

PARENTAL ALIENATION SYNDROME: IS IT VALID?

“Parental alienation syndrome” (“PAS”) is a controversial theory which has been increasingly used in child custody battles before family courts in overseas jurisdictions. This article begins with defining PAS, and elaborates on its use in cases seen in Australia, the UK, and the US. It then proceeds to discuss the scientific, ethical, diagnostic and legal issues related to PAS. The article concludes that the acceptance and indiscriminate use of PAS may be dangerous in the medical and legal arenas, as it may result in a failure to comprehensively investigate abuse allegations, and a failure to account for complex family dynamics in custody decisions. Ultimately, a child-centric approach, rooted in comprehensive family assessment and interventions, should be recommended in child custody cases.

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I. Introduction

1 Divorce is a rising trend in Singapore,¹ with the proportion of adults who have divorced at least twice also on the rise.² In 2016, 48% of divorces under the Women's Charter³ had at least one dependent child under 18 years.⁴ In divorces under the Administration of Muslim Law Act,⁵ 56% had at least one dependent child.⁶ From 2005 to 2015, The Family Justice Courts recorded more than 50,600 children who saw their parents file for divorce.⁷ Most of these children were young, with seven in ten aged below 14 years.

2 The majority of custody arrangements are settled privately or through mediation. However, a proportion of these divorces are high-conflict and proceed to litigation in family courts. High-conflict cases involves great distrust and anger between parents, with children often caught in between. Custody battles in such cases are highly stressful, with a higher probability of allegations of child abuse or domestic violence in high-conflict cases.⁸

3 "Parental alienation syndrome" ("PAS"), also known as "parental alienation disorder", is a controversial theory which has been increasingly used in child custody battles before family courts in Australia, the UK, and the US in the last two decades. In Singapore, parental alienation has been mentioned in some local cases in recent years.⁹ Hence, it is important for us to take a closer look at PAS: does it have good scientific and diagnostic bases? Should this concept be admissible in legal settings?

1 Singapore Department of Statistics, *Statistics on Marriages and Divorces: Reference Year 2016* (July 2017) at p 13.

2 Singapore Department of Statistics, *Statistics on Marriages and Divorces: Reference Year 2016* (July 2017) at p 79.

3 Cap 353, 2009 Rev Ed.

4 Singapore Department of Statistics, *Statistics on Marriages and Divorces: Reference Year 2016* (July 2017) at p 84.

5 Cap 3, 2009 Rev Ed.

6 Singapore Department of Statistics, *Statistics on Marriages and Divorces: Reference Year 2016* (July 2017) at p 99.

7 Priscilla Goy & Janice Tai, "Mandate Counselling for Children in Divorces" *The Straits Times* (26 July 2015).

8 Stephanie J Dallam & Joyanna L Silberg, "Myths That Place Children at Risk during Custody Disputes" (2006) 9(3) *Sexual Assault Report* 33 at 42.

9 See *Ministry of Social and Family Development (MSF) v GCC* [2017] SGYC 2; *ABW v ABV* [2014] 2 SLR 769.

II. What is parental alienation syndrome?

4 The term “PAS” was coined by child psychiatrist Richard Gardner to describe, in the context of a custody dispute, a child’s unjustified denigration of a parent, which comes in the form of trivial, highly exaggerated or totally untrue accusations.¹⁰ The child is found to form a strong alliance with one parent while strongly rejecting a relationship with the other parent.¹¹ In Gardner’s experience, the preferred parent whom the child aligns with is almost always the mother,¹² and the breakdown of the parent–child relationship is solely attributed to the custody dispute.¹³

5 Gardner proposed eight symptoms of PAS:¹⁴ (a) the campaign of denigration; (b) weak, frivolous and absurd rationalisations for the denigration; (c) lack of ambivalence;¹⁵ (d) the “independent-thinker” phenomenon;¹⁶ (e) reflexive support of the alienating parent in the parental conflict; (f) absence of guilt over custody to and/or exploitation of the alienated parent; (g) presence of borrowed scenarios;¹⁷ and (h) spread of the animosity to the extended family of the alienated parent. In typical cases, Gardner stated that children with PAS will exhibit most (if not all) of these symptoms.

10 Richard A Gardner, *The Parental Alienation Syndrome and the Differentiation between Fabricated and Genuine Child Sex Abuse* (Creative Therapeutics, 2nd Ed, 1987); Richard A Gardner, *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (Creative Therapeutics, 1998).

11 William Bernet, Wilfrid von Boch-Galhau, Amy J L Baker & Stephen L Morrison, “Parental Alienation, DSM-V, and ICD-11” (2010) 38 *The American Journal of Family Therapy* 76 at 78–79.

12 Richard A Gardner, “Commentary on Kelly and Johnston’s ‘The Alienated Child: A Reformulation of Parental Alienation Syndrome’” (2004) 42(4) *Family Court Review* 612.

13 Richard A Gardner, *True and False Accusations of Child Sex Abuse* (Creative Therapeutics, 1992); *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (Creative Therapeutics, 1998).

14 Richard A Gardner, “Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?” (2002) 30 *The American Journal of Family Therapy* 93 at 97.

15 “Lack of ambivalence” refers to the child’s belief that the alienated parent is all bad and the preferred parent is all good (instead of seeing both the good and bad in – thus having mixed feelings about – each parent as in normal parent–child relationships: see generally Alan M Jaffe, Melanie J Thakkar & Pascale Piron, “Denial of Ambivalence as a Hallmark of Parental Alienation” (2017) 4(1) *Cogent Psychology* 1).

16 The “independent-thinker” phenomenon refers to the child proudly stating the decision to reject the alienated parent as his own, and not influenced by the preferred parent.

17 “Presence of borrowed scenarios” refers to the child manifesting rehearsed statements that are identical to those made by the preferred parent.

6 The cause of PAS is attributed to a combination of two factors: (a) a preferred parent who “programmes” the child to denigrate the rejected parent; and (b) the child adding his own material to the denigration.¹⁸ Thus, the initiator is termed as a pathological parent who embeds his own ideas and attitudes into the child, also termed as “programming” or “brainwashing”. The child’s rejection of a parent is then seen as an outcome of such “programming”, and not reflective of the child’s feelings or beliefs towards the rejected parent. Gardner postulated that the child also creates his own statements and narratives to contribute to the denigration of the rejected parent.

7 PAS was originally not intended to be applicable to cases where sexual abuse allegations against fathers are involved.¹⁹ In cases where there is no abuse, PAS was suggested by Gardner to be the reason for false abuse allegations, in order to keep the child away from the rejected parent.

8 However, the issue of how to distinguish true sexual allegations from false ones has not been adequately addressed by Gardner’s theory. In the absence of clear diagnostic criteria for sexual abuse, the legitimacy of abuse allegations in PAS is focused on subjective personality characteristics of the parties involved, as opposed to expert assessments of the abuse or the consideration of other factors which may contribute to the hostile parent–child relationship.²⁰ For example, a parent who holds a stable job, is well-mannered and articulate, may influence evaluators to debase the legitimacy of abuse claims, rather than to closely examine them. Gardner proposed a diagnostic tool named the “Sexual Abuse Legitimacy Scale” to address this issue, but later withdrew this non-empirically validated tool due to considerable criticism.²¹

9 Furthermore, it is a concern that PAS is no longer limited to sexual abuse allegations. Instead, it is routinely used in custody cases for

18 Richard A Gardner, “Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?” (2002) 30 *The American Journal of Family Therapy* 93 at 95.

19 Richard A Gardner, *True and False Accusations of Child Sex Abuse* (Creative Therapeutics, 1992); “Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?” (2002) 30 *The American Journal of Family Therapy* 93 at 96.

20 Joan S Meier, “A Historical Perspective on Parental Alienation Syndrome and Parental Alienation” (2009) 6 *Journal of Child Custody* 232 at 236.

21 Carol S Bruch, “Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases” (2001) 35(3) *Family Law Quarterly* 527 at 539; Jennifer Hoult, “The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy” (2006) 26(1) *Children’s Legal Rights Journal* 1 at 19–20; Kathleen Coulborn Faller, “The Parental Alienation Syndrome: What Is It and What Data Support It?” (1998) 3(2) *Child Maltreatment* 100 at 105.

other types of abuse and/or when a mother seeks to restrict a father's access to the child.²²

10 Treatments for PAS are highly authoritarian and confrontational,²³ based on the assumption that the relationship of an alienated child with the rejected parent will be irreparably damaged, unless drastic measures are taken, such as (a) custody transfer to the rejected parent for deprogramming; (b) threats of legal deprivations of custody and visitation in relation to the preferred parent; or (c) even court-orders which terminate all contact with the preferred parent.²⁴ Highly coercive measures also include being placed in institutional care for a period of time, special reunification "camps", and even incarceration to reject the influence of the preferred parent.²⁵

11 Janet R Johnston and colleagues have tried to remove the controversial elements of PAS and revise it in the framework of the alienated child, which is also associated with the term "parental alienation".²⁶ In the revised framework, the new formulation shifts the focus from the preferred parent's "programming" behaviour to that of the child's.²⁷ They conceptualised alienation as part of a spectrum of the child's relationship with the parent after separation and divorce,²⁸ and have included an assessment of the multiple reasons which may account for a child's behaviour towards his parent.²⁹ At the healthy end where a child has a positive relationship with both parents, he desires continuity and contact with both parents even though there may be a stronger affinity for one parent. Further along the spectrum, estrangement may

22 Joan S Meier, "A Historical Perspective on Parental Alienation Syndrome and Parental Alienation" (2009) 6 *Journal of Child Custody* 232 at 240.

23 Joan S Meier, "A Historical Perspective on Parental Alienation Syndrome and Parental Alienation" (2009) 6 *Journal of Child Custody* 232 at 238.

24 Stephanie Dallam & Joyanna L Silberg, "Recommended Treatments for 'Parental Alienation Syndrome' (PAS) May Cause Children Foreseeable and Lasting Psychological Harm" (2016) 13(2-3) *Journal of Child Custody* 134 at 137.

25 Richard A Gardner, "Family Therapy of the Moderate Type of Parental Alienation Syndrome" (1999) 27 *The American Journal of Family Therapy* 195; "Should Courts Order PAS Children to Visit/Reside with the Alienated Parent? A Follow-Up Study" (2001) 19(3) *American Journal of Forensic Psychology* 61.

26 Janet R Johnston, "Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child" (2005) 38(4) *Family Law Quarterly* 757; Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249.

27 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 251.

28 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 251-254.

29 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 254-262.

have occurred due to a parent's history of violence, abuse or neglect, or due to severe parental deficiencies such as persistent immature parental behaviours and chronic emotional abuse of the child or preferred parent. In such situations, the child forms an alliance with one parent but wants limited contact with the other. Finally, the alienated child is introduced as a child who expressly rejects a parent who has no history of physical or emotional abuse with him. The child's negative views and feelings are considered to be significantly distorted and exaggerated reactions. In the absence of factors leading up to these highly rejecting behaviours, this response is considered to be maladaptive and detrimental to safety and well-being.

12 When it comes to treatment for alienation, the revised model differentiates itself from the original PAS theory, such that it does not employ coercive methods in the form of threats and custody switching. Instead, it encourages individualised assessments of the child and the parents, maintaining a focus on the children's needs rather than the parents' "rights".³⁰

13 Additionally, the revised model is different from the original PAS theory in its multifactorial approach. Multiple explanations are considered to account for the child's harsh rejection of one parent, and his preference for the other. The child's response is considered in the context of (a) parental personality traits, beliefs and parenting behaviours of both the preferred and rejected parents; (b) highly stressful separation, divorce and litigation processes; (c) contributions of extended family members, new partners and professionals; and (d) the child's developmental stage (that is, age and cognitive capacity), temperament and personality vulnerabilities.³¹

14 However, although there are merits to the revised model, Joan S Meier, a professor of Clinical Law at George Washington University Law School, stated that the delineation of the alienated child in the revised model with the original PAS theory has not been clear.³² When one considers the setting, response and behaviour of the alienated child which lies at the end spectrum of the revised model, many features draw on the foundation set by PAS: (a) the phenomenon of the alienated child occurs mostly in high-conflict custody disputes; (b) the strong resistance of the child to contact with the rejected parent occurs with a denigration

30 Janet R Johnston, "Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child" (2005) 38(4) *Family Law Quarterly* 757.

31 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 254–264.

32 Joan S Meier, "A Historical Perspective on Parental Alienation Syndrome and Parental Alienation" (2009) 6 *Journal of Child Custody* 232 at 246–248.

of that rejected parent; (c) the child's allegations against the rejected parent are postulated as the script of the preferred parent; and (d) the preferred parent strongly believes that the rejected parent is dangerous to the child in some way: that is, violent, physically or sexually abusive, or neglectful.³³ There also remains an emphasis in the revised model that mothers are not conscious of those behaviours they have which may encourage the alienating behaviours of the child; this element of alienation occurring through unconscious and subconscious factors reinforces the pathologising of mothers and favours loose psychoanalysing, which freely asserts that even the best-intentioned mothers do not know their own insidious wishes or behaviours.³⁴

15 Additionally, there is a danger that alienation can be conflated with logical responses to abuse.³⁵ A child who has suffered or is suffering abuse may react in a way that is similar to a child who is suggested to have been alienated by the malicious influence of the preferred parent. Abuse can be a root of both the psychological damage and the child's estrangement behaviours. Notably, there is no valid and reliable assessment of alienation, which questions the utility of this concept.³⁶

16 Hence, Meier stated, "the reality is that whatever some researchers may say about the differences between PAS and [parental alienation], in practice, [the latter] is rarely understood to be different".³⁷ The terms PAS, "parental alienation", "child alienation", or simply "alienation" have been often used interchangeably and indiscriminately. Therefore, it will be wise for judges, evaluators and professionals to practise discernment when processing any information that uses any of these terms. Children may exhibit alienating behaviours towards a parent in custody disputes, but the acceptance of alienation puts a focus on the pathology of the preferred parent. This acceptance often encompasses a speculation on the unconscious wishes and hostilities of the parents, rather than to consider other child-related factors and to focus on the demonstrated parenting ability of the preferred parent, which is conscious and objectively measurable.

33 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 258.

34 Joan S Meier, "A Historical Perspective on Parental Alienation Syndrome and Parental Alienation" (2009) 6 *Journal of Child Custody* 232 at 248.

35 See Janet R Johnston, Marjorie G Walters & Nancy W Olesen, "Is It Alienating Parenting, Role Reversal or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes" (2005) 5(4) *Journal of Emotional Abuse* 191.

36 Robert E Emery, Randy K Otto & W T O'Donohue, "A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System" (2005) 6(1) *Psychological Science in the Public Interest* 1 at 10.

37 Joan S Meier, "A Historical Perspective on Parental Alienation Syndrome and Parental Alienation" (2009) 6 *Journal of Child Custody* 232 at 247.

III. Use of parental alienation syndrome in family courts in other jurisdictions

A. *Australia*

17 In Australia, the previous Chief Justice of the Family Court, Diana Bryant, has said of PAS in 2015 that “it isn’t something that the Family Court accepts. All of the internal counsellors that are in the Court subscribe to the view that there is no valid condition as Parental Alienation Syndrome”.³⁸ In 2015, the Psychology Board of Australia imposed conditions on a psychologist’s registration due to a complaint regarding a psychological report written by him ostensibly to support a client’s disability support pension application in family law proceedings. The complaint focused in part on certain contents of the report which alleged PAS against the client’s former partner. The allegation of PAS greatly distressed the partner, who argued that it affected her maintenance payments. The psychologist appealed in respect of these conditions.³⁹ The Acting Civil and Administrative Tribunal, which heard the case, ruled in agreement with the contentions of the Psychology Board and only revisited the duration of the conditions imposed. The tribunal commented that the report “does not distinguish between fact, hearsay, inference, or opinion. And it uses a form of terminology (Parental Alienation Syndrome) *as though* it were a recognised and commonly used psychiatric classification” [emphasis added]. Overall, this case demonstrated that PAS is not only rejected by psychologists in Australia, but also the Australian courts.

B. *UK*

18 In the UK, PAS was rejected in an expert review compiled by child psychiatrists for the court.⁴⁰ The review stated that PAS is a unidirectional concept that sees difficult situations as a linear process and ignores the contributing factors of the dynamic and interactional aspects of each parent’s relationship to the other. The psychiatrists preferred the term “implacable hostility”, where there is the presence of resistance of contact by resident parents, but this can arise for a variety

38 “In the Child’s Best Interests” *ABC Radio* (14 June 2015) <<http://www.abc.net.au/radionational/programs/backgroundbriefing/in-the-childs-best-interests-v2/6533660>> (accessed 23 July 2018).

39 See *Eastwood v Psychology Board of Australia (Occupational Discipline)* [2016] ACAT 52.

40 Claire Sturge & Danya Glaser, “Contact and Domestic Violence – The Experts’ Court Report” [2000] *Fam Law* 615.

of reasons.⁴¹ The Court of Appeal of England and Wales in *Re M*⁴² relied on this report and rejected an appeal in this case. The issue in this case was whether the judge at first instance was right in rejecting evidence of PAS given by a forensic psychologist. The first instance judge had great discomfort accepting the psychologist's assessment of the presence of serious PAS and the suggestion of coercive treatment in the form of subjecting the child to therapy with direct threats to the mother in the event of non-co-operation. The Court of Appeal upheld the judge's rejection of PAS and found that the judge gave sufficient reasons not to accept the psychological evidence presented. The Court of Appeal commented that while there are cases of some parents, particularly mothers, who are responsible for alienating their children from their fathers without good reason, this state of affairs is a long way from a recognised "syndrome" requiring mental health professionals to play an expert role.

C. US and Canada

19 In the US⁴³ and Canada,⁴⁴ the use of PAS in courts has increased in recent years with mixed outcomes. Walker and colleagues highlighted cases in the US which recognised PAS.⁴⁵ Nine of the 14 cases reviewed admitted expert testimony involving PAS. The circulation of PAS in legal settings is still occurring in the US. In 2016, the Appellate Division of the Supreme Court of New York affirmed an order by the Family Court that gave supervised visitation to the mother and required the mother to engage in therapy to address her PAS.⁴⁶ Despite this use of PAS in legal settings, the American Professional Society on the Abuse of Children ("APSAC"),⁴⁷ the American Psychological Association ("APA"),⁴⁸ as well as the National Council of Juvenile and Family Court

41 Claire Sturge & Danya Glaser, "Contact and Domestic Violence – The Experts' Court Report" [2000] Fam Law 615 at 622.

42 *Re L* [2001] 2 WLR 339.

43 Joan S Meier & Sean Dickson, "Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation" (2017) 35(2) *Law & Inequality* 311.

44 Nicholas Bala, Suzanne Hunt & Carolyn McCarney, "Parental Alienation: Canadian Court Cases 1989–2008" (2010) 48(1) *Family Court Review* 164.

45 Lenore E A Walker, Kristi L Brantley & Justin A Rigsbee, "A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court" (2004) 1(2) *Journal of Child Custody* 47.

46 *Hoyt v Davis* 145 AD 3d 1353 (3rd Dept, 2016).

47 Kathleen Coulborn Faller, "APSAC Responds to Inclusion of PAS/PAD Information in Diagnostic and Statistical Manual of Mental Disorders" *APSAC Advisor* (2010).

48 "Statement on Parental Alienation Syndrome" *American Psychological Association* (1 January 2008) <www.apa.org/news/press/releases/2008/01/pas-syndrome.aspx> (accessed 23 July 2018).

Judges (“NCJFCJ”), have noted a lack of supporting scientific data for it. Importantly, NCJFCJ has advised against the court’s acceptance of PAS because there was insufficient evidence for it.⁴⁹

20 It is submitted that the use of PAS in the adversarial legal system has been observed to thrive because it offers simple and clear-cut answers as to who is right or wrong. However, family courts in Australia, the UK, and the US have begun to recognise its lack of scientific basis, ethical concerns of harm, questionable diagnostic criteria and evidentiary inadmissibility, which this article will elaborate on later.

IV. Lack of scientific basis

A. *Biased sample*

21 PAS was formulated based on a biased sample. The primary sample used to generate the theory consisted of cases where men were charged with or accused of sexually abusing their own children, in which Gardner was engaged to be an expert witness.⁵⁰ The theory has been criticised to be biased towards the father, providing Gardner’s clients with a legal defence against abuse accusations.⁵¹ Fathers’ rights activists have seized on PAS to advocate the position that vindictive mothers alienate their children from the father as a means of seeking revenge for divorce and separation. In a preliminary analysis of 238 published appellate and trial court opinions which used parental alienation⁵² between 2002 and 2013,⁵³ Meier and Sean Dickson found that 82% were brought by fathers, with alleging fathers twice as likely as alleging mothers to “win the case” when claiming alienation. In the study, “winning” was defined as the rates at which custody was switched

49 Clare Dalton, Leslie M Drozd & Frances Q F Wong, “Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge’s Guide” *National Council of Juvenile and Family Court Judges* (2006) at p 24.

50 Richard A Gardner, “Recent Trends in Divorce and Custody Litigation” (1985) 29(2) *Academy Forum* 3–7; Gardner, *True and False Accusations of Child Sex Abuse* (Creative Therapeutics, 1992).

51 Joan S Meier & Sean Dickson, “Mapping Gender: Shedding Empirical Light on Family Courts’ Treatment of Cases Involving Abuse and Alienation” (2017) 35(2) *Law & Inequality* 311 at 316.

52 Parental alienation receives substantial attention from courts even after the discrediting of parental alienation syndrome (“PAS”), although it is highly contested that parental alienation is really different from PAS. See Joan S Meier & Sean Dickson, “Mapping Gender: Shedding Empirical Light on Family Courts’ Treatment of Cases Involving Abuse and Alienation” (2017) 35(2) *Law & Inequality* 311 at 317.

53 Joan S Meier & Sean Dickson, “Mapping Gender: Shedding Empirical Light on Family Courts’ Treatment of Cases Involving Abuse and Alienation” (2017) 35(2) *Law & Inequality* 311 at 323–328.

from one parent to the other. It also referred to obtaining all or part of the relief requested or rebutting the other party's request, without necessarily obtaining a custody switch.⁵⁴ Even when the fathers' alienation claim was rejected by court, fathers "won" 37% of the time as compared to mothers in a similar situation who only "won" 11% of the time. These outcomes may also be compounded by the courts' deep preference for paternal involvement in children's lives following divorce.⁵⁵

B. Lack of rigorous research

22 Methodologically, there is a lack of rigour with PAS research designs. Most studies have been exploratory, with small samples and are largely opinion pieces, rather than using randomised design, control groups or long-term data to test the validity of PAS. Studies on PAS have been critiqued for a lack of critical scrutiny regarding the strengths and weaknesses of the study methodology.⁵⁶ The legitimacy and objectivity of the peer review process for a lead publication journal on PAS has been criticised – as there were half a dozen prominent PAS advocates on the editorial board of the journal.⁵⁷ Johnston and Joan B Kelly commented on the absence of systematic long-term data which compares the development, adjustment, as well as the well-being of alienated and non-alienated children. Hence, any long-term projections on how alienated children turn out (in terms of their emotional, physical, *etc.*, well-being) are only speculative.⁵⁸ It is important that matched-control study designs are employed to examine if PAS criteria can discriminate reliably between children who have PAS and those who have other problems. Longitudinal follow-up data is needed to validate the theory and diagnosis with evidence of better outcomes for PAS cases who receive interventions as compared to PAS cases who do not receive such interventions.

54 Joan S Meier & Sean Dickson, "Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation" (2017) 35(2) *Law & Inequality* 311 at 322.

55 Joan S Meier, "A Historical Perspective on Parental Alienation Syndrome and Parental Alienation" (2009) 6 *Journal of Child Custody* 232 at 242.

56 Allison M Nichols, "Toward a Child-Centered Approach to Evaluating Claims of Alienation in High-Conflict Custody Disputes" (2014) 112(4) *Mich L Rev* 663 at 677.

57 Allison M Nichols, "Toward a Child-Centered Approach to Evaluating Claims of Alienation in High-Conflict Custody Disputes" (2014) 112(4) *Mich L Rev* 663 at 678.

58 Janet R Johnston & Joan B Kelly, "Commentary on Walker, Brantley, and Rigsbee's (2004) 'A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court'" (2004) 1(4) *Journal of Child Custody* 77 at 84.

23 Despite the extensive scientific issues, as detailed above, the notion of PAS has been widely disseminated through journals and the press. Gardner had his own press, Creative Therapeutics, which meant that his work could be published without being critically evaluated.⁵⁹ Gardner's writings on PAS total about 20 articles and four books.⁶⁰

C. *Definitional issues*

24 The definition of PAS assumes an alienating parent and a receptive child as causal factors of the child's alienating behaviours.⁶¹ Assumptions were also made by Gardner regarding the pathology of the child's hostility toward the alienated parent, and the aim of the alienating parent as always seeking to undermine the relationship between the child and the alienated parent. PAS describes the behavioural signs and symptoms of a child in a custody dispute, but it may not explain these behaviours correctly. Presuming causal agents in the theory leaves no room for testing of multiple hypotheses so as to accurately ascertain cause and effect.⁶² A foundational tenet of science is that a theory must be disprovable for any hypothesis to gain credence. However, Gardner based his explanations mainly on his own clinical experience and perceptions.⁶³

D. *Failure to consider alternative explanations*

25 In focusing on the alienating parent as the cause, PAS fails to consider alternative explanations for the rejecting behaviours of a child or the alienating parent in custodial cases, which can be beyond the parent-child relationship. Reasons for parental rejection can result from (a) the child's fear or capacity to cope with the high conflict in marriage and divorce; (b) the child's resistance to a parenting style which may seem unresponsive and insensitive to him; (c) the child's concern for an emotionally fragile custodial parent; or (d) the child's opposition to remarriage in which the presence of new partners or step-parents alters

59 Carol S Bruch, "Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases" (2001) 35(3) *Family Law Quarterly* 527 at 535.

60 William Bernet, Wilfrid von Boch-Galhau, Amy J L Baker & Stephen L Morrison, "Parental Alienation, DSM-V, and ICD-11" (2010) 38 *The American Journal of Family Therapy* 76 at 88.

61 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 249.

62 John J Mearsheimer & Stephen M Walt, "Leaving Theory behind: Why Simplistic Hypothesis Testing Is Bad for International Relations" (2013) 19(3) *European Journal of International Relations* 434.

63 Kathleen Coulborn Faller, "The Parental Alienation Syndrome: What Is It and What Data Support It?" (1998) 3(2) *Child Maltreatment* 100 at 106.

his willingness to visit the rejected parent.⁶⁴ In a sample of 292 young adults who had their parents separate when they were 8–17 years of age, Scott C Huff found that violence and a perceived lack of warmth were significant predictors of contact refusal.⁶⁵ Alignment of the child to the parent was also a predictor, but the study found that this alignment was not due to parental manipulation. Rather, the child was more likely to be aligned to the parent who demonstrated the more caring behaviour toward them. In other studies, the lack of empathy⁶⁶ and the presence of abuse⁶⁷ also significantly predicted parental rejection.

E. Lack of developmental sensitivity

26 PAS assumes that children of all ages and developmental stages behave and react similarly.⁶⁸ There is no developmental sensitivity, where a child's responses to parents may be dependent on his own developmental state and vulnerabilities.⁶⁹ Young children often exhibit separation anxieties, but consistent alignment with a certain parent and rejection of another requires sufficient cognitive and emotional maturity. Hence, older children are more likely to express consistent rejection, and the anger and contempt that they express also reflect the normative changes in anger which can be expected in the preadolescent and adolescent years. Due to their younger age, children prior to ages 7–9 years tend to not display consistent rejection. However, young children who have severe attachment and intense anxiety issues are likely to display a consolidated rejection of a parent if their circumstances do not improve. A child's vulnerability also increases with greater psychological adjustment problems in the child.⁷⁰ Those who are anxious, fearful, and passive are unable to withstand the intense

64 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 251.

65 Scott C Huff, "Expanding the Relationship between Parental Alienating Behaviors and Children's Contact Refusal Following Divorce: Testing Additional Factors and Long-Term Outcomes" (University of Connecticut Doctoral Dissertation No 817, 2015) <<http://opencommons.uconn.edu/dissertations/817>> (accessed 23 July 2018).

66 Anita K Lampel, "Children's Alignment with Parents in Highly Conflicted Custody Cases" (1996) 34(2) *Family and Conciliation Courts Review* 229.

67 Janet R Johnston, Marjorie G Walters & Nancy W Olesen, "Is It Alienating Parenting, Role Reversal or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes" (2005) 5(4) *Journal of Emotional Abuse* 191.

68 William O'Donohue, Lorraine T Benuto & Natalie Bennett, "Examining the Validity of Parental Alienation Syndrome" (2016) 13(2–3) *Journal of Child Custody* 113 at 121.

69 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 260–261.

70 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 261.

pressures of the custody battle and the parental animosity. Hence, the psychological load is easier if they resort to choosing sides. These children are more likely to feel responsible for divorce. Additionally, cognitive limitations can also increase a child's vulnerability. These limitations could include poor analytic and problem-solving capabilities, and difficulty in understanding abstract concepts. Children of higher cognitive functioning are more able to demonstrate situational awareness and analyse the nature of the parent–parent and parent–child relationships. Despite the parental conflict, the child is able to stay connected to each parent.

F. *Unreliable estimates of prevalence*

27 The prevalence estimates of PAS that Gardner has done are not empirically supported or reliable. The prevalence of PAS has been estimated from small clinical samples which are not randomly selected, with an absence of representative sampling.⁷¹ Moreover, Carol S Bruch noted that Gardner changed his 95% figure of high-conflict divorces that experience PAS to a mere 40% in the second edition of his book.⁷² There was also no empirical basis to Gardner's claim that the use of child sexual abuse allegations in custody cases was widespread, and his belief that these allegations had a high likelihood of being false.⁷³ The prevalence of sexual abuse allegations was found to be low (less than 2%) in a study of approximately 9,000 families with custody and visitation disputes served by eight domestic relations courts in the US.⁷⁴ A more recent study in Canada found allegations of sexual abuse to be at 6%.⁷⁵ Furthermore, in contrast to Gardner's claim that sexual abuse allegations were likely to be false, almost half (45%) of these reports in the Canadian study were found to be either substantiated or suspected. Catherine Ayoub, Robin Deutsch and Andronicki Marangnore's review of child custody reports found that allegations of various forms of child

71 Representative sampling is a method to obtain a sample that resembles the total population of interest. The characteristics of the representative sample reflects that of the total population. Small samples have a higher likelihood of being biased (*ie*, self-selection bias), hence findings from specific samples may not be generalisable to the population.

72 Carol S Bruch, "Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases" (2001) 35(3) *Family Law Quarterly* 527 at 528.

73 Joan S Meier, "A Historical Perspective on Parental Alienation Syndrome and Parental Alienation" (2009) 6 *Journal of Child Custody* 232 at 237.

74 Nancy Thoennes & Patricia G Tjaden, "The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes" (1990) 14(2) *Child Abuse & Neglect* 151.

75 Nicholas M C Bala, Mindy Mitnick, Nico Trocome & Claire Houston, "Sexual Abuse Allegations and Parental Separation: Smokescreen or Fire?" (2007) 13(1) *Journal of Family Studies* 26.

maltreatment was supported between 25% and 44% of the time,⁷⁶ consistent with the findings of Johnston and colleagues on 120 couples involved in custody disputes.⁷⁷ Additionally, the inter-rater reliability⁷⁸ of PAS remains in question. Two studies⁷⁹ have attempted to test inter-rater reliability, but were subject to many scientific problems which took away the credibility of the studies' findings. These issues included the small sample sizes, self-selection bias⁸⁰ and the questionable use of vignettes⁸¹ as compared to real-life cases in assessing for PAS.

V. Ethical concerns of harm

A. Failure to adequately investigate abuse allegations

28 The acceptance of PAS can result in a failure to adequately investigate abuse allegations.⁸² Statutory protection of victims can be circumvented by an uncritical reliance on this theory, thus putting children at risk.⁸³ By characterising the alienating parent as pathological and vengeful, the courts' attention is diverted away from closely examining if abuse has occurred. In accepting PAS, custody evaluators appear to be predisposed to attribute abuse allegations to vindictiveness, as against comprehensively ascertaining if there is factual basis for the

76 Catherine Ayoub, Robin Deutsch & Andronicki Marangnore, "Emotional Distress in Children of High Conflict Divorce" (1999) 37(3) *Family and Conciliation Courts Review* 297.

77 Janet R Johnston, Soyoung Lee, Nancy W Olesen & Marjorie G Walters, "Allegations and Substantiations of Abuse in Custody-Disputing Families" (2005) 43(2) *Family Court Review* 283.

78 "Inter-rater reliability" refers to the degree of agreement between two raters. In terms of parental alienation syndrome ("PAS"), it is a measure of the consensus between two individuals who separately rate the presence of PAS in the same case.

79 Stephen L Morrison, "Parental Alienation Syndrome: An Inter-rater Reliability Study. Alienating Behaviors – Related Justice System Issues" (The University of Southern Mississippi Dissertation Archive, 2006); Carlos A Rueda, "An Inter-rater Reliability Study of Parental Alienation Syndrome" (2004) 32(5) *The American Journal of Family Therapy* 391.

80 Self-selection bias is a bias that is introduced into a study when participants choose whether or not to participate in the study. The group that chooses to participate may share similar characteristics, and these characteristics may be different from the group that chooses not to participate. Hence, the two groups are not equivalent.

81 Respondents in the study were presented with vignettes, and asked to determine the presence of parental alienation syndrome based on the defined symptoms.

82 Stephanie Dallam & Joyanna L Silberg, "Recommended Treatments for 'Parental Alienation Syndrome' (PAS) May Cause Children Foreseeable and Lasting Psychological Harm" (2016) 13(2–3) *Journal of Child Custody* 134 at 137.

83 Erika Rivera Ragland & Hope Fields, "Parental Alienation Syndrome: What Professionals Need to Know" *National Center for Prosecution of Child Abuse* (2003).

child's disclosure or the protective parent's concerns.⁸⁴ In addition, Johnston, Vivienne Roseby, and Kathryn Kuehnle pointed out that abuse can occur in a continuum from explicit blatant acts to more subtle forms of emotional abuse (for instance, a lack of empathy and concern for the child) which may go unacknowledged, unreported, or dismissed by authorities.⁸⁵ Independent confirmation of formal investigations of abuse is difficult even without having to deal with the PAS issue, but becomes more so if law enforcement or child protective services personnel believe in PAS and thus fail to conduct thorough and comprehensive investigations of reports of abuse. It is also a concern that abuse allegations can be turned against the alleging parent when PAS is used, that is, the alleging parent being viewed as vindictive and vengeful. This is due to the presumption in PAS that the alleging parent is making these allegations for self-serving purposes. The label of "alienator" by evaluators also seems to have a significant impact on the courts, even in cases when abuse has not been ruled out.⁸⁶ In the US, compared to domestic violence claims which are credited by the court 59% of the time, abuse claims by mothers alleged to be alienating were credited only 25% of the time.⁸⁷ In the same study, the type of abuse also mattered: sexual abuse allegations, as compared to other types of abuse, were found to increase fathers' likelihood of winning to 81%. Fathers alleging alienation managed to negate the abuse allegations in the majority of the cases (72%).

B. Potentially harmful treatments

29 Additionally, the acceptance of PAS can result in punitive recommendations which can cause lasting psychological harm to the child.⁸⁸ Treatments are experimental and do not meet ethical standards. Coercive treatments, such as custody transfer to the rejected parent for

84 Daniel G Saunders, Kathleen C Faller & Richard M Tolman, "Child Custody Evaluators' Beliefs about Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations" (31 October 2011) <<https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>> (accessed 23 July 2018).

85 Janet Johnston, Vivienne Roseby & Kathryn Kuehnle, *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (Springer, 2nd Ed, 2009).

86 Joan S Meier & Sean Dickson, "Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation" (2017) 35(2) *Law & Inequality* 311 at 318.

87 Joan S Meier & Sean Dickson, "Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation" (2017) 35(2) *Law & Inequality* 311 at 327.

88 Stephanie Dallam & Joyanna L Silberg, "Recommended Treatments for 'Parental Alienation Syndrome' (PAS) May Cause Children Foreseeable and Lasting Psychological Harm" (2016) 13(2-3) *Journal of Child Custody* 134 at 138.

“deprogramming” with termination of contact with the preferred parent, have no empirical basis for their treatment effectiveness. Rather, Stephanie Dallam and Joyanna L Silberg commented, “isolating a child from everyone he/she is familiar with and attempting to force him/her to adopt a different view of a parent, especially by strangers who know little about the child’s actual experiences, can in and of itself be traumatic”.⁸⁹ A 25-year follow-up study on 131 children of divorcing families revealed that children’s alignments with a specific parent were usually transient and dissipate within one or two years.⁹⁰ If a child’s rejection is unwarranted, the child is found to typically reconcile with the parent on his own without any interventions.⁹¹ However, if these cases are not managed well through attempts to force the child to change allegiance, this may lead to an entrenched position in the child.

30 Peter G Jaffe, Dan Ashbourne, and Alfred A Mamo have argued that enforced punitive treatment can have counter-effects, serving to reinforce the child’s hatred for the rejected parent, and adding stress to the already vulnerable child.⁹² Silberg, Dallam, and Elizabeth Samson studied 27 “turned around” custody cases, which referred to a first court disbelieving the occurrence of alleged abuse and changing the child’s custody to the alleged abuser, after which a second court subsequently corrected the ruling and validated the abuse.⁹³ When the court ordered children into the custody of abusive parents, the study found that the children’s mental and physical condition deteriorated, and included symptoms of anxiety, depression, dissociation, post-traumatic symptom disorder, self-harm and suicidality.

VI. Questionable diagnostic criteria

31 Proposals to include PAS in the *Diagnostic and Statistical Manual of Mental Disorders* (“DSM”), the authoritative handbook published by the American Psychiatric Association used by healthcare

89 Stephanie Dallam & Joyanna L Silberg, “Recommended Treatments for ‘Parental Alienation Syndrome’ (PAS) May Cause Children Foreseeable and Lasting Psychological Harm” (2016) 13(2–3) *Journal of Child Custody* 134 at 139.

90 Judith S Wallerstein, Julia M Lewis & Sandra Blakeslee, *The Unexpected Legacy of Divorce – The 25 Year Landmark Study* (Hyperion, 2000).

91 J R Johnston & J R Goldman, “Outcomes of Family Counseling Interventions with Children Who Resist Visitation: An Addendum to Friedlander and Walters (2010)” (2010) 48(1) *Family Court Review* 112 at 115.

92 Peter G Jaffe, Dan Ashbourne & Alfred A Mamo, “Early Identification and Prevention of Parent–Child Alienation: A Framework for Balancing Risks and Benefits of Intervention” (2010) 48(1) *Family Court Review* 136.

93 Joyanna Silberg, Stephanie Dallam & Elizabeth Samson, *Crisis in Family Court: Lessons from Turned around Cases. Final Report Submitted to the Office of Violence against Women*, Department of Justice (30 September 2013).

professionals worldwide for the diagnosis of mental disorders, have been rejected for both the fourth and fifth editions.⁹⁴ PAS fails to meet the criteria of a diagnostic syndrome as defined by the American Psychiatric Association, as it is not commonly recognised and it does not have an empirically verified pathogenesis, course, familial pattern, or treatment selection.⁹⁵ PAS merely describes signs and symptoms but fails to provide empirically supported explanations of behaviours, which makes it non-diagnostic at the very most.⁹⁶

A. *Circular reasoning*

32 The circular problem of PAS resurfaces in diagnostic issues. Every PAS symptom described by Gardner is used as evidence of the presence of PAS, although each symptom can have alternative explanations. This is further complicated by the absence of a valid tool within the PAS model to determine abuse. Without being able to accurately ascertain abuse, it is difficult to determine if PAS exists independently of any abuse. Similarly, without being able to determine if PAS exists, it is difficult to determine if abuse claims are valid, as Gardner postulates that PAS is the reason for abuse allegations of the preferred parent against the rejected parent.⁹⁷

B. *Lack of data to support diagnostic criteria*

33 There is no available data to justify the specific list of criteria for diagnosing PAS. William Bernet and colleagues' proposed criteria for DSM is that of Gardner's eight symptoms,⁹⁸ grouped into four major criteria.⁹⁹ Criterion A consists of the child's resistance or refusal to have contact with the alienated parent, which as mentioned above, could be due to a range of reasons. Criterion B states that the child's behaviours include a persistent campaign of denigration against the alienated parent and weak, frivolous, and absurd rationalisations. Much subjectivity is

94 William Bernet Wilfrid von Boch-Galhau, Amy J L Baker & Stephen L Morrison, "Parental Alienation, DSM-V, and ICD-11" (2010) 38 *The American Journal of Family Therapy* 76.

95 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 249.

96 Joan B Kelly & Janet R Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome" (2001) 39(3) *Family Court Review* 249 at 250.

97 Joan S Meier, "A Historical Perspective on Parental Alienation Syndrome and Parental Alienation" (2009) 6 *Journal of Child Custody* 232 at 236.

98 Richard A Gardner, *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (Creative Therapeutics, 1998).

99 William Bernet Wilfrid von Boch-Galhau, Amy J L Baker & Stephen L Morrison, "Parental Alienation, DSM-V, and ICD-11" (2010) 38 *The American Journal of Family Therapy* 76.

involved on the evaluator's part to determine if the child's rationalisations are "weak, frivolous and absurd", which are affected by factors such as the child's motivation to disclose relevant information, and what the evaluator finds reasonable. Self-disclosure is also dependent on the trust that a child has with the evaluator, and younger children may have difficulty in articulating their reasons for not preferring a parent due to developing cognition.

C. Diagnostic criteria is open to subjective interpretations and biases

34 To aid diagnosis, three levels of PAS have been proposed: mild, moderate or severe.¹⁰⁰ Criterion C of Bernet *et al*'s proposal states that when a child's symptoms reach a moderate or severe level, these clinical features will frequently occur: a lack of ambivalence, independent-thinker phenomenon, reflexive support of the preferred parent against the alienated parent, a disregard for the feelings of the alienated parent and an absence of guilt over exploitation of the alienated parent, and borrowed scenarios, which are rehearsed statements that are identical to those made by the preferred parent. Again, many of these symptoms require subjective interpretation by the evaluator who has his own biases. For example, the independent-thinker phenomenon refers to the child proudly claiming and insisting that the decision to reject the alienated parent is entirely his, and not one that is influenced by the preferred parent. Hence, in the PAS model, a child who displays this symptom is supposed to have been programmed (to reject the alienated parent), but this insistence that the decision is one's own can also be a reaction of anger, defiance and frustration in situations when the child's words are discounted and disbelieved.

35 In addition, the criteria to assess the severity for each level is vague: which symptoms and how many constitute a mild level, moderate or severe level.¹⁰¹ Burrill analysed 30 court-referred cases of PAS and found a distinction between the mild and severe categories,¹⁰² but the study has been criticised for the lack of a control group.¹⁰³

100 William Bernet Wilfrid von Boch-Galhau, Amy J L Baker & Stephen L Morrison, "Parental Alienation, DSM-V, and ICD-11" (2010) 38 *The American Journal of Family Therapy* 76.

101 Richard Bond, "The Lingering Debate over the Parental Alienation Syndrome Phenomenon" (2008) 4(1-2) *Journal of Child Custody* 37 at 40.

102 Janelle Burrill-O'Donnell, "Parental Alienation Syndrome in Court Referred Custody Cases" (Dissertation.com, 2001).

103 Richard Bond, "The Lingering Debate over the Parental Alienation Syndrome Phenomenon" (2008) 4(1-2) *Journal of Child Custody* 37.

D. *No evidence-based interventions*

36 Lastly, there have been no methodologically acceptable studies that evaluate the interventions recommended for PAS. As mentioned earlier, the interventions proposed are highly punitive and coercive, and have high potential for harm. Most interventions are ineffective if they do not understand and address treatment needs, or are not given early or in a timely manner. There is thus no utility in diagnosis unless treatment can be given.

37 In rejecting PAS for inclusion in DSM-5, Darrel Regier, vice-chair of the task force, stated, “[it’s] a relationship problem: parent–child or parent–parent. Relationship problems *per se* are not mental disorders”.¹⁰⁴ The American Psychiatric Association Board of Trustees would not include PAS in the section for disorders needing further research.¹⁰⁵

VII. *Legal inadmissibility*

38 In court, PAS fails to hold up to principles of admissibility. Nichols examined expert testimony in the US regarding PAS under both *Frye*¹⁰⁶ and *Daubert*¹⁰⁷ standards, and concluded that such testimony is inadmissible under either standard because it is neither generally accepted within the medical and mental health fields, nor supported by reliable empirical evidence.¹⁰⁸

39 Under the *Frye* standard, the general rule for the admissibility of scientific evidence in a court of law is its general acceptance in its discipline. The theory has to have been tested to determine its reliability. Once deemed reliable, the court can determine whether to permit its use as scientific evidence. PAS neither holds sufficient scientific merit nor is it generally accepted, as seen from its rejection from the DSM and the heated dialogue it continues to create in the legal, medical and mental health professions. Hence under the *Frye* standard, a court should rule the evidence as inadmissible.¹⁰⁹

104 David Crary, “Psychiatric Group: Parental Alienation No Disorder” *The Washington Times* (21 September 2012).

105 *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association, 5th Ed, 2013) at pp 783–806.

106 *Frye v United States* 293 F 1013 (DC Cir, 1923).

107 *Daubert v Merrell Dow Pharmaceuticals* 509 US 579 (1993).

108 Allison M Nichols, “Toward a Child-Centered Approach to Evaluating Claims of Alienation in High-Conflict Custody Disputes” (2014) 112(4) *Mich L Rev* 663 at 671–673.

109 Jennifer Houlst, “The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy” (2006) 26(1) *Children’s Legal Rights Journal* 1 at 5.

40 In 1972, r 702 of the Federal Rules of Evidence (“FRE”) did not focus on reliability but gave judges a gatekeeping responsibility to evaluate the qualifications of an expert witness, and to evaluate the relevance of the testimony to facilitate the understanding of the scientific evidence.¹¹⁰ In 1993, the *Daubert* standard was introduced to clarify the FRE by providing four factors to determine the reliability of scientific evidence on top of the judge’s gatekeeping responsibility – the scientific evidence must (a) be empirically tested; (b) be subject to peer review; (c) have an error rate;¹¹¹ and (d) be capable of being replicated by other experts. As seen under *Frye*, PAS fails to pass empirical testing, and does not have widespread acceptance. The validity of its peer-reviewed articles has been questioned based on its small samples, anecdotal methods, and the strong representation of its advocates on a well-known family journal. No known error rate of PAS has been generated, and thus it is not known if the theory fits actual data.¹¹² Due to its poorly defined and subjective diagnostic criteria, the error rate is postulated to be high.¹¹³ With flawed methodological designs failing to adequately prove the initial theory of PAS, it would be challenging to replicate studies. Based on the arguments above, it is submitted that PAS does not meet the *Daubert*¹¹⁴ standard.

41 Despite being inadmissible and having a predominantly negative law review coverage, some family courts in America continue to recognise PAS and related theories. This may happen because the admissibility of expert testimony is not contested in many cases.¹¹⁵ The courts must be careful of uncritical reliance on expert testimony. Robert E Emery and colleagues recommend limiting expert testimony of mental health professionals in child custody cases to the presentation of scientifically supported evidence, which includes prohibiting testimony about PAS or any other “syndrome” that lacks scientific support.¹¹⁶

110 Richard Bond, “The Lingering Debate over the Parental Alienation Syndrome Phenomenon” (2008) 4(1–2) *Journal of Child Custody* 37 at 47.

111 Error rate refers to the rate of inaccurate diagnosis. A low error rate is indicative of better reliability of the diagnostic criteria.

112 William O’Donohue, Lorraine T Benuto & Natalie Bennett, “Examining the Validity of Parental Alienation Syndrome” (2016) 13(2–3) *Journal of Child Custody* 113 at 119.

113 Allison M Nichols, “Toward a Child-Centered Approach to Evaluating Claims of Alienation in High-Conflict Custody Disputes” (2014) 112(4) *Mich L Rev* 663 at 676.

114 Richard Bond, “The Lingering Debate over the Parental Alienation Syndrome Phenomenon” (2008) 4(1–2) *Journal of Child Custody* 37 at 48.

115 Allison M Nichols, “Toward a Child-Centered Approach to Evaluating Claims of Alienation in High-Conflict Custody Disputes” (2014) 112(4) *Mich L Rev* 663 at 680.

116 Robert E Emery, Randy K Otto & W T O’Donohue, “A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System” (2005) 6(1) *Psychological Science in the Public Interest* 1 at 23.

VIII. Child-centric approach

42 Children cope in different ways when parents separate or divorce.¹¹⁷ When parents have a cordial relationship with each other, a child may use the method of balancing, which is maintaining separate but approximately equal relationships with each parent. However, when the parental relationship is full of competition and conflict, children may change their coping techniques to that of acting as mediators. This role refers to the children carrying messages back and forth between parents while trying to solve their parents' problems. At times, they may distort the message to reduce the negative impact or remind their parents to be nice to each other. Another strategy that children can use is to become distractions by displaying exceptionally good or bad behaviour. The former is to act like angels, in an attempt to redirect parental attention onto their achievements and hopefully become a common source of pride and purpose. For the latter, it is to act like devils, in an attempt to unite parents in their shared anger or concern about the child over his misbehaviours. Both of these distracting strategies take on a burden of responsibility on the child as he works to distract his parents. The most unfortunate form of coping is for the child to withdraw from both parents, be it emotionally or physically. This child ends up spending most of his time on his own, or with friends and romantic partners, or with other "substitute" family figures.

43 Picking sides is also a form of coping,¹¹⁸ and it is something which is always seen when PAS is alleged. PAS does not take into account that in divorce, an inherent loyalty conflict commonly occurs. Children feel pressured to take sides. This is exacerbated by high parental conflict and accompanied by significant changes occurring in their lives. In such cases, a child-centric approach is even more important, as the child is often caught in the cross-fire of parental anger and his voice drowned out by the louder voices of the parents. This is a critical time where the child requires external help to deal with huge emotional stress, and to help him adjust to the changes that are coming.

44 In Singapore, there have been initiatives to work towards a child-centric divorce process in recent years. There is the set-up of divorce specialist support agencies ("DSSA") to provide support services, and the amendment of the Women's Charter to mandate divorcing parents who have not agreed on a parenting plan for their minor children to attend a parenting programme before filing for divorce.

117 Robert E Emery, *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation* (The Guilford Press, 2nd Ed, 2012) at pp 91–92.

118 Robert E Emery, *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation* (The Guilford Press, 2nd Ed, 2012) at p 92.

These are small steps in the right direction: (a) to enable families to resolve disputes as early as possible; (b) to protect the children involved; and (c) to focus on reconciliation and healing. This process keeps the child at the centre of decisions. In the following sections, essential elements of a child-centric approach in custody disputes are addressed.

A. *Multifactorial family assessment*

45 In any custody dispute, it is important that a comprehensive family evaluation is conducted by professionals with special knowledge in divorce and interpersonal violence. The acceptance of PAS can colour the lenses of evaluators to prematurely attribute the cause of a child's behaviours to a pathological parent, thus compromising a thorough investigation of abuse allegations. PAS focuses on merely the parents and the child, but an understanding of the family beyond this unit is important. Consideration of relationships such as grandparents, the parent's new partner, and parental friends, is essential for a more accurate understanding of family dynamics. In line with best practices, multiple sources of data collection should always be used.¹¹⁹ These consist of document reviews, interviews with family and friends, contacts with professionals, use of screening measures and psychological tools. There should also be more than one interview with the child, with the incorporation of a trauma-focused perspective, as children may be affected by and react differently to the trauma they experience based on their age, maturity, resilience and external support.¹²⁰

46 In contrast to PAS's focus on a single hypothesis, evaluators should always consider multiple hypotheses and competing explanations for understanding a child's behaviour toward parents. Custody evaluators should explore the basis for the child's concerns, as well as the role each parent has in shaping the child's opinion of the other.¹²¹ Parental factors, such as the parental relationship prior to family breakdown, parental relationship, parenting capacities and parental prioritisation of the children's needs for safety and well-being, should be

119 "APSAC Position Paper on Allegations of Child Maltreatment and Intimate Partner Violence in Divorce/Parental Relationship Dissolution" (2016) <www.apsacohio.org/aspac-position-papers> (accessed 23 July 2018).

120 Clare Dalton, Leslie M Drozd & Frances Q F Wong, "Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide" *National Council of Juvenile and Family Court Judges* at p 18.

121 Clare Dalton, Leslie M Drozd & Frances Q F Wong, "Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide" *National Council of Juvenile and Family Court Judges* at pp 24–25.

assessed.¹²² Additionally, there needs to be careful assessments of the attitudes and behaviours of the rejected parent as his expressed behaviours could have contributed to the hostile behaviours of the child.¹²³ Rejected parents could have been passive and withdrawn in the face of high conflict, which children may have perceived as rejection and abandonment. The hostile behaviour of the child then causes the rejected parent to counter-reject, which only serves to escalate the animosity and conflict in the parent–child relationship. If the situation does not improve, their level of empathy for the child may also decrease over time as frustration increases. The parenting style of the rejected parents may also be harsh and rigid, hence children do not respond well to them.

47 It is also important to ensure the selection of appropriate test instruments in custody evaluation. Forensic psychological testing requires consideration of specific legal rules and regulations, while psychological testing emphasises on standardised and empirically supported test instruments. However, psychological tools may not directly assess psycho-legal constructs, hence there needs to be thoughtful consideration of the use and application of such tools in custody disputes brought to court. When the evaluator selects psychometric tests, it is critical that the *Daubert* criteria be carefully considered. Ultimately, given the complexity of custody assessment, psychometric tools should not be viewed as a primary data source or the only method of assessing parenting capacity or best interest standards. It is important for evaluators to rely on multiple sources of data and information about the child and family in multiple contexts.

48 When abuse and violence is alleged, the difficulty for a court to clearly determine why a child rejects a parent increases. APSAC recommends that professionals need to differentiate abuse investigations from child-custody evaluations, addressing the former before proceeding to the latter.¹²⁴ In a publication of top-ten tips for professionals involved in child-custody evaluation accompanied by allegations of child sexual abuse, the strategies include the need for a court order to clearly appoint a mental health professional by name, and

122 Michael A Saini, Leslie M Drozd & Nancy W Olesen, “Adaptive and Maladaptive Gatekeeping Behaviors and Attitudes: Implications for Child Outcomes after Separation and Divorce” (2017) 55(2) *Family Court Review* 260 at 268.

123 Joan B Kelly & Janet R Johnston, “The Alienated Child: A Reformulation of Parental Alienation Syndrome” (2001) 39(3) *Family Court Review* 249 at 258–260.

124 “APSAC Position Paper on Allegations of Child Maltreatment and Intimate Partner Violence in Divorce/Parental Relationship Dissolution” (2016) at p 2 <www.apsacohio.org/aspac-position-papers> (accessed 23 July 2018).

to clearly define the specific role of the appointed professional.¹²⁵ This professional must strive to avoid biases by approaching the evaluation with multiple hypotheses, and use the data gathered to support or oppose various hypotheses. Furthermore, it is important to recognise that child sexual abuse is an event or a series of events, and potential symptoms that the abused child may exhibit vary significantly. Different types of interview questions should be used, and open-ended questioning with a neutral interview reduces the risk of inaccurate statements.

49 If abuse allegations are determined to be unlikely, the best interest of the child and case specific factors should determine the custody and visitation arrangement. The “best interest of child” principle can vary depending on the different angles one takes in ascertaining what constitutes the well-being of the child and at what time-point. Best interest can refer to best psychological interest, best economic interest, best educational interest, best medical interest and so on.¹²⁶ Best interest also indicates the importance of listening to the voice of the child.¹²⁷ Although the child’s voice is not determinative as his preferences often reflect the immediate future instead of long-term interests, his wishes and preferences are important to note. Each child is unique and hence the “best interest of the child” principle cannot be bluntly adopted. Rather, each child has to be assessed holistically, taking into account his individuality, his relationships with the parents and his expressed viewpoints with regard to custody decisions. The guidelines of APA¹²⁸ and the Association of Family and Conciliation Courts¹²⁹ identified a number of factors considered to be integral to child-custody evaluations. There is a need to assess parenting figures and abilities, to assess the parental capacity to provide a stable loving home, to consider inappropriate parental behaviours or psychopathology as it affects parenting ability or the child directly, and to understand the child’s

125 Kathryn Kuehnle, “Top Ten Tips for Professionals Appointed to Conduct a Child Custody Evaluation Accompanied by Allegations of Child Sexual Abuse” in *Ask the Experts from the AFCC eNEWS: Guidance from Leading Family Law Professionals* (Andrea Clark & Larry V Swall eds) (Association of Family and Conciliation Courts, 2015) at pp 80–81.

126 Robert E Emery, Randy K Otto & W T O’Donohue, “A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System” (2005) 6(1) *Psychological Science in the Public Interest* 1 at 19–20.

127 Barbara Jo Fidler, “Top Tips for Legal and Mental Health Professionals Involved in Alienation, or Alleged Alienation Cases” in *Ask the Experts from the AFCC eNEWS: Guidance from Leading Family Law Professionals* (Andrea Clark & Larry V Swall eds) (Association of Family and Conciliation Courts, 2011) at p 61.

128 American Psychological Association, “Guidelines for Child Custody Evaluations in Family Law Proceedings” (2010) 65(9) *American Psychologist* 863.

129 Association of Family and Conciliation Courts, “Model Standards of Practice for Child Custody Evaluation” (2006).

wishes. It is clear that there is recognition, within these guidelines, of the challenges that individuals face, but the key to the legal issue at hand is whether any psychopathology, substance use, personality, or interaction styles affect the parents' ability to provide "good enough" care and nurturance for the child.

50 Despite all the above recommendations, it should be noted that there is a lack of scientific evidence and legal guidance about how evaluations should be conducted and what type of evaluation is most helpful in custody cases.¹³⁰ Some rely more on mental health approaches while others question the value of psychological testing and look more into information derived from environmental factors in the child's ecology, such as school, healthcare, childcare, family, and friends. Three principles were suggested as standards of practice for evaluators:¹³¹ (a) show preference for evaluations conducted by mutually agreed-upon or court-appointed experts; (b) promote settlement and other steps that will facilitate a degree of parental co-operation in child-rearing and authoritative parent-child relationships; and (c) acknowledge that custody is ultimately a legal decision and thus avoid offering "expert opinion" on legal matters – such as the type of custody order and who gets care and control, and under what conditions – despite considerable pressure to do so within the legal system.

B. Independent child representative

51 The legal system treats parents as adversaries.¹³² Legal procedures are designed to protect individual rights, hence lawyers are ethically obligated to ardently represent only the interests of their clients. Unfortunately, this focus on individual interests in divorce can fuel anger and conflict in divorce, causing each parent to only keep sight of his own without consideration for other parties. The use of PAS may be tapped upon to advocate for a disgruntled or rejected parent, which may in turn cause retaliation from the countering side that only serves to worsen the parental conflict. An abusive parent may also see custody proceedings as a way to control or provoke others, or an opportunity to maintain access to the victim. Thus, the adversarial approach of the courts can increase parental conflict, with each parent seeking to convince the judge of his interpretation of the child's best interest.

130 Robert E Emery, Randy K Otto & O'Donohue, "A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System" (2005) 6(1) *Psychological Science in the Public Interest* 1 at 24.

131 Robert E Emery, Randy K Otto & O'Donohue, "A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System" (2005) 6(1) *Psychological Science in the Public Interest* 1 at 24.

132 Robert E Emery, *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation* (The Guilford Press, 2nd Ed, 2012) at p 100.

52 This highlights the need for an independent child representative who serves in the “best interest of the child”. A child representative is a trained professional who seeks to understand the views of the child and who represents the voice of the child in court. This representative provides an independent view of child issues, and presents an objective assessment of the arrangements which are in the best interest of the child. The presence of a child representative will ensure that parental interests do not take precedence over the child’s, and will assist the court in coming to a decision on child arrangements post-separation.

C. Mediation

53 Even in the midst of a highly emotional divorce process, the key to a healthy resolution of loyalty conflicts often lies in the parents’ relationships and their co-operation to find ways to work for their children’s sake.¹³³ Instead of using the court to settle custody decisions and tapping on PAS to win favour in such a system, parents should take responsibility to reach their own decisions over their children. This recognises that parents should decide on the best interest of their children, promotes parental self-determination,¹³⁴ and reduces the harm inflicted on a child in the adversarial court system.

54 Emery and colleagues found in a longitudinal research involving randomised trials of mediation and adversary settlement that mediation can (a) help to resolve a large percentage of cases which may have headed for court; (b) possibly quicken the speed of settlement, (c) save costs and raise compliance with agreements; (d) clearly lead to greater party satisfaction; and (e) result in better relationships between non-residential parents and children, as well as between divorced parents, even up to 12 years after dispute settlement.¹³⁵ They listed key ingredients of mediation as including a call for parental co-operation over the long run of co-parenting after separation, the opportunity to address underlying emotional issues, helping parents to establish a cordial relationship, and the avoidance of divisive negotiations at a critical time for family relationships.

133 Robert E Emery, *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation* (The Guilford Press, 2nd Ed, 2012).

134 Robert E Emery, *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation* (The Guilford Press, 2nd Ed, 2012) at p 111.

135 Robert E Emery, David Sbarra & Tara Grover, “Divorce Mediation: Research and Reflections” (2005) 43(1) *Family Court Review* 22.

D. Family systems approach to interventions

55 Lastly, interventions for parents and children during and post-divorce are important to aid adjustments to the changes in the family. The harsh rejection of a child towards a parent is often an outcome of a systemic and family problem where disruptions have occurred in family structure, boundaries and roles. Finding a solution is the responsibility of both parents.¹³⁶ Family systems intervention involves the participation of the entire family in various combinations, and may include relatives, as well as any third-party professionals.

56 An example of a family systems approach is the programme of “functional family therapy” (“FFT”). It is different from individual services in that the entire family is viewed as the target of intervention; not just the child alone. FFT sessions take place in the home environment, and seek to address relational and communication issues within the family system. In the context of divorce, this approach helps to address family relationship issues, to improve the child’s healthy relationships with both parents, to restore adequate parenting and to enhance the child’s well-being. This systemic approach is essential to mitigate complex family dynamics, and to manage the negative repercussions of parental separation.

IX. Conclusion

57 Divorce is inherently a highly difficult process for the child. PAS is a simplistic and biased theory which has little scientific and diagnostic merit, and may be profoundly harmful to children and families. The acceptance of PAS is dangerous in the medical and legal arena as it may result in a failure to comprehensively investigate abuse allegations, and a failure to account for complex family dynamics in custody decisions. The courts, judges, medical and mental health professionals should never ignore abuse allegations based on PAS, but instead give due diligence to carefully examine each claim in order that an effective plan and structure for legal, judicial and therapeutic interventions can be carried out. Lastly, the best interests and the voice of the child must always be put at the forefront in custody disputes. Kofi Annan, the seventh Secretary-General of the United Nations, once said, “There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected,

136 Barbara Jo Fidler & Nicholas Bala, “Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums” (2010) 48(1) *Family Court Review* 10 at 25.

that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.¹³⁷

137 *The State of the World's Children 2000* (United Nations Children's Fund, 2000) at p 4.