THEMATIC SHADOW REPORT ON FAMILY-RELATED ISSUES IN CANADA
89th CEDAW Session, October 2024

Global Campaign for Equality in Family Law[1], and GAMBE[2]'s Submission to the Committee on the Elimination of Discrimination Against Women (CEDAW) on Canada's periodic report for the 89th CEDAW Session, October 2024.

Following the briefing to the CEDAW Committee in October 2023 on Article 16 and family law, the Global Campaign for Equality in Family Law (GCEFL) and GAMBE respectfully submit this thematic shadow report to contribute to the analysis of Canada's compliance with the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention"). In this report, we focus on articles 1 (equality), 2 (non-discrimination), 5 (gender stereotypes), and 16 (marriage and family) of the Convention.[3] We urge the CEDAW Committee to kindly consider granting more time and specific attention to Article 16-related matters during the Constructive Dialogues.

Summary of issues:

Related CEDAW Arts.	Issues Related to Family Law / Practices	Details
Art 1, 2, 5, 16	**Child custody:** Parental Alienation and Related Concepts	This concept is weaponized in custody and domestic violence cases, reinforcing and promoting gender stereotypes in courts, resulting in custody being granted to abusers.

[1] The Global Campaign for Equality in Family Law (GCEFL) is led by a coalition of 8 women's rights, human rights and faith-based organisations including Equality Now, Act Church of Sweden, CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights), Musawah, Muslims for Progressive Values, SOAWR (Solidarity for African Women's Rights) network represented by FEMNET, Women's Learning Partnership, and UN Women. GAMBE is a coalition member of the GCEFL. More info: www.equalfamilylaws.org

[2] GAMBE is a non-profit organization that supports Brazilian women living abroad, particularly those suffering domestic abuse. From 2020 to 2022, GAMBE assisted 155 Brazilian women, who sought information on divorce law, custody rights regarding bi-national children, and support to face domestic abuse intersected with racism and xenophobia in the countries where they were living as migrants. Affected women come from the most diverse Brazilian states and approach GAMBE in cases where they have faced different forms of intimate violence. These women, when leaving Canada due to domestic abuse, are immediately seen by the justice system as abductors of children, when in reality they were usually fleeing violence to ensure their lives and well-being. More info: https://www.gambe.org/.

[3] This report was prepared by, Tamara Amoroso Gonsalves and Stella Furquim, with contributions from Hyshyama Hamin.

Art. 1, 16	**Access to Justice** Underfunded legal aid	The impacts of underfunded services such as legal aid for family matters.

KEY ISSUE OF CONCERN 1: 'False' Parental Alienation Syndrome

In Canada the Divorce Act was amended in 2021, replacing custody and access with "parenting arrangements" with focus on parents' responsibilities for their children and the tasks required for the care of the children. The introduction of the new Act means that terms like "custody" and "access" are no longer used and the court assigns decision-making responsibility and parenting time through a parenting order, based only on the best interests of the child. However, even though the best interest of the children should guide decisions on parenting arrangements, many family courts continue to push for maintaining contact with both parents as an ultimate goal, often dismissing situations of domestic abuse, violence against children, and negligence. Provincial laws further regulate issues on divorce and parenting rights differently.

The current legal formulations in Canada do not contain openly discriminatory language, but research has also shown that the application of 'parental alienation' and related concepts operate in a gendered way, disproportionately affecting women, in Canada[4] and elsewhere.[5] This has a compounded effect on migrant women, women of color, Indigenous women, and others who might find themselves at the joint of multiple vulnerabilities.

To date, the majority of family courts in most provinces use concepts related to false parental alienation syndrome in decisions about the child/children. Despite efforts from scholars to reformulate the concept of parental alienation syndrome and to distance themselves from the original[6], problematic definition proposed by Richard Gardner (see below), we notice that the key elements have been preserved. Research also indicates a growing tendency to apply 'parental alienation' and related concepts in cases that are considered highly conflictual divorces.[7]

[4] Zaccour, Suzanne. (2018). Parental alienation in Quebec custody litigation. Cahiers de Droit, 59(4), 1073-1112; -Sheehy, E., & Boyd, S. B. (2020). Penalizing Women's fear: intimate partner violence and parental alienation in Canadian child custody cases. *Journal of Social Welfare and Family Law, 42*(1), pp. 80-91.

[5] Vaccaro, S., & Barea, C. (2009). *El pretendido Síndrome de Alienación Parental: un instrumento que perpetúa el maltrato y la violencia.* Madrid: Editorial Desclée de Brouwer, SA.

[6] For example: Kelly, J. B., & Johnston, J. R. (2001). The alienated child: A reformulation of parental alienation syndrome. *Family Court Review, 39*(3), 249–266. https://doi.org/10.1111/j.174-1617.2001.tb00609.x.

[7] Bala, N., Hunt, S., & McCarney, C. (January de 2010). Parental Alienation: Canadian Court Cases 1989-2008. *Family Court Review, 48*(1), pp. 164-179; Boyd, J.-P. (July 2015). *Alienated Children in Family Law Disputes in British Columbia.* Canadian Research Institute for Law and the Family; Zaccour, Suzanne. (2018). Parental alienation in Quebec custody litigation. Cahiers de Droit, 59(4), 1073-1112.

About Parental Alienation Syndrome:
This concept was first coined by Richard Gardner in the 1980s, who did not follow minimal standards of scientific investigation, which was the main reason his theory did not make its way into academic journals and has been openly rejected by health professionals in general and authorities. Regardless, PAS has been emerging as a prominent issue in custody cases, dividing legal and medical professionals and being claimed by mothers and their legal representatives as an instrument to refute the mother's claims of abuse and violence endured previous to the divorce. This is not by chance, as Gardner's definition of PAS is permeated by gender biases and sexism: "a "syndrome" whereby 'vengeful' mothers employ child abuse allegations as a "powerful weapon" to punish the ex and ensure custody to themselves." In short, Gardner claimed (solely based on his own clinical observation) that the sexual abuse allegations brought up by mothers in custody cases would be false in 90% of the cases.

Parental alienation syndrome (PAS) is recognized as an international human rights violation with severe implications for women's and children's rights. In 2023, the UN Special Rapporteur on Violence Against Women and Girls concluded that while PAS is characterized as a pseudo-scientific form of psychological abuse perpetrated by women against men, in reality, it has been weaponized to obscure accusations of sexual and emotional abuse perpetrated by male partners against women and their children. As stressed by the Special Rapporteur, "Parental alienation is used in family law proceedings by abusers as a tool to continue their abuse and coercion and to undermine and discredit allegations of domestic violence made by mothers who are trying to keep their children safe."

According to recent research being conducted by Professor Simon Lapierre (University of Ottawa, from 911 women interviewed in Canada experienced domestic abuse and were accused of parental alienation. Fathers also used the argument of parental alienation once mothers brought in accusations of child abuse (50%) and sexual abuse (25%).[8]

Gender stereotypes, including those claiming that women are "hysterical" or "crazy", lie at the heart of PAS. Previously, the CEDAW Committee has emphasized the need for states to address and adequately deal with gender stereotypes and prejudices in judicial systems. The Committee has also commented on PAS in concluding observations issued to Costa Rica, Italy, Uruguay, Brazil, and New Zealand.This Committee has further It further recommended that "*the rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings…should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity, and guided by the principle of the best*

[8] Family Violence Family Law. (January 11, 2024). Available at: Western University : https://fvfl-vfdf.ca/webinar-recordings/Webinar_special-report.html

interest of the child." [9]

Issues of PAS in Canada

There is evidence that Canadian children are being sent to family 'reunification' camps in the United States, where they are forced to interact with their fathers[10] (usually considered the "alienated" or "estranged parent") despite evidence of violence and abuse. This further puts these children at risk not only in the present but also in the future, since there might be long-standing effects of these practices, carried out throughout their roles and lives resulting in severe mental health issues.

Using and accepting false PAS, often as the primary evidence in judicial proceedings, breaches Canada's obligation to act with due diligence to prevent and respond to gender-based violence and discrimination against women and fails to ensure victims-survivors' access to justice and adequate judicial protection. It increases the chances of mothers being revictimised through institutional violence, by denying women their parental rights and reinforcing gender-biased perceptions and stereotypes about women within judicial procedures. Children also need to be protected as Dr. Josimar Antonio de Alcantara Mendes states: "*There is an extensive and robust body of evidence indicating that 'unstable'[11], 'unsafe'[12] and 'precarious[13]' environments can harm children's well-being and best interests can impact child development*".

Courts lack understanding of the extent and impact of domestic violence and coercive abuse

- A critical issue that can lead to unjust outcomes for survivors and perpetuate cycles of abuse is that Canadian Courts often focus primarily on physical violence, neglecting other forms of abuse such as emotional, psychological, patrimonial, vicarious, and sexual abuse. This narrow view can result in the minimisation or dismissal of cases where physical evidence is absent but where coercive control[14] is deeply damaging.
    - Additionally, information on gender-based violence and domestic abuse in

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[9] González Carreño v. Spain, CEDAW, Communication n. 047/2012. Available at: https://juris.ohchr.org/casedetails/1878/en-US

[10] Family Violence Family Law. (January 11, 2024). Available at: Western University : https://fvfl-vfdf.ca/webinar-recordings/Webinar_special-report.html

[11] Fe licia A. Hardi, Leigh G. (et.al), Early childhood household instability, adolescent structural neural network architecture, and young adulthood depression: A 21-year longitudinal study, Developmental Cognitive Neuroscience, Volume 61, 2023, https://www.sciencedirect.com/science/article/pii/S1878929323000580

[12] Kobulsky, J. M., Villodas, M., Yoon, D., Wildfeuer, R., Steinberg, L., & Dubowitz, H. (2022). Adolescent Neglect and Health Risk. Child Maltreatment, 27(2), 174-184. https://doi.org/10.1177/10775595211049795

[13] Conrad-Hiebner A, Byram E. The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review. Trauma Violence Abuse. 2020. https://pubmed.ncbi.nlm.nih.gov/29400135/

[14] According to Dr Emma Katz, a specialist in the subject, "Coercive control is a severe form of domestic violence experienced by millions of women worldwide. It involves a perpetrator using a range of tactics to intimidate, humiliate, degrade, exploit, isolate, and control a partner or family member. Some coercive control perpetrators use violence, others do not". This type of violence is often misunderstood or overlooked by the courts. This type of abuse, though less visible, can be equally or more damaging than physical violence, yet courts may not recognize it as a severe form of abuse. Economic abuse is a significant aspect of coercive control, where the abuser controls the victim's access to financial resources, limiting their ability to leave the relationship or achieve independence. Courts may fail to recognize this, leading to financial settlements that leave victims in precarious situations. https://global.oup.com/academic/product/coercive-control-in-childrens-and-mothers-lives-9780190922214

Canada is not comprehensive, as noted by this Committee in previous reviews. Recently, the province of Ontario declared that domestic abuse is an epidemic, which signals the need to assess the situation better and design adequate policies to address it.[15]

- Courts often underestimate the long-term psychological impact of domestic violence, such as trauma and post-traumatic stress disorder (PTSD). This can affect a victim's ability to participate in legal proceedings, make sound decisions, or parent effectively, yet these issues are often not adequately considered.
- A court's lack of understanding of domestic violence and coercive abuse can lead to outcomes that fail to protect victims and can perpetuate cycles of abuse. Addressing this issue requires systemic changes in training, legal definitions, and the overall approach to handling domestic violence cases.
- Judges, attorneys, and other legal professionals in Canada usually lack specialized training in domestic violence and coercive control, leading to misjudgments or inappropriate responses. Without proper training, the nuances of these cases can be misunderstood, and the severity of the situation may not be fully appreciated. There may be biases or misconceptions among legal professionals, such as the belief that both parties share equal blame in a conflict (mutual abuse) or that victims could easily leave if the situation were dangerous. These attitudes can lead to victim-blaming and unjust legal outcomes.

SUGGESTED RECOMMENDATIONS:

1. Implementing mandatory, ongoing training for judges, lawyers, and court staff on the complexities of domestic violence and coercive control, gender, and migration perspectives can help ensure that legal professionals are better equipped to handle these cases. Combating domestic violence needs a multidisciplinary team, which is not often offered to women in Canada.
2. Canada needs to have laws on domestic violence that include coercive control and other non-physical forms of abuse that can help ensure that these behaviors are recognised and adequately addressed by the courts. The rights of children also need to be protected.

KEY ISSUE OF CONCERN 2: Underfunded services to provide access to justice

Through the work of GAMBE and other women's rights organisations, it is noted that inequalities in accessing justice due to underfunded legal aid or insufficient public defenders profoundly affect the fairness and efficiency of the legal system. Underfunding has a direct impact on the quality of the defense, since public defenders often handle an overwhelming

[15] According to the Bill 173, Intimate Partner Violence Epidemic Act, 2024, available at: https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-173 . See also: https://globalnews.ca/news/10414769/ontario-support-opposition-bill-declare-intimate-partner-violence-epidemic/

number of cases, leading to limited time and resources for each client. This can result in less thorough investigations, rushed plea deals, and inadequate defense strategies. Underfunding legal aid and public defenders contribute to systemic inequalities that undermine the principle of equal justice under the law. Addressing this issue requires both increased resources and systemic reforms.

Impacts on women, children and families

GAMBE has observed that when legal aid services are underfunded, families, especially those with limited financial resources, face significant challenges in navigating the legal system, leading to various inequalities that disproportionately affect vulnerable members of these families. When analysing custody disputes, child support cases or other family law matters women/ mothers struggle to secure adequate legal representation, particularly if they were victims of financial abuse during their marriage. Without proper legal support, women - often the less financially secure parents - may be at a disadvantage, leading to unfair outcomes. Women, especially First Nations women, and Black, Indigenous, People of Color (BIPOC) women, are disproportionately affected by a lack of access to justice and compounded violations.

Furthermore, domestic violence survivors often rely on legal aid services to obtain protection orders, custody of children, and other necessary legal interventions. Underfunded services may delay or limit their access to these protections, putting them at greater risk.

As experienced by affected women supported by GAMBE, some impacts are as follows:

1. In cases of divorce or separation, underfunded legal aid services can result in unequal settlements. In cases of self-representation, women might be unable to advocate effectively for a fair division of assets, spousal support, or custody arrangements, leading to long-term financial and emotional hardship.
2. When one party has access to private legal counsel and the other must rely on overburdened or unavailable legal aid, the imbalance in legal representation can result in outcomes that favor the more powerful or wealthier party, more often men/fathers. Those who can afford private attorneys generally receive more personalized and resource-intensive legal representation. They can hire experts, conduct extensive research, and have more time dedicated to their cases.
3. The legal principle of acting in the "best interests of the child" can be compromised when parents cannot access adequate legal representation. This might lead to custody arrangements that are not in the child’s best interest, affecting their well-being and stability. Families with better legal representation can secure resources and support, such as child support payments, educational provisions, and healthcare benefits. Underfunded legal aid services may leave other families without these essential supports, affecting the children's quality of life.
4. The inadequate defense could translate into prolonged legal battles, and family law cases may drag on for years, exacerbating stress and conflict within families. This prolonged legal uncertainty can strain relationships, create emotional distress, and negatively impact mental health. Legal aid is often the only resource for low-income

families facing legal issues. Underfunding means these families might go without representation, leading to a higher likelihood of losing their homes, children, or essential benefits. Whenever individuals who cannot access legal aid are forced to represent themselves in court, we see enormous challenges for women, since family law cases have high stakes and the legal processes are intricate, leading to potential mistakes and unfavorable outcomes.

5. Immigrant families, especially those with language barriers or undocumented status, rely heavily on legal aid for issues like family reunification, immigration status, and protection from deportation. Underfunding these services puts them at greater risk of legal challenges without adequate support.
6. Unfavorable legal outcomes in family cases can lead to long-term financial instability, particularly for single parents or primary caregivers. This financial strain can perpetuate cycles of poverty and limit opportunities for the family's future.

The consequences of underfunded legal aid services can ripple across generations. Children from families who experience unfair legal outcomes may face reduced educational opportunities, housing instability, and ongoing legal issues, perpetuating inequality.

Additionally, this lack of access to justice in Canada amounts to the erosion of public trust. When people perceive that the legal system is unfair, particularly because of disparities in legal representation, it can erode trust in the justice system as a whole. Underfunded legal aid services exacerbate inequalities in the legal system, particularly for families facing sensitive and high-stakes legal issues. Addressing these funding gaps is crucial to ensuring that all families, regardless of their financial situation, have access to fair and just legal outcomes.

For relevant case study please see Supreme Court judgement G.E.I. v C.G.B, 2023 BCSC 269 (CanLII)[16].

SUGGESTED QUESTIONS FOR THE CANADIAN GOVERNMENT:

1. What are the preventive measures the Government is taking to prevent legal changes that broaden or seek to restore parental alienation syndrome in the Canadian legal system?
2. Considering Article 5 of the CEDAW Convention, in conjunction with Article 16, what are the efforts the Government is making to advance in de-constructing gender stereotypes within the Canadian courts, considering the multiple ways women of colour, migrant and Indigenous women might face aggravated forms of discrimination? Please provide information regarding the amount of training courses realized (directed at judges, police officers, technical professionals working within the judicial system, etc), budgetary allocations destined to achieve this goal, and information on future/scheduled training.
3. What are the remedies/reparations being offered for women and children victim-survivors of institutional violence due to the application of the parental alienation

[16] G.E.I. v C.G.B, 2023 BCSC 269 (CanLII), retrieved on 2024-09-09 https://canlii.ca/t/jvt42

concepts by family law courts?

4. Considering CEDAW's General Rec. 33, and the precedent of *González Careño v. Spain*, how has the Canadian government been addressing issues of domestic violence in cases of disputed custody rights?
5. Regarding access to justice and mental health and wellbeing, what services are available to women victim-survivors of domestic abuse and accused of parental alienation syndrome, particularly keeping in mind that women in the process of getting a divorce often face economic hardship due to structural inequalities and might not be able to afford the costs of lawyers and mental health professionals?
6. What is the current investment of the Canadian Government in legal aid services focused on family law, to ensure proper access to justice particularly for marginalized women?

SUGGESTED RECOMMENDATIONS

1. Increased funding for public defender offices and legal aid services focused on family law, in which women and children are the primary clients, is essential. This could reduce caseloads, improve access to resources, and provide better training for defenders.
2. Legal system reforms, such as limiting mandatory minimum sentences or exploringpromoting alternatives to incarceration to hold perpetrators accountable, could help alleviate the pressure on public defenders and reduce the need for extensive legal representation in some cases.
3. Take measures to ensure gender sensitivity in the Canadian justice system (especially in family courts) and ensure that gender stereotypes harmful to women within the Canadian courts are eliminated;
1. Ensure efficient and effective support services (including legal, psychosocial, and economic) are available for victim-survivors of gender-based violence in Canada, as well as to Canadian women living abroad facing domestic violence through specific embassy and consular services;
2. Canada does not have an overarching law to prevent, address, and punish domestic violence against women, and the current provisions of the criminal code seem insufficient to protect women in Canada against domestic abuse. Therefore, it would be important that Canada passed a specific regulation on violence against women more broadly and domestic abuse more specifically, so that psychological abuse, coercive control, and economic abuse are also considered as forms of violence against women.

ANNEXE: NOTE ON THE IMPLEMENTATION OF THE HAGUE CONVENTION VOID OF A GENDER PERSPECTIVE

The Hague Convention of 1980 on Civil Aspects of International Child Abduction, was approved almost 50 years ago and is currently enforced in more than 100 countries around the world. Originally, this treaty sought to protect their citizens with children from a foreign father, who could then take them away and cross borders without authorization and without leaving a trace. This practice was growing against women and children in countries such as Canada, France, and Great Britain in the 1970s, which requires, in fact, a quick response from authorities at an international level. Thus, the protocol activated by the 1980 Hague Convention was born to facilitate communication between the country of habitual residence and destination in abduction cases. However, in 2015 alone, more than 7 in 10 abduction accusations fell on mothers, according to official statistics. There were more than 73% of cases registered in the world that year, almost triple the number against male parents, and in a growing trend that includes 15,000 women accused of “abducting” their own children under article 28 in the last decade**.**

Often, these women seek refuge in their country of origin or a third country with their children to escape domestic abuse suffered within their marriage or common law union relationships or even in some cases, to protect their children from sexual violence. Data shows that 90% of the Brazilian women accused of internationally kidnapping their children under the Hague Convention suffered domestic abuse and were fleeing such abuses when they traveled to Brazil, for example. The Hague Convention has no explicit mention of domestic abuse as an exception to the repatriation of children, and these Brazilian women living abroad often are not familiar with the local justice systems or suffer combined biases for being women and Brazilian/immigrants. We note that 48 out of the 103 signatories of the 1980 Hague Convention criminalize these types of abduction. When the children are returned to the country the mother and the children were fleeing from, where they had no support network or help to leave the abusive relationship, the mother who follows the children in trying to obtain custody rights will likely respond to criminal charges before the local courts or even go to jail awaiting trial. This abrupt separation from the primary caregiver, often exposing the children to the care of abusive parents or parents who were never very involved in childbearing, has been causing harm to the children's development.

Following the CEDAW Committee jurisprudence on *González Careño vs. Spain*, domestic violence must be taken into account when custody and visitation rights are determined after a divorce procedure. We believe this is an important standard to be observed in cases involving the Hague Convention, and Canadians, particularly immigrant mothers and children.