

MANAGING THE VOICE OF THE CHILD IN A PARENTAL ALIENATION CASE

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CANADIAN, EH?



Children's Evidence in PA Cases

- **A significant problem we struggle with in all cases**
- **Misplaced emphasis on the filter/source**
 - ❖ Police
 - ❖ Children's counsel
 - ❖ Child protection authorities
 - ❖ Custody evaluator
 - ❖ Therapist
 - ❖ Schools
- **If children and families exhibiting maladaptive behavior after separation constitute a “special population”, then specialized training and experience is required to receive their “voice”.**

TOPICS FOR TODAY (if time allows)

- **Who, What, When, Where, Why the Voice of the Child**
- **Methods for Conveying the Voice of the Child**
- **Implications From Neuroscience**
- **Discounting the Voice of the Child in Alienation Cases**
- **Judicial Reviews Not Recommended**
- **Judicial Explanations and Review Orders with Parenting Covenants and Structured Therapeutic Intervention Recommended**
- **Evidence Law Issues**
- **Discounting the View of Children's Counsel**

PRECEDENTS TO ACCOMPANY PRESENTATIONS

LIST OF PRECEDENT MATERIALS PROVIDED

- **Statement of Law on Judicial Interviews**
- **Statement of Law on Voice of the Child**
- **Statement of Law on Discounting Views of Children's Lawyer**
- **Statement of Law on Credibility**
- **Failed Therapy Quotes from the Jurisprudence**
- **Statement of Law on Review Orders**
- **Reading List – How Memory Works**
- **Reading List – Suggestibility, Delusion and Lying**
- **Reading List – Parenting**
- **Notice of Motion – Interim Intervention With Parenting Covenants**

WHO, WHAT, WHEN, WHERE, WHY OF THE VOICE OF THE CHILD

Who, What, When, Where, Why of Child's Voice

Who - Depends on Age of Child; Age Ranges are historical and don't reflect current Neuroscience

What – Views and preferences; probe rationale for the views and preferences; factual assertions of incidents and relative parenting issues

When – Early enough in the case for contesting evidence

Where – Prior to Court Hearing disclosure of custody assessor and children's lawyer's and child protection authorities' files – sometimes contested

Why – Legislation requires soliciting views and preferences where they can be reliably ascertained; children should feel that they were part of the process (a voice but not a choice)

RHETORIC CONCERNING THE CHILD

- The “right of the child”; the “voice of the child”, the “best interests of the child”
- UN Convention on the Rights of the Child (1990)
Article 12 protects the right of the child to maintain a relationship with his/her parents; not the right of the child to reject a parent
- The voice of the child can be put before the Court in a sensitive, age-appropriate way through an assessment or OCL investigation or “open mediation” or through a therapist rather than by appointing counsel and making a child a party to the private custody/access litigation

RHETORIC CONCERNING THE CHILD

- **The Best interests of the child are governed by the *Divorce Act (Canada) s. 16*, including:**
 - (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
 - (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage **should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.**
 - ❖ The custodial parent, in effect, becomes the interim trustee of the child's right to a relationship with the other parent

RHETORIC CONCERNING THE CHILD

- **The best interests of the child are also defined in s. 24 the *Children's Law Reform Act (Ontario)* - overlapping jurisdiction and for common law relationships**
 - ❖ This is a list of factors for which support for the other parent's relationship with the children has been inferred (*Rogerson v. Tessaro, Ont. CA 2006 and many cases since*)
 - ❖ The expressed wishes of the children is one factor
 - ❖ The challenge is to ascertain the child's capacity to make this expression or whether free will is lacking as a result of the PA dynamic.
 - Need to ensure that the child is not subject to a loyalty-bind and has the freedom to express love for both parents

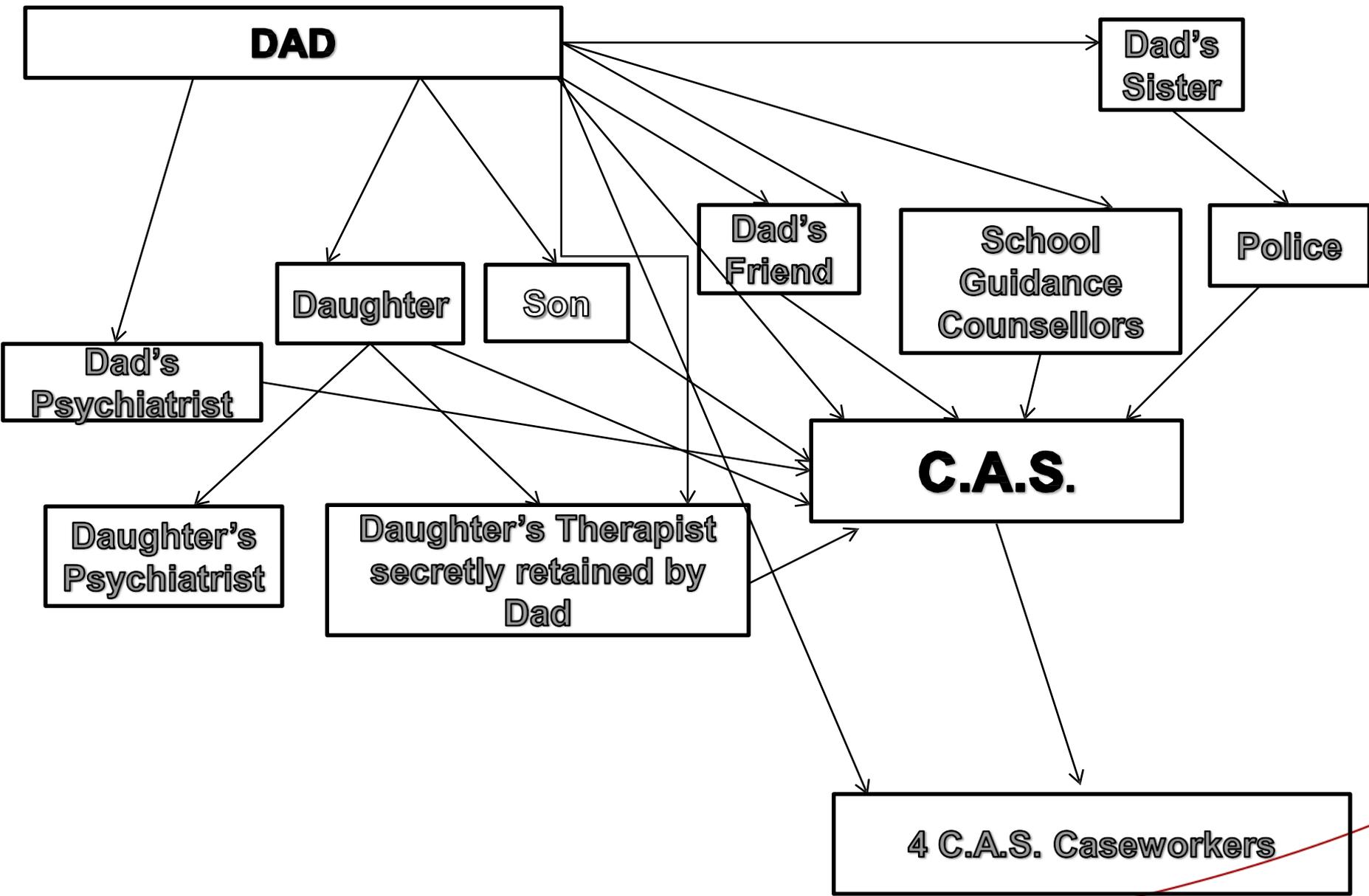
RHETORIC CONCERNING THE CHILD

- **Supreme Court of Canada in *Young v. Young* (1993) clarified that access is the “right of the child” rather than a “parental right” and so heightened the importance of becoming at least a joint custodial parent.**
- **However, “custody” issues are generally related to: health, education, religion and mobility issues**
 - ❖ Most parental disputes relate to the living arrangements and day-to-day decisions
 - ❖ But the rhetoric and “label” are important regarding the parent and child’s views of the nature of their relationship. Nobody wants to be a “visitor”. There should be “two [equal] healthy happy homes”.
- **The child used to have a 100% living arrangement with both parents – why should the child lose out as a result of the separation**

THE CHALLENGES IN HEARING THE VOICE OF THE CHILD IN ALIENATION CASES

Children's Narrative

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



CREDIBILITY ASSESSMENTS

- **Courts assess the credibility of the adults in the case, including the parents, using common unscientific methodologies**
- **Courts rarely comment on the credibility of assertions from the children**
- **Courts do, however, frequently comment on findings or concerns about parental programming/influence of the children**
- **Children's counsel have a duty to advise the Court of concerns about capacity to instruct or risk of lack of independence – but rarely do so**

AP Tactics Related to Credibility

- The aligned parent offers the Court no real answer – therapy without living with and experiencing life with the formerly psychologically-bonded parent can't work. They accept no responsibility, over-empower the children and refuse to abide by Court Orders
- Typical “logical traps” used by aligned parents:
 - **TP “won’t listen to the children”** (when all the children are saying is “get out of my life” or just minor complaints)
 - **TP “won’t change”** (without articulating the issue or explaining why it wasn’t an issue before separation or how the TP is supposed to demonstrate change to the children when they don’t see him/her)
 - **I can’t/won’t force them to visit** - They are old enough to decide for themselves
 - The children just need peace and not more therapy

AP Tactics Related to Credibility

- Typical “logical traps” used by aligned parents:
 - **I can’t/won’t force them to visit** - They are old enough to decide for themselves
- ❖ Fortune Magazine March 30, 2009 article on Ray Dalio (manager of the world’s largest hedge fund):
 - *“The thing that makes him different is an intolerance for the inadequate answer. He’ll just keep peeling back layer after layer to get at the essential truth”*
- **THE ANSWER: You are either lying about your good faith efforts or you are completely ineffective as a parent – either way you are not an appropriate trustee for the children’s right to have a relationship with the other parent. (resulting in custody reversal as per *Rogerson v. Tessaro – Ont. CA 2006*)**

Jurisprudence on Credibility

- **Credibility (veracity and sincerity and balance) vs reliability (accuracy, perspective, power to observe, ability to recall)**
- **Strength of belief has little to do with existence of the fact**
- **A credible witness may be incorrect or misapprehend or not have had all of the fact**
- **Assessing credibility factors include internal consistency, consistency with the other evidence, inherent plausibility, whether contra evidence omitted, whether perspective omitted.**
- **PA cases plagued with unjustified and embellished and fabricated accusations internally inconsistent with “encouraging” the child to see the other parent**

Reading Lists Handouts

- **How memory works**
- **Suggestibility, Delusions and Lying**
- **Parenting Topics (20 pages)**
 - ❖ General
 - ❖ Parenting after separation
 - ❖ Communication, Boundaries and Discipline
 - ❖ Complex Needs
 - ❖ Adolescents
 - ❖ Family systems, resilience and change
 - ❖ Gender-specific and internet issues
 - ❖ Fatherhood
 - ❖ Emotional Regulation, Resilience

Neuroscience and *The Teen Brain*

- Prof. Laurence Steinberg (*“Age of Opportunity”* and *“Adolescence – 10th ed.”*) and Dr. Dan Siegel (*“Brainstorm”*)
- **Jurisprudence re weight of children's views vs. adolescence extending to age 24**
 - ❖ Also relevant to never giving up on older teens, since these relationships are meant to last a lifetime
- **Pruning of the pre-teen brain at 10-11 coincides with PA onset**
Loss of or fading of old favourable memories inconsistent with the internal working model of the TP in the AP’s home
“invalidating environment”
 - ❖ Effect of invalidating environment on new brain growth
 - “ruts in the road”; Maintenance of cognitive distortions; Impaired critical thinking skills
- **Higher risk of PA as individuation is already a programmed developmental step – easy to divert**
 - ❖ The teen’s search for new and exciting experiences
 - ❖ Physical changes and sleep deprivation

Neuroscience and *The Teen Brain* - 2

- **See “Mental Health Advocates Aim for Cure”, *National Post*, Oct. 7, 2014 p.A4**
 - ❖ *In a knowledge-based economy, “brain health” is “brain capital”*
 - ❖ *Many mental illnesses are organic - caused by abnormalities in the way the brain is structured or functions, rather than psychodynamic Freudian disorders*
 - ❖ *Transforming diagnosis by incorporating genetics, imaging, cognitive science and others*
- ***PA - The child’s brain is under stress at a particularly “plastic” stage of development - query our understanding of just how damaging this dynamic actually is and whether emotional harm PLUS physical harm in a child protection sense***

Neuroscience -3

- **Memory formation and plasticity**
- **Trauma**
- **Splitting**
- **Critical Thinking Skills**
- **Conflict Resolution**
- **Assertiveness vs Submission**
- **Enmeshment**

- **DISCOUNTING THE EXPRESSED VIEWS OF THE CHILD IN AN ALIEANTION CASE**

Insights From Jurisprudence on Children's Voices

- **Extensive jurisprudence on low to no weight being placed on children's testimony in PA cases**
- **Similarly in cases of enmeshment or alliances or vicarious expression of a parent's views or coaching or lack of cognitive ability to express independent views in circumstances**
- **Lack of ambivalence or balance a key criteria**
- **Regardless of source (even professionals); interviewer bias**
- **Repeated questioning held to alter, recreate or contaminate memory so that children adopt the AP narrative of abuse**

Methods for Conveying the Voice of the Child

How to Hear the Voice of the Child – There is No Perfect Solution

- **Child Representation**
- **Assessments**
- **Judicial Interviews – issues and concerns**
- **Therapists**
- **Child testimony**
- **Children can reach a stage of distrust and fatigue after being interviewed by OCL, CAS, therapists, Police and parental coordinators and refuse to participate**

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

ISSUES WITH JUDICIAL INTERVIEWS

- **Judges' advantages**

- ❖ Can put a face to a name
- ❖ What the child says vs how they say it
- ❖ Are they open and empathetic and balanced
- ❖ Child's literal words unfiltered
- ❖ Unlike any other player, if done at end of case the Judge is the one participant who has the broadest range of evidence, beyond a custody evaluator or therapist, since he/she has seen and heard all witnesses and has broadest view of documentary evidence

ISSUES WITH JUDICIAL INTERVIEWS

• Judges' disadvantages

- ❖ Can't probe/cross-examine
- ❖ Can't test critical thinking skills regarding parents and generally
- ❖ Can't Could corrupt analytical process
- ❖ Lack of training in PA dynamics, family systems dynamics and impact of the "loyalty-bind".
- ❖ Will never be able to offer full cross-exam to litigating parties
- ❖ Adjudicative vs investigative
- ❖ Not trained how to ask questions and interview children and
- ❖ When in the case?
- ❖ New evidence/assertions from the child
- ❖ Judge can run afoul of same cognitive biases as MHP if not fully trained about children's suggestibility

JURISPRUDENCE ON JUDICIAL INTERVIEWS

- **Almost uniformly against using this modality unless it is the only way to provide the children's voice unfiltered by parents' and lay collaterals' testimony**
- **Guidelines document in Ontario has multiple requirements that effectively preclude Judicial interviews as a modality without both parties' consent**

JUDICIAL INTERVIEWS TO EXPLAIN THEIR DECISION

- **Recommended modality**
- **Enables an interim decision, subject to review, with clear guidelines for the family members**
- **The following slides explain the structured interim solution, which is available as the “second-to-last” remedy before the protective separation**
- **Protective separations or “time-outs” are available even without access to Family Bridges or any of the other programs and often yield successful healing**

❖ Query why?

JUDICIAL SUPERVISION THROUGH REVIEW ORDERS WITH CASE MANAGEMENT

- **Use of Review Orders in Alienation Cases**

- ❖ Meet with Children to explain decision
- ❖ Covenant pattern
- ❖ Structured Intervention
- ❖ Accountability for all participants, including children
- ❖ Case Management
- ❖ Dynamic vs static/historical analysis of the family system and observations/testing of the competing narratives and of the voice of the children

- **Failed Therapy Jurisprudence**

- **Structured Intervention Components**

Jurisprudence on Review Orders and Structured Interventions

- **See handout**
- **The supportive provisions and powers and rules are justified as “incidents of custody/access”**
 - ❖ Terms, conditions, mandatory participation in education/therapy
 - ❖ Mandatory covenants

Jurisprudence on Failed Therapeutic Interventions and the Success of Structured Interventions

- **See handout**
- **Broad recognition of the failure of traditional therapy but not cohesively advanced and rarely with an understanding of what “therapy” actually is and is not**
- **The key thought recognized in the jurisprudence is that without complete buy-in by the AP, and communication of that to the children, a therapist can achieve nothing so long as the children can continue to receive contra messaging**

The Structured Interim Intervention With Judicial Case Management

- **Handout – Sample Notice of Motion**
- **If at a final (Trial) hearing, add Case Management and same judge staying seized on the case**
- **Is it the structure (one last chance, covenants and accountability) or is it the “directive therapy”**
- **There aren’t enough “programs”, and there are timing and affordability issues, so judicial intervention with structure and covenants will have to serve most families**
- **Courts won’t lightly impose a “time-out”, it is a remedy of the last resort**

Covenant Pattern for the Favoured Parent

- **Positive Covenants to promote the TP**
- **Negative Covenants**
- **Covenants to interfere with their personal narrative – disarm and disempower them**
- **Covenants to cause healthy behavior when with the TP and take ownership of that (avoiding the “waiter analogy”)**
- **Customized covenants to deal with specific incidents and trends and myths in the case and to reintroduce empathy, forgiveness and healing as normal family dynamics**
- **Covenants/therapy to deal with enmeshment, intrusive parenting, histrionics, separation anxiety**

Covenant Pattern for the Targeted Parent

- **While we don't judge them for their reactive behavior to provocations and we don't re-victimize them by forcing them to apologize for matters that they assert never happened, nonetheless they must make changes.**
- **Thick skin, project empathy, smile, speak softly, deliver unconditional love and optimism for the future, have fun, stock their favoured foods, compromise on their otherwise normative parenting, pick your spots, seek advice, read/learn/be certified.**
- **Practice “state of the art parenting”**
- **Demonstrate resilience**

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

Children's Needs, Responsibilities vs Wants

- Children have duties to assist the family in restructuring after divorce and in adapting to two homes.**
- It is normative and expected for children to adapt to normative parenting rather than over-empowering the children just because of the separation**
- Children must not play one parent off against the other**
- It is not acceptable for children to dictate the access schedule**
- Children must accept the inconveniences of transiting back and forth**
- There are standards for acceptable children's behaviour**

The Children's Charter of Rights and Responsibilities - RIGHTS

- **The children have the right to love and express love, verbally and through hugs, to each of their parents equally, free from any feelings of disloyalty or upset of the other parent.**
- **The children have the right to cherish and think highly of each of their parents and the right to be free from any disparagement, negative opinions or criticism of one parent by the other parent or by members of a parent's extended family and friends.**
- **The children have the right to demonstrate affection to each of their parents in the presence of the other and in the presence of their respective extended families.**
- **The children have the right to describe positively and with enthusiasm their life with one parent to the other parent and the right to expect that this expression will be received openly and warmly and encouraged.**
- **The children have the right to not have to manage the feelings of a parent by demonstrating loyalty or conveying dislike of the other parent's home.**
- **The children have the right to see their parents get along and be cordial with each other.**

The Children's Charter of Rights and Responsibilities - RESPONSIBILITIES

- **The children are responsible for dealing with each of their parents fairly, respectfully and with love and affection.**
- **The children should not seek to use one parent to intervene or overrule parenting decisions made at the other parent's house.**
- **The children are responsible to respect the privacy of each of their parents' homes.**
- **If the children are exposed to disparagement of one parent by the other or by their extended family, the children have the responsibility to assert themselves and ask that their right to think highly of both parents be respected.**
- **The children are responsible for managing their own behavior in a manner which will support their rights and responsibilities and their parents' parenting plan.**
- **The children have the responsibility to maintain a balanced, fair and independent attitude towards their parents and to not take sides on any issues with one parent against the other.**
- **The children have the responsibility to not behave in the manner depicted in the Court Decisions that resulted in the current situation in the family.**

“Light” therapy vs. “Reconciliation Therapy”

- **Open vs. closed**
 - ❖ Privacy laws (such as The Personal Health Information Privacy Act) allow “competent” estranged children to prohibit the sharing of their file with the TP, even though AP gets it
- **Child therapist vs. multi-client**
- **Goal oriented: “reconciliation” – or not**
- **Timeline after which return to Court**
- **Avoid the “therapeutic alliance” regarding each of therapist/coach for AP and therapist for children**
- **Children told that if they are nice to TP in therapy it will be used against AP in Court – instead they actively try to justify their estrangement**
- **Court-Ordered or not – forcing AP to cooperate**
 - ❖ Note that *Healthcare Consent Act / Child and Family Services Act* allow adults and children of 16 years to refuse therapy
 - ❖ Court Order re therapy as a condition of custody/access

“Light” therapy vs. “Reconciliation Therapy”

- **Chose the therapist or team carefully – you want people who are not afraid to take a stand**
 - ❖ Wishy-washy or inconsistent statements are not helpful in solving the dynamic
 - ❖ Avoid “individual therapy” and instead chose/specify Strategic/Structural Family Systems Therapy
- **Some early therapeutic input can be useful so long as the case itself is moving inexorably towards trial**
 - ❖ Insight into what the children are saying
 - ❖ Exposes the numerous “complaints” that are outright fabrications or distorted out of all proportion
 - ❖ Creates a fixed “moment in time” snapshot that can help identify PAS if new complaints arise afterwards
 - ❖ Forces the AP to get involved in solving the situation or to expose that they have no interest in actually solving the situation

AVOID THERAPIST FRAGMENTATION

- **What does that mean?**

- ❖ Securities Law Root
- ❖ Individual therapists can work at cross purposes;
- ❖ Gaps in services and analysis

- **Insight from AF v. JW (2008 – 2013)**

- ❖ AP found in Contempt and having fostered distortions June 2011 (A.F. v. J.W., 2011 ONSC 1868);
- ❖ Custody reversed after no change in behaviour (A.F. v. J.W., 2013 ONSC 4272)
- ❖ Children's therapist counted on AP's therapist changing AP's internal working model about TP, but this was not occurring
- ❖ Children's therapist moved too slowly and without clear milestones and therapeutic goals and was not using SFS intervention
- ❖ Parenting styles and "control"

Structuring Reconciliation Therapy

1. **Multi-party and Fully-Open**
2. **Using Structural Family Systems Methodology**
3. **Goal-oriented**
4. **Time-Limited (6 months)**
5. **Milestones (monthly)**
6. **Active Case Management by a CM Judge**
7. **Everyone on the Same Page Premises**
 - ❖ Mea Culpa; acceptance of TP as safe, loving competent and available
8. **Must have parallel non-therapeutic access**

Judicial Case Management During the Therapeutic and Review Process

- **Ability to convene Case Conferences for Directions and to deal with non-compliance**
- **Finding of Contempt and Suspension of Sentence**
- **\$500 per missed visit with TP or therapist**
- **Order involvement of CAS/CPS**
 - ❖ Generally not helpful due to practical limitations
 - ❖ JW v AF experience
- **Process to deal with early insights from the reconciliation therapy**

THE PROBLEM OF COUNSEL FOR THE CHILDREN

Children's Counsel

- **Seeking counsel for a child is a common tactic of AP in PA cases**
 - ❖ Pits the child against the targeted parent
 - Child will state to assessor or targeted parent: *“When do I get my own lawyer. I don’t want to talk to you – you need to talk to my lawyer”*
 - A key indicator of aligned parent manipulation
 - ❖ Office of the Children’s Lawyer – Courts of Justice Act (Ontario)
 - Intake criteria
 - Assess for independence, rather than mere advocate
 - Social workers and counsel often don't understand PA dynamics and are often confused over the actual role of the OCL
 - ❖ Private counsel
 - Advocate; not guardian; no requirement to advance best interests
 - However, need capacity assessment to determine whether can rely on instructions (e.g. false allegations cases)
 - Lawyers not equipped for this

CHILDREN'S COUNSEL ISSUES

- **Budget (documents, collaterals, depth of analysis) and independence – child representation vs. investigation**
- **Guidance vs. getting involved on a granular level**
 - ❖ Negotiate access and parenting decisions; Overrule decisions of school vs. hockey?; Accepting/validating complaints
- **Transparency vs. going behind the parent's back**
 - ❖ Showing up unexpectedly at school
- **Contesting – bringing Motions/ Aligning with one party/Undermining Court Orders**
- **Sole voice of the child or just one of many (assessment, parents, therapist, Judicial interview)**
- **Advocacy vs amicus curiae vs best interests**
- **Duty to advise Court about risk of lack of independence and risk of lack of capacity to instruct**
- **“The Children’s Attorney and the Alienated Child: Approaches to Resolving the Ethical Dilemma of Diminished Capacity”, Jaimie Rosen, Family Court Review, Vol. 51, No. 2, April 2013 pp. 330 – 343**

Children's Narrative

- ❖ **The outward presentation**
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Jurisprudence on Providing the Voice of the Child Through Children's Counsel

- **Concerns apply to other conduits as well**
- **General rules of evidence: relevance, exclusionary rule, judicial discretion**
- **Hearsay: depends on whether advancing for the truth of its content vs for the fact it was made**
- **Discretion: voir dire on necessity/reliability**
 - ❖ Usual credibility assessment
 - ❖ Query reference to consistency over time
- **State of mind exception still subject to tests of necessity/reliability for truth of contents**
- **Residual discretion to exclude based on direct evidence trumping hearsay evidence**

Evidence Law Issues Pertaining to Indirect Children's Testimony/Evidence

- **Who was in the room, or listening in at the time (doctors office, CAS interviews in the home)**
- **Motive to fabricate**
- **Corroboration by related evidence**
- **Entire circumstance/environment in which statement made**
- **Look for manipulation, coercion, pressure, spontaneity, timing of event to statement, non-verbal communication**

Jurisprudence on Children's Counsel and Related Evidence

- **Why counsel for children is to be avoided in PA cases**
- **Counsel and social worker assist must be independent and act independently and in a balance fashion**
- **Fact-finding exercise and not a clinical exercise**
- **Not an assessment or investigation, just a conduit**
- **Reasons to challenge: poor methodology, lack of thorough analysis, failure to verify facts, facts at odds with other evidence or with recommendations, not supported by legal analysis, failed to consider facts objectively, failed to consider independence of children's views**

**COMPETING NARRATIVES
COMPLICATE THE
UNDERSTANDING OF THE VOICE
OF THE CHILD**

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; situational vs actual persona
 - ❖ 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 hatred, 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**

MANAGING THE VOICE OF THE CHILD IN A PARENTAL ALIENATION CASE

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