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FROM PARENTAL ALIENATION TO COERCIVE VIOLENCE: PERSPECTIVES FROM CANADIAN COURTS AND REFLECTIONS FOR BRAZILIAN LAW

DA ALIENAÇÃO PARENTAL À VIOLÊNCIA COERCITIVA: PERSPECTIVAS DOS TRIBUNAIS CANADENSES E REFLEXOS PARA O DIREITO BRASILEIRO

DE LA ALIENACIÓN PARENTAL A LA VIOLENCIA COERCITIVA: PERSPECTIVAS DE LOS TRIBUNALES CANADIENSES Y REFLEXIONES PARA EL DERECHO BRASILEÑO

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ABSTRACT

Considering the legitimacy crisis of the Parental Alienation Law in Brazil (Law No. 12.318/2010), which is the subject of intense debate for its repeal due to allegations that it instrumentalizes family violence, the objective is to analyze the evolution of the Canadian legal system, which has transitioned from the concept of parental alienation to the broader framework of family violence and coercive control, in order to draw reflections for improving child protection in Brazil. To do so, a comparative, documentary, and bibliographic analysis of the Civil Law (Brazil) and Common Law (Canada) systems is carried out, focusing on the legislation of both countries, case law, and reports from the Canadian Department of Justice from 2005 and 2023. It is observed that the main distinction lies not in the law itself, but in Canada's systemic maturity, which, following the 2021 *Divorce Act* reforms, prioritizes child safety over parental contact and frames alienating behavior itself as a form of coercive control. This allows for the conclusion that Brazil's challenge is not the lack of a law, but the underutilization of its instruments, requiring the maturation of forensic and judicial practices to apply existing legislation with the technical rigor and systemic understanding of family violence demonstrated by Canada.

Keywords: Parental Alienation. Coercive Control. Family Violence. Comparative Law. Child Custody.

RESUMO

Considerando a crise de legitimidade da Lei de Alienação Parental no Brasil (Lei nº 12.318/2010), alvo de intensos debates sobre sua revogação por alegações de que instrumentaliza a violência familiar, objetiva-se analisar a evolução do ordenamento jurídico canadense, que transitou do conceito de alienação parental para o enquadramento mais amplo de violência familiar e controle coercitivo, a fim de extrair reflexos para o aprimoramento da proteção infanto-juvenil no Brasil. Para tanto, procede-se à análise comparativa, documental e bibliográfica dos sistemas de *Civil Law* (Brasil) e *Common Law* (Canadá), com foco na legislação de ambos os países, na jurisprudência e em relatórios do

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Departamento de Justiça canadense de 2005 e 2023. Observa-se que a principal distinção não reside na norma em si, mas na maturidade sistêmica canadense, que, após as reformas do *Divorce Act* em 2021, prioriza a segurança da criança sobre o contato parental e enquadra o próprio comportamento alienador como uma forma de controle coercitivo, o que permite concluir que o desafio brasileiro não é a falta de lei, mas a subutilização de seus instrumentos, sendo necessária a maturação da práxis pericial e judicial para aplicar a legislação vigente com o rigor técnico e a compreensão sistêmica da violência familiar demonstrada pelo Canadá.

Palavras-chave: Alienação Parental. Controle Coercitivo. Violência Familiar. Direito Comparado. Guarda de Filhos.

RESUMEN

Considerando la crisis de legitimidad de la Ley de Alienación Parental en Brasil (Ley N° 12.318/2010), objeto de intensos debates sobre su derogación por alegaciones de que instrumentaliza la violencia familiar, el objetivo es analizar la evolución del ordenamiento jurídico canadiense, que ha transitado del concepto de alienación parental a un marco más amplio de violencia familiar y control coercitivo, con el fin de extraer reflexiones para mejorar la protección de la infancia y la adolescencia en Brasil. Para ello, se realiza un análisis comparativo, documental y bibliográfico de los sistemas de *Civil Law* (Brasil) y *Common Law* (Canadá), con enfoque en la legislación de ambos países, la jurisprudencia y los informes del Departamento de Justicia de Canadá de 2005 y 2023. Se observa que la principal distinción no reside en la norma en sí, sino en la madurez sistémica canadiense, que, tras las reformas de la *Divorce Act* en 2021, prioriza la seguridad del niño sobre el contacto parental y enmarca el propio comportamiento alienador como una forma de control coercitivo, lo que permite concluir que el desafío de Brasil no es la falta de ley, sino la subutilización de sus instrumentos, siendo necesaria la maduración de la práctica pericial y judicial para aplicar la legislación vigente con el rigor técnico y la comprensión sistémica de la violencia familiar demostrada por Canadá.

Palabras clave: Alienación Parental. Control Coercitivo. Violencia Familiar. Derecho Comparado. Custodia de los Hijos.

1 INTRODUCTION

The study and application of law are not limited to the boundaries of a single legal system. In an interconnected world, where social and human challenges often transcend geographical barriers, the analysis of legal solutions adopted by other nations ceases to be a mere exercise in erudition to become an essential tool for the progress of legal science. The evaluation of the treatment of a given matter in another country has a multifaceted and crucial importance, justifying the present comparative investigation between the approaches of Canada and Brazil in the sensitive field of destructive family dynamics, specifically in the conceptual transition from parental alienation to coercive violence.

The main driver for this analysis lies in the perception that national law sometimes faces moments of crisis and imperative need for reform. In contexts such as the one experienced in Brazil, with regard to highly complex family conflicts, comparative law emerges as a fundamental need for understanding the legal phenomena of our time. The careful observation of how other legal systems, with their own historical and cultural paths, have faced problems analogous to ours, offers a unique opportunity for learning (Ancel, 1980).

In addition to this primary function of a catalyst for reforms, comparative study serves to improve scientific knowledge and a deeper understanding of national law itself. It is through the contrast and critical analysis of a foreign system that the superficial understanding of our own institutions is transformed into a global and in-depth understanding. This method proves to be an indispensable instrument for jurists, both in public and private law, who aim not only to describe, but to improve legal dogmatics. By shedding light on the "true coloring" of institutions, comparative law enriches scientific legal culture and qualifies the resolution of practical problems.

Furthermore, immersion in the logic and "spirit" of different legal systems, such as the Canadian one, facilitates the understanding of their institutions, methods and foundations, revealing the elements of an institutional system that, in perspective, helps us to decipher ours. This intellectual and methodological exercise contributes to the formation of a **"**universal legal consciousness", which transcends the traditional classification of the great "families of law" and brings us closer to a global legal dialogue.

By comparing how different legal systems deal with a matter, it becomes possible not only to identify innovative solutions, but also to analyze trends and legislative and jurisprudential developments on an international scale. This study of parallel legislation and its correspondences promotes a scientific approach to legal phenomena, helping to anticipate future developments and continuously improve the normative framework.

In this panorama, it is unquestionable that Brazil is experiencing a deep period of crisis and reevaluation with regard to the phenomenology of parental alienation. Law No. 12,318/2010 is at the center of a robust repeal campaign, which reverberates in both the Legislative and Judiciary Branches. The main justification for such a movement is that its practical application has served, paradoxically, as an instrument for the perpetuation of family violence, whether domestic or directed against children and adolescents, sometimes with the seal of the State itself. The intensity of this debate is evidenced by the processing of multiple bills in the National Congress that propose their full repeal, such as PL 2.812/2022, whose discussion gained strength from testimonies collected in the CPI on Maltreatment, in which mothers reported that the law was used against them precisely after denouncing abuses suffered by their children.

The Federal Supreme Court was urged to express itself on the matter on more than one occasion, highlighting the Direct Action of Unconstitutionality (ADI) 6.273, filed by the Association of Lawyers for Gender Equality, which sought the declaration of unconstitutionality of the entire law, on the grounds that it was a "tool for gender discrimination against women". Although the action was not known for procedural reasons of legitimacy, its existence already demonstrated the seriousness of the controversy. More recently, ADI 7,606, proposed by the Brazilian Socialist Party (PSB), once again questioned key provisions of the law, notably articles 2, sole paragraph, VI, and 4, caput, on the grounds that they restrain and discourage the reporting of abuse and mistreatment (Rocha, 2025b). This scenario of intense legislative and judicial questioning characterizes the current moment as one of profound instability and reflection, making the examination of alternatives and solutions from other legal systems a pressing need.

In view of the above, this article is justified by the conviction that the analysis of the evolution of the treatment of parental alienation to the broader framework of coercive violence in Canadian courts can offer valuable reflections for the Brazilian debate. It seeks, through this comparative study, to lead to a deeper and more accurate knowledge of both foreign law and our own, with the ultimate objective of contributing to the advancement of the full protection of children and adolescents in Brazil.

2 METHODOLOGY

This article is primarily based on the comparative method, contrasting the legal systems of Brazil and Canada in the treatment of intrafamily violence, with special attention to the conceptual transition from parental alienation to coercive violence. The choice of Canada as a reference is justified by its historical maturity and the robustness of data

collection on the subject, allowing an in-depth analysis of a system that has faced challenges analogous to those of the Brazilian scenario.

To achieve the objectives, documentary and bibliographic research was used. The documentary analysis was anchored in primary and secondary sources, including the pertinent legislation of both countries, with emphasis on Law No. 12,318/2010 in Brazil and the *Canadian Divorce Act*, institutional reports, notably the 2005 and 2023 guides of the Department of Justice of Canada, and a selection of relevant judicial precedents that illustrate the praxis of each system. The bibliographic research, in turn, served to support the theoretical framework, through the consultation of scientific articles and doctrinal works that deal with the phenomenology of violence and parental dynamics.

The analytical approach adopted is qualitative in nature, privileging the critical interpretation and recontextualization of key concepts, such as the distinction between "genuine alienation" and "realistic estrangement". In addition, an interdisciplinary perspective was adopted, which integrates knowledge from Law, Psychology and Social Sciences for a deeper understanding of the object of study. This combination of methods aimed not only to describe and compare, but also to extract practical and theoretical reflections from the Canadian experience, contributing to the advancement of the debate on the subject in Brazil.

3 CIVIL LAW AND COMMON LAW IN FAMILY VIOLENCE: CONTRASTS BETWEEN BRAZIL AND CANADA

The genesis of Law No. 12,318/2010 is intrinsically linked to the performance of Elizio Peres, Labor Judge in São Paulo and one of the main scholars on the subject in the country, who was responsible for consolidating the draft bill that gave rise to the rule. The process of drafting the law was marked by a broad social engagement, which began in May 2008, when Peres launched the first version of the draft bill for public debate. The text was widely disseminated on *online platforms* of associations of fathers and mothers, as well as professionals in the areas of Law and Psychology, with the aim of collecting criticism and suggestions. This participatory method, which involved everything from experienced experts to fathers and mothers who experienced the problem on a daily basis, resulted in a dynamic text, which went through 27 versions and was almost entirely rewritten.

According to Peres, it was this active listening that gave legitimacy to the proposal, as it captured a real and pressing social demand. The central concern, throughout the elaboration, was to create an instrument with technical consistency and political feasibility that would be effective in inhibiting the practice of acts of parental alienation. Even after its formal presentation, the project continued to be improved during its progress in the National

Congress. For this reason, Elizio Peres emphasizes that the law is the result of a "collective authorship", and it is up to him to consolidate the various contributions received.

This option for specific and detailed legislation to curb parental alienation is not a coincidence, but a direct reflection of the Brazilian legal tradition, inserted in the *Civil Law* (or Romano-Germanic) system. In this model, the main source of law is the written law, affirmed in codes and statutes. It is a striking feature of the national legal culture the search for security through codification, which often results in a notorious legislative inflation. Driven by the hope of making judicial decisions more predictable and limiting the discretion of magistrates, there is a tendency to detail in the law as many situations and procedures as possible.

This approach contrasts sharply with the system in place in Canada, a country with a tradition of *common law*. In this system, the main source of law is not legislation, but judicial precedents, which are the reiterated decisions of the courts consolidated over time. For this reason, laws can be more generic, establishing general principles and guidelines, while details, specifics, and application to concrete cases are developed and refined by jurisprudence. Thus, it is justified because Brazil has a detailed law to deal with acts of parental alienation, while Canada addresses the issue in a more principled way in its legislation, leaving to its courts, through precedents, the task of specifying the conducts and consequences. Therefore, the comparative analysis requires the understanding that, while Brazil seeks legal certainty in the letter of the law, Canada finds it in the strength of its precedents, shaping the approach to the complex phenomenon of parental alienation in different ways.

Despite these differences in legislative culture, the choice to analyze the Canadian model is particularly pertinent for two main reasons: First, the debate on intrafamily violence and the dynamics of parental separation already had considerable social and judicial experience in Canada many years before the enactment of Law No. 12,318/2010 in Brazil. Second, and crucially, Canada is a pioneer in refining research and collecting data on the incidence and risk factors of family violence, something that in Brazil still lacks the same degree of detail and precision. While the Brazilian system relies mostly on a passive collection of information, waiting for the victim to look for the reporting platforms (which is known to be affected by underreporting), Canada adopts a posture of active search for this data.

A clear example of this proactive approach is the work of *Statistics Canada* (the country's statistics agency), which as early as 2005 carried out comprehensive telephone surveys on the subject. These surveys stood out for collecting rich information on trends, context of violence, violence against children and the elderly, and the risk of homicide (Jaffe *et al*., 2005).

The data revealed important gender patterns, such as the fact that women are four times more likely to be killed by their spouses and to be targeted in more than 90% of cases of spousal homicide followed by suicide (Dauvergne, 2004). The survey also looked at post-separation violence, revealing that 27% of separated spouses with minor children reported assault in the previous five years, and that victims of abuse were more than twice as likely to report the absence of contact between the ex-partner and the children (*Statistics Canada* 2005).

Another indicator of the late stage of the debate in Canada is the remarkable prevalence of shared custody. Data from 2002 already pointed to its application in 42% of the cases, a scenario consolidated six years before the institute was formally introduced into Brazilian legislation. This significant temporal difference denotes an earlier legal and social maturity in dealing with the complexities of post-separation coparenting, contrasting with the more recent experience of our courts (Jaffe, 2005).

This in-depth knowledge allowed the elaboration of detailed guidelines for policymakers and professionals, aiming to bridge the gap between the promotion of coparenting and the need for safety in cases of family violence, as well as the confrontation of false reports and parental alienation, something that fully justifies the analysis of her experience for reflections on Brazilian law.

The present research, therefore, is primarily anchored in two seminal works published by the Department of Justice of Canada, which illustrate the evolution of legal and psychosocial thought in that country. The first, dated 2005 and entitled *"Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices",* is a milestone for having been published five years before the enactment of Law No. 12,318 in Brazil. Already at that time, the document guided policymakers and professionals on how to deal with the complexity of parenting arrangements in contexts of violence, seeking to bridge the gap between the promotion of coparenting and the need for security, offering a thorough treatment for situations involving the instrumentalization of complaints.

The second work, a review and update of the original published almost two decades later, in 2023, evaluates the practices employed in the matter by the courts and protection devices to, once again, outline new guidelines. This most recent report is of special relevance, as it incorporates and analyzes the important legislative changes that occurred in the *Divorce Act* in 2021, which inserted new paradigms for the protection of children and victims of violence into the Canadian legal system, such as a broader definition of family violence and the recognition of coercive control.

4 THE DEFINITION OF COERCIVE CONTROL AND ITS APPLICATION IN CANADIAN LAW

The evolution of family law in Canada reflects a growing sophistication in understanding the power and abuse dynamics that permeate intimate relationships, culminating in the recent formal incorporation of the concept of "*coercive control*" as a specific modality of family violence.

This approach represents a significant step forward, moving away from a view focused only on isolated acts of aggression to encompassing patterns of behavior that, while subtle, are deeply harmful.

In the Canadian context, coercive control is defined as a pattern of abusive behaviors used by a family member or intimate partner to control, dominate, and subjugate the other over time. Essentially, it goes beyond one-off incidents of physical or sexual abuse, taking the form of a variety of tactics that aim to undermine the victim's independence, self-esteem, and security, restricting their autonomy and choices.

Because it is often "invisible" and difficult to identify externally, its legal recognition has become a fundamental step towards the protection of victims. Perpetrators often do not perceive their conduct as abusive, but as a legitimate means to achieve their goals of domination. Canadian law and jurisprudence identify a range of behaviors that characterize coercive control, including threats of death or physical harm to oneself, the victim, or others; intimidation, such as the constant monitoring of the victim's location (including online, characterizing *stalking*) and the destruction of their property; emotional abuse, through constant humiliation, degradation or belittling; financial abuse, such as strict control of access to cash or credit and deliberate non-payment of child support; and social isolation, keeping the victim away from their support network, such as friends, family, work or school.

Particularly relevant to family law, the practice of undermining the victim's parenting, making threats against the children to create an environment of fear, *litigation abuse* to prolong legal disputes, and gaslighting (psychological manipulation that leads the victim to doubt his or her own sanity) are recognized as clear manifestations of coercive control.

Coercive control was formally incorporated into Canada's federal law through amendments to the Divorce *Act*, which came into effect in March 2021. This reform was a milestone, updating a legal diploma that, in its 1985 version, did not make specific reference to family violence, which led to an undervaluation of its importance in decisions about parenthood.

The new wording of Section 2 of the Act now expressly defines that *family violence means any conduct ... that is violent or threatening or that constitutes a pattern of coercive*

and controlling behavior or that causes the other family member to fear for their own safety or that of another person[2]. The law also lists examples of such conduct, reinforcing the breadth of the concept and requiring courts to consider the impact of this violence when determining the best interests of the child.

The decision to incorporate coercive control into the legislation stemmed from a mature recognition of the limitations of the previous system and the need for more robust protection. The literature review and practical experience have shown that collaborative coparenting is not appropriate in cases of coercive control.

The new legislation directs courts to adopt differentiated approaches, which may include limited, supervised contact or even no contact with the aggressor, based on a risk assessment. In addition, the 2021 reforms established the physical, emotional, and psychological safety and well-being of the child as the primary consideration in parenting arrangement decisions. This represented a paradigm shift from the old "*maximum contact principle*", which was often interpreted in a way that favored shared custody even in contexts of violence. Finally, the amendments aligned the federal statute with several provincial and territorial laws that already recognized the centrality of family violence in custody disputes, creating a more cohesive and protective system throughout the country.

Thus, the modifications introduced by Bill C-78 were presented to the 42nd Parliament in May 2018, receiving the Royal Sanction in June 2019, modernizing a framework that no longer adequately responded to complex issues such as family violence (Department of Justice Canada, 2019).

Several private membership bills had proposed the creation of a legal presumption of *Equal Shared Parenting*, which would mean equal time and joint responsibility in decision-making, unless one of the parents could prove that such an arrangement would not be in the best interests of the child. However, the 2019 reforms (Bill C-78) did not incorporate this presumption. The legislation has kept the best interest of the child as the sole consideration for parenting decisions, without a presumption of equal time. The reason for not including this presumption was that it could increase litigation by forcing parents to present evidence that the other parent was less fit, fueling conflict, and would be inconsistent with the emphasis on the child's best interests.

On the other hand, although the reformed Divorce Law (effective March 2021) maintains the principle that the child should have as much time with each spouse as is

[2] In the original: "*Family violence means any conduct, whether or not it constitutes a criminal offense, by one family member toward another family member that is violent or threatening or that constitutes a pattern of coercive and controlling behavior or that causes the other family member to fear for their own safety or that of another person—and in the case of a child, direct or indirect exposure to such conduct—and includes: (...)*"

consistent with his or her best interests, the specific reference to "Maximum Contact" or "Maximum Parental Time" does not appear in the text of the law. During the parliamentary process, there were concerns that the marginal note "Maximum Parental Time" might give the impression of creating a presumption of equal parental time. In response, the Minister of Justice committed to making an administrative amendment to remove the word "maximum" and use wording that more closely reflected the legislative intent of "parental time consistent with the best interests of the child." Therefore, the underlying principle was retained, but the specific terminology in the marginal note was modified to avoid misinterpretations (*Department of Justice Canada*, 2019).

At this point, the comparison with the Brazilian legal framework reveals a fundamental structural difference. In Brazil, the principle of the "best interest of the child" is not only a legal guideline, but a commandment with *the status* of a fundamental right, enshrined in article 227 of the Federal Constitution.

Contrary to the Canadian tradition, the Brazilian Constitution is markedly analytical, to the point of constitutionalizing matters of Family Law which, in turn, should guide all infra-constitutional legislation. Thus, the national legal system does not need an ordinary law that reiterates the primacy of the interests of the children in any custody arrangement, as this is already the supreme norm. Consequently, all other laws, including the one that establishes shared custody as a preferential regime (article 1,584 of the Civil Code) or those that provide for measures such as the reversal of custody in cases of parental alienation, are only sustained if their application is based, in the specific case, on the best interest of the child and adolescent.

This analysis cannot be based on an abstract interpretation of the rule, but rather on a detailed evaluation of the facts at trial. A judicial decision that determines any change in the routine or bonds of a child without demonstrating, in detail, how such measure meets his or her best interests, runs the risk of being considered null and void due to unconstitutionality. Therefore, there is no need to speak of reversal of custody or extension of the period of cohabitation as merely punitive measures for the identification of the act of parental alienation. On the contrary, all the legislative tools provided for in Law No. 12,318/2010 necessarily go through the prior and mandatory analysis of the best interest of the child, which gives such measures an essentially protective character, aimed at preserving the fundamental right to healthy family life of the being in formation.

This assertion finds a strong parallel with Canadian law, especially in the 2021 legislative reforms and subsequent judicial interpretation. The evolution of the issue in Canada shows a clear transition from an approach that, in 2005, still sought to reconcile

parental cooperation and "maximum contact" with the recognition of violence, to an approach in 2023 that unequivocally prioritizes the safety and well-being of the child and the victim, recognizing family violence in its multiple forms. The 2021 reforms to the Divorce *Act* require that, when considering factors for parenting decisions, the court give "*primary consideration to the physical, emotional and psychological safety, security and well-being of the child*" (s.16(2)) (our[3] translation).

The Supreme Court of Canada, in *Barendregt v. Grebliunas* (2022), re-examined the "principle of maximum contact" in light of the 2021 amendments, emphasizing that the "principle of maximum contact" is now the "parental time factor" and is "significant only insofar as it serves the best interests of the child; should not be used to deviate from this investigation." This subordinates contact to safety and well-being, giving the measures an intrinsically protective character. In the same judgment, he warned that the suggestion that domestic abuse or family violence has no impact on children and has nothing to do with the aggressor's parental capacity is untenable[4]. In the specific case, the Supreme Court restored the order of *relocation* for the mother, separating the children from the father, based on the analysis that this measure promoted the well-being of the children, protecting them from the environment of "high conflict" and "animosity" between parents. The objective was to ensure a healthier family life for the children, and not to punish the alienating father for his behavior. The reversal of custody occurred due to an essentially protective character for the healthy development of the children (Jaffe *et al*, 2023, p. 40).

It should be noted that even in 2005, the Divorce Act of 1985 already established that decisions on custody and access would be based on an individualized determination of the "best interests of the child". However, the 1985 interpretation of the "principle of maximum contact" (s.16(10)) sometimes led to the promotion of maximum contact with both parents, even in high-conflict contexts, which could be problematic in cases of family violence. Thus, the report "*Making appropriate parenting arrangements in family violence cases: Applying the*

[3] In original: *16(2) In considering the factors referred to in paragraph (3), the court shall give primary consideration to the safety, security and physical, emotional and psychological well-being of the child.*

[4] In the original: *"133 What is known as the maximum contact principle has traditionally emphasized that children shall have as much contact with each parent as is consistent with their best interests. A corollary to this is sometimes referred to as the "friendly parent rule", which instructs courts to consider the willingness of a parent to foster and support the child's relationship with the other parent, where appropriate... 134 Although [the Supreme Court in] Gordon placed emphasis on the "maximum contact principle", it was clear that the best interests of the child are the sole consideration in relocation cases... some courts have interpreted what is known as the "maximum contact principle" as effectively creating a presumption in favour of shared parenting arrangements, equal parenting time, or regular access..... 135 These interpretations overreach. It is worth repeating that what is known as the maximum contact principle is only significant to the extent that it is in the child's best interests; it must not be used to detract from this inquiry. It is notable that the amended Divorce Act recasts the "maximum contact principle" as "[p]arenting time consistent with best interests of child": s. 16(6). This shift in language is more neutral and affirms the child-centric nature of the inquiry. Indeed, going forward, the "maximum contact principle" is better referred to as the "parenting time factor."*

literature to identify promising practices" already highlighted the need for a "different approach, which recognizes the need to promote safety and accountability" in cases of family violence, which in Brazil seems to have been the target of attention only in 2023, when Law 14.713 was enacted, that removes shared custody in contexts that highlight the risk of domestic violence.

The update to the "*Making appropriate parenting arrangements..."* in 2023 expressly warns against the use of allegations of parental alienation as a form of punishment or to discredit parents who are victims of family violence: "*Significant caution should be used when evaluating allegations of parental alienation when made against parents who may be victims of family violence*," warning that such allegations "*can be misused against a victim parent as evidence of poor parenting capacity or unwillingness to engage in 'friendly' parenting*" (Jaffe *et al*., p. 10).

Crucially, the alienating behavior itself can be considered a form of "coercive control" and "family violence", without distinction for the gender of the alienating parent, or for which of them is the primary custodian, a correspondence similar to that of Law 12.318/2010, which focuses on acts of parental alienation as an abuse in itself, regardless of whether the child actually refuses to live with the victim-parent, either they still have primary custody or not.

Given a history of abuse, Canadian courts distinguish between genuine alienation and "realistic estrangement" or "justified rejection." The need for "proper assessment and investigation" of allegations of alienation and abuse is critical to ensuring that parenting arrangements are appropriate to the "unique dynamics and needs of each family." If the child's rejection is "linked to the rejected parent's history of violence and ongoing attempts to monitor and harass the children and the primary caregiver, then interventions to create safety for the children and the caregiver are far more important than interventions to address the 'alienation.'"

In this last aspect, a distinction is important with the national legislation: Law 12.318/2010, by requiring the figure of specific intent in the typification of the act of parental alienation (explicit objective of fading the bonds of affection with the other parental partner), removes from legal typicity acts that are aimed at protecting the child (Rocha, 2025a), something that Canadian studies have emphasized on several occasions, making it clear that it is not realistic to expect the spouse who is a victim of domestic violence to be able to be collaborative with the parenting of the abusive spouse. Accusing him, because of this, of practicing parental alienation, is a way of perpetuating coercive control. It should be noted that the 2005 report was already skeptical of "Parental Alienation Syndrome" as an empirically validated diagnostic category. It was already recognized that the rejection of a

parent by a child could have "a number of reasons" and that an "analysis of alienation is especially inappropriate in cases of family violence", where the children's reluctance to contact one of the parents is better understood as "hypervigilance or fear", which perfectly fits the specific intent required in Brazilian legislation, alongside the need for concrete and objective demonstration of factually verifiable acts as alienators from the exemplifying list.

In short, parental alienation in the studies pointed out is shown as a reality, but approached with caution and under the lens of family violence when it is presented in the concrete case, focusing on protection and the creation of a safe environment for children.

5 DIFFERENTIATING GENUINE ALLEGATIONS FROM FALSE ACCUSATIONS: THE CAUTIOUS APPROACH OF CANADIAN COURTS

According to reports, one of the biggest challenges facing Canadian courts in highly complex family disputes is the task of differentiating a genuine accusation of violence from a false allegation, formulated as a litigation tactic. This difficulty is multifaceted and requires a careful analysis by legal operators.

First, the very nature of family violence, especially intimate partner violence (IPV), contributes to the evidentiary complexity, as it often occurs "behind closed doors", without the presence of witnesses or other corroborating evidence, such as police reports or interventions by child protective services (*Barendregt v. Grebliunas*, 2022).

In addition, victims themselves may be reluctant to expose the true extent of the abuse they suffered, either because of embarrassment, lack of trust in the system or fear that their revelations will not be properly understood, especially in cases of sexual abuse. Often, the victim only feels safe to report violence after separation, which, incongruously, can lead to their allegations being received with skepticism, although experience shows that most of these post-separation complaints are valid (Johnston *et al*, 2005).

The behavior of the aggressors also entangles the analysis, as it is common for them to deny or minimize their abusive conduct, projecting guilt and an image of reasonableness that can deceive evaluators and judges in specific interactions. Added to this is institutional skepticism on the part of the police, child protection authorities and other professionals in the justice system who may, from the outset, interpret reports of violence in the context of a custody dispute as a strategy to limit the contact of the other parent with the child. In this scenario, protective strategies adopted by the victim, such as avoiding contact with an abusive ex-partner, run the risk of being misinterpreted as a lack of cooperation or even as an act of parental alienation, inverting the logic of protection and revictimizing those who seek to safeguard themselves and their children (Coelho, 2020).

This dynamic is aggravated by the judicial culture that has historically promoted the "friendly *parent rule*", according to which custody should be granted to the person who best promotes the child's relationship with the other parent. In cases of violence, this rule proves dangerous, as the victim who raises legitimate concerns about safety may be framed as uncooperative or "unfriendly," which is used against them in the process, increasing their financial and emotional costs.

The aggressor, in turn, can instrumentalize the judicial system, engaging in what is known as "litigation *abuse*" or "legal *bullying*", prolonging the disputes as a way to continue coercive control and exhaust the victim. The allegations of "parental alienation" themselves are often misused by abusers as a tactic to accuse victims of manipulating their children, when in fact the child's resistance to contact may be a "realistic alienation" or a "justified rejection" stemming from their own history of violence.

It is therefore crucial that the court assess whether the rejection of the child is linked to the behavior of the rejected parent, at the risk of silencing women and children by preventing them from presenting evidence of abuse. Faced with this complexity, Canadian courts, especially after the Divorce *Act* 2021 reforms, seek a nuanced approach, with a primary focus on safety and the "best interest of the child". The new legislation requires initial screening for family violence in all cases of separation and ongoing monitoring. In the provisional hearings, which take place in an admittedly volatile and high-risk post-separation period, an eminently cautious judicial approach is recommended: "*allegations of abuse cannot be presumed to be true, but neither can they be ignored*"[5] [*Droit de la famille* – 21917, 2021 QCCA 864 (CanLII)].

When evidence raises significant concerns of violence, but there is still a lack of sufficient information to establish concrete risks to the child's safety, Canadian courts often order an interim supervised cohabitation arrangement. This measure has a dual purpose: to protect the alleged victims of threats and, at the same time, to protect the accused parent from allegations that may prove to be false. Supervision can take place in a variety of forms, whether by a trusted third party, in a public place, or in a specialized center, and is generally understood as a transition period, while the accused parent addresses behavioral issues and demonstrates that supervision is no longer necessary.

It is important to note that the burden of proof falls on the party seeking the restriction of cohabitation time (*M.H.S. v. M.R.,* 2021 ONCJ 665, 2021). A court order of no contact is rare, as judges "generally assume that a child will benefit from a relationship with both parents

[5] In the original: *"(...) I would reiterate that, at this point, that the spousal abuse allegations are unresolved, and cannot be assumed to be true. I would add, however, that they cannot be ignored either (...)"*

and require significant evidence of risk of harm to the child before terminating all visits" (Jaffe *et al.*, 2023). After the investigation phase, even decisions that are considered permanent may be subject to judicial review, especially in high-conflict cases. If family violence is proven, the court must consider its effects on parents and children and the resources needed for rehabilitation and safe contact, starting from the premise that coparenting is not appropriate in scenarios of coercive control or ongoing violence (Bala; Ebsim, 2022). The assumption of full responsibility for the abusive conduct is, therefore, an inescapable precondition for any less restrictive plan of coexistence to be considered. The importance of this requirement is underlined in the 2023 update of the guide "*Making Appropriate Parenting Arrangements...",* in which the need for the aggressor to recognize the harm of his or her actions and demonstrate remorse is mentioned in at least eleven different passages, evidencing its fundamental character for rehabilitation and family security.

Finally, recognizing that it is not easy or safe to deal with family violence without knowledge of the facts, the Canadian guide concludes that the work of highly specialized professionals in the management of these cases is essential. The recommendation emphasizes the need for ongoing training that covers the dynamics of family violence, the adoption of trauma-informed practices, and the correct use of risk assessment tools. The document also points out that the lack of resources and the absence of effective coordination between the justice systems (criminal, family and child protection) constitute the most significant barriers to the full implementation of parenting arrangements that are, in fact, safe and adequate.

On the national scene, the Henry Borel Law (No. 14,344/2022) emphasizes the need for highly specialized professionals and the adoption of trauma-informed practices, in addition to recognizing the importance of resource allocation and coordination between justice systems to ensure the safety and well-being of children and adolescents who are victims of violence (Wedge; Ávila, 2025, p. 110). The rule is integrated by other legal diplomas, such as the Statute of the Child and Adolescent (Law No. 8,069/90) and the Special Testimony Law (No. 13,431/2017), which in its article 8 mentions that the performance of "special testimony, under the terms of article 8 of Law No. 13,431/2017, which requires a specially trained team". The law also explicitly seeks coordination and integration between the criminal and family justice systems.

6 THE OVERLAP OF DOMESTIC VIOLENCE AND CHILD ABUSE AND THE INHERENT VIOLATION OF CHILD SAFETY

The contemporary Canadian approach, consolidated in recent legislative reforms, is based on the recognition that intimate partner violence (IPV) and child abuse are intrinsically overlapping phenomena and cannot be analyzed in isolation. The Divorce Act adopted a broad definition of "family violence" that encompasses both child abuse and spousal violence, understanding that the latter falls within this broader concept.

This understanding is corroborated by data from Canadian child protective services, which classify child exposure to domestic violence as one of the most common forms of confirmed maltreatment. Studies show that IPV and child abuse often occur in the same family, and it is estimated that in homes where there is exposure to spousal violence, more direct forms of child maltreatment are four times more likely (Hamby *et al.*, 2010). Reinforcing this interconnectedness, the literature points out that many perpetrators of family violence also directly abuse their children, making child safety the primary consideration in any parenting arrangement (Jaffe *et al*., 2023, p. 23).

Canadian legislation is explicit in stating that the safety of the child is undermined by exposure, whether direct or indirect, to domestic violence [Divorce Act, Section 2 and Section 16(2)]. The very legal definition of family violence includes, in the case of a child, his or her exposure to such conduct. Therefore, an "informed lens on trauma and violence" is adopted, which requires understanding the deep and lasting impacts that living in an environment of fear and coercive control entails for survivors and their children.

Trauma has a direct impact on the victim's parenting capacity and the children's adaptation in the post-separation period. Exposure is defined broadly, including the act of the child seeing, hearing, being informed about, or perceiving the consequences of abuse and coercive control against his or her parent. This experience is itself recognized as a form of child emotional abuse, as children are deeply affected even if they do not directly observe the acts of violence, something that parents often do not realize.

Relatedly, the typification of psychological violence provided for in article 4, II, "c", of our Law No. 13,431/2017, although it represents an advance, reveals a restrictive conception of the phenomenon. The provision defines such violence as the exposure of the child or adolescent to "violent crime" against a family member or member of the support network. However, this legal delimitation ignores the robust body of scientific evidence that attests to the severe damage to child and adolescent development resulting from exposure to a context of chronic domestic violence, even if the conducts are not strictly configured as "violent crimes" (Lalonde *et al*., 2020). In this way, the legislation diverges from the systemic

understanding of domestic violence, enshrined in the Maria da Penha Law (Law No. 11,340/2006), whose article 7 covers a broader spectrum of aggressions (physical, psychological, moral, sexual and patrimonial), whose cumulative impact on the family environment is unequivocally harmful to its younger members.

In the Canadian legal system, however, the safety of the child becomes the primary consideration in judicial decisions, regardless of the "type" of violence they may witness. The guide also recognizes that women who are victims of spousal violence are significantly more likely to worry about the safety of their children, and the period of separation, while essential for long-term protection, can increase the immediate risks of serious harm or death for all involved. In extreme cases, domestic homicide may involve the killing of children, often as an act of revenge by the abuser against the partner who left him.

Coercive control behaviors undermine the victim's and children's sense of physical and emotional safety, and may focus specifically on parenting (interparental violence), with the abuser making threats against the child to instill fear in the victim parent. Even if they are not the direct target, children are harmed by living in a home with an abusive parent or by witnessing violence against a sibling (Exposure to Parental Assault on a Sibling - EPAS, in Tucker *et al*, 2021). In the latter, the results of the indicated research showed that 83% of children exposed to EPAS felt fear, and "higher levels of current mental distress (anger, depression and anxiety)", which is associated with symptoms of distress in children and adolescents.

In short, the Canadian framework reinforces that domestic violence is not only a problem among adults, but a factor that directly and undeniably impacts the safety and well-being of children, constituting, in itself, a form of maltreatment.

6.1 THE REALITY BEHIND CHILD CUSTODY LABELS

The in-depth analysis of the Canadian guide reveals other issues of great relevance, especially in the way the justice system of that country differentiates parenting arrangements, establishing clear criteria for each modality. The distinction between coparenting, parallel parenting, supervised switching, supervised parenting time, and the prohibition of contact is not based on an abstract legal preference, but on a realistic assessment of the risk and the parents' ability to cooperate.

It is interesting to note that the arrangement that in Brazil has been adopted on a large scale as "legal shared custody", imposed by the courts with a reference home for one of the parents and a fortnightly time of cohabitation for the other, would not be considered coparenting from the Canadian perspective. In practice, this Brazilian model is much more

similar to what Canadians define as parallel parenting, because in the imposed shared custody, what prevails is not dialogue and cooperation, but the avoidance of contact to minimize conflicts. In short, the very modalities of parental exercise in Canada seem more realistic and adapted to the diversity of concrete cases than the practice in the Brazilian courts, which sometimes generalize the application of the "preferential modality" of shared custody, without evaluating whether the family dynamics effectively support the cooperation that such a regime, in its essence, would require (Merten, 2025b).

The Canadian guide highlights this conceptual difference through a spectrum of clearly defined parenting arrangements. At the top is *co-parenting*, which requires a high level of cooperation, trust and mutual respect between parents for joint decision-making, and is contraindicated in contexts of violence or high conflict. For situations in which cooperation is unfeasible but both are apt, the indicated model is *Parallel Parenting*, in which parents get involved with their children in a meaningful way, but with minimal contact with each other, making decisions independently. On a more restrictive level, *Supervised Exchange* applies when only the child's transfer needs to be monitored to avoid direct and conflictual contact between the parents, without the parenting time itself needing supervision. When the risk of physical or emotional abuse during contact is a concern, *Supervised Parenting Time* is adopted, where the entire period of coexistence is monitored by a third party as a safety measure. Finally, in extreme cases where a parent represents a continuous and serious risk, the maximum protective measure is the prohibition of contact (*No Contact*), which completely suspends coexistence.

In addition to the clarity in the definition of custody arrangements, the Canadian system advances by establishing formal protocols and tools for the assessment of the risk of family violence, a fundamental step that precedes the decision on which parental modality is safer and more appropriate. The guide "*Domestic Violence Risk Assessment: Informing Safety Planning & Risk Management*," published by the Canadian Domestic Homicide Prevention Initiative, is an example of this systematization. Its purpose is preventive, aiming to prioritize cases, guide the monitoring of aggressors and, crucially, inform the elaboration of safety plans for victims. The guide details structured approaches, such as actuarial and structured professional judgment (SPJ), and presents a list of validated instruments, such as ODARA, SARA-V3, and *Danger Assessment*, including versions adapted for vulnerable populations. Among the best practices, the requirement for specialized training and the use of multiple sources of information stand out, emphasizing the importance of incorporating the victim's own risk perception into the analysis, which has high predictive value (Campbell *et al.,* 2016).

6.2 THE EVOLUTION OF THE CANADIAN LEGAL SYSTEM IN THE ASSESSMENT OF PARENTING AND FAMILY VIOLENCE: A COMPARATIVE ANALYSIS (2005-2023)

The comparative analysis between the 2005 and 2023 guidelines reveals a paradigmatic evolution in the approach of the Canadian family justice system, especially with regard to the assessment of parenthood, the recognition of family violence, and the treatment of allegations of parental alienation. Driven by profound legislative reforms and a maturing understanding of the dynamics of abuse, these transformations reflect a shift from a philosophy that sometimes prioritized parental cooperation over safety, to a model unequivocally focused on child protection and well-being.

In 2005, the Canadian scenario was in a transitional stage. The prevailing legal terminology, with the terms "custody" and "access," perpetuated a litigation mentality, although there was already an incipient movement toward concepts such as "coparenting." The legal culture of the time actively promoted "maximum contact" between the child and both parents, based on the premise that this would be the best solution, even in contexts of high conflict.

With regard to family violence, its recognition as a relevant factor for parenting decisions was relatively recent, having been, in the previous decade, often disregarded as an "adult issue". Consequently, there was considerable skepticism about such allegations, often interpreted as strategies to gain advantages in the custody dispute, especially in the absence of police records.

In this context, victims tended to minimize the abuse, while the abusers denied it, requiring evaluators to take a multi-method approach to identifying patterns of coercive behavior. The discussion on parental alienation, in turn, already recognized the lack of empirical validation for Richard Gardner's "Parental Alienation Syndrome" (PAS), but faced the challenge of differentiating the justified rejection of a child in contexts of abuse from a genuine campaign of demoralization by one of the parents (in what Brazilian law defines as *acts* of parental alienation).

The transformative milestone of this evolution was the enactment of the reforms to the Divorce Act in 2021, materialized by Bill C-78, whose effects are fully reflected in the 2023 guide.

The first substantive change was terminological and philosophical: the terms "custody" and "access" were formally replaced by "*parenting time*" and "*parenting plans*", aiming to shift the focus from a "winner/loser" dispute to cooperative and child-centered arrangements. Crucially, the old "principle of maximum contact" was reformulated in Article 16(6) of the Act as the need to ensure "parental time consistent with the best interests of the child". The

Supreme Court of Canada, in the case of *Barendregt v. Grebliunas* (2022), solidified this interpretation by stating that such a principle is a factor to be considered, and not a presumption of equal time, and should be subordinated to security.

The most significant change, however, lies in the centrality given to family violence. The new legislation inserted in its article 2 a comprehensive definition of the term, which transcends the notion of criminal offense to include patterns of coercive and controlling behavior, threats and the exposure of the child to such conduct. The explicit recognition of coercive control, even in the absence of physical violence, and litigious abuse (use of the judicial system as a tool of harassment) represents a notable advance in the protection of victims. This new legislative reality has driven demand for more sophisticated professional practices, such as structured risk assessments, the adoption of an informed lens on trauma and violence, and the application of an intersectional analysis, which considers how factors of gender, race, *immigration status*, and disability shape experiences of abuse. As a result, the child's physical, emotional and psychological safety and well-being were elevated to the status of "primary consideration" (art. 16(2)), correcting the previous interpretation that could superimpose contact over protection.

In this new paradigm, the concept of parental alienation is treated with greater rigor and caution. While acknowledging the seriousness of the problem, the 2023 guide strongly warns against the misuse of such allegations as a weapon to discredit victims of violence or silence children who reveal abuse. Courts are now instructed to differentiate genuine alienation from "realistic *estrangement*," which occurs in response to a history of abuse. In an innovative way, the alienating behavior itself can be framed as a form of coercive control and, therefore, as family violence, subjecting the alienating parent to the same legal considerations as an aggressor.

In short, the trajectory of the Canadian legal system between 2005 and 2023 demonstrates a fundamental shift: from an approach that sought to balance parental cooperation with a still inconsistent recognition of violence, to a robust system that prioritizes safety, it is based on an expanded and precise definition of family violence, including its non-physical forms such as coercive control, and requires highly differentiated and informed interventions. The refutation of any presumption of equal time and the recontextualization of parental alienation within the spectrum of family violence solidify a more protective legal and practical framework in line with scientific evidence on the impacts of abuse on child and adolescent development.

6.3 PARALLELS AND DISSONANCES IN THE BRAZILIAN LEGAL SYSTEM: DOMESTIC VIOLENCE AT THE INTERFACE BETWEEN CONJUGALITY AND PARENTHOOD

The analysis of the evolution of the Canadian legal framework, which transitioned to an integrated model of evaluation of family violence, sheds light on the contradictions and challenges present in the Brazilian legal system. When looking at the national legislation, a notable dissonance emerges: while the Maria da Penha Law (Law No. 11,340/2006) represents a vanguard milestone in the systemic recognition of domestic violence, the legislation that deals with the specific protection of children and adolescents as victims or witnesses reveals a more restrictive conception, which has not yet fully absorbed the complexity of the phenomenon.

The Maria da Penha Law, in its article 7, offers a broad and multifaceted typification of violence against women, which serves as a theoretical and practical reference of great relevance. In particular, its item II, when defining psychological violence, covers conducts such as threat, embarrassment, humiliation, manipulation, isolation, persistent surveillance, persecution and any other that aims to degrade or control the actions, behaviors, beliefs and decisions of the victim. This definition is conceptually robust and in line with the international understanding of "*coercive control*", recognizing that domestic violence often manifests as a pattern of domination and subjugation, and not just as isolated incidents of physical aggression.

In direct contrast, Law No. 13,431/2017, known as the Special Testimony Law, which establishes the system to guarantee the rights of children and adolescents who are victims or witnesses of violence, remains at an earlier stage of conceptual development. Although fundamental, its definition of psychological violence in article 4, item II, paragraph "c", is limited. The legal text circumscribes it to the child's exposure to a "violent crime" against a family member, failing to encompass the vast spectrum of intrafamily violence of which the child is an indirect victim. Living in an environment permeated by coercive control, constant humiliation and chronic psychological tension – conducts already framed as violence by the Maria da Penha Law – does not find express protection in this provision, if it is not configured as a "violent crime".

This conceptual split, which seeks to isolate marital conflict from the parental sphere, is based on the mistaken premise that Intimate Partner Violence (IPV) would be irrelevant for the evaluation of coparenting, except in cases of direct abuse against children. However, this perspective suffered a significant setback with the enactment of Law No. 14,713/2023. By amending the Civil Code and the Code of Civil Procedure, the new legislation began to expressly contraindicate shared custody when there are elements that show a risk of

domestic or family violence. The use of the disjunctive conjunction "or" is of fundamental importance, as it ensures that violence directed at the partner is, in itself, an impeding factor, legally unifying the interests of the adult victim and the protection of the children. In this sense, Brazil is close to the Canadian model, although the latter is even more explicit: Canadian legislation not only sees domestic violence as a form of family violence, but categorically defines it as a form of maltreatment against the child exposed to this environment, regardless of whether he or she is the direct target of the aggression.

The legislative convergence between Brazil and Canada in the treatment of domestic violence does not, however, ensure the congruence of jurisdictional praxis. In fact, it is in the application of the norm to the concrete case that the maturity of a system is revealed, and the Canadian reference demonstrates a more sophisticated approach in the analysis of what can be called an "ecosystem of power". The *M.H.S. v. M.R. case* (2021 ONCJ 665) illustrates this distinction eloquently. In it, Judge Sherr operationalizes an analysis that transcends the manifest conflict, investigating the structural asymmetries between the parties:

> "(...) There is a significant imbalance of power between the mother and the father. The father has a university education... The mother has cognitive and mental health challenges. She is very vulnerable. The father seems to have taken advantage of this imbalance of power. It is easy for him to threaten and intimidate his mother (...)"[6] (our translation)

The legal consequence – granting decision-making to the mother and restricting the father's parental time – derived directly from the recognition that the parent used his advantages (educational, financial and social) as a tool of coercive control, configuring a situation of complex family violence. This holistic approach highlights a gap in Brazilian forensic practice. While the Canadian court delves into the idiosyncrasies of the case, psychosocial assessments in national courts are often criticized for their protocol character. Instead of in-depth and customized investigations, they risk producing reports with generalist conclusions, which in practice are superficial in the face of the complexity of intra-family power dynamics.

In fact, Brazilian jurisprudence itself, even if timidly, has been recognizing this failure in the collection and evaluation of information. The Court of Appeals of Minas Gerais considered it essential to complement the technical evidence when the expert opinion "*little*

[6] In the original: "*It is apparent to the court that there is a significant power imbalance between the mother and the father. The father is university educated.... The mother has cognitive and mental health challenges. She is very vulnerable. The father appears to have taken advantage of this power imbalance. It is easy for him to threaten and intimidate the mother. … it is easy for him to control the mother by telling her how he has powerful friends who will assist him with any abduction. She believes him. He is powerful to her...*"

or nothing addresses the central point of the allegation" (Interlocutory Appeal No. 3957446-08.2024.8.13.0000), and the Court of Appeals of São Paulo has already annulled a sentence in the face of an "*imprecise and without conclusive answer" technical study on the occurrence or not of parental alienation*" (Civil Appeal No. 1010797-91.2021.8.26.0451).

Canadian jurisprudence consolidates the thesis that the practice of coercive control against a parent constitutes, in itself, sufficient reason for the limitation of parental contact. The case *of Armstrong v. Coupland* (2021 ONSC 8186) is a notable example of this approach. In it, an Ontario court analyzed a claim of parental alienation made by the father. However, Judge Chappel concluded that the parent's own communications were inappropriately aggressive, demanding, and threatening, setting up a pattern of coercive and controlling behavior toward the mother. As a direct consequence, the court ruled that the father's parental time would be limited and supervised, in addition to imposing a restraining order. The judgment is emblematic for inverting the narrative: the parent who claimed to be a victim of alienation was, in fact, identified as the perpetrator of the abuse, having his contact with the children restricted precisely to protect the family from his conduct.

In the case *of Barendregt v. Grebliunas* (2022 SCC 22) the Court upheld the lower court decision that allowed the relocation of the mother with the children, largely due to the father's history of violence and abuse. The judgment reinforced the centrality of family violence in parenting disputes, establishing it as a factor that can prevent the adoption of a coparenting regime or joint decision-making. Crucially, the decision recontextualized the old "principle of maximum contact," downgrading it to the status of a "parenting time factor" to be weighed, rather than a presumption. With this, the Supreme Court affirmed that the safety and physical, emotional and psychological well-being of the child constitute the primary consideration, to which the time of contact must be subordinated.

The *C. v. A.J.* (2021 ONSC 8191) demonstrates how alienating behavior is framed by Canadian justice as a modality of "coercive control" and "family violence". In the judgment, the court concluded that the father, by preventing the mother from having contact with the children for six months and making unfounded allegations of abuse, exerted "enormous pressure on the mother and children to do their will." Establishing a direct parallel with the Brazilian legal system, the father's conduct is expressly typified as acts of parental alienation in article 2, items III (hindering contact) and VI (filing a false complaint), of Law No. 12,318/2010. In view of an identical factual framework, Brazilian legislation authorizes the application of more drastic measures in favor of the children, including the reversal of custody (art. 6, V), which would lead to a legal consequence analogous to the decision of Judge Audet, who granted the mother primary custody and exclusive decision-making.

The case *Droit de la famille – 21917* (2021 QCCA 864), of the Quebec Court of Appeal, addresses an atypical custody modality known as "guarda nidal" (*nesting order*), an arrangement in which the parents take turns in the family residence, which does not have a direct correspondent in the Brazilian legal system. In the judgment, the Court reversed the order that forced the mother, an alleged victim of violence, to alternate living in the same house as the father, considering that the situation represented a serious danger to her physical and psychological integrity. Even if such a model formally existed in Brazil, the legal solution would tend to be the same as that of the Canadian court. The recent Law No. 14,713, of 2023, which contraindicates shared custody in contexts of risk of domestic violence, established a principle of protection that would apply even more strongly to an arrangement of such proximity. If the law rules out coparenting in the management of children's lives, it would even more so rule out alternating cohabitation in the same space, in line with the Canadian conclusion that the victim's safety must prevail over any parental arrangement (*Communauté de pratique sur la violence familiar e o direito da família, 2022*).

The premise of the revisibility of parental decisions (*rebus sic stantibus*), a pillar of both Brazilian and Canadian family law, gains different practical contours when analyzing the infrastructure that supports the judicial system. In the precedent set in *McBennett v. Danis* (2021 ONSC 3610), the restoration of full coparenting of a parent with a history of emotional abuse was not based on mere claims of change, but on concrete evidence of their transformation, validated by their participation in "improvement programs." Judge Chappel's decision reveals a system that not only punishes inappropriate conduct, but also offers and values pathways to parental rehabilitation. When contrasting with the Brazilian reality, a significant systemic asymmetry emerges. The lack of parental rehabilitation programs, formally integrated into the family justice ecosystem in Brazil, creates an evidentiary vacuum. Without structured mechanisms to guide and certify the process of change, the possibility of reevaluating a parent who has made mistakes in the past is hostage to a more discretionary and less objective analysis, making it difficult to apply a truly restorative justice in the family environment.

In addition, the very measurement of a genuine change in behavior in Brazil would depend on the overcoming of a psychosocial assessment model classically centered on the self-report of the parties. The practice in Brazilian courts of dispensing with the collection of information from collateral sources — such as contacts with schools, therapists or other informants who make up the family's support network — is notorious. This methodological limitation is often justified under the flimsy argument that the expert opinion "*is not an investigative work*" (Sousa; Brito, 2011, p. 275). Such a restrictive approach, however,

compromises the depth and reliability of the analysis, making it even more difficult to assess the veracity and sustainability of an alleged parental rehabilitation.

The decision rendered in the criminal case *R v. Brame* (2003, YKTC 76) shows a remarkable judicial maturity and an informed approach to domestic violence, which deserves to be highlighted. In the judgment, the defense's attempt to disqualify the victim's credibility because she only reported the abuses after the separation was promptly rejected by the judge, who noted that such conduct "is often the norm, and not the exception." The recognition has empirical bases: the breaking of the bond is usually the catalyst that makes the call for help viable. Such a posture is opposed to a recurrent suspicion bias in the Brazilian system, where the allegation of violence that emerges concomitantly with the dispute over custody is often received with a presumption of instrumentalization. The inquiry about the "delay in reporting" – a frequent question in the national courts – disregards the complex web of factors (emotional and financial dependence, fear, shame) that make up the cycle of violence. *R v. Brame*, therefore, is not just a decision on a specific case; it is the materialization of a judicial practice that replaces lay skepticism with the scientific understanding that, for the victim of abuse, fear is the norm, and denunciation, an act of courage that occurs when possible, rather than when convenient.

What is denoted from the comparative analysis of the judgments, therefore, is not necessarily a greater or lesser robustness in Canada's protective norms, but rather a greater maturity of the entire justice system in understanding the phenomenology of family violence. A maturation is perceived that transcends the judges and reaches the other professionals, based on the recognition that the various forms of violence are interconnected. This systemic maturity is materialized in the technical guidelines that guide psychosocial assessments, which are expressed as to the methodology to be employed.

The Canadian guide establishes a complex and multifaceted information gathering process as nuclear. The evaluation requires individual and repeated interviews with both parents, allowing the professional to "see beyond the façade" that may be presented initially. It is recommended the use of structured instruments to assess the frequency and severity of abuse, as well as in-depth research into the impact of violence and its effects on children, interviews with parents and children, and observations by parents with their children, as well as collateral information from community professionals. The credibility of the allegations is considered crucial and, in order to assess it, the active search for collateral information is determined, including the review of police and medical records and interviews with support networks (Jaffe *et al*., 2005, p. 21).

However, this search is guided by a sophisticated understanding: the guide warns that, although important, the absence of third-party evidence "does not imply fabrication", recognizing the pattern of silencing common to victims. Finally, the entire process is centered on the child's needs, and it is essential to conduct direct interviews with them and consult their own collateral sources, such as teachers and doctors. It is this in-depth, multi-informant and scientifically informed methodological architecture that constitutes the true differential, allowing an application of the law more adjusted to the complex reality of each family.

7 CONCLUSION

The comparative analysis between the legal systems of Brazil and Canada, proposed in this article, started from the pressing crisis of legitimacy that plagues the Brazilian Parental Alienation Law. By delving into the Canadian experience, it is noted that the main distinction between the two systems does not lie in the formal robustness of their norms, but in the systemic maturity with which Canada understands and approaches the complex phenomenology of family violence. While Brazil debates the limits of a specific law, Canada demonstrates a consolidated evolution, moving from a debate focused on alienation to a broader and more precise paradigm, centered on the concepts of family violence and coercive control.

This maturity is manifested in a forceful way in the expert and judicial praxis. The Canadian framework, detailed in the 2005 and 2023 guides, calls for an in-depth, multi-informant, and scientifically informed methodological architecture. However, what the analysis reveals is not the inadequacy of Brazilian law, but the underuse of its own tools. The national legal system, in Law No. 12,318/2010, already offers the instruments for coercive control to be framed as an act of parental alienation. The Brazilian norm, by focusing on the intentional interference in the psychological formation of the child, and not on the concrete result of the removal, is perfectly in line with the Canadian notion of abuse.

In this sense, the false imputation of parental alienation, often used to delegitimize the violence suffered by the victim and silence it, constitutes, in itself, a typical act of alienation and a form of procedural violence in our legal system. What is lacking, therefore, is not the norm, but the ability to frame the law to the concrete case, with the technical rigor and contextual sensitivity that the Canadian guiding frameworks demonstrate to be essential. The Canadian experience teaches that the full protection of children and adolescents is not only effective with the letter of the law, but with the capacity of an entire justice system to apply it wisely and with a robust technical methodology. The challenge for Brazil is, therefore, to

mature its practice so that the existing legal tools are, in fact, used to protect those who care and repress those who truly abuse, regardless of gender.

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