

## **HOW THE COURTS MIGHT HELP WITH ALIENATION REACTONS**

Because of the stubbornness of the parental alienation reaction, and the intensity of the parental conflict surrounding it, the issues of access and treatment are often presented to the Court. The Court often asks for professional (expert) assistance to assess the family, to recommend a course of action in the children's interests, to manage (parent coordinator, arbitrator) issues of access, and to counsel or assist family members as they proceed to implement the Court's decision. Often, the judge becomes bound as the judicial case manager for the case.

Over the years, I have worked with judges on a number of very difficult cases in Calgary. The following four papers, along with the preceding paper (*The Dangers of Choice...*), give some of my thoughts about issues that have come up in working together with judges on these very difficult cases.

### **Outline**

- A. Refusal of Access (Alienation): A Summary for Judges and Parents.**
- B. Getting a Lawyer for the Child:** Reasons why this is usually not a good approach.
- C. Guidelines for Judges Talking to Alienated Children.**
- D. How Judges and Therapists Can Work Together:** Importance of authority remaining with the judge (court). Communication between the therapist and the judge could be arranged.

#### **A. Refusal of Access/Parental Alienation/Splitting** **Summary of the Problem, for Judges and Parents**

**Background and Frame of Reference:** Often pre-adolescent and adolescent children in high-conflict separated families develop a very serious reaction. They begin to refuse access to one parent, usually their father. This reaction has been called **parental alienation** by those who attribute it to the influence of the favored parent. It has been called **splitting** by those who see it more as a reaction of the child's mind to the family conflict. Mental Health professionals and child advocates, who often become involved in various roles, raise and argue various positions about the cause and treatment of this problem. With adolescent children over about 13, the issue of the child's choice is particularly argued. The court is often asked to decide what to do.

Most of the ways that agencies, children's advocates, the legal system, and even many therapists attempt to deal with this problem tend to make it worse. This is because the problem is not what it appears to be. In order to help effectively, we must know the nature of the problem.

1. **What It Looks Like:** The child refuses access to one parent. The child complains about that parent and has only negative memories about that parent. The child shows a lack of guilt or any concern, and tends to be happy and well adjusted with the favored parent. It seems as though the child has **chosen** to reject the alienated or split-off parent, because the child talks about not wanting to go and adamantly refuses to do so. Often, great fear and demonization are generated both by the child and by the favored parent.

The parents are engaged in intense and protracted conflict. Each parent blames the other for the child's refusal of access. There are intense arguments about what is the truth. Parental **arguments about truth and mutual blaming** are hallmarks of this problem. I will argue that these are the principal causes of the child's reaction.

2. **Erroneous Assumptions:** Both parents and most professionals make erroneous assumptions about what is going on. The alienated parent believes the reaction is caused by the influence of the favored parent. The favored parent believes it is caused by all the bad things the alienated parent has done. Some professionals, especially child advocates, side with the favored parent and the child's complaints, assuming the child has made an appropriate choice to deal with a very disordered parent. They see the refusal of access as a matter of **realistic estrangement**. Other professionals side with the alienated parent and assume the child has been influenced and manipulated by the favored parent. They see it as a matter of brainwashing and malicious alienation. As long as interventions focus on one of these two polarities, they usually will not help and will tend to make the problem worse.

In what follows, I am assuming that the judge has become convinced that the child's refusal is not principally a matter of realistic estrangement, but rather a matter of the splitting/alienation reaction. (*See the section above about distinguishing between these.*)

3. **What It Really Is:** This phenomenon of a child becoming apparently alienated from, or split off from, or refusing access to one parent (all these are terms used for the same phenomenon) occurs in high-conflict divorced families. It is a **symptomatic reaction**, i.e., a reaction that occurs spontaneously in the child's mind. Symptomatic reactions, like panic attacks, phobias, temper tantrums, and the like, have several well-known characteristics. They occur spontaneously: you do not choose them; they happen to you. They occur as a solution to some hidden

problem that is very stressful or threatening. And they are trying to tell a story: they are trying to reveal something that cannot be expressed, yet, in any other way.

To help a child, or anyone, with a symptomatic reaction, you need to do three things. First, you need to realize that the problem did not start with a choice: it happened to the person. So you cannot approach the problem as if the person can choose to be rid of it. Second, you need to find out what kind of stress or pain or threat the reaction is trying to solve. Finally, the symptom will tell you something about the world that the sufferer has experienced and is experiencing.

This particular symptomatic reaction—alienation/splitting/refusal of access—occurs (happens) in the child's mind as a solution to the intolerable stress of living a divided life between two very polarized parents, in the context of authority breakdown and over-empowerment. It is incredibly stressful and painful to try to love and be loyal to two parents, on whom you depend, and whom both nature and society have said you must love at all costs, when these parents do not love but despise each other. The parental conflict both stresses the child and dramatically empowers the child. These are the principal causes of the alienation reaction. Once the reaction begins to occur, it amplifies and escalates parental conflict very quickly. Each parent blames the other for the child's reaction, and so the conflict that gave rise to the reaction escalates quickly. In no time at all the family is locked into the symptom, with the parents and child each doing their part. And, of course, the symptom is telling a story about divorce, about family breakdown, with love, respect, and authority gone awry.

4. **Mistakes to Avoid:** In this context, it is true that the alienated parent makes some mistakes, and the favored parent does have some influence. But if we forget that the principal cause is the conflict itself, we will not help but will make matters worse by siding with one parent or the other, which means blaming the opposite parent. If we forget that it is a symptomatic reaction, we will fall into the trap of thinking it is a matter of choice. If we do this, we will then unwittingly further empower the child and burden the child with the implication that the child has betrayed love, loyalty, and decency. Nothing could be further from the truth—the reaction occurs **because** the child has a loving and decent heart, and because this heart depends on a hierarchical family structure. That is why the parental conflict became so painful and stressful for the child. We must not approach the problem as a matter of the child's choice, because if we do we run a very grave risk of damaging the child's love and self-respect, exposing the child to serious emotional conflicts later in life. (For more about these dangers, see my other paper titled *The Dangers of Choice in Alienation/Splitting Reactions*.)
5. **How to Help:** The problem derives from the parental conflict, so treatment has to deal with this conflict. The child cannot and will not solve the problem. We should not try, and it does not work, to expect the child to return to the same

parental atmosphere that produced the problem. Treatment depends on four things: **First**, the parents must both see and agree that the alienation reaction is very harmful and must be remedied. The favored parent may need the help of the court to realize this. **Second**, once both parents are committed to the treatment, blaming must stop. Both parents must stop blaming the other for the child's reaction. They must realize that their blaming and their arguments over truth, along with their lack of decency and respect toward the other parent, are the principal causes of the reaction. **Third**, each parent must do his or her part. The favored parent must be prepared to insist and require that access occur, even in the face of strenuous resistance by the child. If the child becomes angry with the favored parent, this is all right, because it immediately puts both parents in the same position. The child is angry with both and the polarization in the child's mind is decreased, and parental authority begins to return to the family. The alienated parent must be patient, not argue with the child, validate and relate to the problems that are very real to the child, be firm but not confrontational, and give space for the child's mind to exit the symptom. **Fourth**, the child must constantly get the message that the treatment and access are not a matter of choice, even though the child will argue strenuously for choice. The parents and therapist must remember that the idea or experience of choice is the poison (See *The Dangers of Choice...*), and that over-empowerment of the child is part of the problem. Any treatment of the child will be based on the notion that the child has a handicap—a dysfunctional divorced family—requiring the child to learn unusual and difficult ways to cope with this.

6. **How the Court (Judge) Can Help:** The judge can be very helpful, once it has been determined that the problem is principally an alienation/ splitting reaction (and not principally a matter of realistic estrangement), such that it is in the child's best interest to remedy the alienation and resume a viable relationship with both parents.

The judge can help in three crucial ways. **First**, the resistance of the favored parent is the hardest part of the treatment. The judge needs to find ways not only to convince the favored parent that remedying the problem is best and wisest, but also to make it in that parent's interest to do so. The judge can manage the case and impose sanctions for resistance. In essence, the judge represents the return of authority to the family. **Second**, the judge can mandate treatment or professional monitoring, or both, as the case may require. **Third**, sometimes the judge can talk to the child or children involved. The judge can let the children know that the problem was not really their choice. And neither is the solution. It is like going to school or the doctor—it must be done because it is determined to be best and necessary. Again, the judge delivers adult authority and structure back into the family. (See my accompanying *Guidelines for Judges Talking to Alienated Children.*)

## **B. Getting a Lawyer for the Child: Problems with This Approach**

In very high conflict cases with lots of litigation, application is sometimes made to get a lawyer for the child or children.

The request is usually made by the favored parent, who is sympathetic to the child's refusal of access, and who sees the refusal as a legitimate and reasonable choice by the child. It is hoped that the child's lawyer can help promote the child's wishes and perspective. The appointed lawyer, in my experience, seems to feel obliged to defend the child and represent the child's wishes, perspective, and perceived interests.

**This process tends to amplify both the empowerment of the child and the idea that the splitting/alienation reaction is a matter of the child's choice.** As I have discussed earlier, I believe this framing and approach are very dangerous to the child's attachment life. What is needed is a return to structure in the family through at least some parental cooperation, allowing the child's mind and heart to reopen attachment to the refused parent.

Giving the children a lawyer also tends to interfere with treatment. The treatment, i.e., the process of using the Court's authority to mandate remedying the alienation in the best interests of the child, tends to be undercut by the child's lawyer and other advocates who feel compelled to champion the child's wishes and perspective.

If a child did not want to go to school and had all sorts of seemingly reasonable objections and complaints, would we give the child a lawyer to represent the child's apparent interests, or would we insist on our (ultimately the court's) determination of the child's real best interests?

If such a lawyer is truly supposed to be an **amicus curiae** (friend of the court), then that lawyer would need to be there to facilitate the accomplishment of the court's objective, which may well be contrary to the child's perceived interests. I am not sure how a lawyer can help a client (child) to accept and do something (access to refused parent) that the child is adamantly opposed to, other than to explain the court's authority and emphasize the need to comply with court orders.

## **C. Guidelines for Judges Talking to Alienated Children**

The following are some specific ideas for what a judge might tell children, when it has been decided that access must occur. These practical suggestions are based on two other summaries I have written: *Parental Alienation: How a Judge Can Help* and *The Dangers of Choice in Alienation/Splitting Reactions*. It is assumed that you have read these.

1. **I'd begin by acknowledging to the children that they have been through a lot.** “There’s been lots of trouble in your family. Your parents’ divorce has been very disturbing. There has been lots of blaming and lack of respect. You have often been caught between the two people you love the most and need the most. At times it has looked like the end of your family. But this is not true. You are still a family. Your parents cannot get back together, but we are going to see to it that you all become a good divorced family. We are going to help your parents get back in charge of running the family.”
2. **Next I'd try to focus on what we all know about a family.** “Sometimes, when there has been too much trouble, families forget some basic things. They forget that everyone needs to be respected. They forget that you can’t expect family members to make choices about love or loyalty. They forget that parents never choose between their children. Parents do not ignore one child and love the other. Parents do not send one child away and keep the other. Even if they forget about this because they get so frustrated, we won’t let them do it. Your trouble with (alienated parent) is telling us that some of these things have been forgotten in your family. We won’t let this happen. We are going to see to it that your family returns to respecting each other, and that you do not lose one of your parents.”
3. **Next, I'd let the children know we are going to deal with the problems that led to their refusal of access. Some of these will be specific to each family history. But in general I'd touch base with what we know are the main issues.** “We are going to help your parents stop arguing and blaming each other. We are going to help them, and require them, to get back to managing the family more cooperatively. You have shown them and us how necessary this is. Even if they don’t love each other anymore, they have to respect each other, because they created you. That way you won’t get caught in the middle anymore. Your part is going to be to start seeing your (alienated parent) again. We are going to insist on this, and so is your (favored parent). We are going to require these things because you are still a family. We let marriages end, but we will not and cannot let families end. Your trouble has reminded us of this.”
4. **Finally, I'd encourage you to use your authority, and to take away the idea of choice.** “I know you feel sometimes you don’t want to do this. I know you didn’t want your parents to divorce. But you have to do this. Just like you have to go to school even if you don’t feel like it. Just like you have to go to the doctor or

dentist, even if it might be hard or hurt. Being a family and having two parents is more important than school or doctors. So you do not have a choice in this. You have to do it. We will give the family a helper to stop the arguing and blaming, and to encourage respect and teamwork. But you are going to have to do your part. You've done your part to raise the alarm about what is happening to your family, and now you have to do your part to make things better. It will only be hard at first, and then it will get easier."

#### **D. How Judges and Therapists Might Work Together**

When young adolescents refuse access, the family often finds itself in court. The problem presents in many ways, but generally there are two categories: the merely difficult, and the horribly complex.

**In merely difficult cases,** the refusal of access is not associated with all sorts of abuse allegations and absolute demonization of the refused parent. The favored parent doesn't know what to do about the child's strong refusal of access to, and complaints about, the refused parent. She (it is usually the mother) at least partly wants a solution and is worried about what is happening in the family and to her children. However, she too harbors some doubts about, or fear of, or animosity toward, the other parent. Generally, these cases need two things: referral to a therapist experienced with this problem, and some form of mandated access that must occur. The judge often has the benefit of expert assessments to help with the decision.

**In the horribly complex cases,** the refusal of access is associated with all sorts of abuse allegations and a general demonization of the refused parent, both in the present and in memories of the past. The favored parent is convinced access is bad for the children and adamantly opposes it. Often the family has generated an atmosphere of intense fear of the refused parent. There are often many hearings and assessments. Often, many agencies and professionals have been involved, offering differing opinions and recommendations. Finally, some unfortunate judge has to decide what to do and becomes case manager. We are talking about cases where the judge decides that preservation of access to, or restoration of a viable relationship with, the refused parent is in the best interest of the child or children. The judge orders a process to achieve this.

The following guidelines about this process are derived from the experience of a therapist who has sometimes been designated to treat both types of cases—the merely difficult and the horribly complex. In general, I have come to the conclusion that these families need the help of both the court (authority) and the therapist. The problem that generally arises here is that the two roles—authority and treatment—are not kept sufficiently distinct, with detrimental consequences both for the therapy and for the family.

## **Guidelines:**

1. **Access** is the most important part of the treatment. It is more important than the counseling sessions. Without access of some sort, the refusal/splitting/alienation becomes more and more entrenched. Waiting for the children to be ready almost never works and usually makes things worse. The judge needs to decide and specify how much access, when it is going to occur, if and for how long it will be supervised, etc.
2. **Authority:** Judges tend to download authority and decision making onto the therapist. A court order often states that the therapist will determine if access is going to occur, and when, and whether it will be supervised or not, etc. This seems like a good idea, but it doesn't work. What happens is that the entrenched conflict about the best interests of the children, and about the intense beliefs of each parent, are transferred from the court to the therapist's office. No therapy can happen, because the parents are compelled to argue their case incessantly with the therapist. The children too just argue their case with the therapist. At each critical juncture, someone says to the therapist, "You have to decide." Whatever he decides, he loses the trust of one side, and his ability to help is crippled. **The therapist needs to be in the position that both access and treatment have been compelled by a higher authority.** The therapist's job is to help the family get through it by offering a place to talk about difficulties and issues, not to decide if or when it is going to happen.
3. **Children's Choice:** The favored parent will invariably tend to rely on the children's choice and lobby for this. Adolescent children will adamantly maintain that it is up to their choice, and that they cannot be forced. Various child advocates will tend to take the same position. (For my thinking about this issue, see the paper *The Dangers of Children's Choice*.) Once it has been decided that access is in a child's best interest, both the court and the therapist need to insist that it occur. The child's total empowerment must be replaced with some adult authority and structure. The favored parent needs the help of the court and of the therapist to realize it is her responsibility and duty to insist that access occur, just as she must insist that the children go to school or the doctor. The therapist has to help the refused parent to be patient, stop blaming, and relate to his child's real difficulties. **The therapist must be able to rely on the court's decision compelling access and treatment.** Then the therapist can help with all the stress and turmoil that accompany this. It is as though the therapist is in the position of helping the family undergo a painful and difficult, yet necessary, medical procedure.
4. **Collaboration:** In complex cases, some collaboration between judge and therapist is often necessary. The judge/case manager must remain the decision maker. But the judge also needs the benefit of the therapist's experience with the family. The

way to accomplish this is to set up the case in such a way that the therapist can report to the judge. The therapist will make clear to the parents that his role includes reports to the judge if necessary, and that these reports will be treatment reports, not evaluative or assessment reports. These reports, along with case conferences that include the judge, the therapist, and both lawyers, can help overcome impasses. **The key is that authority and decision making remain with the judge**, while the therapist deals with the emotional issues and helps the family with a difficult process.

5. **Remember, the main work is with the parents, not with the children.** The children cannot be expected to relinquish their symptom (refusal) unless there has been some alleviation of the forces that caused it—the parental conflict and attitudes, and the breakdown in parental authority. In some complex cases, this conflict goes way back, prior to the separation. When the favored parent is absolutely entrenched in his or her demonizing attitudes toward the refused parent, such that joint sessions are impossible, and no progress in access can be made because the children also are entrenched, then the therapist might suggest **plan B** (#6, below). When plan B doesn't work, the court and therapist must consider drastic measures (#7, below)
6. **Plan B:** If the favored parent is not cooperative and the children are 14 or older, it is worth a try, as a last resort, to focus treatment on just the children and the refused parent. The children can be approached as having a handicap—a dysfunctional divorced family—that requires learning a new perspective and new strategies. Resistance to this will be great, and strong authority will be required. The refused parent can learn how to cope with the children's reactions and challenges. The Court will need to stay in charge and require specified access, organized so that the child or children can isolate the two worlds and the stress of transfers is kept to a minimum. In general, leaving it to the children without improving the family atmosphere, and setting up a very divided life, are not recommended. But these may be preferable to losing a parent because of the family war and distortions. With children 13 or younger (the ages herein are somewhat arbitrarily chosen), it may be more advisable to look at more drastic measures (see below).
7. **Ultimate issues:** What can be done when the favored parent cannot and will not cooperate in achieving access or with the treatment? This sometimes happens, and it is a huge problem and dilemma. The favored parent and the children simply dig in and maintain that it is up to the children's choice, and that they can't be forced. The therapist and the judge become demonized along with the refused parent. At this point, both the judge and the refused parent have to consider drastic action. The Court has to consider how far it is willing to go to enforce its determination that access is in the children's best interests. The options range all the way to citations for contempt and **changing custody**. These are drastic measures, and I

have seen cases where I felt they would be helpful and appropriate, and others where they probably would not work or would be too risky.

The refused parent has to consider giving up and losing his children, rather than continuing to expose them to more conflict and litigation. Again, sometimes I have advised fathers that this is the best they can do; and at other times I have felt they must not give up, but continue to try to get the court to take drastic action. It depends on the psychological and developmental circumstances of the particular family. In general, I have wished the court were prepared to take a stronger stance more often than the contrary. This being said, we really don't know what the consequences would be, because it has so seldom been tried. We do know that it is very risky indeed for the refused parent actually to give up and go away. This tends to cement, legitimize, and validate the alienation reaction, with serious long-term consequences. **A more complete discussion of this issue can be found at the end of the Treatment section of the main paper, where there is reference to a specialized treatment program and a fourfold strategy.**

8. **Caution:** The foregoing has all assumed that the refused parent, usually the father, is cooperative and willing to do anything to recover a relationship with his child or children. It also assumes that the court has decided, often after expert assessment, that reunification with the alienated parent is in the best interests of the child. There are cases where the refused parent is not cooperative, or is in fact very dysfunctional or disturbed, or has been physically or sexually abusive to the children. In these kinds of cases, the above reasoning and guidelines do not apply.

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