

Damages for Parental Alienation?

[Glegg v. Glass, 2020 ONCA 833 \(CanLII\)](#)

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Parental alienation is a most insidious form of child abuse, a phenomenon that leaves children scarred and innocent parents victimized. If and when the child is returned, the healing process begins, though often times the damage is difficult to repair and the financial and emotional wear and tear is immeasurable.

Sometimes “left-behind” parents consider whether a court action is feasible to receive damages from the alienating parent as compensation for the tortuous journey they travelled to recover their “stolen” child.

In a recent Ontario case, the Court of Appeal considered an appeal by a father who sued his former wife and her new husband in a Florida court for \$9.6 million in damages, including punitive damages, arising from an intentional course of conduct to interfere with his custodial rights and intentional infliction of emotional distress. [Glegg v. Glass et al 2020 ONCA 833](#).

The father alleged that his former wife moved with his daughter to Florida in 2014 in the face of a 2001 joint custody agreement that provided both parents would remain in the Oakville, Ontario area until their daughter turned 18 years. The unilateral move led to extensive litigation and the return of their then 15-year-old daughter to Ontario. However, when the young girl turned 16, she sought and obtained an emancipation order, withdrawing from both parents’ control. Father’s appeal of this order was not successful. Later, his daughter brought a child support application against him, which she eventually abandoned.

The recourse to the Ontario courts was related to an application based on Letters of Request (letters rogatory) from the Florida court for the production of documents in the possession of his former spouse’s lawyers, as well as from the lawyer for his now estranged daughter, and Justice for Children and Youth, a non-profit organization providing legal services for children under the age of 18.

The application judge dismissed the father’s application concluding it would be against public policy to enforce the Letters of Request from a foreign court “in aid of a cause that is forbidden in Ontario” and because it would be a breach of solicitor-client privilege.

The heart of the court’s dismissal was based on *Frame v. Smith* [1987 Canlii 74 SCC](#) where the high court held that a parent cannot sue his spouse or third parties for interfering with a parental relationship. In *Frame* the court stated:

"Permitting civil actions against the custodial parents cannot be said with any certainty to be in the best interests of the child...Like the resort to fines and imprisonment, these proposed remedies could encroach on the resources of the custodial parent and could cause the child to suffer from the knowledge that one parent has taken such drastic action against the other."

Query whether with the passage of 33 years since the Frame decision and the almost universal acceptance of advanced research and judicial analysis of parental alienation, this decision would stand scrutiny today, if the right case presented itself.

While an action in damages for parental alienation has not yet succeeded in Canada, it is a viable claim in the United States. *Segal v. Lynch* May 3, 2010 in the New Jersey Court of Appeal, began in Ontario where child custody, child support, spousal support, and property division was determined. A few years later the children and their mother moved to New Jersey and she effectively hid the children from their father for three months.

The children's father alleged that the mother's actions alienated the children such that they no longer sought a relationship with him. He sued his former spouse for intentional infliction of emotional distress.

At trial the judge dismissed the father's lawsuit. The principal grounds for the dismissal were the finding that the facts of the case were not sufficiently egregious to satisfy a claim for intentional infliction of emotional distress. The court also said that the father's allegations should be dealt with by the family court and not in a separate civil action.

On appeal the trial judge's decision was affirmed, but a different analysis of the law was invoked. The appeal court held that an action for damages alleging parental alienation was available, however, the best interests of the child and the doctrine of *parens patriae* must come into play.

The appeal court said that the obvious witnesses in such a trial would be the children and the best interests of the child would not permit the action to proceed. The court did, however, confirm that the cause of action could be made out where the facts were so outrageous that justice required intervention. They suggested that prolonged alienation or repetitive allegations of unfounded sexual abuse may provide adequate grounds.

Parental alienation is a complicated issue, but with the amendments to the [Divorce Act](#), soon to come into effect, our legislators have recognized the dynamics associated with alienation by including a provision that a court must consider a parent's ability to support the child's relationship with the other parent, empowering the court to prioritize family connections when making parenting orders.

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