SUPREME COURT OF YUKON

Citation: *B.J.G.* v. *D.L.G.,* 2010 YKSC 44

Date: 20100826
Docket S.C. No.: 99-D3183
Registry: Whitehorse

BETWEEN:

B.J.G.

Plaintiff

AND:

D.L.G.

Defendant

Before: Madam Justice D. Martinson
Appearances:
Kathleen Kinchen — Appearing for the Plaintiff
Carrie Burbidge — Appearing for the Defendant

RULING ON THE CHILD`S LEGAL RIGHTS TO BE HEARD

I. SUMMARY

[1] In this hearing to consider applications by Ms. R. and Mr. G to vary an existing custody and child support order granted under the *Divorce* Act, relating to K., their 12 year old child, the evidence with respect to custody did not include information about K`s views, or whether he wished to express them. The Court raised the issue of whether the Court should hear from K. and heard submissions from the lawyers for the parents.

[2] I did so because in my respectful view all children in Canada have legal rights to be heard in all matters affecting them, including custody cases. Decisions should not

be made without ensuring that those legal rights have been considered. These legal rights are based on the *United Nations Convention on the Rights of the Child,* ("the *Convention"*), and Canadian domestic law.

[3] The *Convention***,** which was ratified by Canada, with the support of the provinces and territories, in 1991, says that children who are capable of forming their own views have the legal right to express those views in all matters affecting them, including judicial proceedings. In addition, it provides that they have the legal right to have those views given due weight in accordance with their age and maturity. There is no ambiguity in the language used. The *Convention* is very clear; *all* children have these legal rights to be heard, without discrimination. It does not make an exception for cases involving high conflict, including those dealing with domestic violence, parental alienation, or both. It does not give decision makers the discretion to disregard the legal rights contained in it because of the particular circumstances of the case or the view the decision maker may hold about children's participation.

[4] A key premise of the legal rights to be heard found in the *Convention* is that hearing from children is in their best interests. Many children want to be heard and they understand the difference between having a say and making the decision. Hearing from them can lead to better decisions that have a greater chance of success. Not hearing from them can have short and long term adverse consequences for them. While concerns are raised by some, they can be dealt with within the flexible legal framework found in the *Convention.*

[5] Canada has chosen not to incorporate the provisions of the *Convention* directly into domestic law because it takes the position that Canadian domestic law complies with the *Convention.* That is because Canadian jurisprudence provides that in interpreting domestic statutes, Parliament and provincial legislatures are presumed to respect the rights and values set out in the *Convention*. The broad, child focused best interests of children test found in the *Divorce Act* includes children's legal rights to be heard found in the *Convention.* Provincial legislation should also be interpreted to reflect the values and principles found in the Convention. The Yukon's *Children's Act* specifically requires the Court to consider the views and preferences of children in determining their best interests.

[6] Children have legal rights to be heard during all parts of the judicial process, including judicial family case conferences, settlement conferences, and court hearings or trials. An inquiry should be made in each case, and at the start of the process, to determine whether the child is capable of forming his or her own views, and if so, whether the child wishes to participate. If the child does wish to participate then there must be a determination of the method by which the child will participate.

[7] In this case I concluded, on June 24, 2010, that K. was capable of forming his own views, had a view about the custody claim, but did not wish to express his view to the Court. I will now explain the relevant legal principles in more detail by considering the provisions of the *Convention* and their application to Canadian law. I will then explain how they apply to this case.

II. INTERNATIONAL LAW

A. THE PROVISIONS OF THE *CONVENTION*

[8] The *Convention* is a comprehensive international instrument which reinforces the fact that children are people with human rights. (The *Convention* was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990 in accordance with article 49.)

[9] While many of those rights existed in other international instruments, the United Nations recognized the importance of singling out children in this way. The *Convention* provides that in all actions concerning children the best interests of the child shall be a primary consideration: Article 3(1).

[10] Under the *Convention* all children have two separate though related legal rights to be heard in all matters affecting them, including judicial proceedings. The first is the right to express their views so long as they are capable of forming their own views. The second is the right to have those views given due weight in accordance with their age and maturity. A child's evolving capacity will be relevant to how the views are expressed, and the weight or importance to be attached to them.

[11] In this respect Article 12 of the *Convention* says that:

> 1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or though a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

[12] The *Convention* applies to all children. It states that for the purposes of the *Convention* a child means *every* human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier: Article 1. It specifically provides that countries that have ratified the *Convention* shall respect and ensure the rights set forth in the *Convention* to *each* child within their jurisdiction without discrimination of any kind...: Article 2(1).

[13] There is no ambiguity in the language used. The *Convention* is very clear; *all* children have these legal rights to be heard, without discrimination. It does not make an exception for cases involving high conflict, including those dealing with domestic violence, parental alienation, or both. It does not give decision makers the discretion to disregard the legal rights contained in it because of the particular circumstances of the case or the view the decision maker may hold about children's participation.

[14] The legal rights to be heard are not isolated rights. A key premise of Article 12 is that hearing from children is an integral part of a determination of their best interests.

[15] There is still some discussion and debate about the wisdom of hearing from children, particularly in complex cases such as those involving high conflict, including those in which there are allegations of alienation. Some of the concerns raised are that: it is harmful to children and an unfair burden on them to place them in the middle of the

conflict; they can be easily manipulated; there could be serious repercussions if a parent does not like what they say; and what they say may not be reliable or useful.

[16] The terms of the *Convention* creating the legal rights to be heard for all children resulted from a critical policy decision. That is, the choice was made by the international lawmakers that there are compelling reasons for affording these legal rights to be heard to all children as part of the determination of what is in their best interests. The concerns raised can be dealt with appropriately for all children, including those involved high conflict cases, within the flexible legal framework provided by the *Convention*.

[17] I will consider both the reasons for affording children these legal rights, and why the concerns raised can be dealt with within the *Convention's* flexible legal framework.

B. REASONS UNDERLYING THE LEGAL RIGHTS TO BE HEARD

[18] I will summarize many of the reasons underlying the legal rights to be heard found in the social science literature by referring to what children want, the benefits of their input to the decision making process, and the adverse consequences for them of excluding their participation. (For details see Rachel Birnbaum, *The Voice of the Child in Separation/Divorce Mediations and Other Alternative Dispute Resolution Processes: A Literature Review*, June 2009, prepared for the Canadian Department of Justice; Joan B. Kelly, *Child Participation in Divorce Processes: The Structured Child-Focused Interview Process,* prepared for a joint conference, Hear the Child, sponsored by the British Columbia Continuing Legal Education Society and the International Institute for

Child Rights and Development, Vancouver, British Columbia, November 19-20, 2009; and Birnbaum, R., Fidler, B.J., & Kavassalis, K., "Children's Views and Preferences", in *Child Custody Assessments: A Resource Guide for Legal and Mental Health Professionals.* 2008, Toronto, Canada: Thomson Carswell.)

1. What Children Want

[19] Most children are not informed about their parent's separation, how the separation will affect them, or given a chance to ask questions. The majority of children have a parenting plan imposed on them without any discussion. They are not asked for suggestions regarding living arrangements or subsequent changes in the schedule.

[20] Yet, most children are clear. They want to be involved and heard in some way in matters that affect them. They think that being heard leads to better outcomes. They understand the difference between providing input and making decisions. They prefer voluntary input and want the right not to be heard. Many wish they could talk with family members rather than professionals.

2. The Benefits to the Decision Making Process

[21] Obtaining information of all sorts from children, including younger children, on a wide range of topics relevant to the dispute, can lead to better decisions for children that have a greater chance of working successfully. They have important information to offer about such things as schedules, including time spent with each parent, that work for them, extra-curricular activities and lessons, vacations, schools, and exchanges between their two homes and how these work best. They can also speak about what

their life is like from their point of view, including the impact of the separation on them as well as the impact of the conduct of their parents.

[22] Receiving children's input early in the process, and throughout as appropriate, can reduce conflict by focusing or refocusing matters on the children and what is important to them. It can reduce the intensity and duration of the conflict and enhance conciliation between parents so that they can communicate more effectively for the benefit of their child. When children are actively involved in problem solving and given recognition that their ideas are important and are being heard, they are empowered and their confidence and self esteem grow. They feel that they have been treated with dignity. In addition, children's participation in the decision making process correlates positively with their ability to adapt to a newly reconfigured family.

3. Short and Long Term Adverse Consequences of Exclusion for Children

[23] Excluding children and adolescents may have immediate adverse effects such as: feeling ignored, isolated and lonely; experiencing anxiety and fear; being sad, depressed, and withdrawn; being confused; being angry at being left out; and having difficulty coping with stress.

[24] Further, longer-term adverse effects of not consulting children and adolescents may include: loss of closeness in parent-child relationships; continuing resentment if living arrangements don't meet their needs in time or structure; less satisfaction with parenting plans, less compliance, more "voting with their feet"; and longing for more or less time with the non-resident parent.

C. FLEXIBILITY WITHIN THE CONVENTION'S LEGAL FRAMEWORK

[25] There is no doubt that children's safety must be a paramount consideration. The United Nations legal framework addresses this concern and provides the flexibility to deal appropriately with all cases for several reasons.

[26] First, children have a legal right to express their views. There is not a legal requirement to do so. They can choose not to participate.

[27] Second, there must be a determination of whether a child is *capable* of forming his or her *own* views before the child has the legal right to express his or her views. The thrust of this provision is to ensure that children are capable in the sense that they have the cognitive capacity to form their own views and to communicate them. In alienation cases, for example, the issue of parental conduct that may amount to alienation should generally not be considered at this stage, but rather at the stage dealing with the second legal right, the right to have a child's views given due weight in accordance with the child`s age and maturity. However in some cases the alienating conduct of a parent may be such that the child is not really capable of forming his or her *own* views.

[28] Third, decision makers can deal with all of the circumstances of the case when deciding what weight should be given to a child's views. This second legal right of children is based on the best interests of children principle. It gives children a voice, not the choice, as others have put it; they are *not* required to make the decision.

[29] Fourth, views can be obtained on a wide variety of issues. As noted above, children have important information to offer relating not only to what their life is like generally, from their point of view, but also to specific matters relating to their day to day lives.

[30] Fifth, there are many different ways in which children's views can be obtained, depending on the family circumstances and the age and maturity of the child. The method does not have to be intrusive. Each approach can deal sensitively with the child's emotional well-being.

III. CANADIAN DOMESTIC LAW

A. RATIFICATION OF THE CONVENTION

[31] The federal government, with the support of the provinces and territories, ratified the *Convention* in 1991. The *Convention* requires countries that ratify it to give effect to children's rights contained in it. Among other things, Canada:

> -must respect and ensure the rights set forth in the present *Convention* to each child within its jurisdiction without discrimination of any kind... Article 2;
>
> -shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the *Convention*: Article 4; and
>
> -undertake to make the principles and provisions of the *Convention* widely known, by appropriate and active means, to adults and children alike: Article 42.

[32] The *Convention* creates a Committee on the Rights of the Child which monitors compliance with the *Convention*: Article 43. Countries that ratify the *Convention*

undertake to submit to the Committee reports on the measures they have adopted which give effect to the rights recognized in the *Convention*: Article 44.

[33] Canada demonstrated its view that the *Convention* is a very important international legal instrument by acting as a key player in ensuring that it was enacted in the first place. There are two ways in which countries ratify *Convention*s. The first is the monist model, where, as in the United States, once a *Convention* is ratified it becomes part of the domestic law. The second is the dualist model, in which the ratifying country specifically incorporates the *Convention* into domestic law. Canada uses the dualist model.

[34] Canada has not directly incorporated the *Convention* into domestic law. It takes the position that it is not necessary to do because it has complied with its international obligations under the *Convention* by determining that existing domestic laws, including provincial and territorial laws, comply with the *Convention*. The manner in which the *Convention* was implemented in Canada is described in some detail in the Final Report of the Standing Committee on Human Rights, *Children; The Silenced Citizens, Effective Implementation of Canada's Obligations With Respect to the Rights of Children,* April 2007.

[35] Before this *Convention* was ratified, the federal government consulted with the provinces and territories to determine whether their laws complied. The government of Canada advised the Senate Committee that it does not ratify a *Convention* until all jurisdictions indicate they support ratification and are in compliance with the obligations contained in it. In the case of this Convention, though it was signed in May 1990, it was

not ratified until December 1991, when all the provinces and territories sent letters of support to the federal government.

[36] The federal government and the provinces and territories continue to say that Canadian domestic law complies with the *Convention* in their periodic reports to the United Nations Committee on the Rights of the Child.

B. APPLICATION OF THE CONVENTION TO DOMESTIC LAW

1. A Contextual Approach

[37] International treaties and *Convention*s are not part of Canadian law unless they have been implemented by statute: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para. 69. Nevertheless, the values reflected in international human rights law may inform the contextual approach to statutory interpretation: *Baker,* at para. 70.

[38] In interpreting domestic statutes, Parliament and provincial legislatures are presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible interpretations that reflect these values and principles are preferred: *Baker,* at para. 70.

[39] In *Baker*, at para. 71, the Supreme Court of Canada dealt specifically with the *Convention on the Rights of the Child* and concluded that the values and principles of

the *Convention* recognize the importance of being attentive to the rights and best interests of children when decisions are made that relate to and affect their future.

[40] It may be that the provisions of the *Convention* should, for clarity, be incorporated directly into domestic law. But, it by no means follows that it now has little or no legal effect. To the contrary, there is a presumption that domestic family law legislation respects the rights and values set out in the Convention; such legislation should be interpreted to reflect those values and principles.

[41] It is worthy of note that the government of Canada and the governments of the provinces and territories themselves rely on this presumption when they take the position that their domestic laws comply with the Convention without the need to directly incorporate it.

2. Application to the Divorce Act

[42] The provisions of the *Divorce Act* are presumed to reflect the values and principles found in the *Convention*. The *Divorce Act* provides that in making custody and access decisions the court "shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child." s. 16 (8). It has as its focus the best interests of children.

[43] Canadian jurisprudence, in cases such as *Young v. Young*, [1993] 4 S.C.R. 3 and *Gordon v. Goertz*, [1996] 2 S.C.R. 27, favours a broad and flexible approach to the best interests test which is child centred, focusing on the child's perspective, not that of

the adults involved. Taking a broad and flexible child centred approach, the best interests provisions should be interpreted to reflect the fact that, by virtue of international law, the rights to participate in the decision making process are an integral part of the determination of a child's best interests.

[44] The Yukon`s *Children`s Law Act*, R.S.Y. 2002, c. 31, amended by: S.Y. 2003, c. 21, s. 6; S.Y. 2008, c. 1, s. 199, specifically requires the Court to consider the views and preferences of the child in determining the child`s best interests, if those views and preferences can be reasonably determined: s. 30(1)(c). This provision, and the ones found in other provincial and territorial statutes, will be interpreted to reflect the values and principles found in the *Convention.*

[45] While the *Divorce Act* does not specifically refer to children's legal rights to be heard, judges in divorce proceedings do take into consideration the views of the child as one of the relevant factors in determining a child's best interests. As noted by the British Columbia Supreme Court in *L.E.G. v. A.G,* 2002 BCSC 1455, a cased decided under the *Divorce Act,* Canada has an obligation to ensure that children have the chance to make their views known:

> [17] Canada also has an international obligation to make sure that children have an opportunity to make their views known in custody decisions affecting them. Article 12 of the *United Nations Convention on the Rights of the Child*, Can. T.S. 1992, No. 3, which has been ratified by Canada, requires that children be given opportunities to participate in legal proceedings:
>
> (Article 12 of the *Convention* is quoted)

[46] As Suzanne Williams, Deputy and Legal Director, International Institute for Child Rights and Development, puts it, hearing from children informs their conditions, means, needs or circumstances; children are the best people to provide information about their lived experiences: Suzanne Williams, *Perspective of the Child in Custody and Access Decisions: Implementing a Best Interests and Rights of the Child Test*, [2007] 86 CBR 633. I agree with her that it "is difficult to imagine not seeking the views of the person from whose perspective a child's best interests are to be determined": Suzanne Williams, *Bringing a Child-Perspective Lens to Canadian Family Justice Processes, 2008* Federation of Law Societies Family Law Program, Huntsville, Ontario, at p. 8.

3. Implementation

a. Generally

[47] More than just lip service must be paid to children's legal rights to be heard. Because of the importance of children's participation to the quality of the decision and to their short and long term best interests, the participation must be meaningful; children should:

1. be informed, at the beginning of the process, of their legal rights to be heard;

2. be given the opportunity to fully participate early and throughout the process, including being involved in judicial family case conferences, settlement conferences, and court hearings or trials;

3. have a say in the manner in which they participate so that they do so in a way that works effectively for them;

4. have their views considered in a substantive way; and

5. be informed of both the result reached and the way in which their views have been taken into account.

[48] Separate legal representation for children is an effective way of making sure that the participation of children is meaningful. The Yukon has the benefit of an official guardian who has the right to decide, in custody proceedings, whether any child requires publicly funded separate representation by a lawyer or other person: s. 168, *Children's Law Act*.

[49] An inquiry should be made in each case, and at the start of the process, to determine whether the child is capable of forming his or her own views, and if so, whether the child wishes to participate. If the child does wish to participate then there should be a determination of the method by which the child will participate. While the views of parents about participation are relevant, they are not determinative.

[50] Alfred Mamo and Joanna Harris, in their recently published book chapter called "Children's Evidence", agree that lawyers and judges should, early in the process, be considering how the child`s voice will be brought into the process. In their opinion lawyers have an obligation to discuss the matter with their clients. They say that the Court can raise the issue on its own. They point out that time is of the essence in making decisions as to the appropriate method in any particular case for the child to be

heard. They note that many of the options available to the court require time for implementation and it is often not desirable to have a final adjudication postponed until that process unfolds. See Alfred A. Mamo and Joanna E. R. Harris, c. 4, “Children`s Evidence”, in *Evidence in Family Law*, edited by Harold Niman and Anita Volikis, July 2010 Canada Law Book, at 4 – 16.

[51] There are many different ways in which children`s views can be presented to the Court. The evidence can be presented by or through a neutral third party; this type of participation is generally ordered by the Court. That person is often a psychologist, psychiatrist or social worker. For example, it may be done by way of a comprehensive assessment, or a “views of the child” report. Specially trained lawyers can prepare and present the views of a child. Children can meet with a judge in what is referred to as a judicial interview.

[52] Evidence can be presented about children’s views by either parent, or by a lawyer or other representative of the child. That evidence may be in the form of an affidavit of the child, “in court” testimony of the child, letters written by the child, audio tapes or videos of the child, evidence of the parent or another witness as to what the child has said to the person about his or her wishes, or an expert report presented on behalf of one parent.

[53] For a comprehensive and very helpful analysis of the various ways to obtain information from children, see Mamo and Harris, c. 4, “Children`s Evidence”, referred to above.

b. <u>Judicial Interviews</u>

[54] While there are many different ways in which children can participate in the process, there are cases in which judicial interviews are necessary and appropriate. Judicial interviews can take place both at the more informal judicial dispute resolution stage, such as at a family case conference or a settlement conference, and during more formal court hearings and trials.

[55] Three broad purposes of a judicial interview have been identified: obtaining the wishes of children; making sure children have a say in decisions affecting their lives; and providing the judge with information about the child: *L.E.G. v. A.G.*, cited above. A judicial interview can be useful for all or any one of these purposes. For example, though a judge may have information about a child's wishes through an assessment by an expert, the judicial interview may provide the judge with more general information about the child.

[56] Giving children the opportunity to speak directly to the judge who will be making a decision that could profoundly affect their lives provides meaningful participation, consistent with the values and principles found in the *Convention*. Judges who have to make decisions that have such a significant impact on a child's life should have the benefit of spending the time necessary to get to know that child.

[57] Dr. Rachel Birnbaum and Professor Nicholas Bala have recently prepared an extensive and very helpful analysis of the issues relating to judicial interviews by doing a comparison between the situation in Ontario and Ohio. They conclude that "all children should be regarded as having the *right* to decide whether they want to meet with the person who may be making very important decisions about their future." They say that

judges will often benefit from meeting with children, though the meeting can never be the only basis of the judge's information about the child. In their opinion judicial interviews, unless the case is urgent, should not be viewed as replacements for child legal representation or an assessment by a mental health professional, but should be viewed as supplements. See R. Birnbaum & N. Bala, *Judicial Interviews with Children in Custody and Access Cases: Comparing Experiences in Ontario and Ohio*, (forthcoming 2010), International Journal of Law, Policy and the Family, at p. 38.

[58] Dr. Joan Kelly, when summarizing the research on interviewing children, makes the important point that some children want to speak directly to judges. She notes that in cases with a history of violence, abuse and high conflict, children more often want to talk directly with a judge to make sure that their views are heard correctly. What is said can sometimes be lost in the translation. See Joan B. Kelly, *Child Participation in Divorce Processes: The Structured Child-Focused Interview Process,* referred to above.

[59] There will also be cases in which the only way the Judge will be able to hear the child's views is by the use of a judicial interview because of the lack of financial and other resources. Other methods, such as mediation services that involve the participation of children, reports from professionals, and separate legal representation for children, are simply not available.

[60] In *L.E.G. v. A.G.*, the Court reviewed some of the benefits of and concerns relating to judicial interviews that had been advanced and concluded that the benefits could be significant in some cases and the concerns raised could be addressed through the use of procedural safeguards. The interview takes place in a courtroom, with a

court clerk present, though the judge does not sit at the bench. It is recorded and though generally confidential, is available for the purposes of an appeal. The judge will normally summarize the contents of the interview in Court after the interview, after discussing doing so with the child. The parents or their lawyers have an opportunity to advance arguments about the significance of what was said, and if appropriate, to call evidence relating to it.

[61] Judges, lawyers and others involved in child custody cases, should be, and in some cases are, provided with education programming, both with respect to child development issues and interviewing skills. Canada's National Judicial Institute has developed and presented such programs for judges.

[62] Dr. Birnbaum and Professor Bala are of the opinion that, "training and education is an ongoing process for all professionals involved in family law disputes, and would greatly assist all judges in any jurisdiction in regard to judicial interviews with children." They also suggest that there must be government policies in place to ensure that there are appropriate resources in terms of judicial time and court facilities to allow judges to meet with children in a comfortable and supportive environment. See Birnbaum and Bala, *Judicial Interviews with Children in Custody and Access Cases: Comparing Experiences in Ontario and Ohio*, cited above, at p. 38.

IV. APPLICATION OF THE LEGAL PRINCIPLES TO THIS CASE

[63] As noted at the outset, the Court raised the question of K.'s participation in the process during the hearing, which was the first time the case was dealt with by a judge. Both lawyers said that they thought it would be inappropriate to involve K. as doing so

would place him in the middle of the dispute. Counsel for Ms. R. submitted that the evidence showed that if K. wanted a change, or if he wanted to speak to the judge, he would tell her, based on the relationship they have, and their past experience in dealing with issues of this sort.

[64] By way of background, Ms. R. and Mr. G. were divorced in 2000. At that time they consented to an order that Ms. R would have sole custody of K. with primary residency with Ms. R, and they would share joint guardianship. Guardianship was specifically defined and included the requirement that Ms. R. consult with Mr. G. before making decisions. In 2009 K. asked his mother if they could change the schedule so that he would spend alternating weeks with each parent, and she agreed. That schedule started in September 2009, less than a year ago.

[65] Because Mr. G applied to vary (change) an existing custody order and an agreement that was made by consent and at K.'s request, the Court had an obligation to consider K.'s legal rights to be heard. He is 12 years old and is capable of forming his own views. When considering his rights to be heard, the questions are whether he has views, and if he does, whether he wishes to express them.

[66] I am satisfied that his view is that he wants the existing alternating week schedule to continue. It is a recent change that was made at his request. Had he wanted to change it again, he would have spoken to his mother about it. He did not do that. I am also satisfied that had he wanted to have his views conveyed to the Court, he would have told his parents, or at least one of them. It is likely that he did not want to

get caught in the middle of what is in essence a dispute between his parents about money.

[67] In reaching this conclusion, I took into account the fact that neither Mr. G. nor Ms. R. thought that involving K. in the process was in his best interests, and the reasons they gave in support of their views.

[68] I note that ultimately the Court decided that Mr. G did not have a genuine desire to change the custody arrangement in a way that was in K.'s best interests. Rather, he was following through on the threats he previously made to make a claim for custody if Ms. R pursued her claim to increase the child support being paid: 2010 YKSC 33.

Martinson, J.