

Risk Managing Allegations Within Context of High-Conflict Family Court Disputes

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Canadian Child Advocacy Centres

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Word Association

What words come to mind
when you think about “High
Conflict”?

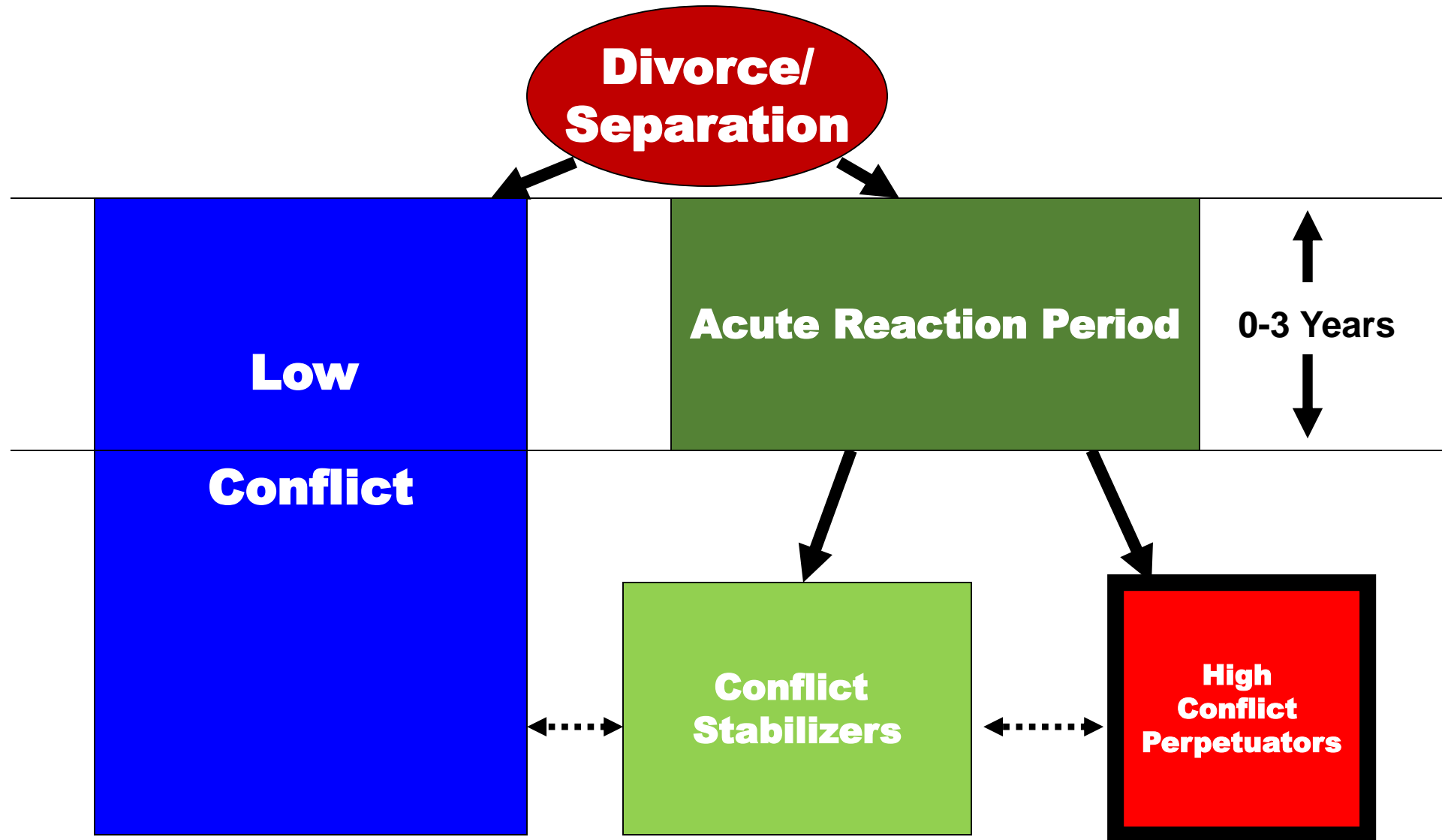




Truisms for High Conflict

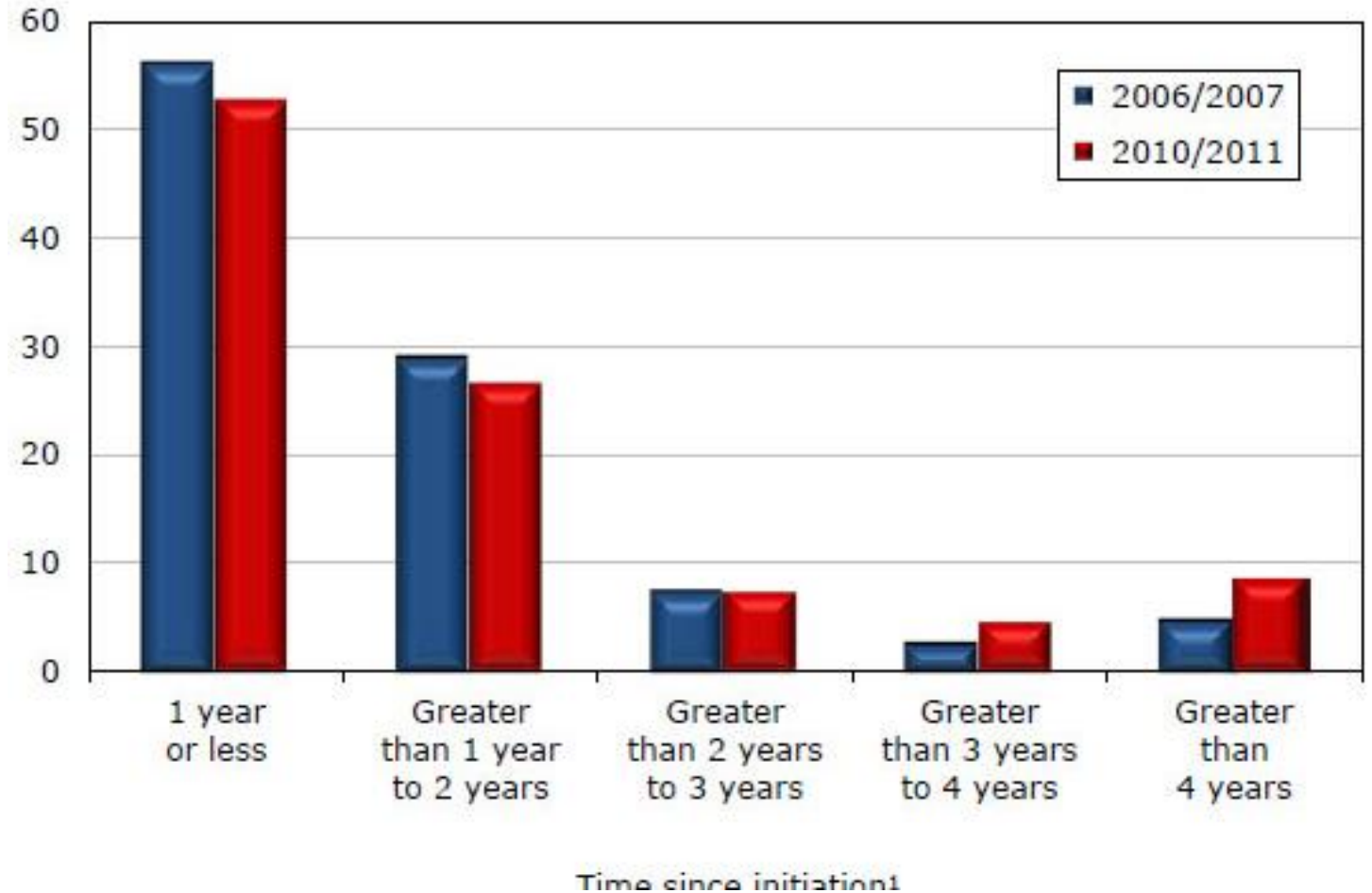
- “People have to WANT to change.”
- “Nothing works with these people.”
- “There is no research proving that...”
- “There are no qualified therapists to work with high-conflict families.”
- “It’s too risky to provide treatment until the court case is over.”
- “They will only use therapy for court purposes.”
- “Therapy can’t work without total confidentiality.”

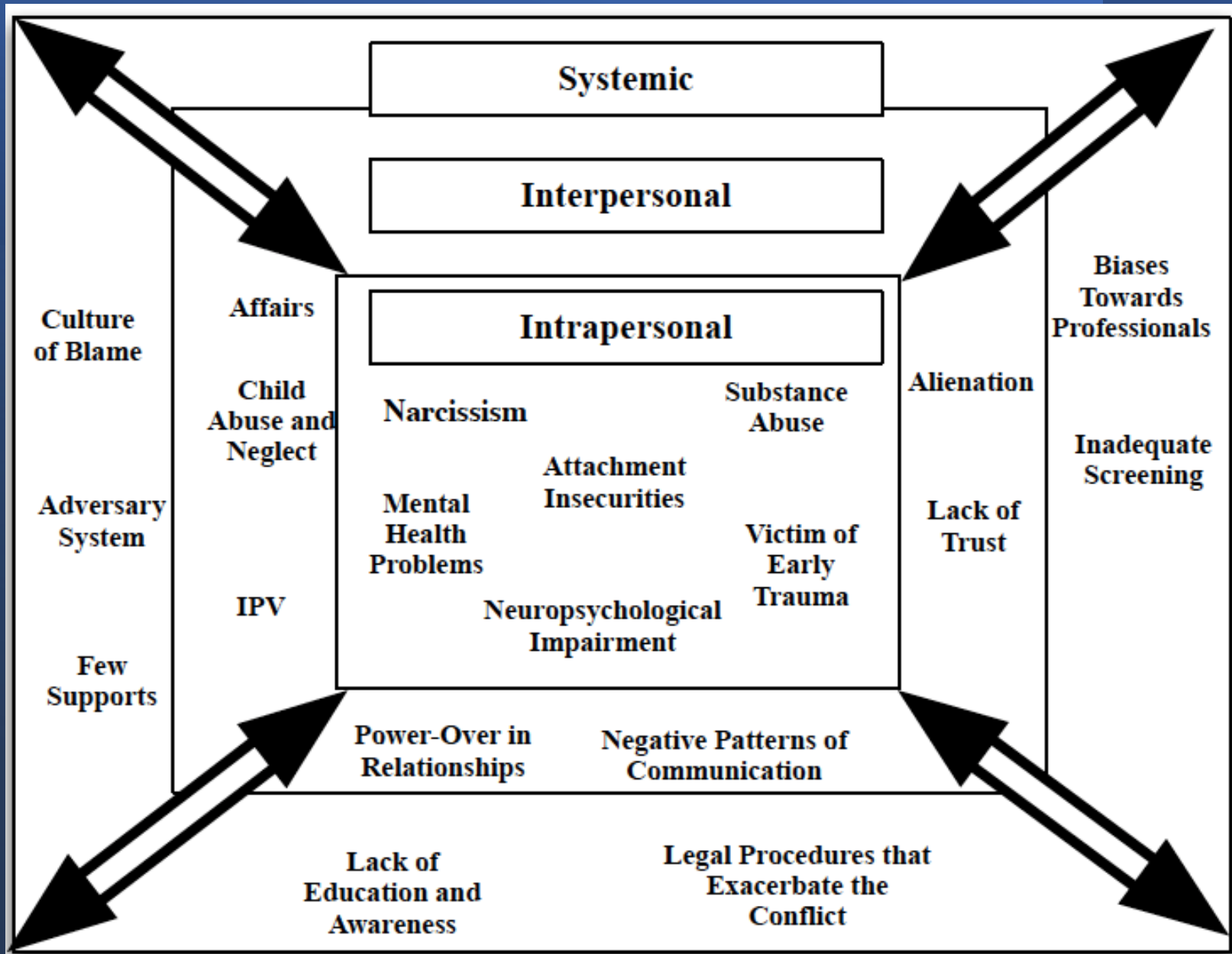
Separation Pathways



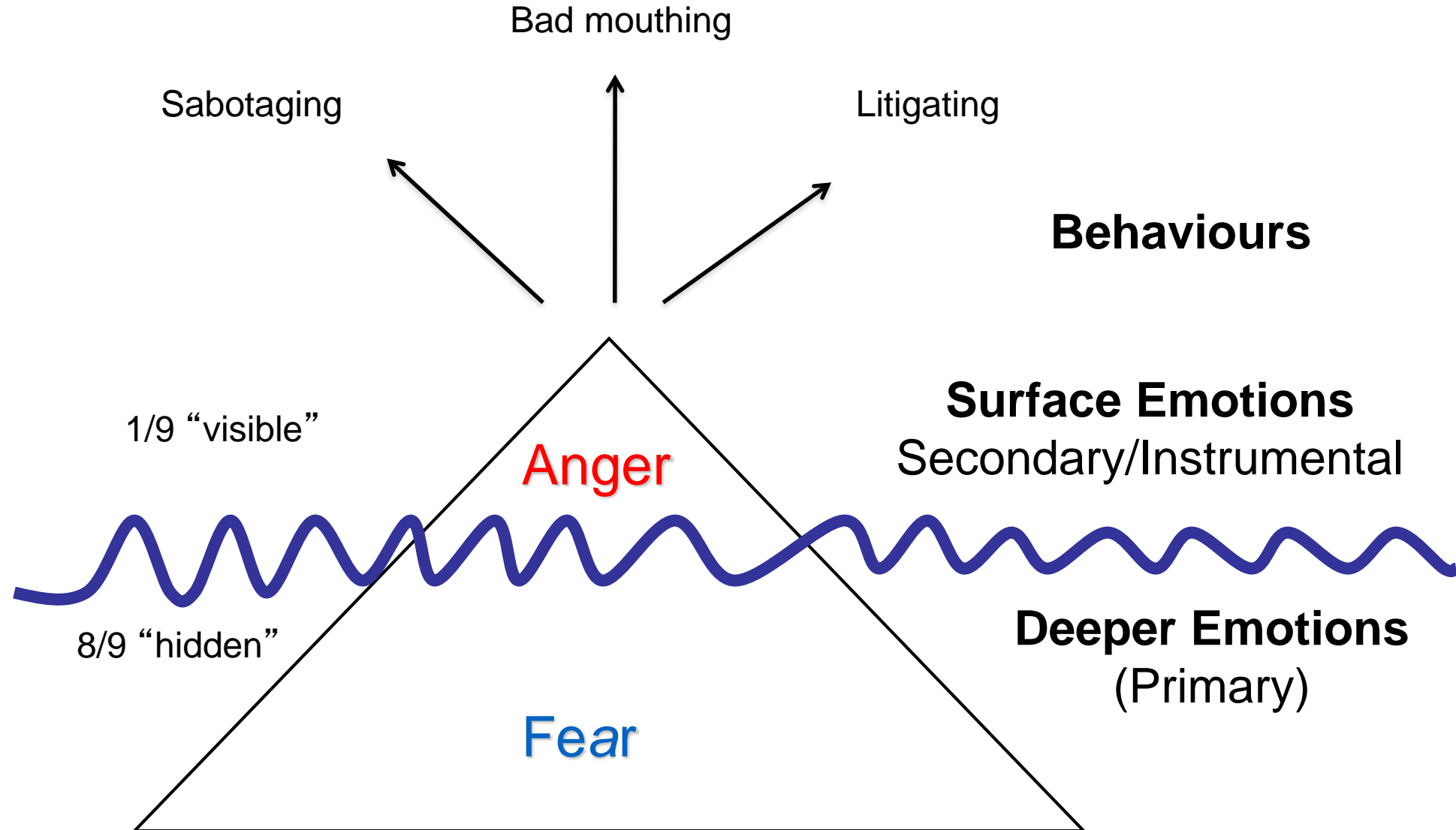
Family Justice Pathways

- Active divorce cases in five provinces and territories by time since initiation
- 2006/2007 and 2010/2011 (Statistics Canada, 2012)





Emotional Iceberg



An iceberg floating in the ocean. The tip of the iceberg is above the water line, and the much larger base is submerged. A small ship is visible on the water's surface near the tip of the iceberg. The text is overlaid on the image, with the title at the top and several phrases below, representing the hidden fears of parents in conflict.

Parents in Conflict

Fear of isolation

Fear of abandonment

Concern for safety

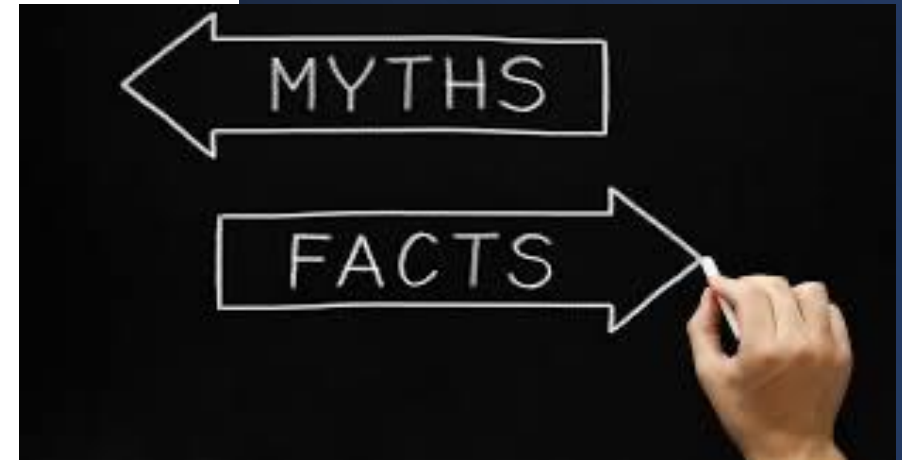
Fear of lack of respect

Fear of incompetence as a parent

Fear of not being valued as a parent

Myths about Child Abuse

- Perpetrators are strangers;
- Sexual abuse is the most common type of abuse in child custody disputes;
- Children disclose about the abuse immediately;
- Disclosures in custody issues are usually false allegations;
- A false allegations indicates alienation.



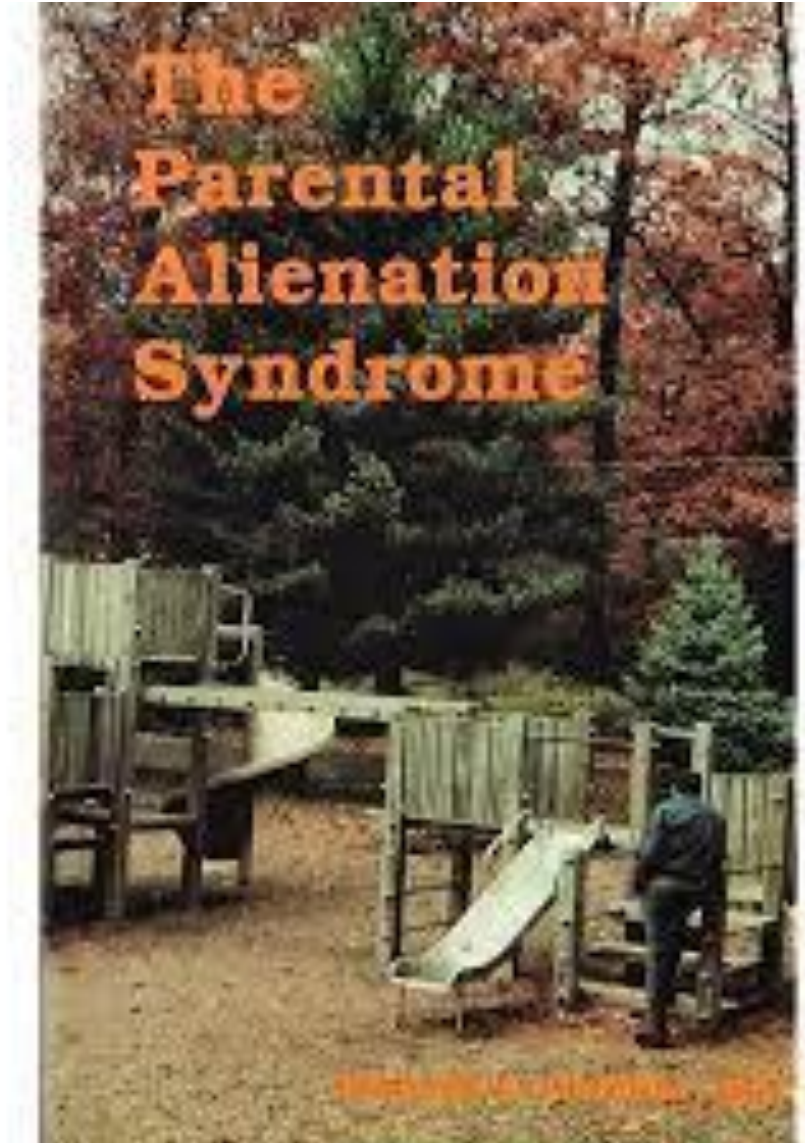
The Myth of False Allegations: “The Early Studies”

- Arthur Green (1986) described four of five cases (80%) which he concluded involved false allegations of sexual abuse.
- Benedek and Schetky (1984) described 18 children referred to them during custody or visitation disputes. They found sexual abuse in only 8 of the children, giving a false accusation rate of 55%.
- Schuman (1986) described seven cases, all of which he claimed were false accusations.
- Wakefield and Underwager (1981) claimed that nearly all allegations of sexual abuse are false. They reported that 75% of the cases they had seen had involved false allegations.



False Allegations and Parental Alienation

- Gardner (1987) formulated Parental Alienation Syndrome (PAS) to explain, in part, the frequency of fabricated allegations.
- Fabricated allegations are considered the 'ultimate weapon' (Rand, 1997, p. 2).
- Parental alienating behaviors include making repeated, unfounded allegations of child abuse (Johnston, 2009).



False Allegations and Alienation

- It has been suggested that:
 - The alienating parent professes to protect the child and cannot be convinced otherwise, even when there is evidence to the contrary (Darnell, 2006).
 - The child must undergo repeated investigations or may believe the unfounded allegations to be real (Johnston et al., 2009).

Gatekeeping and Alienation

- Austin et al. (2013) described a gatekeeping continuum from facilitative to restrictive.
- Restrictive gatekeeping is further separated by unjustified and justified (Austin et al., 2013).
- The concept of parental gatekeeping overlaps with parental alienation (Austin, 2018);
 - between unjustified restrictive gatekeeping and parental alienating behaviors.

Gatekeeping by Allegation

| | | | |
|---|---|--|---|
| Facilitates Other Parent Involvement | | | |
| Adaptive | Supportive Parent encourages other parent | Apathetic Parent abdicates responsibility to other parent | Maladaptive |
| Promotes child safety and wellbeing | Inconsistent Use of different strategies that are both adaptive and maladaptive | | Does not strongly weigh child safety and wellbeing |
| | Protective Parent protects child from other parent | Constrictive Parent unjustly restricts child from other parent | |
| Adaptive | | | Maladaptive |
| Restricts Other Parent Involvement | | | |

(Saini, Drozd, & Olesen, 2017)

Gatekeeping by Allegations

- ‘Gatekeeping by allegation’ refers to parents making reports to child protection services about allegations of child abuse to ‘gatekeep’ the other parent from the children (both justified and unjustified) (Dale, 2013).
- The onus is placed on CPS to determine the history, context, and validity of allegations regarding the child’s safety.
- More likely for parents to be the reporters in child custody disputes (Saini et al., 2013).

Types of Child Abuse Decisions

Substantiated

The balance of evidence indicates that the maltreatment occurred.

Suspected

Maltreatment cannot be confirmed or ruled out.

Unfounded

The balance of evidence indicates that the maltreatment did not occur.

Determining Substantiation

- Professionals working with allegations of child abuse within child custody disputes **must be guided by scientific methodology and data** and not by an a priori position or pseudoscience, bias, or taking sides in parenting plan disputes (Heilbrun, 2001; Heilbrun, Grisso, & Goldstein, 2009; Melton, Petrila, Poythress, & Slobogin, 2007; Packer & Grisso, 2011)



Unfounded

- Among unfounded cases, it may be important to try to determine whether the report was made:
 - On a reasonable basis and in good faith;
 - Maliciously fabricated to harm;
 - Reflective of the distorted perceptions of the reporting parent, perhaps due to their own history of trauma, a personality disorder, or mental health issues.

Verified Allegations Post Separation

- Reasons for valid allegations of child abuse surfacing after parental separation:
 - A child who is being abused may be afraid to disclose the abuse while the family is still together;
 - A child who has been threatened with the dissolution of the family may be able to tell once these consequences are happening anyway;
 - It is more difficult for the abusing parent to enforce secrecy once he or she is not living with the child;
 - A child may become genuinely terrified at the prospect of spending time alone with the abuser and, therefore, finally disclose the abuse to avoid a visit.


Canadian CIS-Data

- Canadian Incidence Study of Reported Child Abuse and Neglect, reporting years 1998, 2003 and 2008 (Black et al., 2016; Saini, et al., 2013; Trocmé & Bala, 2005).
- National information about child maltreatment investigations collected directly from child protection workers about reports investigated.
- 400 variables:
 - type of abuse investigated, level of substantiation, duration of maltreatment, physical and emotional harm to the child, child custody dispute, information about decisions made by the child protection workers about the investigation etc.



CIS-98 (Trocmé & Bala, 2005)

-
- 7,672 maltreatment investigations involving 903 (12%) cases with custody disputes.
 - Type of abuse: Physical abuse, sexual abuse, neglect, and emotional maltreatment.
 - Substantiation status in custody dispute cases*:
 - Substantiated 40% (vs. 47%; $p < .001$);
 - Suspected 14% (vs 19%);
 - Unsubstantiated allegation made in good faith 34% (vs 31%);
 - Intentionally fabricated 12% (vs 3%; $p < .001$).
 - *all forms of maltreatment combined, compared to maltreatment cases without a custody dispute



CIS-2003
(Saini et al.,
2013)

- Nationally representative data (CIS-2003) of 11,562 maltreatment investigations with 12% of the cases involving a custody dispute.
- Substantiation status in cases involving a custody dispute*:
 - Substantiated 45% (vs. 49%);
 - Suspected 19% (vs 12%);
 - Unsubstantiated, malicious referral 13% (vs. 4%, $p < .0001$);
 - Unsubstantiated, unknown intent 10% (vs. 6%);
 - Unsubstantiated, but not malicious referral 13% (vs. 29%).

*all forms of maltreatment combined, compared to maltreatment cases without a custody dispute

CIS-2008 (Black et al., 2016)

-
- 235,842 child maltreatment investigations in Canada in 2008:
 - estimated 12% of investigations involved a child custody dispute;
 - Maltreatment types: neglect (23%), physical abuse (17%), domestic violence (20%), emotional maltreatment (10%), sexual abuse (5%);
 - Unsubstantiated, non-malicious referral 44% (vs 73%).
 - Unsubstantiated, malicious referral 25% (vs 12% $p < .001$).
 - Unsubstantiated, unknown intent 31% (vs 15 %).
 - *all forms of maltreatment combined, compared²³ to maltreatment cases without a custody dispute

USA Study (Hendershot & Bow, 2013)

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-
- 92 experienced mental health professionals with experience in CSA allegations in the context of custody evaluations responded to a survey of 41 questions.
 - 16% of custody evaluations involved an allegation of CSA and in 56% of these the child was 6 years or younger.
 - On average 80% of the sexual abuse allegations in child custody cases were found to be unfounded.
 - 40% were attributed to misinterpretations of the child's behavior, 28% to deliberate manipulation.
 - High possibility of recall bias: a retrospective survey and the answers were approximations (not based on detailed case reviews).

Finnish Study (Laajasalo et al. 2018)

- A casefile review of 145 young children participating in child sexual abuse investigation.
- 26% of the cases involved a custody dispute:
 - 81% of these were not confirmed; 16% were inconclusive; and 3% was confirmed.
- In a separate analysis of cases of CSA or physical abuse allegations involving a custody dispute (n = 67), only 6% of the cases to be intentionally fabricated (Laajasalo et al. 2016).
- Selection bias: highly complicated cases with young children sent to a specialized clinic.

Child Abuse Allegations



Child abuse allegations are uniquely challenging.

- Few other areas of child custody disputes involve such a variety of complex issues and potentially serious consequences for faulty conclusions.

Black, et al., (2016) found that when controlling for other factors, CPS investigations involving custody disputes *were less likely than investigations without custody disputes to stay open for ongoing services* (adjusted odd ration = -.828, $p < .001$).

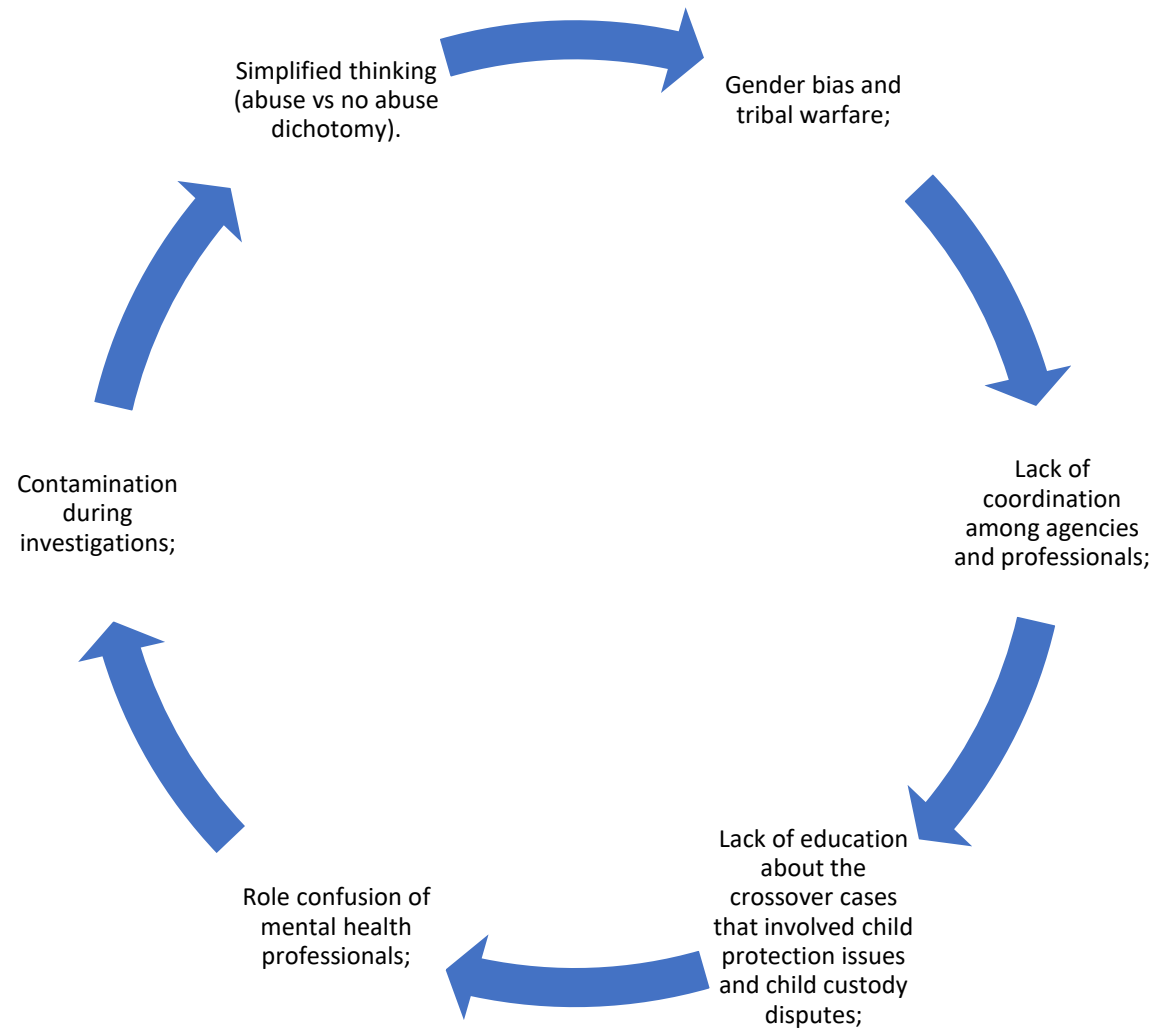
Challenge for CPS workers

- Different dynamics from non-parenting plan dispute cases
 - Less “history” than typical cases;
 - Higher-income, education, and social status than other clients.
 - Cases take more time and emotional energy for workers;
 - More stressful than other cases.
 - More challenging to maintain the perception of neutrality.
 - The problem of other professionals not seeing them as “allies.”
 - Pressure from parents’ lawyers to “take sides”
(Saini et al., 2019)



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The Complexity of Allegations



Best Practices Interviewing Children

Regardless of the context high quality interviews are:

- non-judgmental;
- bias-free;
- include rapport building;
- inform the interviewee about the process;
- are as narrative-based as possible;
- hypothesis testing, not hypothesis-confirming.

Brubacher, SP; Powell, MB, Best-Practice Interviewing Spans Many Contexts, *Journal of Applied Research in Memory and Cognition*, 2019, 8 (4), pp. 398-402

Investigating Abuse

- When investigating possible abuse, interviewers should follow the NICHD protocol (or some other researched interview protocol)
 - NICHD diminishes false negatives (Hershkowitz et al., 2007)
 - Flexible: can and should be adjusted to the individual case at hand
- In addition to abuse, alternative hypotheses (e.g., misunderstanding, source monitoring failures, estrangement, manipulation, alienation) can be assessed during the child's interview (diminishes false positives)
 - Practical issues are also important, e.g., who escorts the child to the interview?

Examples of questions for advancing multiple hypothesis testing

"How do you know your mom did that?" ("My dad told me.")

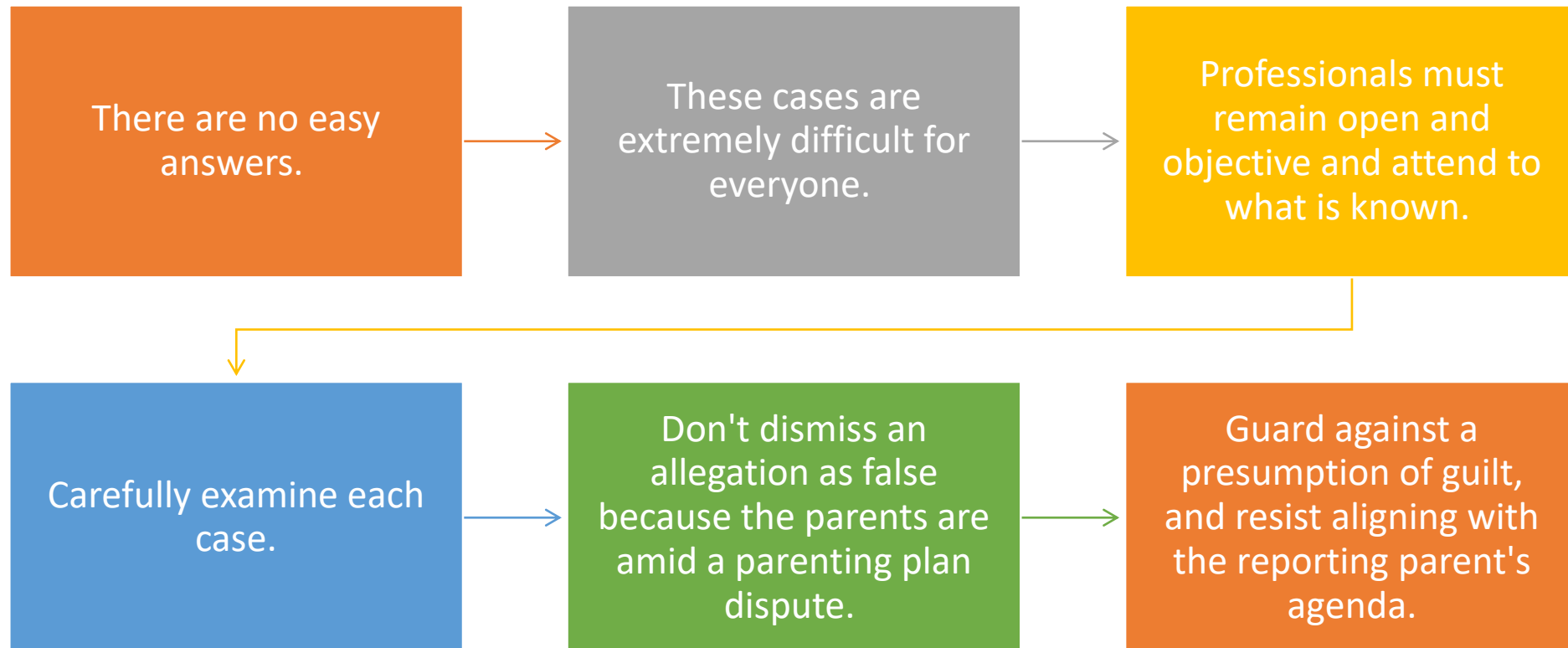
"How did it cross your mind to tell me that?" ("My mom told me to.")

"You came here with your dad. What did you talk about on your way here?" ("That you guys will now decide where should live.")

What are the good/bad qualities in mom/dad?

Answers to these questions (and the child's narrative as a whole) always need to be weighed against other gathered case material.

Take Home Message



Final Thoughts

A false accusation is seldom a deliberate fabrication made to obtain parenting time.

More likely that a parent becomes hypersensitive to the possibility of abuse.

To be part of the solution means resisting the temptation to premature conclusions.

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Next Webinar:
January 25,
2024

Part B: Protecting Children from being Weaponized in the Context of High-Conflict Family Court Disputes

High-conflict family court disputes often expose children to emotional manipulation and coercion, where their voices may be exploited as weapons in parental battles. This webinar will explore strategies and safeguards to preserve the integrity of children's perspectives and ensure their protection within this challenging context. By upholding age-appropriate communication, adhering to a child-centred approach, and prioritizing the child's best interests, Canadian Child Advocacy Centres can navigate high-conflict disputes while safeguarding the genuine and uncoerced voices of the children involved. These measures are essential for creating a supportive and protective environment that shields children from being weaponized in family court proceedings. This webinar will focus on the need for multidisciplinary collaboration among legal professionals, mental health experts, and child welfare specialists to play a pivotal role in assessing children's well-being and mitigating undue influence.

For Further Information

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