

# **A CROSS-DISCIPLINE APPROACH TO FAMILY LAW CHILDREN’S CASES**

## **INTRODUCTION**

There have been continual changes to systems in the Family and Federal Magistrate Courts (referred to hereafter as “the family courts”) that have been advancing with changes in society. Parental and child alienation has been identified over the past few decades as an issue of concern in some children’s cases in the family courts. My research indicates that this may have occurred prior to court proceedings in some cases, and that the court proceedings may either caused or intensified the issue.

The evolution of family law is continuing with a greater realization that various forms of parental and child alienation exist, and that there are a number of causes and different forms and levels of alienation. The literature reviewed indicates that alienation, and high conflict cases in the Family Courts, require assessment and recommendations in the early stage of Family Court processes. In this thesis it will be proposed that psychologists experienced in both undertaking psychometric assessments appropriate for family law cases, and in the use of clinical observation, should be appointed at the beginning of proceedings. If there is a psychosis identified in the psychometric tests it may be appropriate for a psychiatrist to be appointed for further remedial therapy and reports. Otherwise the psychologist should make recommendations for appropriate intervention, and if approved by the judiciary such intervention should take place by the psychologist. With the assistance of such assessments, the judiciary may be better able to make timely orders based on a greater amount of objective information than can be obtained in the same time frame from evidence, lawyer submissions and family reports without the psychometric tests and psychologists’ input.

Without an understanding of what might be causing the conflict between the parents and the children, directions by the judiciary to parents and their lawyers to negotiate agreements rather than have the court make orders that neither parent may like, may not resolve the conflict. The use of psychometric tests is being recommended as this is a way of identifying and addressing the causes of conflict so that the conflict may be eliminated or at least diminished.

### a) Causes of Conflict

Conflict Resolution theory maintains that conflict results when human needs (as opposed to wants) and values are not being considered and dealt with.<sup>1</sup> If this is addressed in either mediation, or by a psychologist and sometimes also a psychiatrist, at the commencement of court processes, the conflict may be eliminated, or at least recognized and dealt with. Lengthy and expensive court proceedings could thus be diminished considerably or may not be needed.

Some of the issues that can be identified by psychometric tests are personality differences that may result in needs not being met within the relationship. For example, Isabel Briggs Myers and Katherine Cook Briggs are referred to by Reis, Steven as describing how individuals have different but equal natures that give rise to misunderstandings.<sup>2</sup>

Dr. Steven Reis created the Reis Motivation Profile (RMP), a 128 item standardised questionnaire to measure the strength of 16 needs for any one person.<sup>3</sup> He and Susan Haverkamp executed a series of published exploratory and confirmatory factor analyses of human needs. Their results, which overlapped significantly with previous lists of human needs, showed 16 human needs, called acceptance, curiosity, eating, family, honour, idealism, independence, order, physical activity, power, romance, saving, social contact, status, tranquility, and vengeance.

Reis writes that nearly all psychologically important motives can be reduced to these 16. He adds that “Ken Olson from Fort Hays State University and other colleagues have demonstrated the reliability and validity of this instrument in a series of published studies with about 5,000 research participants.....The validity can be proved scientifically, or it can be observed in real-world behaviour.”

---

<sup>1</sup> Burton, John W. *Conflict Resolution: The Human Dimension* The International Journal of Peace Studies Vol 3, number 1 (January 1998) ISSN 1085-7494. [www.gmu.edu/programs/icar/ijps/vol3\\_1/burton](http://www.gmu.edu/programs/icar/ijps/vol3_1/burton)

<sup>2</sup> Myers Briggs referred to by Reis, Steven Emeritus Professor of Psychology and Psychiatry at the Ohio State University [www.psychologytoday.com/who-we-are/200907/the-16-human-needs](http://www.psychologytoday.com/who-we-are/200907/the-16-human-needs). Myers Briggs developed a Type Indicator (MBTI) extrapolated from Carl Jung's book *Psychological Types* (1921).

<sup>3</sup> Reis, Steven and Haverkamp Susan [www.psychologytoday.com/who-we-are/200907/the-16-human-needs](http://www.psychologytoday.com/who-we-are/200907/the-16-human-needs).

The following are examples of some causes of conflict in families.

- (i) the competing interests and needs of the parents and the children;
- (ii) whether power and control is being given to parents who wish to seek revenge, retribution or vindication on ex-partners;
- (iii) whether a parent is still clinging to a relationship that the other parent has ended;
- (iv) whether or not there is; or has been sexual, physical or emotional abuse;
- (v) whether a parent, and/or a child has a psychological disorder;
- (vi) whether newly made family structures create further conflict in some situations;
- (vii) whether a parent has relocated; and
- (viii) whether there is parental or child alienation and the causes of this.

**b) Behavioral disorders related to conflict in the family courts**

There are a number of recognized behavioral disorders described in the Diagnostic and Statistical Manual (“DSM”) produced by the American Psychiatric Association, and used by psychiatrists and psychologists, and also available to interested laymen. Various disorders that are included in DSM-IV have similar features to pathologies that exist in families that may or may not be disclosed during family law proceedings. Many of the disorders in DSM–IV are not related to family separation. However some may be present in some cases. If so, this may be affecting the resolution of the conflict between the parents, and their children. If relevant disorders are included in a Family Law Cross Discipline Manual (“the Manual”) this could enable lawyers and the judiciary to have a better understanding of the disorders. This is discussed further in chapter 5.

**c) Identifying behavioral problems and causes of conflict**

In addition to psychological disorders and psychoses there may be other unrecognized behavioral issues that are the cause of the conflict between the parents. If this is not detected early in the proceedings, efforts made to reduce the overt conflict may be fruitless. The time spent on interviewing the parents and children and other significant people by the family consultant or by a psychiatrist or psychologist may not be enough to identify the covert causes of the conflict.

Psychiatrists are medical practitioners trained in the diagnosis of physical disorders that affect mental disorders and in psychotherapy provided with appropriate medication and treatment of mental disorders. Psychiatrists generally are not trained to use psychometric tests, although there are some exceptions such as Reis referred to above who is an Emeritus Professor of Psychology and Psychiatry. Psychometric tests are learned as part of the university training of psychologists and not psychiatrists. Both professions are trained in the clinical diagnosis of mental disorders, although psychiatrists, as medical practitioners are able to use medication as part of their therapy, and psychologists are able to use psychometric tests as a diagnostic tool in addition to their clinical observation. The tests also reveal other issues, such as different parenting skills, educational, cultural and other issues that may be causing conflict and that are not psychiatric issues so are generally not dealt with by psychiatrists. If the psychologist identifies that a psychosis exists, then it may be beneficial for a further report by a psychiatrist to be made. However, if the problems are behavioral then psychologists would be appropriate for providing identification of the causes and appropriate therapy.

In my experience, while there are a number of family courts approved psychologists doing the expert assessments, the lawyers who decide who will be the agreed independent expert often have no knowledge of the differences between psychologists and psychiatrists and often choose known psychiatrists. This may be because psychology education is relatively new compared to psychiatry and has only recently become approved for medical benefits to be applied. I have heard lawyers say that psychologists only deal with learning difficulties of children, and I have also heard this from a psychiatrist. While psychologists do tests measuring intelligence and learning ability, they also have a vast number of other human behaviors that they are able to test, and in many cases provide therapy for.

The use of psychometric tests would provide faster and more objective identification of whether a psychosis exists than can be identified in the short time that psychiatrists and psychologists have to interview families without the psychometric tests and write a report for the family courts. With the assistance of such reports at the beginning of proceedings, the judiciary may be better able to make timely orders based on a greater amount of objective information than can be obtained from evidence, lawyer submissions and family or expert reports without the psychometric tests.

#### **d) Scientific Intervention and Therapy by Psychologists**

While it may never be possible for some parents to coexist for the sake of their children without significant conflict or abuse, psychologists have endeavored to analyze the causes of dysfunctional families, and find ways of educating parents to manage the conflict, and the stressors that are involved. As this science has been developing over the past few decades, and research has provided more information, psychologists and psychiatrists have become more involved in family law proceedings, particularly where there are high levels of conflict that can result in different levels of parental or child alienation.

The research I describe in chapter 4 indicates that the use of psychometric tests together with clinical observation and reading of relevant court and subpoenaed documents provides a faster, more objective and relatively cheaper means of identifying and managing causes of conflict. Amongst other authors, I describe the views of J.R. Flens about the use of psychometric tests in children's evaluations. Flens describes the need for critically evaluated psychometric tests to meet the psychologists' criteria of being reliable and valid and the legal criteria of being relevant and helpful.<sup>4</sup> While there are some criticisms of the use of psychometric tests, generally the research shows that they are beneficial provided they are used properly by well trained and experienced psychologists. This thesis thus would argue that what this evidence suggests is that once the causes are found, appropriate treatment to remedy the causes could be recommended by the psychologist and used throughout the court proceedings with monitoring and progressive orders by the judiciary.

These tests could be given to separating parents and the children either prior to mandatory mediation, so that the parents can negotiate some of the unfulfilled needs of both parents and children, prior to making an application to the family courts orders could be made at the first directions hearing for the tests to be made with clinical observation and recommendations for treatment. The timing of the psychometric tests prior to further court proceedings is critical. Without the knowledge gained from the

---

<sup>4</sup> Flens J.R *The Responsible Use of Psychological Testing in Child Custody Evaluations: Selection of Tests* (in Flens J.R. & Drozd L. *Psychological Testing in Child Custody Evaluations* 2005 Hazworth Press Inc..

tests and clinical observation and the reports of psychologists and in some cases also psychiatrists, much time and cost can be wasted at court in attempting to get parents, and sometimes also their lawyers so negotiate agreements that may either not eventuate, or may continue the conflict because the underlying cause is not apparent without using the tests.

Psychometric tests are already being used by approved psychologists when making reports for the family, children's and criminal courts and other psychologists generally use tests relevant to client's individual issues in clinical practice. It may be beneficial for psychologists who are not already approved as experts in the family courts and wish to do this work to have additional training as to what psychometric tests would be appropriate for family law cases, and also what the family courts consider is relevant. This could be addressed by appropriate training and specialization in family law for those psychologists who want to practice in this field.

**e) Common Discourse between Professionals**

There is a need for a common discourse between lawyers, family consultants, psychiatrists, psychologists and professionals involved in pre-court mediation, counseling, and appropriate courses. The cross-discipline approach advanced in this thesis calls for a greater integration of the discourses of law, psychology, psychiatry, and the social sciences generally, so that the concepts of each profession can be communicated more precisely.

I propose that a "Cross-discipline Family Law Manual" ("Manual") be compiled and published. This would include a dictionary of terms used by each profession, DSM disorders relevant to family law, descriptions of relevant psychometric tests and what they can identify. The Manual together with appropriate training of psychologists, psychiatrists and family lawyers may bridge the gap in communications that currently exist between various professions involved in family law proceedings. A pilot program to test this hypothesis using the relevant professionals, psychometric tests and the proposed Manual would be at a cost. There would be a need to research what psychometric tests should be included in the Manual, and what terms have different meaning, or do not exist amongst all of the different professions involved so that they can be included in the Manual. There would then be a need to provide appropriate

training for the professionals taking part in the pilot project and of the judiciary who may be involved in the pilot project. There would also be a need for a psychologist to do the statistical analysis of the benefits of the Pilot Project compared to what occurs without the changes that are proposed for the Pilot Project. I propose that there would also be savings as discussed further in chapter 5.

#### **f) Court processes**

The literature referred to in this thesis indicates that the existence of parental and child alienation has become more apparent and possibly more severe during Family Court proceedings. The development of high levels of conflict is often fuelled by the long delays between proceedings. Lawyers and their clients are told that it would be more beneficial if the parents could reach an agreement themselves rather than have orders made that may not resolve their conflict, nor be the outcome that either parent wants.

The problem with this approach is that often neither of the parties nor their lawyers may know what is causing the conflict. The situation may have reached an emotional level that makes rational discussions difficult to impossible. The lawyers may have tried their best to negotiate agreements before and during the court proceedings without success. Some lawyers are still using the adversarial system and trying to win the case for their client at any expense. Some are unsuccessful in convincing their clients. Further endeavours to negotiate at multiple court appearances often become fruitless. In these cases a recommendation by the judiciary to negotiate an agreement may be beneficial on the first instance, although such recommendations may not be fruitful because of underlying conflicts that have not been addressed. I have described the current family law processes with comments on how this can be improved in chapter 1.

#### **g) Summary and Outline of the Thesis**

**Chapter 1** discusses the fact that Court processes may cause or develop alienation, which can become pathological in extreme cases and which some professionals believe should be called a syndrome.

**Chapter 2** describes greater distinctions about the different causes of alienation, their indicators and the consequences.

**Chapter 3** provides the sections of the Australian *Family Law Act 1975 (Cth)* as amended that are relevant to parental alienation.

**Chapter 4** addresses the fact that it is important to identify at an early stage the different forms and causes of alienation and high levels of conflict that may exist in individual cases. Psychologists recommend a number of psychometric tests that appear to provide a more objective and faster way of diagnosing parental and child alienation at various levels, and of identifying causes of conflict.

**Chapter 5** considers the various forms of assessment and intervention, the mediatory role of the family court, with the difficulties and conflicts between legal and scientific discourse, and possible changes in training of family lawyers, psychologists and court processes

**Chapter 6** provides a summary and recommendations, draft orders and a proposed Pilot Project.

I have endeavoured to draw attention to the evidence that there is a more serious form of alienation that is pathological; and that there are a number of complex forms and levels of parental and child alienation that need to be understood and considered by the legal profession and the judiciary. Where family law proceedings may be responsible for the development of the effects of alienation, consideration of alternate court processes should be beneficial. I have included Draft Orders that could be implemented at any time now, and a Pilot Project that would enable education of family law specialists to follow a new process through the family courts. The pilot project could be assessed statistically as to its benefit, both financially and in decreasing levels of conflict that currently exist in the present proceedings. A Cross-discipline Family Law Manual is also proposed as a text for the training of family law specialists and also to be available for any professionals involved in family law cases.

## CHAPTER 1

### PATHOLOGY, SYNDROME, PROCESS, TERMINOLOGY

Parental and child alienation or rejection can be outcomes of high levels of conflict during a marriage and during procedures in family courts. Literature on parental alienation in its various forms, and the different ways of conceptualizing alienation are reviewed and commented upon in the following chapters. Publications referred to describe varying views of the tragedy and urgency of cases where parental or child alienation and rejection exists, and how this affects decisions about where children shall live, and what time they will spend with each parent. Some of my own experiences as a family lawyer are also included. With regard to professional ethics, I have ensured that none of the cases I refer to can be identified by the information provided. They are merely partial examples of some of the difficulties I have observed in the current family law procedures.

#### **1.1 Early Assessment**

One of the supporters of early assessment is Dr. John Irvine who refers to a report by Jennifer McIntosh and former Justice Richard Chisolm, that claims parents who cannot cooperate, and who remain hostile towards each other, can cause a higher than normal rate of clinical anxiety in children. The report recommends that mediators and Family Court Judges and Federal Magistrates should screen parents at an early stage to ascertain their level of conflict.<sup>5</sup> Perhaps lawyers representing the parents might also suggest that their clients obtain such assessment from psychologists referred to by their doctor. However, the use of the same psychologist for all parties would be more appropriate, and lawyers might discuss this option with their clients and each other prior to making an application to the court.

In his report Irvine says that McIntosh refers to studies that show children whose parents have either shared, or substantial care, are frequently exposed to animosity and

---

<sup>5</sup> Irvine, John. *Co Parenting Crisis* (9 a.m. with David and Kim refers to a report by Jennifer McIntosh, a child psychologist and associate professor of psychology at La Trobe University, and Richard Chisolm, a former judge of the Family Court, 2008).

acrimony, and witness derogatory exchanges between the parents, often resulting in children not having any security in their relationship with either parent. McIntosh refers to a study of two groups of children that had their well being tracked after their parents' divorce. In one group 28% of the children were clinically distressed four months after their parents' court cases ended. Children were unhappy with their living arrangements, and experiencing their parents' high levels of conflict. This report supports the need to assess cases at an early stage rather than finding after orders are made that the living arrangements are not conducive to reducing conflict, or emotional and developmental risks to children.

## 1.2 Two Frames for Parental Alienation

A simple classification of parental alienation where there are allegations of abuse being made is provided by Michelle Adams.<sup>6</sup> She places the different forms of alienation into two frames – allegations of child abuse that are true and allegations that are false. She also writes that a number of people believe that alienation of some form, not necessarily relating to allegations of abuse, is an inevitable passing issue that occurs only while parents are fighting each other at court, and that it has no long term affects. The latter view is very generalized and does not take into consideration, the various forms and levels of alienation later described by Dr. Johnston and Dr. Kelly who are considered authorities on the issue of parental and child alienation or rejection.<sup>7</sup>

Adams has distinguished between the two most critical situations where parental alienation occurs. However her comments about the views of some people that all forms of alienation are transitory has been challenged by psychologist Dr. Amy Baker has completed research on adults experiencing long term consequences of childhood

---

<sup>6</sup> Adams, Michelle, A. *Framing Contests in Child Custody Disputes: Parental Alienation Syndrome, Child Abuse, Gender and Fathers' Rights* (VI Parental Alienation Syndrome and Gender Types HeinOnline 40 Fam LQ 315 2006-7).

<sup>7</sup> Johnston, Janet. R; & Kelly, Joan. B. *The Alienated Child: A Reformulation of Parental Alienation Syndrome* (39 Family Court Review 249 at 249-254, 262-264 2001); see also other articles written by Johnston and Kelly, and by Lowenstein L.F. *When is it not a case of PA or PAS? Alienation of a Child. Towards a Parent Without Programming by a Custodial Parent (i.e a non PAS scenario)* Parental Alienation Southern England Psychological Services, 2006 at [www.parental-alienation.info](http://www.parental-alienation.info). Dr Ludwig F Lowenstein (BA, MA, Dip.Psych, C.Psychol Ph.D) is a Chartered Psychologist, as well as a member of the British and American Psychological Associations. He was recently made President Elect (2010) of the International Council of Psychologists. He is also a former Director of the International Council of Psychologists (specialising in parental alienation). He has written many articles on Parental Alienation found on [www.parental-alienation.info](http://www.parental-alienation.info).

parental alienation.<sup>8</sup> Baker reports that her subjects came from both intact families and separated families.

### **1.3 Research on adults who experience parental alienation as a child**

Baker writes that some of the adults referred to in her book experienced alienation during their parents' marriage and others experienced it as a result of divorce and court proceedings. Only discussion of alienation in the context of court proceedings occurs in the following chapters.

Baker contends that all subjects of her research described their experiences of having rejected a parent because of the attitudes of the other parent, and all described how this had affected their lives adversely into adulthood. She includes how they felt after they realised what had happened. The subjects informed Baker that this was also distressing to them when they realised the time that they had lost with the other parent.<sup>9</sup>

The subjects provided evidence that their perceptions of the alienated parent as a child were induced by the other parent, and that these false perceptions had affected not only their relationship with the alienated parent, but also other relationships formed as adults. Baker says these people had to go through further psychological and emotional changes so that the effects of their childhood experiences could be remedied. This supports the belief of many professionals that there is such a disorder as parental alienation syndrome that may be appropriate to be included in DSM-5.

Baker refers to psychologist Douglas Darnall describing three types of parent who undertake to alienate children against the other parent as naive, active and obsessed.<sup>10</sup> Darnall writes that most parents at some time make negative comments about the other parent, however such parents usually support the relationship between the child and the other parent. It is the obsessed parents who cause the most problems. He describes active alienators as knowing that they should support a relationship with the other parent but that they sometimes allow their intense anger and hurt to cause them to lose

---

<sup>8</sup> Baker Amy J.L., *Adult children of parental alienation syndrome – breaking the ties that bind*. (Norton & Company New York, London 2007). Dr. Amy Baker is a Developmental Psychologist, Researcher, Author and Expert on Parental Alienation

<sup>9</sup> Ibid.

<sup>10</sup> Darnall, Douglas .cited in Baker.

control. Obsessed alienators intentionally aim to destroy the relationship between the children and the other parent. He adds that this often happens during court proceedings.

When obsessed alienators are successful in turning the children against the other parent, Baker concludes that this is when parental alienation syndrome has been induced in the child.<sup>11</sup> Her descriptions of the child with parental alienation syndrome are similar to that of Johnston and Kelly and others who do not call it a syndrome, but do refer to it as the most extreme type of alienation that is pathological.

Baker confirms that while there are areas of disagreement and controversy in the research literature, there is universal consensus that children who have been exposed to intense chronic parental conflict suffer the most.<sup>12</sup>

Baker refutes three myths about parental alienation – i.e. that it is only mothers who cause it; that parental alienation only occurs when there is a divorce or separation of the parents; and that it is only caused by custodial parents. She explains that “debunking” those myths highlights a greater complexity in parental alienation than was first recognised.

One situation where parental alienation occurs is where the mother has a Narcissistic Personality Disorder with everything centring on her. She has an inability to comprehend the needs and feelings of others. This can occur in both intact families and separated families. Another situation is where there is a campaign of fear, pain, denigration, rejection and abuse used by a parent, often with alcoholism as a factor, which results in the child rejecting that parent. Baker adds that the children often perform this on their own children later.

She claims that personality disorders are among the most common of the severe mental disorders where there are persistent maladaptive patterns of perception, emotional regulation, anxiety and impulse control. She writes that parents who cause parental alienation usually have dramatic personality disorders being anti-social, borderline,

---

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

histrionic or narcissistic. These disorders can be treated by psychologists who specialise in the disorder.

Baker adds that some targets of parental alienation often play a role in their own alienation by being passive and uninvolved. In some cases, the targeted parent may not realise that despite the attitude and behaviour of the child toward that parent, the child may still hold positive feelings about that parent, and that if this is drawn out it may resolve the alienation.

Baker describes thirty two different strategies used to alienate the other parent, and lists the following twelve as associated with attachment theory in that they caused the child to believe that the other parent is unavailable or unsafe. These are:

- bad-mouthing the other parent;
- limiting contact with the other parent;
- withdrawing love from the child, or being angry with the child who shows any feelings for the other parent; telling the child that the targeted parent does not love the child;
- forcing the child to choose between the parents;
- creating the impression that the targeted parent is dangerous;
- confiding in the child about adult issues in the relationship with the other parent;
- limiting mention and photographs of targeted parents;
- forcing a child to reject the targeted parent;
- limiting contact and belittling the extended family;
- belittling the targeted parent in front of the child; and
- inciting conflict between the child and the targeted parent.

Baker also provides a list of the other strategies used that give the child three-part messages that:

- the alienating parent is the only parent who cares;
- the alienating parent is needed for the child to feel safe and have good self-esteem;
- the alienated parent must be rejected by the child to maintain the love and approval of the alienating parent.

She writes that these strategies were recognised by the adults who had been alienated from their other parent as children. She adds that there would be more strategies only known to the alienating parent.

While different types of abuse have been defined as physical, sexual and emotional, Baker explains that emotional abuse has been less researched because it is more difficult to observe and document although it is described in the Federal Child Abuse Prevention and Treatment Act (PL 93-247)(USA) as

*“a repeated pattern of caregiver behaviour or extreme incidences that convey to children that they are worthless, flawed, unloved, unwanted, endangered, or only of value in meeting another’s needs”*

Baker describes parental alienation syndrome as having seven core components. These are where the child is: rejected, isolated, ignored, terrorised, corrupted, verbally assaulted, over-pressured, witnesses parental abuse of drugs and alcohol, threatened with abandonment, exposed to domestic violence, told that the targeted parent does not love the child, told that the targeted parent is unworthy of love, told of personal details that exceed the child’s cognitive and emotional capabilities, made to feel responsible for an adult’s well being.

She informs the reader that such children are often identified by personal characteristics, perceptions, and behaviours that convey low self-esteem, a negative view of the world, and internalised and externalised anxieties and aggressions, and have inappropriate and exceptional social behaviour and responses. She also describes possible remedies for adults who have realised what has happened to them as a child.

#### **1.4 Syndrome**

Baker uses the term parental alienation syndrome, which is also used by many other authors. In order to identify whether the use of the word syndrome is appropriate for describing this form of alienation, parental alienation syndrome can be compared to other behaviors that are accepted as syndromes.

Syndrome is used to describe psychiatric, and psychological groups of characteristics that often occur together to identify a specific pathology or disorder. Associate Professor Carolyn Quadrio considers whether parental alienation is a syndrome, and quotes Myers' definition of a syndrome which is consistent with definitions found in a number of dictionaries, that is a group of symptoms that occur together and that constitute a recognizable condition.<sup>13</sup>

Quadrio, who acts as an expert psychiatrist in the family courts in Australia says that in the case of a syndrome, a cause is assumed for the group of symptoms that are present. She compares parental alienation syndrome ("PAS") with Child Abuse Accommodation Syndrome ("CASS") and says that the difference between CAAS and PAS is that in cases of CAAS the child maintains an attachment with the abusing parent, and accepts the abuse as part of life, but this does not invalidate that there has been abuse. The question in family law cases is who is the child's abuser? Is it the parent who is alienated because of false allegations, or the parent who is making the false allegations and denying the child a relationship with the alienated parent.

Quadrio writes that because of the many interpretations that can be given to behaviours, parental alienation syndrome requires evidence that there has not been actual abuse. She also writes that alienation is a family dynamic and can only be assessed by assessing the whole family. She continues that as a syndrome suggests a psychiatric disorder of a specific person, parental alienation cannot be a syndrome as it is part of the family dynamics. This seems to suggest that there may be many causes that are part of family dynamics.

While alienation may be the result of family dynamics, requiring assessment of the whole family, this does not preclude the child from being indoctrinated by one or both parents to alienate the other, and having parental alienation syndrome induced. No matter how many possible causes there are, the syndrome is the child's distorted and unrealistic perception of a parent. This can be tested by examining other evidence that provides a different perception of the rejected parent, and by using psychometric tests.

---

<sup>13</sup> Quadrio Associate Professor School of Psychiatry, University of New South Wales *Parental Alienation in Family Court Disputes* (Paper presented at Child Sexual Abuse Justice Conference or Alternative Resolutions Conference convened by the Australian Institute of Criminology held in Adelaide 1-2 May 2003).

The evidence and test results may identify real physical or psychological abuse, or it may show that the alienated parent has none of the characteristics that the child or the other parent is describing.

A comparison of parental alienation to a recognised syndrome is psychologist Dr. Lowenstein's comparison to the Stockholm Syndrome coined by Nils Bejerot, a psychiatrist working with the police in 1973.<sup>14</sup> In both cases the victim, or the child in cases of parental alienation syndrome, may be subjected to fear, indoctrination and feelings of helplessness resulting in the victim or child becoming loyal to the alienator. In the case of parental induced alienation this loyalty is to the parent making the false allegations, which is ensuring control and dependence of the child and stopping contact between the child and the other parent. Eventually the other parent becomes unnecessary to the child who is dependent on the parent who makes the allegations.

If CAAS and the Stockholm Syndrome are accepted as psychological disorders and called syndromes; and if the definition of a syndrome "*a group of symptoms that occur together and that constitute a recognizable condition*" is applied, parental induced alienation could also be accepted as a syndrome. Considering there are many other forms of alienation, calling the pathological form a syndrome would ensure that it is not confused with the other forms of alienation and that it is treated more vitally by the Courts.

### **1.5 Pathological Alienation and the Diagnostic and Statistical Manual ("DSM")**

The most serious form of alienation is classified as a psychological disorder by Johnston and Kelly.<sup>15</sup> The question of whether or not the pathological form of alienation should be included in the next edition of the DSM remains to be answered. While the need to find solutions that will benefit children in the short and long term are advocated by many professionals, it seems that the continuing debate over whether or not parental alienation syndrome exists, and whether it should be classified as a mental disorder and included in DSM-5 still needs to be decided. Professionals involved in the court processes and those involved before applications are made to the Family Courts would

---

<sup>14</sup> Lowenstein L.F. *The Comparison of Parental Alienation to the Stockholm Syndrome* (Southern England Psychological Services, 2006).

<sup>15</sup> Johnston and Kelly, op.cit.

then have an authoritative reference to assist them with the cases where there are high levels of conflict placing children at risk, and where there is parental alienation.

The reasons for changes to DSM-IV are summarised as being that the validity of previous editions has been questioned<sup>16</sup>. An example is that individuals can meet the criteria for the same Personality Disorder while having few and, in some cases (e.g. Obsessive Compulsive Personality Disorder) no features in common, and can present clearly distinct clinical pictures<sup>17</sup>. The existing DSM-IV is based on the assumption that there are a small number of personality types, each of which has a fundamental nature even though no such set of types has yet been found.<sup>18</sup>

The proposals for changes to DSM-5 are based on the fact that while human personality varies continuously, resulting from the merging of a variety of personality traits and a variety of cultures, there are culturally universal characteristics which indicates that there are fundamental biological processes.<sup>19</sup> Critiques of the DSM's categorical approach to Personality Disorder diagnosis have appeared since DSM-III was published in 1980 although not addressed in DSM-IV.<sup>20</sup> Considerable research has since detailed the nature of the problems inherent in this approach. The release of the final, approved DSM-5 is expected in May 2013.<sup>21</sup>

The question remains as to whether or not the pathological form of alienation should be included in DSM-5, or whether other categories of disorders already included in the DSM are all that is necessary to relate the various forms of pathological alienation to. The DSM categories that have similar features found in the pathological form of alienation are discussed further in chapter 3.

---

<sup>16</sup> Frances, Alan MD, *DSM5 in Distress – the DSM's Impact on Mental Health and Research*, Psychology Today (May 2, 2012) citing Kupfer et al., *A Research Agenda for DSM-V* (2002)..

<sup>17</sup> Frances, Alan referring to 2012 American Psychiatric Association publications "Rationale for the Proposed Changes to the Personality Disorders Classification in DSM-5".

<sup>18</sup> Ibid. Frances cites Kendler, (2009); Eaton et al., (2011); McCrae et al., (2006).

<sup>19</sup> Ibid. Frances cites Markon et al., (2005); McCrae & Costa, (1997); McCrae et al., (2005).

<sup>20</sup> Ibid Frances, cites Frances (1980; 1982)..

<sup>21</sup> DSM-5 Development, DSM-5 Overview: The Future Manual. American Psychiatric Association (July 2011 - 2012). [www.dsm5.org](http://www.dsm5.org).

The literature referred to in this thesis indicates that knowledge and understanding of parental or child alienation or rejection is still confusing. There are many different forms according to the literature reviewed. This thesis proposes that the use of the psychometric tests will uncover the causes of the alienation and differentiate between whether the causes are pathological disorders included in the DSM, or if they are behavioral issues that can be changed, or are only transitory. Whatever the underlying rationale, or purpose of using the term parental alienation syndrome, or calling the issue a pathology or disorder, if it is known that the pathological forms are the same as the disorders already existing in DSM-5 the response of the legal profession and judiciary to the most serious form of alienation, together with physical and sexual abuse of children, may be approached more vitally than if it is not recognized as a disorder.

The disorders included in DSM-IV (and possibly in DSM-5) are not always related to family separation. However they may be present in some family law cases and may be affecting the resolution of the conflict between the parents, and their children. While they do already exist in the current DSM-IV, they are not necessarily the cause of all forms of pathological alienation. Therefore there seems to be a need for a category of parental or child alienation that has the features described in the existing DSM disorders. These disorders that are already included in DSM-IV could be included in the proposed Manual rather than having to rely on using the DSM where they are amidst all of the other pathologies that are not related to parental alienation or the types of cases before the family courts. This is discussed further in chapter 3.

## **1.6 Process**

The processes in the family courts do not provide for expert reports at the time an Application is made to the court. My experience is that in some cases they are not made until close to a final hearing, and in others they may be made sometime within the court processes, and may not be considered until there is a hearing. This can also mean that more than one report is made so that the initial report is updated. This results in a time and money spent trying to encourage parents to come to an agreement themselves rather than having one imposed on them while the underlying causes of conflict have not been recognised or dealt with.

Psychometric tests with clinical observation by a psychologist could either occur by

agreement between the parents at the stage of mandatory mediation before making a court application; or by an order being made by the judiciary at the first mention after an application is made, if there is no agreement before. Appropriate psychometric tests are able to identify causes of conflict and difficulties being experienced by the parents and the children in a shorter time than can be identified by clinical observation only. The use of appropriate tests may identify parental or child alienation and the reasons for it, if it does in fact exist. The severity of the alienation could also be detected, so that the more severe cases of alienation can be compared to DSM categories as discussed above. The other forms of alienation that are not pathological could also be identified so that the parents, and their lawyers would have much more information to assist with negotiations. If negotiations are unsuccessful, the judiciary would have more information at the commencement of proceedings on which to base orders and directions. There could then be a continuing cross- discipline approach to resolving the issues and conflict in a shorter and less stressful manner.

## **1.7 Terminology**

Professionals who discuss parental alienation are divided about the use of the term parental alienation syndrome. However, the division seems to be more about terminology than about learning more of the behavior that might affect the child adversely.

Johnston and Kelly are considered by many as experts in the research about alienation. They write that there is a form of parental alienation that is pathological.<sup>22</sup> They describe other causes including realistic reasons for the alienation, and a child's distorted perception that results in behavioral changes in the child. They also confirm that the focus on the terminology found in much of the literature has distorted the perceptions of those in the judicial, legal and psychological circles. They introduce a different perspective which takes the focus off the parents and places it on the child's reaction to the behavior of either, or both parents, by calling the alienation child alienation or rejection. The descriptions of behaviors of parents that may result in child alienation are similar to those described by Baker in her research on adults who

---

<sup>22</sup> Johnston and Kelly, *op.cit.*

experienced parental alienation as a child that resulted in parental alienation syndrome in the child, then in the child turned adult.<sup>23</sup>

There seems to be a need for differential terminology that is agreed amongst the professions involved, to be used for parental alienation, and child alienation, or rejection, all of which can be ambiguous because of their reference to multiple factors and causes. Currently there are different views of what parental alienation, or parental alienation syndrome are, or if in fact this exists at all, although this thesis shows that researchers such as Johnston and Kelly do provide descriptions that parental or child alienation exists and that there is a pathological form of alienation. They are also accepted as being experts in the knowledge of parental or child alienation. However they do not call the pathological form of alienation a disorder that should be included in DSM-5. There are varying views amongst the public and professionals about what should be called a mental illness, and this is reflected in some of the comments about classifications in the DSM provided by the American Psychiatric Association on their website<sup>24</sup> and in Psychology Today website.<sup>25</sup>

Recognition and knowledge of the role of psychologists is not always clear to many people, including lawyers, other experts and the judiciary. Psychologists have only relatively recently become accepted as being able to provide mental health diagnosis and therapy by Medicare, which now funds these services. University education in psychology has been growing significantly with far more knowledge now than was available two decades ago. However many people still see the role of psychologists as being related more to learning issues than the many other aspects of human behaviour that psychologists can now identify and provide therapy or counselling for. This affects communication between psychologists and other professionals in that the concepts of other professionals often do not include all the education and experience that psychologists actually have. Like social workers who often do family reports at the courts, psychologists learn about social issues, family dynamics and counselling that are part of the training of social workers. However, like psychiatrists, social workers are generally not trained in the use of psychometric tests, unless they have also completed

---

<sup>23</sup> Op cit 7 Baker.

<sup>24</sup> [www.dsm5.org](http://www.dsm5.org), 3<sup>rd</sup> edition 2012

<sup>25</sup> Frances, op.cit. [www.psychologytoday.com/blog/dsm5-in-distress-/201205/wonderful-news](http://www.psychologytoday.com/blog/dsm5-in-distress-/201205/wonderful-news) May 2, 2012.

courses to become psychologists. They need to have some knowledge of the terminology used by psychologists, and that is included in psychometric tests for communication between the professions to be improved.

The following is my attempt to define the various forms of alienation by labels that identify the cause. For example parental alienation could be interpreted as a parent alienating the other parent, or a parent programming a child so that the child alienates the other parent. In these cases the parent is the cause of the alienation. If only the parent is rejecting the other parent, and the child does not do so, this could be included as a category called 'Parental alienation'. If the alienating parent has a psychological disorder this could be identified amongst the various disorders related to family law cases and is likely to be identified by the psychometric tests. However, if the child becomes programmed by the alienating parent to reject the other parent, then this could be distinguished by using the term 'Parental Induced Alienation'.

According to Johnston and Kelly, child alienation can result from the child's view of a parent based on the child's own observations or relationship with that parent, whether that view is realistic or distorted. They call this child alienation (and rejection).<sup>26</sup> To distinguish the child's realistic perception from the distorted and unrealistic perception of a parent, the realistic rejection could be called 'realistic rejection' or a similar term in which the causes of the rejection are based on evidence. There then needs to be another term for the child's unrealistic rejection, which could be merely 'unrealistic rejection'. In some cases the realistic rejection needs to be treated as Post Traumatic Stress Disorder according to Johnston and Kelly, while the distorted or unrealistic perception of the child would require different treatment and therapy.<sup>27</sup>

As the treatment of the different forms of alienation is dependent on the cause, it seems to me to be reasonably vital that appropriate terminology is agreed on and used so that the wrong treatment is not used because it has the same name as another cause that requires totally different treatment. This is the dilemma that is currently found in the preparation of DSM-5.

---

<sup>26</sup> Johnston and Kelly, op.cit See also Katz A. *Junk Science v Novel Scientific Evidence: Parental Alienation Syndrome, Getting it Wrong in Custody Cases*. (Hein Online 24 Pace L. Rev. 239, 2003-4) who also discusses the need to assess the actual cause of alienation.

<sup>27</sup> Ibid. See also Lowenstein op. cit.

The following is a suggestion of different terms to distinguish between the different forms of alienation:

1. *Realistic Rejection*: based on a realistic perception of a parent because of the relationship with that parent, whether it be a normal developmental stage of the child, poor parenting skills, personality differences, or as a result of physical, sexual or emotional abuse of the child by a parent.
2. *Child Alienation*: based on the child's distorted view of the parent that is not induced by the other parent, but is formed by the child because of a number of different factors. For example, the child may have an exaggerated view of different behaviours, and interaction with a parent, or there may be a personality conflict between the parent and child with poor communications between them.
3. *Parental Induced Alienation*: where the child's distorted perception of the parent has been induced by the other parent.
4. *Parental Alienation*: where a parent is alienating the other parent without having induced alienation in the child, but assessment of the affects on the parent's alienation needs to be dealt with.

## **1.8 Conclusion**

My own conclusion is that it is necessary to identify and distinguish the causes, whether they be family dynamics, court processes, financial difficulties, personality issues, psychoses, behaviour of the parents and possibly also the child and other family members including extended family, differing needs of the parents and the children; or many other possible factors, so that the different types of parental alienation can be distinguished from each other. Then solutions need to be found to manage or remedy the conflict and its causes.

The knowledge and view of parental, or child alienation, and parental alienation syndrome has continued to evolve as more research has been developing. Much of the

literature referred to shows that alienation, or rejection of a parent, occurs whether or not allegations about the rejected parent are true. There is agreement between the authors referred to that when a child rejects a parent for realistic reasons, such as the former abuse of the child, or of the other parent witnessed by the child, the developmental stage of the child, or the poor parenting skills of the rejected parent, this is not the pathological form of parental or child alienation, although the child's behaviour includes rejection of a parent. Despite this, identification of the causes and remedies should still be beneficial in enabling the relationship between the child and parent to improve by appropriate intervention. The causes are described in chapter 2.

## CHAPTER 2

### CAUSES and CONSEQUENCES

#### 2.1 Causes

Dr. Richard Gardner describes some of the methods used by a parent to induce alienation as: intimidation and threat; guilt induction; the “buy-off”; playing the victim; suggesting that the child or parent will experience loneliness and fear; promises to change themselves and/or conditions; over indulgence, permissiveness, and telling the child the alienator’s alleged “truth” about past events. It is when the child becomes hostile toward the other parent and alienates that parent that Gardner says parental alienation syndrome has been induced.<sup>28</sup>

While Gardner’s views have often been rejected because of lack of scientific methodology, the descriptions provided by other professionals referred to in this thesis are very similar. It was Gardner’s early description of the scorned woman inducing the child to alienate the other parent that has caused considerable opposition.<sup>29</sup> That cause still continues to be referred to by authors who are opposed to Gardner’s views. However, just as there has been a continual evolution of views about parental and child alienation, Gardner’s description of the causes also evolved, and I have referred to some in this thesis. Although he has opponents, he also has followers who have built on his views.

While Gardner’s focus was initially on the parent’s behaviour, Johnston and Kelly focus on the child’s behaviour. Federal Magistrate Dr. Altobelli accepts the views of Johnston and Kelly in his reasons for judgment in *Calvert and Calvert* in the Federal Magistrates Court of Australia and quotes Johnston and Kelly as providing a better focus on the various relationships children have with their parents.<sup>30</sup>

---

<sup>28</sup> Gardner, Richard A. M.D. Misperceptions Versus Facts About Richard a Gardner M.D Creskill New Jersey June 9, 1999 (written by Richard Gardner and published on his internet 2011, now not available); see also Gardner Richard A. M.D. *Differentiating Between Parental Alienation Syndrome and Bona Fide Abuse–Neglect* The American Journal of Family Therapy. Vol. 27, No. 2, p 97-107 (April–June 1999) (This or similar comments have been made in various articles written by Gardner.)

<sup>29</sup> Ibid.

<sup>30</sup> Altobelli, Tom.. [Calvert & Calvert \[2008\] FMCAfam 101 \(18 February 2008\)](#) at paragraphs 23-43. (From [Federal Magistrates Court of Australia - Family Law](#); 18 February 2008).

## 2.2 Various forms of alienation, rejection and alignment

Johnston and Kelly provide various forms of child alienation, or rejection, on their continuum of child responses shown below.<sup>31</sup> I have referred to the continuum and explanation of it at length, as it appears to be the most current accepted expert categorisation of the various forms of alienation, rejection and alignment.

*A continuum of children's relationships with parents after separation and divorce.*

Child prefers Contact with Both parents		Child prefers one parent (ambivalence evident)		Child rejects one parent (no ambivalence)	
A	B	A	B	A	B
Positive Relationship With both Parents	Affinity with one parent	Alliance with one parent	Estranged from one parent Realistic Estrangement		Alienated from one parent Pathological Alienation

The continuum commences with children who want to spend time with both parents: some having a positive relationship with both parents (A) and some that may have more affinity with one parent but still want to spend time with the other (B). There is no parental alienation or rejection occurring in this group.

In the second group, the group A children may demonstrate some reluctance to spend time with one parent as they are conflicted about what is happening when the parents separate, while at the same time still wanting the other parent in their lives. The group B children may have had bad experiences with one parent such as poor parenting by that parent, or because of the child's stage of development, or uncertainty about how they feel about that parent. This may particularly occur if the parent with whom the child is

<sup>31</sup> Johnston, J. R; & Kelly, J. B. *Rejoinder to Gardner's "Commentary on Kelly and Johnston's 'The Alienated Child: A reformation of parental alienation syndrome'"* (Family Court Review, 2004. Vol 42(4), 622-628). See also Altobelli Tom, Seminar presentation at the Advanced Family Law Weekend held at the College of Law Sydney 15-16 August 2010 "The writer's purpose is to stimulate discussion, to encourage research, to share knowledge and to improve practice in relation to cases where a child rejects a parent. It is also to attempt to bring together and summarise the wealth of knowledge and experience presented at the Association of Family and Conciliation Courts (AFCC) 47<sup>th</sup> Annual Conference – *Traversing the trails of alienation* Denver Colorado" (June 2-5-2010) comments on hybrids, mixed hybrids, real physical abuse and false allegations.

living is upset about the separation, or is communicating to the child that the other parent's behaviour is wrong.

The third group is divided into group A which includes children who show no uncertainty, and who form an alliance with one parent, rejecting the other parent for realistic reasons; and group B children who may be estranged from the other parent without any realistic reason, neither developmentally, nor as a result of experiencing or witnessing actual abuse, nor as a result of that parent's behaviour.

The extreme end of the continuum, where the child expresses the rejection of a parent without guilt or ambivalence, and strongly resists or refuses any contact with the rejected parent, is described as pathological by Johnston and Kelly.<sup>32</sup> In these cases, the child's negative view and feelings are distorted and exaggerated to the extent that it is pathological. Johnston and Kelly claim that the allegations are mostly a replica, possibly a slight variant of the aligned parent's allegations and stories that the children have adopted. The difference between these allegations and those of actual abuse is that there is no compelling or supporting evidence that the allegations are true.<sup>33</sup>

## **2.3 Indicators**

### **a) Realistically Estranged Children**

Johnston and Kelly observe that some estranged children are realistically estranged as a result of family violence, abuse or neglect; or after either observing or experiencing repeated violence by a parent during the marriage, or after separation. Other children are estranged because of their responses to "*severe parental deficiencies*". This may be immature and self-centred parental behaviours, angry, rigid and restrictive parenting styles, and psychiatric disorders, or substance abuse. It may result from chronic emotional abuse of the child or the other parent, or physical abuse that is undetected. They say that these responses are sometimes incorrectly interpreted in parental alienation cases.<sup>34</sup>

---

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

## **b) Deficient Parenting Skills**

A child may resist spending time with a parent who tends to be deficient in parenting capacities – lacking in warmth, empathy, and cognitive understanding of the child’s viewpoint. Communication with such a parent may be difficult, and the parent may not enjoy being involved in the child’s activities, nor try to relate to the child.<sup>35</sup>

In these cases the parents may require considerable education and orders for attendance at courses and/or counselling such as are provided by the various relationship centres. The benefit of such orders would be dependent on the parent’s desire to have a continuing relationship with the child, and be prepared to put the time and effort into the education process. Assessment of the parent’s motivation and of the child’s, and the other parent’s willingness to assist would be beneficial. These issues could be diagnosed with the use of psychometric tests and clinical observations described in chapter 4.

The mother may be dependent on her child for approval and support, and for her emotional needs. She may sabotage the child’s relationship with the father by trying to control the amount of contact the father has with the child, and the types of activities in which the father is involved with the child. She may also question the child about visits with the father, and may try to send messages to the father through the child.<sup>36</sup>

Johnston and Kelly describe the family dynamics in these cases as being different to others, in that the mother is lacking in parenting skills, or her parenting has been affected by the child’s rejection and other family dynamics<sup>37</sup>. The mother may not demonstrate any warmth, empathy, capacity to communicate, or to understand her child’s feeling and ideas. Such mothers, like fathers who lack parenting skills, are unable to enrich the child’s life or enjoy activities with the child. My experience is that courses and counselling may assist in these cases depending on the motivation of the parent and the cooperation of the child and the other parent. However the courses need to be applicable to the specific family difficulties, as some generic courses may not be of any great value. Orders may need to be made before a parent takes the initiative to be involved in any of these interventions.

---

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

In many cases the parent may not have the insight to understand what is happening. The use of psychometric tests to identify the problems followed by the guidance of a psychologist would more likely ensure that there is appropriate intervention.

This manner of parenting is often related to the fact that the parents are having difficulties in adjusting, both socially and emotionally to the separation or divorce. If this is the case, then it could be expected that with time allowed for the adjustment, the parenting may also improve, unless the habit formed throughout truncated court proceedings has already caused too much damage and has become an entrenched habit.

**c) Aligned Child**

Children often gravitate to one parent more than the other at specific periods of their development because of their temperament, age, gender, shared interests; because other siblings prefer one of the parents; and because of parenting practices. This can change over time as the child's needs and situations change. It is called aligned child by Johnston and Kelly.<sup>38</sup> The aligned child is placed on the less serious side of the continuum. On its own it does not mean that the child is alienating a parent for any other reason than a relatively normal developmental process that can occur in families where there is no separation or conflict as much as when there is separation and conflict.

**d) Mild Rejection to Hostile Alignment**

There is a moderate degree of rejection of a parent after divorce for some children who show a clear preference for the other parent during the marriage, then after separation only want limited time with that parent. They usually do not reject the other parent completely, and show some ambivalence toward that parent, including anger, sadness and love. For children in this category, called mild rejection, and alignment, Johnston and Kelly say that clinical observations and psychometric assessment are essential to evaluate how entrenched the child's behaviour is, and whether the child is vulnerable to alienating pressures.<sup>39</sup>

---

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

The evaluator (or expert in Australia) needs to look for any changes in the child's attitude, particularly if the child describes the rejected parent in derogatory terms, and is unable to recall positive memories, according to Johnston and Kelly. This may mean that the child has emotionally "shut down", which can be a sign of alienation that is in response to high levels of conflict, or as a result of trauma, and needs to be understood in the light of other findings to establish its relevance to alienation.

Commonly, the aligned child may endlessly replicate, or provide slight variations of, the aligned parent's allegations about the rejected parent, without there being any evidence that the allegations are true. They generally sound very rehearsed and frequently use adult words and phrases. They do not show any ambivalence, guilt or regret when describing the rejected parent in such derogatory terms, and often appear to be enjoying themselves. They appear to have been given permission to express the hostile and rude perceptions of the rejected parent and the grandparents and others related to the rejected parent. These children often describe their aligned parent glowingly and refuse to consider anything that may undermine their view. They also reject any suggestion that their views of the rejected parent may be the views expressed by the aligned parent. Instead they may describe how much the aligned parent is suffering, or has been harmed financially and emotionally by the rejected parent. Despite this abnormal behaviour, such children may otherwise behave normally and appear to be well adjusted, doing well at school and in extra curricula activities. A close observation is needed to identify that this is really not the full truth.

Some of the worst cases are when the child's harsh views and feelings may be demonstrated in their communications with their peers and with authority. They may destroy property of the rejected parent, behave in appalling ways toward that parent, and treat them with scorn and verbal abuse in public. They may insist on contact with the aligned parent by telephone when they may whisper hostile observations of the rejected parent's words, behaviour, meals and personality. They "rebuff" all attempts by the rejected parent to communicate with them, and may demand that the rejected parent never contact them again, or stop harassing them with presents and letters that are often

discarded or unopened. They tell the rejected parent to stop their useless legal efforts and court appearances.<sup>40</sup>

The aligned parent may have extremely negative views of the rejected parent, and may freely, angrily and repeatedly express this to the child. There may be innuendos of sexual or child abuse, or that the rejected parent is dangerous in other ways. The aligned parent may believe that their child does not need the other parent in their lives. In some cases the aligned parent may believe that the rejected parent is dangerous to the child in some ways, either violent, physically or sexually abusive, or neglectful, thus justifying behaviour aimed at blocking time with the child. The aligned parent may believe that the rejected parent does not love or care about the child, and has never done so.

#### **e) Distorted Perceptions**

Johnston and Kelly explain that there is often an extreme difference between the child's perception and beliefs about the rejected parent and the real history of the parent's behaviour toward the child.<sup>41</sup> This is different to either aligned or estranged children as the children demonise and vilify the rejected parent while providing trivial reasons to justify their hatred. They have no concern about informing others of their perceptions of the rejected parent. They strongly resist visiting the rejected parent, and may completely refuse to do so even when advised to by therapists and lawyers, or even if ordered by a judge. They strongly believe that they have the right to choose whether or not they see the rejected parent.

A child who has witnessed violence or the trauma of a parent, who has been abused, may have perceptions that the violence was much worse than the abused parent's perception according to Johnston and Kelly.<sup>42</sup>

Often in high conflict children's cases, some children may form extreme alignments with one parent after separation, and strongly resist, or refuse contact with the other parent without any apparent ambivalence or guilt. They reject a parent who is normally a relatively good parent, and there has been no history of physical or

---

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

emotional abuse of the child. While there may be some element of truth, the child's views and feelings may be exaggerated, and a distortion of the child's previous relationship with the now rejected parent. Johnston and Kelly place these children at the extreme end of their continuum, and describe the child's response as pathological<sup>43</sup>.

As the extreme distortions are often so intense, and the child may demonstrate such ferocious behaviour toward the rejected parent, Johnston and Kelly claim that they are responding to complex and frightening dynamics in high conflict cases within the divorce process, which includes an array of parental behaviours. The child's vulnerability together with the parental behaviour makes the child susceptible to alienation.<sup>44</sup> If the court processes are in any manner responsible for this extreme attitude and behaviour, changes to the court processes are necessary to avoid psychological damage to children.

I have witnessed this occurring in one of my cases in which the mother was attempting to alienate the three children from their father by refusing any visits with the father from about twelve months after the parents separated at which time the father made an application to the Family Court. The mother succeeded in alienating the eldest daughter and causing confusion and alignment of the other two children because the court attendances in the LAT system were not adequate to identify what was occurring. Assessment by a psychiatrist occurred about twelve months after the initial application was made, at which time I saw that the pathological form of alienation described in this thesis was already entrenched in the eldest child's behaviour. The other younger two children's views were eventually changed by orders that they spend time with the father. Some years after the court proceedings had settled, the father informed me that the eldest daughter had commenced communication with him again. My observation of this case was that the court processes enabled alienation of the eldest daughter, and if the proceedings had continued much longer the young two children may also have been alienated. It was only after the court processes that good relationship the father had prior to the parents' separation was resumed. However, the alienation had commenced after separation and just prior to the court proceedings, which resulted in the father making an application to the court.

---

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

## f) Age Related Vulnerability

Johnston and Kelly explain that the developmental stage of children is highly relevant to how they experience alienation.

- Alienated children often feel abandoned by the rejected parent.
- The temperament and personality of the child as well as other factors such as whether there is external support of the child may make the child more vulnerable to alienation.
- Separation often exacerbates the anxieties of children who are less socially competent.
- The stresses associated with litigation can increase anxiety in children and can last well after the parents have separated..
- Older children are more vulnerable, and more likely to reject their fathers.
- In some cases, the child's rejection may not be related to attempts by either the mother or the father to sabotage the child's relationship with the other parent.<sup>45</sup>

Altobelli claims that the developmental stage of the most vulnerable children to alienation is between eight and fifteen as they are pressured by loyalty demands, can maintain anger, and are more likely to make rigid moral judgments.<sup>46</sup>

While Altobelli believes the representation by Johnston and Kelly are helpful, he concludes that they fail to address the likelihood that distinctions may be blurred, and some cases may present with hybrid and mixed hybrid features. He says that the underlying causes of alienation are often quite different even though they may present the same behavior. He describes other behaviors as being between the poles that can be called normal preferences, alignments, enmeshment, and realistic estrangement. In some cases both parents may be contributing. Features may be intense marital conflict, narcissistically vulnerable parents unable to shield their feelings, and at least one parent

---

<sup>45</sup> Ibid. see also Swerdlow-Freed, Daniel H. *New Research on Alienated Children Psychology* [www.drswerdlow-fried.com/forensic\\_article4.ht](http://www.drswerdlow-fried.com/forensic_article4.ht), Forensic Psychology – Family Court (Michigan USA, 2004).

<sup>46</sup> Altobelli, Tom, Seminar presentation at the Advanced Family Law Weekend held at the College of Law Sydney 15-16 August 2010 “The writer’s purpose is to stimulate discussion, to encourage research, to share knowledge and to improve practice in relation to cases where a child rejects a parent. It is also to attempt to bring together and summarise the wealth of knowledge and experience presented at the Association of Family and Conciliation Courts (AFCC) 47<sup>th</sup> Annual Conference – *Traversing the trails of alienation* Denver Colorado” (June 2-5-2010).

having a parenting deficiency ranging from diminished empathic involvement to abuse and neglect. Psychometric assessments described in chapter 4 may assist in the early diagnosis of what the underlying causes of alienation and conflict may be.

Lowenstein explains that the extent of the problem of parental alienation is unknown and that there are often multiple factors involved. However he claims that it doesn't matter if parental alienation is called only parental alienation or parental alienation syndrome, it is self evident that parental alienation exists and that it does harm to children.<sup>47</sup>

Chapter 3 describes the legislated requirements to identify alienation; and some forms of alienation that include psychological disorders defined in DSM-IV.

---

<sup>47</sup> Lowenstein, op.cit.

## CHAPTER 3

### LEGISLATION AND DSM-IV DIAGNOSES

While the literature supports the need for early identification of various maladaptive forms of children's responses to high levels of conflict between their parents Altobelli also refers to section 60CC of the *Family Law Act (1975)(Cth)* and describes how the various forms of parental and child alienation are affected by the legislation.<sup>48</sup> Lawyers should realise that the legislation does require identification of issues such as parental and child alienation as seen in the various parts of section 60CC.

#### **3.1 Legislation**

The meaningful relationship that the child has with one parent (s60CC(2)(a)) may be affected if the child is wrongfully being alienated from that parent. The child may need protection from a parent where there has been physical, sexual or emotional abuse (s60CC(2)(b)). If there is not early assessment and provision of evidence that there has been abuse of the child, orders may be made that place the child at continuing risk because the orders have been made based on the wrong premise.

The child may express views about whether or not the child wants to have a relationship with a parent. The court needs to assess what weight it should put on the child's views (s60CC(3)(a)). To be able to decide what weight to put on the child's views, it is necessary for the court to understand what is causing the child to have the view. As stated previously, there may be a number of different causes from real incidences where the child has experienced or viewed violence and abuse to where the child's perception is distorted, either by the manipulative allegations of one parent, or by the child not having understood what has been perceived.

The child's relationship with the favoured parent may raise questions about why the other parent is being rejected (s60CC(3)(b)). Again the child may have a distorted perception of the other parent and may be basing his/her conclusions on confused thoughts about what is happening.

---

<sup>48</sup> Altobelli, op.cit.

The willingness of the favoured parent to facilitate and encourage a close and continuous relationship between the child and the other parent is another important issue to be addressed as this may affect the child's relationship with the other parent (s60CC(3)(c)). This is self evident. A refusal to facilitate and encourage a close and continuous relationship can occur at different levels, with the refusal to do so being a form of behaviour that could cause the child to alienate the other parent. It may also have the reverse effect of causing the child to alienate the parent who refuses to facilitate the relationship with the other parent. Baker's research shows how some adults who experienced alienation as children, or adolescents, in adulthood may reject the parent who was responsible for that alienation when the person was a child once they learn of and understand what has happened. Perhaps this may also occur during adolescence if the child perceives this is what has been happening, although further research would be needed about this.

If a parent is rejected the rejection quite often affects that parent's extended family (s60CC(3)(d)). If there is rejection of one parent, there may also be rejection of that parent's extended family. However, I believe that this will also depend on the relationship that both the other parent and the child has had with the extended family. While there may be alienation of the other parent, there may still be a good relationship with that parent's extended family. However, this may also not occur, in which case the child may lose the benefits of both extended families and the parent. This may be for realistic reasons, or for unrealistic reasons depending on the relationship that existed prior to separation,

A child's favoured parent may relocate away from the other parent as part of the rejection of that parent, making the child's contact and communication with the other parent difficult and expensive (s60CC(3)(e)). If not managed properly, it may also become the reason for rejection of the other parent as a result of the practical difficulties of retaining a relationship over distance.

The capacity of each parent to provide for the child's needs must be considered and often the parents may make allegations about the other parent's capacity to do this (s60CC(3)(f)). The allegations may be true, or used in order to alienate the other parent.

Psychometric tests with clinical observation at an early stage may assist in identifying this and appropriate orders made. Some relevant tests used by psychologists in Family Court cases are discussed in more detail in chapter 4.

Changes in lifestyle after a separation may lead to the rejection of one parent (s60CC(3)(g)). There are many changes in lifestyle for each parent and the children that may occur after a separation. If the different lifestyles cannot be integrated without too much conflict, it may be a reason for one or both parents trying to influence the child, or demanding that the child leads the lifestyle chosen by one parent, and the lifestyle of the other parent may be denigrated by one parent to the child in such a manner that the child either chooses or gives in to siding with the more dominant parent who may be the parent on whom the child is more dependent.

Parental attitudes and responsibilities are usually involved where there is alienation of a parent (s60CC(3)(i)). As stated above for lifestyles, the attitudes of parents may differ so much as to cause conflict between the parents resulting in a child choosing to side with one parent only to avoid being even more psychologically damaged by the conflict caused by trying to please both parents.

There may have been family violence either perpetrated on the child, or witnessed by the child, that results in alienation of the perpetrator (s60CC(3)(j)(k)). This needs to be assessed early as stated previously, so that the child does not continue to be placed at risk.

There is often re-litigation associated more in cases where there is parental alienation (s60CC(3)(l)). Re-litigation can be financially devastating as well as continuing the polarisation of the parents. It appears to me that the best way to avoid this is for early assessment during the first family law procedures and appropriate orders, counselling, and education to occur at an early stage so that the parents are able to resolve differences that are likely to occur over time. The parents may still need to have intervention when new issues arise over time. However, if their experience during the first procedures has been beneficial, they are more likely to cooperate to resolve future issues than to have to again ask for the court's intervention according to Professor Robert Emery who describes how parents who have reached agreement in mediation,

will often return to mediation if new issues arise, because of their satisfaction with the process initially.<sup>49</sup>

The practicality of possible orders is often an issue in cases where there is parental alienation. (s65DAA(5)). These cases, may have emotional responses and may not consider the practicality of each parent to be able to provide for the child's needs. This may be assisted by counselling or mediation where other options that are practical and acceptable can be considered. Emery writes that the mediation he refers to as being successful is mediation in conjunction with counselling and education programs.

In *Calvert and Calvert* Altobelli describes allegations of alienation as needing consideration, as they have a distinct legal context referring to s60CC(2)(a), s60CC(3)(b)(c)(i) as described above.<sup>50</sup> He also professes that alienation is not a legal concept. Instead it is a concept of the social science/mental health professions, in particular psychology and psychiatry. Legal and social science/ mental health concepts may differ while at the same time being relevant to the same situation. The differences between legal and social science/mental health concepts and dialogue are discussed further in chapter 5 where they are seen to be an issue that needs to be addressed seriously in reviewing family law procedures and the determination of what is in the best interests of the child.

Reference to Gardner's comparison of parental alienation syndrome to other mental disorders already included in DSM-IV may assist lawyers to have a better understanding of the mental health issues that are involved.<sup>51</sup>

### **3.2 DSM-IV as an Additional Diagnosis**

Gardner offers a compromise to those who are reluctant to voice their recognition of parental alienation syndrome, although he says he would prefer not to as this only

---

<sup>49</sup> Emery, R. *Divorce Mediation Research & Reflections* (14<sup>th</sup> National Family Law Conference Canberra, ACT October 2010, 286). Emery R. E. *Parental Alienation Syndrome Proponents Bare the Burden of Proof* (Family Court Review 43 (1) 8-13 2005).

<sup>50</sup> Altobelli in *Calvert and Calvert* op.cit.

<sup>51</sup> Gardner Richard A. M.D Does *DSM-IV Have Equivalentents for the Parental Alienation Syndrome (PAS) Diagnosis?* (Unpublished Manuscript Accepted for Publication Department of Child Psychiatry, College of Physicians and Surgeons Columbia University, New York, New York, USA found on Gardner's previous website.)

detracts from the argument that parental alienation syndrome should be included in DSM-V.<sup>52</sup>

Gardner argues that the cause of alienation is the mother's or father's programming or implanting their own views in the child's mind, and the child must be protected from that programming. He explains that by using existing disorders defined in DSM-IV the term parental alienation syndrome does not necessarily have to be used. He writes that there are also other DSM-IV diagnoses that may be applicable, which can be used to describe behaviour that has common elements to parental alienation syndrome, although they are not identical to parental alienation syndrome, and can't be used as a substitute for parental alienation syndrome.<sup>53</sup> There seems to be some contradiction here. He says that the existing DSM disorders can be used instead of parental alienation syndrome, while also saying they are not a substitute for parental alienation syndrome.

An examination of the disorders referred to by Gardner may assist in seeing the similarities that suggest why parental alienation syndrome might be included in DSM-V. This could be beneficial whether or not parental alienation is defined as a syndrome. The question that might be raised here is why should yet another disorder be included in DSM-5 when the disorders already in DSM-IV can be applied instead of using the term parental alienation syndrome, which may be divided into any of the disorder categories already existing in DSM-IV. In fact these divisions into different categories of disorders seem to provide a more specific description of the different forms that parental alienation syndrome may take. However, the problem remains that DSM-5 is still trying to overcome similar problems to the classification of parental alienation.

Each of the descriptions that follow, are explained by Gardner as relating to parental alienation syndrome in some ways. The only reason given by Gardner for not relying only on these categories is that if this is done, it would make the likelihood of parental alienation syndrome being included poor. This does not seem a good reason for not using the existing categories, provided the legal profession also have knowledge of the meaning of each of the categories. While the categories are being described in

---

<sup>52</sup>Ibid,

<sup>53</sup> Ibid.

psychiatric terms, their descriptions seem simple enough to be adopted by the legal profession as legal terms also.

The following are the DSM-IV listings summarised, and include Gardner's reference to their relationship to parental alienation syndrome. In her research on adults who experienced parental alienation as a child, Baker describes some of those adults researched as having some of the following disorders. It may be better to refer to the existing DSM disorders once diagnosed by psychometric tests, than to continue naming the disorder parental alienation. The difficulty in doing this may be the law's ability or inability to include the names and descriptions of these disorders in the law's discourse. This is a problem that is discussed further in chapter 5.

None of the disorders in DSM-IV that have been referred to by Gardner are called syndromes, leaving the question of why parental alienation should be called a syndrome. However, if the term parental alienation is replaced by the actual DSM definition of the behaviour, there may be no reason for what has to date been called the pathological form of alienation to be categorised as parental alienation at all. Instead the behaviour could be named according to the pathology described in DSM with parental alienation being one of the symptoms of the specific DSM categories.

The following are the DSM categories of which parental alienation syndrome may be a symptom.

*DSM-IV 61.20 Parent-Child Relational Problem.* Although this is not always associated with parental alienation syndrome, it includes situations where communication between a child and parent is impaired; or when the parent is overprotective and using inadequate discipline, and there is individual or family dysfunction with the development of clinically significant symptoms in a parent or child. Gardner describes this as being similar to parental alienation syndrome where the child is programmed to denigrate and be hostile toward the rejected parent who may have previously been a loving parent, and into being fearful of that parent to the extent that the parent is viewed as "*noxious and loathsome*".<sup>54</sup> The communication between

---

<sup>54</sup> Ibid.

the rejected parent and the child becomes distorted because the child's view of the rejected parent is not realistic. This appears to describe the pathological form of parental alienation. Provided that lawyers are aware of the disorder, there seems to be no reason why the pathological parental alienation should not be referred to as a Parent-Child Relational Problem.

*DSM-IV 297.71 Delusional Disorder of which the Persecutory Type* is the most applicable to parental alienation syndrome. In such cases, the alienating parent may initially recognise that what is being said about the rejected parent is a deliberate false allegation. However after some time, the alienating parent, obsessed with hatred for the rejected parent, comes to believe the allegations. The child who may at first realise that the allegations were consciously false will probably have entered the severe level of parental alienation if this category is applied.

*DSM-IV 301.0 Paranoid Personality Disorder.* This is another disorder that Gardner associates with parental alienation syndrome, although he says that this disorder is already a disorder of the alienating parent prior to the marriage breakdown. Gardner recommends that a detailed history would need to be taken from the rejected parent as well as other sources as the parent with this disorder would not likely reveal the symptoms.<sup>55</sup> The person assessing the alienating parent may not be able to discover the symptoms as these may be deep-seated traits embedded in the personality structure that may be impossible to hide. However, the use of psychometric tests may improve the possibility of doing so.

Gardner states that it is less likely that the child will have this disorder, although if the severe level of parental alienation syndrome has been reached, the child may need to be diagnosed as to whether the Shared Psychotic Disorder exists. In some cases, he explains the diagnosis Schizophrenia, Paranoid Type (295.30) is warranted for the alienating parent, although other manifestations of schizophrenia are usually present prior to separation and may already have been diagnosed. Medical evidence would need to be applied.<sup>56</sup>

---

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

Gardner argues that most people involved in protracted litigation over children are likely to show some signs of paranoia that may be elevated on the paranoid scale of the Minnesota Multiphasic Personality Inventory (“MMPI”) which is a psychometric test that is discussed further in chapter 4. Gardner states that the adversarial process intensifies psychopathology in general, and in particular paranoid psychopathology. He also explains that there is a continuum from delusional disorder to paranoid personality disorder to paranoid schizophrenia and during protracted litigation a parent may move from the milder to the more severe disorder on this continuum.

While Gardner argues that protracted litigation can increase the severity of a personality disorder, he is not stating that the litigation is the cause of the personality disorder, only that it is a stress that increases the severity of an existing personality disorder. The disorder would need to be identified, or assessed so that it could be managed appropriately. However, if the litigation process increases the severity of the disorder, then it would seem counterproductive for the litigation process to continue while a treatment of the parent by a psychiatrist or psychologist is being attempted. As stated previously, the early assessment by a psychologist or psychiatrist is important in the processes involved in family law, and may assist in ensuring that the disorder does not progress to being so severe that therapy may require years to remedy the pathology, if it is even possible to remedy by that stage.

*DSM-IV 301.83 Borderline Personality Disorder (BPD).* This may be present to some extent prior to separation according to Gardner, although the symptoms may progress further as a result of the stresses of separation. Gardner explains that soon after separation the parent with this disorder may feel abandoned (one of the symptoms of the disorder) and may devalue the spouse who has previously been idealised. Gardner states that the campaign of denigration is the manifestation of BPD. He explains that parents who have BPD will have severe symptoms of affect instability, irritability and intense episodic dysphoria, chronic feelings of emptiness with tirades of anger against the rejected parent and strong feelings of suspiciousness that serves as a model for the child who may adopt that parent’s behaviour or may form the view that the other parent has caused this behaviour and so alienates the other parent<sup>57</sup>.

---

<sup>57</sup> Ibid.

*DSM-IV 301.81 Narcissistic Personality Disorder.* Gardner writes that this is a less likely description of parental alienation syndrome, although Baker has referred to it being a common cause. Gardener states that some of the criteria are present, such as the parent acting as though the Court orders have nothing to do with them, even though their names are spelled out in the orders. They often violate the orders, which the courts generally do not punish them for. Gardner said that it is the Courts' failure to punish the parent who induces parental alienation syndrome in the child and the symptom may become entrenched in the child.<sup>58</sup>

*DSM-IV 309.21 Separation Anxiety Disorder.* This is a disorder of parental alienation syndrome where the child is afraid that the alienating parent will be angry at the child or reject the child if the child shows any affection toward the rejected parent. The child may exhibit a variety of psychosomatic symptoms related to the tension associated with the visit with the rejected parent. This may become more apparent when the alienating parent is present and is more likely applicable in mild and moderate cases of parental alienation syndrome whereas in severe cases of parental alienation syndrome there is more likely anger shown toward the rejected parent in order not to be rejected by the alienating parent. In contrast to the normal diagnosis of separation anxiety, children who have had parental alienation syndrome induced focus their fear on the rejected parent rather than the fear existing because of being away from the alienating parent.<sup>59</sup>

*DSM-IV 300.15 Dissociative Disorder (NOS) category 3.* This is normally applied to cult indoctrinations or military prisoners who are brainwashed to convert their loyalties to the cult or their homeland is also applicable to severe cases of children who have had parental alienation syndrome induced by the alienating parent. The children often appear to be like robots in the way in which they denigrate the rejected parent and appear to be in an altered state of consciousness while doing this according to Gardner.<sup>60</sup>

---

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

Gardner describes some of the behaviours of children who have had parental alienation syndrome induced, which are also included in *DSM-IV as 312.8 Conduct Disorder* such as aggression to people and animals; destruction of property; deceitfulness or theft; serious violations of rules. However, the identification of this behaviour as being the same as the DSM-IV diagnosis, does not mean that the child has the DSM-IV disorder.<sup>61</sup>

While the above DSM-IV diagnoses have common symptoms to parental alienation syndrome, Gardner warns that they should only be used as additional diagnoses.<sup>62</sup> However, it appears that there is the need to differentiate between the various causes and symptoms of parental alienation, and the above descriptions may do that for the more severe and pathological form of parental alienation.

Gardner describes another symptom of Conduct Disorder as when the alienating parent attempts to extract increasing amounts of money from the rejected parent without allowing time with the children and without any feeling of guilt in doing so. This lack of empathy and sympathy for the rejected parent satisfies other criteria for this disorder. Gardner said for a parent to alienate the other parent they must have no empathy or sympathy for the other parent. They are often haughty and arrogant which goes along with their sense of entitlement, another criteria for the disorder.<sup>63</sup>

Gardner continues describing severe levels of the parental alienation syndrome where children will scream at, intimidate, and sometimes physically assault the rejected parent with objects such as bats, bottles and knives. They may sabotage the rejected parent, destroy property in that parent's home, and may set fire. They may be deceitful, particularly when facilitated by the alienator; may steal important documents or records to take them to the alienator and may run away from the rejected parent's home back to the home of the alienator, especially in moderate and severe cases.<sup>64</sup>

The children who have had parental alienation syndrome induced may also suffer adjustment disorders such as *DSM-IV 309.0 with Depressed Mood; 309.24 With*

---

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

*Anxiety, 309.28 With Mixed Anxiety and Depressed Mood; 309.3 With Disturbance of Conduct; 309.4 With Mixed Disturbance of Emotions and Conduct* according to Gardner. In these cases, the child is trying to adjust to a situation in which one parent is trying to convince the child that the child's previous view of a loving parent is wrong and that the parent is instead a dangerous and horrible person. This is confusing to the child who may respond with anxiety, depression and disturbances of conduct.<sup>65</sup>

*DSM-IV 297.3 Shared Psychotic Disorder.* Gardner states that this category is warranted for severe parental alienation syndrome cases in which the alienating parent is paranoid, and the child's campaign of denigration includes the paranoid ideation; and where there are delusions of persecution that can justifiably be called paranoid, with the rejected parent being named the persecutor. He argues that most moderate and some mild cases of parental alienation syndrome include examples of folie a deux phenomenon, although he states that the moderate and mild cases do not warrant being labelled psychotic.<sup>66</sup>

Folie a deux phenomenon is also described by Lowenstein as programming by the alienating parent resulting in the child having a fear of losing the security of the alienating parent. Lowenstein recommends that the only way to eliminate the child's delusional beliefs about the rejected parent is to break the relationship between the child and the alienating parent. There are a number of reasons for opposing this, including the fact that this may exacerbate the behaviour of an already indoctrinated child, or the child may simply refuse to stay with the rejected parent.<sup>67</sup>

Lowenstein states a child's behaviour initially does not provide any indication of the shared psychotic disorder folie a deux. However, after a period of brainwashing or programming the hostility occurs and progresses to "*implacable hostility difficult to reverse*". The child shares the animosity and paranoia of the alienating parent and feels "*dread, anxiety and a virtual phobia*" if required to visit the rejected parent, and will resist doing so. The alienating parent will deny having done anything to cause this. In time, the child feels it necessary to give loyalty to the parent who has the most power,

---

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Lowenstein L. F. (2006) *Parental Alienation Due to a Shared Psychotic Disorder (Folie a Deux)* (Southern England Psychological Services).

which is the parent with whom the child is living, usually the alienating parent. Lowenstein quotes a Canadian Judge as saying that hatred has to be learned, and any parent who teaches their child to hate the other parent damages the mental health of the child.<sup>68</sup>

As the court processes are so slow, and in many cases, expert witnesses and the court decide that it is better to keep the status quo at least until there is a final trial to test the evidence, in the meantime, the shared psychosis may develop to such an extent that it becomes irreversible; or in some cases, the rejected parent may give up because of the child's increasing hostility toward that parent. Lowenstein called this not only folie a deux, but also folie a trois, then folie carre with the expert and the court becoming part of the problem.<sup>69</sup>

Lowenstein argues that the long term consequence of this disorder is that the child is likely to have difficulties in relationships with a partner in the future, and repeats what has been learned as a child, resulting in the cycle of paranoid delusions continuing throughout the child's life unless therapy can reverse the process, although he states that there is no research of this happening, and it is likely to be very seldom<sup>70</sup>. The research by Baker, referred to previously, shows that it does persist into adulthood in some cases.<sup>71</sup>

Lowenstein writes that when parental alienation syndrome is induced, the child's memory of the other parent is systematically destroyed by the other parent, and the child misses all the normal daily interactions of learning, support and love with both parents and extended family.<sup>72</sup> It is interesting that Lowenstein and others such as Baker, continue to use the words parental alienation syndrome, although Lowenstein has stated that it does not matter whether the word syndrome is used or not.

---

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

Lowenstein quotes Turkat who called the disorder “*malicious parent syndrome*”.<sup>73</sup> The question is raised as to why *malicious* is not enough in itself to define a parent who has so much hate for the other parent as to try to malign and alienate the child from that parent, just as the term *intractable hostility* used in cases in England is also used to describe this behaviour, and is another definition that can be applied without it being called a syndrome or psychological or psychotic disorder.

Behaviour that is deemed appropriate to be described in the DSM is behaviour that exceeds the boundaries of what is considered normal behaviour. Malicious parent syndrome does seem to meet the criteria of being out of the range of normal behaviour. However, while people who are considered normal may be hostile at times, such behaviour is only likely to be included in the DSM if there isn't evidence of a good reason, such as actual physical abuse of a child, for the intractable hostility; or if it exceeds for a lengthy period what may be called reasonably normal in specific situations, and if it is difficult to change.

Lowenstein also describes the alienator as able to be diagnosed as having a personality disorder that includes mixed, unspecified, histrionic, borderline, passive-aggressive or paranoid behaviour. He argues that it is necessary for an experienced psychologist or psychiatrist to look for signs of parental alienation syndrome that may have developed because of this.<sup>74</sup> The expert witness and the court may take the child's wishes into consideration, ignoring the fact that the child's wishes may have been programmed by the alienating parent who may have a psychosis.

Although it is a drastic option, recommendations are made by some, including Lowenstein and Gardner, that the child should be taken from the alienating parent for a period and allowed to live with the rejected parent for a length of time while having intensive therapy in order for the child to develop a good relationship with the rejected parent, then later for the child to spend time with both parents. It seems to be important, if this occurred, for the alienating parent to also undergo therapy.

---

<sup>73</sup> Lowenstein, op cit. referring to Turkat, I. (1994) *Child visitation interference in divorce* (Clinical Psychology Review, 14, 737-742).

<sup>74</sup> Ibid.

This view is not shared by Dr Celest van Rooyen, a psychologist and expert in the family courts in the United Kingdom and Bala Mahendra, a consultant psychiatrist and barrister who has written extensively on medico-legal issues, and is an expert in family courts in the United Kingdom.<sup>75</sup> They argue that where there are such high levels of conflict between the parents, the child is likely to become enmeshed in the alienating parent's behaviour and incorporates the alienating parent's hatreds and emotions for the rejected parent. It would then be difficult for the child to leave the alienating parent. If orders were made for the child to live with the rejected parent, the child seems likely to run away or use other tactics so as not to have to stay with the rejected parent. This also has the potential of causing the rejected parent to withdraw from any desire to have a continuing relationship with the child.

Van Rooyen and Mahendra also provide another name for one type of alienation, that being where there are false allegations of sexual abuse that is called 'Sexual Allegations in Divorce Syndrome' ("SAIDS")<sup>76</sup>. They claim that making false allegations of sexual abuse of the child is of a similar degree of emotional harm to the child as actual sexual abuse. The question is raised that if false allegations of sexual abuse are already named a syndrome, why is Gardner's parental alienation syndrome being opposed? At the same time it could be argued that as there are other names for the various forms of parental alienation syndrome, why is there a need for using the term parental alienation syndrome, and having that name included in the DSM. As stated previously, the DSM definitions of the various behaviours that may occur when there is parental alienation could be used instead of referring to symptoms under the category of parental alienation syndrome.

Other allegations include accusations of threats or domestic violence, physical or emotional abuse of the child, mental illness of the rejected parent, alcoholism, and drug abuse. These allegations are not named a syndrome although Gardner claims that possibly all the variations of alienation should each be called a syndrome that describes the particular type of alienation. The problem with this is that the other forms of

---

<sup>75</sup> van Rooyen, C.L. and Mahendra, B. (2007) *Psychology in Family and Child Law* (Family Law, Jordan Publishing Limited 2007, Bristol England).

<sup>76</sup> Ibid.

alienation are not considered as pathologies, so why would they be called syndromes, which infer that they are pathologies.

### **3.3 Parental Induced or Child Alienation and DSM-V**

Distinguishing the causes and effects of alienation and distinguishing between parental or child alienation and parental alienation syndrome has been the subject of much research with different perceptions and treatment throughout the world, and by different professions. The causes identified by a number of different researchers vary, while at the same time being similar, or in some cases the same with regard to some features. The consequences can be an abnormal relationship between the rejected parent and the child, which can affect the child psychologically into adulthood as seen in Baker's study.<sup>77</sup>

Whether or not the various disorders resulting from alienation in family law cases is to be included in DSM-V, the categorisation of these needs to be confirmed, so that there is no uncertainty about the definitions, which seems to have happened with regard to the terms 'parental alienation' and 'parental alienation syndrome'. As stated in the introduction, a 'Cross-Discipline Family Law Manual' could be published, including the following suggested categorisation. By having more distinctions in the terms used, there may then follow an awareness and better communication about the issues.

1. *Parental Induced Alienation* where a child is induced by a parent to alienate the other parent and:
  - this distorts the child's perception of the other parent so that *Parent-Child Relational Problem* develops;
  - the alienating parent has *Delusional Disorder of which the Persecutory Type applies*, and the child develops the *Shared Psychotic Disorder* with that parent;

---

<sup>77</sup> Baker, op.cit.

- the alienating parent has *Borderline Personality Disorder (BPD)* and the child alienates the other parent in order to have the approval of the alienating parent;
  - the alienating parent has *Narcissistic Personality Disorder* and the child alienates the other parent in order to have the approval of the alienating parent;
  - the alienating parent has *Malicious Parent Syndrome* and the child alienates the other parent, and mimics the alienating parent;
  - the child has *Separation Anxiety Disorder* and is afraid of separation from the parent with whom the child lives and is afraid that the alienating parent may reject the child if the child does not reject the other parent;
  - the child develops *Dissociative Disorder (NOW) category 3* in which the child appears to be in an altered state of consciousness and robotically mimics the parent who is alienating the other parent;
  - the child develops *Conduct Disorder*;
  - the child develops *Adjustment Disorders with depressed mood, anxiety, mixed depressed and anxiety moods, disturbance of conduct, with disturbance of emotions and conduct.*
2. *Child Alienation* where the child has a distorted perception of a parent that is not consistent with the reality of that parent, and which is not induced by either of the parents.
  3. *Realistic Child Alienation* where the child's rejection results from the rejected parent abusing the child, or the other parent: having poor parenting skills; having a psychosis; being an alcoholic or illicit drug user; showing a lack of care for the child.

4. *Post Traumatic Stress Disorder of the child* where the child has been abused physically, sexually or emotionally or has witness this occurring to a parent, or loved one.

If the child has an unrealistic perception of the rejected parent that is not a factual description of that parent, the child's cognitive processes related to the rejected parent appear to be distorted and abnormal. In many cases, but not necessarily always, the unrealistic view is created by the parent who has wanted to alienate the other parent, and has described the rejected parent in such a way that it is a distortion of who the rejected parent is. That perception of the rejected parent is then implanted in the mind of the child, possibly by the repetition of that view until it is the most recent and prominent view the child has of the parent being alienated. If the child spends little time with the alienated parent, there is little opportunity for the child to form a realistic view of the alienated parent. This is parental induced alienation as it has been created by a parent. It is pathological as it is not normal and requires treatment or therapy for that view to be changed to a realistic perception.

In other cases where the child has a distorted view of a parent, the unrealistic view is not formed as a result of what the other parent has communicated to the child, but as a result of the child's own perception, that may be unrealistic and distorted. This should not be called parental alienation as a parent is not creating that perception. However, it is also not normal, so requires treatment or therapy that is different to what is required for parental induced alienation. The mental disorder affects the child's behaviour toward a parent, and possibly other relationships, and can continue into adulthood if not treated, evidence of which is found in Baker's study.<sup>78</sup> This form of alienation would be more appropriately named child alienation as proposed by Johnston and Kelly.<sup>79</sup>

Depending on the seriousness of the behaviour, whether it is induced by a parent, or a distorted perception of the child, the child's future behaviour and view of life may become personally destructive and antisocial, and so not only affect the child's or the family's lives, but also the community in which the child and later adult may live.

---

<sup>78</sup> Baker, op.cit.

<sup>79</sup> Johnston and Kelly, op.cit.

Lowenstein writes that despite parental alienation syndrome not being in DSM-IV, and being still disputed by many people, the existence of alienation is not disputed.<sup>80</sup> The pathological alienation described by Johnston and Kelly appears not disputed, and there is considerable concern about its effects on children with the growing number of divorces and relationship breakdowns where there are children. At ICL training in November 2011 provided by the Family Law Council, which I attended, potential ICLs were encouraged to read social science literature, and in particular that of Johnston and Kelly.<sup>81</sup>

While the need to find solutions that will benefit children in the short and long term are advocated by many professionals, it seems that the continuing debate over whether or not parental alienation syndrome exists, and whether it should be classified as a mental disorder and included in DSM-5 needs to be decided so that professionals involved in the court processes and those involved before applications are made to the family courts have an authoritative reference to assist them with the cases where there is high levels of conflict placing children at risk, and where there is parental induced, child, or realistic alienation.

My conclusion is that it is necessary to identify and distinguish the causes, whether they be family dynamics, court processes, financial difficulties, personality issues, psychoses, behaviour of the parents and possibly also the child and other family members including extended family; differing needs of the parents and the children; or many other possible factors, so that the different types of alienation can be distinguished from each other. Then solutions need to be found to manage or remedy the conflict and its causes.

Whether the apparently accepted pathological form of parental induced alienation, or child alienation is called parental alienation syndrome, or child alienation syndrome, or a psychological disorder to be included in DSM-5; or whether it is only accepted as one

---

<sup>80</sup> Lowenstein F. L. *Title Publication* (Southern England Psychological Services, 2005, 58).

<sup>81</sup> Unfortunately, in one of my cases the other solicitor provided me with an article by Kelly and Johnson that we both interpreted differently according to our own client's needs, so to only have access to the literature is not sufficient. There needs to be appropriate training and assessment to ensure that everyone's comprehension is the same.

of the many forms of alienation with varying causes, the different causes appear need to be distinguished and managed accordingly.

As discussed in chapter 4, psychologists and psychiatrists have used psychometric tests to identify the often multiple factors that are the causes of conflict. With the growing knowledge that some forms of parental induced alienation are seriously psychologically damaging to children and their parents, perhaps more tests can be developed that focus specifically on the identification of alienation and its causes. However, I believe that psychologists/psychiatrists need to be motivated by the Family and Federal Magistrates Courts recognising and utilising their skills and placing importance on them.

My experience is that experts often only report what the parties, or the ICL tell them. However, if psychometric tests are also utilised, they can either support what the parents have informed the expert, or refute that in many instances, and together with other evidence filed at the Court, this may be a faster and more accurate use of both time and money spent on family law cases. The following chapter discusses the views of professionals who have written about the use of psychometric tests.

## CHAPTER 4

### PSYCHOMETRIC TESTS AND CLINICAL ASSESSMENT

#### 4.1 Psychometric Tests and Therapy.

The psychometric tests are described by some psychologists as being able to identify the causes of conflict, and the existence of what is called by many professionals 'parental alienation syndrome'. The use of psychometric tests may ensure a faster identification of parental alienation in its different forms. They may also identify the causes of conflict, so that recommendations can be made to the judiciary for orders that assist with the appropriate management of these situations.

While it may never be possible for some parents to coexist for the sake of their children without significant conflict, or abuse, psychologists have endeavored to analyze the causes of dysfunctional families, and find ways of educating parents to manage the conflict, and the stressors that are involved. As this science has been developing over the past few decades, and research has provided more information, psychologists and psychiatrists have become more involved in family law proceedings, particularly where there are high levels of conflict, some of which result in different levels of parental or child alienation.

Gradually as there has been more research and knowledge about the issue of parental alienation, the need to identify the causes of the alienation and the means to do this has become more obvious. Psychologists have introduced psychometric tests to examine and diagnose behavior, and these have become important tools used by evaluators in the Family Courts in the United States of America particularly, and by experts in Australia and England. There are some psychologists who describe the problems of using psychometric tests. However many professionals have positive views about their use provided that tests are reviewed and accepted by psychologists as a profession, and that they are administered properly. This could be addressed by appropriate training and specialization in family law for those psychologists who want to practice in this field.

#### 4.2 Expert Reports

While there is still controversy about whether or not there is a parental alienation syndrome, since the research by Johnston and Kelly there appears to be little dispute

about various forms of alienation existing, nor the fact that there is a pathological form of alienation. The latter view has been upheld in Australian case law in *Calvert and Calvert*.<sup>82</sup> A question that arises then is how to detect its existence, and whether or not psychometric tests together with clinical observation and court hearings, or reliance on only clinical observation and court hearings are the most appropriate way of identifying the different levels of alienation.

In *Calvert and Calvert* Altobelli refers to Lee and Oleson in assessing the weight to be given to expert reports in cases where there has been alleged alienation and rejection. He says that the Lee and Olesen article warns of oversimplified evaluations and incorrect assumptions without thorough analysis of the child, the family, and external corroborating sources and data. Use of inflammatory language and diagnostic labels are discouraged, and very detailed plans for intervention should be used.<sup>83</sup>

Altobelli quotes Lee and Oleson as saying that even when parental alienation is identified there is no common solution. He describes Oleson's view that no change in time spent with the alienated person will solve the family difficulties. The best way to manage these issues is a combination of detailed recommendations, therapy and monitoring to occur.

This supports the need for early assessment. The psychometric tools described in this chapter seem to be appropriate for such assessment together with clinical observation, and a knowledge of the evidence provided by other professionals such as school reports, doctors' and counsellor's reports, records of community services, that may have been involved, police records where applicable and the affidavit evidence. In my experience, the affidavit evidence and subpoenaed records are not always read early in the court proceedings. In one of my cases, the psychiatrist's report indicated that the mother's new partner was a good citizen who had always worked. I had read the police reports that showed he had been charged for theft, illicit drug use and sale and domestic violence. I asked the expert if he had read this. He hadn't. He then read the records and concluded that the partner may have an antisocial disorder, a far different description. Psychometric tests may have shown that he was not truthful when

---

<sup>82</sup> Altobelli, op.cit.

<sup>83</sup> Ibid.

interviewed by the psychiatrist, which would ultimately have saved time, and the cost of the psychiatrist's report that was increased by the need to answer further questions.

In the present system, experts are appointed to do assessments and write reports that are provided to the Family Courts and to the lawyers involved. If there is an Independent Child's Representative ("ICL"), that person usually organises who will do the assessment in consultation with the lawyers representing the parents. The parents pay half each for the cost of the report unless either is funded by Legal Aid when Legal Aid pays for that person's share for the report. Each report can cost up to about \$12,000 or sometimes more depending on what is involved and how many people need to be assessed. My experience is that these reports are ordered then completed some months after proceedings have commenced. Then, quite often the report might be outdated by the time the case is heard at a final hearing. New developments may have occurred, and another report may be required. Sometimes an expert report may not reveal enough and a second report by a different person may be ordered. Sometimes a family consultant at the court may do a family report and an expert report by a psychiatrist may also be ordered. The family report by the family consultant is funded by the government.

Psychologists and psychiatrists may be appointed and some use psychometric tests. The expert generally only answers questions put to him/her by the ICL. However, if either or both the lawyers for the parents wish to question the expert in writing after reading the report, this can be done at an extra cost to the parents, or Legal Aid. The problem with this is that if neither the ICL, nor the other lawyers have enough knowledge to ask the appropriate questions of the psychologist/psychiatrist, and the expert only answers the questions posed, then the report may provide an incorrect portrayal of the parties, and lead to inappropriate orders. There is also the issue of whether or not the lawyers interpret these reports correctly. This issue is relevant to appropriate training and common discourse discussed in chapter 5.

A psychometric test includes questions that have been tested and approved by the psychological profession. They can be analysed by the psychologist/psychiatrist and compared with that person's clinical observations of the parents, and subpoenaed documents and affidavits. They may make certain issues clear that could otherwise be missed by the expert. They can identify where there are inconsistencies that may show

that there have been untruthful or distorted portrayals of specific issues, or people. The tests have built in controls to show whether a person has been untruthful in completing them. In my experience psychologists/psychiatrists who do use psychometric tests have not been any more expensive than when psychometric tests are not used. In fact they could be less expensive overall because the process is shortened and problems identified faster.

According to Altobelli in *Calvert and Calvert*, Lee and Olsen write that recommendations by the expert should include a proposed schedule of time spent with the alienated parent, which may contain a graduated access plan between the child and the rejected parent, and a plan for how decisions about the child will be made and exchanged between the parents.<sup>84</sup> Rules should be made to manage, minimise and avoid conflict between the parents. Monitoring the family's compliance with orders and recommendations about how contraventions of the orders would be treated should be included with proposals for scheduled evaluative updates. Penalties should apply to ensure that any parent who believes they can be untruthful and manipulative without penalty are quickly shown the seriousness of breaking the court orders.

If either party is untruthful to the experts, this can be brought to the attention of the lawyers, and the relevant lawyer should be able to provide an affidavit to the court together with an application in a case for different orders. The court can then decide what further appropriate orders could be made, and order penalties for the untruthful parent.

Johnston and Kelly propose that a full assessment needs to be made of the multiple determined factors and influences leading to a child's abrupt rejection of a parent with whom they had previously had a good relationship.<sup>85</sup> Such an assessment, they say, can then enable an effective plan and structure for the legal, judicial and therapeutic interventions to assist toward a resolution of the situation.

Altobelli discusses the framework of background factors, intervening variables and the child's response provided by Johnston and Kelly, and says that the necessity for a

---

<sup>84</sup> Altobelli in *Calvert and Calvert*, op.cit.

<sup>85</sup> Johnston and Kelly, op.cit.

differential diagnosis is important, and the legal, mental health, and social science response needs to be different depending on the differential diagnosis.<sup>86</sup> He identifies that multiple variations, causes and hybrid causes can lead to the different levels of alienation. An expert using clinical observation only to identify these multiple and hybrid causes in the brief time spent on each case without the assistance of psychometric tests that are designed to identify them would not be able to see all of the multiple factors. It would also be beneficial for lawyers and the judiciary to be trained to understand the multiple factors involved. Otherwise, reports based on these tests may be misinterpreted by the legal profession.

The different discourses of the legal and social science professions are discussed further in chapter 5. This appears to be a significant issue that needs to be addressed if a cross-discipline approach can be achieved. Considering the reality that both professions need to be involved if a workable solution is to be found, the need for the different professions to understand each other seems paramount and this impacts on the training of the different professions who are to specialize in family law.

Clinical observation, lawyers' affidavits and submissions, and court hearings are affected by the inability to always identify when there is deceit. I have found on some occasions that my own clients have not been truthful, and I have heard lawyers submitting to the Court information that is contradictory to evidence I have provided without the contradictory information being based on evidence. Whether the lawyers know that their clients are being untruthful, and still present the client's instructions, or whether they are not really aware that they are untrue, this makes any decision by the Court inappropriate because it is not based on true facts. Added to this are the value judgments of the judiciary, psychologists, psychiatrists, family consultants and lawyers.

### **4.3 Value Judgments and Perceptions Based on Deceit**

Clinical observations and court hearings alone have two major problems. Value judgments are dependent on the values of the person judging, whether that be a lawyer, psychologist, psychiatrist, social worker, or judge. There are many differences in individual values that are dependent on many variables such as culture, religion,

---

<sup>86</sup> Altobelli, op.cit.

education, experiences. To make value judgments, particularly when they may be contrary to the values of the parties involved is fraught with problems, as values also affect perception and communication,

Deceptive information provided by parents, and children are not always obvious when there are only clinical observations and court hearings. Martindale writes that it is not possible for a human to hear and interpret one person's information without that information effecting what is conceived after hearing the other person in clinical evaluations. It is therefore preferable to do initial interviews with both parents together to avoid this. In the initial interview the evaluator develops an understanding of what has been happening from both parents.<sup>87</sup> The following is a summary of Martindale's views.

Martindale discusses the adverse effects of the power of suggestion and the difficulties faced by professionals without the use of psychometric tests that are designed to identify if the person being tested is truthful. He includes quotes from other researchers with regard to detection being distorted by deceptive information provided by some clients. He writes that:

*"humans lack the ability to detect deceptive communication...Twenty years of research in deception has shown that there is not a reliable set of non-verbal or verbal indicators of deceptive communications."*<sup>88</sup>

*"Experience does not necessarily heighten one's ability to detect deception.....Even those with specialized deception detection training can only perform at a level significantly above chance."*<sup>89</sup>

Considering this, it is difficult to believe that an expert who only interviews each parent and the children is able to assess whether or not one or both parents are telling what they know is not what is the truth, or any version of the truth; or if one or both parents are engaging in influencing the expert to write a report that is favorable to that person but not based on the premise of what has actually occurred, only on a distorted premise.

---

<sup>87</sup> Martindale D.A *Confirmatory Bias & Confirmatory Distortion* (in *The International Handbook of Parental Alienation Syndrome* Charles C Thomas Publisher Ltd, Springfield Illinois, USA).

<sup>88</sup> Ibid citing Feeley & Young 1998, 109).

<sup>89</sup> Ibid citing de Paulo, Charlton, Cooper, Lundberg & Muhlenbruck (1997) Ekman & O'Sullivan (1991).

As it is difficult for the experts to identify whether or not they are being given an accurate account of what has been happening, it seems that objective psychometric tests would be more useful, providing indicators of parental alienation or parental alienation syndrome and their causes.

The use of psychometric tests together with clinical assessment for family law cases has been developing over many years. As more research and skills in the use of them continues, making appropriate and timely orders by providing a more objective and less costly and time consuming analysis of the problems associated with the children of separated parents are likely to be the outcome.

Dr. Christopher Barden, a lawyer and psychologist in the United States of America, like many other scientists that I have read while undertaking this research, is a believer in the existence of parental alienation syndrome. However he does not believe that it is possible to identify its presence using the current family law processes alone. He recommends that psychometric tests together with clinical assessment by appropriately qualified psychologists are necessary to make this identification.<sup>90</sup> He claims that science experts are necessary for there to be an effective family law litigation team, and adds that if the family law system is reformed, this would greatly reduce the tragedy of parental alienation syndrome, which currently has defective and confused standards for lawyers and unreliable expert testimony.

He writes that it should be the duty of family law professionals to reduce child abuse and help victims of abuse while punishing those who harm children, whether this be by alienating parents, science illiterate lawyers, poorly trained and negligent experts, of which he includes physicians and psychotherapists.<sup>91</sup>

Barden declares that it is not only a parent who is causing damage to the child by attempts to alienate the other parent, but also all those professionals and the court itself

---

<sup>90</sup> Barden, R Christopher . PhD. JD, LP. *Protecting the Fundamental Rights of Children and Families: Parental Alienation Syndrome and Family Law Reform* (The International Handbook of Parental Alienation Syndrome Charles C Thomas Publisher Ltd, Springfield Illinois, USA. 2007 is the only licensed psychologist and attorney to receive two national research awards in psychology and a Law degree with honours from Harvard Law School. He is president of the National Association of for Consumer Protection in Mental Health Practices.)

<sup>91</sup> Ibid citing Barden, 1994, Barden, 2001a, Hagen, 1997, Dawes, 1997, Linfield et al, 2003).

who are the primary cause of the serious harm resulting from parental alienation syndrome that is induced in the child.

He recommends that properly trained professionals and judges can easily identify when parental alienation syndrome exists as the signs are predictable attempts to manipulate or control the legal process by filing false criminal allegations of abuse, repeatedly failing to honour court orders and settlement agreements, attempting to manipulate witnesses, and hiring incompetent therapists to whom the parties give selected information to validate their claims. Considering Barden's views, it seems possible for such false allegations to continue until a full hearing because the evidence is not tested until then. If there is appropriate assessment and an early hearing of the evidence the court would be in a position to stop it continuing by ordering penalties, and other strategies, with the assistance of the psychologist/psychiatrist who did the assessment.

Barden declares that the failure of the courts to identify and treat parental alienation syndrome appropriately could lead to years of unnecessary ongoing litigation, psychological, social and financial damage to children and families. He describes some of the legal processes that are failing to prevent parental alienation syndrome from creating and exacerbating family conflict. These processes include failing to sanction, filing false allegations of abuse, perjury, coercing children into making false statements, submitting false information to evaluators, taking children to therapists who are known to validate abuse claims amongst others. If there are no sanctions provided by the court, the parent making the false allegations could become confident to continue with their behaviour without any consequence.

The failure of the family courts to sanction such behaviour could lead to years of unproductive court hearings, possibly bankrupting or financially ruining families. I have witnessed this in some of the cases where I have represented a parent who has been alienated. The other parent has continued over a period of up to two years in some cases to obtain my clients supervision based on false allegations, which allegations commonly increases throughout the court processes, until at a final hearing the truth is revealed and orders have had to be changed.

Often the affidavits that have been filed initially, which provided evidence that the other parent's allegations are false, have not been tested, and in some cases appear not to have even been read, or possibly memory of them has been mixed with other cases being judged until final hearings, so the truth has not been revealed. If they have been read, they have not been tested because of the time allowed for the judiciary to do this, and the judiciary may not have wanted to make changes in living arrangements until the evidence had been tested. This has meant the child has continued to be left in the care of a parent who has become confident in continuing to increase false allegations, as no penalties have been imposed, and has cost the alienated parent high legal fees often from \$50,000.00 to anything over \$100,000.00 to ensure that the child is brought back to the safety of the alienated parent's care. It would also have cost the court considerably because of all of the unfruitful mentions.

If psychometric tests with clinical observation had been made at the commencement of proceedings, and the causes of conflict and each parent's attitude, parenting skills etc, could be identified. Recommendations for parenting courses, counselling or therapy, followed by an early interim hearing to test the evidence and make penalties to stop further contravention where necessary, could have resulted in more appropriate orders at a cheaper cost. Additional court mentions could monitor the progress being made by the recommendations of the expert being implemented, such as courses, counselling or therapy, until a satisfactory result has been reached and final orders made.

Barden points out that there is improper or substandard interviewing by the experts and/or the lawyers; failure of lawyers to consult a competent social science expert; and a failure to properly cross-examine the expert and expose inappropriate assessments and poor interviewing methods. He points out that science-illiterate lawyers naively accept improper assessments and wrong diagnoses of mental illness and proposed treatment.<sup>92</sup> Without appropriate training, it seems obvious to me that they cannot expect to have the knowledge to form accurate assessments of their own clients, and despite the fact that lawyers are meant to test the truth of their client's allegations in many cases that I have acted in, they don't always do so.

---

<sup>92</sup> Ibid.

Barden refers to other research, and says that few lawyers have training in science and methodology, and this lack of inter-disciplinary training results in the lawyers being inadequate in exposing the incorrect assessments used by the experts, and as a result millions of families are damaged by this deficiency in the legal profession. Such improper assessments, he declares include the problems of interpreting projective tests, the misuse and misreporting of objective personality tests, misreporting of research reports, and failure to produce peer-reviewed research articles, and instead rely on journals produced by political/professional cliques.

Barden warns that in the Family Courts in the United States of America, despite having powerful and affirmative steps to stop the use of junk science by the use of the *Daubert/Kumho and Frye Tests*, the legal profession still remains untrained in science, and few use these tests in court. He suggests that with the proper training of legal-science for clinical experts and lawyers, the rights of families, and the integrity of the legal process, will be protected, as well as the children who will be protected from serious damage.<sup>93</sup>

While Barden has identified that there may be misuses and misinterpretations of some of the diagnostic tools available to the psychological profession, he also describes the benefits of proper use of such tools that have provided significant success in a short period of time to such an extent that the National Legal Associations and local Bar Associations (in the USA) are offering training in science-intensive litigation methods.

He also proposes that in order for appropriate reform of the family law system, scientists at university level and medical schools should be endeavouring to answer the following questions and publishing the results in respectable journals.

- *“What is the incidence and prevalence of PAS problems?”*
- *Is Parental Alienation best described as a syndrome, a process, a crime of abuse etc?*
- *What is the diagnostic reliability and validity of PAS and related processes?*

---

<sup>93</sup> Ibid citing *Daubert v Merrell Dow Pharmaceuticals Inc* 113SCt 2786 (2003); *Kumho Tyre Co Ltd v Charnichael* 119 SCt 1167 (1999); *Frye v U.S.* 293 Fed 1013 (DCir 1923).

- *What, if any, treatments might be possible for PAS including efforts to reintegrate families and prevent alienating acts?”*

Barden blames the science-illiterate family law system and affiliated professions for the serious problems in children's issues before the family courts and claims that multidisciplinary efforts are needed to reform the family law system. *Frye or Daubert/Kumho* tests should be used to exclude improper and misleading testimony and improper assessments according to Barden. This or similar tests might also be beneficial in the Australian legal system.

The use of psychometric tests together with clinical assessment for family law cases has been developing over many years. As more research and skills in the use of them continues they may assist the courts in making appropriate and timely orders by providing a more objective and less costly and time consuming analysis of the problems associated with the children of separated parents where there are high levels of conflict and parental or child alienation.

As a result of my experience as a family lawyer, and after reading the publications referred to in this thesis, I believe that psychometric tests with clinical assessments by psychologists/psychiatrists trained in high conflict family law issues, have the potential of decreasing the amount of time taken to identify issues that may not be discovered over a longer period of time during court processes. The assessments by psychologists, or psychiatrists, or by court employed family consultants without the benefits of psychometric tests are often done without reference to the evidence, and only in a brief amount of time. I believe that if the tests are appropriately chosen and applied, they could identify the causes of the high level of conflict, and whether or not there is parental or child alienation or parental or child alienation syndrome. They can also assist in the recommendation of strategies to be used to try to remedy the situation.

According to the literature referred to in this chapter, they are also more objective than the opinions of lawyers who may have experience in family law cases, and can cite full or high court rulings that may have some similarities to the cases in which they act, but who have not been trained to be aware of specific behaviors that would be identified

quickly by a trained psychologist/psychiatrist using appropriate psychometric tests. That is not to say that there are no problems with using psychometric tests and the factors for and against using this form of assessment are discussed below.

#### **4.4 Selection of Tests**

Psychometric tests must be tested for reliability and validity before they are accepted by the psychological profession, and there is less reliance on the individual skill and observations of the expert. However, they are not purely objective. They do require interpretation by the psychologist providing the tests. It is therefore necessary for psychologists employed to provide assessments for the family courts to be highly trained, experienced and skillful. Van Rooyen and Mahendra write that there are standards set by the Psychological Test Commission, within countries and internationally, for professionals using psychometric tests.<sup>94</sup> The psychologist must be able to:

*“demonstrate knowledge and understanding of psychological principles underlying test construction, knowledge of the type of tests that are available, when it is appropriate to use them, and to be able to administer, score and interpret tests in order to provide accurate and meaningful feedback to others.”<sup>95</sup>*

*“The competent test user will use the test appropriately, professionally and in an ethical manner, paying due regard to the needs and rights of those involved in the testing process, the reasons for testing and the broad context in which the testing takes place.”<sup>96</sup>*

Van Rooyen and Mahendra specify the importance of not releasing the full details of the test items as this would jeopardize the security and integrity of the tests in general, and result in unqualified people misusing them.<sup>97</sup> However, it would still be useful for lawyers and the judiciary to be given an overview of what the tests can reveal, and do reveal in specific cases, supported by other evidence such as clinical observation, subpoenaed documents, affidavits etc.

J.R. Flens discusses the need to select tests that meet the legal standards of relevance and helpfulness, and the standard for health practitioners being reliability and validity.

---

<sup>94</sup> Van Rooyen and Mahendra, op.cit.p21.

<sup>95</sup> Ibid. Psychological Testing: Users Guide.

<sup>96</sup> Ibid. The International Test Commission (ITC) 2000.

<sup>97</sup> Ibid.

He also suggests that experts need to understand the rules of evidence in law as they relate to expert testimony, and must understand the legal and psychological concepts of reliability, relevance and helpfulness. They should also have knowledge of case law in order to assess what is reliable analysis. The following is a summary of the views of Flens.<sup>98</sup>

Flens refers to both State and Federal statutes in the United States of America that define the best interests of the child, and other concepts relevant to child custody determinations, which describe what the expert should address.

The rules of evidence as they apply in the United States of America apply with regard to experts, and the Federal Rules of Evidence (Rule 5) state that

*“expert evidence must be scientific, technical, contain other expert knowledge that will assist the trier of fact to understand or to determine a fact in issue: an expert qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliable to the facts of the case.”*

Flens writes that there are resources available with critical views of a majority of psychologists about most psychometric tests such as *The Mental Measurements Year Book* and *Tests in Print* published by *Buros Institute of Mental Measurements*. Admissibility under the legal criteria such as the *Frye Test*, and *Daubert’s Test* - the four pronged standard that is the current standard applied in the United States are also published together with other psychological issues in test selection.<sup>99</sup>

Katz describes the *Frye Test* used in the United States to determine the admissibility of novel scientific expert evidence.<sup>100</sup> The *Frye Test* is that

*“A proponent of the evidence must show the generally accepted reliability of such procedure in the relevant scientific community*

---

<sup>98</sup> Flens J.R *The Responsible Use of Psychological Testing in Child Custody Evaluations: Selection of Tests* (in Flens J.R. & Drozd L. *Psychological Testing in Child Custody Evaluations* 2005 Hazworth Press Inc).

<sup>99</sup> Ibid.

<sup>100</sup> Katz A. *Junk Science v Novel Scientific Evidence: Parental Alienation Syndrome, Getting it Wrong in Custody Cases*. (HeinOnline 24 Pace L. Rev. 239, 2003-4).

*through judicial opinions, scientific or legal writings or expert opinion other than the proffered expert.”*

The *Daubert Test* is more stringent than the *Frye Test*. In this test the judge must determine whether the theory is scientifically valid. Validity is determined statistically by psychologists whereas the use of the word valid in non-scientific language has a different meaning. Katz warns that this is a problem because most judges do not have scientific training. The judge must determine that the theory is:

1. *“testable and falsifiable;*
2. *has many peer-reviewed publications in reputable scientific journals;*
3. *can provide an error rate determined by scientific studies;*
4. *can demonstrate existence and maintenance of standards controlling its operation; and*
5. *has obtained general acceptance in the relevant scientific community”.*

Flens named some critics of the use of psychometric tests in child cases being, Grisso who criticizes the inappropriate use of tests, which is misleading and critical, and Brodinsky Melton, Petrilla, Poythreso & Slobogin who criticise the overuse of tests without psycho/legal relevance. However research by Ackerman and Ackerman, Bow and Quinnell, Horvath, Logan and Walker find that current child custody evaluations do not support these concerns.<sup>101</sup>

Flens refers to a number of psychologists, and says that *MMPI-2* meets the standard of practice required. Two of those psychologists include Bricklin and Ellis who provide detailed descriptions of the appropriate use of *the Perception-of-Relationships Test (PORT)* and *Bricklin Perceptual Tests (BPS)* which they proclaim are able to indicate whether parental alienation syndrome may exist and how this helps additional means of identifying it.<sup>102</sup> The following is a summary of their views.

---

<sup>101</sup> Flens, op.cit.

<sup>102</sup> Bricklin, Barry and Elliott, Gail, *Psychological Test Assisted Detection of Parental Alienation System* (The International Handbook of Parental Alienation Syndrome, Charles C Thomas – Publisher Ltd, Springfield, Illinois USA, 2007, 264, [www.DrBarry-Bricklin.com](http://www.DrBarry-Bricklin.com)) also referring to Taylor R.J. *Use of change theory in the context of divorce mediation session* Journal of Divorce and Remarriage 40 (1-2) 87-92 (2003). (Full detailed data is provided in the article referred to, and on the authors’ website. The complexity of the article is beyond the scope of this research.

Bricklin and Elliott write that psychometric tests that show the impact of various caretakers on children in different family systems have been developed over about forty years, and can help to identify if there is parental alienation syndrome and related clinical patterns. There are a number of tests that elicit a child's attitudes, opinions, behaviours or emotional states toward the child's caretaker such as *the Family Relation Test* (Bene and Anthony); *the Family Relation Inventory* (Nash, Morrison and Taylor); *the Family Apperception Test* (Sotile, Julian, Henry and Sotile). However, although useful, they say that these tests do not generate any specific and detailed hypothesis about parental alienation syndrome detection.

Instead the authors recommend *the Perception-of-Relationships Test (PORT)* (Bricklin) and *Bricklin Perceptual Tests (BPS)*. Full details and validation of these tests and how they can be used to identify if a parental alienation syndrome exists are provided by the authors who also apply the data to the limited range of choices used by the legal profession, being: the legal parental responsibility of making major decisions for the child; and how much time the child should spend with each parent.

In the first category there are three alternatives being shared responsibility, sole responsibility, or in rare cases neither parent has responsibility. In the second category the Australian legislation provides for equal shared time, primary care for one parent, and substantial time or significant time for the parent who does not have the primary care with the best interests of the child, including not placing the child at risk of psychological, physical or sexual abuse as the over-riding criteria. The authors refer to the American formula at the time their article was written, which was similar to the primary care and standard time with the other parent as it previously existed in Australia. They explain that more complex parenting plans are recommended by mental health professionals, and often negotiated privately between parents, but that judges prefer less complex arrangements. This may be because of the limited information on which they are able to make judgments.

The signs in these tests indicate the possible existence of parental alienation syndrome, and also the possibility that the current behaviour could lead to parental alienation syndrome. The tests show whether the verbal information provided by the child is consistent with the test results; or if the verbal information is likely to be fuelled by

parental bribery, intimidation, a child's attempt to save a parent, or other psychologically malignant influences such as occurs in what many professionals call parental alienation syndrome.

Johnston and Johnston, Gans Walters, and Oleson say that three studies by them have found that problematic parenting behaviours of both parents as well as vulnerability within the child contribute to the problem of what they call child alienation. They discuss the benefits of the *Rorschach Projective Tests* that add unique contributions to an assessment battery. They describe these tests as being objective and able to provide data against which other data sources can be compared. The other data might be the psychologist's clinical observation, subpoenaed evidence, such as school reports, police of community records, medical reports. The data obtained by the tests allows the integration of substantial organised categories such as emotion, thinking, coping, self perception, impulse control, situational stress and interpersonal information.<sup>103</sup>

The authors propose that the Rorschach test provides the parents with a description of themselves, the children, and the other parent to each of them and assists them to think of ways to help their children to adjust better to the separation.<sup>104</sup> They add that these tests allow understanding amongst family members about other family members in the family system as well as enabling understanding of their own characteristics that led to the divorce and current conflict.

They advise that such understanding can be achieved by the parents and the children, if they are willing to cooperate in trying to resolve these issues. Following a path of identifying parental alienation syndrome as being caused by one parent alienating the other in the mind of the child may not be necessary in some cases. This may not be achievable if the parent who is alienating the other is unable to understand, because of personality defects identified in the tests, when other methods of managing the situation need to be found.

---

<sup>103</sup> Johnston J.R. Walters M.G. Olesen N.W. *Clinical Ratings of Parenting Capacity and Rorschach Protocols of Custody Disputing Parents: An Exploratory Study* cited in Ibid 6 Johnston and Kelly.

<sup>104</sup> Ibid.

The authors state that in cases where there may be parental alienation or parental alienation syndrome, the *Rorschach* indicates if a child is positive on the *Coping Deficit Indicator* (CDI) that identifies coping deficiencies and limitations. There are a number of indicators in the *Rorschach* tests that identify whether individuals are inclined toward emotional displays, and whether they are comfortable around emotional displays. If one parent is inclined toward emotional displays and the other unable to cope with emotional displays this could lead to domestic violence.

The *Rorschach* tests have high levels of inter-relational reliability and higher levels of incremental validity in the prediction of criteria for a host of personality disorders as well as for the description of personality function and behaviour.<sup>105</sup> They have met the criteria established by the Supreme Court of USA in *Daubert, Kumho & Joiner* according to Medoff and as scored by Exner as a comprehensive system. Although there have been some challenges to this by Wood, Nezworski, Stejskal, Garvin and west, the *Rorschach* has been upheld in a large majority of cases according to Medoff, Meloy, Hansen & Weiner.<sup>106</sup>

Grove et al, and Luther-Starbid, decry the misuse of the *Rorschach*. However, the same arguments can be applied to any tests or evaluations by inexperienced or poorly trained examiners. The same can be said of lawyers who do not have an appropriate understanding of the psychological factors or of their evaluation by experts and psychometric tests. It seems that additional criteria for using psychometric tests might be that the psychologist is able to interpret the tests in a manner that lawyers can understand, and that lawyers are trained in at least understanding the outcomes provided by the psychologist, even if they do not fully understand the psychometric tests used by the psychologist in making the assessment.

Van Rooyen and Mahendra also describe the most well known projective tests used such as the *Rorschach Ink Blot Test*, the *Thematic Apperception Test (TAT)*, the *Draw Person Test (DAP)*, the *Family Relations Test (FRT)* and the *Roberts Apperception Test*

---

<sup>105</sup> van Rooyen and Mahendra, op.cit.. citing Exner and Medoff, and Meyer and Archer and Blais et al as cited by Medoff.)

<sup>106</sup> van Rooyen and Mahendra, op.cit.

*for Children (RATC)*.<sup>107</sup> The use of the word ‘Apperception’ in these tests refers to comprehension or assimilation of something such as a new idea, in terms of previous experiences or perceptions.<sup>108</sup> These tests reveal the memories and concepts stored in the individual’s subconscious mind. As the referencing is from the subconscious mind, the person being tested cannot respond purely in ways that he/she expects would be the best image of the person. In this way individuals are expected to reveal strivings, dispositions and conflicts, motives, fears, anxieties, defence mechanisms, goals, desires, fantasies, feelings of aggression or depression etc. Van Rooyen and Mahendra also provide Appendix 2 in their book that describes various psychometric tests that can be used and what they do, including questionnaires, ability and performance tests, and projective techniques.

Interpretation of the responses requires significant experience and psychodynamic understanding and knowledge of personality and developmental theory. If this is required by psychologists to enable them to do a proper assessment, it is easy to see that lawyers, who have not had any education in personality and developmental theory would find it difficult to be aware of these issues, and how they may affect people in high level conflict.

Van Rooyen & Mahendra say that the *Rorschach Ink Blot Test* is one of the most widely used and best researched tests.<sup>109</sup> The test reflects the person’s ability to handle new situations, the functional self image of the person, how the person experiences his/her environment, how the person handles the emotional content of the environment, the person’s interpersonal relationships with their father and other authority figures, and with their mother and nurturing figures. The idealised self image of the person; the functional self image; handling of sexuality; affection needs; and the impact of these are all considered by the psychologist from the responses to the tests. These issues are all factors involved when there is parental alienation or parental alienation syndrome as described by Baker and others previously.

---

<sup>107</sup> Ibid.

<sup>108</sup> Encarta Dictionary: English (U.K.)

<sup>109</sup> Van Rooyen and Mahendra, op.cit.

Another projective test used is the *Thematic Apperception Test (TAT)* created by Henry Murray and C Morgan. This test is particularly useful in making inferences about motivation according to van Rooyen and Mahendra. It consists of thirty (30) picture cards and one blank card. Only some of these cards are chosen depending on the age and sex of the person being tested, and the area of conflict that needs to be clarified. The chosen cards usually relate to a hypothesis about the reaction to demands made on the person and how the person copes with those demands. Interpersonal and family relationships are assessed, including the person's attitude toward parents and the environment, and the person's aspirations. Reaction to frustration, handling of aggression, conflict, affection, and psycho-sexual development can be assessed by various cards.<sup>110</sup>

The *Roberts Apperception Test for Children (RATC)* was developed by Roberts, and is similar to the *Thematic Apperception Test* although used to assess the psychological development of children between 6 and 15 years. It can be used for initial clinical assessment and treatment planning, and to measure change over time. It measures the characteristic thoughts, concerns, conflicts and coping styles of the child through the child's interpretation of the pictures of adults and children in everyday situations. As children have undeveloped defence mechanisms, there is a minimum of distortion. The children would be expected to feel or act the same as they describe for situations portrayed in the picture cards and the results provide clues about psychodynamic issues, which can be clinically useful. The pictures used are generally of:

*“family confrontation, maternal support, school attitudes, a child's support, aggression, parental affection, peer and racial interaction, dependency and anxiety, physical aggression toward peers, fears, parental conflict and depression, aggression release, maternal limit setting, nudity and sexuality, and paternal support.”<sup>111</sup>*

There has been criticism of projective tests that some believe are not scientific or objective. They do rely on subjective interpretation, although the authors say that psychodynamic formulations are used that rely on an understanding of psychological and emotional functioning, and there are guidelines and principles to be observed when these tests are used. They are published tests accepted by the psychological profession.

---

<sup>110</sup> Ibid. at p. 29.

<sup>111</sup> Ibid, at p. 30.

They are also used to supplement the information obtained using the qualitative interviewing, observation and assessment skills of the examiner.

Van Rooyen and Mahendra warn that tests should never be used alone or accepted as final. They must be tested against other information obtained during the clinical assessment. Psychometric tests are generally used to study behaviour under controlled and standardised conditions. They reveal what could be revealed by clinical interviews and observation over a longer period of time. They are a quick and effective way of creating conditions for a particular behaviour to be described rather than waiting for responses to occur spontaneously over a longer period of time. Hidden personality dynamics can be identified in a short period of time that might otherwise take months for a clinician to see, or lawyers, Judges or Magistrates to observe in the limited time that they are able to view what is happening in a case, mixed with the perception of other cases they are involved with.

Psychologists are therefore in a unique position to assist the Family Court as they are able to provide valid and reliable psychometric tests that are relevant to the legal issues before the Court.

They can also provide information about the capabilities of the parents and the needs of the child, and recommend arrangements that make the most of both parents' strengths. By using the psychometric tests, it is possible to see beyond the perception of either or both parents in the context of high conflict cases, and can identify what may assist what is needed without asking the child directly to choose between the parents.

Horwell et al are cited by Flens as saying psychometric tests are not used enough as assessment of domestic violence and child abuse, parenting skills, health status, nor are formal tests used with multiple methods. Flens recommends that experts need to be encouraged to use psychometric tests and behavioural assessment instruments in their reports. He said that there are two models of test selection – the *Scientist-Practitioner Model* which is a selection of tests based on psycho/legal issues involved in specific cases, and the psychological qualities of particular tests that are appropriate in that they meet the legal criteria of relevance and helpfulness and the psychological criteria of reliability and validity. He cites Heilbrun and Otto et al who recommend that tests

should be commercially available with test manuals, although Flens warns that such published tests may not necessarily be valid or reliable. A criteria set for the publication of psychometric tests would assist with this.

Current guidelines for 'best practice' according to the American Academy of Child & Adolescent Psychiatry (AACAP), American Psychological Association (APA), Association of Family and Conciliation Courts (AFCC), endorse the need for gathering data from a variety of sources using different methods: clinical assessment of parents and children; self report using structured questionnaires; standardized psychological testing; direct parent-child observations; and review of documents and interviews with collateral sources. According to these sources, there has been increased sophistication and comprehensiveness over the past fifteen years with most practices adhering to APA guidelines, in particular with the use of diverse and multiple sources of data. Most evaluators (expert's in Australian terms) in the United States of America use a combination of clinical interviews and psychometric tests with an emphasis being placed on the clinical assessment.

The *Frye Test*, and *Daubert Test* described previously provides the legal standards for admissibility of expert testimony, and psychometric tests are measured against those standards.

#### **4.4 Professional Views of the Use of Psychometric tests**

Gould-Saltman, a United States attorney who also has psychology qualifications describes generally how United States attorneys view psychometric tests. She writes that the assessments in the limited time allowed during Family Court litigation and personal observations are not able to identify aspects and comparisons of people who are parties to a dispute over children. She also describes tests as being more objective than clinical evaluation on their own and that they provide a short cut to more in depth evaluations.<sup>112</sup>

---

<sup>112</sup> Gould-Saltman D *Testing, One, Two, Three, Testing: An Attorney's Perspective* (in Flens J.R. & Drozd L. *Psychological Testing in Child Custody Evaluations*, Hazworth Press Inc. 2005).

She writes that the people who do evaluations (expert reports in the Australian context) usually provide a summary of a battery of tests that have been carried out, which are included in an overall evaluation that highlights the ways in which the tests support the conclusions reached by the person doing the tests. These are based on clinical assessments, observations of interactions of family members, and interviews of witnesses, as well as reading documentation provided from other people, such as affidavits, medical and school reports etc.

She points out that one of the disadvantages of psychometric tests is that they may cause a litigant to become defensive if the report is adverse, or offensive by the other party, thus creating more conflict. However, this can be said whether or not the expert report includes psychometric tests and even if there are no reports, only issues that are brought up in the adversarial process, and even the inquisitorial process.

Another very significant disadvantage that she describes is that most lawyers do not understand the complexities of the psychological instruments, or the interplay between the instruments, or even the relevance of the instruments to parenting ability, and can't meaningfully cross-examine an expert regarding their interpretation of the results.

Gould-Saltman differentiates between the fact finding, and interrogatory interviews of lawyers to the open ended and exploratory interviews of psychologists.<sup>113</sup> She claims that psychologists' and lawyers' perceptions are based on the specific training that each profession has had. While the goal of the psychologists is to identify the profile and aspects of the profile of each person in order to find ways to assist those people to rectify problems they may have, the goal of lawyers is to identifying what is in the best interests of the child.<sup>114</sup>

Lawyers do this in most cases without having had any education in developmental psychology, personality, abnormal and therapeutic psychology, cognitive processes and others psychological issues. They rely on their own experience, and ever changing legislation and case law, which are also not based on knowledge of these areas of psychology as they relate to children of separating parents. Lawyers are influenced by

---

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

wanting to win the case for their client. Thus they may choose those parts of the report that will support their client, and any negative aspects about the other person to reduce that person's case. Again this highlights the need for lawyers to move away from the adversarial process in which the lawyer's aim is to get the best results for the client.

Judges and Magistrates are looking for information that will reveal what is *in the best interests of the child* to comply with the legislation. While there are varying views on the use of psychometric tests, many believe that the psychometric tests and expert evaluations assist them more than listening to litigants and witnesses according to Gould-Saltman. However, the judiciary may still require the experts to be tested in trial, and this adds costs for clients who may already be finding the court processes more expensive than they can afford.<sup>115</sup>

Gould-Saltman claims that Judges in the United States of America have even less knowledge of psychological testing and evaluation than lawyers<sup>116</sup>. This is not confirmed by research, and unless an understanding of psychometric tests is taught to lawyers there is no way to be sure that lawyers or Judges do understand or use the evidence provided in expert reports appropriately.

Ackerman and Ackerman are cited by Gould-Saltman as saying that generally lawyers accept the use of the objective test *Minnesota Multiphasic Personality Inventory –2 (MMPI-2)* mostly used with the *Rorschach Test* described previously, and the *Millon Clinical Multiaxial Inventory III (MCMI-III)* which is an objective test. They are used to identify likely pathologies but can also identify parenting capacity and address parenting strengths and weaknesses. The responses to these tests are then interpreted by the expert within the context of other information, such as other tests, documents, individual clinical interviews, observations of family dynamics etc.<sup>117</sup>

Referring to a number of professionals Gould-Saltman says that lawyers generally prefer objective tests because the same questions are used for each person resulting in comparing the same things. However, experts also choose those parts of the results they

---

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

think are relevant and significant to the person, resulting in some subjectivity, although most likely based on what is accepted in the psychological profession. This can also occur with only clinical observations. There is a need to ensure as much as possible that lawyers are focused on the best interests of the child, rather than on their parent client where it is obvious that their client may not be seeing what is best for the child.

The use of information provided by third parties has become an integral part of evaluations by assisting verification of what is found in the other tests. Some other tests that are used are the *Parent Child Relationship Indicator (PCRI)*, the *Parent Stress Indicator (PSI)*, *Parent Awareness, Skills Survey*, *Child Behaviour Checklist (CBCL)*, self report tests that may not be as accurate because people often try to present themselves in such a way as to support their case. This can also happen when the expert only questions each parent and writes a report on the observation of those answers, which I have observed being used in expert reports.

An example of this was in a case where I represented the father. The psychiatrist interviewed both parents, and the mother's new partner. He found the father suffered some anxiety, which he suggested was because of not having seen his children for a long time as a result of the mother attempting to alienate him from the children's lives. He said the mother and new partner appeared to be quite normal and quoted some of the information provided by the mother's new partner. After reading the report I wrote to the psychiatrist asking if he had read the police records on the new partner. His response was that he had not, but would. After reading this information he changed his report to say that the new partner could have an anti-social or personality disorder. He also replied after being questioned that there may be parental alienation involved.

Gould-Saltman recommends that surveys and questionnaires addressing parenting skills, concerns, values and level of understanding may be most relevant and may provide the evaluator the most accurate picture of a parent's ability to parent the particular child, but such tests need to be reviewed by other professionals to assure the questions are not ambiguous; are readily understood; and not generalized beyond what they purport to measure. She cites Kirkland & Kirkland as stating that little is known of standards and practices for surveys and questionnaires and that they should not be used as the sole or primary basis on which to draw conclusions.

Some such tests are *CAPi – Capacity and Intelligence Test* and *PASS* is used to assess parenting abilities. The *Perceptual Thinking Indicator (PTI)* is not used as a primary source for specific diagnosis decisions. It is used on a continuous scale on which higher is less preferable than lower, and is mainly used to alert the likelihood of mediational or ideational difficulties according to Exner. It relates to difficulties in accurate perception and interpretation of the world and could be beneficial for assessments of children who have a distorted view of a parent. Gould-Saltman cites Karp & Karp as reporting that lawyers are most likely to use the Minnesota Multiphasic Personality Inventory.

Emery comments on Family Law in the United States. He admits that States do differ in some respects. He writes that United States courts believe that the parents are the best judges of what is best for their children, and it is far better for agreements to be reached through mediation, than by orders of the court.<sup>118</sup> He adds that the law defines “best” very generally and not based on empirical evidence with regard to a child’s “best interests” thus leaving a lot of misinterpretation between the various people involved in family law children’s issues, such as the parents, evaluators or expert witnesses, and Judges. As a result the American Law Institute has proposed the definition of “best” as being what the parents define as “best” for their own children, and if the parents can’t agree on what is “best” then the Judges should order parenting time based on an “approximation rule” of what occurred during the marriage.

He claims that this would give parents and Judges clear guidance for organizing individualized parenting plans based on what has been happening in the past rather than attempting to predict the future. However, it may be that what the parents have been doing prior to separation with regard to parenting, in addition to other issues, is likely to be the cause of much of the conflict that has resulted in their separation.

Emery explains that only the State of West Virginia has used the approximation rule, which is largely theoretical and untested at this time. He refers to the history of family law, and writes that while no one would suggest going back to the historical alternatives where the “chattel rule” applied and the wife and children were the husband’s marital

---

<sup>118</sup> Emery Robert (Professor University of Virginia (USA)) *Rule or Rorschach? Approximating Children’s Best Interests* (14<sup>th</sup> National Family Law Conference Canberra ACT October 2010).

property, or the “tender year’s presumption” where the mother was believed to be the best custodian of the children, and states that changes in social views have taken the gender out of the equation to some extent. Judges have to decide what is best for the child, and as each case requires individual assessment the reference to precedent cases has little relevance.<sup>119</sup>

He describes the usual processes in the United States where an evaluation is ordered soon after applications are made to the court. The evaluator (expert witness in Australia) may use psychometric tests such as the Minnesota Multiphasic Personality Inventory (MMPI) Rorschach, and some other tests, which are the most commonly used tests in the United States for adults. The children may take an IQ test and do some drawing and projective tests. There are also clinical interviews of all concerned.

Emery describes the approximation rule as a hybrid principle. It looks at the past to determine future roles of the parents but allows for a variety of possible parenting plans that suit the individual families. This rule is hoped to reduce the conflict between parents.

Emery argues that until the law can define clearly what is in the child’s best interests the Rorschach test, and the views of individual Judges, will define what *is in the best interests of the child*. However his view is that a legal rule is needed, and while the approximation rule is not tested, it may be worth trying.<sup>120</sup> My view is that this may work for some cases, but where there has been a high level of conflict that has been affecting the children during the marriage, continuing what occurred in the past may result in continuing the conflict. If the parents cannot determine the future of their children by agreement, then the past may need modifying to assist the parents to avoid a continuation of the past that led to their separation. The separation may assist to relieve some of the conflict between the parents, but not necessarily.

It seems that the tests that have been successful when applied properly, together with observations by the expert witness, including observations of what has worked in the past, and the observations of the Judge, including some reference to precedent cases that

---

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

are relevant to current society, may pave the way for a better future for many cases. If there is ongoing counselling to assist the parties through the transition, this could also assist, provided the court processes allow for speedy assessment early in the process. There could be a combination of Court orders and counselling until an appropriate resolution has been found. Counselling and courses have already been recognised as beneficial. This is supported by the fact that the government is funding a number of relationship centres that provide these services. Emery informs of his experience that for mediation to be successful in difficult cases, it needs to be accompanied by counselling and courses. This is now occurring in some of the family relationship centres.<sup>121</sup>

Dr. Deborah Wilmoth reports that the psychologists' role of providing psychological evaluations in the Family Courts is complex and challenging work with many pitfalls for psychologists.<sup>122</sup> Two areas of focus are required by the single expert witness. One is what is in the best interests of the child. The other is that there is a presumption that both parents should have as much time as possible with the child, provided that this is in the best interests of the child, and does not include placing the child at risk.

In regard to deciding what is in the best interests of the child, the legal definition is vague and leaves a great deal of latitude for the Court and the expert. As described at the beginning of this research, what the law has considered to be in the best interests of the child has changed considerably over time and is generally influenced by interest groups such as parents and professionals. As history indicates that there is continuing evolution of society and views, this may be changed again with further research, and input from parents and the professionals involved in family law children's issues.

It is not always practical, for reasons described in chapter 1, that each parent spends as much time with the child as possible. This may have been difficult during the marriage, and also if there is a high level of conflict between the parents. Unless they learn to resolve conflicting situations, the conflict is likely to be exacerbated because of the need for parents to learn to negotiate.

---

<sup>121</sup> Ibid.

<sup>122</sup> Wilmoth, Deborah, *Family Court Psychological Evaluations* – (Australian Psychological Society, December 2007. Dr. Wilmoth was the presiding officer of the Western Australia Board of Psychologists at the time of writing this article).

Wilmoth describes the wide range of complex cases that psychologists may be asked to provide reliable and valid reports for, which include allegations of sexual abuse, domestic violence, risk assessment and parental alienation. While the psychologist may be expected to evaluate the reliability of the information provided, and discuss the underlying issues or motivations that contribute to what parents present, they are not judges of the facts, which are left to the Court. She describes what psychologists are expected to be able to do to assist the Family Court.<sup>123</sup>

Under the current Family Court guidelines, she says that an assessment of the positive aspects each parent provides should be made. This requires the use of interviewing techniques that focus on the values and skills of each parent, and observing the parenting behaviour that is demonstrated at the interview with the psychologist. The psychologist should also ask questions about the type of parenting they received as children. Wilmoth says that it is helpful to include normative comparisons by the use of psychometric tests. In addition to assessing the parents, the psychologist must assess the children to determine their developmental, psychological and cognitive needs. The information obtained by interviewing the children needs to be corroborated by the developmental history through school and medical reports and through appropriate psychological testing.<sup>124</sup>

The psychologist must assess the effectiveness of the child's parenting by each parent, and their capacity to provide love, empathy, structure and limit setting as well as having flexibility and good impulse control. Use of collateral information, clinical interviews, observations and reliable psychological testing are all valuable techniques. The psychologist must then use the conclusions from these methods to provide an opinion to the Court as to what arrangements for time with each parent are in the best interests of the child.<sup>125</sup>

Wilmoth explains that a parenting plan that addresses the issue of the child having a positive and meaningful relationship with both parents should also include assisting the

---

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

parent with whom the child lives to cope with the child spending time with the other parent, and if the other parent has been alienated, regardless of how or why, the psychologist should provide a plan that assists the child to develop a relationship with that parent in a safe manner that addresses the child's emotional and psychological needs.

Wilmoth expresses her increasing concern with a rising number of complaints lodged against psychologists in relation to Family Court evaluation and says her concern is shared by other psychologist boards in Australia. She says that many of the complaints concern the competence of the psychologists to provide the reports, the perceived bias of the psychologist, the methodology of the evaluation, and the dual relationship of the psychologist as expert witness and therapist. She said that the Australian Psychological Association guidelines emphasise that psychologists must be aware that special competencies and knowledge are required, such as understanding the role of the developmental history and issues in evaluating children for the Family Court, and that they must be mindful of their own biases that may influence their conclusions. She recommends that psychologists must seek information that will differentially test plausible alternative explanations and different outcomes as this will provide a more accurate view of the situation. She also states that the methodology used should be reliable and trustworthy as described in the analysis used in the Frye/Daubert tests.<sup>126</sup>

Wilmoth explains that the questions raised of who the client is, and what the goal of the evaluation and the bases of information is when the psychologist is already engaged in therapy with a family member, and is then asked to provide an expert report for the Family Court. She also raises another problem that occurs when psychologists undertake therapy with a child without obtaining the permission of both parents, or if an evaluation is completed on the child for the Family Court without involving both parents.<sup>127</sup> The need to identify the family dynamics has been reported by Quadrio earlier in this thesis. It may be beneficial for the assessor to also provide the therapy required as that person would have a full understanding of what occurred in the assessment and so build on that for therapy. If the assessment is completed after therapy has begun, it seems that a different assessor to the therapist should be appointed.

---

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

Wilmoth claims the number of complaints about psychologists involved in Family Court evaluations indicates the need for Australian guidelines for conducting evaluations, which would assist psychologists in deciding if they have the necessary competencies to undertake this work; and would provide directions in avoiding the risks that are generated by complex Family Court evaluations. The guidelines provided in the *Family Law Act* for the Family Court and lawyers, could be supplemented by Australian-based guidelines provided by the Australian Psychological Society.

Wilmoth concludes that the work can be stressful and even traumatic for those who are not properly trained, educated and experienced, and it is the responsibility of the Australian Psychological Society to ensure that psychologists who want to do this specialised work are appropriately trained. Psychologists can then contribute reliable and trustworthy information to the Family Court and will be able to provide much needed direction for families suffering from the breakdown of the family.<sup>128</sup> There is then also a need for lawyers and the judiciary to be trained about the interpretation of the tests and clinical observations reported by the psychologists as stated previously.

After reading the literature describing the various psychometric tests, what they can identify, and how a significant amount of knowledge can be obtained in a much faster time frame than it would otherwise take for clinical observation, or court mentions, and even trials, my view is that they must be a less expensive and time consuming, and a more objective way of identifying issues and conflicts in a family law case, particularly if used at an early stage after parental separation.

While there is some subjectivity in the assessment of the results with the observations of the psychologist, and evidence in affidavits and subpoenaed documents, the standards expected of psychologists using psychometric tests are set by the psychological profession who have a vested interest in protecting their respectability, expertise and reputation generally.

---

<sup>128</sup> Ibid.

Compared to this, the few hours spent by a psychiatrist or psychologist not using psychometric tests, may be far less accurate, as well as being more subjective than if psychometric tests were also used. The qualifications and experience of such experts provides them with much more psychiatric and psychological knowledge about human behaviour and psyches than the majority of lawyers who have not been trained in these fields. However, the time frame in which they have to do their assessments does not provide them with all of the information that might be obtained from the use of psychometric tests in a shorter time frame. This would also affect the costs incurred for the reports. There would be increased costs incurred by the time spent achieving the same amount of information without the psychometric tests.

In one of my cases where I applied for orders similar to those in 6.2 of the thesis. The Magistrate made the comment that expert reports only provide what the party tells them. From my experience in reading reports without psychometric tests, I have seen that this is often true. However, in the case before the Magistrate, my client had already been provided with a psychologist's report referring to a psychological test that supported what my client had told the psychologist and me, and this had been attached to her affidavit. When the Magistrate read the report, and applied it to her own observations during the court mention, she accepted that my client did have a mental health issue resulting from her experience of domestic violence.

Further testing may have also revealed more information about the conflict between the parents, and the effects on the children. Like most high conflict cases, an independent children's lawyer was appointed to make decisions about further reports and evidence in consultation with the lawyers. However, from my experience, most ICLs do not have sufficient training about psychometric tests and psychological or psychiatric issues to be able to contribute full benefit to the proceedings.

To provide the most benefit, such tests and reports would need to be completed at an early stage of proceedings, possibly by lawyers making appropriate applications for orders, such as those provided in 6.2, which could be made at the first court mention. Once the assessments and recommendations have been made, the court could make orders and monitor the progress until final orders could be made.

In cases where there is parental alienation the information about the psychometric tests, that can identify whether there is parental alienation, and whether the alienation is serious enough to be called pathological can be of value to lawyers and judges. They are then in a more informed position to apply for or make appropriate orders. While the tests have potential for identification of a number of issues, including alienation, they must be used and reported appropriately by psychologists so that they can be understood by lawyers and the judiciary, who also need to have the knowledge of interpreting the reports properly.

The problem in facilitating the use of psychometric tests and psychological and educational intervention early in the proceedings is that there needs to be greater understanding by all professionals involved, including the judiciary, of the benefits of doing this. If an education process for all family law professionals is implemented appropriate orders might be made initially in applications. Instead, my observations of the orders drafted in applications and responses are that they are orders that the parents want, or are orders that the lawyers interpret that the parents want, or should be applying for, based on the legislation and case law rather than on a scientific evaluation of the individual parties to the proceedings. Like most lawyers that I have observed, I have also drafted these types of orders in the past, without realising that this could change.

The example of orders in 6.2 could be included in applications to the Family Courts. They would enable psychometric tests, and more intervention by psychologists, psychiatrists and other behavioural professionals and educators, particularly in cases where there is a high level of conflict and possibly allegations of parental or child alienation. This could assist in identifying if there is alienation, the level of alienation, and the causes. It could also identify if there has been physical or sexual abuse, and other causes of the conflict between the parents, and the child's real or distorted perception of a parent or parents.

Once such processes are implemented, it is possible that the psychological profession would put more effort into devising tests that provide even greater information than currently exists, and more psychologists/psychiatrists might be motivated to specialise in family law, and gain the skills to enable them to be admitted as experts. If there is

little or no use of this process, then there is likely to be little motivation for psychologists, or lawyers to undertake the necessary training, or for such training to be established.

The necessity for more specialised training for family lawyers and other family law professionals is discussed in chapter 5 with reference to Michael King and Christine Piper, and their references to Gunther Teubner, who address the difficulties of communications between the professions as a result of their differing discourses. The role of the Family Courts and possible changes to the Court processes are also addressed.

## CHAPTER 5

### LAW AND PSYCHOLOGY - A CROSS-DISCIPLINE APPROACH

The previous chapter has described how psychologists may be able to provide a faster and more objective assessment of parents and children, and the dynamics that are causing high levels of conflict, including different levels of parental alienation when this exists. This could be achieved by using appropriate psychometric tests together with clinical observation, and providing reports of the psychologists'/psychiatrists' assessment, including possible remedies. The Court could then consider this when making orders for time spent by the children with each parent, and where the children should live primarily.

#### **5.1 Legal Processes in High Conflict Cases**

This chapter discusses legal approaches to resolving high level conflict, including parental alienation. It proposes what needs to be done to ensure that when psychologists or psychiatrists, and lawyers, are communicating about these issues, there is a common understanding of what is observed by each profession.

The role of the Family Courts and their processes are examined. The Family Court is still playing a mediatory role between the adversarial parents, while attempting to cause them to comply with what the Court expects of them as 'good parents'. Possible changes to the court processes are discussed.

Training of lawyers and psychologists to specialise in Family Law, and to be able to have a common understanding of the factors and issues involved in high conflict cases is necessary. Currently lawyers are named family law specialists after having their ability to advise clients, refer to currently used court precedents tested briefly with a focus on litigation rather than negotiation and without any knowledge of psychological factors.

While much of this chapter is about communications, education and high levels of conflict generally, as parental alienation can be one of the high levels of conflict, all

references to high levels of conflict and approaches to it, include parental alienation in all of its forms.

## 5.2 Conflict between Legal, Social Science and Medical Discourse

One of the reasons that law has so much difficulty in resolving all of the complex children's issues that face it is the conflict that legal discourse has with social science discourse according to Michael King and Christine Piper.<sup>129</sup> Their views of these problems are included in their publication and are discussed in the following pages. They also refer to Gunther Teubner.

King and Piper reveal the limitations of the legal discourse that could be relevant to its appropriateness to promote the wellbeing of children. They refer to Teubner's definition of 'second-order auto-poiesis' where he points out that under pressure of the legal processes, the court's view of reality uses its own comparative norms which are different to the views of the community and science.<sup>130</sup> He writes that the community and scientific views are more likely to be closer to reality. King and Piper argue that while the court's approach may be appropriate in the court's domain, it is inappropriate for constructing a realistic view of the types of issues that affect the well being of children.<sup>131</sup>

Another view of the legal process by King and Piper is that the law reduces the social world to manageable concepts, which cannot be changed fundamentally, although people's accounts may change, at which time they are then constructed in a way that they fit into the pre-existing categories and classifications that law provides. In family law cases, their view is that the law places the family '*in the centre of the wheel of causality*'. They say that while there have been many attempts to replace this with a scientific approach to the welfare of the children, this is not possible while ever the law thinks about children's issues as being individualised relationships between parents and children within what they perceive as the social environment in which the culture is the value of individualism and people controlling their own fate.<sup>132</sup>

---

<sup>129</sup> King, Michael & Piper, Christine, *How the Law Thinks About Children* (Ashgate Publishing Limited ants GU11, England & Ashgate Publishing Company Vermont 05036 USA 1995).

<sup>130</sup> Ibid. referring to Teubner Gunther (1989) *How the Law Thinks: Towards a Constructivist Epistemology of Law* (Law Society Review Vol 23 No 5 pp727-56 cited in Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

According to King and Piper, Teubner states that the reality constructions produced by science, politics and economics for instance, prevail over those of law, yet the law reconstructs those reality concepts so that questions generated from the pre-existing categories and classifications provided by law can be answered. They refer to Taubner as describing how law has the difficulty of having to rely on the reality constructions of other disciplines while producing an autonomous legal reality.<sup>133</sup>

In attempting to intervene in disputes over children between separating parents, King and Piper see the court as playing the role of arbitrator that results in determining offers and counter-offers by each parent to provide socially acceptable arrangements for the children, and at the same time attempts to minimise harm to the children. King and Piper also refer to the element of collective responsibility, community action, and sociological theories that identify social factors that affect individual lives.<sup>134</sup>

Reference is made by King and Piper to Teubner's description that the law has to permanently revise legal models of social reality according to the accumulation of knowledge in the social sciences. However instead of the two discourses merging into a multidimensional super discourse, an ambiguous hybrid results whereby the scientific information is reconstructed within the legal communications, giving it a different meaning to the social science meaning from where the information came, and which is then no longer in the hands of the social scientists.<sup>135</sup>

King and Piper identify a possible solution to this problem named *reflexive law* by Teubner, in which the law does not define or interpret what is in the best interests of the child. Instead there should be a model that incorporates sociological theories of law, and transforms them into legal constructions of social reality by changing the court's own structures and its relation to other subsystems. King and Piper use Teubner's theory of *reflexive law* to examine ways in which this may happen with regard to the welfare of children, and conclude that this opens new possibilities for the future of the law as it is related to children.<sup>136</sup>

---

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

According to King and Piper, it is the absence of stability and consensus as to what is good and bad for children that leaves law struggling to formulate principles in the context of legal norms without the assistance of scientific and medical concepts of what is best for children that can be applied to legal communications. The difficulty that this creates is that law may be seen to lack competence in resolving conflicts when it is promoting children's welfare because the prolific information that is being generated by the social sciences, that is available generally to the community, may result in the community viewing the law as not relating to this knowledge. This could lead the community to believe that the Courts may not have the competence to make judgments about what might be in the best interests of the child.<sup>137</sup>

King and Piper write that the law needs to consider the social and psychological research that has developed information about the various forms of child abuse, and the affects of the different forms of child abuse, while accommodating it within legal communications and processes. They refer to the significant amount of research in the United Kingdom and the United States of America in the 1980's that concludes that conflict between parents, whether in a marriage, or after separation and divorce, has the most damaging effect on the development of the child. It is in the best interests of children for parents to be positive and supportive to each other, and to promote the relationship of the children with the other parent.<sup>138</sup> These research findings have led to legislation that incorporates that ideal in countries such as USA, Canada, UK, New Zealand and Australia. However, despite the legislation, my own experience and the research referred to in this thesis indicates that the adversarial legal system often continues, and exacerbates the conflict between the parents. The children continue to be affected by it, while ever the parents are involved in court proceedings. Sometimes it continues on to when the children are adults as described in the research by Baker.<sup>139</sup>

### **5.3 The Mediatory Role of the Family Courts**

King and Piper discuss the mediatory role of the Family Court and how this impacts on making decisions about what is in the best interests of the child. They propose that

---

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Baker, op.cit.

although the English Family Court is concerned about the welfare and best interests of the child, in practice it still plays a mediatory role balancing the claims of each parent to control and exercise power over the children, and the rights of the children to be free of any parent who is likely to cause them harm. In doing so the law also brings pressure on the parents to accept and perform their parental responsibilities.<sup>140</sup> The following is their view of the mediatory and general role of the Family Courts in England.

There have been attempts by the law to substitute the mediatory role with a scientific enquiry into the child's welfare, however the law only admits psychological or psychiatric accounts of behaviour into the legal system if this will legitimise the law's search for right or wrong. The law may use psychological concepts derived from scientific research which then becomes a normative rule for parents.

King and Piper suggest that scientific concepts must be suitably adapted and reconstructed in order to be made sense of in legal contexts to be admitted by the law. While this may appear to subordinate the knowledge of psychologists and psychiatrists to the law, the law's authority is also diminished to some extent by the need to obtain scientific advice. While the psychological concepts are reconstructed for the law, they do not change within the scientific community, which can cause some confusion according to King and Piper who say that this can decrease the power and authority of both law and science.<sup>141</sup>

My observations are that there are many parents who take no notice of court orders, and even health professionals and some people in relationship centers do not abide by court orders. One example of this is where the Magistrate made orders similar to the example orders in 6.2. The mother followed the orders and attended the courses and counseling ordered. The father did not. In this case the relationship centre where the parents were ordered to attend did not inform the Court in seven days of a parent did not attend, despite my reminder to do so. After three months with nothing happening by the father, the case came before the Magistrate again for mention. Despite the fact that the father had not obeyed the orders and the relationship center had not informed the Court, the

---

<sup>140</sup> King and Piper, op.cit. p127

<sup>141</sup> Ibid.

father was given no penalty, only strict advice that he must do so, and the case was adjourned for him to do this.

This indicates to me that neither the father, nor the relationship center respected the court orders, possibly because they had heard that the Court is usually soft on parents even if they do not have the interests of the child in mind, only what suits them. In this case, if the parents had not been assumed to work together for the child's best interests, and the relationship center was not assumed to do what was asked of them, and what they were funded to provide, psychometric tests may have picked this up initially, and the time before the next mention with nothing happening by the father would not have been wasted. If the father had received a penalty for not attending, he may not have continued to disobey the orders. Instead he continued to do so and even asked for more orders with regard to a special occasion for the child to attend.

The major difference between the social sciences and law, according to King and Piper is that social science procedures are always based on empirical evidence of causes and a consequence, which is opposed to the law's normative learning. The law may rule out causes that it may not be able to handle, or can only handle with difficulty through its procedures, rules of evidence, relevance, and a small number of issues that fall directly under the influence of the Judge.<sup>142</sup> Such causes may be financial issues, psychological issues, genetics, personalities, abnormal behaviour, psychoses, education, environmental issues, parental alienation, that are all recognised by social science as being able to affect the welfare of the child.

The legal system and processes polarise the parents into taking opposing positions, if only to defend themselves against the allegations of the other parent according to King and Piper. This in turn justifies the need for the law to take a mediatory role. This can happen in both the adversarial or inquisitorial system. The law thinks about children's issues in terms of individualised relationships between the parents and the children. Attempts to replace the law's mediatory role with scientific enquiry are not possible while ever this situation continues.

---

<sup>142</sup> Ibid.

The legal decision making is framed by the offers and counter-offers of the individual parents within a framework of what society thinks is appropriate for children. This reflects the cultural belief in the individual who has some control over his/her own fate through the choices that are made. However, offers and counter offers do not address the possibility of false allegations being made, nor how such false allegations affect the children, such as in cases where there has been parental alienation. If the parental alienation is pathological, it is difficult to see how parents could come to an agreement that would be in the interests of the child.

If agreements are encouraged by lawyers without the knowledge of the causes of conflict or alienation, it seems reasonable to expect that such agreements may not always be sustained, whether there are consent orders or not. They are made during family court processes where the parents have arrived because they have not been able to reach agreement without going to court because of the high level of conflict; or because there are allegations of abuse of one form or the other. In such cases, agreements may have been made grudgingly, at least by one parent; and neither parent's position and arguments may have been properly tested at trial where the evidence is presented, and where sanctions could be placed on the behaviour. The children may remain at risk if this occurs because nothing may have been done to address and correct the causes that resulted in the conflict or alienation.

While science may not have all the answers and may need improvement in its own processes, and the administration of those processes, the literature provided by psychologists and psychiatrists referred to previously suggests some possible alternatives for the Family Courts that could decrease the burden on Judges and Magistrates. However as suggested by King and Piper, there needs to be the ability for the legal profession and the psychological profession to communicate with at least an understanding of what each profession is saying.

#### **5.4 Training of family lawyers**

In addition to discussing the problems of communication, and perception that makes communication difficult between the legal and social science professions, King and Piper continue by proposing that specialised training of family lawyers might assist such communication. They say that despite legislation attempting to introduce the

inquisitorial approach and placing the focus on parental duties and responsibilities rather than rights, lawyers still talk of winning or losing cases, and fight to assert the rights of parents over their children. They contend that this is because the traditional training and professional orientation of lawyers leads them to do all in their power to secure the best outcome for their client, which overshadows what is in the interests of the child, often resulting in using the children as ammunition between the parents.<sup>143</sup>

In Australia there has been an attempt to reduce the adversarial system by introducing the Less Adversarial Trial (“LAT”). However in cases where there is intractable conflict and parental alienation, Altobelli writes that the representation of the opposing views of the parents by their lawyers is diametrically opposed to the attempts of the court to guide the parents into working together for the interests of the children<sup>144</sup>. This is also my experience of family law cases. It often results in a lot of expensive mentions during which the Judge attempts to get the parents to move forward and agree, with little progress because no attempt is made to analyse the evidence to find what is causing the conflict, and how this can be overcome, or if it can be overcome, until there is a final hearing, and even then within limitations of time and costs.

Altobelli writes that the adversarial system is at the heart of the problem, and offers the LAT as a potential solution. This system, he proposes, would assist in managing and mitigating the intense marital conflict that has existed between the parents. He refers to some parents who may have personality predispositions to narcissistic vulnerabilities that escalate under threat, and who may feel humiliated by the separation and litigation.<sup>145</sup>

The introduction of the LAT has been the court’s way of dealing with such cases without enabling allegations of psychological disorders and other adverse behaviour being used to perpetuate the adversarial system. My observations are that this is done by warning lawyers and their clients that negative comments about the other parent will not be tolerated, and that the parents must work together to decide on issues relating to their children. However, my experience is that this does not resolve the conflict because

---

<sup>143</sup> Ibid.

<sup>144</sup> Altobelli, op.cit. p22-25

<sup>145</sup> Ibid.

underlying issues, including possible psychological or psychiatric disorders are not addressed, and will continue to affect future behaviour and decisions.

Unless the LAT process is used together with appropriate assessment by psychologists or psychiatrists, including psychometric tests, at an early stage of the proceedings, the conflict that is being flamed by unidentified causes will not be resolved. My view is that there is a need to identify what may be causing the conflict, followed by recommendations as to how to manage the conflict, with counselling and courses to assist with the required changes. Otherwise it seems likely that any settlement by consent orders, or judicial decision without any changes in the behaviour and attitudes that are needed will result in the orders not being sustained. This has been my experience in a number of high conflict cases that are settled without identifying the cause of the conflict that brought the parents to the court.

Altobelli describes some parents as holding an exaggerated conviction about the other parent and the child. He writes that the LAT has the potential to reduce the humiliation and threat of litigation, and can provide a safer venue where the parents' convictions can be reality tested in a constructive environment. While this may be true, there is also the issue of what should be done during the LAT system to identify the issues causing conflict and order appropriate remedial treatment if it is needed. To enable this there would need to be early testing of the evidence provided to the court, and of the parents and child, by an appropriately qualified psychologist. Altobelli acknowledges this, and that it does not always follow in the current LAT system.<sup>146</sup>

My experience in LAT cases is that the lawyers and the parents attend a number of mentions at the Court before a Judge, during which time they are expected to try to negotiate an agreement. The Judge informs the parties that it is more beneficial to the parents and the children if the parents can reach an agreement than if a Judge has to make an order. In some cases the parties are required to attend courses, although not always. The processes are not designed to ensure that there is early identification of crucial issues underlying the conflict, together with appropriate courses, or counselling designed to address the conflicts specific to the individual cases. Often the courses are

---

<sup>146</sup> Ibid.

generic, and while they may have general benefit, do not necessarily overcome the barriers to agreement by the parents.

Altobelli discusses the actions of the extended families, friends and even the professionals who take sides in the dispute. Allegations of parental alienation syndrome thrive in the adversarial system as it is fault finding and focuses on who is right and who is wrong.<sup>147</sup> He comments that Johnston et al still believe that there is necessary involvement of the court in these cases and this is seen in their discussions of designing interventions for alienated children. He provides the interventions suggested by Johnston and others as: identifying the goal of the intervention and what would be a good outcome or success; early and accurate assessment; the implementation of responses of the mental health/social sciences together with the implementation of a judicial response.<sup>148</sup>

Altobelli describes the interventions proposed by Johnston et al as recognising the complexity of these cases, and focusing on a systematic principled response while clearly articulating the important role of Family Law and the Family Law Courts. The interventions include early assessment or diagnosis that alienation exists and case management within the legally defined framework while family therapy is provided by a team of professionals occurring in the context of interim orders. Altobelli adds that these interventions are very practical suggestions provided they are seen in the context of every child, every family and every case being different; and that these interventions should be at most a working hypothesis that is developed and modified as evidence is presented and tested.<sup>149</sup> It appears that the LAT system would be the most suitable system for this to occur.

While professionals of other disciplines, and their methods, are also developing with new knowledge, their contribution to the law would seem to be better facilitated if the communication between lawyers and these professionals could be improved by training both the lawyers and other professionals to have a working basic knowledge of both

---

<sup>147</sup> Ibid.

<sup>148</sup> Ibid, at p. 22.

<sup>149</sup> Ibid, at p. 15.

family law and psychological factors related to family law, while still maintaining their own expertise.

Psychologists/psychiatrists could be trained to understand the legal processes, the use of evidence and what is admissible and relevant, and possibly some knowledge of applicable cases. Lawyers could be trained to understand the developmental needs of children, family dynamics, personality issues, cultural issues, some knowledge of abnormal psychology, and of cognitive processes and perception at a basic level. They could also be given enough knowledge about psychometric tests that have been found to be appropriate by the profession in order to understand the reports provided by psychologists, without having to have the detailed knowledge of the tests that is required of psychologists who use psychometric tests.

Fines, Glesner and Madson all agree that family law has gone through significant changes in the past few years with efforts made to reduce conflict by increased use of alternate dispute resolution.<sup>150</sup> Collaborative negotiation and interdisciplinary cooperation have been emphasised. Lawyers who have been challenged with the emotions of separating couples need to be skilled in understanding and managing the issues that are peculiar to family law. My own experience is that knowledge and skills in managing human emotions, and awareness of the affective and psychological aspects of family law, are also of assistance, together with competence in listening and counselling skills that might be gained by enrolling in units teaching this skill. Lawyers also need to protect themselves from the risks of vicarious trauma that affects their professional judgment. Family Law is stressful and lawyers' health and well being need to be considered, as well as the effects on lawyers that the stress may have when acting in family law cases.

With the knowledge of psychometric tests and appropriate education of all professionals participating in Family Law, another alternative process might be a system where psychologists/psychiatrists who specialise in Family Law could provide family assessments in a less confronting environment for children such as at the Family

---

<sup>150</sup> Fines, Barbara Glesner and Kathy Madson, Caring too little, caring too much: competence and the *Family Law Attorney* (75 UMKCL Rev 965-9 American Journal of Family Law; Spring 2008, 22,1, Academic Research Library 2007).

Relationships Centres, or the psychologist's rooms, as soon as possible before court proceedings are started, at the time that a certificate of mediation, including whether or not it had occurred, are provided. At that time a list of psychologists/psychiatrists who use psychometric tests together with their resumes, could be provided to the parents to choose one jointly, or else for the relationship centre to recommend one if there is no agreement.

There could be one initiating application made by consent similar to the draft orders provided in 6.2. The psychologist/psychiatrist could file the report on the family to the Family Courts to be joined by the Court to the application by consent. Copies of the report should be provided to the lawyers and an ICL appointed. The Court could then list the matter as early as possible for directions and further appropriate orders based on the written evidence, including orders to attend courses or counselling recommended by the psychologist/psychiatrist and the submissions of the lawyers for the parents.

The psychologists or psychiatrists would need to be trained in the legal aspects of Family Law, and the appropriate psychological testing and clinical assessments. They would also need to have knowledge of the causes and consequences of high conflict cases and identification of parental alienation in all of its forms. Lawyers would benefit from having enough training to be able to interpret these reports properly, and to ask the appropriate questions of the experts. Once the psychological report is made, a full, although still interim hearing of the case could occur, with the psychologist as a witness and advisor, possibly instead of the current Family Consultant, unless the consultant is qualified and has done the assessment.

The economic costs of doing this may be considerably less than the present system that is struggling to find ways to accommodate the continual flow of people who are affected by intractable conflict in their families, but whose lifestyles and degree of conflict can be so varied. Currently family reports may be made by family consultants employed by the Family and Federal Magistrates Courts. The consultant is then required to be examined at different stages of the procedures as to their views of specific issues. For cases with greater intractable conflict, expert reports are made by psychiatrists or psychologists who are acknowledged as experts by the Court. Their fees are either shared by the parents, or paid by Legal Aid in some cases. My observations are that the

reports can be either beneficial or not, depending on whether the consultant or expert has enough information on which to base their opinions. With the use of psychometric tests, the information could be increased in a shorter period of time.

The timing of the reports, and when they are actually referred to, and tested, can also make them unhelpful in many cases in the current system where the parents are often required to attend a conference with a Court employed family consultant at the first directions hearing. However, my experience is that little time is given to diagnose the conflict. Affidavits and other evidence provided to the Court are not read, and the consultant often plays a mediatory role while also making recommendations based on generic possibilities on the same day to the judiciary without considering the evidence of issues relating to the child.

An example of my own experiences where this has occurred is when an application has been made for psychometric tests with clinical observations to be reported at the first instance with recommendations for time spent by the child with each parent, assessment of causes of conflict, parenting skills and other factors, and recommendation for counselling or courses made for the Court to consider. Instead the parents have been sent to the court family consultant for a quick mediation in a limited amount of time and recommendations by the family consultant are based on generic possibilities for children of that age, without consideration of any individual difficulties the child has been having. This has then resulted in orders being made according to the consultant's recommendations, as there is no time for a proper interim hearing with affidavit evidence read.

An order is made for an Independent Children's Lawyer to be appointed. Leave is given for the matter to be restored to the list with seven days notice. However when an application in a case has been made because the child is chronically ill before each weekend spent with the other parent, and the school reports antisocial behaviour the matter is listed for mention five or six months later during which time the orders stand and the child continues to be chronically ill with behaviour problems at school.

I am left with only being able to advise my client that she can't breach a court order as this is a criminal offense that is punishable, while being aware that the child is

continuing to be exposed to psychological risk, resulting in fears of the mother that are likely to be subconsciously transferred to the child, making the situation worse. The cause may be the dynamics between the parents and other family members, or because of the behaviour of one or the other of the parents, or any of the hybrids described by Altobell, which without early and accurate assessment, cannot be identified and managed. In this case reference to an expert report is likely to occur six months after the initial examination, and further court proceeding about nine month after the initial application. In some cases there is only a mention listed after the report has been released, so there may be more months before there is a hearing of the evidence.

Similar delays have resulted in another case in which I acted. The father made an application to the court because the mother had relocated and was refusing him any time with his son. The mother made allegations that graduated from the father wanting to kidnap the child and take him out of the country never to see the mother again, to allegations of domestic violence, to negligent care of the son and finally to sexual abuse of the son. A report from a psychologist assisted by psychometric tests showed that the father was highly unlikely to have done the things alleged but the mother and her mother were viewed as having abnormal tendencies. A later report by a psychologist indicated the same, and also referred to the mother and maternal grandmother as either being malicious or having a psychosis. The reports were made about twelve months after the initial application, then not heard for another six months. The father had been ordered to have supervised has left the child developing antisocial behaviour at school. Finally at the fourth day of the hearing, the ICL barrister informed the mother that she should agree for the child to live with the father, and orders were made to that effect. The child had no further behavioural issues while living with the father. These are the types of procedural problems in the court that results in continuing to expose the child to either physical or psychological damage. Yet I have seen this occur a number of times.

A process involving the use of psychometric tests together with clinical observations, examination of the evidence from doctors, schools, and community and other services, with recommendations for management could ensure a speedy and less expensive outcome than the multiple attendances at court, the outdated of information throughout the process, and the employment of people who may not have the appropriate

qualifications for such assessments. It could also assist by reducing the risk of children being left or placed at risk until there is a hearing where the evidence is tested. The cost to the parents who are currently burdened by all of the legal costs incurred over lengthy processes could also be reduced by early identification of the issues and the causes of conflict. However, the information contributed by professionals I have referred to in this thesis, with the exception of Altobelli's more recent support, have been made over the past decade with little change occurring.

There are a number of challenges that face professionals working with the Family Court to endeavour to accomplish the allusive best interests of the child that continues to evolve and change throughout the centuries and across cultures, and which may never be identified because there is no generic formula that is in the interests of all children. This needs to be assessed in individual cases.

For changes to properly reflect updated knowledge in the social sciences as well as law, it seems that there needs to be appropriate updated education and use of scientific skills by lawyers, psychologist, psychiatrists and the judiciary such as in the use of psychometric tests. The current knowledge in the social sciences, if integrated with that of Family Law, could help to form a new family law system. This would necessitate the cooperation of the psychological sciences, the legal profession, the judiciary and the legislators.

## **CHAPTER 6**

### **SUMMARY AND RECOMMENDATIONS**

#### **6.1 Summary**

A history of Family Law shows that there have been many changes and developments related to the changes in society. The development of research and information has provided different views, and addressed the changing family dynamics and complexities of the social world. There has been recognition in more recent years that when parents separate there are often emotional and psychological factors that may have resulted in the separation, and from the separation, and also the court processes. There has also been a gradually increasing perception of the complexities of these psychological and developmental factors, and recognition of the greater need to find ways of identifying and addressing these complexities, particularly where there are high levels of conflict between the parents that could flow over into the social community and on to the adulthood of the children, and possibly then onto their own children.

While parents may want more certainty, and this may be found with the assistance of psychometric tests, it may never be possible to perfect court processes because of the complexities of all parties involved, including the legal profession, the court staff, family consultants, psychologists, psychiatrists, the judiciary and the legislators, not to mention the community groups and government departments that are responsible for changes in the legislation. However, this should not be a reason to stop endeavouring to achieve outcomes that result in children's lives being set on a path that avoids possible destruction, which the community may eventually suffer the results of, such results being seen through the media on a regular basis.

Alienation between children and one of their parents is often found in the high conflict children's cases before the Family Courts. It has been found to exist at various levels as shown on the continuum provided by Johnston and Kelly in chapter 1. The continuum and articles by a number of professionals recognises that there is a significantly serious form of parental alienation that is pathological and that some professionals have called parental alienation syndrome.

Johnston and Kelly and others have renamed alienation as child alienation rather than parental alienation. Child alienation places the focus on the child's responses to parental behaviour. It includes situations where neither parent has tried to influence the child into rejecting the other parent, yet the child has rejected the other parent because of various reasons. As a result of seeing alienation from a different viewpoint, a number of complex dynamics have been identified, and have been referred to in this thesis.

The question of whether the worst form of alienation is a syndrome or a psychological disorder or psychosis has been examined. Psychological syndrome has most commonly been used to describe a recognizable condition that has a set of symptoms, or a pattern of behaviour that is a disorder. Parental alienation syndrome consists of the symptoms and patterns of behaviour that are the rejection of a parent by a child. The condition is the child's abnormal perception of the parent that some professionals referred to in this thesis say may also distort the child's perception of relationships generally, and which may develop into the adult's perception of relationships generally. This could also result in long term consequences if not managed or treated appropriately, and instead allowed to fester and develop.

The views of Johnston and Kelly have shown there are a number of causes that may result in a child rejecting a parent and Baker has described the consequences in adulthood to children who have been subjected to parental alienation. Whether the worst form of child alienation or parental alienation is a psychological disorder that should be included in DSM-5 appears to be the major issue of contention and continuing debate. However, considering the difficulties being experienced with the production of DSM-5, and the number of disorders in the DSM that are not related to family law, a Manual has been proposed that could assist those who are involved in family by identifying the disorders associated with family law, providing the psychometric tests that relate to family law issues, and providing a dictionary of terms used by the professions involved in family law.

Although the cause may sometimes be the brainwashing of a child by a parent who has unresolved emotional and separation issues, and sometimes who may have a psychosis that is responsible for their behaviour, the cause may also be specific to the child and

the child's distorted perception; or a child's developmental stage; or may be a realistic perception of the rejected parent based on evidence of physical, emotional or sexual abuse, either perpetrated on the child or perpetrated on the other parent and witnessed by the child. The question remains whether these causes should also be treated as a psychological disorder that requires intervention by psychologists or psychiatrists so that it does not develop further and cause personal and social problems in the future. It has also been proposed that if there is evidence to support a realistic alienation of a parent, then the child should first be treated for Post Traumatic Stress Disorder, which is also the result of a psychological event that can be assisted by appropriate intervention.

Gardner suggests that if every form of alienation is called a syndrome, then perhaps parental alienation syndrome would also be accepted. Naming the syndrome according to its cause may satisfy the need for the pathology to be included in DSM-5. However, Gardner has also referred to various disorders that are included in DSM-IV. Their descriptions are similar to the descriptions of behaviour when there is parental or child alienation. It seems that if these descriptions become part of legal discourse, this would be another way of identifying some of the different causes of the pathological parental alienation.

Butler has researched adults who experienced alienation of a parent during childhood or adolescence. Her subjects reported the long term effects of that alienation on their relationship with the rejected parent and on other relationships in their adulthood. This supports the proposal that there is a psychological disorder requiring therapy as a result of some forms of rejection of the other parent. Some of the disorders that subjects of Butler's research have are those that are already included in DSM-IV.

The problem caused by there being other less serious forms of parental or child alienation that do not have long term serious consequences, is that it does not seem appropriate for rejection that results from these short term distorted perceptions, or developmentally normal perceptions, to be classified and treated as a psychological disorder. Distinctions need to be made between the various levels of alienation and their causes by assessment at an early stage so that assumptions are not made that result in orders that may be inappropriate.

This issue, and the fact that there are so many complex factors involved in the rejection of a parent, exemplifies the need for accurate and early assessment that may be assisted by the properly used psychometric tests together with clinical observation and recommendations for appropriate management as early as possible in Court proceedings, together with judicial examination of the evidence provided by lawyers, the psychologists and other appropriate professionals and witnesses. Recommended therapy together with sanctions ordered by the Courts should be made to ensure that parents participate in a manner that is likely to have an outcome that is in the best interests of their child, at least as much as can be achieved by human intervention into human behaviour, which may never be perfect.

In order to implement the above procedures, the current Family and Federal Magistrate Court processes need to be examined and changed. King and Piper have proposed a need for a new family law system. Although they write about the family law system in England, much of what they discuss also applies in Australia, except that Australia has introduced the Less Adversarial Trial, which Altobelli recommends as the appropriate process for managing cases where there is a high level of conflict.

Altobelli refers to the research of Johnston and Kelly, and elaborates on the complex differences in the types and levels of parental alienation. He proposes that there is a need for appropriate assessment at an early stage of family law proceedings. This proposal is also made by a number of other professionals referred to in this thesis. My conclusion is that the assessment should be made by psychologists with the use of psychometric tests, and that the psychologist who performs the psychological test and clinical observation of the causes and types of conflict and alienation, should provide the Family Courts with recommendations about strategies to manage or remedy this condition. The judiciary can assess the reports and recommendations together with the evidence filed at court, the submissions of the lawyers, and examination of the parents and witnesses, with the knowledge that can be gained by studying some of the psychological aspects that are involved. The Court should monitor the progress of therapy and courses, making appropriate orders at different stages until a final order can be made when the family has achieved the best results possible under their circumstances.

Changes to the court processes have been proposed in chapter 1. The issue of costs has also been addressed. The costs involved in the current processes are extremely high for most separated parents who still want their children in their lives and hope that the court will enable this. Added to their own costs, parents are expected to pay large amounts for expert reports that do not assist them or improve their situation in many cases. They also have to pay for an Independent Children's Lawyer if one is appointed, despite the fact that the ICL may act against them when making recommendations to the judiciary. Family Consultants are employed by the family courts as are the judiciary and all other staff involved. Legal Aid is generally too little to be of much value to the parents who have to rely on this because of their financial situation. Much of these costs, including not employing a Family Consultant or ICL and not spending money on numerous mentions at court that often tend to not progress the case, could be eliminated. While the costs of the psychologist in each case would have to balance some of the eliminated costs, it may well be that these costs are not as high as the existing costs of current court processes.

King and Piper identify the need for better communication between the legal profession, and the psychological, psychiatric and social work professions, and also that there is a need for educating all of these professionals in order to increase their understanding of the communications of each other, and of the relevant knowledge of each profession as it relates to children caught in high conflict between their parents, as well as the causes and possible remedies for this. Willmot also proposes that similar education will result in psychologists being skilled in providing appropriate assistance to the Family Courts, and also result in less stress for the psychologists who need to take care of their own stress levels as they engage in their work. This applies to lawyers and other professionals involved in the high level conflict also.

Emery makes the observation that conflict itself is not bad, is sometimes inevitable, and can be constructive. However, it is how this conflict is managed by the parents with an aim to resolving the conflict, not allowing the children to become part of the conflict, and presenting a united front to the children in child raising issues that is important. He also observes that many parents try to win their children's loyalty by overindulging them with gifts, or autonomy that only causes more conflict, and affects the children. This description complies with other views of parental alienation described in this

thesis. Emery warns that this type of attitude is exacerbated by the adversarial processes of court proceedings, which often creates such conflict.<sup>151</sup>

He proposes that if this is happening, one of the options available is for the judiciary to make orders that the child not spend any time with the alienated parent, which is not the best outcome. He also suggests that in cases of intractable hostility, that may result in inducing what he refers to as parental alienation syndrome in the child, mediation or therapy may assist, but must in some cases be accompanied by threats from the judiciary that the alienating parent will be severely punished if that parent does not cooperate and encourage the children to spend time with the other parent. Otherwise, mediation or therapy is not likely to be successful, and the children are likely to suffer short term or even more serious long term psychological damage as a result. However, he writes that currently the judiciary is reluctant to adopt punitive measures. While his comments are about the family law system in the United Kingdom, my observations are that this also seems to apply in some cases in Australia where similar difficulties are experienced.

Emery reports that threats of fines, changing residence of the children, community service, or even prison are necessary to stop this from happening, and only the most pathological parent would not be influenced to cooperate if the threat is made realistic. This is consistent with other expert opinions that have been discussed in this thesis.

Dr. Richard Warshak who is accepted as an authority on parental alienation in the United States of America and elsewhere comments on the American Law Institutes Approximation Rule.<sup>152</sup> The Law Institute's article uses scientific studies that show that children can benefit from joint custody even when there is conflict between the parents.

He concludes that the best interests of the child standard is preferable when it retains the benefits of individualised decision making while also operating in the context of contemporary reforms based on new knowledge, and which encourages non-adversarial resolutions. If there is individualised decision making then the use of appropriate psychometric tests by well trained and experienced psychologists should be able to

---

<sup>151</sup> Ibid.

<sup>152</sup> Warshak, Richard A. Building Family Bridges [www.warshak.com/store/cr43html](http://www.warshak.com/store/cr43html).

provide a profile of the family members, together with the observations of the psychologist, or psychiatrist when necessary, and the evidence submitted by lawyers for the parents and subpoenaed documents. This profile can then be used by the psychologist to make recommendations to reduce the conflict and by the judiciary to make orders based on more information than is currently being provided.

My observations after representing clients in the Family Courts for a number of years is that usually in Australia the cases that go to the Family Courts are cases where there are high levels of conflict that mediation and counselling have not been able to resolve.

A certificate stating whether mediation has been attempted, and the outcome of mediation that is attempted, must be attached to an application to the Family Courts. If the mediation has been successful, the parents do not apply to the Court. If it has not been successful, there are issues or causes of conflict that cannot be settled by mediation. It is the issues or causes that need to be identified and managed with appropriate education of the parents. Psychometric tests are designed to provide that identification, so it would seem beneficial for all applications to the Court to commence with the assessment previously discussed.

There is generally a combination of inquisitorial and adversarial process in the Family Courts with an emphasis still being on endeavouring to encourage the parents to come to an agreement and realise the damage they are doing to their children if they don't. This seems to be based more on attempting to educate parents, who in some cases can't be educated because of underlying psychological issues that are resulting in hostility and conflict between the parties. Merely telling them that this is what should occur is not enough in many cases.

The court processes result in high cost to the parents and to the government. Despite the high costs, many parents remain entrenched in their conflict and the patterns of behaviour that has led them to the Family Courts. The judiciary emphasise the damage to the children if parents are obsessed or entrenched in their own views, however this may not be psychologically processed by the parents who may remain focused on their negative views of the other parent; or the parent may become confident about making false allegations because the Court does not impose penalties for breaking the orders.

Sometimes the issues are only resolved by one parent not being able to afford to continue paying the legal fees, which does not necessarily mean that the best outcome for the children has been achieved when the parents consent to orders being made that they have had to agree to.

If there are short mentions, or directions hearings, in which there is informal communication between the lawyers and their clients followed by long delays when the judiciary, and the lawyers attend to other cases, there seems to be the possibility of escalating conflict and more serious damage to the children. Full recall of what has happened in the specific cases may be lost during the delays between court attendances; or may be distorted by recall of the other cases, which would be difficult to avoid with all the cases that have to be heard at court. Affidavits that have been made at considerable cost may not be read during the earlier court attendances because of lack of time, then have to be updated later which incurs further time and costs.

It appears to me that the only possible advantage of this process is the possibility that some parents will resolve their conflict themselves over time, or be forced to because of the costs of continuing at court. This has the potential of resulting in outcomes that may be damaging to the children, and that may result in the parents having to go back to court because their agreement has not worked. Altobelli reports that this is often the case when there is parental alienation involved.<sup>153</sup>

There is still much need for change in the family law system, and it seems from my research that education and a change of processes, together with the use of appropriate assessments made by psychologists/psychiatrists, whose education is in the behaviour of humans, is needed to facilitate outcomes that are more beneficial to families and the community in general. For this to occur I believe there is also a need for lawyers to have an understanding of psychological issues and psychoses, and the results of psychometric tests and clinical observation by psychologists/psychiatrists, that is psychological discourse needs to be adopted as legal discourse.

---

<sup>153</sup> Altobelli, *op.cit.*

This does not make the lawyer qualified in psychology, as this would take quite a few years more of education and supervised practice, only that the lawyers are able to understand the assessments made by the psychologist/psychiatrist. However, as lawyers often do a double degree including the legal component and a major in another discipline, those who want to work in family law could make their other major in psychology. I have seen some cases where lawyers have totally misinterpreted what the expert report has included, in a manner that supports their own client, when it is eventually disclosed that this has not been what the expert has reported. Thus the training of lawyers and psychologists and accreditation as family law specialists after completing this training seems to be paramount for these changes to occur.

## **6.2 Recommendations**

Either prior to mandatory mediation, if the parents agree, or at the time of making an initiating application to the Family or Federal Magistrates' Courts, the following or similar orders could be applied for jointly by consent, and made in chambers; or one lawyer, if there is no agreement by both parents, could apply for the following orders. If neither lawyer makes this application, the orders could be made by the judiciary at the first directions hearing. I believe that such orders would enable a transition to the Pilot Project I suggest in 6.3 and in the meantime would facilitate a faster identification of what causes the conflict between the parents and the children so that management by way of orders and psychological (or psychiatric if appropriate) counselling and courses.

### **6.2.1 Orders**

1. The parties shall agree to the appointment of an approved Psychologist within fourteen days.
2. The lawyers for each party shall make appointments with the Psychologist for the parents, children and any other significant person in the lives of the children.
3. The lawyers for each party shall provide the Psychologist with all affidavits filed for their clients, including school and medical and psychological reports.

4. The lawyers for each party shall provide the Psychologist with a list of issues that require identification and recommendations and request psychometric tests with clinical observation and a report to be filed at court.
5. In addition to any other issues identified by the lawyers, the tests and clinical observation shall be focused on the following issues.
  - (i) Identifying the causes of conflict between the parents and children and proposing strategies to change or manage that conflict.
  - (ii) Identifying if there is parental or child alienation or rejection; what level of alienation or rejection exists; finding what the causes of the alienation or rejection are; and recommending strategies for reducing or eliminating the alienation or rejection provided there is no risk to the children.
  - (iii) Identifying
    - a) if there is factual evidence of risk of physical or psychological abuse to the children, or a parent; and
    - b) if there is evidence then to notify the Department of Human Services and advise the Court if such notification is made by the psychologist, or any other professional or service provider to whom referral is made:
      - b.i as to any of the matters set out in s10(D)(4) of the Family Law Act; and
      - b.ii if the psychologist/psychiatrist thinks it appropriate to provide the court with a copy of such notification to be admitted into evidence of the Court's own motion; and
      - b.iii subject to s69ZT(2), and proceedings shall be relisted as a matter of urgency; and
      - b.iv of the Court's own motion, and pursuant to s60K to determine what further interim or procedural orders should be made to:
        - (a) enable appropriate evidence about the allegations to be obtained as expeditiously as possible; and
        - (b) to protect the child, or any of the parties to the proceedings;
        - (c) to deal with the issues raised by the allegation.

- (iv) Identifying if either of the parents, or the children have psychological disorders or psychoses that may be causing or resulting from the conflict, alienation, or rejection, and recommending strategies or treatment that may assist the children and the parents in managing this.
  - (v) Identifying difficulties in parenting communication and cooperation, and proposing methods to overcome these difficulties.
  - (vi) Identifying the parenting skills of each parent, and whether or not the parenting practices of each parent are in conflict with the other.
  - (vii) Identifying the developmental needs of each child, and recommending arrangements that meet and respond to his/her/their needs.
  - (viii) Recommending any courses or counselling that may benefit any or all family members and significant others.
  - (ix) Recommending how best to develop and maintain a relationship between the children and each parent, and significant others in an age and developmentally appropriate way provided there is no risk to the children.
  - (x) Recommending age appropriate and risk free time arrangement for the children to spend with each parent.
6. If a psychosis that requires psychiatric treatment is identified, the Psychologist shall inform the Court and a Psychiatrist agreed between the parties shall be appointed to make further assessment and recommendations.
7. The parents shall attend at such times, dates and places and pay such fees as informed by the Psychologist/Psychiatrist, and shall continue to do so until that service, and any counselling or therapy, course or program that is recommended, is completed, and the above stated purposes are achieved to the extent that the psychologist considers possible.
8. The Psychologist and any other professional or service provider to whom referral is made, including the legal representatives, are requested to:
- (a) advise the court in writing when the service provision is completed or withdrawn;

- (b) advise the court in writing should either parent fail to contact the Psychologist, within seven (7) days, or fail to cooperate, accept referrals, or fail to participate in any service, course or program recommended.
9. Any employee of the Psychologist/Psychiatrist engaging with the parent and other professionals or services to whom referral is made has leave to inspect the court file and subpoenaed material produced to the court, and for which leave has been granted to inspect by the parties, and their legal representatives.
10. In the event that the Psychologist/Psychiatrist determines that it would be useful or desirable for the children to be involved in any counselling, courses or programs that would be appropriate and of assistance to the child then each parent shall do all things, sign all documents and give such consents and authorities necessary to facilitate such attendance, and the above provisions shall thereafter apply to the children's attendance; and noting the children's details as follows.

Names and dates of birth

11. Any information provided to the Psychologist or Psychiatrist by either parent or the children shall remain confidential unless the Psychologist or Psychiatrist and the parties agree that it should be disclosed to the Court, or in the event that there is threat to any person or property.
12. Each parent shall within four weeks register for any appropriate courses recommended by a Family Relationships Centre or the Psychologist/Psychiatrist.
13. If the matter proceeds to trial each parent should expect to be questioned as to what impediments to joint cooperative parenting they have perceived in their circumstances and the steps they have taken to remove or lessen those impediments.
14. All communications between the parties and/or their lawyers, shall as far as possible be practical, courteous, non-judgmental, non-accusatory, and focused

on issues in dispute and towards finding a path forward to address those relevant issues in dispute.

15. Liberty to the lawyers to restore the matter to the list with seven days notice in the event of any allegations of non-compliance with any interim parenting order, any difficulties that are encountered or anticipated with respect to preparation for hearing, or in the event of fresh matters of urgency relating to the child's welfare arise, and neither party shall file any Application in a Case or for Contravention prior to having relisted the matter.
16. In the event that the above liberty is utilised by a party then they are to ensure that the other party is advised forthwith of any listing date as well as the basis on which the relisting has been sought and the orders or directions that are to be sought by them when the matter is next before the Court.

Once the Psychologist's/Psychiatrists report has been provided to the lawyers and the Court, there should be an interim hearing during which the Psychologists/Psychiatrist's report and recommendations are tested together with evidence provided to the Court, and submissions of the lawyers on behalf of the parents.

If further recommendations are made for the parents to attend courses or counselling, then the Court should monitor the progress of the parents with brief reports being provided to the lawyers and the Court on a regular basis until a final settlement can be reached. Penalties should be applied if orders are not obeyed unless there are mitigating circumstances, and if the case is not progressing appropriately, the lawyers should have the matter listed as soon as this is known.

### **6.3 Pilot Project**

The following is a proposal for a cross-discipline pilot project to be funded by the government to test the proposals made in this thesis. An Administration Board of one Lawyer, one Psychologist and one Psychiatrist to be established.

This proposal would require further research into the current use of specific psychometric tests that would be appropriate to identify causes of conflict, and the use

of terminology specific to the legal, psychological and psychiatric professions. This would also require training of relevant professionals to test the hypotheses.

The training of all participants could be assisted by the publication of the suggested “*Cross-Discipline Family Law Manual*”. The Manual should be researched and published. This would then be used as a text book for all participants. If the pilot project is successful in proving the hypotheses then the Manual and course could be extended to other professionals.

### **HYPOTHESIS 1:**

The use of psychometric tests with clinical observation by a qualified psychologist prior to, or at the beginning of court proceedings will result in faster, less expensive and more accurate resolution of issues that may place children at risk, physically, sexually, emotionally, and developmentally.

### **HYPOTHESIS 2:**

That a “*Cross-discipline Family Law Manual*” and training of relevant professions to understand psychometric tests, psychological issues and discourses of the legal, psychological and psychiatric professions will enable lawyers to ask appropriate questions of experts and to better understand their reports and discourse, and for experts to be able to write reports that comply with legal requirements, so that greater accuracy in orders based on more objective information in a shorter time can be achieved.

### **METHOD:**

1. A group of Psychologists who are trained and experience in the use and interpretation of psychometric tests at a high level, and of family dynamics, developmental processes, cognitive processes, cultural issues, perception, neurology, abnormal psychology, and psychoses should be chosen and briefed about the pilot program and its processes, and about legal requirements with regard to evidence and relevance. *The Cross-discipline Family Law Manual* to be given to the selected Psychologists.

2. The Psychologists to select the most current psychometric tests approved by the International Psychological Society taking into consideration the identification of issues that might be causing conflict between parents and the affects of this on the children that will be included in the *Cross-discipline Family Law Manual* to be given to the Family Lawyers involved in the project and used as a text for their training,
3. A group of Family Lawyers who have training in, and experience in providing alternate dispute resolution and/or collaborative law to be chosen and briefed about the pilot program, and about the benefits of using:
  - psychometric tests together with clinical observation, and
  - some understanding of psychological factors such as family dynamics, developmental processes, cognitive development and processes, cultural issues, perception, neurology, abnormal psychology and psychoses.
4. Staff of a Family Relationship Centre to be provided information about the Pilot Project and given the *Cross-discipline Family Law Manual*.
5. Selected Federal Magistrates and Judges who are willing to participate to be informed in writing and verbally about the project and provided with the *Cross-discipline Family Law Manual*.
6. The training for each professional could be over a period of about six to twelve months to be assessed by the participants writing assignments on their practical experience gained from applying the project requirements in their practice after completing the training. This will be year 2 of the project. Participants to be awarded with a *Post Graduate Diploma in Family Law Specialisation* to those who complete the course satisfactorily.
7. Once the training has been completed, the Family Relationship Centre or the Family Courts will provide written and verbal information about the project to parents who are willing to participate in the project.

8. The parents to then be assigned to Family Lawyers who have been trained to participate in the project. The family lawyers to obtain the parents' agreement to participate in writing. The lawyers would also obtain affidavits from the parents and their witnesses. Initiating applications and responses would be made in a similar form to the draft orders provided in Appendix A and parents would be advised to consent to the initial orders as part of their participation in the Pilot Project.
9. The assigned Federal Magistrates and/or Judges to make orders in chambers for the psychometric tests and reports by the psychologists to be made with recommendations for appropriate courses, counselling or other management of the conflict between the parents, and the effects on the children using the Draft Orders in 6,2. If there are other significant persons, such as new partners, or grandparents, then they should also be briefed about the pilot project, and included in the assessments.
10. The Family Lawyers to provide the Psychologist with affidavits and subpoenaed documents that have been filed at the court, including any evidence from schools, medical and psychological or psychiatric professionals and any police records and community services records.
11. After reading the evidence, each Psychologist to file a report at court that is released to the Lawyers. The report to include:
  - what psychometric tests have been used and why;
  - what has been diagnosed as causing conflict; any
  - other relevant information learned from the tests; and
  - what the observations of the psychologists are taking into consideration the clinical observation from the interviews with the parties, and
  - the evidence; and
  - what recommendations are being made about intervention such as counselling, courses etc.
12. If there is a psychosis identified that may need psychiatric intervention and not normally treated by a psychologist, then the case to also be referred to a

psychiatrist who is to be informed about the project and provided with a report stating the psychometric tests, what they measure, and what the outcome was for each person tested, and clinical observations of the Psychologist.

13. After the assessments and reports have been made, there should be an interim hearing to test the affidavit material and the psychologist's/psychiatrist's report followed by orders based on the findings of the judiciary with continuing monitoring of the progress of the parents after attending courses and counselling recommended by the psychologist/psychiatrist. When agreement has been reached as a result of the causes of the conflict being addressed and modified, final orders to be made.
14. Payment for the professionals involved should be made, by a funding source provided by the Federal Government.
15. Statistical analysis of the progress, outcomes and costs to be made by an appropriately qualified and experienced Psychologist together with a lawyer supervised by a university. The results should be compared to a random selection of the same number of cases where there are similar profiles and issues that have not been included in the pilot project.

## BIBLIOGRAPHY

1. Adams, Michelle A, *Framing Contests in Child Custody Disputes: Parental Alienation Syndrome, Child Abuse, Gender and Fathers' Rights* (VI Parental Alienation Syndrome and Gender Types HeinOnline ...40 Fam LQ 2006-7, 315).
2. Altobelli, Tom, Seminar presentation at the Advanced Family Law Weekend held at the College of Law Sydney 15-16 August 2010 "The writer's purpose is to stimulate discussion, to encourage research, to share knowledge and to improve practice in relation to cases where a child rejects a parent. It is also to attempt to bring together and summarise the wealth of knowledge and experience presented at the Association of Family and Conciliation Courts (AFCC) 47<sup>th</sup> Annual Conference – *Traversing the trails of alienation* Denver Colorado" (June 2-5-2010); *Calvert & Calvert* (FMCAfam 101, 18 February 2008).
3. American Psychological Association (2009) *DSM-V The Future* → [www.psych.org/dsm.asp](http://www.psych.org/dsm.asp)  
"Leaders from the APA, the World Health Organization (WHO) and World Psychiatric Association (WPA) determined that additional information and research planning was needed related to specific diagnostic areas. Hence, in 2002, the American Psychiatric Institute for Research and Education (APIRE), with Executive Director Darrel A. Regier, M.D. M.P.H. as the Principal Investigator, applied for a grant from the NIMH to implement a series of research planning conferences that would focus on the research evidence for revisions of specific diagnostic areas."
4. Baker Amy J.L, *Adult children of parental alienation syndrome – breaking the ties that bind*. (Norton & Company New York, London 2007).
5. Barden, R Christopher . PhD. JD, LP. *Protecting the Fundamental Rights of Children and Families: Parental Alienation Syndrome and Family Law Reform* (The International Handbook of Parental Alienation Syndrome Charles C Thomas Publisher Ltd, Springfield Illinois, USA, 2007)
6. Bricklin, Barry and Elliott, Gail, *Psychological Test Assisted Detection of Parental Alienation System* (The International Handbook of Parental Alienation Syndrome, Charles C Thomas – Publisher Ltd, Springfield, Illinois USA, 2007, 264, [www.DrBarry-Bricklin.com](http://www.DrBarry-Bricklin.com) ) also referring to Taylor R.J. *Use of change theory in the context of divorce mediation session* Journal of Divorce and Remarriage 40 (1-2) 87-92 (2003).
7. Burton, John W. *Conflict Resolution: The Human Dimension* The International Journal of Peace Studies Volume 3, number 1 (January 1998 ISSN 1085-7494 [www.gmu.edu/programs/icar/ijps/vol3\\_1/burton](http://www.gmu.edu/programs/icar/ijps/vol3_1/burton)
8. Emery R. E. *Parental Alienation Syndrome Proponents Bare the Burden of Proof* (Family Court Review 43 (1) 8-13 2005). Emery, R. *Divorce Mediation*

*Research & Reflections* (14<sup>th</sup> National Family Law Conference Canberra, ACT October 2010, 286). Emery Robert (Professor University of Virginia (USA)) *Rule or Rorschach? Approximating Children's Best Interests* (14<sup>th</sup> National Family Law Conference Canberra ACT October 2010).

1. Flens J.R. & Drozd L, *Psychological Testing in Child Custody Evaluations* (Hazworth Press Inc. United States of America 2005); Flens J.R, *The Responsible Use of Psychological Testing in Child Custody Evaluations: Selection of Tests* (Hazworth Press Inc. United States of America 2005) cites Martindale D. A, *Confirmatory Bias and Confirmatory Distortion*, cites Feeley, Young (1998) cites De Paulo, Charlton, Cooper, Lundberg, Muhlenbruck Ekman (1997) O'Sullivan (1991).
2. Fines, Barbara Glesner and Kathy Madson, Caring too little, caring too much: competence and the *Family Law Attorney* (75 UMKCL Rev 965-9 American Journal of Family Law; Spring 2008, 22,1, Academic Research Library 2007).
3. Frances, Alan MD, *DSM5 in Distress – the DSM's Impact on Mental Health and Research*, Psychology Today (May 2, 2012). Psychology Today [www.psychologytoday.com/blog/dsm5-in-distress-/201205/wonderful-news](http://www.psychologytoday.com/blog/dsm5-in-distress-/201205/wonderful-news) refers to the following: Kupfer et al., *A Research Agenda for DSM-V* (2002); "Rationale for the Proposed Changes to the Personality Disorders Classification in DSM-5" American Psychiatric Association (2012); Kendler, (2009); Eaton et al., (2011); McCrae et al., (2006), Markon et al., (2005), McCrae & Costa, (1997); McCrae et al., (2005); Frances, Alan MD (1980; 1982); Myer Briggs cites Myer Briggs developed a Type Indicator (MBTI) extrapolated from Carl Jung's book *Psychological Types* (1921) [www.psychologytoday.com](http://www.psychologytoday.com) .
4. Gardner, Richard, *Does DSM-IV Have Equivalents for the Parental Alienation Syndrome (PAS) Diagnosis?* (Unpublished Manuscript Accepted for Publication Department of Child Psychiatry, College of Physicians and Surgeons Columbia University, New York, New York, USA); Gardner R. A. *Misperceptions Versus Facts About the Contributions of Richard A Gardner M.D.* ([www.deltabravo.net/custody/pas-gardner04.php](http://www.deltabravo.net/custody/pas-gardner04.php) February 20, 2001); Gardner R. A. *Commentary on Kelly and Johnston's "The Alienated Child: A Formation of Parental Alienation Syndrome* Family Court Review, 2002, 39 (3); *The relationship between the parental alienation syndrome (PAS) and the false memory syndrome (FMS)* American Journal of Family Therapy, 2004 Vol 32(2), 79-99).
5. Gould-Saltman D *Testing, One, Two, Three, Testing: An Attorney's Perspective* (see Flens J.R. & Drozd L. *Psychological Testing in Child Custody Evaluations* Hazworth Press Inc. United States of America, 2005).
6. Johnston, Michael P and Kelly, Joan. B. *The Alienated Child: A Reformulation of Parental Alienation Syndrome*, 39 Family Court Review 249 at 249-254, 262-264, 2001); Johnston, J. R; & Kelly, J. B. *Rejoinder to Gardner's Commentary on Kelly and Johnston's 'The Alienated Child: A reformation of parental alienation syndrome* (Family Court Review, 2004, Vol 42(4), 622-628); Johnston , M. P and Kelly, J.B. *Differentiation Among Types*

*of Intimate Partner Violence: Research Update and Implications for Interventions*, Family Court Review Vol. 44 No. 3, 3 July 2008, 476-499; citing Johnston J. R, Walters M.G. and Olesen N.W. *Clinical Ratings of Parenting Capacity and Rorschach Protocols of Custody Disputing Parents: An Exploratory Study* (see Flens J.R. & Drozd L. *Psychological Testing in Child Custody Evaluations* Hazworth Press Inc. United States of America, 2005).

7. Katz A. *Junk Science v Novel Scientific Evidence: Parental Alienation Syndrome, Getting it Wrong in Custody Cases*. (HeinOnline 24 Pace L. Rev. 239, 2003-4).
8. King, Michael & Piper, Christine, *How the Law Thinks About Children* (Ashgate Publishing Limited Hants GU11, England & Ashgate Publishing Company Vermont 05036 USA 1995); also referring to Teubner G. *How the Law Thinks: Towards a Constructivist Epistemology of Law* (Law Society Review Vol 23 No 5, 727-56,1989); Teubner G. *Industrial Democracy Through Law. Social Junctions in Law in Institutional Innovations* (in Daintith T & Teubner G (eds) *Legal Analysis in the Light of Economic and Social Theory*, (Berlin: De Gruyter, 261 see King and Piper Christine, *How the Law Thinks About Children* (Ashgate Publishing Limited Hants GU11, England & Ashgate Publishing Company Vermont 05036 USA 1995).
9. Lowenstein L. F. *Title Publication* (Southern England Psychological Services, (2005); Lowenstein L.F. *The Comparison of Parental Alienation to the Stockholm Syndrome* [www.parental.alienation.info/index.html](http://www.parental.alienation.info/index.html) 2006); Lowenstein L. F. *Parental Alienation Due to a Shared Psychotic Disorder (Folie a Deux)* (Southern England Psychological Services, 2006).
10. Quadrio A/Prof Carolyn, *Parental Alienation Syndrome in Family Court Disputes* (School of Psychiatry, Paper presented at the Child Sexual Abuse: Justice Response or Alternative Resolution Conference convened by the Australian Institute of Criminology and held in Adelaide, 1-2 May 2003).
11. Reis, Steven Emeritus Professor of Psychology and Psychiatry at the Ohio State University [www.psychologytoday.com/who-we-are/200907/the-16-human-needs](http://www.psychologytoday.com/who-we-are/200907/the-16-human-needs). and Havercamp Susan [www.psychologytoday.com/who-we-are/200907/the-16-human-needs](http://www.psychologytoday.com/who-we-are/200907/the-16-human-needs),
12. Swerdlow-Freed, Daniel H. *New Research on Alienated Children Psychology* [www.drswerdlow-fried.com/forensic\\_article4.ht](http://www.drswerdlow-fried.com/forensic_article4.ht), Forensic Psychology – Family Court (Michigan USA, 2004).
13. van Rooyen C.L. Mahendra, B. *Psychology in Family and Child Law* (Jordan Publishing Limited United Kingdom, 2007).
14. Warshak, Richard A. *Building Family Bridges* [www.warshak.com/store/cr43html](http://www.warshak.com/store/cr43html)

15. Wilmoth, Deborah, *Family Court Psychological Evaluations* – (Australian Psychological Society, presiding officer of the Western Australia Board of Psychologists, MAPS State Forensic Mental Health Service Western Australia, 2007).