SUPREME COURT OF YUKON

Citation: SLH v AWH
2025 YKSC 76

Date: 20251124
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

Appearing on his own behalf — A.W.H

REASONS FOR DECISION

Overview

[1] The parties in this family law matter, S.L.H. and A.W.H., have three children of the marriage: M.H., born [redacted]; and A.H. and. B.H., both born [redacted] (collectively, “the Children”).

[2] S.L.H. has filed two applications, in which, amongst other relief, she seeks that I conduct a judicial interview with the Children and change A.W.H.’s parenting time with them. A.W.H. opposes the applications. A hearing was conducted on the application for a judicial interview. These reasons address this issue.

[3] For the reasons below, I grant S.L.H.'s application. If the Children consent, I will conduct judicial interviews with them.

Background

[4] The parties went through a divorce trial in 2019. The trial judge ordered that S.L.H. have the majority of the parenting time with the Children. In 2023, A.W.H. applied to have equal parenting time with the Children. A.W.H. claimed that S.L.H. was alienating the Children. S.L.H. opposed the application. She claimed that A.W.H. was not taking good care of the Children.

[5] A Child Lawyer was appointed for M.H. At the hearing of the application, I made an order reducing A.W.H.'s parenting time for six months in hopes some of the family dynamics would be addressed. I also stated there would be a review of A.W.H.'s parenting time at the end of the six months. The parties remained, however, extremely conflictual; and the problems remained. The Child Lawyer also got off the record and a second child lawyer was appointed for all the Children.

[6] At the review, the Child Lawyer told the Court the Children's views. She submitted that the Children, particularly M.H., wanted parenting time every second weekend. Following the review, I issued an interim decision, granting S.L.H. the majority of parenting time with the Children. I also ordered that A.W.H. have parenting time with the Children from Thursday to Sunday every second weekend, and every Tuesday afternoon to Wednesday morning.

[7] The Children, and particularly M.H., have expressed they are not happy with the Tuesday visits. On one Tuesday, they did not wait at school for their father but got on

the bus to go to their mother's house, instead. They tried to do the same thing in the following weeks but were stopped.

[8] S.L.H. also alleges that the Children feel that the Child Lawyer misrepresented their wishes in court. Following a meeting with the Children, the Child Lawyer got off the record.

[9] There have been several court appearances in response to these developments. I changed A.W.H.'s parenting time with the Children on an interim, interim basis to every second weekend; and S.L.H. brought the applications for a judicial interview and a change to A.W.H.'s parenting time.

Issues

[10] The issues are:

A. When should judicial interviews be conducted?

B. For what purposes may judicial interviews be conducted?

C. What factors should be used in determining if a judicial interview should be conducted?

D. How should judicial interviews be conducted?

E. Should I conduct a judicial interview with the Children?

F. What will be the process for the judicial interview?

Analysis

A. When should judicial interviews be conducted?

[11] In Canada, the law on judicial interviews of children in family law matters is unsettled. In some jurisdictions, they occur only seldomly. In other jurisdictions, they occur more frequently. In some of the jurisdictions where judicial interviews are more

common, moreover, legislation either permits or requires the judge to meet with children if the children wish (Art 34 CCQ; *Children's Law Reform Act*, RSO 1990, C c-12, s. 64).

[12] In Yukon, judicial interviews are not conducted often. In the cases that consider the question, the judges did not reject the notion of judicial interviews outright, but determined that, on the facts of the case before them, it would not be appropriate. In *BJG v DLG*, 2010 YKSC 44 *("BJG")* at para. 54*,* the Court stated that there are cases in which judicial interviews "are necessary and appropriate". In *RKK v BMM*, 2017 YKSC 1 at para. 10 *("RKK"),* although the judge declined to conduct a judicial interview, he stated he was not philosophically opposed to them. In *FS v TWS*, 2019 YKSC 27 at para. 14, the judge rejected the request for a judicial interview based on the facts.

[13] Across jurisdictions, when judges are reluctant to conduct judicial interviews, the concerns expressed were similar. Some believe it is not an appropriate task for a judge to undertake. In the Canadian legal system, it is the lawyers and litigants who provide the evidence and arguments in support of their position. Judges, in contrast, sit "above the fray", taking in the information presented to them, analyzing it, and providing a decision. Judicial interviews require the judge's participation to be more active. Thus, some judges decline to conduct judicial interviews, in part, because they believe interviews derogate from the traditional judicial role (*Richie v Harkness-Gehle,* 2008 ONCJ 475 at para. 26).

[14] In addition, the court is aware that the process of parental separation and custodial disputes can have a tremendously negative impact on children. Judges that are wary of judicial interviews are often worried that a judicial interview will exacerbate the negative impact the dispute has on the children. They state, for instance, that they

seek to protect the children from being drawn into their parents' dispute (*DJWS v CMM*, 2012 BCPC 156 at para. 79 ("*DJWS*"); *KK v MM*, 2021 ONSC 3975*,* ("*KK*") at para. 164); they are concerned that an interview will be traumatizing for children (*GC v RDP*, 2021 ONSC 4206 at para. 93 *("GC"); Fias v Souto,* 2020 ONSC 6346 at para. 75 *("Fias"); DJWS* at para. 79); or the judge is not trained to conduct such an interview (*GC* at para. 93; *Fias* at para. 75; *RKK* at para. 10).

[15] Finally, judges also concluded that meeting children behind closed doors violates the parties' rights to procedural fairness (*KK* at para. 161).

[16] In my opinion, however, these concerns can be addressed. While a judge conducting a judicial interview does adopt a role outside the norm, this occurs because family law disputes are unique. In most other civil law cases, the people who will be most affected by the outcome of the case are the parties. They have the opportunity to fully participate in the proceedings: they can testify, call evidence, negotiate resolutions, and present legal arguments.

[17] In family law proceedings, the children are not parties. They do not give evidence or participate throughout the proceedings. This is for good reason: children should be shielded from the antagonism and division that arises through the adversarial process. As a result, however, the children can remain unseen and unheard. At the same time, children have a right to participate in family law proceedings affecting them (*BJG* at para. 6) and are the individuals who are most affected by a court's decision.

[18] To address this gap, methods have been introduced to permit children to be heard without excessively drawing them into the litigation. In some jurisdictions, Voice of the Children Reports ("VOCR") are used. In VOCRs, a lawyer or other professional

interviews the children and ascertains their views. Child lawyers may also be appointed to represent children. Additionally, parenting assessments can provide an in-depth understanding not only of the children's lives but also of the parents' abilities to meet their children's needs. In Yukon, under the *Children's Law Act,* RSY 2002, c 31 (ss. 43 and 168), government funding is provided for child lawyers and parenting assessments, called Custody and Access Reports ("CAR") for some children.

[19] In some circumstances, however, even where the child's wishes have been presented through a professional, the court may continue to have questions about a child's situation. There are also jurisdictions in which the mechanisms for presenting the child's views are too expensive for the parties. In my opinion, where it may help the children, because family law disputes have unique features, it may be appropriate for the court to step outside its traditional role.

[20] Additionally, in cases where courts viewed judicial interviews more favourably, the reasons address the fear that judicial interviews could harm the children. The courts in those cases determined that judicial interviews can help children feel more involved in the proceedings and understand the judge's task and process (*SK v DG*, 2022 ABQB 425 ("*SK*") at para. 192). It can also help the judge to better understand who the child is for the purpose of determining the best interests of the child (*Stefureak v Chambers,* [2004] 6 RFL (6th) 212 (ON SC) ("*Stefureak*") at para. 67). This can lead to better decision-making and outcomes (*SK* at para. 194). Rather than being traumatic, these judges state that for some children, speaking with the judge can be a positive experience.

[21] Research into the issue supports this view. It suggests:

- a significant portion of children, if asked, say they would like to speak with the judge;
- there are better outcomes if children feel they have a voice in the dispute resolution process, but children report they often feel ignored;
- being involved in high-conflict separations can be traumatizing for children but meeting with the judge puts them in the same position as regards their parents as meeting with a lawyer or professional hired to do an evaluation;
- children are often anxious about meeting with the judge but usually feel positive about the meeting afterwards;
- there is no evidence that children are traumatized by meeting a judge; and
- judges report they often find it helpful to meet with children.

(Nicolas Bala et al, "Children's Voices in Family Court: Guidelines for Judges Meeting Children" (2013) 47:3 Fam LQ 379 *"Children's Voices*")).

[22] Furthermore, procedures can be adopted to protect parents' rights to procedural fairness. This will be discussed further below.

[23] Judicial interviews are thus a valid tool to use in family law disputes involving children, if the judge concludes that a judicial interview would be in the best interests of the children.

B. For what purpose may judicial interviews be conducted?

[24] While there is a divide about the extent to which judicial interviews should be conducted, there is more agreement about the purposes of judicial interviews.

[25] Judicial interviews are not conducted to gather evidence (*Stefureak* at para. 65). The receipt of evidence entitles parties to cross-examination and to call evidence in response, which children should not be exposed to.

[26] A judicial interview also cannot be the sole basis for the judge's decision. Instead, the court must put the judicial interview within the context of the best interests of the child. Regard must be had, however, to a child's age. For teenagers, it may be undesirable to force them to live with a parent against their wishes (at para. 64).

[27] Most case law states that judicial interviews may be used:

- For the court to better understand who the child is for the purposes of determining their best interests (at para. 67)
- To obtain the wishes of the child (*BJG* at para. 55);
- For the child to have a say in the decisions affecting their lives (*Stefureak* at para. 55);
- To help the child feel more involved in the process (at para. 55);
- To help the child understand the judge's task and process (*SK* at para. 192);
- To give the child the opportunity to satisfy themselves that the judge understands their wishes (*Stefureak* at para. 192); and
- After a decision has been made, for the judge to explain the outcome (*RL v MF*, 2023 ONSC 2885 at para. 188).

[28] In some cases, the court states that the purpose of the interview should be considered when deciding whether to conduct one *(SK* at paras. 197-198; *CJJ v AJ*, 2016 BCSC 676 ("*CJJ*") at para. 325; *LEG v AG*, 2002 BCSC 1455 ("*LEG*") at para. 5).

Identifying the purposes helps to determine whether, given the facts of the case, a judicial interview is the right process to use to obtain a child's wishes. It can also guide the court in how it will structure the interview.

C. What factors should be used in determining if a judicial interview should be conducted?

[29] There have been some attempts to develop guidelines for judicial interviews of children in family law matters (*Children's Voices*; "Guidelines for Judicial Interviews and Meetings with Children in Custody and Access Cases in Ontario" (2014), 36 RFL (7th) 489 ("*Guidelines*")). While there are some similarities between *Children's Voices* and the *Guidelines*, there are also points of difference. Similarly, there is both agreement and differences in the case law on the factors used to determine whether to conduct a judicial interview.

[30] In my analysis, and focusing on the case law, I will address whether it is possible to reconcile the different viewpoints by examining their commonalities and differences. The factors upon which there are general agreement are: whether the child consents to be interviewed; the child's circumstances; and the stage of the proceedings at which interviews may be conducted.

[31] Courts disagree, however, about how the involvement of other professionals, such as child lawyers or other professionals, should be treated; how the potential that the child may change their mind should be treated; whether an allegation of alienation suggests that an interview should not be conducted; the role that the parties' consent plays; and whether judges are equipped to conduct child interviews.

(a) Child's Consent

[32] There is consensus that a child should only be interviewed if they want to take part in a judicial interview. Some courts also noted that some children seek to speak with the judge (*BJG* at para. 58)

(b) The Child's Circumstances

[33] Courts take the child's circumstances into account in determining whether to conduct an interview. This includes the child's age and maturity, any health issues that may make the interview more stressful for the child or more difficult to have effective communication and whether the parents have involved the child in the litigation. On the last factor, some courts have decided not to conduct a judicial interview because they sought to spare the child further involvement in the litigation (*KK* at para. 164). Others concluded that, perhaps because of their involvement in the litigation, the children had strongly held views, which they should be permitted to express (*Peters (Re)*, 2025 NWTSC 23 ("*Peters*") at para. 36).

(c) Stage of the Proceedings

[34] Child interviews have occurred at different stages of the proceedings before a judicial decision is made (*BJG* at para. 54). Some interviews have also taken place during trial (*CR v AH*, 2024 ONSC 1960 at para. 96).

(d) The Involvement of Other Professionals

[35] Turning to the factors in which there is disagreement in the case law, in some cases, the court has determined that a judicial interview should be conducted only if other methods of obtaining the child's views, such as through a lawyer or other professional appointed to put the child's views before the court, are not available

(Stefureak at para. 62; *Ward v Swan et al*, [2009] 71 RFL (6th) 384 (ON SC) at para. 23). These cases often recognize that children are entitled to have a voice in family law proceedings but see judicial interviews as the mechanism of last resort to get the child's point of view before the court.

[36] In other cases, the court implicitly rejected the position that judicial interviews should be conducted only when there are no other options for representing the child's views. In these decisions, the judicial interview is considered a supplement to the information the court obtains through other sources. They state that, absent urgency, judicial interviews cannot replace child representation through other mechanisms (*BJG* at para. 57).

(e) Potential that the Child will Change Their Mind

[37] In many cases, the judge will only be able to meet with the children once. Because children can change their minds, judges have cited this as a reason not to interview the child *(GF v MAM,* 2022 BCPC 45 at para. 36). Others, however, do not view it as a reason to not proceed with an interview *(SK* at para. 198).

(f) Allegations of Alienation

[38] The case law is also divided about whether judicial interviews should be conducted in situations where alienation is alleged. In some cases, the court decided that the lawyer appointed to act on behalf of the child would be better able to make that assessment than the court (*KK* at para. 165).

[39] In other cases, the court has found that a judicial interview is warranted despite finding that the child had been alienated from their parent (*CJJ* at paras. 335-337). In *CJJ*, the court stated that the child did not feel that his views had been taken into

account; he wanted a judicial interview; the judge could reassure the child in the interview that he had been heard; the judge could also explain the various considerations he needed to take into account in making his decision; and an interview would enhance the likelihood that the child would accept the outcome (at para. 337). Finally, where there are allegations of alienation, the court may also use a judicial interview to assess whether there is parental influence *(SK* at para. 191).

(g) Role of the Parties' Consent

[40] The *Guidelines* suggests that lack of consent of one or both parties to a judicial interview is a factor that may suggest that an interview is not appropriate (at 10-11). In *RAL v RDR,* 2006 ABQB 835 at para. 25, the court arguably went further, as the judge there stated she was reluctant to conduct an interview without the consent of the parties, out of concern for trial fairness.

[41] On the other hand, other courts have concluded that an interview can be conducted without the consent of the parties (*Hamilton v Hamilton* (1989), 20 RFL (3d) 152 (Sask CA); *Jandrisch v Jandrisch* (1980), 16 RFL (2d) 236 (Man CA). In *LEG*, the court explained that the essential question is whether an interview is in the best interests of the child. Parental consent is not, therefore, determinative. The court did note that, while parents cannot veto an interview, parental consent may be an important factor in the analysis (at paras. 4-6).

(h) Judges' Ability to Conduct Interviews

[42] Some case law questions the ability of judges to conduct child interviews, as they are not trained to do so. Others state simply that they themselves do not feel confident conducting child interviews. Judges who do conduct interviews acknowledge the

challenges, but state that with appropriate guidelines and/or training, judges are able to conduct interviews with children (*BJG* at paras. 61-62).

(i) Summary of Factors

[43] Because there is a philosophical divide about the use of judicial interviews, it is not possible to completely reconcile the opposing perspectives on the factors to be used in determining whether a judicial interview should be conducted. However, regardless of this philosophical difference, all agree the driving question for the court is whether a judicial interview would be in the best interests of the child. By using the consideration of the best interests of the child, I believe it is possible to enumerate some of the factors to be used in deciding whether to conduct a judicial interview, as well as questions the court may pose to determine how those factors should be applied. These factors include:

- Whether the child wants a judicial interview. The court should only proceed if the child is in favour of an interview. If the child seeks to speak with the court the judge may also consider if the child is being pressured or influenced to ask for a judicial interview.
- The circumstances of the child. This includes the child's age, maturity level, health concerns that may impact their ability or comfort in attending the interview, and the extent to which they have been negatively involved in the proceedings. On the last factor, the court may assess whether further involvement will cause harm or, on the other hand, provide the child with the chance to speak for themselves or feel heard.

- The stage of the proceedings. If the trial is underway, the court should carefully consider what evidence the parties have already led and whether conducting an interview would impact the parties' rights to a fair trial.
- Whether there are other professionals involved who can represent the child's views. If the child's views have been represented, the court may ask what the purpose is for the judicial interview. If it is simply to hear the child's views, an interview may not be necessary. If it is for a different purpose, such as to help the child feel part of the process or to help the court and child discuss the court's role, a judicial interview may still be useful.

  If the child's views have not been represented, the court may ask whether other ways of receiving the child's views have been explored. In matters of urgency, or if there are no other alternatives, a judicial interview may be important.
- Whether the child might change their mind. If the child's views have vacillated, the court may conclude getting the child's views through one interview may not be of assistance. The court may also decide, however, that because the child's views change, an interview may help the court better understand the child.
- Whether there are allegations of alienation or a finding of alienation has been made. The purpose of the judicial interview should be considered to determine if an interview would be useful. If the purpose is to ascertain the child's wishes, the interview may not be necessary. If it serves to help the

child communicate their wishes and understand the court's role, it may be helpful to have an interview. The judge may also want to assess whether and to what degree the child is being influenced, although some judges may believe they are not equipped to do that, or would consider it an inappropriate purpose for the interview.

- Whether the parties consent to the interview. The importance of this factor may depend on the reasons a party does not consent to the interview. The court may also weigh the probability of repercussions against the child where there is lack of consent.
- The judge's knowledge and comfort in conducting an interview. Conducting a judicial interview does require the judge to step outside the traditional role of judge. A judge's knowledge in the area may have an impact on the decision to conduct an interview. The age of the children may also be a factor here, as it is generally easier to interview an older and more mature child.

D. How should judicial interviews be conducted?

[44] *Children's Voices* provides a thorough set of guidelines for conducting child interviews. For the purposes of this decision, I will focus on the process and procedure used in conducting interviews, including who should be present; whether it will be recorded; what information the parents will have access to; and where the interview should take place. Although not all cases reviewed described these details, where they are described, in most respects judges adopted similar procedures.

(a) Who Should be Present

[45] Neither the parties nor their counsel were permitted to attend the interviews in any of the decisions reviewed. *Children's Voices* suggests that parents and their lawyers should not attend a judicial meeting unless it is held in open court (at 398). In the cases where the child had a lawyer or a trusted counsellor, they attended (*SK* at para. 196; *Peters* at para. 37; *Morin-Vertongen v Gregoris*, 2022 ONSC 135 ("*Morin-Vertongen"*) at para. 29). In all cases, a court clerk or other court employee attended the meeting, as well *(BJG* at para. 60; *DNL v CNS*, 2011 BCSC 1535 ("*DNL*") at para. 32*).*

(b) Whether the Interview is Recorded

[46] The court most often recorded the interview (*SK* at para. 196; *BJG* at para. 60; *Verth v Verth*, 2021 ONSC 4380 *("Verth")* at para. 41; *DNL* at para. 32; *Morin-Vertongen* at para. 29, but see *Haberman v Haberman,* 2011 SKQB 415 at para. 173). The court also sealed the recording, subject to further court order from the court or court of appeal (*SK* at para. 196; *BJG* at para. 60; *Verth* at para. 41; *DNL* at para. 32; *Morin-Vertongen* at para. 29).

(c) Information Given to the Parties

[47] It is suggested that the judge inform the child that the judge cannot keep secrets; and the parents will be informed of the substance of the discussions *(Stefureak* at para. 68; *Children's Voices*, at 400). In the majority of the cases, the court provided a summary of the interview to the parties (*SK* at para. 196; *BJG* at para. 60). Sometimes, as well, the child's permission was sought before conveying information to the parties. In one case, the court provided the summary to the parties' lawyers with instructions

that they were not to share the information with the parties. The court then provided a summary in its decision (*SK* at para. 196).

[48] Some judges, however, have concluded that the parents should be provided with a transcript of the interview and be given the opportunity to make submissions and call evidence in response (*McAlister v Jenkins*, [2008] 54 RFL (6th) 126 (ON SC)). In *Children's Voices* the authors caution that if the court proceeds in this manner, the child should know this from the start of the interview (at 400)

[49] On the other hand, the Court of Appeal for British Columbia has determined that the court is not required to tell the parents about the outcome of the interview (*Jespersen v Jespersen*, [1985] 48 RFL (2d) 193 (BC CA) at para. 19). In that case, the Court noted the judge met the child upon the parents' consent; and counsel did not seek disclosure of the information ahead of time. It is not clear, therefore, whether disclosure of information is always at the discretion of the judge or if the judge may decide not to disclose the outcome only in those specific circumstances.

(d) Location of the Interview

[50] Some judges state interviews should take place in the courtroom (*SK* at para. 196; *BJG* at para. 60; *DNL* at para. 32), while others conducted the interview in chambers (*Peters* at para. 37).

[51] Although there is consistency in the case law as to the procedures adopted, the determination of how to conduct the interview should be informed by the context of the situation. As stated in *SK*, at para. 199:

> There are no set protocols for judicial interviews. The literature and jurisprudence offer a wide variety of options and possible conditions for judicial interviews. What is best-

> suited will depend on the specific circumstances of the case and will be determined after hearing from counsel.

The role for the court is to decide what structure will be in the best interests of the child, while still respecting the parties' rights to trial fairness.

E. Should I conduct a judicial interview with the Children?

[52] S.L.H. seeks that I conduct a judicial interview with the Children, while A.W.H. is opposed. I conclude that a judicial interview would be in the Children's best interests.

(a) Facts and Evidence

[53] The Children's residential arrangements have been before the Court for over a year.

[54] At first, only M.H. was represented by a child lawyer, as I considered A.H. and B.H. too young to have one. A.W.H. challenged the lawyer's appointment, citing a conflict of interest, which I dismissed. At the hearing, the Child Lawyer advised the court of M.H.'s wishes, stating that he wanted to spend less time with A.W.H. She also stated she did not believe M.H. was being influenced by S.L.H.

[55] In my decision, dated August 26, 2024, I reduced A.W.H.'s parenting time with the Children temporarily, in hopes of addressing some of the problems in the family.

[56] In a Consent Order filed December 4, 2024, the parties agreed that a child lawyer other than the Child Lawyer on file be appointed to act for all the Children. Subsequently, a different Child Lawyer was appointed to act for all the Children.

[57] At the next hearing, the Child Lawyer provided the Children's views. She stated that the Children, particularly M.H., was happy with the current schedule. She also stated, however, that she was worried about the Children; and their answers seemed

scripted. I took these representations to mean that the Child Lawyer was concerned the Children were being influenced by S.L.H. and noted it in my decision.

[58] In my decision, I ordered that A.W.H. have interim parenting time with the Children from Thursday after school until Sunday at 5:00 p.m. every second weekend and every Tuesday after school to Wednesday morning. This did not align exactly with the Children's wishes, but I considered it to be in their best interests.

[59] The parenting schedule did not go as planned. S.L.H. states the Children told her they did not like the Tuesday night visits with A.W.H. and wanted to go to his house only on weekends. On one Tuesday, they got on the bus to go to S.L.H.'s home rather than staying at school and being picked up by A.W.H. M.H. also recorded a conversation between the Children and A.W.H. in which the Children expressed they did not want to go to his house on Tuesdays. A.W.H. does not deny the Children have avoided going to his house or that they have said they do not want to visit on Tuesdays but submits they are reacting in this way because S.L.H. is alienating them from him.

[60] The Children's relationship with the Child Lawyer also foundered. S.L.H. provided the Child Lawyer's letter to the Children to reassure them about what she had said. S.L.H. states the Children got upset, telling her the Child Lawyer misstated or misrepresented what they had told her. S.L.H. states they told her they did not want to see their Child Lawyer again; and M.H. said he wants to speak with the judge.

[61] A.W.H. believes that it is S.L.H. who does not want the Children to see the Child Lawyer again, rather than the Children. He took the Children for an appointment with the Child Lawyer. After the meeting, the Child Lawyer got off the record.

[62] This information was provided to the Court, and a Family Law Case Conference was scheduled. S.L.H. proposed that I conduct a judicial interview. I stated that was a possibility I had contemplated myself. S.L.H. was directed to apply for a judicial interview. She did, and then also made an application to change A.W.H.'s parenting time with the Children.

(b) Analysis

[63] A.W.H. argues that before considering whether to conduct a judicial interview, S.L.H. must demonstrate there has been a material change of circumstances. I will therefore consider this question first.

Material Change in Circumstances

[64] A party seeking a judicial interview will not always be required to show there has been a material change in circumstances for the court to consider the request. If it arises during an application or in anticipation of a trial, for instance, the request will form part of the proceedings themselves.

[65] Here, I granted an interim order about A.W.H.'s parenting time on March 24, 2025 (the "Order"). In Yukon, where trials are unusual, interim orders are often final orders; and they are only changed upon demonstrating a material change in circumstances. S.L.H. seeks to vary the parenting time granted to A.W.H. by the order. The judicial interview would be for the purpose of determining whether the variation should be made. She must, therefore, demonstrate a material change in circumstances.

[66] A.W.H. submits there has been no material change in circumstances. He states that the Children have been represented by multiple child lawyers; and their voice was heard only seven months ago. The underlying facts have not changed.

[67] I agree with A.W.H. that where child lawyers are involved and represent the Children's views to the court, a party cannot wait in the weeds and seek a judicial interview if they receive a decision they do not like. I conclude, however, that this is not what occurred here. In this case, the Children actually refused to attend parenting time with A.W.H. on Tuesdays. Forcing them to continue to have parenting time with A.W.H. without any further inquiry has the potential to rupture their relationship with him.

[68] Furthermore, the Child Lawyer has gotten off the record. A decision must, therefore, be made about how to have the Children's wishes included in the proceedings. This, too, is a material change in circumstances.

[69] I want to underline that in coming to this conclusion, I have come to no conclusions about why the Children oppose parenting time with A.W.H. on Tuesdays, nor about why the Child Lawyer got off the record. All I have concluded is that the Children strongly oppose having parenting time with A.W.H. on Tuesdays. This, and the fact that the Child Lawyer is off the record, is sufficient to constitute a material change in circumstances.

Purpose of the Judicial Interview

[70] Both parties agree that at least M.H. and A.H. are stating they do not want to have parenting time with A.W.H. on Tuesdays. The role of a judicial interview would not, therefore, simply be to understand the Children's wishes.

[71] The judicial interview would, however, serve other purposes. For M.H., at least, his views are strong. Meeting with me would give him a chance to see that I understand his wishes. For my part, although much has been said about the Children, the parents have very different perspectives on them. A judicial interview may help me better understand who the Children are in order to determine their best interests. It would also give me the opportunity to explain my task and process. If I make an order that does not align with the Children's wishes, I may also have a post-decision meeting to explain the outcome.

Conducting a Judicial Interview

[72] A.W.H. also submits that the Children's voices can be heard in another manner, aside from a judicial interview. He suggests that the Children's last Child Lawyer would likely reinstate herself as the Children's counsel upon the Court's request, or another lawyer could be appointed as child lawyer. As I understand it, he also offers the Children's psychologist as an alternative for presenting the Children's wishes. He suggests that other alternatives would be a VOCR or parenting assessment.

[73] In Yukon, VOCRs are rarely if ever produced so there is no developed process for them nor a roster of professionals that are engaged to do them. The VOCR would need to be funded by at least one of the parties, and a professional would need to be engaged. A.W.H. has not presented any clear path forward for proceeding in this manner. Moreover, while this matter is not currently urgent, given its history and the issues involved, there should not be undue delay; and I am concerned that, even if viable, a VOCR would take too long to sort out.

[74] While VOCRs are, at best, extremely rare in Yukon, the same is not true of CARs, as they are provided for in the *Children's Law Act.* The parties rejected a CAR at the last proceeding. At this point, A.W.H. seems to be submitting that a CAR is warranted. Even if it is, I am concerned about delay. If the Director of Family and Children's Services, who determines whether a CAR should be conducted, authorizes a CAR, it can take six months for the report to be produced. Because of the delay a CAR should not be the sole method for having the Children's voices and needs expressed.

[75] The Children's psychologist is also not an alternative. Based on past evidence, she does not want to be involved in the litigation. I do not know if the Children are continuing to see her, but even if they are not, the therapist-client relationship should be preserved in case the Children see her in the future.

[76] The last option A.W.H. presents is that I ask the Children's last Child Lawyer to reinstate herself or recommend the appointment of another child lawyer. I will not, however, ask the Child Lawyer to get back on the record. The Children have a solicitor-client relationship with their lawyer. It would not be appropriate for the Court to insert itself into that relationship. Moreover, the Child Lawyer spoke with the Children herself and decided to get off the record. I do not have reason to question that decision.

[77] I am also hesitant to recommend the appointment of a third child lawyer. It is rare for child lawyers to be challenged in the way the Child Lawyers have been here. I am not confident that a third would be successful.

[78] Additionally, the Child Lawyers made different representations about the Children. The first Child Lawyer stated she did not believe M.H. had been influenced in his choices. The second Child Lawyer stated the Children's statements sounded

"scripted". In her communications with the parties after my decision was rendered, the Child Lawyer states it was not her intention to imply that S.L.H. was influencing the Children. It is therefore unclear what the Child Lawyer was suggesting but stating that a child sounds scripted to me suggests that they are being influenced by someone. Two Child Lawyers thus made seemingly different representations about the Children. I fear a third will not help resolve the issues.

[79] Turning to the other factors, the first factor is whether the Children want to take part in a judicial interview. According to S.L.H., the Children want to speak with me, although S.L.H. is concerned that B.H. may have a harder time with an interview than A.H. and M.H. Given my knowledge of B.H., I too wonder about the impact an interview would have on him. I am also, as well, alive to A.W.H.'s submissions that S.L.H. is influencing the Children. If a child lawyer were still involved, they could speak to the Children about this possibility. In this absence, I could structure the meetings in such a way to ensure the Children know their involvement is voluntary and could be terminated by them at any time.

[80] The other factors that are relevant here are the Children's circumstances; A.W.H.'s allegations of alienation; the court's ability to conduct the interview; and A.W.H.'s opposition to an interview.

[81] Looking at the Children's circumstances, they are now 11 and nine. The Child Lawyers have not stated that the Children have had difficulty with the process or that they were unable to present their wishes. I am also aware that B.H.'s and possibly A.H.'s feelings might not be as certain as those of M.H. In my opinion, however, the

strength and resilience of the Children's wishes is not a reason for me to reject a judicial interview. It would, instead, potentially go to weight.

[82] There is also the question of the Children's exposure to the proceedings thus far. It is clear they are involved in the proceedings in ways they should not be. However, in my opinion, a judicial interview would not further expose them to the legal process in a way that is negative. It would, rather, be at least neutral exposure. At best, it may assist the Children.

[83] There are also allegations of alienation in the case at bar. My purposes for meeting with the Children take this concern into account, however. I would not be meeting with them simply to hear their views. Even if S.L.H. is influencing the Children, it does not diminish the beneficial impact an interview may have.

[84] In terms of my comfort, I have read, thought, and learned about judicial interviews and am prepared to meet with the Children.

[85] Finally, I have also considered A.W.H.'s opposition to an interview. A.W.H. took a principled position in opposing the request. Some of the other factors, however, strongly suggest that a judicial interview is warranted. A.W.H.'s opposition, given the other factors, is, therefore, neutral.

[86] Considering the factors, a judicial interview is warranted, if the Children consent to take part in one when they meet me.

F. What will the process be for the judicial interview?

[87] There will be three meetings. They will take place in the Supreme Court Boardroom with a judicial assistant present. The meetings will be recorded; and the recording will be sealed for possible use at the Court of Appeal of Yukon.

[88] The first meeting will be for informational purposes and to put the Children at ease. I will meet with all the Children together at that meeting. They will be told that I only want to meet with them if they want to, and they can stop meeting with me at any time. I will also tell the Children that I cannot keep secrets but will provide a summary to the parties of the interview, which the Children will see and be able discuss with me before it is provided to the parties. At this meeting, and throughout the meetings as necessary, I will explain to the Children my role, including that their wishes are one factor that I must consider. The Children will also be reminded that the parties should not ask them what was discussed in the meetings.

[89] At the second and third interviews, I will meet with the Children individually. S.L.H. will bring them to one of the interviews; and A.W.H. will bring them to the other interview. Once the interviews are concluded and the summaries have been provided to the parties, they will have an opportunity to file further evidence and make submissions on the summaries.

Conclusion

[90] I grant S.L.H.'s application that the Court conduct a judicial interview with Children. Three interviews shall be conducted if the Children consent.

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WENCKEBACH J.