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**Family Law Newsletters**

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— **Franks & Zalev - This Week in Family Law**

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**Some Issues Never Go Away: Alienation vs. Estrangement**

*C.C. v. C.H.C.* (2025), 9 R.F.L. (9th) 272 (B.C. Prov. Ct.) — Reeves Prov. J.

**Issues:** British Columbia — Alienation

*C.C. v. C.H.C.* offers another sad example of the challenges courts face when confronted with complex allegations of parental alienation. In this case, Judge Reeves was tasked with understanding the underlying dynamics behind the teenage children's wholesale rejection of their mother. The dispute hinged on whether the children's estrangement from their mother was the result of parental alienation, realistic estrangement, or a combination of both. Judge Reeves also had to determine the most appropriate remedy for the children's well-being, whether through a custody reversal, therapeutic intervention, or another course of action.

The decision offers a thorough discussion about the differences between parental alienation and realistic estrangement, highlighting the multi-factor and faceted nature of these phenomena and the need for careful consideration of all contributing factors.

The parties in *C.C.* were married in 2004 and had two children. They separated in 2021 but continued to live in the same home for a period post-separation. The situation quickly deteriorated, becoming volatile. As Judge Reeves commented, "[t]o describe their relationship following this as acrimonious and dysfunctional would be a significant understatement and does not begin to approach the visible hostility they shared thereafter against each other."

In March 2022, the mother began surreptitiously recording events in the home, alleging a "shift in the home dynamic against her."

In August 2022, following a significant family blow-up — partially recorded by one of the children — the father left the home with both children. Since then, and despite multiple court orders, the children had been refusing all contact with their mother.

By the time the trial started in July 2023, the children were already 17 and 14 years old. The mother alleged parental alienation and, while she did not seek relief with respect to the older child, she asked the court to place the younger child in her sole care, and to order the use of the Building Family Bridges program to help repair their relationship.

The father denied any alienation and asserted that the children's estrangement from the mother stemmed from her own behaviour, including making unsubstantiated allegations, being controlling and obstinate, and violating their trust by secretly recording private family interactions.

The trial was protracted, unfolding over four days in July 2023, with additional hearing dates in October 2023, January 2024, February 2024, and March 2024, followed by five days in May 2024 and two final days in October 2024. Judge Reeves released his decision in January 2025, by which point the "children" were 19 and 16 years old.

It will come as no surprise to regular readers of this Newsletter, but the excessive time it takes to complete many high-conflict parenting trials — in this case, 19 months from start to finish — is simply untenable. The delay in reaching a resolution not only exacerbates and entrenches the emotional and psychological toll on the children involved but also prolongs the suffering of parents trapped in these protracted disputes. It is truly a travesty that our courts have not been allotted the necessary resources to adjudicate family law cases involving children quickly, efficiently and within a reasonable timeframe.

During the course of the proceedings, Judge Reeves conducted two *voir dices*. The first focused on the admissibility of 17 surreptitious audio recordings made by the mother prior to the father and children leaving the home. Although the court was critical of the recordings (as courts *always* are) — describing the mother's conduct as an "odious practice that should be discouraged" (as courts *always* do) — Judge Reeves ultimately admitted the evidence (as courts *often* do). He found that the probative value of the recordings outweighed their prejudicial effect. Or, to borrow the more cynical phrasing used in our November 4, 2024 issue ("Hey Siri — Please Delete All My Incriminating Text Messages — Part Two"), the recordings were simply "too good" and "too juicy" to exclude.

The second *voir dire* addressed whether Dr. Barbara Fidler, a well-known Ontario expert in high-conflict parenting disputes, could give expert opinion evidence based on a generic report she had authored concerning "parent-child conflict problems" (PCCP) — a term encompassing both parental alienation and realistic estrangement. Judge Reeves permitted Dr. Fidler to testify regarding the general indicators of PCCP, the research distinguishing alienation from estrangement, and potential interventions for children up to the age of majority.

For readers less familiar with PCCP, Judge Reeves helpfully summarized the key parts of Dr. Fidler's evidence, including the following:

1. **Parental Alienation** involves a child's rejection of a parent without objectively reasonable cause, often linked to the other parent's hostility and intentional or inadvertent undermining of the parent-child relationship.
2. **Realistic Estrangement**, by contrast, occurs where the child refuses contact for understandable reasons, including the rejected parent's emotional or physical abuse, rigid parenting, or dysfunctional conduct linked to mental health issues.
3. **Multi-Factor Model Preferred:** A multi-factor model of PCCP is preferable to a binary "either-or" approach. The latter incorrectly assumes a child is either alienated by the favoured parent or estranged due to the rejected parent's conduct — ignoring the child's own agency and the complex interplay of contributing factors.
4. **Alienating Behaviours Are Common — But Alienation Is Not:** While it is common for parents to make negative comments about the other parent — both intentionally and unintentionally — most children do not become alienated, highlighting the multifactorial nature of contact resistance.
5. **Factors That Can Predispose, Precipitate, or Perpetuate PCCP** include:
  - The child's age, temperament, resilience, and vulnerabilities.
  - Pre- and post-separation parental conflict.
  - Sibling dynamics.
  - Favoured and rejected parent traits, including mental health and willingness to change.

- Influence of third parties (therapists, professionals, extended family).
- Adversarial litigation and poor co-parenting communication.

**6. Indicators of Alienation in Children** may include:

- Weak or irrational reasons for rejecting a parent.
- Lack of ambivalence — idealization of one parent and total rejection of the other.
- Reflexive support for the favoured parent in conflict.
- Absence of guilt about cruelty toward the rejected parent.

While it was undoubtedly helpful that the parties in this case could afford to retain a leading PCCP out-of-province expert to testify directly, this level of evidence will be financially out-of-reach in most cases. The cost of litigation is already prohibitive for the majority of Canadians — before even considering the additional expense of hiring an expert.

That said, helpful information on PCCP may be put before the court by relying on the growing body of case law discussing alienation, estrangement, and related dynamics. In addition to this case, see e.g.: *L. (A.G.) v. D. (K.B.)* (2009), 65 R.F.L. (6th) 146 (Ont. S.C.J.); *Malhotra v. Henhoeffter*, 2018 CarswellOnt 18560 (S.C.J.) at paras. 97-110; *LS v. MK*, 2023 CarswellAlta 2281 (K.B.) at paras. 34 - 42; *Ginese v. Fadel* (2024), 4 R.F.L. (9th) 114 (Ont. S.C.J.) at paras. 204 - 208; and *D.C. v. N.B.C.*, 2024 CarswellAlta 1912 (K.B.) at paras. 104 - 125.

Once one court accepts the indicia of alienation and the differences between alienation and estrangement, query whether future courts can rely on the previous case as authority for those concepts. Notably, several decisions (including from appellate courts) have made clear that expert evidence is *not* required to establish alienation, including: *V.M.B. v. K.R.B.*, 2014 CarswellAlta 1870 (C.A.) at para. 16; *S.T. v. J.T.* (2019), 33 R.F.L. (8th) 253 (Sask. C.A.) at paras. 78-82; *A.M. v. C.H.* (2019), 32 R.F.L. (8th) 1 (Ont. C.A.) at paras. 31-36; *Bouchard v. Sgovio* (2021), 63 R.F.L. (8th) 257 (Ont. C.A.) at para. 72; *Artichuk-Murphy v. Murphy* (2019), 34 R.F.L. (8th) 327 (Ont. C.A.); *Fiorito v. Wiggins* (2015), 69 R.F.L. (7th) 5 (Ont. C.A.); *L.M.A.M. v. C.P.M.* (2011), 96 R.F.L. (6th) 365 (Man. Q.B.); *Bors v. Beleuta*, 2019 CarswellOnt 19975 (S.C.J.); *O.M. v. S.K.* (2020), 42 R.F.L. (8th) 343 (Ont. S.C.J.); and *E.M. v. M.Q.* (2021), 63 R.F.L. (8th) 443 (Ont. C.J.). These courts tend to be of the view that alienation is a "process" or legal concept and not a medical or mental health "diagnosis" so that the court can make a finding of alienation on a detailed analysis of the facts alone without expert evidence.

Caution, however, as some courts do suggest that expert evidence is required to establish the existence of alienation and the appropriate remedy. See, for example, *Williamson v. Williamson* (2016), 74 R.F.L. (7th) 18 (B.C. C.A.) at paras. 86-87; *Stavropoulos v. Stavropoulos*, 2021 CarswellOnt 13669 (S.C.J.) at para. 23; *Barrett v. Huver* (2018), 9 R.F.L. (8th) 244 (Ont. S.C.J.) at paras. 17-18.

What do *we* think? Glad you asked. Many courts have offered lists of indicia or factors for many different issues: Were parties cohabiting? [*Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.); *M. v. H.* (1996), 25 R.F.L. (4th) 116 (Ont. C.A.), aff'd (1999), 46 R.F.L. (4th) 32 (S.C.C.)]. When did parties separate? [*Kassabian v. Marcarian*, 2025 CarswellOnt 4365 (C.A.)]. Was an advance of money a loan or a gift? [*Chao v. Chao* (2017), 99 R.F.L. (7th) 281 (Ont. C.A.) at para. 54]. So if one accepts that alienation is, in fact, a legal concept rather than a medical diagnosis, there should be no issue determining alienation without expert evidence. And even if alienation *is* a medical diagnosis, we don't need an expert to give evidence that a set list of factors — my stuffy head, runny nose, watery eyes, coughing and sneezing — likely amounts to a cold. (Although I guess the astute among you may suggest this may result from nothing more than lay opinion evidence: *R. v. Graat*, 1982 CarswellOnt 101 (S.C.C.)].) But over-and-above all that, as noted above, not many litigants can afford the luxury of expert evidence. That said, we're not completely satisfied with our own position, especially in complicated multi-faceted cases.

After a thorough review of the evidence — including the surreptitious recordings — Judge Reeves concluded that this was a "mixed case", featuring both alienation and realistic estrangement dynamics.

The mother, according to the court, demonstrated "a rigid parenting style that is self-centered on her belief that she knows best", characterized by "one-way communication" and little room for the children's independent views. She also engaged in repeated attempts to shame the children using emotionally charged language.

But not to worry — the father, for his part, did *plenty* to undermine the mother. He involved the children in the financial details of the separation, telling them that their mother was trying to "extort" money from him through child support. He openly denigrated her to the children, made no meaningful effort to encourage their relationship with her, and violated multiple court orders relating to their care.

Despite the mother's flaws, Judge Reeves ultimately found that the children's rejection of her was "more the product of alienating behaviours and the associated enmeshment with [the father] and his views" than a natural reaction to poor parenting. In short, alienation outweighed estrangement.

Having determined that the father was the primary cause of the children's rejection of their mother, Judge Reeves faced the unenviable task of choosing a remedy — knowing full well that, given the children's ages, it was unlikely there was anything the court could do to effectively remedy the situation.

As we previously outlined in the December 4, 2023 (2023-46) edition of *TWFL* ("The Interim Alienation Switch-Er-Oo — Part Deux — This Time with Feeling!"), there are generally four ways of trying to deal with cases of proven alienation:

1. **Do nothing**, and leave the child with the alienating parent;
2. **Reverse custody**, placing the child with the rejected parent;
3. **Leave the child with the favoured parent**, but order reunification therapy; or
4. **Create a transitional placement**, typically with a neutral third party, paired with therapy, to eventually return the child to the rejected parent.

In this case, the mother advocated for Option 2 — a full custody reversal — paired with enrollment in the Building Family Bridges program, a controversial intervention designed to repair parent-child relationships following alienation.

Judge Reeves described Building Family Bridges as "a peer — reviewed program . . . recognized within academic literature, following the main study by Dr. Warshak, *Reclaiming Parent-Child Relationships*." He explained that the model involves court-ordered "restorative contact" with the rejected parent, paired with a period of "protective separation" from the favoured parent — typically no contact for at least 90 days.

But while Building Family Bridges continues to be ordered by courts throughout Canada, the controversy around it cannot be ignored. As we've previously discussed (and as the academic community continues to debate), some jurisdictions — including California and Colorado — have actually enacted legislation banning these types of programs. And, as Professor Nicholas Bala, Dr. Rachel Birnbaum, Jessica Farshait explained in *Children Resisting Contact & Parental Alienation: Strategies for Lawyers in High Conflict Parenting Cases* (Bala, Birnbaum, Farshait, 2024 CanLIIDocs 921):

**Research on these intensive transitional programs has significant limitations**, as, for example, **there are no control groups, and involvement generally requires a judicial decision that this is an appropriate case**, at least for custody reversal. The available research suggests that these programs are generally effective (80% or more) at supporting a stable custody reversal. **Although in theory the programs provide for the possibility of later engagement with the alienating parent to allow that parent to also have a healthy relationship with the child, these parents are often unwilling to engage** in a custody reversal.

**The research about these intensive programs has been heavily critiqued**, especially by feminist scholars and advocates, who argue that removal of children from the care of a custodial mother, especially one who has been the victim of family violence, may endanger the psychological well-being of children and violate their rights. **There are small number of highly publicized cases of older children and young adults reporting that they were psychologically abused in these programs** and were very relieved to have returned to the care of their allegedly alienating mothers. [emphasis added]

Although Judge Reeves was clearly motivated to fashion a meaningful remedy, he candidly acknowledged that there was nothing the court could do in respect of the older child, who had already reached the age of majority by the time of the decision.

As for the younger child — then 16 — Judge Reeves ultimately declined to order a full custody reversal, citing two key concerns.

First, there was insufficient evidence about the logistics of the proposed Building Family Bridges intervention. The court had no clarity on who would conduct the program, what precisely it would entail, or where it would take place. Given the serious implications of such an order, the absence of those details was fatal to the mother's request.

Second, and perhaps more significantly, the younger child was doing well academically, and Judge Reeves was concerned that uprooting him from his current environment — even temporarily — could disrupt his education and cause more harm than good.

Instead, Judge Reeves opted for a more cautious and incremental approach. He made a comprehensive order that included:

- A requirement that the younger child resume contact with the mother;
- An order that the child participate in counselling; and
- A direction that the matter be brought back before the court within 5 months, at which point the court would entertain further submissions — including whether a more intensive intervention, such as Building Family Bridges, would be appropriate at that time.

Judge Reeves' decision admirably strikes a reasonable balance: it acknowledges the presence of alienation, affirms the need for intervention, and adopts a cautious, incremental approach, rather than resorting to an abrupt custody reversal or a controversial treatment regime without necessary evidence to support it. But while the remedy may be measured, it is — tragically — almost certainly too little, too late. By the time the decision was rendered, the older child had already reached adulthood, and the younger was just two years away. After years of entrenched conflict and the absence of more timely intervention, the prospect of meaningfully repairing the parent-child relationship — something that is already extremely difficult to accomplish in these types of cases, even when children are much younger and intervention comes far earlier — has diminished dramatically. While we don't know what has happened since the decision was released in January 2025, we are not optimistic that things will have improved when the matter returns to court later this year.

### **Opposite Ends of the Motions for Temporary Relief Spectrum**

*Bourque v. Luker*, 2025 CarswellOnt 1497 (S.C.J.) — Pazaratz J.

*Richard v. Plavcic* — Endorsement — January 22/24 — Court File No. FS-23-106899-00 — Agarwal J.

**Issues:** Ontario — Motions for Temporary Relief

#### ***Bourque v. Luker***

We've all seen or been part of files that start very, very strong — perhaps *too* strong — and then seem to just peter out. This was what happened in *Bourque v. Luker*.

This case is Justice Pazaratz' plea that this practice stop. Or, in his words, "If you start it, finish it." It is judicial admonition against those cases that just don't go anywhere; the ones that just seem to meander through the system with nothing happening

for long periods, with interim motions every once-in-a-while. Nothing happens for years; then there is a brief flurry of interim activity; and the matter then goes to sleep again — sort of like the Mauna Loa of litigation.

In this case, the parties separated on September 23, 2020. They had two children — ages two and seven months at separation — now aged seven and five.

The court case started in 2021.

There were a series of interim motions.

And, then, everyone went to sleep. It was last before the court in October 2022 at a "To Be Spoken To" attendance.

There had been no movement toward a trial or final order for more than two years and there were no pending court dates — until January 17, 2025, when the Mother brought another interim motion for the release of some net proceeds of sale that had been sitting in trust for quite some time.

Although the unrepresented Father did not respond to the Mother's motion (and did not attend the motion), Justice Pazaratz was of the view that the court still had an obligation to ensure that everyone's rights were protected — *including* the rights of taxpayers who fund a court system overwhelmed with inefficient litigation. As noted by His Honour, if the parties were not able to settle their matter, they could have had a trial years ago, had they simply paid attention to the file and pursued their claims with any degree of diligence.

His Honour dismissed the Mother's motion finding there was insufficient evidence to support the relief she was seeking. But he also noted that, in his opinion, the Mother's motion should not have been brought:

[17] Motions for temporary relief are appropriate at the early stages of a court case. But once a temporary order is in place, that should be the end of the "motion stage." *Gafanha v. Gafanha*, 2022 ONSC 1613 (SCJ); *Crozier v. Nolin*, 2024 ONSC 4343 (SCJ); *Sham v. Lee*, 2024 ONSC 6598 (SCJ); *Persaud v. Jeffrey*, 2024 ONSC 6678 (SCJ).

- a. The older the court file — the longer the period since the initial temporary orders were granted — the greater the onus on lawyers and parties to explain why they are still litigating by motion and affidavit.
- b. Late-stage motions are unfair to judges, parties and children, because the inevitably voluminous materials are untested, and the court is unable to make necessary factual and credibility determinations based on affidavits.
- c. Where parties have had enough time to schedule a trial for a final order, they should no longer be litigating by motion seeking more temporary orders.
- d. Our court system barely has enough resources to accommodate unavoidable motions. Unnecessary motions clog up the system and cause delay for families who truly require interim relief.
- e. Endless motions for temporary orders with no apparent interest in proceeding to trial — this emerging trend is protracting litigation, driving up costs, frustrating litigants, and needlessly placing judges in the untenable position of having to decide complex issues based on inadequate information.

Finding that the matter had to move to final resolution, his Honour scheduled a Trial Scheduling Conference.

If you want a trial, have a trial; if you don't want a trial, settle your case; and if you want neither, know that endless interim motions may not be graciously received.

So, we can certainly appreciate that too many motions in a file that never goes anywhere is a problem.

But is the "fix" for this problem to just not allow parties to bring motions? Read on.

***Richard v. Plavcic***

*Richard v. Plavcic* is, in a word, concerning — and it is the result of an over-burdened, under-resourced court system. But, telling litigants they cannot access His Majesty's courts is not, in our opinion, a reasonable solution.

*Richard v. Plavcic* is not reported. It is a short endorsement from January 2024 that only recently came to our attention. Short enough that we reproduce the entire endorsement below (all **emphasis** added):

[1] The parties were married from July 2021 to August 4, 2023. There are two children of the marriage: Zoe-Rose was born in September 2021, and Zachary was born in November 2023 (after the parties separated).

[2] **The applicant Emilie Richard requested an urgent motion in October for a parenting order for Zoe-Rose. The court allocated parenting time on a 2-2-3 schedule. The court encouraged the parties to negotiate parenting time for Zachary, whose birth was imminent.**

[3] The conference is scheduled for September 2024.

[4] The respondent Timothy Plavcic alleges that Emilie isn't letting him have any parenting time with Zachary. Emilie argues that Timothy has to agree to certain terms arising from his substance abuse. Timothy wants an urgent motion hearing.

[5] **The parties can't litigate this case by motion. Their matter is troublesome, but so are the hundreds of other parenting cases in our system. This family has already had the benefit of one indulgence from the court. They should avail themselves of other extra-judicial means of dispute resolution, including a settlement meeting, mediation, or family therapy.**

With great respect — and we really mean it — a litigant accessing the court is not an "indulgence." Access to the courts is a guaranteed right in a free and democratic society. And to suggest that the *Father* cannot bring a motion for access to a newborn child because the *Mother* had previously brought a motion for access to one child (before the child that was the subject of the current requested motion was even born) until after a Case Conference that was not scheduled to take place until 9 months later must be contrary to rules of natural justice. It is also worth noting that the Mother likely was not successful on her previous motion given the shared parenting result and her current position that the Father had to jump through some hoops before she would allow for parenting time of the second child.

To deal with over-crowded subways, we do not arbitrarily restrict access to the subway.

To deal with traffic, we do not arbitrarily limit access to the streets.

To deal with an over-burdened court system, we cannot arbitrarily limit access to the courts.

Somewhere between *Bourque* and *Plavcic*, there must be a middle ground.