation, Dr Aube has stated, “If there is, in the near future, no significant change, I recommend strongly to [the respondent father] to seek sole guardianship”.³⁴⁵

These cases also illustrate that while alienation cases often involve other issues, such as safety allegations, high conflict in and of itself is a cause of children becoming alienated from a parent.

³⁴³ *K.M.H. v. P.S.W.* above n 317.

³⁴⁴ At [15].

³⁴⁵ At [16].

5.5. Failure to Work Through Alienation Issues

A parent's apathy, in terms of failing to encourage a relationship between children and the other parent where alienation is evident, was also a factor identified in one of the New Zealand cases. While this was not evident in any of the three Canadian cases reviewed, it was present in one of the UK cases.

5.5.1. *Apathy*

5.5.1.1. *Re S (Children)* – Family Court at Oxford, England

*Re S (Children)*³⁴⁶ involved the “apathy” of the mother. An investigation had been undertaken regarding the mother's allegations against the father, and Judge Vincent considered that the mother had the opportunity to work with the father in Dr Misch's programme of reconciliation but did not. As a result, the children's views had become more entrenched.³⁴⁷ On that basis, the mother had effectively prevented the children from having a relationship with their father.³⁴⁸ Judge Vincent considered that her attitude towards the father was one of “unremitting negativity” and that she appeared to see no benefit in the boys spending time with him.³⁴⁹

Judge Vincent considered that if no order were made compelling the children to see their father there was no reasonable prospect that their mother would take any steps either to “adjust the demonised version of him that she and the children hold, nor to promote direct or indirect contact with him or any members of the wider family”.³⁵⁰ She considered that would mean the boys' relationships with their father would be likely to be permanently severed at age 12 and eight and that, as a result, the consequences for them, and for him, throughout their whole lives would be potentially devastating.

She considered that on the balance of probabilities the children were not at risk of physical harm from their father. However, in so far as emotional harm was concerned she referred to Dr Misch who considered the children's view of their father “was not based on reality, and they had developed a false belief system which was prejudicial to them.” As a result, he had considered that “their innate and natural tendency to attach to both parents was compromised and their attachment to their father disrupted.” She referred

³⁴⁶ *Re S (Children)* above n 294.

³⁴⁷ At [87].

³⁴⁸ At [90].

³⁴⁹ At [94].

³⁵⁰ At [116].

to his evidence that this would affect the boys' future ability to form secure attachments. She also referred to Dr Misch's evidence that this would impinge on their mental health.³⁵¹

Judge Vincent expressed the clear wish that "these children's relationship with their father rekindled and allowed to flourish."³⁵² However, the father was not asking the Court to order a change of residence for the boys, so a change of care was not an option. Alternatively, she considered making an order compelling contact, but she recognised this would be against their wishes.

Finally, she stated:³⁵³

Instinctively I do not want to accept that the Court has reached the end of the road with children who are eight and 12. I am satisfied they are not at risk of harm from their father, but consider it would be to their very great benefit to spend time with him. In my Judgment, they will suffer significant emotional harm if they do not.

As a result, she concluded that she should not force the boys to have contact with their father against their wishes and cited a number of reasons including, and in particular, the evidence of the experts engaged by the court and that she was concerned there was a real and significant risk of emotional harm if the boys were forced to see their father. She did, however, order indirect contact by way of phone and social media and suggested the father set up a pocket money account for the boys and write to them on special occasions. In doing so, she recognised that her suggestions were "meagre and a grave injustice to both the father and the boys".³⁵⁴

It is difficult not to consider how the outcome of this situation may have been different had the court taken significantly more proactive steps at an earlier stage in the proceedings. The action used in some of the New Zealand cases such as bonds or warnings of wardship or, as with the Canadian approach, contempt, may have proven a deterrent for the mother's ongoing alienating behaviour.

³⁵¹ At [119].

³⁵² At [132].

³⁵³ At [141].

³⁵⁴ At [148].

5.6. Unilateral Guardianship Decisions

There was also one Canadian case where there was a breach of guardianship obligations. Interestingly there had also been a relocation, although this was on application by the mother and, therefore, did not constitute a “unilateral relocation”. Of the three UK cases, none specifically dealt with the question of unilateral guardianship decisions or relocations. However, in the Canadian case involving the unilateral decisions by the mother, these decisions were a significant issue relating to the mother’s alienation of the children.

5.6.1. *Unilateral Relocation*

5.6.1.1. *Delichte v. Rogers* – Manitoba Court of Queen’s Bench, Canada

In *Delichte v. Rogers*,³⁵⁵ Judge Doyle, with regard to the unilateral relocation issue, stated that:³⁵⁶

I am satisfied beyond a reasonable doubt that the mother has repeatedly breached the final Order that grants the father joint custody of the children and requires the mother to communicate and/or consult with the father on all major decisions relating to the children.

He held that because of the actions of the mother the father had not been able to participate on an ongoing basis in decisions concerning the education of the children since they had relocated to California. As a result, he considered that the mother had marginalised the father in so far as making decisions that affected the son. He considered that she was in contempt of the final Order by failing to communicate and consult with the father and failing to comply with the Order granting the father final decision making authority regarding the son’s extracurricular activities and with respect to using Our Family Wizard.³⁵⁷

Judge Doyle considered that this contempt proceeding was:³⁵⁸

³⁵⁵ *Delichte v. Rogers* above n 338.

³⁵⁶ At [49].

³⁵⁷ <https://www.ourfamilywizard.com/>>

³⁵⁸ *Delichte v. Rogers* above n 338 at [79].

... in many respects a sequel to the 2008 contempt proceeding that was before Little J., which arose as a result of the mother's misconduct. There is a common theme of parental alienation.

Judge Little, in the earlier decision, *Delichte v Rogers*³⁵⁹ stated:³⁶⁰

The evidence overwhelmingly demonstrates that the relationship these two young children were to have had with their father under the terms of that Order has gone utterly unsupported by their mother on any standard by which goodwill or bona fides might be measured. Worse than that, their time with [the father] has been manipulated, obstructed, and undermined, and with that the terms of an Order contemptuously thwarted.

Judge Doyle found that the same conduct that Little J. had identified in the 2008 contempt proceedings had continued and had become the subject of the present proceedings. He considered that this had resulted in the father and daughter's relationship being severed and the father and son's relationship being "profoundly weakened".³⁶¹ Further, he found that the mother had "on an ongoing basis unilaterally made important decisions affecting the children without consulting the father" and had defied the Order as "most serious, deliberate disobedience". He concluded that, as such, imprisonment should be imposed.³⁶²

Because Judge Doyle considered that the mother was a repeat contemnor, involving similar misconduct previously, he sentenced her to 60 days of imprisonment for the purpose of securing compliance with the Order in respect of the father having final decision making authority regarding the son's extracurricular activities. However, he suspended the period of imprisonment until the son reached 18 years (approximately 21 months), provided the mother satisfied certain conditions as follows:³⁶³

1. The mother shall provide to the father particulars of all required and optional courses in which the son may register each term and a copy of the

³⁵⁹ *Delichte v. Rogers*, [2008]. MBQB 131, 227 Man. R. (2d) 118)

³⁶⁰ At [5].

³⁶¹ At [80].

³⁶² At [81].

³⁶³ At [22].

- school registration form, which is to be completed 30 days prior to the registration deadline;
2. The mother shall provide to the father a copy of the completed school registration for each term where there is a registration, within five days of the date of the registration;
 3. The mother shall provide to the father a copy of each report card and progress report concerning the son that is issued by the son's school within five days of issuance of the report;
 4. In the event that the son discontinues his attendance in any course in which he is registered, the mother shall inform the father writing within five days of the discontinuation of attendance;
 5. The mother shall provide to the school such written authorisation as is required by the school to permit the father to make inquiries and receive oral and written information regarding the son's studies and participation in school activities on or before July 31, 2017;
 6. The mother shall provide particulars and copies of all documents in regard to any extracurricular activity in which the son expresses an interest to the father no later than 30 days prior to the registration deadline for the activity;
 7. The above information and documents may be provided by the mother to the father by using either Our Family Wizard or email.

This outcome is certainly a strong message to the mother of the implications of continuing to breach those obligations. It is somewhat unfortunate, however, that the daughter's relationship with the father had already been severed and the father had made the heart-breaking decision to stop contact with his son so as to reduce the ongoing trauma to him of his mother's alienating behaviour when he saw his father. However, the Court was able to sanction the father's guardianship rights by using the contempt provisions. The question is whether the relationship between the father and his children might have been saved had the Court used such sanctions early in the proceedings to reduce the risk of the children becoming alienated.

5.7. Implications of Alienation

5.7.1. *Outcomes for Children*

5.7.1.1. *DCP v J.B. & D.J.* – Prince Edward Island Supreme Court, Canada

The Canadian courts have also considered the outcomes of alienation. For example, in *DCP v. J.B. & D.J.*, Dr Mallia undertook a psychological assessment of the child to determine the “cognitive, academic, and social/emotional functioning and to aid with academic and long term planning”.³⁶⁴ The Judge summarised Dr Mallia’s findings as follows:³⁶⁵

Dr Mallia concludes the child is “not doing well at all” and that his mental health functioning is impaired and continues to worsen over time. While Dr Mallia points out that it is beyond the scope of his assessment to determine with “exact causation” the source of the child’s stressors, the “strongest case” of the child’s stress appears to be the exposure to the long standing conflict in his family.

Dr Mallia’s conclusions were summarised as follows:³⁶⁶

1. Test results indicate the child is intelligent; however, there are significant concerns regarding abstract reasoning.
2. The child meets the diagnostic criteria for learning disabilities in reading and mathematics.
3. Tests indicate “significant clinical concerns” regarding the child’s emotional and personality functioning.
4. Dr. Mallia specifically comments on the “Rorschach” tests:³⁶⁷
5. Interpretation of [the child’s] Rorschach was concerning in that in comparison to others of his age, many of his perceptions were somewhat limited in complexity, lacked good representations of others and were highly unusual in light of form demands ...[his] Rorschach results are very unique in that he has given a significant number of these types of perceptions... Therefore, a person who performs like this on their Rorschach is more likely to make judgments regarding their perceptions based more on their expectations rather than their reality.

³⁶⁴ *DCP v. J.B. & D.J.* above n 312 at [61] referred to at paragraph 21 of Dr Malia’s report.

³⁶⁵ At [60] referred to at paragraph 23 of Dr Malia’s report.

³⁶⁶ At [61].

³⁶⁷ At [61] referred to at paragraph 21 of Dr Malia’s report.

6. The results of the evaluation strongly indicate that social-behavioural and emotional functioning are impaired.
7. The child is not mentally healthy.
8. The child himself reports significant symptoms of anxiety, and he meets the diagnostic criteria for an anxiety disorder.
9. Dr Mallia also notes the longstanding history of allegations of physical and mental abuse by the child's father, including that the father has consistently denied the allegations.

He concluded that this child was reporting symptoms typical of children who have experienced trauma. However, he noted that the child's presentation lacked affect and appeared rote stating:³⁶⁸

[The Child's] pattern of test results, behavioral observations, behavioral reports, and clinical interview are extremely complex and difficult to interpret. Test results show that The Child consistently reports symptoms similar to children who have been abused... However, test results throughout the assessment show that The Child has a marked tendency to take a seriously narrow view of his environment. Test results show that The Child restricts his perceptions to the point where his reality testing is impaired, and then he has a marked tendency to misperceive events and form mistaken impressions of people and what their actions signify. The psychological interpretation would therefore indicate that The Child truly believes he has been abused. There are no indications in this assessment that would indicate that he is consciously distorting events or facts. However, tests results show that his judgment and perceptions of events are impaired.

The Judge accepted the expert evidence and specifically commented on the number of references to "parental alienation", as well as "features" of parental alienation as to the cause of the issues suffered by the child.³⁶⁹

³⁶⁸ At [61] referred to in paragraph 22 of Dr Malia's report p. 22.

³⁶⁹ At [75].

5.7.2. Summary

While it is not as simple as merely defining the behaviour of the child as a direct result of only alienating behaviour, this case illustrates the traumatic effect of high conflict and alienating behaviour on children.

5.8. Comparative Analysis of Cases Reviewed

The alienating behaviours identified in the UK and Canadian cases are strikingly similar to those identified in the New Zealand cases as set out in Table Three below:

Table Three: Comparison of Alienating Behaviours in Cases Reviewed from New Zealand, England & Wales and Canada

Case & Jurisdiction	Behaviour				
	<i>Safety</i>	<i>Psychopathology/ Personality Traits</i>	<i>High Conflict</i>	<i>Passive/ Dysfunctional Parenting</i>	<i>Unilateral Decisions</i>
New Zealand					
<i>K v B</i>			•		•
<i>ALZ v FLZ</i>	•		•		
<i>F v F</i>		•			
<i>Garrett v Garrett</i>				•	
<i>Belford v Belford & McInnes v McInnes</i>	•	•			
<i>Secrest v Axley</i>	•		•	•	
<i>Gebrien v Todd</i>	•	•			
<i>Palmer v Holm</i>	•	•			
<i>ASM v DPM</i>	•	•			
<i>MR v CR</i>					•
<i>M v N</i>					•

England & Wales					
<i>B v B</i>	•				
<i>Re S (Children)</i>	•	•		•	
<i>Re D (A Child)</i>	•		•		
Canada					
<i>DCP v J.B & D.J.</i>	•	•			
<i>K.M.H. v. P.S.W.</i>	•		•		
<i>Delichte v Rogers</i>			•		•

It is clear from this case review that the majority of cases where alienation is identified also involve allegations of abuse or violence. This is significant, as it clearly illustrates the need for both the research and the courts to identify the issues relating to justified estrangement and why it can be viewed as a spectrum. It is also clear that particular personality traits are a factor present in a number of these cases and why assessment for psychopathology may be a useful tool for the courts to consider to identify alienation. All these cases had a lengthy litigation history, and while high conflict is only specifically identified in six of the 17 cases referred to in Table Three, it could be argued that all these cases involve high conflict if this is defined as those cases involving a lengthy litigation history. While the making of unilateral decisions is not something the research focuses on it is interesting to note that it appears as a factor identified by the New Zealand courts and also the Canadian courts as contributing to (or causing) alienation.

5.9. Conclusion

The manner in which the England/Wales and Canadian cases are dealt with vary. There appear to be some inconsistencies in the England/Wales cases, in terms of two cases with similar facts where a change of care was ordered in one case (*B v B*)³⁷⁰ but not in the other (*Re S (Children)*).³⁷¹ In addition, of the cases reviewed, the England/Wales courts had not taken the opportunity to take proactive steps to deter alienating behaviour at an early

³⁷⁰ *B v B* above n 294.

³⁷¹ *Re S (Children)* above n 302.

stage in the proceedings, unlike both the Canadian and New Zealand courts. The Canadian courts, in contrast with the New Zealand and England and Wales courts, were more likely to order therapeutic intervention.

Like the New Zealand cases, the behaviours identified in the Canadian and UK cases are consistent with those referred to in the empirical research. However, there are many more behaviours considered in the empirical research that may contribute to a child becoming alienated. What is unknown is whether there are other alienating behaviours present in these cases that are not being identified by the court. This is where consistent diagnostic criteria would be useful, as it would assist the courts in assessing all behaviours that may be relevant.

Chapter Six

How should the New Zealand Courts Deal with Alienation?

6. Introduction

The empirical research establishes specific behaviours exhibited by an alienating parent that may result in a child rejecting the targeted parent. However, since the 1970s when the issue was first researched, the question of justified estrangement has been considered extensively in terms of its relationship with such alienating behaviour. One of the most challenging questions for the courts is to identify cases where the rejection by a child of the parent is primarily the result of alienation in contrast to cases where a parent's own behaviour results in the child rejecting them. This identification, in terms of where the case sits on the alienation/justified estrangement spectrum, is essential. Only then can the courts consider what outcomes can be imposed to reduce the impact on the child. The key to minimising the effect of alienation is fast assessment and early intervention. This Chapter sets out to consolidate the research reviewed with the information available from the case law to assess how the New Zealand courts can more effectively deal with parental alienation.

6.1. The Diagnostic Approach by the Courts

6.1.1. *An Assessment of the Possible Presence of Alienation*

Naïve alienation may be present in a significant number of parenting cases. In assessing the evidence available, the court could use the questions from the BSQ³⁷² to establish whether alienating behaviour is present and whether the behaviours exhibited by a parent are intermittent or sustained. Consideration of this, coupled with the child's reaction to such behaviour and any degree of resistance to contact with a parent can also be early indicators of the intention behind the alienating behaviour. In addition, where a parent is exhibiting BSQ tactics, enquiry could be made as to whether there is involvement of others to the extent where the child comes to view those others as more

³⁷² Amy JL Baker "Knowledge and Attitudes About Parental Alienation Syndrome: A Survey of Custody Evaluators" (2007a) *American Journal of Family Therapy* 35 1-19; Amy JL Baker and Jaclyn Chambers (2011) "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" *Journal of Divorce & Remarriage* 52 55-76; Amy JL Baker (2006) "Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences" *Journal of Divorce & Remarriage* 45 97-124.

important than the targeted parent, which may be another indicator that a parent is exhibiting alienating behaviour. All of these factors can assist in clarifying both whether alienation is present (or a risk of becoming an issue) and whether there is a risk of alienation becoming severe where it is evident there is an intention to alienate (as opposed to naïve alienation).

6.1.2. Is Justified Estrangement Present?

As alienation often includes allegations as to safety issues, the earliest possible assessment of any safety allegations must be undertaken. This is the case regardless of whether there is a risk of alienation or the case is one where there are significant safety issues for the child. The research has established that safety issues, in particular, violence, will not necessarily cause a justified estrangement of the child from that parent, yet this does not necessarily mean that alienation should not be considered. Where allegations of violence are made, even where there is no initial resistance by the child to contact, assessment should be made as to whether there is any element of alienating behaviour by the parent making such allegations. This is because alienation cases often involve unsubstantiated or exaggerated safety allegations. If the safety concerns are assessed, but the parent alleging those issues continues to make allegations or exhibit alienating behaviours, then the child can later become resistant to contact:³⁷³

(some cases) started with elements of less significant realistic estrangement but developed into disproportionate reactions on the part of the child because of alienating behaviour by an overprotective or hyper-vigilant aligned parent who unintentionally or intentionally was not responsive to redirection and intervention.

The court will, therefore, need to undertake enquiry to establish whether the dispute is primarily one relating to alienation, justified estrangement or is a “hybrid” case. The following enquiry could be made:³⁷⁴

³⁷³ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 29.

³⁷⁴ Amy JL Baker, Barbara Burkhard & Jane Albertson-Kelly "Differentiating Alienated From Not Alienated Children: A Pilot Study" above n 61 at 190.

1. Evidence as to a positive relationship between the child and the rejected or targeted parent prior to separation.
2. The lack of any substantiated finding of abuse or neglect.
3. Evidence of whether a favoured parent, where the child is resisting contact, used many of the BSQ tactics.
4. Whether the child exhibits behavioural characteristics or reports ideas characteristic of alienation (i.e. scores of seven or above on the BSQ). Such enquiry would clearly need to be undertaken by an appropriately qualified expert experienced in alienation and with knowledge of the BSQ.

If there is a positive answer to all four questions, then alienation is more likely than realistic or justified estrangement. This would be a clear case requiring early intervention and appropriate steps imposed by the court to minimise the risks of the alienation becoming more severe.

6.1.3. Severity of Alienation

Consideration should also be given at the earliest possible stage to how severe the alienation is where it has been identified. This will depend on the degree of intentionality of the behaviour exhibited by the alienating parent.

6.1.4. Therapeutic Intervention for Mild & Moderate Alienation

Where the alienation is categorised as mild, moderate or severe, different approaches will need to be taken. In the case of mild or moderate alienation, education, psychotherapy and counselling may be sufficient to reverse any impact on the child. In addition, this may result in the alienating parent stopping such behaviour. However, assessment should be undertaken as to issues that may be present indicating the alienation may become severe.

The options for therapeutic intervention necessary to minimise, or resolve, the issues in mild or some moderate cases of alienation are limited for the New Zealand courts because there is no legislative provision to order such intervention and there are no specific alienation psychotherapy programmes available.

6.1.5. Intervention Necessary for Severe Alienation

Where severe (or in some cases moderate) alienation is present, or the alienating parent is displaying behaviours consistent with a categorisation of severe alienation, a more

intrusive approach is required. This includes any case where the child has not, as yet, resisted contact with the other parent. In such circumstances, screening and clinical assessment will need to consider whether the aligned parent is likely to be responsive to direction of the court or compliant with court orders. The correlation between psychopathology and severe alienation should be considered at the earliest possible outset given the implications for a child subject to the behaviour of a parent displaying severe alienation tactics.

This is particularly so given the research findings as to the ineffectiveness of any form of psychotherapy and overcoming severe alienation where a child has no regular contact with the rejected parent. This then requires early and strong intervention of the court to ensure that contact occurs between the child and the targeted parent, irrespective of other possible therapeutic interventions where severe alienation is present.

6.1.6. Is a Change of Care Warranted?

Where a parent is exhibiting severe alienating behaviours, and provided there is no risk of abuse or neglect (i.e. no substantiated safety allegations), consideration should be given to a change of care. Such alienating behaviour often involves malicious or strongly believed unsubstantiated allegations of abuse, and is potentially associated with a psychotic, sociopathic or severely character disordered parent.³⁷⁵ This, in turn, may impact on that parent's ability to effectively parent the child (in addition to causing or contributing to the child becoming alienated from the other parent). Given the short term and long term negative impact on children, this then justifies consideration of a change of care where the alienation is severe. Another reason to justify a change of care as being in the best interests of the child is that in severe cases the alienating parent may have

³⁷⁵ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 29 referring to SS Clarwar and BV Rivlin *Children Held Hostage: Dealing with Programmed and Brainwashed Children* above n 47; Richard A Gardner *True and False Allegations of Child Sex Abuse* (NJ Cresskill Creative Therapeutics, 1992b); Janet R Johnston and Judith Roth Goldman "Outcomes of Family Counselling Interventions with Children Who Resist Visitation an Addendum to Friedlander and Walters" (2010) 48 *Family Court Review* 112-15; Janet R Johnston, Vivienne Roseby and Kathryn Kuehnle *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (2nd ed New York, Springer, 2009); Janet R Johnston, Margorie G Walters and Nancy W Olesen "The psychological functioning of alienated children in custody disputing families: An exploratory study." (2005c) *American Journal of Forensic Psychology* 23(3) 39-64.

serious parenting deficits such as being “extremely overprotective or intrusive”³⁷⁶ and that these “severe cases are tantamount to significant emotional abuse³⁷⁷ and are unlikely to be remedied with education and therapy”.³⁷⁸

6.2. How the New Zealand Courts Can Manage Alienation Cases

Given that there appear to be some inconsistencies in the manner in which the New Zealand courts both identify and deal with alienation, it will be beneficial if consistent diagnostic criteria can be determined. Likewise, the wider implementation of steps to reduce or reverse the impact of alienating behaviour would be of benefit in improving outcomes for alienated children.

6.2.1. *Identifying Alienation*

In identifying whether alienation is present there are a number of considerations. The New Zealand courts have identified unilateral relocation and the making of unilateral guardianship decisions (for example *K v B*³⁷⁹) as alienating behaviours in some circumstances. Likewise, high conflict (for example *F v F*³⁸⁰) and passive dysfunctional parenting (for example *Secrest v Axley*³⁸¹). However, there are a number of behaviours that may be alienating and are complicated by the presence of safety allegations.

In the cases reviewed, the courts have undertaken various steps in assessing what behaviour may constitute alienation, including those where safety allegations have been made. However, these cases illustrate two significant issues; the first is that the behaviours referenced above, although having been identified as alienating, have not been assessed in accordance with a consistent method. The application of a consistent

³⁷⁶ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 29.

³⁷⁷ Johnston, Janet R., Marjorie G. Walters, and Nancy W. Olesen "Clinical Ratings of Parenting Capacity and Rorschach Protocols of Custody-Disputing Parents: An Exploratory Study" (2005) 2 *Journal of Child Custody* 159-78; Richard A Gardner *The Parental Alienation Syndrome, a Guide for Mental Health and Legal Professionals* Cresskill (2nd ed, New Jersey, Creative Therapeutics, 1998b; D Rand "The spectrum of parental alienation syndrome, Part I" (1997b) *American Journal of Forensic Psychology* 15(4) 39-92; 1997b, MJ Sullivan and JB Kelly "Legal and Psychological management of cases with an alienated child" (2001) *Family Court Review* 39 299-315; and Richard A Warshak "Bringing sense to parental alienation: A look at the disputes and the evidence (2003a) *Family Law Quarterly* 37 273-301.

³⁷⁸ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 29.

³⁷⁹ *K v B* above n 242.

³⁸⁰ *F v F* above n 224.

³⁸¹ *Secrest v Axley* above n 197.

diagnostic measure, such as the BSQ or the diagnostic criteria for Parental Alienation Disorder (see Appendix C), administered by properly qualified and experienced psychologists, would be helpful in obtaining consistent determinations of whether these cases constitute alienation or justified estrangement (or are hybrid). The second significant issue is the delays in the courts making these determinations. Many of these cases undergo a significant litigation history, often for years, before such assessments are made. The children subject to alienating behaviour are exposed to significant risk of harm, both over the period where alienation is exhibited and in the long term if the delays result in the inability to reverse the alienation.

When alienation is identified, it is important to consider what remedies are available to the courts to impose measures to limit or reverse the alienation.

6.2.2. Measures Available to Enforce Shared Care or Contact Where Alienation Present

As noted in Chapter Three, Judges are able to;

- impose a bond (*Garrett v Garrett*³⁸²);
- impose a warrant (*Garrett v Garrett*³⁸³);
- warn of intervention from OT as to wardship (*Garrett v Garrett*³⁸⁴);
- make an Order that the child becomes a ward of the court (*Gebrien v Todd*³⁸⁵);
- impose a change of care (*F v F*³⁸⁶);
- impose therapeutic intervention (*F v F*³⁸⁷); and
- impose various specific conditions such as:
 - the provision of information;
 - no denigration;
 - completion of parenting through separation;
 - therapeutic intervention;
 - allocating the case as complex and as such being case managed by a specific Judge; and

³⁸² *Garrett v Garrett* above n 252.

³⁸³ *Garrett v Garrett* above n 252.

³⁸⁴ *Garrett v Garrett* above n 252.

³⁸⁵ *Gebrien v Todd* above n 197.

³⁸⁶ *F v F* above n 224.

³⁸⁷ *F v F* above n 224.

- providing warnings that if any breaches occur the almost certain outcome is the likelihood of a change in care (*Garrett v Garrett*³⁸⁸).

However, the use of these specific conditions is not prevalent in the New Zealand courts, particularly in comparison to such conditions opposed by the Canadian courts. For example, while a bond was imposed in the New Zealand case of *Garrett v Garrett*,³⁸⁹ in the Canadian case of *Delichte v. Rogers*³⁹⁰ a bond was imposed but also a change of care and contempt provisions were utilised (although the alienating behaviour was arguably more severe in *Delichte*³⁹¹). A further example being *DGP v J.B. & K.J.*,³⁹² where the child was removed from the care of both parents where alienation was a significant feature.

6.2.3. Steps for the Courts Where Safety Allegations Are Made

Alienation can exist where no safety allegations are made, just as a child can be exposed to violence or harm with no resistance or rejection by the child resulting from such parental behaviour. However, in any case presenting to the courts where there are safety allegations, a child is resisting contact, or there are alienating behaviours exhibited by a parent, a consistent approach should be taken such as set out in **Figure Two**:

Alienation Assessment Flow Chart

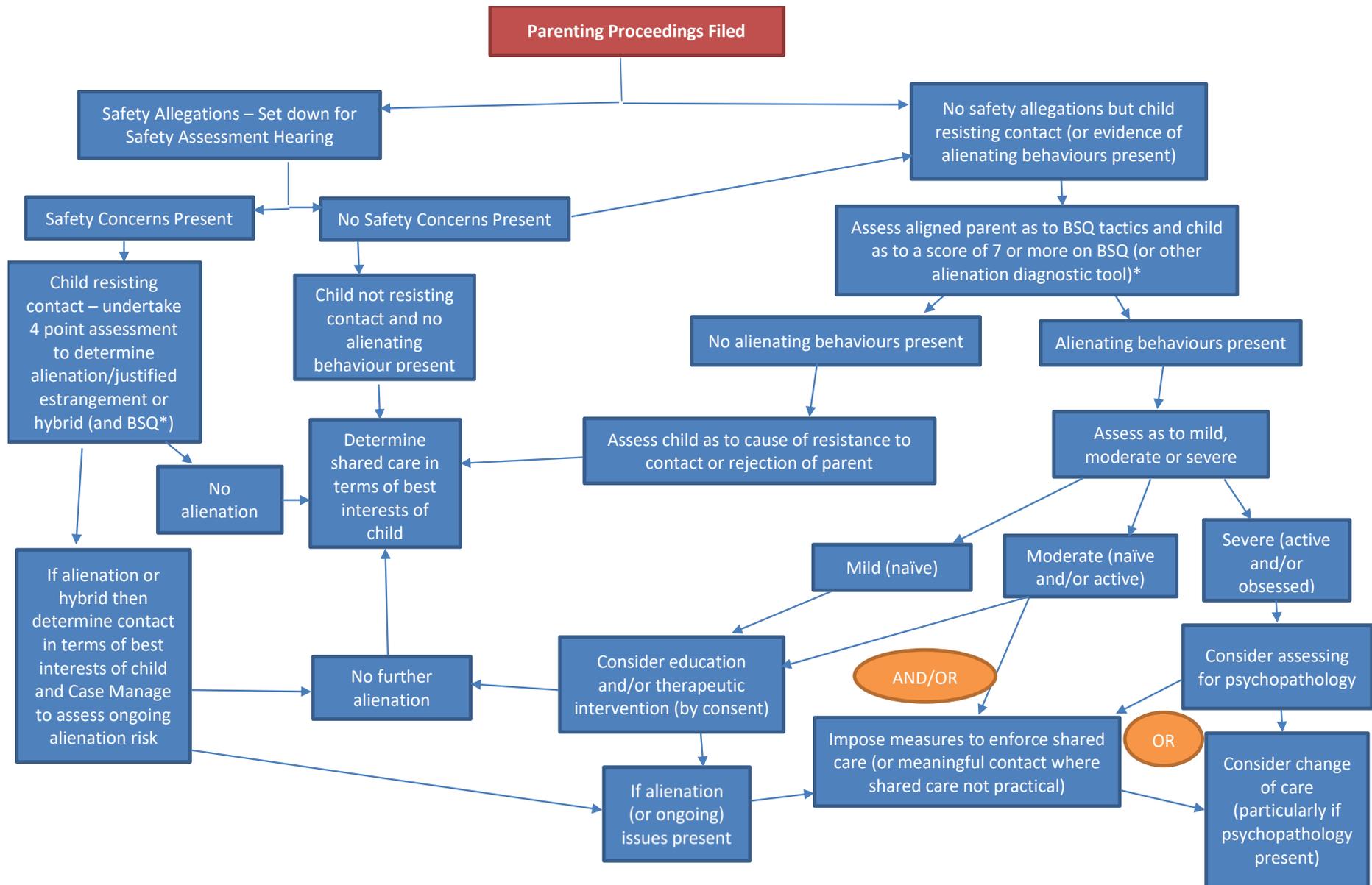
³⁸⁸ *Garrett v Garrett* above n 252.

³⁸⁹ *Garrett v Garrett* above n 252.

³⁹⁰ *Delichte v. Rogers* above n 338.

³⁹¹ *Delichte v. Rogers* above n 338.

³⁹² *DGP v J.B. & D.J.* above n 312.



This Figure illustrates the steps that can be applied by the courts to assist in both the identification of alienation and consideration of any questions of justified estrangement. Where there are allegations relating to the safety of the child, the four-point assessment can be used to assist in determining this.³⁹³

With each step, the courts can identify the issues and assess any risks for the child. Where both alienation and justified estrangement are identified such cases should be recognised as being complex and a comprehensive risk analysis of all the factors should be undertaken. Currently there are no legislative provisions or resources available for such risk analysis in relation to the impact of both violence and alienation where both are present. The ability to undertake a risk analysis in such complex cases, including the long-term impact on the child, would assist the court in making decision that are in the best interests of the child.

In a situation where there is no assessed safety risk for the child, the final outcome would be the shared care of the child to ensure the child has a meaningful relationship (ongoing attachment) with both parents to ensure the best outcome for the child. Where there are ongoing issues with alienation, and particularly a risk of severe alienation, then a change of care should be considered. The change of care implemented will generally involve a change of primary care, often with a period of no contact with the alienating parent then moving to limited contact to ensure that the child is not exposed to the “risk” of the alienating behaviour such as was recognised in *F v F*.³⁹⁴

6.2.4. Provisions Required to Implement Such Steps

The most difficult cases for the court to deal with, and arguably causing the most significant detrimental impact on children, are those where severe alienation is present. Based on the association between severe alienation and psychopathology, it may be of benefit for the courts to assess this at an early stage of the proceedings. The identification of psychopathology may assist the courts in predicting a risk of severe alienation at an earlier stage and acting to reverse the effects of any alienating behaviour. This would require the court to make a specific direction as to a psychological or psychiatric assessment. The parent exhibiting alienating behaviours (perhaps pursuant to a

³⁹³ Amy JL Baker, Barbara Burkhard and Jane Albertson-Kelly “Differentiating Alienated From Not Alienated Children: A Pilot Study” above n 61.

³⁹⁴ *F v F* above n 224.

preliminary assessment as to BSQ tactics used or utilising the diagnostic criteria in terms of the Parental Alienation Disorder being applied) could be directed undertake a specific assessment as to any psychopathology present. The difficulty is that psychopathology generally, but personality disorders particularly, can be difficult to diagnose and an assessment indicating that no psychopathology is present could in the long term be more detrimental than helpful if psychopathology is in fact present. One way to resolve this issue is for the legislation to give jurisdiction for Judges to direct an independent report to make this assessment and to ensure that the report is completed by an expert both qualified and experienced in relation to alienation.

Currently, s133 limits the court's ability as to what can be assessed regarding matters specifically relating to the child. While this is appropriate in most parenting cases, the situation regarding alienation is exceptional in that in severe cases it is possible the primary issue may relate specifically to the alienating parent's psychopathology. This, in turn, could have a significant detrimental impact on the child if it is not assessed at an early stage and an enforced shared care arrangement imposed, or change of care where necessary.

In the case of high conflict, or complex cases involving justified estrangement and alienation (hybrid cases), the use of a Parenting Coordinator, as appointed in Canada³⁹⁵ and various states in the US, may be of assistance.³⁹⁶ The US Association of Family and Conciliation Courts defines a Parenting Coordinator as:³⁹⁷

[A] child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high-conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about their children's needs, and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract.

³⁹⁵ <http://www.coparenting.ca/services/parenting-coordination/>>

³⁹⁶ Christine A. Coates, Robin Deutsch, Hon. Hugh Starnes, Matthew J. Sullivan and BeaLisa Sydlík "Special Issue: Models of Collaboration in Family Law: Parenting Coordination for High-Conflict Families" 2004, 42 Fam.Ct.Rev 246.

³⁹⁷ Association of Family Conciliation Courts Task Force on Parenting Coordination, *Guidelines for Parenting Coordination*, 44 FAM. CT. REV. 164, 165 (2006) at 1.

In Louisiana, a Parenting Coordinator may be appointed without the consent of the parties where the court determines one or both parties:³⁹⁸

(1) are unable or unwilling to make parenting decisions with one another without assistance of others or insistence of the court, (2) are unable or unwilling to comply with parenting agreements and orders, (3) have demonstrated an ongoing pattern of unnecessary litigation, (4) refuse to communicate or have difficulty in communicating about and cooperating in the care of the children, and (5) refuse to acknowledge the right of the other parent to have and maintain a continuing relationship with the children.

The ability for the courts to appoint a Parenting Coordinator, either by consent of the parties, or in a situation where the court determines it is necessary (such as for the reasons set out above), would be of significant assistance in dealing with complex cases involving alienation. It may be that in New Zealand the current role of the Family Court Coordinator, for appropriately qualified and experienced incumbents, could be extended to undertake a Parenting Coordinator role.

In addition, the direction by the court for the use of Our Family Wizard,³⁹⁹ could be beneficial for high conflict parents. This online programme can assist parents to schedule and track parenting arrangements, share information, eliminate miscommunication, avoid arguments and protect children from conflict. The ability of professionals involved with the family to log in to the particular family subscription allows oversight of communication by parents and allows the professionals to monitor compliance with agreements and Orders. The programme is used in other jurisdictions for cases where alienation is present⁴⁰⁰ but despite being available in New Zealand does not, as yet, appear to be used.⁴⁰¹

³⁹⁸ LA. REV. STAT. ANN. § 9:358.1(A) (2010), Comment (c); *Palazzolo v. Mire*, 10 So. 3d 748, 779 (La. Ct. App. 2009) (citing LA. REV. STAT. ANN. § 9:358.1(A) (2010), Comment (c)).

³⁹⁹ Above n 340.

⁴⁰⁰ Such as referred to in *Delichte v. Rogers* above n 338.

⁴⁰¹ Although its use for parenting disputes has been promoted in New Zealand such as at the New Zealand Law Society Family Law Conference, Rotorua October 2017.

6.3. The Court's Role in Therapeutic Intervention

Given that the research indicates mild, and in some cases moderate, alienation may be resolved by therapeutic intervention⁴⁰² then conceivably a significant reduction in what may potentially become severe alienation could result if the appropriate therapeutic intervention was available. While therapeutic intervention can be imposed by the courts, this is only likely to be successful where the alienation is mild (by a naïve alienator), and the alienating parent is likely to cooperate.⁴⁰³ Any imposed therapeutic intervention direction is unlikely to be successful where there is an active or obsessed alienator, and the court does not impose significant punitive remedies if the alienating behaviour does not cease. A further difficulty is that such therapeutic intervention programs, specific to alienation, are currently unavailable in New Zealand.

The availability of programs, in conjunction with the court having the ability to both obtain specific psychological and or psychiatric evaluations to assist with identifying potential alienation cases, along with appropriate punitive measures to ensure compliance with orders, would make a significant impact on the reduction and management of severe alienation cases. This, in turn, would reduce the risk and impact for children exposed to alienation.

In any case involving high conflict in the early stages, or where alienation appears to be either present or a risk, options for appropriate interventions would assist the court, particularly in the early stages of proceedings. Fidler and Bala⁴⁰⁴ argue that the court has an important role to play in the case management of such proceedings, particularly given the need for early intervention, triage and appropriate intervention, even where alienation appears to be mild at that time. They also consider court intervention is important to ensure that all cases, not only relating to custody reversal, utilise recommended alienation programs such as individual and family therapy, reintegration

⁴⁰² Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" above n 171.

⁴⁰³ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" above n 171 at 244.

⁴⁰⁴ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

therapy, parenting coordination, and some parent education programs (such as Family Bridges⁴⁰⁵).

The court's role could be like that of a "benevolent dictator". The overseeing role could ensure compliance in any case where alienation is present:⁴⁰⁶

Clinical experience in studies summarised in this issue suggest that in many alienation cases, education, coaching, and encouragement or threats of a Judge can be prime motivators for change, including engagement and therapy. The fear of loss can be very motivating.

6.4. The Need for Case Management

Another important aspect of alienation cases is the necessity for one Judge to manage the case. Rule 416T of the Family Courts Rules 2002 allows a Judge to categorise a case as a complex case on the standard track where the Judge is satisfied that the proceedings require a greater degree of judicial oversight than is ordinarily provided in proceedings under the Act. The complexity of issues involved in any alienation case, coupled with the significant detrimental impact on the child where an unjustified estrangement exists, clearly justifies this categorisation. The grounds on which the Judge may make this categorisation are where the particular proceedings require a greater degree of judicial oversight than is ordinarily provided.

As Fidler and Bala state:⁴⁰⁷

Although contempt of court orders, reversal of custody and temporary suspension of contact with an alienating parent are important options in the judicial tool box for dealing with alienation, they should be last resorts. The primary judicial role, and all but the most intractable cases, it should be educational – an authoritative figure making clear to both parents how their behaviour is affecting the children. The exhortations of a Judge – setting out

⁴⁰⁵ Richard A Warshak, "Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children" (2010b) 48 *Family Court Review* 48-80.

⁴⁰⁶ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 28.

⁴⁰⁷ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 28.

clear expectations and consequences for failures to comply – can move many parents and children, who may also be interviewed by the Judge,⁴⁰⁸ to alter their behaviours, especially if combined with directions for educational or therapeutic interventions.⁴⁰⁹ Only the most personality disordered parents are likely to defy a Judge who has set out clear expectations and consequences. When this occurs, it may be necessary to resort to remedies more suitable for severe cases of alienation.

Case management should, therefore, be utilised where the personalities or behaviour of either (or both) of the parties, indicates that there may be a serious risk to the physical or psychological safety or wellbeing of any child involved in the case to enable one specific Judge to have oversight and set clear expectations of the parties.

6.5. Summary

While cases involving elements of justified estrangement are complex and challenging, the courts can be assisted by following a step by step approach (such as set out in Figure Two above).

The research available does give sufficient guidance for the courts to determine where alienation is present. Provided there are no allegations as to abuse or neglect, or where the court assesses such allegations as not posing a risk for the child, then the court's duty is to find an outcome that ensures the child can maintain a meaningful relationship with both parents even where alienation is present. The use of therapeutic intervention may be of assistance if the alienation is not severe; however, if the alienation is severe then more extreme steps should be considered by the court.

The Children and Family Court Advisory and Support Service⁴¹⁰ (Cafcass) in the UK recently released a press statement regarding the impending implementation of a “ground-breaking” process being trialled that could deny divorcing parents contact with

⁴⁰⁸ Richard A Warshak, "Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children" (2010b) 48 *Family Court Review* 48-80.

⁴⁰⁹ H Brownstone *Tug of War* (Toronto, Canada, ECW Press, 2008); D Darnall and BF Steinberg "Motivational Models for Spontaneous Reunification with the Alienated Child: Part 1" (2008a) 36 *The American Journal of Family Therapy* 107-15.

⁴¹⁰ <https://www.cafcass.gov.uk/> Cafcass is a non-departmental public body accountable to the Secretary of State at the Ministry of Justice and was set up on 1st April 2001 under the provisions of the Criminal Justice and Court Services Act to work within the strategic objectives agreed by our sponsor department and contribute to wider government objectives relating to children.

a child if they try to turn them against their former partner.⁴¹¹ Following the recognition that “parental alienation is a feature in many of our cases and (we) have realised that it’s absolutely vital that we take the initiative.”⁴¹² The intention is for parents to initially be given the chance to change their behaviour with the help of intense therapy and any alienating parents who do not respond will not be able to have their children live with them. Contact between the parent and child could be restricted or refused for a number of months, and, in the most extreme cases, the alienating parent will be permanently banned from any contact with their child.⁴¹³

Sarah Parsons, the Assistant Director of Cafcass, stated:⁴¹⁴

We have reached a much clearer position on parental alienation recently, which we want to send a very clear, strong message about.

The current, popular view of parental alienation is highly polarised and doesn’t recognise this spectrum. We want to reclaim the centre ground and develop a more nuanced, sophisticated understanding of what’s going on.

The process proposed by Cafass will initially implement a 12-week programme designed to help the abusive (alienating) parent put themselves in the child’s position and give them skills to break their patterns of behaviour. If that does not work, then psychiatrists and psychologists and mental health experts will be brought in. If the alienating parent continues to perpetuate the abuse, the contact with the child will be limited to supervised visits.⁴¹⁵

The current role and resources of OT are now limited to the care and protection of the most at risk children.⁴¹⁶ The service focuses on cases of severe neglect and violence. However, alienation and high conflict have a significant detrimental impact on children. Therefore, with an extension of the role, and with appropriate resources, OT could implement such steps as proposed by Cafcass for the early management of such cases.

⁴¹¹ Amelia Hill *Divorcing parents could lose children if they try to turn them against partner* The Guardian (United Kingdom, 17 November 2017) <https://www.theguardian.com/society/2017/nov/17/parental-alienation-divorce-custody-crackdown-cafcass>

⁴¹² Amelia Hill *Divorcing parents could lose children if they try to turn them against partner* above n 411, Sarah Parsons, Assistance Director of Cafcass at 1.

⁴¹³ At 2.

⁴¹⁴ Amelia Hill *Divorcing parents could lose children if they try to turn them against partner* above n 411.

⁴¹⁵ Above n 411 at 2 and 3.

⁴¹⁶ <https://www.orangatamariki.govt.nz/working-with-children/overview/>

The use of Parenting Coordinators ordered and supervised by courts to assist with restoring relationships between parents and children identified as alienated, and that in Mexico and Brazil alienating a child from a parent is a criminal act.⁴¹⁷ It is clear that there is a growing recognition of the seriousness of the consequences of alienation and the need to take proactive steps to limit the impact of alienation on children. It is also clear that there are other jurisdictions that have specific laws and Government organisations in place to deal specifically with alienation. The New Zealand legal system needs to respond to this to enable both the courts to more effectively identify the presence of alienation and implement appropriate steps to reduce or reverse the impact of alienation, but also to implement educational and therapeutic programmes to limit the impact of alienation.

⁴¹⁷ Above n 411 at 2.

Chapter Seven

Discussion and Conclusion

7. Introduction

Parental alienation has been researched for decades and has been recognised as a form of abuse⁴¹⁸ that has a detrimental effect on children where it is present.⁴¹⁹ While the researchers do not all agree on a single specific definition of alienation there are general themes that emerge as to what parental alienation is and, in particular, the behaviours that may be exhibited by an alienating parent.⁴²⁰

While Gardner, in his early research, regarded alienation and justified estrangement as two separate situations,⁴²¹ subsequent research has recognised that many parenting disputes involve both alienation and elements of justified estrangement; in other words, they are “hybrid” situations.⁴²² An alternative perspective considers them in terms of a spectrum, as illustrated by the author in Figure One (see page 28).

7.1. The Legislative Framework

The current legislative framework does enable the New Zealand courts to consistently apply several steps to determine whether alienation is present and does provides various

⁴¹⁸ Amy JL Baker and Trudy Festinger “Adult Recall of Children Psychological Maltreatment: A Comparison of Five Scales” (2011) 20 *Journal of Aggression of Maltreatment and Trauma* above n 68.

⁴¹⁹ Demosthenes Lornados, William Bernet and S Richard Sauber *Parental Alienation: The Handbook for Mental Health and Legal Professionals* (Springfield, IL, Charles C. Thomas, 2013); DC Rand, R Rand and L Kopetski (2005) “The Spectrum of Parental Alienation Syndrome, Part III the Kopetski follow up study” *American Journal of Forensic Psychology* 23 15-43; Amy JL Baker and Naomi Ben-Ami, “To Turn a Child against a Parent Is to Turn a Child against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being” above n 80 at 79; Amy JL Baker and Maria Christina Verrocchio “Italian College Student-Reported Childhood Exposure to Parental Alienation: Correlates with Well-Being” (2013) *Journal of Divorce and Remarriage* 54:8 609-28; Amy JL Baker “Knowledge and Attitudes About Parental Alienation Syndrome: A Survey of Custody Evaluators” (2007a) *American Journal of Family Therapy* 35:1 1-19”; Richard A Warshak “Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children” (2010) *Family Court Review* 48 81-90.

⁴²⁰ Such as those identified by Amy Baker and others: Amy JL Baker “Knowledge and Attitudes About Parental Alienation Syndrome: A Survey of Custody Evaluators” (2007a) *American Journal of Family Therapy* 35 1-19; Amy JL Baker and Jaelyn Chambers “Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation” (2011) *Journal of Divorce & Remarriage* 52 55-76; Amy JL Baker “Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences” (2006) *Journal of Divorce & Remarriage* 45 97-124 referred to at p 24.

⁴²¹ Richard A. Gardner *The Parental Alienation syndrome: A Guide for Mental Health and Legal Professionals* above n 38.

⁴²² Joan B Kelly and Janet R Johnston “The Alienated Child: A Reformulation of Parental Alienation Syndrome” above n 50.

remedies that can be of assistance. However, if specific provision was included to enable the courts to take into account any obstructive behaviour of a parent, this would ensure the courts had specific authority to take such behaviour into account when making parenting orders. In addition, the inclusion of provisions to enable the court to make enquiries as to a parent's behavioural traits, or psychopathology,⁴²³ and likewise the ability to impose specific therapeutic intervention where alienation is mild or moderate, provided appropriate programmes are made available, would be beneficial.

7.1.1. Expert Evidence About the Parent

Where alienating behaviours are exhibited by a parent (or there is a risk of alienation becoming severe), it would be beneficial if the court could make an early enquiry to assess the parent. Because s133 of COCA enables the court to obtain a report "about the child" (but not the parent) the courts are unable to obtain specific evidence as to possible psychotic, sociopathic or severely character disordered parents,⁴²⁴ which may indicate a risk (or presence) of severe alienation. It is acknowledged that some disorders, particularly personality or character disorders, are difficult to diagnose. However, including provision for the courts to undertake this investigation would be likely to assist with the identification of alienation, particularly if this assessment is undertaken at the early stages of a case before the alienation becomes severe.

7.1.2. Specific Therapeutic Intervention Where Alienation Is Identified

Where alienation is identified, it may be beneficial for the courts to assess the category,⁴²⁵ or the seriousness, of the alienation. If the alienation is mild, or perhaps some moderate cases at the lower end of the scale, then educational and therapeutic remedies may be of assistance in reducing the impact of alienation.⁴²⁶ While the Parenting Through Separation Courses include education for parents that may assist them to promote the child's relationship with the other parent, they are not specifically designed to deal with alienation situations. The legislation contains no specific provision to require therapy,

⁴²³ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57 at 29.

⁴²⁴ Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

⁴²⁵ Bernet and others "Parental Alienation, DSM-V, and ICD-11" above n 7.

⁴²⁶ Richard A Warshak "Ten parental alienation fallacies that compromise decisions in court and in therapy" (2015) *Professional Psychology: Research and Practice* 46:4 235-249.

and without specific provisions contained in the legislation, the court's ability to enforce therapy is limited (even where the parties may consent to this).

7.2. The Case Law

The review of the New Zealand case law in comparison to the reviewed international case law indicated some significant similarities.⁴²⁷ High conflict, although only referred to specifically by some of the Judges, was arguably present in all cases (all having an extensive litigation history). Of specific note was the number of cases identified where there were allegations of violence or abuse (often unsubstantiated). The identification of particular personality traits in alienating parents was also evident as being a factor recognised by the courts, and the making of unilateral decisions was identified as being relevant to alienation, both in the New Zealand cases and in one of the Canadian cases.

There were some areas of inconsistency between the various cases and jurisdictions in terms of the outcomes. While the New Zealand courts imposed preventative measures in some cases⁴²⁸ such measures were not imposed in other similar cases.⁴²⁹ A significant difference between the New Zealand and the England/Wales case law and the Canadian case law was in terms of the implementation of therapeutic intervention.

7.3. Identification of Alienation

Consistent strategies for identifying the presence of alienation will come from applying diagnostic criteria utilised in the present research, such as the BSQ,⁴³⁰ or by implementing the detailed diagnostic tool for Parental Alienation Disorder (see Appendix B) defined by Bernet and others.⁴³¹ While the court currently has the ability to obtain specialist reports to assist with the identification of alienation,⁴³² the specialist evidence provided is limited to information "about the child". For the diagnostic criteria to be implemented consistently where alienation is present, it will always be necessary for the court to

⁴²⁷ Refer to Table Three above.

⁴²⁸ For example *Garrett v Garrett* above n 252, *Gebrien v Todd* above n 197 and *F v F* above n 224.

⁴²⁹ For example *Secrest v Axley* above n 197 and *Palmer v Holm* above n 197.

⁴³⁰ Amy JL Baker "Knowledge and Attitudes About Parental Alienation Syndrome: A Survey of Custody Evaluators" (2007a) *American Journal of Family Therapy* 35 1-19; Amy JL Baker and Jaclyn Chambers "Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation" (2011) *Journal of Divorce & Remarriage* 52 55-76; Amy JL Baker "Behaviours and Strategies Employed in Parental Alienation: A Survey of Parental Experiences" (2006) *Journal of Divorce & Remarriage* 45 97-124.

⁴³¹ Bernet and others "Parental Alienation, DSM-V, and ICD-11" above n 7.

⁴³² By appointing a specialist report writer pursuant to s133 of COCA.

appoint a report writer with both qualifications and experience specific to parental alienation.

7.4. Justified Estrangement

Where safety allegations are made, an early safety assessment will enable the court to determine whether abuse or neglect allegations are made out and, where they are made out, whether they pose an ongoing risk to the child. If such allegations are substantiated, then the court should also assess if this contributed (or caused) the child to resist or refuse contact with that parent. If there is no resistance to contact or rejection of the parent, then the court should make enquiry as to the risk of alienation if the allegations were not made out (particularly where such allegations are malicious or strongly believed unsubstantiated allegations of abuse⁴³³), which may indicate a risk of severe alienation.

It is recognised that there are other factors that may contribute to the child's rejection of a parent, such as a parent's minimal involvement in parenting, poor parenting or when a child becomes angry or upset when a parent leaves or starts a new relationship.⁴³⁴ However, the research clearly supports that it is in the best interests of the child to continue having a meaningful relationship with both parents⁴³⁵ (except where a parent may be exhibiting severe alienating behaviours⁴³⁶).

7.5. Management of Alienation and High Conflict Cases

The use of the online program, Our Family Wizard by the parents to assist with communication and allow oversight by professionals would also be a useful tool in any case involving alienation or high conflict. However, where alienation is present (particularly with hybrid cases) or the dispute is assessed as being high conflict, a comprehensive risk assessment of all of the issues and the long-term impact on the child

⁴³³ Barbara Jo Fidler and Nicholas Bala "Children Resiting Postseparation Contact with a Parent: Concepts, Contraversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

⁴³⁴ Barbara Jo Fidler and Nicholas Bala "Children Resiting Postseparation Contact with a Parent: Concepts, Contraversies, and Conundrums (Special Issue on Alienated Children in Divorce and Separation: Emerging Approaches for Families and Courts)" above n 57.

⁴³⁵ GC Greenberg and MT Armsden "The Inventory of Parent and Peer Attachment: Individual Differences and Their Relationship to Psychological Well-Being in Adolescence" (1987) *Journal of Youth and Adolescence* 16:5 427-54.

⁴³⁶ Richard A Warshak "Ten parental alienation fallacies that compromise decision in court and in therapy" above n 171.

of such issues, would assist the courts in identifying both the risks to and best interests of the child. The immediate referral of the parties to an organisation able to undertake intensive educational, therapeutic and investigative (psychological and/or psychiatric analysis) steps, such as those proposed by Cafcass, would provide much faster and more effective measures to reduce the detrimental impact on the child. As referred to at page 137 above, an extension of the role and resources of OT could be implemented to undertake such steps.

Such cases would likely also benefit from the appointment of a Parenting Coordinator to assist with arrangements and make decisions for the parties where necessary and appropriate. This role could work in conjunction with the educational, therapeutic and assessment steps taken by OT. The role of the court would be to case manage and monitor such steps and to implement more severe measures where alienation continued.

7.6. Outcomes

Assuming the safety issues (abuse and neglect) have been assessed, the onus is on the court to ensure that the child can have a meaningful relationship with both parents. Where severe alienation is present a care reversal (and possibly no contact with the alienating parent⁴³⁷) should be seriously considered. The legislative framework provides many options for ensuring this can occur (case management, bonds, warrants, conditions imposed in respect of orders, wardship or a change of care). The manner in which the court is severely limited in terms of outcomes currently is in the ability to impose specific intervention and the availability of such specialist therapeutic programs.

7.7. Summary

Ideally, to maximise the court's ability to consistently identify alienation and maximise outcomes for children where alienation is present, the legislative framework would include the ability to:

- Direct a specific assessment into any psychopathology present where a parent is engaging in severe alienation tactics (even where there is no resistance or rejection of the parent by the child at that stage); and

⁴³⁷ Such as is being considered by Cafcass above n 410.

- Where alienation is present, to direct therapeutic intervention, not only for the alienating parent but for the family, to encourage reunification.

It would also be necessary to develop specific reunification programs. Any measures taken to reduce the detrimental impact of alienation on children long term in relation to such issues as depression, relationship issues and substance abuse would result in long term social benefit.

However, the current legislative framework does allow for the identification of alienation, provided the court takes early steps and ensures that the assessment of alienation strategies is undertaken by appropriately qualified and experienced experts. The current laws also contain provisions that can be utilised to ensure compliance with orders applied for the purpose of reducing the impact of or reversing alienation. Until such time that a review is undertaken, the steps set out in the flow chart in Figure Two could be implemented to improve the consistency of the identification and outcomes in alienation disputes by the New Zealand courts.

While other jurisdictions have specific organisations or systems in place to deal with alienation disputes, New Zealand does not. However, implementing the legislative changes set out above may be a step forward in enabling the courts to take earlier proactive steps in both identifying alienation and implementing steps (therapeutic) to address cases of mild or moderate alienation. In addition, the formation of an organisation to deal specifically with high conflict disputes, and in particular those where alienation is present (such as Cafcass proposes⁴³⁸, undertaken for example by OT), would be of significant benefit in taking early and proactive steps in alienation disputes, even before the dispute reaches the courts. Such an organisation, coupled with the implementation of specific therapeutic programmes designed to educate parents about alienation and to reunify families where alienation is present would be a positive step forward in providing resources for families embroiled in alienation disputes. The use of Parenting Coordinators and Our Family Wizard would also be of significant benefit for parenting disputes involving alienation.

While the seriousness of the consequences of alienation support the establishment of an organisation as suggested above there can be little doubt that there will be cases where

⁴³⁸ Above n 410.

the alienation is severe that will necessitate court intervention. Reform of the law to; assist with identification of alienation by way of expert reports targeted at assessing alienating parents, to specifically consider the conduct of an alienating parent in any decision relating to a child and to direct therapeutic educational and reunification therapy are considered necessary. This would pave the way forward for the New Zealand courts to identify alienation more effectively and to impose more adequate determinations to improve outcomes for children who are the subject of disputes involving alienation.

Appendix A

Legislation Relevant to Parental Alienation

Care of Children Act 2004 (COCA)	
Section 4	<p>Child's welfare and best interests to be paramount</p> <p>(1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration—</p> <p>(a) in the administration and application of this Act, for example, in proceedings under this Act; and</p> <p>(b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.</p> <p>(2) Any person considering the welfare and best interests of a child in his or her particular circumstances—</p> <p>(a) must take into account—</p> <p>(i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time; and</p> <p>(ii) the principles in section 5; and</p> <p>(b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child's welfare and best interests.</p> <p>(3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person's gender.</p> <p>(4) This section does not—</p> <p>(a) limit section 6 or 83, or subpart 4 of Part 2; or</p> <p>(b) prevent any person from taking into account other matters relevant to the child's welfare and best interests.</p>
Section 5	<p>Principles relating to child's welfare and best interests</p> <p>The principles relating to a child's welfare and best interests are that—</p> <p>(a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whānau, hapū, and iwi:</p> <p>(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:</p> <p>(c) a child's care, development, and upbringing should be facilitated by ongoing consultation and cooperation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:</p> <p>(d) a child should have continuity in his or her care, development, and upbringing:</p> <p>(e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:</p>

	(f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.
Section 5(A)	<p>Domestic violence to be taken into account</p> <p>(1) This section applies if—</p> <p>(a) an application is made to the court for—</p> <p>(i) a guardianship order under <u>section 19</u> or <u>27</u>; or</p> <p>(ii) a direction under <u>section 46R</u> in relation to a guardianship dispute; or</p> <p>(iii) a parenting order under <u>section 48</u>; or</p> <p>(iv) a variation of a parenting order under <u>section 56</u>; and</p> <p>(b) a final protection order made under <u>section 14</u> of the Domestic Violence Act 1995 is, or at any time has been, in force against one or more parties to the application.</p> <p>(2) In taking into account the principle in <u>section 5(a)</u>, the court must have regard in particular to the following matters:</p> <p>(a) whether the protection order is still in force;</p> <p>(b) the circumstances in which the protection order was made;</p> <p>(c) any written reasons given by the Judge who made the protection order for his or her decision.</p>
Section 6	<p>Child's views</p> <p>(1) This subsection applies to proceedings involving—</p> <p>(a) the guardianship of, or the role of providing day-to-day care for, or contact with, a child; or</p> <p>(b) the administration of property belonging to, or held in trust for, a child; or</p> <p>(c) the application of the income of property of that kind.</p> <p>(2) In proceedings to which subsection (1) applies,—</p> <p>(a) a child must be given reasonable opportunities to express views on matters affecting the child; and</p> <p>(b) any views the child expresses (either directly or through a representative) must be taken into account.</p>
Section 7	<p>Appointment of lawyer to represent child in proceedings</p> <p>A court may appoint, or direct the Registrar of the court to appoint, a lawyer to represent a child who is the subject of, or who is a party to, proceedings (other than criminal proceedings) under this Act if the court—</p> <p>(a) has concerns for the safety or wellbeing of the child; and</p> <p>(b) considers an appointment necessary.]</p>
Section 46E	<p>Family dispute resolution mandatory before commencement of proceedings</p> <p>(1) This section applies to an application under <u>section 46R</u> or <u>48</u>.</p> <p>(2) The application must be accompanied by a family dispute resolution form that has been signed by an FDR provider within the preceding 12 months.</p> <p>(3) Subsection (2) does not apply if subsection (4) applies.</p> <p>(4) A family dispute resolution form is not required to accompany an application that—</p> <p>(a) is in response to an application that another party to the proceedings has made for an order under <u>section 46R</u> or <u>48</u>; or</p> <p>(b) is without notice; or</p> <p>(c) is for a consent order; or</p> <p>(d) seeks the enforcement of an existing order; or</p>

	<p>(e) relates to a child who is the subject of proceedings already begun under Part 2 of the [[Oranga Tamariki Act 1989]]; or</p> <p>(f) is accompanied by an affidavit that provides evidence of either of the following matters:</p> <p>(i) that at least one of the parties to the family dispute is unable to participate effectively in family dispute resolution:</p> <p>(ii) that at least one of the parties to the family dispute, or a child of one of the parties, has been subject to domestic violence by one of the other parties to the dispute.</p> <p>(5)A Registrar may refuse to accept for filing an application that is accompanied by an affidavit of the kind referred to in subsection (4)(f) if the affidavit does not provide sufficient evidence of either of the matters set out in subparagraphs (i) and (ii) of that paragraph.</p> <p>(6)A Registrar who is unsure, under subsection (5), whether to refuse to accept an application for filing may refer that application and accompanying affidavit to a Judge, and the Judge must determine whether the affidavit provides sufficient evidence of either of the matters set out in subsection (4)(f).</p>
Section 46F	<p>Family dispute resolution after proceedings commenced</p> <p>(1)This section applies after an application has been made to [[the Family Court]] for—</p> <p>(a) a direction under section 46R; or</p> <p>(b) a parenting order under section 48.</p> <p>(2)At any time before the application is finally determined, a Family Court Judge may direct the parties to attend family dispute resolution.</p> <p>(3)A direction under subsection (2) may only be made by a Judge if—</p> <p>(a) the Judge considers that there is a reasonable prospect that family dispute resolution will assist the parties in reaching an agreement on the resolution of the matters in dispute; and</p> <p>(b) the parties—</p> <p>(i) have not participated in family dispute resolution in the preceding 12 months; or</p> <p>(ii) have participated in family dispute resolution in the preceding 12 months but consent to the direction being made.</p> <p>(4)A direction under subsection (2) may be made only once.</p>
Section 46G	<p>Counselling after proceedings commenced</p> <p>(1)This section applies after an application has been made to [[the Family Court]] for—</p> <p>(a) a direction under section 46R; or</p> <p>(b) a parenting order under section 48.</p> <p>(2)A Family Court Judge may direct the Registrar of the court to refer the parties to the application to counselling services for either or both of the following purposes:</p> <p>(a) to improve the relationship between the parties;</p> <p>(b) to encourage compliance with any direction or order made by the court.</p> <p>(3)A direction under subsection (2) may only be made by a Family Court Judge if the Judge considers that the provision of counselling services is the best means of assisting the parties with their relationship or the implementation of any decision of the court, or both of those matters.</p> <p>(4)A Family Court Judge may make a direction under subsection (2)—</p>

	<p>(a) at any stage of the proceedings, including when making a final order; but</p> <p>(b) once only.</p> <p>(5) On receipt of a direction under subsection (2), the Registrar must—</p> <p>(a) arrange for the parties to be referred to a counsellor or an approved counselling organisation; and</p> <p>(b) inform the parties accordingly.</p>
Section 460	<p>Judge may direct party to undertake parenting information programme</p> <p>(1) At any time after an application has been made to the court for a parenting order under section 48, a Family Court Judge may direct one or more parties to the application to attend a parenting information programme.</p> <p>(2) However, the Family Court Judge may not make a direction under subsection (1) in respect of a party if that party has undertaken a parenting information programme within the preceding 2 years.</p>
Section 47B	<p>Mandatory statement and evidence in applications</p> <p>(1) This section applies to—</p> <p>(a) an application for a parenting order under section 48;</p> <p>(b) an application to vary a parenting order under section 56.</p> <p>(2) The application must include a statement made by or on behalf of the applicant for the order—</p> <p>(a) that the applicant has undertaken a parenting information programme within the preceding 2 years; or</p> <p>(b) that the applicant is not required to undertake a parenting information programme because—</p> <p>(i) the applicant is unable to participate effectively in a parenting information programme; or</p> <p>(ii) the applicant is making the application without notice.</p> <p>(3) Evidence in support of a statement made under subsection (2)(a) or (b)(i) must be included in the application.</p> <p>(4) A Registrar may refuse to accept an application if the Registrar considers that the evidence provided does not adequately support the statement.]</p>
Section 48	<p>Parenting orders</p> <p>(1) On an application made to it for the purpose by an eligible person, the court may make a parenting order determining the time or times when specified persons have the role of providing day-to-day care for, or may have contact with, the child.</p> <p>(2) A parenting order determining that a person has the role of providing day-to-day care for the child may specify that the person has that role—</p> <p>(a) at all times or at specified times; and</p> <p>(b) either alone or jointly with one or more other persons.</p> <p>(3) A parenting order determining that a person may have contact with the child may specify any of the following:</p>

	<p>(a) the nature of that contact (for example, whether it is direct (that is, face to face) contact or some form of indirect contact (for example, contact by way of letters, telephone calls, or email));</p> <p>(b) the duration and timing of that contact;</p> <p>(c) any arrangements that are necessary or desirable to facilitate that contact.</p> <p>(4) A parenting order (whether an interim parenting order or a final parenting order) may be made subject to any terms or conditions the court considers appropriate (for example, a condition requiring a party to enter into a bond).</p>
Section 56	<p>Variation or discharge of parenting and other orders</p> <p>(1) On an application for the purpose by an eligible person, the Court may vary or discharge any of the following:</p> <p>(a) a parenting order (whether the order is about the person or persons who have the role of providing day-to-day care for a child, or about contact with the child, or about both of those matters):</p> <p>(b) any other order about the role of providing day-to-day care for, or about contact with, a child:</p> <p>(c) an order about the upbringing of a child.</p> <p>(2) On an application for the purpose by an eligible person, the Court may vary or discharge an order vesting the guardianship of a child in one parent or in any other person or persons. If the order is discharged, and no other order with respect to the guardianship of the child is made, guardianship vests in the person or persons (if any) who would be the guardian or guardians if the order discharged had not been made.</p> <p>(3) In this section, eligible person, in relation to an order relating to a child, means any of the following persons:</p> <p>(a) a person affected by the order:</p> <p>(b) a person acting on behalf of the child.</p> <p>(4) Subsections (1) and (2) apply to orders of the kind referred to in those subsections whether or not the orders were made after the commencement of this Act, but nothing in those subsections applies to—</p> <p>(a) any order under the [Oranga Tamariki Act 1989]; or</p> <p>(b) any interim order or adoption order under the Adoption Act 1955.</p> <p>(5) Subsection (2) does not limit section 29.</p>
Section 59	<p>Court may order supervised contact</p> <p>(1) This section applies if the court—</p> <p>(a) is making or varying a parenting order determining the time or times when a person may have contact with a child; and</p> <p>(b) is not satisfied that the child will be safe with that person.</p> <p>(2) The court may make an order for supervised contact between the child and that person, and, if it does so, the court must specify in the order whether the supervised contact is to occur—</p> <p>(a) under the supervision of an approved provider; or</p> <p>(b) in the immediate presence of a person approved by the court (for example, a relative, a friend of the family of the child, or any other person whom the court considers suitable).</p>
Section 68	<p>Court may make certain orders or respond in other ways to contravention of parenting orders</p> <p>(1) On an application for the purpose by a party to a parenting order, the Court may, if satisfied that another party to the order has contravened the order, do any of the following:</p>

	<p>(a) admonish the party who has contravened the order;</p> <p>(b) vary or discharge the parenting order under section <u>56</u> (for example, by reducing the time during which the child is in the care of, or has contact with, the party who has contravened the order).</p> <p>(2)The Court may (as well as, or instead of, exercising its powers under subsection <u>(1)</u>) consider making an order or issuing a warrant under any of sections <u>70</u> to <u>77</u> if—</p> <p>(a) the contravention that is the subject of the application under this section is of a serious nature; or</p> <p>(b) the party who has contravened the parenting order has previously contravened that order or another order under this Act.</p> <p>(3)Nothing in this section limits other powers of the Court to deal with a contravention of a parenting order.</p> <p>(4)On receiving an application under this section, the Registrar—</p> <p>(a) must appoint a date and time for the hearing of the application and, by notice in writing to the parties to the application, inform them of that date and time:</p> <p>(b) may, if the Court directs, request them to attend.</p>
Section 69	<p>Court may require parties to attend ... for hearing of application under section <u>68</u></p> <p>(1)On an application for the purpose or on its own initiative, the Court may issue a summons requiring a person to attend at a time and place to be specified in the summons if the person fails to comply with—</p> <p>(a) <i>Repealed.</i></p> <p>(b) a request under section <u>68(4)(b)</u> to attend the hearing of an application under section <u>68</u>.</p> <p>(2)[Section <u>159</u> of the Criminal Procedure Act 2011 applies] to a summons under this section as if it were a witness summons issued under that section.</p>
Section 70	<p>Ordering party to enter into bond</p> <p>(1)On an application for the purpose or on its own initiative, the Court may order a party who has contravened a parenting order to enter into a bond as an assurance that the party will not contravene the parenting order again.</p> <p>(2)Before making an order under subsection <u>(1)</u>, the Court must consider the extent (if any) to which the party has sufficient means to deposit an amount of money in the Court.</p> <p>(3)The bond must specify—</p> <p>(a) the amount of money to be deposited in the Court; and</p> <p>(b) the conditions the breach of which may lead to some or all of that money being forfeited to the Crown; and</p> <p>(c) that, if that money is forfeited by a direction under subsection <u>(4)</u>, the Court may, by an order under section <u>71(1)</u> made at the same time as that direction, require costs incurred by another party to the parenting order to be satisfied from that money; and</p> <p>(d) a date after which the bond will no longer be required (if the bond does not cease to be required earlier, because the parenting order ceases to have effect earlier).</p> <p>(4)If, after entering into the bond, the party contravenes the parenting order again, the Court may, at its discretion and on an application for the purpose, direct that some or all of the bond is forfeited to the Crown, but the Court must exercise its discretion by taking into account—</p> <p>(a) the reason the bond was imposed; and</p>

	<p>(b) the extent to which the conditions of the bond have been met or breached; and</p> <p>(c) any explanation given for the breach of the bond conditions; and</p> <p>(d) all other matters the Court considers relevant.</p> <p>(5) Following the earlier of the following dates, the bond is no longer required, and the Court must make all reasonable efforts to refund to the party any money not forfeited by a direction of the Court under subsection (4):</p> <p>(a) the date on which the parenting order ceases to have effect:</p> <p>(b) the date specified under subsection (3)(d).</p> <p>(6) Nothing in this section prevents the Court, on an application for the purpose or on its own initiative, from revoking the order and directing that any money not forfeited by a direction of the Court under subsection (4) be refunded to the party.</p>
Section 71	<p>Costs of contravention</p> <p>(1) On an application for the purpose or on its own initiative, the Court may order a party to a parenting order (party B) to reimburse another party to the order (party A), either wholly or in part, for costs party A incurred, if the Court is satisfied—</p> <p>(a) that party B contravened the order and had no reasonable excuse for doing so; and</p> <p>(b) that the contravention caused party A to incur the costs; and</p> <p>(c) that the costs party A incurred were reasonable in the circumstances.</p> <p>(2) An order under subsection (1) (the costs order) may require costs (being costs party A incurred and is, under the order, entitled to be reimbursed for by party B) to be satisfied from money—</p> <p>(a) deposited in the Court by party B as a bond required by an order under section 70(1); and</p> <p>(b) forfeited by a direction under section 70(4) made at the same time as the costs order is made.</p> <p>(3) Nothing in this section limits section 121 or section 142.</p>
Section 72	<p>Warrant to enforce role of providing day-to-day care for child</p> <p>(1) In this section, eligible person, in relation to a child, means a person who, at the time of the application, has the role of providing day-to-day care for the child—</p> <p>(a) through being a guardian (other than a testamentary guardian) whose role of providing day-to-day care for the child has not been removed by a Court order; or</p> <p>(b) under a parenting order, some other order of a New Zealand Court, or an overseas parenting order registered under section 81.</p> <p>(2) On an application for the purpose by an eligible person, [the Family Court or the District Court] may issue a warrant authorising a [constable] or a social worker or any other person named in the warrant to take the child (using reasonable force if necessary) and to deliver the child—</p> <p>(a) to the eligible person; or</p> <p>(b) to some other person or authority (including a person in or from a prescribed overseas country) named in the warrant on behalf of the eligible person.</p> <p>(3) However, if two or more persons have the role of providing day-to-day care for a child, no warrant under this section may authorise—</p> <p>(a) the removal of the child from the care of one of those persons; and</p> <p>(b) the delivery of the child to the care of another of them.</p>

Section 73	<p>Warrant to enforce order for contact with child</p> <p>(1) In this section, eligible person, in relation to a child, means a person who, at the time of the application, is entitled to have direct contact with the child under a parenting order, an order for supervised contact, or an overseas parenting order registered under section <u>81</u>.</p> <p>(2) On an application for the purpose by an eligible person, [the Family Court or the District Court] may issue a warrant authorising a [constable] or a social worker or any other person named in the warrant to take the child (using reasonable force if necessary) and to deliver the child—</p> <p>(a) to the eligible person; or</p> <p>(b) to some other person or authority (for example, a person in or from a prescribed overseas country) named in the warrant on behalf of the eligible person.</p>
Section 78	<p>Contravening parenting or guardianship order</p> <p>(1) A person commits an offence who, without reasonable excuse, intentionally—</p> <p>(a) contravenes—</p> <p>(i) a parenting order; or</p> <p>(ii) a guardianship order made under section <u>40</u> or <u>46R</u>; or</p> <p>(b) prevents compliance with—</p> <p>(i) a parenting order; or</p> <p>(ii) a guardianship order made under section <u>40</u> or <u>46R</u>.</p> <p>(2) A person who commits an offence under subsection (1) is liable on conviction to—</p> <p>(a) a term of imprisonment not exceeding 3 months; or</p> <p>(b) a fine not exceeding \$2,500.</p> <p>(3) Nothing in this section limits the power of a court to punish a person for contempt of court.</p>
Section 131A	<p>Advice from chief executive or social worker</p> <p>(1) For the purpose of expediting an application for a guardianship order or parenting order, a Registrar, on his or her own initiative, may—</p> <p>(a) refer the application to the chief executive; and</p> <p>(b) request the chief executive to provide brief written advice on the nature and extent of any involvement that the department has had with the parties.</p> <p>(2) On receipt of a request for advice made under subsection (1), the chief executive or a social worker must provide the advice.</p> <p>(3) The Registrar must refer advice received under subsection (2) to the Family Court Judge who is considering the application.</p>
Section 132	<p>Reports from chief executive or social worker</p> <p>(1) A copy of an application for guardianship or a parenting order (other than an interim parenting order) must be supplied to the chief executive if the court so directs.</p> <p>(2) The chief executive or a social worker must report on the application, and may appear on the application personally or by a lawyer.</p>
Section 133	<p>Reports from other persons</p> <p>Definitions</p> <p>(1) In this section,—</p> <p>application—</p>

	<p>(a) means—</p> <p>(i) an application for guardianship; or</p> <p>(ii) an application for a parenting order; or</p> <p>(iii) an application under <u>section 105(1)</u>; but</p> <p>(b) does not include an application for an interim order about the role of providing day-to-day care for a child</p> <p>approval means an approval under subsection (10)</p> <p>cultural report means a report that is about the child who is the subject of an application and that covers an aspect or aspects of the child’s cultural background, including the child’s religious denomination and practice</p> <p>materials means—</p> <p>(a) the psychological report; and</p> <p>(b) the report writer’s notes; and</p> <p>(c) other materials the report writer used in preparing the psychological report</p> <p>medical report means a medical report that is about the child who is the subject of an application</p> <p>psychiatric report means a psychiatric report that is about the child who is the subject of an application</p> <p>psychological report means a report that is about the child who is the subject of an application and that covers any or all of the following matters:</p> <p>(a) how current arrangements for the child’s care are working for the child;</p> <p>(b) the child’s relationship with each party, including, if appropriate, the child’s attachment to each party;</p> <p>(c) the child’s relationship with other significant persons in the child’s life;</p> <p>(d) the effect or likely effect on the child of each party’s parenting skills;</p> <p>(e) the effect or likely effect on the child of the parties’ ability or otherwise to cooperate in the parenting of the child;</p> <p>(f) the advantages and disadvantages for the child of the options for the care of the child;</p> <p>(g) any matter that the court specifies under subsection (5)(b)(ii)</p> <p>report writer means—</p> <p>(a) the person requested under subsection (2) to prepare a report;</p> <p>(b) the psychologist requested under subsection (5) to prepare a report</p> <p>second opinion means—</p> <p>(a) a critique of a psychological report; and</p> <p>(b) a report covering the same matters as those covered by a psychological report.</p> <p><i>Court’s power to obtain cultural reports, medical reports, or psychiatric reports</i></p> <p>(2) To obtain a written cultural report, medical report, or psychiatric report, the court may—</p> <p>(a) request a person whom the court considers qualified for the purpose to prepare one; or</p> <p>(b) direct the Registrar to request a person whom the Registrar considers qualified for the purpose to prepare one.</p> <p>(3) The court may act under subsection (2) only if satisfied that—</p> <p>(a) the information that the report will provide is essential for the proper disposition of the application; and</p> <p>(b) the report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and</p>
--	---

	<p>(c) the proceedings will not be unduly delayed by the time taken to prepare the report; and</p> <p>(d) any delay in the proceedings will not have an unacceptable effect on the child.</p> <p>(4) If the court is entitled by subsection (3) to act under subsection (2) and if the court knows the parties' wishes about the obtaining of a report or can speedily ascertain them, the court must have regard to the parties' wishes before deciding whether or not to act under subsection (2).</p> <p><i>Court's power to obtain psychological reports</i></p> <p>(5) To obtain a written psychological report,—</p> <p>(a) the court may—</p> <p>(i) request a psychologist whom the court considers qualified for the purpose to prepare one; or</p> <p>(ii) direct the Registrar to request a psychologist whom the Registrar considers qualified for the purpose to prepare one; and</p> <p>(b) the court—</p> <p>(i) must specify which of the matters listed in paragraphs (a) to (f) of the definition of psychological report in subsection (1) that the report is to cover; and</p> <p>(ii) may specify any matter not listed in paragraphs (a) to (f) of the definition of psychological report in subsection (1) that the report is to cover.</p> <p>(6) The court may act under subsection (5) only if—</p> <p>(a) the court is satisfied that the information that the psychological report will provide is essential for the proper disposition of the application; and</p> <p>(b) the court is satisfied that the psychological report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and</p> <p>(c) the court is satisfied that the proceedings will not be unduly delayed by the time taken to prepare the psychological report; and</p> <p>(d) the court is satisfied that any delay in the proceedings will not have an unacceptable effect on the child; and</p> <p>(e) the court does not seek the psychological report solely or primarily to ascertain the child's wishes.</p> <p>(7) If the court is entitled by subsection (6) to act under subsection (5) and if the court knows the parties' wishes about the obtaining of a psychological report or can speedily ascertain them, the court must have regard to the parties' wishes before deciding whether or not to act under subsection (5).</p> <p><i>Court's power to direct meetings</i></p> <p>(8) If the court acts under subsection (2) or (5), it may give directions at the same time on arrangements for—</p> <p>(a) the child to meet with the report writer; or</p> <p>(b) 1 or more of the parties to meet with the report writer; or</p> <p>(c) the child and one or more of the parties to meet with the report writer.</p> <p>(9) If a party or the child fails to meet with the report writer as directed by the court,—</p> <p>(a) the report writer must notify the court; and</p> <p>(b) the court may make further directions.</p> <p><i>Second opinions</i></p> <p>(10) The approval of the court must be obtained before a second opinion may be prepared and presented.</p> <p>(11) The court may give approval only if there are exceptional circumstances.</p>
--	---

	<p>(12) A party who obtains the approval of the court for the preparation and presentation of a second opinion is liable for the costs of that opinion.</p> <p>(13) If the court gives approval, it may permit disclosure of the materials to the psychologist preparing the second opinion.</p> <p>(14) If the court declines to give approval to a party, or if a party does not seek approval, the court may permit disclosure of the materials to a psychologist who is employed by the party and who is not the report writer.</p> <p>(15) The court may permit disclosure under subsection (14) only if the court is satisfied that the psychologist requires the materials to assist the party to prepare the party's cross-examination.</p>
Family Courts Rules 2002	
Rule 416UA	<p>Complex case on standard track [or without notice track]</p> <p>(1) A Judge may classify as a complex case any proceedings that are being dealt with on the standard track [or without notice track], but only if the Judge is satisfied that the proceedings require a greater degree of judicial oversight than is ordinarily provided in proceedings under the Act.</p> <p>(2) The kind of features that indicate that particular proceedings require a greater degree of judicial oversight than is ordinarily provided include the following:</p> <p>(a) allegations of serious abuse or violence;</p> <p>(b) that the personalities or behaviour of the parties, or any of the parties, indicate that there may be a serious risk to the physical or psychological safety or wellbeing of any child involved in the case;</p> <p>(c) novel or difficult legal, technical, or evidential issues.</p> <p>(3) If a case is classified as a complex case,—</p> <p>(a) the Judge who so classified the proceedings must personally (wherever practicable) take over all subsequent steps in the proceedings, unless or until the Judge decides that it is no longer a complex case; and</p> <p>(b) case management conferences may be convened at any time in connection with the proceedings.</p>
Care of Children Act 2004 (Repealed provisions)	
Section 48(5)	<p>(A) parenting order may also be subject to any other terms or conditions (including, without limitation, a condition requiring a party to enter into a bond) the Court determines.</p>
S61	<p>Matters relevant to question in section 60(4)</p> <p>In considering, for the purposes of section 60(4), whether a child will be safe if a violent party provides day-to-day care for, or has contact (other than supervised contact) with, the child, the Court must, so far as is practicable, have regard to the following matters:</p> <p>(a) the nature and seriousness of the violence used;</p> <p>(b) how recently the violence occurred:</p>

	<p>(c) the frequency of the violence:</p> <p>(d) the likelihood of further violence occurring:</p> <p>(e) the physical or emotional harm caused to the child by the violence:</p> <p>(f) whether the other party to the proceedings—</p> <p>(i) considers that the child will be safe while the violent party provides day-to-day care for, or has contact with, the child; and</p> <p>(ii) consents to the violent party providing day-to-day care for, or having contact (other than supervised contact) with, the child:</p> <p>(g) any views the child expresses on the matter (as required by section 6):</p> <p>(h) any steps taken by the violent party to prevent further violence occurring:</p> <p>(i) all other matters the Court considers relevant.</p>
S61A	<p>Court may make orders to ensure safety of child in other cases</p> <p>(1) This section applies if—</p> <p>(a) there are proceedings before the court relating to any of the kinds of application specified in section 59(1)(a); and</p> <p>(b) section 60 does not apply to the proceedings because—</p> <p>(i) the court is not satisfied that an allegation of violence (as defined in section 58) is proved; and</p> <p>(ii) there is not otherwise a violent party (as defined in section 58) to the proceedings.</p> <p>(2) If the court is satisfied that there is a real risk to the safety of a child, the court may make any order under this Act that it thinks fit in order to ensure the safety of the child.</p>
Family Dispute Resolution Act 2013	
Section 4	<p>family dispute resolution means family dispute resolution provided by a family dispute resolution provider for the purposes of—</p> <p>(a) assisting parties to a family dispute to resolve the dispute without having to pursue court proceedings; and</p> <p>(b) ensuring that the parties' first and paramount consideration in reaching a resolution is the welfare and best interests of the children.</p>
Care of Children (Parenting Information Programme) Regulations 2014	
Section 3	<p>Parenting information programme</p> <p>The programme funded by the Ministry of Justice called Parenting Through Separation, which provides information about the effects of a relationship breakdown, is specified as a parenting information programme for the purposes of sections 46O and 47B(2) of the Care of Children Act 2004.</p>

Appendix B

Reference: William Bernet, Wilfrid von Boch-Galhau, Amy JL Baker and Stephen L Morrison "Parental Alienation, DSM-V, and ICD-11" (2010) The American Journal of Family Therapy 38:2 76-187 (Appendices A p183 and B p187)

Proposed Criteria for Parental Alienation Disorder (A)

Diagnostic Features

The essential feature of parental alienation disorder is that a child—usually one whose parents are engaged in a high conflict divorce—allies himself or herself strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification. The primary behavioural symptom is the child's resistance or refusal to have contact with the alienated parent (Criterion A). The behaviours in the child that characterize parental alienation disorder include a persistent campaign of denigration against the alienated parent and weak, frivolous, and absurd rationalisations for the child's criticism of the alienated parent (Criterion B). The following clinical features frequently occur in parental alienation disorder, especially when the child's symptoms reach a level that is moderate or severe (Criterion C). Lack of ambivalence refers to the child's belief that the alienated parent is all bad and the preferred parent is all good. The independent thinker phenomenon means that the child proudly states the decision to reject the alienated parent is his or her own, not influenced by the preferred parent. Reflexive support of the preferred parent against the alienated parent refers to the pattern of the child's immediately and automatically taking the preferred parent's side in a disagreement. The child may exhibit a disregard for the feelings of the alienated parent and an absence of guilt over exploitation of the alienated parent. The child may manifest borrowed scenarios, that is, rehearsed statements that are identical to those made by the preferred parent. Also, the child's animosity towards the alienated parent may spread to that parent's extended family. The diagnosis of parental alienation disorder should not be used if the child's refusal to have contact with the rejected parent is justifiable, for example, if the child was neglected or abused by that parent (Criterion D).

Associated Features

Parental alienation disorder may be mild, moderate, or severe. When the parental alienation disorder is mild, the child may briefly resist contact with the alienated parent, but does have contact and enjoys a good relationship with the alienated parent once they are together. When the parental alienation disorder is mild, the child may have a strong, healthy relationship with both parents, even though the child recites criticisms of the alienated parent.

When the parental alienation disorder is moderate, the child may persistently resist contact with the alienated parent and will continue to complain and criticise the alienated parent during the contact. The child is likely to have a mildly to moderately pathological relationship with the preferred parent.

When the parental alienation disorder is severe, the child strongly and persistently resists contact and may hide or run away to avoid seeing the alienated parent. The child's behaviour is driven by a firmly held, false belief that the alienated parent is evil or dangerous. The child is likely to have a strong, severely pathological relationship with the preferred parent, perhaps sharing a paranoid worldview. While the diagnosis of parental alienation disorder refers to the child, the preferred parent and other persons the child is dependent on may manifest the following attitudes and behaviours, which frequently are the major cause of the disorder: persistent criticisms of the rejected parent's personal qualities and parenting activities; statements that influence the child to fear, dislike, and criticise the alienated parent; and various manoeuvres to exclude the rejected parent from the child's life. The behaviour of the preferred parent may include complaints to the police and child protection agencies with allegations about the rejected parent. Parental alienation disorder may be the basis for false allegations of sexual abuse against the alienated parent. The preferred parent may be litigious to the point of abusing the legal system. The preferred parent may violate court orders that are not to his or her liking. Specific psychological problems—narcissistic personality disorder, borderline personality disorder, traumatic childhood experiences, and paranoid traits—may be identified in these individuals. Also, the rejected parent may manifest the following attitudes and behaviours, which may be a minor or contributory cause of the disorder: lack of warm, involved parenting; deficient parenting skills; and lack of time dedicated to parenting activities. However, the intensity and duration of the child's refusal to have contact with the rejected parent is far out of proportion to the relatively minor weaknesses in the rejected parent's parenting skills. Although parental alienation disorder most often arises in the context of a child custody dispute between two parents, it can arise in other types of conflicts over child custody, such as a dispute between a parent and stepparent or between a parent and a grandparent. Sometimes, other family members—such as stepparents or grandparents—contribute to the creation of parental alienation disorder. On occasion, other individuals—such as therapists and child protection workers—contribute to the creation of parental alienation disorder by encouraging or supporting the child's refusal to have contact with the alienated parent. Also, parental alienation disorder does not necessarily appear in the context of divorce litigation, but may occur in intact families or years following the divorce.

Differential Diagnosis

It is common for children to resist or avoid contact with the non-custodial parent after the parents separate or divorce. There are several possible explanations for a child's active rejection of contact. Parental alienation disorder is an important, but not the only, reason that children refuse contact. In the course of normal development children will become polarised with one parent and then the other depending on the child's developmental stage and events in the child's life. When parents disagree, it is normal for children to experience loyalty conflicts. These transitory variations in a child's relationship with his or her parents do not meet criteria for parental alienation disorder because they do not constitute "a persistent rejection or denigration of a parent that

reaches the level of a campaign.” If the child actually was abused, neglected, or disliked by the non-custodial parent or the current partner of that parent, the child’s animosity may be justified and it is understandable that the child would not want to visit the rejected parent’s household. If abuse were the reason for the child’s refusal, the diagnosis would be physical abuse of child or sexual abuse of child, not parental alienation disorder. This is important to keep in mind because an abusive, rejected parent may misuse the concept of parental alienation disorder in order to falsely blame the child’s refusal of contact on the parent that the child prefers.

In shared psychotic disorder, a delusional parent may influence a child to believe that the other parent is an evil person who must be feared and avoided. In parental alienation disorder, the alienating parent may have very strong opinions about the alienated parent, but is not usually considered out of touch with reality. When parents separate or divorce, a child with separation anxiety disorder may become even more worried and anxious about being away from the primary caretaker. In separation anxiety disorder, the child is preoccupied with unrealistic fears that something will happen to the primary caretaker, while the child with parental alienation disorder is preoccupied with unrealistic beliefs that the alienated parent is dangerous. It is conceivable that a child with specific phobia, situational type, might have an unreasonable fear of a parent or some aspect of the parent’s household. A child with a specific phobia is unlikely to engage in a persistent campaign of denigration against the feared object, while the campaign of denigration is a central feature of parental alienation disorder. When parents separate or divorce, a child with oppositional defiant disorder may become even more symptomatic—angry, resentful, stubborn—and not want to participate in the process of transitioning from one parent to the other. In oppositional defiant disorder, the child is likely to be oppositional with both parents in a variety of contexts, while the child with parental alienation disorder is likely to focus his or her negativism on the proposed contact with the alienated parent and also to engage in the campaign of denigration of that parent. When parents separate or divorce, a child may develop an adjustment disorder as a reaction to the various stressors related to the divorce including discord between the parents, the loss of a relationship with a parent, and the disruption of moving to a new neighbourhood and school. A child with an adjustment disorder may have a variety of nonspecific symptoms including depression, anxious mood, and disruptive behaviours, while the child with parental alienation disorder manifests a specific cluster of symptoms including the campaign of denigration and weak, frivolous rationalisations for the child’s persistent criticism of the alienated parent. Parent-child relational problem (a V-code) is the appropriate diagnosis if the focus of clinical attention is on the relationship between a child and his or her divorced parents, but the symptoms do not meet the criteria for a mental disorder. For example, a rebellious adolescent may not have a specific mental disorder, but may temporarily refuse to have contact with one parent even though both parents have encouraged him to do so and a court has ordered it. On the other hand, parental alienation disorder should be the diagnosis if the child’s symptoms are persistent enough and severe enough to meet the criteria for that disorder.

Diagnostic Criteria for Parental Alienation Disorder

A. The child—usually one whose parents are engaged in a high conflict divorce—allies himself or herself strongly with one parent and rejects a relationship with the other, alienated parent without legitimate justification. The child resists or refuses contact or parenting time with the alienated parent.

B. The child manifests the following behaviours:

(1) a persistent rejection or denigration of a parent that reaches the level of a campaign; (2) weak, frivolous, and absurd rationalisations for the child's persistent criticism of the rejected parent.

C. The child manifests two or more of the following six attitudes and behaviours: (1) lack of ambivalence; (2) independent thinker phenomenon; (3) reflexive support of one parent against the other; (4) absence of guilt over exploitation of the rejected parent; (5) presence of borrowed scenarios; (6) spread of the animosity to the extended family of the rejected parent.

D. The duration of the disturbance is at least 2 months.

E. The disturbance causes clinically significant distress or impairment in social, academic (occupational), or other important areas of functioning.

F. The child's refusal to have contact with the rejected parent is without legitimate justification. That is, parental alienation disorder is not diagnosed if the rejected parent maltreated the child.

Proposed criteria for parental alienation relational problem (B)

This category should be used when the focus of clinical attention is a pattern of interaction between mother and child, father and child, and mother and father (e.g., the parents are divorced and the child forms a strong alliance with one parent [the preferred parent] and rejects a relationship with the other parent [the alienated parent] without legitimate justification) that is associated with clinically significant impairment in individual or family functioning or the development of clinically significant symptoms in mother, father, or child. The symptoms that typically occur in parental alienation relational problem are the child's persistent campaign of denigration against the alienated parent and weak, frivolous, and absurd rationalisations for the child's criticism of the alienated parent. The symptoms that sometimes occur in parental alienation relational problem include: lack of ambivalence (the child's belief that the alienated parent is all bad and the preferred parent is all good); the independent thinker phenomenon (the child proudly states the decision to reject the alienated parent is his or her own, not influenced by the preferred parent); reflexive support of the preferred parent against the alienated parent; a disregard for the feelings of the alienated parent and an absence of guilt over exploitation of the alienated parent; borrowed scenarios (rehearsed statements that are identical to those made by the preferred parent); and the

child's animosity towards the alienated parent may spread to that parent's extended family. The diagnosis of parental alienation relational problem should not be used if the child's refusal to have contact with the rejected parent is justifiable, for example, if the child was neglected or abused by that parent.