

The Role of the Lawyer in Preventing and Handling Child-Parent Contact Problems

By Philip Marcus, Judge (Retired), Jerusalem Family Court

Throughout the #Covid19 crisis, we've had to adapt: how we operate, like so many other key workers. But we have continued to operate and have been busier than ever. In many ways, as many of people's family-related challenges have been accentuated by the demands of confinement and the anxieties driven by prolonged concerns at the most primal of levels.

This paper attempts to capture many of the key themes. It is the second in a series of articles about the tasks of members of professions whose work brings them into contact with families with children, as they relate to child-parent contact interference. It follows on from articles published recently.

In *The Role of the Social Worker in Preventing Child-Parent Contact Failure*, (Contemporary Family Magazine, Spring 2021, p. 18-19) there was a description of the reasons for child-parent contact failure and how social workers can use their skills to minimize the damage caused to children where it appears that contact has failed or is about to fail. The emphasis is on prevention of contact failure; on early identification and swift intervention when it appears that contact is about to fail or has already failed; and on what to do to reverse the situation so that the child and the rejected parent will be reconciled.

This article considers the ways in which lawyers, faced with a situation in which the adult client describes a dispute in which a child may be at risk of losing contact with a parent or other close relative, or where contact has already ceased, should approach the case. It also describes the role of a lawyer who represents the child.

Not all legal systems provide adequate arrangements for dealing with high conflict cases relating to children. However, what follows applies, with the necessary adaptations, in all systems. Even where the system works, but especially where the laws and procedures are not adequate, the lawyer's tasks include trying to persuade parents to avoid litigation and reach agreement on the exercise and sharing of



yet started, their children are inevitably affected by the changes in their lifestyle;

- ▶ When the dispute develops into open conflict, the children very often find themselves exposed to arguments and verbal and physical fights;
- ▶ The child may feel angry, abandoned, and injured, and he may find himself taking sides in the dispute or being enlisted by one parent against the other;
- ▶ Some children whose parents are at odds stop seeing one of the parents. This is referred to in this article as 'contact failure'.
- ▶ In many cases one of the parents has acted or said things to the child which have caused the breakdown of contact. This last type of contact failure, caused by unjustified interference with child-parent contact, is parental alienation, which may be defined as actions or omissions by a parent which cause the child unjustifiably to cut off contact and connections with the other, previously loved, parent. This is a particularly injurious form of child psychological maltreatment.

Child-Parent Contact Problems

In the article on the role of social workers, the importance of multidisciplinary work in such cases was emphasized. Readers of this article are encouraged to read that article as well. However, for those who have not yet done so, the following are some of the major points which lawyers and other professionals need to be aware of when they embark on handling such cases:

- ▶ When the parents of children are at odds, even when divorce or separation proceedings have not

- ▶ Clinical observations, case reviews and both qualitative and empirical studies uniformly indicate that alienated children may exhibit a variety of psychological and physical symptoms, including feelings of loss and abandonment and often a blurring of the roles of the child and the alienating parent.
- ▶ A child whose parents have separated does not have an opportunity to observe a normative, loving couple relationship: when there is no contact with one of the parents, he cannot have a normal child-parent relationship
- ▶ Adults who were alienated as children suffer; in studies of adults alienated as children, it was discovered that these adults suffered from all or some of the following: low self-esteem, self-hatred, self-blame; significant episodes of depression; use of drugs or alcohol starting in adolescence; self-doubt about their own perceptions and feelings about themselves and others; difficulty trusting other people, and fear that they will never be loved; high rates of divorce; anger and resentment about having been emotionally manipulated and controlled; negative effect on their relationship with the alienating parent; alienation from their own children.

What can and should lawyers do?

A lawyer who takes on representation in a matter involving a parent of a child must be aware that he can have a substantial influence on the future of the child; if there are adversarial court proceedings, the child will inevitably be aware of high conflict between the parents, but if the parents truly see the best interests of the child as their guide, the child will emerge from the situation intact.

While legal professionals are required to represent the client's interests to the best of their ability, nothing in this obligation can override the moral and ethical duty to do no harm to children. This has practical ramifications for a lawyer who is asked to represent a parent:

- ▶ A lawyer who takes on representation in family cases should, of course, be fully aware of the law relating to parenting in the jurisdiction in which he practices, including legislation, case law and procedures.
- ▶ But he should also educate himself so that he has a suitable familiarity with the social sciences associated with the work.
- ▶ These include the elements of child development, psychology, psychiatry, personality disorders, social work and dispute resolution.
- ▶ He should make himself aware of all the services and professionals available to the client and the children.
- ▶ These include counselling professionals, experts in problem-solving parenting coaches, and mental health professionals.
- ▶ However, not all professionals are aware of the special nature of child-parent contact problems and how to resolve them, and those who are not knowledgeable and experienced can cause damage to the situation. Therefore the lawyer should carefully choose those to whom he refers clients.

- ▶ The lawyer should be conversant with the varying ways in which an alienating parent can cause a child to resist contact with the other parent, or to reduce contact, denigrate the other parent, etc.



- ▶ These include, among many others: presenting the other parent as being abusive or a danger to the child; threatening the child that contact with the other parent will cause the alienating parent to stop loving the child; telling the child that when he visits the other parent, the alienating parent will be sad and lonely; drafting the child as an ally against the other parent, including talking about the court proceedings; turning the child against the other parent's family; use of demeaning names for the other parent and encouraging the child to do so; relocating the child to live far from the other parent, without that parent's permission or an order of the court; failing to inform the other parent about medical appointments and health issues, or law relating to parenting in the jurisdiction in which he practices, including legislation, case law and procedures.
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If it appears that the client is engaging in alienating behaviours, the lawyer should advise about the legal consequences of such conduct; and if the client shows no signs of refraining from such actions or omissions, the lawyer is entitled to refuse to act for such a parent. Indeed, if the acts of the parent amount to abuse, there may be an obligation to report the abuse to child protective services or to the police, which overrides client-lawyer confidentiality.

When the client reports that he is experiencing problems with contact with a child, it is incumbent on the lawyer to advise that action be taken immediately. This should take the form of a letter to the other parent, suggesting that the child and the parents receive advice from an agreed expert so as to avoid deterioration; demand that contact be immediately resumed, as well as consulting with a psychologist or other professional who is familiar with the reasons for child resistance or refusal of contact. If no satisfactory response is received, the lawyer should advise immediate action in court, so as to obtain orders for reconciliation, therapeutic help for the child, and re-education for the parents so that they can properly co-parent despite the separation.

The need for immediate action cannot be emphasized enough. A child who is not in contact with one of the parents, and lives with the alienating parent, is exposed continuously to the alienating parent, and within a short time, as little as three months, the prospects for reconciliation, three months, the prospects for reconciliation, despite the separation.

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Early identification and immediate intervention

At the initial meeting with a potential client who is the parent of a child, the lawyer should



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without intensive specialist therapy, become extremely poor.

The lawyer should therefore be familiar with the procedures and law for bringing these matters before a judicial officer at the earliest possible opportunity, and with the types of orders which should be applied for. If the judicial officer is not sufficiently familiar with the subject matter, the lawyer's role includes bringing the relevant law and procedures, and the social science, to the attention of the court (taking care, of course, to do so in a way which is appropriate to the standing of the court).

The lawyer should also suggest that an independent lawyer or guardian ad litem be appointed for the child, giving instructions as to the role of that person as advocate for the child's position, or to present an independent view of the child's best interests (these are not always the same).

The lawyer for either parent should not have any communication, direct or indirect, with the child, except if specifically permitted to do so by the court. The client should be told that the lawyer's office is not an appropriate place for a child, even the waiting room. If a child approaches a parent's lawyer, the lawyer should immediately inform the court, and may suggest that the court appoint a lawyer or guardian ad litem for the child.

Where the voice of the child is to be heard, the lawyer should try to ensure that the person charged with bringing the child's views before the judge is aware of the possibility of improper influence on the views of the child, and the meaning of the child's demeanour and vocabulary, if these are inappropriate. In no case should the child be given the impression that his views override or will decide the case.

The lawyer should also be vigilant as to expert evidence to be presented to the court. It is usually preferable to have an agreed court-appointed expert who is knowledgeable and experienced in cases of this nature. However, this is not always possible, and in such a case the lawyer should be well prepared for the possibility that an "expert" brings forward material which purports to deny the existence of parental alienation, and/or pseudo-scientific journal articles.

The lawyer also has a cardinal rule in the drawing up of the orders to be given by the court. These should be precise and detailed, and should include time limits for performance and warn of the results of non-compliance by a parent.

Where possible, the court should be asked to fix an early date for review, in the presence of the parents, or progress in reconciliation, preferably before the same judicial officer, so that in the case of non-compliance, the court may be asked to impose sanctions on the recalcitrant parent.

However, in cases where the child's resistance is not affected despite reconciliation efforts and treatment, there are occasions when the best advice lawyer can give is to cease legal proceedings, while finding a way to make it clear to the child

that the parent does so, not because he does not love the child, but because he wants the child to have a more peaceful life, while leaving the door ajar for a resumption of contact in the future. A judge may be able to reflect this in a communication to the child, or even in court.

Child's lawyer or guardian ad litem
A lawyer appointed by the court should be aware of the current state of the law and the professional and academic literature relating to child-parent contact problems. He should also request powers to speak to the parents and any other person whose views and knowledge might be relevant. He should, whenever appropriate, press for speedy action by the court.

Such a lawyer should pay special attention to these issues:
▶ Unless specified in the order of the court appointing him, the role given is not simply to repeat what the child says, since this may be the result of influence by an alienating parent, or the product of the child's choice of an "easy" life by splitting – resolving the conflict of loyalties by seeing one parent as all-good and the other as all-bad.

▶ The task given includes reviewing all the testimony, experts' reports, lawyers' submissions, helped the client and the children involved.

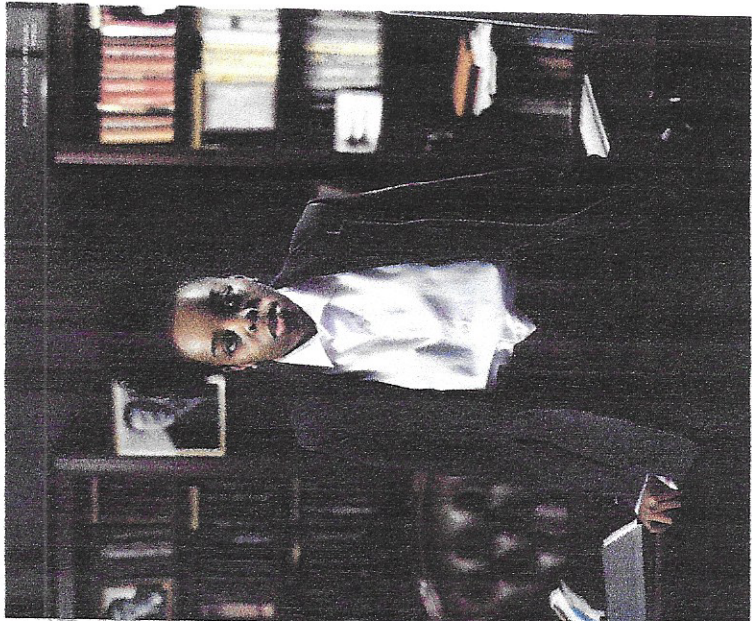
▶ The lawyer should also keep in mind that members of other professions may be involved, and in some cases, the lawyer should initiate contact with competent and experienced mental health and other workers, in order to work together and help the client and the children involved.

▶ There is a risk of being drafted on to the side of one of the parents, especially as one or both may be highly skilled at manipulation, and an alienated parent may be very angry and suspicious of anyone who does not agree with him.

Conclusion
Representing a parent or a child in contentious court proceedings relating to the child is fraught with challenges, but can also be highly rewarding.

In order to do so competently and ethically, the lawyer should arm himself with sufficient learning about the many issues, legal and non-legal, that are likely to arise. This requires training and self-education.

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