Proposal

Application to

International Tribunal for Natural Justice

To declare the Australian Family Law Act 1975 (and subsequent amendments), and its implementation and administration by the Family Courts of Australia as constituting violations of the content, spirit, and intent of

The United Nations Convention on the Rights of the Child (As ratified by the government of the Australian Commonwealth government in 1991)

And

Prejudicial to the Principles of Natural Justice

13th October 2015

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1. Forward

For over two decades, there has been significant and increasing concerns among charitable and voluntary organisations and among academic researchers in Australia, regarding the practices of Australian Family Courts in ordering children and young people to have contact with parents against whom there was clear and convincing evidence that they had abused the child(ren), either directly to the child or in the course of violent assault upon the other parent.

Such disregard for the safety and protection of children from harm and exploitation has led to many thousands of Australian children being subjected to continuing abuse and in some instances has led to their deaths at the hands of such parents.

2. Proposal

To make an application to the International Tribunal for Natural Justice to demonstrate that the Australian Family Law Act and its implementation via the Family Courts, the Judiciary, the legal system and law enforcement are in direct breach of the United Nations Convention on the Rights of the Child (UNCRC) Articles 9 and 24 (As per Section 6.2 of this proposal) and recommend changes accordingly towards justice and fairness and recognition of the rights of children in Australia.

This proposal seeks funding of $10,000.00 to pay for Court Room costs / facilities in which the Application to the ITNJ can be heard. All other services, including the time of the ITNJ are provided pro bono.

3. Introduction

The principle difficulties in the application and administration of family law in Australia is that most of such cases presented to the Family Courts involve allegations of domestic violence and the inherent abuse of children and the direct physical, emotional, sexual abuse of children and their neglect. Yet the Family Law Act which determines the future care and welfare of children after parental separations is a federal enactment Court and are the jurisdiction of the federal Family Courts which do not have the STATUTORY POWERS, EXPERTISE, nor THE RESOURCES to investigate such allegations. (see Federal Parliamentary Committee Report `Every Picture tells a story' – 2003 and Chief Justice Diana Bryant – Brisbane Speech 2009). Such child protection powers are a State function and they have the skilled personnel to conduct such investigations. However, they are involved in less than 25% of such Family Court cases and it is commonly but incorrectly and wrongly believed by such State authorities that the Family Court powers exceed their own in such matters. Consequently in such cases where they do become involved, they only perform a perfunctory and cursory investigation and commonly leave the Family Courts to decide on whether children are at risk if ordered into contact with and even the shared parenting of allegedly abusive parents.

In the absence of a statutory investigation or sometimes despite such an investigation, the Family Courts appoint Family Consultants/ Report Writers drawn from psychologists, psychiatrists and miscellaneous others, to give opinions on whether the children are at risk of abuse if ordered to have contact with or to live with allegedly abusive parents. Such appointees to not have the necessary expertise, nor the time to conduct investigations into child abuse allegations and usually allocate periods of time between 45 minutes and two hours in interviewing the parents and sometimes the children in an office and base their opinions on whatever information they can extract from those parties during such limited time. They do not seek nor consider any corroborative and supportive evidence from independent sources to confirm or otherwise, the abuse allegations.

As a consequence of this confused and inadequate system of investigation children are being Court Ordered to live with or spend time with parents who abuse them, essentially amounting to state sanctioned child abuse and endangerment.

The net effect of this is children having to live in abusive environments suffering physical abuse and / or emotional abuse and/or psychological abuse and / or sexual abuse. The flow on effects from this are high youth suicide rates, drug usage, mental illness issues and a heavy burden being placed on society to support these children as they become adults unable to work or contribute effectively to society. The problems for children are further exacerbated when their voices carry no weight, their views and wishes are ignored and in many cases they are being alienated from their primary carer by the Courts.

It is not unusual to have cases where the Judiciary has disallowed evidence to be used in Family Law proceedings concerning custody and welfare of children where physical, emotional, psychological and sexual abuse of children has been proven and can be demonstrated through Medical, Department of Community Services, Police and Criminal Records e.g. For sexual assault, paedophilia, domestic violence and other criminal acts. When a child reports such abuse, it is often said to have been coerced by the mother, despite independently collected and verifiable evidence to the contrary. Further compounding this problem is the use of Court appointed consultants, protected by legal immunity, whose reports are biased and fabricated towards a result favoured by the party prepared to pay the consultants fees. It is well known throughout the legal community that Lawyers and Barristers will seek out and recommend specific consultants towards achieving an outcome in favour of their client as opposed to what is in the best interests of the children.

There are case examples whereby women and children have left relationships due to issues associated with domestic violence and sexual abuse. There is one such example whereby the father of a young girl had a criminal record for paedophilia and was HIV positive. When the mother attempted to use these facts to gain full custody of the child, the evidence was dismissed, with the mother being seen to be alienating the father, with full custody being Court Ordered to the father. Consequently the child suffered 12 + years of Court Ordered physical and sexual abuse at the hands of her HIV Positive, paedophile father and step brother.

The actions of the Australian Family Law Act, the Family Courts and the Judiciary are in direct breach of UNCRC to which Australia is a signatory.

4. International Tribunal for Natural Justice

The International Tribunal for Natural Justice (ITNJ) was established on 15 February 2015 to exist and function according to the Constitution of the International Tribunal for Natural Justice pursuant to the ultimate purpose of realizing equal rights and dignity for each member of the human family – restoring truth and reason to the delivery of justice in the world.

The ITNJ operates in the same way as any other Court, except for the fact that its focus is on natural justice and morality rather than statute. The hearing will be conducted in a normal Court Room and will be completely open. The media will be welcome to attend. It is also intended to film and stream proceedings online.

The Chief Justice is Sir John Walsh of Brannagh. Sir John has specialty areas including Constitutional Law, International Law, Mediation (national and international) and Hague Convention cases.

- Barrister-at-Law
- Constitutional Lawyer
- International Lawyer and Advocate
- Admitted to practice in Australia (Victoria, New South Wales, High Court), Norfolk Island, England and Wales, Ireland, United States of America.
- Honourable Society of the Inner Temple
- Honourable Society of Kings' Inns
- Fellow of the Royal Society of Arts
- President of the Norfolk Island Bar Association
- Accredited Mediator (national accreditation in Australia)
- Accredited Advocacy Coach (Australian Advocacy Institute)
- Notary Public (Archbishop of Canterbury)
- Member of Human Rights Institute (London)
- Australian Constitutional Trust
- Association of European Lawyers
- South Pacific Lawyers Association
- Acton Denning Mediation
- International Member of Australian Institute of Company Directors
- International Tribunal for Natural Justice (ITNJ). The ITNJ is established in England. Sir John was appointed as the first judge of this honourable Court which will deal with human rights issues on an international level.

5. The Proposed Application

To demonstrate that the Australian Family Law Act and its implementation via the Family Courts, the Judiciary, the legal system and law enforcement are in direct breach of the United Nations Convention on the Rights of the Child (UNCRC) Articles 9 and 24 and recommend changes accordingly towards justice and fairness and recognition of the rights of children in Australia. In so doing, the Application will demonstrate other the Australian Family Law Act and its implementation via the Family Courts, the Judiciary, the legal system and law enforcement and provide recommendations.

5.1. Evidence to be Compiled for this Application

5.1.1. Examples of breaches / problems

Will need to compile examples of individual Australian Family Law Judgements that demonstrate:

1. Direct breaches of the UNCRC by the Australian Family Law Act and it's implementation.
2. Bias throughout the Family Law system, whether this be actual or apprehended.
3. Child endangerment as a result of Court Orders.
4. Court Orders that are in breach the Australian Constitution, including Conspiracy to pervert the course of justice and assault on a child.

5.1.2 Potential witnesses to be called

It is intended that high profile witnesses who have direct and specialised knowledge of the failings of the Australian Family Law Act, its interpretation, implementation and enforcement will be called to give evidence. This includes:

- Leading academics e.g. Elspeth McInnes
- Politicians
- Psychologists / Doctors
- Lawyers / Barristers

Other witnesses include parties who have had direct involvement with the Australian Family Law Act, its interpretation, implementation and enforcement. This includes children, mothers and other parties who have suffered as a result of Judgments handed down and Orders made.

5.2 Applicant

The National Child Protection Alliance ("NCPA")

5.3 Respondent

The Commonwealth of Australia, more specifically the Commonwealth Attorney General, or its nominated representative. In the current political climate, this would be George Brandis or his nominated representative.

6 Recommended Changes

To provide recommendations and suggestions as part of the process towards the objective of having the Human Rights of children recognised and protected under the Australian Family Law Act such that:

- Children have a right to be heard and have opinions
- Children have their own representation
- Children are not endangered by Court Orders, the Family Law Act or its implementation, or the processes in the lead up to the involvement of Family Law proceedings.

Such recommendations to include:

- Independent Children's Lawyer (ICL) to specifically represent the child and provide a vehicle through which they can be heard.
- The removal of legal immunity for Court appointed Consultants so as they are both responsible and accountable for the reports they produce.
- Removal of the privacy provisions around Family Law Proceedings.
- Establishing a tribunal based approach rather than the adversarial Court based system currently utilised.
- Any party with a criminal record for Domestic Violence, Child Abuse, Paedophilia, Sexual Misconduct or any other act that may reasonably present a danger to a child be automatically precluded from all but supervised contact.
- Protective measures to be introduced for women and children separating when domestic violence is involved. This may include:
    - Safe houses
    - Intervention Orders to include immediate admission into treatment and support programs e.g. anger management, violence programs, counselling, etc
- The cost of litigation of the parties be deemed as income for the purposes of child support payments. i.e. If a party can afford to pay high legal fees, they can afford to pay child support.
- Penalties to apply where an Applicant is found to be vexatious, including Orders to prevent future vexatious litigation.
- Criminal prosecution of any party acting in a position of power and / or authority in relation to children's matters who is found to be acting directly or indirectly against the needs best interest of a child.

7 Additional Information

7.1 Problems with the Australian Family Law Act and its implementation

The Family Law Act 1975 and subsequent amendments are solely concerned with the rights of parents and children and young people are treated merely as their "Goods and Chattels" (as under 19th Century laws) to be divided up as the Courts may choose.

Children's Rights to give their views - Children and young people under the age of 18 years are not permitted in Australian Family Courts to participate in proceedings as a party in their own right and their views, wishes, and feelings are treated as irrelevant. An Independent Children's Lawyer ("ICL") is appointed, however only to give his/her views to the Court of what he/she considers to be in the best interests of the child. The ICL is not required to place the children's views, wishes and feelings before the Court nor even to speak with the children before doing so. This is a direct contravention of children's rights under the UN CRC.

Children's Rights to be protected from Harm and Exploitation - In implementing the Family Law Act, the Courts are determined to ensure that parents rights to shared parenting, custody and control over children, and contact with their children is paramount and inalienable. Accordingly, evidence of domestic violence (inherently involving the abuse of children), child abuse including sexual abuse, drug addictions, criminal behaviours and convictions, parental mental illness (particularly Anti-Social Personality Disorder, Narcissistic Personality Disorder & other similar disorders) are dismissed or disregarded and excluded from consideration of the best interests of the child. In consequence many thousands of children are suffering continuing parental abuse and neglect and if they disclose / report such further abuse the Courts order that it must not be reported to the statutory State Child protection authorities. Further, the Courts systematically fail to order that the children receive psychological counselling, despite the severity of the emotional/ behavioural disorders they suffer as a consequence of the continuing abuses.

Secrecy of Family Law proceedings makes public awareness of Family Court orders, challenges and problems very difficult. Without public awareness, there is no accountability and no opportunity to implement positive change.

Another issue is judicial discretion in Family Law matters. In particular, this creates issues when it comes to evidence that will or will not be considered. There are plenty of cases where very relevant hard and fast facts, including criminal records are simply dismissed.

Legal immunity of Court appointed consultants introduces opportunities for corrupt practices and manipulation.

The adversarial nature of the legal system is not conducive to outcomes in the best interests of children.

7.1.1 Secondary Problems

The legal system, including law enforcement, does not take into account the realities of families separating as a result of domestic violence and sexual abuse. The system does not provide any real protections for the parent / children who are victims to the abuse after separation from violent and abusive relationships, nor does it provide any support to the perpetrator of the abuse.

The legal system, including the Child Support Agency, does not take into account the impacts of vexatious litigants who perpetuate litigation unnecessarily, on the Respondent, typically the mother and the children. Litigation creates an adversarial environment that is not conducive to the wellbeing of children, or any of the parties involved. It consumes the primary caregivers time and resources, making life unnecessarily difficult for the children. When you consider that many litigants are spending vast sums of money, typically in the order of $150,000+ on actions that would best be dealt with via mediation. Many fathers will not make child support payments stating that they have no money. Yet they are able to afford to pay large amounts of money in legal fees.

7.1.2 Flow on effects

The problems cited above result in children being forced under Australian law to live in violent and abusive situations. This leads to children growing up with psychiatric disorders, addiction issues and being unable to make a positive contribution to society.

In situations where families separate as a result of domestic violence, violent partners are seeking retribution against the party who initiated the separation. In recent times there has been a spate of women being murdered as a result.

When mothers leaving violent relationships report issues of domestic violence or sexual abuse, they are typically accused of alienating the father, typically resulting in the Judiciary ordering custody of the child subject of child abuse allegations (even when it can be proved) be given to the party who perpetrated the abuse.

7.2 United Nations Convention on the Rights of the Child and the Australian Family Law Act

Article 24

Paragraph 1: "***States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services***."

The Australian Family Law Act and the Judiciary are in clear breach of this. Court Orders are regularly made which prohibit a child receiving health care services without the consent of both parents. Given the adversarial nature of Family Law, it is typical to find that parents are never in agreement. The net is the child being deprived of his or her right to access such health care services. Such Orders made by the Judiciary under the FLA also breach paragraphs 2 (a) and 2(b) of Article 24.

Paragraph 2: "***States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:***

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;"

Article 9

Paragraph 1: "***States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence***."

Paragraph 2: "***In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known***."

Paragraph 3: "***States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests***."

In breach of paragraph 2 of this Article, the Judiciary under the Family Law Act in Australia effectively "gag" interested parties by making adverse rulings against the party for expressing views or concerns. For example, if there is an allegation of domestic violence made by a mother against the father, it is treated as an attempt to alienate the father from the children. Through not wanting to run the risk of having custody of children being given to an abusive father, the mother is typically advised to remain silent on issues of domestic violence, even when it can be substantiated.

Paragraph 2 of this Article is further breached through utilisation of Court appointed Family Reporters (Psychiatrists and Psychologists). Judges will typically request the parties suggest a Family Report Writer. In a great many situations, it is the father who has the financial resources to mount a legal case rather than the mother. It is not uncommon for a mother to be self-represented. The father's Barrister is normally the party who suggests the Family Report Writer. Undoubtedly they select a Family Report Writer who they know will support the Father's viewpoint. The effects of this are as follows:

- The wishes of the children, who are questioned in the process, are not considered or are not treated as credible. In some instances, the Family Report Writer will attempt to discredit the child. This also breaches Article 9, paragraph 2 by removing the opportunity of the child to state his or her views.
- It enables paragraph 3 of Article 9 to be breached through Court Orders that are contrary to the best interests of the child. Additionally, Family Report Writers will often choose to ignore substantiated and documented child abuse. They will often deliberately set out to water down documented criminal records for violence and actively seek to discredit ANY information provided by the children that could be seen as negative towards the party paying the bill (normally the father)
- It enables and facilitates breaches of paragraph 1 of Acritical 9 whereby children are separated from a parent against their will and not in their best interests.

The existing processes and practices of the Family Law Courts are very much open to be exploited through the use of biased Family Report Writers and a party's lack of financial resources to be able to afford adequate legal representation. This creates the situation whereby Judges are making Orders based on biased, inaccurate and often false reports.

7.3 Family Law Act (FLA)

Under the presumption of shared care in the FLA, Clause 3 of Article 9 is treated more like an obligation than a right. Although this presumption is rebuttable, the reality is that the FLA allows for the exploitation of this clause, which is contrary to the best interests of the child.

The strict privacy provisions around Family Court proceedings and outcomes has the effect of further removing any rights of a child contrary to the UN Convention. It provides a mechanism for unscrupulous participants in the Family Law system to knowingly and actively produce, or cause to be produced information that is inaccurate, false of otherwise perverted to create a miscarriage of justice which is not in the best interest of the child. This same mechanism protects those who produce such information. For example – Barristers will choose a Family Report Writer based on a known bias. Despite knowing the history of the party they represent, it becomes more about winning that what is in the best interest of the child. Family Report Writer's are supposed to provide a balanced view of both parents and produce an objective assessment as to which parent will provide living arrangements that best cater for the physical, emotional and developmental needs of the child. However, this very rarely happens. There is so much money to be made by the Report Writers that objectivity and impartiality are lost. Thus, Family Law Lawyers and Barristers will utilise and exploit the services of the many Family Report Writers to simply win for the client which is contrary to the best interest of the children. In a great many cases, Judges award custody of a child to the parent who is abusing that child.

Any mention of the abuse results in an alienation defence. Despite Parental Alienation Syndrome (See Section 7.0) being disproved, it is still effectively used in Australia within the Family Courts to silence mothers from being able to raise child safety concerns.

Another issue is judicial discretion in Family Law matters. In particular, this creates issues when it comes to evidence that will or will not be considered. There are plenty of cases where very relevant hard and fast facts, including criminal records are simply dismissed.

7.4 Australian Constitution

Under the Australian Constitution, the Australian Family Law Act, its interpretation, implementation and enforcement result in Constitutional violations, in particular:

- Conspiracy to pervert the course of justice
- Abuse of a child

8.0 Parental Alienation Syndrome (PAS)

Source: Wikipedia Definition of PAS
https://en.wikipedia.org/wiki/Parental_alienation_syndrome

PAS is a term coined by Richard A. Gardner in the early 1980s to refer to what he describes as a disorder in which a child, on an ongoing basis, belittles and insults one parent without justification, due to a combination of factors, including indoctrination by the other parent (almost exclusively as part of a child custody dispute) and the

child's own attempts to denigrate the target parent. Gardner introduced the term in a 1985 paper, describing a cluster of symptoms he had observed during the early 1980s.

Parental alienation syndrome is not recognized as a disorder by the medical or legal communities and Gardner's theory and related research have been extensively criticized by legal and mental health scholars for lacking scientific validity and reliability. However, the separate but related concept of parental alienation, the estrangement of a child from a parent, is recognized as a dynamic in some divorcing families. Psychologists differentiate between parental alienation and parental alienation syndrome by linking parental alienation with behaviours or symptoms of the parents, while parental alienation syndrome is linked to hatred and vilification of a targeted parent by the child.

The admissibility of PAS has been rejected by an expert review panel and the Court of Appeal of England and Wales in the United Kingdom and Canada's Department of Justice recommends against its use. PAS has appeared in some family court disputes in the United States. Gardner portrayed PAS as well accepted by the judiciary and having set a variety of precedents, but legal analysis of the actual cases indicates that as of 2006 this claim was incorrect.

No professional association has recognized PAS as a relevant medical syndrome or mental disorder, and it is not listed in the International Statistical Classification of Diseases and Related Health Problems of the WHO or in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM).

Implications of PAS

Sources:

Elspeth McInnes
PARENTAL ALIENATION SYNDROME: A PARADIGMFOR CHILD ABUSE IN AUSTRALIAN FAMILY LAW
http://www.academia.edu/3493591/PARENTAL_ALIENATION_SYNDROME_A_PARADIGM_FOR_CHILD_ABUSE_IN_AUSTRALIAN_FAMILY_LAW

Paula J. Caplan Ph.D
Psychology Today Website
https://www.psychologytoday.com/blog/science-isnt-golden/201106/parental-alienation-syndrome-another-alarming-dsm-5-proposal

PAS as a tactic used by many perpetrators of child physical, sexual and emotional abuse to influence decision makers and the court system, that has resulted in abused children being placed in the hands of their abusers. It is estimated that over 58,000 children a year are ordered into unsupervised contact with physically or sexually abusive parents following divorce in the United States alone.

When applied to a parent in a case involving an allegation of child sexual abuse, it is nearly always applied to a woman whose child is allegedly being molested by the father. Despite the construct of PAS is unscientific, composed of a group of general symptoms with no empirical basis, PAS has in some courts proven an astonishingly effective vehicle for deflecting the focus from the abuser and simply claiming that the woman must be lying, and coaching her children to lie, because she has the alleged “mental illness” of PAS. The claim is that without cause, she wants to turn the children against their father.

In the Australian Family Court, Parental Alienation as a “syndrome” may not be recognised, however it is open to the concept of the act of Parental Alienation and the effect it has on the children. The net effect is the same.

What often gets short shrift, as a result, is even the consideration of the possibility that the children are truly being molested. Virtually everything that is sometimes a sign that a child is being molested - such as fearfulness when it is time for a visit with the abuser or vaginal bleeding or infection in a 2-year-old - is instead interpreted as further "proof" that the mother has PAS. In these two examples, through use of PAS, the child's fearfulness is cast as the result of the mother's efforts to make the child frightened of the father or terrified of not pleasing her by wanting the visit to take place, and the vaginal problems are assumed to be caused by the mother in order to provide fake evidence of the molesting.

PAS begins from the premise that children who allege serious abuse by a parent are lying and that they are made to lie by an apparently protective parent. PAS thus offers violent controlling ex- partners a pseudo-scientific set of ‘symptoms’ to deny allegations of child abuse and pathologise the alleging child and protective parent.

PAS relies on denying the capacity of children to recognise and articulate their experiences and further denies the child’s right to safety, whilst privileging the rights of the accused parent to enforce a relationship with the child. PAS is a winner with violent parents because:

1. it enables the abuser to occupy the role of victim and
2. assists and legitimises their continuing access for abuse.

Children’s complaints of harm by a parent are, within the logic of PAS, proof that the child is subject to PAS by the other parent. Gardner’s recommended cures include a regime of fines and imprisonment for the ‘recalcitrant’ parent, as he calls mothers, through to removing the child and making it live with the parent the child states has harmed him/her, without contact with the protective parent.

In Australia, mothers who defy court orders to expose their children to further abuse by their father face escalating consequences of education courses, fines, imprisonment and reversal of custody, with restricted and supervised contact. The regime which has been operating in Australian courts mirrors Gardner’s recommendations (Family Law Council 1998).

Paradoxically, the system failure to properly protect children from parental violence creates the circumstances where mothers have increasingly fled in preference to handing their children over for abuse during contact. This in turn is used to justify a reversal of custody. In one case a three year old child was taken from her mother – the only parent she had ever lived with, and who had successfully raised two other children from a previous relationship – and ordered by the court to live with her father who suffers from AIDS and has a long criminal record including sex offences. The mother was placed on supervised restricted contact for three days a month. This regime remained unchanged, despite the mother's attempts to increase time spent with her daughter and many reports by teachers and others to state child protection services based on the child's disclosures of abuse. At Easter this child, when aged 7, held her mother and the supervisor of contact at bay with a knife and begged her mother to kill her rather than take her back to her father. This father accused the mother of Parental Alienation Syndrome. This outcome is a consequence of the mother running away with the child in preference to presenting her for contact with a person who the mother saw as dangerous to the child. Such outcomes reinforce the court's power to impose its decisions, and to punish those who disobey.

The court's emphasis on punishing mothers who flee with their children in preference to repeatedly exposing them to abuse replaces the paramountcy principle of the 'best interests of the child'. The rationale which justifies removing young children from the care of the only parent they have ever lived with and forcing them to reside with the parent they allege has abused them is the paradigm of Parental Alienation Syndrome. Without the circular incoherent logic of PAS that parents who allege abuse are abusers, the court's decisions to reverse residence cannot be made consistent with any notion of the child's best interests

PAS, or Parental Alienation and the effect it has on children, will continue to provide a justification framework for court-mandated child abuse.