

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

B (M)

Applicant

-and-

B (P)

Respondent

**MEMORANDUM OF JUDGMENT**

[1] This is an application by the parties to have new counsel appointed for the children through the Office of the Children’s Lawyer (“OCL”).

[2] The parties have three daughters and two sons. The oldest daughter, O., will turn 18 shortly. The two sons, K. and G., are aged 14 and almost 12, respectively. The youngest children are twin girls who are 5 years old.

[3] On March 6, 2014 the Court ordered that counsel for all five children be appointed. This was arranged through the OCL and they have been represented since that time.

[4] The children’s counsel was granted leave to withdraw as counsel of record on December 14, 2017. She cited a breakdown of the relationship and an inability to obtain meaningful instructions. Neither party objected to that; however, they both argued that the children should continue to be represented.

[5] The OCL takes the position that new counsel should not be appointed by the Court and that in any event, it cannot and should not be compelled to provide counsel through its program.

[6] This matter is in case management. It has not yet been set down for trial. From the outset, it has borne many of the characteristics identified by the Family Court of Australia in *In the Matter of: Re K* (1994) FLC 92-461, which lead courts to conclude that independent counsel for the children will aid in bringing a complete and balanced picture, including the children's views, before it. *Wagner v Melton*, 2012 NWTSC 41 at para 10. This is a high conflict case, involving many interim applications and orders. There are allegations of parental alienation. The father wishes to move away from the jurisdiction with the two boys and the twins. Given each parent's limited financial means, this could potentially limit the mother's access. Finally, one of the twins has significant medical issues, including a compromised immune system, which require frequent trips to Edmonton, specialized equipment and particular educational and housing needs.

[7] The OCL does not dispute that this is the type of case which would ordinarily lead to counsel being appointed for the children. It argues, however, that providing a lawyer for the children has done little to enlighten either the parties or the Court in ascertaining the children's views or to narrow the issues for trial. Moreover, it argues that the children appear to have become drawn into the litigation arena and are participating in an adversarial manner, something which the OCL's counsel stated is entirely inconsistent with its mandate.

[8] I appreciate and understand the arguments made by each of the mother's and the father's counsel in support of new counsel being appointed. In many of the cases that come before this Court appointing counsel for children offers great assistance to both the parents and the Court in determining what is in the children's best interests. Parents have the opportunity to hear their child's or children's voice through what is tantamount to an objective third party. This is particularly important where, as here, there is significant conflict.

[9] Respectfully, however, I agree with the OCL's submission that to this point there has been no discernable benefit to having the children represented in this case. I base this primarily on the Court record, which reveals that there has been little progress towards long-term resolution, by either settlement or trial, in the four years since the OCL became involved. It has remained stagnant and the parents have held fast to their positions. There is no reason to conclude that appointing

another lawyer to represent these children will assist the Court in ascertaining the children's views beyond what the parties' lawyers can offer, nor that it would serve to assist the parents in understanding and assessing what is in their children's best interests from a perspective other than their own.

[10] As noted in previous cases, including *Kalserk v Nelson*, [2005] NWTJ No.3, *Puszczak v Puszczak*, [2005] AJ 1715 (CA) and *Melton, supra*, there are other methods the Court can use to ascertain a child's views. These include appointing an assessor to provide a report under s. 29 of the *Children's Law Act*, SNWT 1997, c 14 and judicial interviews under s. 83. With respect to the latter, a child who is interviewed is entitled to have counsel present, but this does not necessarily require counsel to be appointed for a broader purpose. It would also be open to the trial judge to consider appointing counsel to assist the Court in bringing forward additional evidence.

[11] The parties' application to have new counsel appointed for the children is dismissed. Given this, it is unnecessary to determine whether the OCL or other public entity can be compelled to provide and fund counsel for this purpose.

*Order accordingly.*

Dated at Yellowknife, NT, this  
7<sup>th</sup> day of May, 2018.

K. M. Shaner  
J.S.C.

Counsel for the Applicant/Father:	Paul G. Parker
Counsel for the Respondent/Mother:	Candace Seddon
Counsel for the OCL:	Karen Wilford

S-1-FM-2013-000164

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**MEMORANDUM OF JUDGMENT OF  
THE HONOURABLE  
JUSTICE K. M. SHANER**

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