

SUPREME COURT OF YUKON

Citation: *SLH v AWH*,
2025 YKSC 18

Date: 20250324
S.C. No. 18-D5076
Registry: Whitehorse

BETWEEN

S.L.H.

PLAINTIFF

AND

A.W.H.

DEFENDANT

Before Justice K. Wenckebach

Counsel for the Plaintiff

Shaunagh Stikeman

Counsel for the Defendant

Kulbir Rahal Vaid by videoconference

This decision was delivered in the form of Oral Reasons on March 24, 2025. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): The parties in this matter are divorced and have three children: M.H., born [redacted], and B.H. and A.H., both born [redacted]. The plaintiff is S.L.H. and the defendant A.W.H. In this decision, I will refer to them as the “mother” and the “father”. The mother has the majority of the parenting time with the children. The father seeks to have equal parenting time with them. He is also seeking reunification therapy with M.H. and other relief related to parenting.

[2] I will first consider what parenting time schedule is in the best interests of the children; then, I will address the request for reunification therapy; followed by the other relief sought.

[3] So, first, I will discuss parenting time.

[4] The *Divorce Act*, RSC, 1985, c 3 (2nd Supp) ("*Divorce Act*"), lists a number of factors the Court may consider when determining what parenting time schedule is in the best interests of the children. In this case, I will consider several of the factors together. These are: the willingness of the parties to support the children's relationship with the other spouse; the ability of the parties to meet their children's needs; and their ability to communicate and cooperate with each other. I will then consider the children's views and preferences. Finally, I will consider the children's needs, including their need for stability.

[5] I have reviewed the case law provided by the defendant. The cases have provided limited assistance. The issues in this case are not about the legal principles to be applied but about the facts.

[6] Looking at the first set of factors, the father states that the mother is alienating the children. He alleges that the mother speaks to the children negatively about the father and undermines him, does not consult him on major issues involving the children, and that she interferes with his parenting time. He also has concerns about some of the decisions she makes as a parent which, he submits, also warrants an increase in his parenting time.

[7] Much of the father's concerns arise from what the children are telling him. However, I do not put much weight on the children's reports, and I do this for two reasons.

[8] First, the children may be misunderstanding and misperceiving situations. An uncontentious and provable example in which this occurred is that A.H. told the father

that the Child Lawyer cried during their meeting. The Child Lawyer clarified in court that this had not happened. At their young age, the children may not remember and accurately relay what the mother said or may misinterpret her statements.

[9] Second, at times, children may misreport to parents. This can happen because they provide the answer they think the parent wants to hear or because they see it gets a reaction. I am not saying this is a way to denigrate the children. This is a coping strategy many children can adopt when dealing with parents with differing expectations.

[10] I also have concerns about the father's own perception of events. As an example, the father reacted negatively when the mother told him about an invitation A.H. had received for a sleepover on a day he was to have parenting time. He suggested that the mother was involved in planning the sleepover and planned it without regard to his time with the children. The mother responded by stating that she had not been involved in planning the sleepover, that she would help in coordinating if that would assist, and noting that the decision was up to him to make.

[11] In his initial response to the mother, the father assumed that the mother was somehow involved in scheduling the sleepover during his parenting time. Although she clarified the situation, in his affidavit he reiterated without grounds his views about the sleepover. I conclude that to some extent the father's perceptions are tainted by his expectation and belief that the mother is constantly undermining him.

[12] The paternal grandmother also filed an affidavit in which she states that M.H. is behaving differently towards her than he has before. She then goes on to state that she has concerns about the mother's influence over M.H. and that she is possibly coaching him to behave negatively towards her. The paternal grandmother does not explain how

she comes to this conclusion. There are many reasons why a child may interact differently with a family member than before. The paternal grandmother's conclusions are speculative. While I accept that M.H. is interacting differently with his grandmother than he did when he was younger, I do not conclude that this is due to the mother's influence.

[13] The father also claims that the mother undermined counselling that was arranged between him and M.H. Based on the evidence I cannot come to this conclusion. The parties have different views about how M.H. felt about the counselling. The mother gave her point of view based on what M.H. was telling her and, at times, about his continued attendance at counselling, but also sought to find ways for M.H. to continue to attend counselling in a way that he found comfortable.

[14] The father also says the mother should have consented to the parties filing the counsellor's report, as that would have shed more light on the situation. While it would have been helpful to have had the report, the important issue here is why the counsellor stopped meeting with the father and M.H. The counsellor's emails to the parties state the matters were complex and someone with a specialty in the field would be better placed to assist the father and M.H. Based on her statements, I conclude that that is why she stopped counselling with the father and M.H.

[15] The father claims the mother contacts the children during his parenting time. The mother has provided some proof that it does not occur. Again, it would have been better for the mother to provide a more complete record of the communications between the children and her. However, in some of the specific situations where the father states the

mother communicated with the children through their devices in ways she should not, the evidence shows that she did not.

[16] I do, however, recognize that if the children are contacting their mother frequently during the father's parenting time, it can distract from the time they are spending with their father. I will address this issue further in my decision.

[17] The father also submits that the mother continues to not consult with the father. He complains that the mother did not consult with him when she made changes to the children's schedule, did not inform him that the children were being bullied at school, or before the children received cell phones and smart watches, and M.H. received a rifle for Christmas. He also submits that the mother should have consulted with him before restarting the children in counselling.

[18] For the most part, these are not the kinds of decisions the mother needs to consult the father on. Similarly, the father would not need to consult the mother on those kinds of issues that take place in his house. Electronic devices can be a source of disagreement between parents and, given the issues the father raised about M.H.'s use of his smart watch, it would have been better for the mother to discuss this with the father. However, ultimately, both the mother and the father have the authority to set the rules in their homes about the use of electronics. The real issue is not whether these gifts were purchased for the children but how they should be used, or not, at the father's home.

[19] While the father may disagree with M.H. having a rifle, he has not pointed to anything that makes it unsafe about M.H. having one. The mother provided evidence that the gift was from M.H.'s grandfather, who coached shooting teams. As long as the

rifle is used properly and with supervision, it is up to the mother whether, while M.H. is in her home, he is trained on using a rifle.

[20] Regarding the children's run-ins with other children at school, the mother did not inform the father immediately of the situation but did include him on an email sent to the school about it. The email, it appears, was sent within a week of the first incident occurring. The principal then called the mother. When the father, within a couple of days, asked for information about the conversation, the mother described her discussion with the principal.

[21] I do not conclude that the mother was excluding the father from discussions about important issues involving the children.

[22] Finally, with regard to counselling, the mother was picking up counselling again after the summer off. It was not a new decision. There was no requirement that the mother consult with the father.

[23] In my last decision, I did note issues with the mother in her communications with the father and involving the children in discussions about him. To his credit, the father states that the mother's communications have improved, and that is apparent from the evidence filed. Given the evidence, it seems to me that the mother is addressing the issues raised previously. It could be argued that the mother is simply better at hiding her attempts to influence the children. However, the fact the mother is involving the father more in discussions about the children and showing some support for the father's involvement with the children points to the conclusion that the mother is shifting the way she is interacting with the children as it pertains to the father.

[24] The father also points to things he does differently than the mother, such as the access each gives the children to video games or screen time as warranting increased time with the children. Again, these are parental decisions which simply point to a different way of parenting. I do not give them much weight in this decision.

[25] He furthermore states that M.H.'s and A.H.'s grades are getting worse. He submits that if he had more time with them, he could assist them with their homework. Having reviewed their report cards, it seems to me that there may be a modest decline in some of the children's grades, but it is not striking nor is there reason to believe that it is due to the mother's actions.

[26] The father has also pointed out that there are significant differences in the assessment of what are called "behaviours for success" in M.H.'s report cards. I agree with the father that there has been a change here. However, the behaviours of success are not about academic achievement but about attitudes and behaviours. They are characterized as "responsibility", "social-emotional learning", and "mind set for learning". According to the report cards, these rankings do not form part of the student's grades.

[27] What this says to me is that M.H.'s attitudes have changed while his academic work has largely continued the same. This might be cause for concern. However, I cannot determine why his attitudes have changed.

[28] At the same time, I also conclude the mother over-involves herself in the father's parenting. Examples I saw include when the mother told the father not to approach the children when they were doing their extracurricular activities and going to pick up A.H. from the gymnastics party when the father was having parenting time with the children. It is important for the mother to step back to allow the father to parent. If the father

should not be interacting with the children during their activities, for instance, the coaches can tell him so. Similarly, after having received the message that the party was over, it would have been appropriate to forward the text the mother received to the father to allow him to deal with it. These may seem like minor matters; however, it can send the children the message that the father is not as capable as the mother. When these kinds of issues arise, it may be helpful for the mother to take a step back and consider if it is something that she should involve herself in.

[29] The mother's email to the father about the father's trip with the children to Ontario also provides insight into changes that the mother has made but also changes that can still be made. The email was a good step in the right direction, as the mother spoke directly to the father about her concerns and did so in a respectful manner.

[30] Additionally, in the future, it may benefit for the mother, first, to consider whether the issues she is concerned about are simple differences in parenting or something more significant, such as health and safety. If it is a difference in parenting, then it may be better to step back. If the issues do concern health and safety, then the same caution I noted about the children's statements to the father also apply here. The children may not always be completely clear about what happened or may misrelate events. It may be better to ask about what happened rather than presuming knowledge of what occurred.

[31] As with the mother, the father faces challenges in his parenting. I agree with the mother's counsel that he has difficulty accepting feedback and making changes for his children. As a small example, the first Child Lawyer reported that M.H. did not like the lunches the father made for him and gave specific feedback. It was only after attending

counselling with M.H., however, that the father made changes to M.H.'s lunches. This is not a significant issue in any way but it is a continuation of behaviour I noticed in my first decision.

[32] The father states that he wants the children to come to him themselves to share their problems and interests. It seems to me a valid concern that, if they do, he may simply believe that those feelings are not real and that the children are being put up to it by their mother.

[33] The parties both have strengths and weaknesses as parents. That does not make either of them a bad parent. There were misunderstandings and miscommunication, such as when the father went to A.H.'s last dance lesson before Christmas break but she was not there. There were also situations that could not have been averted, such as the cancellation of the father's and children's flights from Ontario. These and other situations are nuisances and, in the case of the cancelled flight, stressful. They were not, however, anything more than situations which parents — even parents who are together — face regularly. These situations turned into conflicts, however, because the parents continued to expect the worst from each other. They then interpreted the other's actions in the worst light.

[34] In my opinion, their greatest challenge is how they interact with each other, which, in turn, affects how they interact with their children. In looking at the factors of the parents' abilities to communicate with each other, to encourage a relationship with the other parent, and in their abilities to meet the needs of the children, the parties are about equal, though their strengths and weaknesses are different from one another.

[35] I will now turn to the children's views and preferences.

[36] The factors that I will consider in assessing the children's wishes are: the age of the children, the strength of their wishes, and whether there is parental influence on the children's expressed wishes.

[37] A.H. and B.H. are eight years old. Normally, they would not be appointed a Child Lawyer. M.H. is 10, which is also young.

[38] B.H.'s views are not fixed or strong. While A.H. expressed a preference, apart from wanting to have overnights with her father, I cannot say her views are particularly strong. I also would not expect A.H. and B.H. to understand the significance of having weekends with their father rather than splitting their time evenly between their father and their mother.

[39] M.H., on the other hand, has consistently expressed that he does not want to spend more time with his father. His wishes have been clear and unequivocal from the start.

[40] The father submits that the mother influences the children. The Child Lawyer also stated that she was worried about the children. The mother denies she is influencing the children and submits the Child Lawyer approached her task differently than is expected from Child Lawyers. I will, therefore, consider to a certain extent the role of the Child Lawyer before addressing the allegation that the mother is influencing the children's choices.

[41] There are guidelines for Child Lawyers and some cases that discuss the role of a Child Lawyer in the Yukon, particularly *Baxter v. Benoit*, 2004 YKSC 60 ("*Baxter*"). The guidelines are dated and not very specific. As an aside, I understand a committee is working on developing new Guidelines for Children's Lawyers.

[42] *Baxter*, similarly, is an older case. While some of the principles from *Baxter* remain valid, in other ways the understanding of how children participate through the Child Lawyer, what the Child Lawyer may make submissions about, and how they present the children's wishes has evolved since *Baxter* was decided. While there are some consistencies in the way Child Lawyers approach their tasks, they are not set out in the guidelines and case law.

[43] In this case, I would note two things. First, while the Child Lawyer may benefit from reading the affidavits and other materials, they should generally refrain from making submissions about the parents' evidence. The Child Lawyer is in no better place than the parents to provide arguments on their evidence.

[44] Moreover, the Child Lawyer must be careful about how they represent the child in court. The Child Lawyer is in a solicitor-client relationship with the child. It can be challenging to fulfil their duties to their client. In a traditional solicitor-client relationship, the lawyer must act on the client's instructions even where the lawyer believes the client is not acting in their own best interests.

[45] A Child Lawyer, however, may have a client who is not capable of giving instructions. They are also called upon to provide information about whether the child is being influenced by a parent. Their views may be contrary to the child's views. The Child Lawyer must therefore carefully balance their role as lawyer to the child with their role of providing necessary information to the Court. Wading into the parents' evidence can upset that balance. A Child Lawyer should, therefore, generally refrain from basing their arguments on evidence presented by the parents.

[46] Another concern the mother's counsel raised was that, in her letter, the Child Lawyer gave direct reference to some of what the children told her. The mother's counsel pointed out that Child Lawyers generally do not provide much detail in their reports about what the children told them. This has been my experience as well. The Child Lawyer here stated that, in the training she took outside the Yukon, it was recommended that those details be included.

[47] It is important for Child Lawyers to take training. I would note, however, that there may be differences in the way children's views are presented in different jurisdictions. Because the Child Lawyer is in a solicitor-client relationship with the child in the Yukon, generally, a Child Lawyer should only include information from the child in their report with the child's permission.

[48] Additionally — especially with younger children — a Child Lawyer should take care about including too much of what a child says, even with the child's permission, as the child may not recognize that their words can be used against them or that they can be used to draw them deeper into the parental conflict. This was not explored during the hearing, and I make no conclusions about how the Child Lawyer determined what to include in her letter. It is an important point to note, however.

[49] The Child Lawyer implied that the children were being influenced by the mother. Given my review of the evidence, I do not draw that conclusion. I, too, however, am concerned about the children. My conclusion is that the children are in the middle of the parents' dispute, and it is affecting them. In the end, I put little weight on B.H. and A.H.'s wishes. I put more weight on M.H.'s wishes, however not a significant amount.

[50] The final factor is the children's needs, including their need for stability.

[51] Aside from the parental conflict, the children are doing well having the majority of the time with the mother. It seems that changing their schedule at this point may cause more problems than it would help resolve.

[52] Taking all the factors into account, I conclude that it is in the children's best interests to continue to spend the majority of their time with their mother. I therefore reject both the father's primary and alternate proposal for parenting time, as both change the current schedule too much.

[53] As well, the second proposal has the children moving back and forth between homes too frequently. When Justice Aston fixed the schedule, the children were young, and the separation was newer. He put it in place so as to provide the children with daily connection to their mother while still providing good contact with their father. The children are older now. Their need for that frequent connection is less and they have additional activities in their schedule. Changing houses almost daily except for weekends is not in their best interests.

[54] I will now explain what and why I am ordering for parenting time. I will then provide the order.

[55] I conclude that it is in the children's best interests to increase the time they spend with their father more than they have currently. I agree with him that having parenting time with the children from Thursday to Sunday every two weeks is not sufficient to maintain a strong bond with the children. I will maintain the father's weekend parenting time to Thursday after school to Sunday every two weeks. He will also have parenting time one overnight during the week. It will be Tuesday after school until Wednesday

morning. This schedule provides the father with roughly the same amount of time as he had previously but is spread out differently.

[56] I do sympathize with the father's desire to spend time with the children that does not involve taking them back and forth to extracurricular activities. On the other hand, I also appreciate the important role those activities have in the children's lives. We heard, for instance, from the Child Lawyer how important gymnastics is to A.H. and how important extracurriculars are to the children generally. To try to balance these competing interests, I will put as a term of the order that the mother make best efforts not to schedule extracurricular activities on Tuesdays.

[57] I will also here deal with the rest of the logistics for parenting time.

[58] The father seeks that the receiving parent pick up the children, that the parent remain in his/her vehicle, and that the residential parent remain in the doorway to see the children off. He seeks that the exchange time be 3 p.m. except for some of the holidays, in which he seeks that the exchange time be 4 p.m.

[59] For the most part, the mother does not take issue with the proposal, but she seeks that the residential parent drop the children off with the receiving parent. She notes that this is how the parties have always done it and it was structured this way on advice from the Child Development Centre. The father has not explained why he seeks to change the way the parents exchange the children. The current system, with the residential parent dropping the children off to the receiving parent, shall continue.

[60] The time for the exchanges during the school year is, as requested by the father, in accordance with the school schedule. As requested by the father, the drop-off time on

holidays and Professional Development days will be 4 p.m. The drop-off times on Sunday will continue to be at 5 p.m.

[61] This, then, is the order:

1. The father shall have parenting time:
 - (a) from after school on Tuesday to Wednesday until school begins every week;
 - (b) every second weekend from after school on Thursday to Sunday at 5 p.m.; and
 - (c) during holidays, the pick-up and drop-off time on weekdays shall be 4 p.m. except as otherwise provided in the order.
2. The parent with whom the child has been having parenting time shall drop the children off to the receiving parent. The parent shall remain in their vehicle and the receiving parent shall stay in the doorway to receive the children.
3. The mother shall make best efforts not to schedule extracurricular activities for the children on Tuesdays.

[62] I now turn to the father's request for reunification therapy with M.H.

[63] Here, again, the father filed a number of cases about when it is appropriate to order reunification therapy. Some of the legal principles on reunification therapy include: reunification orders are granted sparingly; there must be compelling evidence the therapy will be beneficial; and resistance to therapy is important, but not determinative (*FS v MBT*, 2023 ONCJ 102 at para. 161).

[64] In my last decision, I determined that it would be useful for M.H. to attend counselling with his father, as M.H. had strong feelings in his father's care that I hoped could be addressed through counselling. As noted above, however, the counsellor they were seeing concluded she was not the right person to provide the counselling needed. The question is how to move forward in a way that is in M.H.'s best interests.

[65] The father submits that the counsellor they saw recommended that he and M.H. see a reunification counsellor. This was not her complete recommendation, however. In one email, the counsellor stated:

... I also recommend consulting with Kim Scott, his primary therapist, on [M.H.]'s readiness for parent/child relationship work. Kim has an established trust relationship with [M.H.] and would likely best be able to determine where he is at. ...

[66] The mother included in her affidavit a summary Kim Scott provided about her counselling with the children. In it, Ms. Scott explains that she is concerned about requiring M.H. to attend reunification counselling. The father opposes the inclusion of the summary report because it is Ms. Scott's policy that the results of her therapeutic interventions not be used in family law matters. In reply, the mother's counsel points out that the father did not object to the use of Ms. Scott's summaries in the previous hearing and relied on them himself.

[67] Regardless of the father's past position on the summaries, I conclude that it is not a good practice to include information from a counsellor about their sessions with a child without the counsellor's consent. The parties need to be alive to the impact this can have on the therapeutic relationship between the counsellor and the child.

[68] I have also disregarded the information about what the children told the counsellor. First, most of their statements are double hearsay. Second, the summary

report was not provided to assist in making determinations about parenting time and decision-making. The information is simply not helpful in resolving the legal matters.

[69] Ms. Scott's recommendations about whether M.H. should take part in reunification therapy is different, however. Her statements are directly applicable to a live issue in these proceedings. Furthermore, this part of the report is not simply a recitation of statements made by the children but is her analysis of what would be in M.H.'s best interests.

[70] The father questions Ms. Scott's neutrality, believing that the mother has gotten her on her side. I have, however, seen no reason to question Ms. Scott's abilities as a therapist to the children. The summary provides nothing more than an overview of issues raised by the children and techniques Ms. Scott used to process those issues.

[71] What could be problematic is that the evidence is opinion evidence. Ms. Scott has not been qualified, and her opinion is not presented properly but as an attachment to an affidavit.

[72] On the other hand, Ms. Scott has developed a relationship with M.H. She has also explained her reasoning. Her assessment is ultimately more reliable than the views of either parent.

[73] I will set out Ms. Scott's views in her words. She states:

... I am concerned with the messaging of the children being mandated or referred to see another new person (therapist or lawyer) to assist them with the issues they are faced with. I am concerned they will be getting the message there is something wrong with them that needs to be fixed. This can have long term negative impacts and can lead individuals to be reluctant to seek out therapeutic help later in life. ...

[74] I conclude the evidential record does not include compelling evidence that the therapy would be beneficial.

[75] Additionally, my views on the family dynamics have shifted since the first hearing. As I noted, it seems to me now that the largest issue is that the children are caught up in their parents' conflict. It is not clear to me that reunification therapy will address how the parents relate to each other.

[76] I will therefore not order reunification therapy.

[77] Rather than reunification therapy, Ms. Scott recommends a parenting assessment be conducted, which is called in the Yukon a "Custody and Access Report". Neither party is seeking a Custody and Access Report and I am not making that recommendation. In my opinion, the parents would benefit from working with a parenting coordinator. A parenting coordinator can address the stumbling blocks the parents face in interacting with each other.

[78] I will now address the other relief the father is seeking.

[79] Paragraph 1.b.ii. of the Notice of Application is about the school bus. I order that the father shall be at liberty to enrol the children to take the school bus between his home and the children's school. The mother shall sign any authorization required to facilitate this.

[80] Item 2 is travel. I will grant the order the father is seeking with regards to travel as requested.

[81] Item 4 is the right of first refusal. I will grant the order for right of first refusal. This right is restricted to the parents. While I accept that the mother's partner has an important role in the children's lives, a term such as this is in place to maximize the contact the parents have with the children.

[82] Item 5. The father is seeking an order with respect to the children's devices. The first part of the order he seeks, which is that the parents will each monitor and limit the children's device usage while in their respective care, is too vague and is likely simply to lead to more conflict. I will put in place the order that neither parent shall initiate communication with the children via their smartwatches, cell phones, or other electronic devices or accounts because I am concerned that the devices can interfere with the children's time with the father, but I am also mindful that the smartwatch has helped M.H. with anxiety in the past.

[83] I want to put in place a limitation on the children's use of their devices when they are with a parent. The order is that the children shall have the opportunity to contact the non-residential parent at bedtime and in the morning before school or with the permission of the residential parent or as can otherwise be agreed upon by the parties. This is not part of the order, but the parents should give the message to the children that the reason for this is that they want them to spend quality time with the other parent and that this can be interrupted if the children are reaching out to the non-residential parent too frequently.

[84] The father attested that he believed the mother was following the children's movements through their devices. There is no credible evidence to come to that conclusion. For everyone's peace of mind, however, I will order that the mother turn off any form of tracking on the children's devices before the father's parenting time with the children.

[85] I will also order that the mother provide the father with any passwords she knows on the children's devices. The reason I am including this is to permit the father to parent

as he sees fit when the children are in his care. If the children are concerned about having their privacy invaded, the mother should give them the message that both parents need access to ensure that the children are safe while they are using their devices.

[86] Having put that order in place, I do want to give a word of warning. The parents should not use the access they have to check up on how the other is interacting with the children. This can only serve to place the children into the dispute again.

[87] Item 6. I will put the holiday schedule as the father has requested in place.

[88] I also think it is important to revisit some of the orders I previously made.

[89] Paragraph 17 of my order of October 3rd provides that the father shall take the children to any extracurricular activities that fall during his parenting time unless otherwise agreed upon by the parties. I think this order is too inflexible. I will instead put in place that the parties are to take the children to any extracurricular activities that fall during their parenting time, except for special events which cannot be scheduled at a different time. Consent of the other parent is not required, but each parent shall provide notice to the other when opting out of extracurricular activities.

[90] I also want to address attendance at extracurricular activities. In the ideal world, both parents would be able to attend their children's activities at the same time. Here, however, it seems that the children are not benefiting from having both parents attend.

[91] For practices or regularly scheduled extracurricular activities, I will order that the parents will alternate attendance with the father being at liberty to attend on the weeks he has parenting time with the children on the weekends and the mother attending on the weeks she has parenting time with them on the weekends. For special events,

including performances, tournaments, competitions, and school events, such as Christmas performances, both parents are at liberty to attend.

[92] This is not part of the order, but if both parents are at an event and a child seeks out the parent that did not bring them, the parent should obviously greet them but then encourage them to return to the other parent. The message from both mother and the father should be that each parent's time with the children is special and needs to be respected. Equally, the parent who brought the children should be sending the message that, if the child wants to greet the other parent, it is okay for them to do so.

[93] Both parties have sought costs in this application. Because the defendant proceeded under the *Children's Law Act*, RSY 2002, c 31 ("*Children's Law Act*"), as well as the *Divorce Act*, s. 77 of the *Children's Law Act* applies. Section 77 provides for the circumstances in which the Court may order costs. In this case, the parties both suggested that the other unduly complicated the proceedings by, for instance, setting down unnecessary case management conferences or filing unnecessary materials. Section 77(2)(c), which permits a costs award where a party acted in a way that tended to prejudice or delay the fair trial or hearing of the proceeding, would therefore be the provision the parties are relying on in their submissions.

[94] These proceedings have been complicated, involving multiple appearances. They were not, however, scheduled unnecessarily. The materials filed were also voluminous. The chambers record for the first hearing consisted of four large binders; the second one, one large binder and the father's counsel filed 24 cases for the second hearing. There are times where such extensive materials are required. Here, however, in my opinion, it was not necessary.

[95] Particularly for the first hearing, the extensive materials came from both parties. They ended up in an affidavit war with no one coming out as the victor. I recognize that when conducting litigation, it is challenging to include evidence and submissions only as is necessary. And when an affidavit is filed alleging new claims, it is necessary to respond. Unfortunately, it is easy to end up in these escalating disputes and difficult to find a way out of them.

[96] I would like to provide some comments on affidavits that may assist in some ways to reducing the volume of materials filed. What I say here does not apply simply to this situation, but I see this recurring in other family law matters as well.

[97] The *Rules of Court* of the Supreme Court of Yukon (the “*Rules*”) can provide guidance when determining what to put in an affidavit. Parties should remember that the rules of evidence apply to affidavits. Legal argument should not be in an affidavit. So, for instance, statements that the other party has provided hearsay evidence or that they are not credible should not be included. Letters between counsel should also not generally be attached to affidavits as exhibits.

[98] Parties are permitted to include statements about information and belief, but they must include the source of their knowledge and belief. Before including statements about information and belief, the parties should consider how reliable and necessary those statements are.

[99] The *Rules* also limit the way affidavits can be provided. The moving party provides their affidavit material, the responding party responds with their affidavit material, and the moving party has a chance to reply. Under the *Rules*, no further affidavits may be filed except by consent or if the Court orders otherwise. To ensure that

no further affidavits need to be filed, reply affidavits should be just that: reply. There are times in family law where something new occurs that requires additional affidavit material. This should not be the norm, however.

[100] Finally, parties should always ask themselves why they are including a point in an affidavit. In family law, the parties are dealing with complex, difficult situations that affect them deeply. They may feel attacked as a parent and as a person. The strong emotions that are present in many family law matters can make it difficult to determine how relevant potential evidence might be. In looking critically at whether the proposed evidence actually advances their case, parties are better able to exclude that which is not helpful and include evidence that assists them.

[101] In my opinion, in the review hearing, the plaintiff did provide a more focused affidavit. That is commendable. However, over the course of the application, neither party's conduct stood out more than the other as warranting a costs award.

[102] Additionally, the usual reasons for awarding costs, which is overall success, does not apply. Neither party, as I see it, was particularly successful here. I will therefore order that each party is to bear their own costs.

WENCKEBACH J.