

MANAGING ETHICAL ISSUES IN A PARENTAL ALIENATION CASE

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CANADIAN, EH?



TOPICS FOR TODAY (if time allows)

- **Why are ethical issues so prevalent in PA cases**
- **The Role of Counsel for**
 - ❖ the Targeted Parent (“TP”)
 - ❖ the Aligned Parent (“AP”)
 - ❖ The Child
- **Therapists and Therapy – How to Structure**
- **Custody Assessors/Evaluators**
- **Children’s Aid Societies/Child Protection Authorities**
- **Aligned Non-parties - Tribal Warfare**
- **Schools and Activity Providers**

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Why Are Ethical Issues So Common?

- **PA is counterintuitive**
- **PA is misunderstood**
- **Lack of training in this highly specialized area**
- **Ethical Rules and Professional Standards need updating**
- **Lack of centralized accessible/searchable experience**
- **The stakes are so high**
- **Misplaced emphasis on the “Voice of the Child” in family law adjudications**

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The Role of Counsel - Generally

- **Professional Standards provide little guidance specifically for custody disputes**
- **The advocacy role in an adversarial system is not designed for helping families restructure in a healthy manner**
- **AP tend to terminate lawyers who don't act aggressively and who don't advance all of their allegations and take all of the steps they demand**
- **TP tend to terminate lawyers who are ineffective in achieving restoration of relationships, yet the answer is multi-dimensional and multi-disciplinary**

Ethical Concerns for the Counsel for the AP

- **Limits of Advocacy**
- **Unsupported allegations**
- **Client who does not follow Court Orders**
- **Bullying/Manipulation of therapists, assessors, schools**
- **Limits on crafting strategy and tactics**
- **Raising issues and arguments that are estopped by prior findings when in front of a different Judge or in a different forum**
- **Encouraging non-parties to participate in denial of parenting time**

Ethical Concerns for Counsel for the TP

- **Limits of Advocacy**
- **Lack of Emotional Distance/Objectivity**
- **Misleading third parties**
- **Lack of multi-disciplinary knowledge**
- **Lack of specialized knowledge**

Ethical Concerns for Children's Counsel

- **Not understanding or staying “in bounds” the differing roles/mandates – re assertions and submissions**
 - ❖ Simple advocacy “voice of the child” role (as in Ontario CJA s.89)
 - ❖ Submissions vs evidence through social worker assist
 - ❖ Avoid submissions or evidence that exceeds role
- **Alignment with AP counsel vs appearance of independence**
- **Last minute chg of position seeking to impose terms**
- **Observing/permitting breaches of Court Orders**
- **Not educated or probing for signs of manipulation**
- **Lack of objectivity and simply believing the children's assertions in the face of contra evidence**

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Ethical Issues for Therapists and Structure

- **Competence and Special Population**
- **The therapeutic alliance vs structured directive psycho-educational intervention**
- **Disposition/personality**
- **Failure to terminate therapy that is not working**
- **Asking TP to apologize for things they didn't do**
- **Transference**
- **Logical Reasoning errors**
- **Bias towards therapy for its own sake as opposed for a defined purpose within a defined time**

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Ethical Issues for Custody Assessors/ Evaluators

- **Bias**
- **Transference**
- **Lack of procedural fairness**
- **Logical Reasoning errors**
- **Fact-finding errors**
- **Refusal to read all material provided and interview all collaterals**
- **Static vs dynamic analysis errors**
- **Lack of perceived independence**

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Ethical Issues for CAS/CPO Workers

- **Bias/Transference/Personalization**
- **Failure to distinguish between what is a child protection issue and what is a child protection issue**
- **Minimization/failure to understand risk of emotional harm**
- **“The Society’s position is ...” means one worker and one supervisor and even in complex cases maybe one group meeting**
- **Logical reasoning errors**
- **Advocating/Authorizing breach of Court Orders**

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Ethics Issues for Non-Parties

- **Aiding and Abetting in a breach of Court Orders**
- **Participating in the alienation – defamation and other torts – subject to limits at law**
- **Asserting the right not to have to take a side**
- **Fostering false allegations**
- **Funding their own child's alienation campaign**

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Ethical Issues for Schools and Activity Providers

- **Bias/Transference**
- **Failure to follow Court Orders re parenting time and pickups**
- **Part of the solution**
- **Part of the problem**
- **Failure to stick to their defined roles**
- **Limits to what they can/should do**
- **To call or not call the Police on various interactions**
- **Getting involved/taking a side/Being summonsed**

Common Errors of Professionals

- **Bias**
- **Transference**
- **Dual role prohibition breach**
 - ❖ Doctor for parent and for children
 - ❖ Marriage counsellor who becomes one party's therapist
 - ❖ Assessor/therapist/PC
- **Deliberately or inadvertently becoming an advocate**
- **Taking on assignments that are out of their experience/expertise**
 - ❖ PA; false allegations of sexual abuse

WHAT CAN BE DONE WITHIN A CASE?

- **Spot the issue**
- **Be vocal and firm but polite and educational about the issue**
- **Ask for better behavior**
- **If not:**
 - ❖ Internal complaint/appeal
 - ❖ Court proceeding for remedies including termination of service/replacement and directions
 - ❖ Last resort – complaint to licensing bodies

Reference Sources – Part 1

Title	Volume/ Edition	Author/ Publisher
Counsellors as Witnesses		Allan E. Barsky
Counselling Ethics Philosophical and Professional Foundations		Christin M. Jungers Jocelyn Gregoire
The Social Worker's Guide to Children and Families Law	Second Edition	Lynn Davis
Law for Social Workers	Fifth Edition	Rachel Birnbaum Janet E. Mosher
Essential Law for Social Work Practice in Canada	Third Edition	Cheryl Regehr, Karima Kanani et. al
Companion Manual to the Canadian Code of Ethics for Psychology	Third Edition	Canadian Psychology Association
Ethics for the Practice of Psychology in Canada	Revised and Expanded Edition	Derek Truscott Kenneth H. Cook
Ethical and Legal Issues for Mental Health Professionals <i>in Forensic Settings</i>		Steven F. Bucky, Joanne E. Callan et. al

Reference Sources – Part 2

Title	Volume/ Edition	Author/ Publisher
Law, Standards and Ethics in the Practice of Psychology	Third Edition	David R. Evans
Ethical and Legal Issues for Mental Health Professionals <i>A Comprehensive Handbook of Principles and Standards</i>		Steven F. Bucky, Joanne E. Callan et. al
Issues and Ethics in the Helping Professions	Ninth Edition	Gerald Corey, Marianne Schneider Corey, et. Al
Ethics in Psychotherapy and Counselling	Fifteenth Edition	Kenneth S. Pope <u>Malba J.T. Vasquez</u>
Decoding the Ethics Code A Practical Guide for Psychologists	Fourth Edition	Celia Fisher
Confidentiality and Record Keeping in Counselling and Psychotherapy	Second Edition	Tim Bond <u>Barbara Mitchels</u>
Ethics for the Practice of Psychology in Canada		Derek Truscott Kenneth H. Cook
Ethical, Legal and Professional Issues in the Practice of Marriage and Family Therapy	Updated Fifth Edition	S. Allen Wilcoxon, Theodore P. Remley, Jr. et. al

References – Part 3

Title	Volume/ Edition	Author/ Publisher
Code of Ethics for the Helping Professionals	Fifth Edition	Gerald Corey
Ethics in Psychology and Mental Health Professionals	Fourth Edition	Gerald P. Koocher Patricia Keith-Spiegel
Social Work Ethics: Progressive, Practical and Relational Approaches		Elaine Spencer Duane Massing Jim Gough
Understanding Medical Professionalism	American Board of Internal Medicine Foundation	Wendy Levinson Shiphra Ginsburg Frederic W. Hafferty Catherine R. Lucey
Ethics in Counselling and Psychotherapy	Sixth Edition	Elizabeth Welfel
Neuroscience for Counselors and Therapists: Integrating the Sciences of Mind and Brain		Chad Luke
Issues and Ethics in the Helping Professions		Gerald Corey Marianne Schneider Corey Cindy Corey
Social Work Values and Ethics		Frederic Reamer

- **THE COMPETING NARRATIVES MAKE GETTING THIS RIGHT VERY DIFFICULT SO WE NEED HIGHER STANDARDS OF TRAINING AND EDUCATION AND COMPILATION OF LAW, KNOWLEDGE AND EXPERIENCE**

Need for an Integrative and Updated Understanding of Parental Alienation

- **Baseball transformed by analytics movement (i.e. “Moneyball”)**
 - ❖ NFL on the way with transponders in shoulder pads and overhead cams
 - ❖ NHL “old school” still resistant yielding to huge analytics movement, referee-cams and overhead cams
- **PA discourse needs a more evidence-based approach:**
 - ❖ Understanding of successful vs failed therapy and legal interventions
 - ❖ Understanding of emotional harm issues
 - ❖ Understanding of neuroscience
 - ❖ See: Parenting Plan Evaluations, 2nd ed.
- **Consensus statement from ISNAF 2014 Colloquium**

Parental Alienation is Counter-Intuitive

- **Misconstruing children's rejection – “splitting” or “grief” and the cross-generational coalition**
- **Gender and age issues and assumptions**
- **Mixed pathology – not equal contribution (the “But-For” test)**
- **Failure to examine why no healing**
- **Failure to understand transient nature of dynamic – relationships prior to separation vs failure of family to restructure in a healthy manner**
- **Failure to protect from emotional abuse and enmeshment even though thriving in other areas**
- **No independent Voice of the Child – no matter what process**
- **Failure to understand failures of traditional therapy**
- **Misunderstanding of “trauma” occasioned by a protective separation – not evidence based (they work quickly), just assumptions and not a bar to child protection placements (A.A. v. S.N.A. 2007 BCCA – it is an error in law to focus on short term hypothetical problems vs long term risk of harm)**

Competing Narratives and Credibility

▪ Excerpts from **A.F. v. J.W.**, 2013 ONSC 4272

[36] I do not find A.F. to be credible. When looking at all of my findings, from the prior trial together with her testimony during this review, I find that A.F. has continued to demonstrate the same pattern of misrepresentation of events I had seen in advance of my June 27, 2011 reasons. **I find that this hamster incident is another example of A.F. saying that she supports the children's involvement with their father, yet sending the exact opposite message to her children through her actions.**

[133] A.F. did not seize upon the opportunity given to her by my June 27, 2011 order. **Although she became adept at articulating support for the access between the children and their father, it is clear now that her articulation was hollow, completely devoid of any meaningful substance.** The sad truth is that **A.F. never gave the children permission to love and respect their father.**

[137] The mother was given the opportunity to achieve expectations that were spelled out for her in my judgment of June 27, 2011. **She admitted in her testimony on this review that she never read that judgment and only relied on her memory of what was said orally, which is telling of her commitment to adhere to the order.**

Favoured Parent's Narrative

- ❖ Framing the issue in a way that absolves them of responsibility for cause or solution
- ❖ Hypocritical assertions of “encouraging” access, despite alleging rejected parent as abusive and child as justified
- ❖ Elevates child’s decision-making and “feelings” over all else
- ❖ All positions involve substantive delay and stagnation
- ❖ Imposing conditions on access: “child needs to feel safe and secure”, “child needs a safe environment for access”, “child needs an advocate/mediator in all interactions with rejected parent”
- ❖ The only therapy they will agree to is framed to not involve them or to just give the child a platform and to make it seem like they are interested in solutions – access in parallel with therapy is rejected and then the therapist is co-opted to go slow in recommending access, as the therapy confuses roles
- ❖ No matter how much supportive evidence re rejected parent (courses, plan of care, books, all-clears from mental health and from CAS, many affidavits from collaterals, pictures and movies from the past) no change of position/views
- ❖ Parenting style conflict and refusal to consider the breadth of “normative” parenting

Rejected Parent's Narrative

- ❖ Everyone is judging me and micro-managing my parenting; I am forever on the defensive. I am being judged while suffering from loss of children, impact/loss of career, and PTSD. I am a normative parent – no worse than average Mom.
- ❖ Issues that are capable of resolution if people proceed with a positive goal and good faith are elevated to inherent flaws in me or my parenting that are portrayed as incapable of change
- ❖ Historical issues that had long ago been resolved or managed are suddenly dredged up (prior errors, prior mental health issues) even though they were not an insurmountable issue while the family was intact
- ❖ Nobody (therapists, lawyers, Court, therapists) understands the “Alice-in-wonderland” and “Kafkaesque” nature of my world. I have always been a loving, empathic and devoted parent. What happened?
- ❖ Nothing I do is good enough (courses, books, personal therapy, parenting coach) or will answer the issues – I solve one, there is no relational movement from the children or my ex, just an elevation of the other 24 issues and the creation of new issues
- ❖ I keep getting ask to “apologize” / “confess” to things I didn't do or are taken out of context. I know they are just looking for further “proof” of my allegedly inherent abusiveness, but the therapist was actually siding with the child.

Children's Narrative

- ❖ The outward presentation
- ❖ The inner child
- ❖ Neuroscience
- ❖ Guilt
- ❖ Grief
- ❖ The children's lawyer's narrative is not my narrative

Hidden Agendas Colour The Narratives

- ❖ *“days for dollars”*
- ❖ The “40% cliff” in Canadian child support laws
- ❖ Spite/vindictiveness/fear - projection/power and control/gatekeeping
- ❖ Personality disorders / mixed or just shy of diagnosis
 - ❖ Relevant disorders 10% of population but many times higher in family law PA litigants – high base rate
- ❖ Repartnering – deliver the children as the fruits of the new union
- ❖ Intrusive/enmeshed parenting styles
- ❖ Inability to reconcile to two different but normative parenting styles

Mistaken Court Narratives

- ❖ The usual admonishments of “*Play nice, put the kids first, stay out of court, go do unstructured therapy, both parents are to blame equally*”, plays into the hands of the alienator
- ❖ Reflexive belief in children’s hearsay statements despite studies of children lying to protect themselves or to influence a result or erroneous delegation of the problem to OCL/GAL/Assessment/Therapists/Mediators
- ❖ Lack of understanding of urgency and potential impact of lost memory/history, lost or impaired critical thinking skills, loss of sense of permanence of foundational relationships
- ❖ Little understanding of schools of therapy, prerequisites for therapy, pervasive failures of therapy
- ❖ Little understanding of available diagnostics or psychological processes, despite reams of jurisprudence
- ❖ Lack of understanding of jurisprudence on parental duties to foster compliance with Court orders – “encourage” vs “require”; Children of 12/13/14/15 are old enough to decide; Court Orders are not absolute until varied – just a guide
- ❖ Potential Biases: Voice of the child; Pre-separation division of parenting time governs; Gender; Undue caution; Allegations true until disproven and if disproven, no consequences to false allegor

Mistaken Therapist Narratives

- ❖ Go slow – if I push too hard the children will stop coming. Baby steps so I can demonstrate progress
- ❖ I am afraid of the alienating parent and must avoid a complaint
- ❖ It's not my job to enforce the Court Order re access
- ❖ Non-therapeutic access is not essential – I can solve this in therapy even though I have don't practice strategic family systems and no success in past
- ❖ I can't push the aggressive parent, so I will push the less aggressive parent
- ❖ I accept whatever the children say and never challenge them or ask them to apologize to their parent
- ❖ I am doing individual therapy instead of family systems interventions – so I refuse to be directive/authoritative and unwittingly make things worse
- ❖ I don't have to read everything the rejected parent gives me, or speak to their collaterals, to understand the previous background
- ❖ I must observe the “therapeutic alliance” even if goals of the therapy not met
- ❖ Refusal to call a halt in the face of lack of good faith participation and to write a letter for Court confirming why (properly done in *Huckerby v. Paquet*, 2014 Saskatchewan); Must cease ineffective therapy under most Codes
- ❖ Therapist fragmentation

Missing Narratives

- ❖ Memory/history devalued and lost – kids focused on the present and future
- ❖ The “EITHER-OR TEST” – boundaries of acceptable child-behaviour – child’s pathogenic behaviour is either the product of TP outside broad normal-range parenting or AP inducing such behaviour
- ❖ Parenting = guidance, boundaries, incentives and consequences
- ❖ Co-parenting should be as supportive as during the marriage - instead we get the “waiter analogy” - “it’s not my table”
- ❖ Empathy, morality, spirituality – see *“Raising a Moral Child”*, *New York Times*, April 13, 2014, *Sunday Review*, p.1
- ❖ Positive (actively promote other parent) vs negative covenants
- ❖ Urgency – legally, therapeutically, relationally, mental health
- ❖ Limits on counsel for the alienating parent and counsel for the child
- ❖ This is a child-protection issue, not simply a custody/access issue
- ❖ “Normative Parenting”

Assessments and Legal Cases Gone Wrong

- **Falling prey to the “Framing Game”**
 - ❖ Issues vs inherent flaws in TP; transitional/situational vs actual
 - ❖ The relational expectations of compromise and forgiveness
 - ❖ It is irrelevant that the children do well in other areas
 - ❖ Age – these relationships are meant to last a lifetime
- **Falling prey to “mixed Pathology” – overlooks the BUT-FOR test, disproportionality, past non-issues now becoming terminal, failure to weigh disparity of parental behaviours**
- **Failure to conduct/consider collateral interviews, documentation, source of views, adult/scripted language**
- **Failure to apply recognized methodologies or to understand family systems and the pathological alliance (AP as self-appointed advocate/protector of the child) or errors in logical or inductive reasoning**

Assessments and Legal Cases Gone Wrong - 2

- **Failure to reflect on failure of prior therapeutic and other interventions**
- **Failure to reflect on why sustainment of the dynamic (no healing)**
 - ❖ Which members of family system are motivated re solutions and prepared to forgive, forget and move on
 - ❖ Who is fixated on blame and co-opting therapists and others
 - ❖ Why no healing in the face of attachment system pressure to return to historical bonding
 - ❖ New cognitive distortions and false allegations
 - ❖ “The Pounce”
- **Failure to consider alternative explanations that have the same effect: maternal gatekeeping, enmeshment, anxiety projection, splitting**
- **See: “*Child Custody Evaluations: In Cases Where Parental Alienation is Alleged*”, (Lorandos and Bone) in *Handbook of Child Custody*, M.L. Goldstein (ed.), Springer 2016**

What is Normative Parenting?

- No science being applied by Courts and evaluators
- Debate in Recent Books: *“The Collapse of Parenting”* and *“All Joy and No Fun – The Paradox of Modern Parenthood”* and *“Discipline Without Damage”*
- University Level Family Studies Texts and the “Normative Parenting Project”
- Formal evidence-based parenting inventories
- Interest, attitude, aptitude, flexibility
- Personal qualities of the parent: general level of adjustment; adequacy of coping skills; interpersonal accessibility; able to model behaviours they have to teach, including resilience
- Emotional Intelligence/Social Intelligence
- Transitory Issues and the But-For test

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