

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JEANNINE DIANE PILON, of the City of  
Yellowknife, in the Northwest Territories

- and -

ROGER ERNEST PILON, of the City of  
Yellowknife, in the Northwest Territories

Petitioners

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Transcript of the Oral Decision delivered by The Honourable  
Justice L. A. Charbonneau, sitting in Yellowknife, in the  
Northwest Territories, on the 7th day of December, 2015.

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APPEARANCES:

Mr. E. Bruveris: Counsel for Ms. Pilon, Petitioner

Mr. R. Pilon: For himself, Petitioner

This transcript has been altered to protect  
the identity of the child pursuant to the direction  
of the presiding Judge

1 THE COURT: This case was before me in  
2 regular Family Chambers on December 3rd, 2015.  
3 Two Notices of Motion, one filed by the mother,  
4 the other filed by the father, are before the  
5 Court concerning the care and control of one  
6 child, A., born in 2001.

7 It is apparent from the record that this is  
8 a high conflict and complex matter. I will refer  
9 to some of the background. My purpose this  
10 afternoon is not to summarize all the past  
11 proceedings on this case, but I think some  
12 background is necessary to put my remarks in  
13 context.

14 A few years after A.'s birth, the parties  
15 separated. They lived in the same house for some  
16 time and, in 2004, began living in different  
17 homes and began a shared parenting regime which  
18 was eventually incorporated in a Corollary Relief  
19 Order.

20 Some years later, the mother initiated  
21 proceedings to vary that Order and obtain sole  
22 custody of A. That matter went to trial in March  
23 2011. The Court's decision was filed in August  
24 2011 and is reported at 2011 NWTSC 41 ("the 2011  
25 decision"). It is a lengthy decision which goes  
26 over the trial evidence, some of the contentious  
27 issues that emerged from that evidence and were



1 relevant to the issue of custody, and of course  
2 it includes the Court's findings.

3 Ultimately, the Court did not grant the  
4 mother sole custody in 2011. But the Court also  
5 disagreed with the father's position that the  
6 existing custody regime should remain unchanged.  
7 The Court decided that A. should spend  
8 alternating years with each parent, each year  
9 being aligned with the school year. The Court  
10 decided that this regime should begin with A.  
11 spending the first year with his mother. He  
12 would then spend a year with the father starting  
13 in September 2012, and this alternating regime  
14 would continue from year to year.

15 The Court also concluded that A. has special  
16 needs. The Court concluded that of the two  
17 parents, the mother was the more reasonable one  
18 when it came to dealing with his medical issues  
19 and with medical professionals. Although the  
20 Court directed that the mother consult with the  
21 father and keep him advised of changes and  
22 recommendations regarding A.'s medical situation,  
23 the Court also ordered that in the event of  
24 disagreement as to medication, treatment, or  
25 testing, the final decision would be the  
26 mother's, and that she also would have authority  
27 to consent to testing at school without the need



1 to obtain the father's consent. This authority,  
2 the Court decided, would remain with her even  
3 when A. was spending his year in the care of the  
4 father, unless the mother agreed otherwise.

5 As far as the shared parenting regime, the  
6 year commencing in September 2014 was a year  
7 where A. was with his father. The school year  
8 commencing in September 2015 was when he was to  
9 return to the care of his mother.

10 As far as the present motions, it is  
11 undisputed that A. was returned to his mother's  
12 care in August 2015 for what was supposed to be  
13 the year in her care; but he has not remained in  
14 her care. There is significant conflict in the  
15 affidavit evidence about the reasons that led to  
16 this.

17 The father's wife and another child have  
18 relocated to Manitoba. The father wants to  
19 relocate to Manitoba as well. It is undisputed  
20 that the father took A. to Manitoba in September  
21 2015, registered him in school and, for all  
22 intents and purposes, purported to relocate A. to  
23 Manitoba to live with the father's family.  
24 Again, there is much conflict in the evidence  
25 about how this came to be and, in particular,  
26 whether this was a unilateral action on the  
27 father's part or whether it was something that



1           happened with the mother's agreement or  
2           acquiescence.

3           The mother filed a motion on November 6th,  
4           2015, seeking the immediate return of A. to the  
5           Northwest Territories and to her care. That  
6           application came before this court for the first  
7           time on November 12th. At that point, the only  
8           evidence before the Court was the mother's  
9           affidavit. The father appeared by phone. He  
10          told the Court that he intended on filing a  
11          Notice of Motion to vary the custody regime. He  
12          told the Court various things about his version  
13          of what happened before A.'s move, but of course  
14          none of it was under oath and properly in  
15          evidence before the Court at that point.

16          The Court ordered that A. be returned to the  
17          NWT and returned to the care of his mother by  
18          November 20th. The order also prohibited both  
19          parties from removing the child from the  
20          Northwest Territories and stated that the 2011  
21          order would remain in effect. The matter was  
22          adjourned to be spoken to on December 3rd, which  
23          is when it came before me. By then there were  
24          new materials before the Court. The father had  
25          filed a Notice of Motion seeking various relief  
26          and he had also filed a lengthy affidavit. In  
27          addition, the mother had filed a Supplementary





1 Affidavit.

2 The mother continues to seek A.'s immediate  
3 return to her custody and care. She asks that  
4 the order include a clause requiring the RCMP to  
5 assist with enforcement if necessary.

6 In the motion that he filed on November  
7 24th, the father seeks the appointment of counsel  
8 for A., a variation of the 2011 order granting  
9 him interim primary day-to-day care of A., child  
10 support, and an order permitting him to relocate  
11 with A. to Manitoba.

12 I will now refer to the evidence. It is not  
13 possible for me to refer to it in all its detail.  
14 I do want to make a few preliminary observations  
15 about it, though.

16 The first is that some of the topics and  
17 events covered in the affidavits were the subject  
18 of evidence at the 2011 trial. To the extent  
19 that findings were made by the Court at that  
20 time, the evidence now presented is of little  
21 weight or use because any analysis now undertaken  
22 must have as its starting point the findings that  
23 were made by the Court in 2011.

24 The second observation I want to make is  
25 that while there is significant conflict in the  
26 evidence, there are certain relevant facts that  
27 are not disputed. Clearly, there have been



1 changes in the circumstances since the 2011 Order  
2 was made. At the time that Order was made, both  
3 parents lived in Yellowknife. It appears from  
4 the decision, in particular at paragraphs 109 and  
5 121 of the decision from 2011, that while the  
6 possibility of the father relocating had been a  
7 live issue at one point, it no longer was by the  
8 time of trial. Things are different now. The  
9 father's wife has lost her employment and she and  
10 another child have relocated to Manitoba. The  
11 father wants to relocate there as well. That is  
12 a change of circumstances compared to what the  
13 situation was in 2011.

14 Another change is A.'s age. He was ten at  
15 the time the 2011 Order was made. He will turn  
16 15 next March. There is no doubt that that is a  
17 big difference. In the 2011 decision, at  
18 paragraph 149, the Court specifically  
19 acknowledged that the custody regime may have to  
20 be revisited as A. got older.

21 Another point is that at the time the 2011  
22 order was made, although there had been problems  
23 between A. and his mother, the situation was  
24 found at that point to have been improving. In  
25 fact, one of the reasons why the Court felt A.  
26 should spend the first year with his mother was  
27 to build upon these improvements. It would



1 appear that at present, the situation between A.  
2 and his mother has deteriorated significantly.

3 At first blush, these changes in  
4 circumstances may well open the door for the  
5 custody regime to be revisited, but that of  
6 course does not answer the question as to how it  
7 should be changed. Any decision in that regard  
8 must be based on what is in A.'s best interests,  
9 and, on that front, A.'s best interests may not  
10 necessarily coincide with his present wishes.

11 What I mean by that is that if, for example,  
12 one change in circumstance should turn out to be  
13 the two parents no longer live in the same  
14 community, that does not answer the question of  
15 which parent A. should be residing with. That  
16 decision would have to be made on an assessment  
17 of what is in his best interests, which would  
18 include an analysis of whether one parent is, in  
19 fact, trying to cut A.'s ties from the other  
20 parent. At this point, these are things that are  
21 alleged by the mother and denied by the father.  
22 It is one of the many conflicts in the evidence.

23 One area where there is conflict in  
24 particular is what has transpired since August  
25 2015 when A. was returned to the care of his  
26 mother. That conflict in these various areas  
27 cannot be resolved on the basis of affidavits.



1 Unless the parties are able to come to some sort  
2 of a resolution, which most unfortunately does  
3 not seem very likely at this point, the  
4 application for variation will have to be the  
5 subject of a hearing with viva voce evidence, and  
6 this will not happen overnight. Inevitably, it  
7 will take some time before that hearing can  
8 proceed.

9 In the meantime, the mother seeks  
10 enforcement of the existing Orders. She wants A.  
11 returned to her care immediately in accordance  
12 with the custody regime that was decided in 2011  
13 and which was the basis for the Order made by the  
14 Court in November.

15 For his part, the father asks that the  
16 custody regime be varied on an interim basis so  
17 that A. can remain in his care even though, under  
18 the existing regime, this is supposed to be the  
19 year he spends with his mother. And I understand  
20 that the father also wants A. to be in his care  
21 in Manitoba.

22 The factual conflict in the affidavits filed  
23 by the parties is very consistent with past  
24 history. The 2011 decision includes numerous  
25 references to conflicting evidence presented in  
26 that case. It is worth pointing out that the  
27 Court's findings as to credibility in that case





1           were mixed, as was the Court's assessment of each  
2           parent's decision about various things. The  
3           mother and the father were each found to be  
4           somewhat unreasonable or unrealistic about  
5           aspects of their approaches and behaviours. This  
6           was not a situation where the Court's conclusions  
7           were entirely in line with the mother's position,  
8           nor were they entirely in line with the father's  
9           position. The Court concluded, also, that  
10          aspects of each parent's positions were not  
11          always in line with A.'s best interests.

12                 On many of these topics, there is overlap  
13          between the areas that were covered at that trial  
14          and some of the things that are now covered in  
15          the affidavits, and this makes it all the more  
16          difficult to make any decision based on the  
17          parties' most recent conflicting affidavits and  
18          the assertions that they make about what has been  
19          happening over the past few months.

20                 Serious allegations are being made in both  
21          directions.

22                 The father alleges that A. does not want to  
23          live with his mother and wants to live in  
24          Manitoba. He says that A. is and feels unsafe in  
25          the mother's house. The father deposes that A.  
26          has recently disclosed to him that there has been  
27          physical abuse both on the part of his mother and



1 on the part of her common-law spouse while A. has  
2 been in their house. The father deposes that at  
3 A.'s insistence, he brought him to the RCMP in  
4 early October 2015 to make a complaint about this  
5 abuse. The father says that the Department of  
6 Social Services has also been notified of the  
7 situation and are investigating. There is no  
8 evidence before the Court at this point of any  
9 charge being laid against anyone or of Social  
10 Services having taken any specific action in  
11 relation to these allegations. In submissions  
12 last Thursday, counsel for the mother advised  
13 that she had an upcoming appointment with Social  
14 Services in relation to these allegations.

15 Another allegation that the father makes is  
16 that the mother essentially agreed with him  
17 taking A. to Manitoba and that she is now going  
18 back on that agreement.

19 It seems undisputed that there was a serious  
20 conflict between A. and his mother at the end of  
21 a camping weekend at Reid Lake (which is outside  
22 of Yellowknife) at the end of the Labour Day  
23 weekend. The mother does describe this incident  
24 in her affidavit and it seems fairly clear that  
25 this incident happened. She deposes that they  
26 had been camping as a family at Reid Lake that  
27 weekend and were in the process of packing up



1 when an argument broke out between her and her  
2 son. As a result, he declared that he was going  
3 to walk back to town. She decided to let him  
4 "walk it off", thinking that within 20 minutes  
5 they would have finished packing and would catch  
6 up with him on the road. As it turned out, A.  
7 hitchhiked and got a ride into town from a man  
8 who was driving on the Ingraham Trail and saw  
9 him. A. asked to be taken to his father's home.

10 The father deposes that after this incident,  
11 he encouraged A. to go back to his mother's place  
12 and to work things out with her. At that point,  
13 he was scheduled to leave to go to Manitoba for a  
14 period of two weeks. He deposes that the mother  
15 would not let A. stay with her for those two  
16 weeks. He related a lot of things that A.  
17 allegedly told him about his exchanges with his  
18 mother, including the fact that she told him he  
19 had made his choice and that, essentially, she  
20 kicked him out. The father deposes that she  
21 packed up all of A.'s belongings in 25 to 30  
22 boxes and told the father to come pick them up.  
23 The father deposes that he believed at that point  
24 that the mother was in agreement to letting A. go  
25 to Manitoba with him and live there. This, he  
26 says, is why he arranged for A. to travel there  
27 with him, for his things to be moved, and this is



1           why he registered A. for school down there  
2           notwithstanding the fact that under the Court  
3           Order, A. was to be in his mother's care for the  
4           school year.

5           In her Supplementary Affidavit, the mother  
6           does not respond to many of the allegations in  
7           the father's lengthy affidavit, but she  
8           specifically says that her silence on those  
9           matters should not be taken as an admission. She  
10          deposes that since the Reid Lake incident, she  
11          has been unable to have A. return to her care.  
12          She does not talk about the aspect of any refusal  
13          on her part to let A. return living with her or  
14          about packing up his belongings or about agreeing  
15          in any way to have him reside with his father,  
16          notwithstanding the 2011 Order.

17          The mother's Supplementary Affidavit is  
18          focused on the fact that this court's November  
19          12th Order still has not been complied with.  
20          About that, she deposes that A. did show up at  
21          her residence on November 25th, five days after  
22          the deadline that had been set by the Court. She  
23          deposes that A. told her he did not want to stay  
24          there, did not feel safe staying there and wanted  
25          to live in Manitoba and should be able to make  
26          his own choices about where to live. She says  
27          she attempted to lock the door to force A. to





1 stay so that they could continue their  
2 conversation, but he roughly moved her out of the  
3 way by elbowing her in the chest. She also  
4 deposes that she looked out the window after A.  
5 left and she saw that the father's truck was  
6 parked a short distance away and she saw A. get  
7 into that truck and drive off with his father.

8 At this point, the mother is persuaded that  
9 A. is being influenced and controlled by his  
10 father and that this fits with a long-standing  
11 pattern of parental alienation on his part. She  
12 wants A. back in her care immediately so she can  
13 arrange for counselling to "de-program" him and  
14 restore their relationship. Her position and her  
15 fear is that any additional time that A. spends  
16 with his father will be further detrimental to  
17 her ability to renew her bond with A. Her  
18 position is that if need be, the Order that A. be  
19 returned to her should be enforced by the RCMP.  
20 In essence, she says A. should be forced back  
21 into her care today irrespective of his present  
22 wishes. The father's position is that A. should  
23 not be forced to live with his mother against his  
24 will. He denied attempting to alienate A. from  
25 his mother, and he says that given the  
26 complainants that have recently been made, there  
27 are safety concerns about returning A. to that



1 household.

2 Under both the Order that was made in 2011  
3 after the trial and the one that was made in  
4 November 2015, A. should now be in the care of  
5 his mother. The starting point should be that  
6 those Orders are complied with. The question  
7 then becomes whether, on the evidence now before  
8 the Court, this is what should happen, and that  
9 is because there is evidence before the Court now  
10 that was not before the Court in November.

11 It appears uncontradicted that at this point  
12 A. does not want to return to live with his  
13 mother. This does not just come from the father  
14 relaying what A. tells him but from the mother's  
15 own evidence about how things went when A. came  
16 to her house on November 25th.

17 A.'s wishes are a factor to consider if they  
18 can reasonably be ascertained. Children's Law  
19 Act, Section 17(2)(b).

20 The older a child is, the more his views may  
21 be ascertainable. But a child's views are not  
22 determinative. There are many very good reasons  
23 why children should not be burdened with  
24 decisions that ought to be made by adults.  
25 Giving a child ultimate say on these matters puts  
26 incredible pressure on the child even if no one  
27 is consciously trying to put that pressure on.



1 But it also makes the child vulnerable to  
2 pressure if a parent is inclined to try to  
3 manipulate the situation. And, of course, if  
4 parental alienation is actually established, it  
5 is especially important not to give effect to a  
6 child's wishes because, if that is done, the  
7 parent who has behaved improperly by causing  
8 alienation is, in effect, rewarded for that bad  
9 behaviour, and more importantly, the child is  
10 negatively impacted because the result of the  
11 alienation is to cut off that child's bond with  
12 the alienated parent. To give effect to a  
13 child's wish in those cases is to compound the  
14 effect of the alienating behaviour and  
15 jeopardizes any chance of restoring the bond  
16 between the child and the alienated parent.

17 The mother argues that the decision on these  
18 applications should take into account that there  
19 has already been a finding in this case of  
20 parental alienation. In that regard, in  
21 submissions, counsel for the mother referred to a  
22 report that was filed in the context of the 2011  
23 trial. The father also referred to that report  
24 in his submissions.

25 The report in question was authored by a  
26 Dr. Seitz who testified at the 2011 trial. She  
27 had prepared a report in 2009 and had come to



1 certain conclusions on this issue. But it is  
2 important for everyone to understand that what is  
3 relevant at this point is not what the 2009  
4 report said, not even what the doctor testified  
5 to in 2011. What is relevant are the findings  
6 that were made by the Court in the 2011 decision.

7 The issue of parental alienation was  
8 addressed by the Court at paragraphs 110 to 124  
9 of the 2011 decision. Among other things, the  
10 Court noted that the 2009 report had not been  
11 updated by the time of trial and this had an  
12 impact on the weight that could be attached to  
13 the doctor's conclusion.

14 The Court's interpretation of the doctor's  
15 report was not that the doctor concluded this was  
16 a situation of parental alienation in the matter  
17 that is usually understood. That is apparent  
18 when one reads paragraph 113 of the decision:

19 The contentious part of Dr. Seitz's  
20 evidence is her finding that A.'s  
21 behaviour and that of his parents  
22 and K. as she observed it in early  
23 2009 suggests that there are ongoing  
24 alienating processes at play, by  
25 which [the mother] is more and more  
26 the alienated parent. Dr. Seitz  
27 made it clear that this is not a  
case of what is usually referred to  
as "Parental Alienation Syndrome",  
which she explained as a syndrome in  
which the child is the victim of  
behaviour by one parent which is  
aimed at alienating that child from  
the other parent. What she found in  
this case was "parental alienation"  
which she described as a family





1 dynamic, not focused on actions by  
2 one parent.

3 Ultimately, the Court concluded that the  
4 opinion of the doctor was not significant to the  
5 decision that had to be made.

6 At paragraph 124, the Court said:

7 The significant thing in my view is  
8 that Dr. Seitz described all this as  
9 a dynamic, not an intentional course  
10 of action by [the father]. Although  
11 it is clear that Dr. Seitz tended to  
12 accept what she was told by [the  
13 mother] and was more skeptical about  
14 what she was told by [the father]  
15 and K., her conclusion was that all  
16 are reasonably good parents to A.  
17 And although Dr. Seitz testified  
18 that she would not now change her  
19 opinion, her opinion is still  
20 affected by the fact that her  
21 observations were made and her  
22 information gathered more than two  
23 years ago. The testimony of [the  
24 mother] indicates that her  
25 relationship with A. has improved  
26 since then. [The father] no longer  
27 has concerns about her mistreating  
A. From this I conclude that even  
if Dr. Seitz is correct and the  
family dynamic was causing some  
alienation of [the mother], that has  
significantly decreased or changed,  
possibly because [the father] and  
his spouse have consciously changed  
any behaviour on their part that may  
have contributed to the dynamic.  
For those reasons, I do not view  
Dr. Seitz's opinion as to alienation  
of [the mother] as determinative of  
or very significant for the decision  
I have to make. I am not saying  
there is no validity to her  
concerns, but they are concerns that  
appear to have been addressed.

27 In light of these excerpts of the decision,



1 I do not think it is accurate to say that there  
2 was a finding in 2011 that deliberate parental  
3 alienation had been established. The Court's  
4 findings were much more nuanced than that.

5 Whether parental alienation can now be  
6 established at this point on the basis of what  
7 has transpired since 2011 of course is another  
8 issue entirely, and one that may well have to be  
9 addressed when the variation hearing proceeds.

10 A. certainly seems to now be completely  
11 aligned with his father, including on the  
12 question of relocating to Manitoba. He is  
13 apparently making serious allegations against his  
14 mother and her current spouse. Part of the  
15 evidence adduced by the father is an email sent  
16 to him by the mother in 2013 where she reports  
17 that A. made a very serious threat against her;  
18 more specifically, to slit her throat. All of  
19 these things raise flags and concerns, but it is  
20 obviously beyond the Court's ability, without  
21 more evidence, to draw any firm conclusion on  
22 that issue at this point. But there are elements  
23 in the evidence here that do raise concerns.

24 Another area of concern that arises on the  
25 evidence, of course, are the allegations of A.  
26 being physically abused in the mother's  
27 household. Allegations of abuse are not new in



1           this matter as it is clear from the 2011 decision  
2           that these types of accusations were, at trial,  
3           made by both parents against the other. At this  
4           point, there is no admissible evidence that such  
5           abuse has taken place; everything that is before  
6           the Court is hearsay. But A. has told his  
7           mother, not just his father, that he feels unsafe  
8           in her home. That does not establish that he is  
9           actually unsafe or actually even feels that way,  
10          as opposed to him saying that because it is a way  
11          to remain in the care of his father, but it does  
12          confirm that these are things that A. is, in  
13          fact, saying, because, again, it is not coming  
14          just from the father, it is also coming from the  
15          mother herself.

16                 Another concern is the volatile nature of  
17          the relationship between A. and his mother at  
18          this point, irrespective of what has caused it.  
19          The incident at her house on November 25th, as  
20          well as the Reid Lake incident earlier on,  
21          suggests that at this point she is not able to  
22          get through to him, and this is a reality that  
23          cannot be ignored.

24                 The net result of their argument at Reid  
25          Lake was that he started walking to town from a  
26          very remote area, essentially in the middle of  
27          the bush. She may have thought it best to let



1 him walk it off, and maybe there was very little  
2 a parent could do in her situation, but the  
3 situation was not without some risk for A. He  
4 could have been picked up by someone with less  
5 noble intentions than the man who did pick him  
6 up. He could have encountered a bear. All sorts  
7 of things could have happened.

8 As for the interaction at the house on  
9 November 25th, the mother was evidently not able  
10 to convince him to stay with her or reason with  
11 him at all at that point. She attempted to lock  
12 the door to stop him from leaving and continue  
13 the conversation, but it appears that this  
14 escalated matters further to the point that he  
15 was rough and physical with her. That type of  
16 interaction between A. and his mother is not  
17 conducive to restoring their relationship; it is  
18 more conducive to escalating things further  
19 between them and ultimately causing more harm.

20 The father's actions in this matter raise  
21 some concerns as well. It is always a great  
22 concern when a parent takes a course of action  
23 that goes against a Court Order without first  
24 taking steps to get that Order varied. Here, the  
25 father claims that he thought he had the mother's  
26 agreement not only to have A. stay with him, but  
27 also to relocate him to Manitoba. I must say I





1 find that claim suspect. It would be one thing  
2 for the father to think, after a volatile  
3 incident between A. and his mother, that the  
4 mother was agreeable to have A. stay with him for  
5 some time. But a relocation outside the  
6 jurisdiction, and her giving up her whole year  
7 with A., is a whole other matter. Given the  
8 highly conflictual history of this matter, I have  
9 some difficulty with the suggestion that the  
10 father could have truly believed the mother was  
11 agreeing not only to have A. in his care but that  
12 she was agreeing to this for the whole school  
13 year and agreeing to a relocation to Manitoba. A  
14 firm finding cannot be made on this on the basis  
15 of affidavits, but I am just flagging it as a  
16 concern that emerges from the evidence.

17 In all the circumstances, the unilateral  
18 actions of the father do raise concerns, in  
19 particular, on the relocation issue, and, for  
20 that reason, I do not think that A. should be  
21 taken outside the jurisdiction, further away from  
22 his mother, under the present circumstances  
23 because then he would be completely removed from  
24 her and that would make the restoration of  
25 communication and relation with her very  
26 difficult, if not impossible.

27 I am certainly satisfied that there is an



1           urgent need for intervention in this matter and  
2           for A. to receive counselling and assistance in  
3           dealing with the conflict that has been occurring  
4           over the past few months and in beginning to  
5           restore communication lines and the connection to  
6           his mother. Both parents should cooperate fully  
7           on this.

8           I bear in mind that the mother was granted  
9           final decision-making in 2011 for medical and  
10          treatment issues related to A., and this was  
11          because the Court had concluded at that time she  
12          was the more reasonable of the two parents when  
13          it came to such issues, and this was to be so  
14          even when A. was with his father. There is at  
15          this point no basis to interfere with that  
16          finding. She will have leave to arrange for  
17          whatever counselling she sees fit for A.

18          I am also satisfied that A. needs legal  
19          representation in these proceedings. Having  
20          counsel will assist in giving him a voice and  
21          hopefully also in understanding that the outcome  
22          of these proceedings, including where he is going  
23          to live, will not be left up to him.

24          Counsel for A. may be able to obtain  
25          independent evidence to assist the Court in  
26          deciding what is in A.'s best interest in the  
27          face of this very complicated situation. So I am



1 going to make that appointment today. I know  
2 that counsel is here for the Office of the  
3 Children's Lawyer and I urge that office to  
4 arrange for counsel to speak to A. as soon as  
5 practicable on this matter because I think it is  
6 much needed in this case.

7 I am going to adjourn this matter to  
8 December 17th, which is the last Family Chambers  
9 sittings before the courts close, and this is so  
10 that updates can be provided to the Court about  
11 various things, including the status of the RCMP  
12 and Social Services' investigation into the  
13 allegations of abuse. It may be overly  
14 optimistic, but hopefully one or more counselling  
15 sessions may be arranged between now and then and  
16 this may provide additional useful information  
17 and assist everyone involved; and, finally,  
18 possibly by then counsel for the child may be in  
19 a position to assist the Court as to what the  
20 next step should be.

21 The last issue of course is whether A.  
22 should be ordered returned to his mother's care  
23 immediately. The mother does seek that. She  
24 seeks strict enforcement of the existing court  
25 Orders even though she recognizes that her son  
26 currently seems to want nothing to do with her.  
27 Her position as conveyed to the Court through her



1           counsel last week is that she is convinced that  
2           if she has him back living with her, she will be  
3           able to turn the situation around with the  
4           assistance of a counsellor. She is so convinced  
5           of this that she is asking the Court to go as far  
6           as to get the police involved, if need be, to  
7           forcibly bring A. back into her home.

8           As I have already said, there is evidence  
9           before the Court now that was not before the  
10          Court at the November appearance.

11          Even apart from the allegations included in  
12          the father's affidavit, many of which I realize  
13          the mother disputes, there is her own evidence  
14          about what A. told her when he was at her house  
15          on November 25th and her own evidence about the  
16          physical escalation and him being rough with her  
17          when she tried to prevent him to leave. While I  
18          empathize with the mother's concerns and her wish  
19          to get things back on track with A. as soon as  
20          possible, with the greatest of respect, I am not  
21          persuaded that it is necessarily realistic to  
22          think that she can have the police force him back  
23          into her home and then succeed in getting things  
24          back on track with him and their communication.  
25          There is huge potential for such an action to  
26          cause further escalation of the situation and do  
27          more harm than good. The chance of turning





1 things around would be much greater, in my view,  
2 once there has been some sort of intervention  
3 with counsellors and may also be assisted by A.  
4 having independent counsel to provide an outside  
5 perspective on things and some advice to him.

6 So after much thought, and although the  
7 Court is always concerned when its Orders are not  
8 being complied with, I have concluded that any  
9 decision to order A. back into his mother's home  
10 should be made only with the benefit of  
11 submissions from his appointed counsel and in  
12 light of any additional evidence that may be  
13 brought forward as a result of counselling  
14 process. Forcing A. to go back to that home  
15 before then, before there has been an opportunity  
16 for some counselling and some professional  
17 intervention, and especially ordering police  
18 involvement to enforce this, does not seem to me  
19 to be in his best interests. And although I do  
20 understand the mother does not take that view, I  
21 think doing this at this point could also be very  
22 detrimental to her relation with him as well.

23 So the Order I am issuing today will be as  
24 follows:

- 25 - The matter is adjourned to be spoken to on  
26 December 17th, 2015, at 10 a.m.;
- 27 - The Order of this court, dated August 16,



1                   2011, will remain in effect with the  
2                   exception that on an interim interim basis:

- 3                   1. A. may remain in the care of his father  
4                   until December 17th, 2015;
- 5                   2. The issue of access over the holiday  
6                   season will be spoken to on December 17,  
7                   2015;
- 8                   3. There will be a clause that neither  
9                   parent shall take A. outside the  
10                  Northwest Territories until further  
11                  Order of the Court or without leave of  
12                  the Court;
- 13                 4. The mother shall be permitted to arrange  
14                  for counselling for A., and the father  
15                  shall cooperate and assist in ensuring  
16                  that A. attends any counselling sessions  
17                  that are arranged for him by the mother;
- 18                 5. The Office of the Children's Lawyer is  
19                  appointed to represent A. in these  
20                  proceedings. The terms of that  
21                  appointment will be in accordance with  
22                  the ones that are usually adopted by  
23                  this court.

24                 And I will ask Mr. Kinnear that a separate Order  
25                 be taken out in the usual form. But just so that  
26                 all the parties are clear, what will be included  
27                 in this order in addition to the appointment of



1 counsel is that:

- 2 - The Office of the Children's Lawyer (OCL) is  
3 authorized, without further consent of the  
4 mother or the father, to make a full and  
5 independent inquiry of all the circumstances  
6 relating to the best interest of A.;
- 7 - The OCL may contact and communicate with any  
8 and all third parties involved with A.,  
9 including but not limited to childcare  
10 providers, teachers and school authorities,  
11 family and child counsellors and assessors,  
12 medical service providers, psychologists,  
13 social workers, and any other individuals  
14 having contact with or information about A.;
- 15 - Counsel for the child will be entitled to  
16 receive copies of all notes, records, or  
17 reports relating to A. from any source  
18 whatsoever;
- 19 - Counsel for the child will have the  
20 authority to talk to and meet with A. alone  
21 and confidentially, or with others, at  
22 any location counsel deems appropriate,  
23 including but not limited to the children's  
24 childcare, if that is applicable, school, or  
25 the parents' home;
- 26 - Counsel for the child will have leave to  
27 communicate directly with A.'s parents



1 without the presence of counsel for the  
2 parents even if the parents have legal  
3 counsel;

4 - All third parties involved with A.,  
5 including but not limited to the ones that I  
6 have already mentioned, are authorized to  
7 release any and all information about him,  
8 including documentary information, to  
9 counsel for the child, who shall receive and  
10 use that information for the purpose of  
11 attempting to resolve or have adjudicated  
12 the issues of custody and access;

13 - Counsel for the child will be entitled to  
14 provide an oral summary to this court of the  
15 information acquired in the course of  
16 representing A., and, by doing so, shall not  
17 be deemed to be a witness in these  
18 proceedings; and

19 - Counsel for the child is authorized to  
20 participate in these proceedings as though  
21 A. was a party and, without limiting the  
22 generality of this, will be entitled to  
23 production and discovery, to appear and  
24 participate in the proceedings, have the  
25 ability to examine and cross-examine  
26 witnesses, to call evidence, and to make  
27 submissions to the Court, including the





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position advanced on behalf of A.

These are the standard terms of Orders by this court appointing counsel to a child in Family proceedings and they are designed to ensure that counsel for the child get the maximum information that might be needed in order to present submissions.

The final term of the Order I issue today, Mr. Bruveris, is that costs, which you have raised as an issue in earlier appearances, will be adjourned to December 17th to be spoken to, and depending on how things go and what decisions are made then, it may be that that issue is adjourned again.

So that is my ruling. The matter is adjourned to December 17.

.....

Certified Pursuant to Rule 723  
of the Rules of Court

Jane Romanowich, CSR(A)  
Court Reporter

