

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**2025/FAM/div/00006**

**B E T W E E N**

**N.M.N.**

**Petitioner**

**AND**

**M.S.C.N.**

**Respondent**

**Before: The Honourable Justice C.V. Hope Strachan**

**Appearances: Robert Adams, K.C., and Samuel Brown for the Petitioner**

**Gail Lockhart-Charles K.C. and Tatyanna Maynard for the Respondent**

**Sean Moree K.C. and Peteche Mitchell (on an Application on behalf of ZN and AN for the Appointment of a Litigation Guardian.**

**Hearing on the Papers**

**Submissions Date: 29<sup>th</sup> January 2026; 11<sup>th</sup> and 21<sup>st</sup> March 2026**

*Matrimonial proceedings, divorce, interlocutory application, application to be appointed litigation guardian for minor children of the marriage, "Gillick Test", competency, proprietary and free of interest in appointment as litigation guardian, paramountcy of interest of children, discretion in case management as concerns children.*

## RULING

### INTRODUCTION

[1.] This interlocutory judgment determines whether a litigation guardian should be appointed to represent ZN and AN (“the children”). They are the two minor sons of the N family. The husband endorses this application, while the wife objects.

### SUMMARY OF FACTS

[2.] On 26<sup>th</sup> January, 2026, an Application was made to have Mr. Sean Moree, KC (Mr. M), a Partner with McKinney Bancroft and Hughes (MBH), be appointed the Litigation Guardian for the children, ages 13 and 15. The underlying proceedings include applications under **S. 74 of the Matrimonial Causes Act (Ch. 125) and the Domestic Violence (Protection Orders) Act (“DVPO”)**, to which their parents are involved, emanating from their divorce proceedings. The Respondent (“the wife”) and the Petitioner (“the husband”) have filed competing applications alleging domestic violence perpetrated by the opposite party. They both seek protection for the children. However, the wife’s complaint includes accounts of incidents involving herself and the children, which she attributes to the husband’s influence on them and his efforts to alienate the children from her.

### ISSUE

[3.] **The issue to be determined is:**

- 1) Whether Mr. M should be appointed as a litigation Guardian for the Children.

### LAW AND DISCUSSION

[4.] The preamble to the **United Nations Convention on the Rights of the Child (UNCRC)** recognizes that, “the equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace.” **Article 12 of the United Nations Convention (UNCRC) on the Rights of the Child** States:

*“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 the weight in accordance with the age and maturity of the child.”*

[5.] The governing laws of The Bahamas recognize the welfare and paramountcy of the child in matters pertaining to his/her welfare, **S. 3 (1) Child Protection Act [Chpt. 132]** (“the CPA”) states:

*“Whenever a determination has to be made with respect to — (a) the upbringing of a child; or (b) the administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the paramount consideration.”*

[6.] Finding the answer to the question on whether to appoint Mr. M as litigation guardian for the children, the Court must have due regard to S. 3(3) of the CPA, which provides:

*“(3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to — (a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding; (b) the child’s physical, emotional and educational needs; (c) the likely effects of any changes in the child’s circumstances; (d) the child’s age, sex, background and any other circumstances relevant in the matter; (e) any harm that the child has suffered or is at the risk of suffering; (f) where relevant, the capacity of the child’s parents, guardians or other persons involved in the care of the child in meeting his or her needs.”*

[7.] In support of the protection of the child, the **Civil Procedure Rules (CPR)** provide for the appointment of a litigation guardian where appropriate. **CPR 23.6 and 23.8** require that any appointed guardian be “fit and proper, able to act fairly and competently, and free of any interest adverse to the child.”

[8.] The case of **Re: Spence (1847) 2 Ph. 247** is a seminal authority affirming that “cases in which the Court interferes for the protection of infants are not confined to those in which there is property.” The Lord Chancellor noted, “The Court interferes for the protection of

*infants, qua infants by virtue of a prerogative which belongs to the Crown as parens patriae, and the exercise of which is delegated to the Great Seal.”*

The Spirit and intent of **Re Spence** may be prescribed in this Jurisdiction where the legislature, through the CPA, provided for the protection of all children subject to its jurisdiction.

[9.] The **Gillick** principle established in **Gillick v West Norfolk and Wisbech Area Health Authority [1986] A.C. 112** and authorities cited in **Re: H, D (A Child)** and related guidance require assessment of a Child’s capacity to understand the issues and give coherent instructions, taking into account age, intelligence, emotional state, language ability, and freedom from undue influence before any person can be appointed a litigation guardian.

## **DISCUSSION**

[10.] The Court exercises a broad discretion to regulate children’s participation in proceedings, balancing the statutory welfare paramountcy with proportionality and the proper administration of justice. Where specialist judicial procedures and independent welfare mechanisms exist, the Court may give effect to a child’s voice through private, non-adversarial means rather than by immediate party-driven courtroom participation. The following considerations formed part of the court’s assessment and determination.

### **Competence and Capacity**

[11.] The Court recognizes **Article 12 of the UNCRC** requires that a child capable of forming his or her own views be allowed to express them in matters affecting the child. Nevertheless, that participatory right is qualified by the statutory welfare imperative. Section 3 (4) of the CPA read with Section (1) mandates that the child’s welfare is the Court’s paramount consideration and must supersede competing adult interests where necessary to prevent harm. In **R.B. (a juvenile) v Attorney General**, Criminal Appeal No. 205 of 2025, per *Crane-Scott JA*:

*“92. By signing, ratifying and incorporating the Child Rights Convention, The Government of The Bahamas has demonstrated a commitment to the four main principles expounded therein: namely that all the rights guaranteed by the convention must be available to all children without discrimination of any kind (Article 2); that the best*

*interest of the child must be a primary consideration in all actions, concerning children (Article 3; that every child has the right to life and survival development (Article 6); and that the child's views must be considered and taken into account in all matters affecting him or her (Article 12)."*

[12.] Although the boys are bright and extremely articulate, the Court will not risk or subordinate the proceedings. It must guard against long-term emotional and psychological harm. Their welfare is given primacy to an unguarded exercise of participatory rights that risks exposure to adversarial proceedings.

[13.] The court's responsibility to protect the children's emotional and psychological welfare is recognized as pivotal to the decision the court will make in deciding their competency to instruct an Attorney. Mr. M avers that he was instructed by the children. The "**Gillick**" test is to be applied, as espoused in **The Gillick v West Norfolk and Wisbech AHA** [1985] UKHL 7. According to **Re W (A Child) (Care Proceedings: Child's Representation) Practice Note** [2016] EWCA Civ, [2017] 1 WLR 1027, *Black J* (as she then was) provided: -

*"36.... The judge will expect to be guided by the guardian and those solicitors who have formed a view as to whether they could accept instructions from the child. Then it will be for the judge to form his or her own view on the material available at that stage in the proceedings, sometimes (but certainly not always) including expert opinion on the question of understanding (see **Re H (A Minor) (Care Proceedings: Child's wishes)** (supra) at page 450. Understanding can be affected by all sorts of things, including the age of the child, his or her intelligence, his or her emotional and/or psychological and/or psychiatric state, language ability, influence, etc. The child will obviously need to comprehend enough of what the case is about (without being expected to display too sophisticated an understanding) and must have the capacity to give his or her own coherent instructions, without being more than usually inconsistent." [Emphasis Mine]*

[14.] It does not escape the court that in this case, the solicitor/attorney who has to determine if the children are **Gillick** competent and are capable of instructing their attorney, is also the applicant, and his impartiality can be called into question. In **Re C** [2023] EWCA 889, which followed **Re W**, *Jackson LJ* espoused at paragraph 50:

*“The judgment about whether a child has the ability to instruct is quintessentially a matter for the solicitor in the unique circumstances of the case, and expert advice will not always, or even usually, be necessary.”*

[15.] Following private interviews and consideration of the available assessments, the Court found both boys to be highly intelligent and perceptive, possessing sufficient understanding to comprehend the claims their mother made in her DVPO application made against their father, and the references to incidents between her and them. They are also sufficiently intelligent and perceptive about the father’s DVPO application. However, despite the level of maturity displayed by the children, the Court is not satisfied they possess the freedom from undue influence required to withstand the pressures and potential contamination of an open family trial. I also do not take lightly the inordinate delay that has been caused by the myriad of interlocutory applications filed by the parties, including the competing DVPO applications, which increase the potential for great harm to be inflicted upon the children in these protracted proceedings. Moreover, the parties themselves have acknowledged that the children, even now, require some counselling to cope with the divorce. For those reasons, and to safeguard their welfare, the court considers eliciting the views of these minor children, through appropriately non-adversarial means, such as private judicial interviews and independent welfare assessments, might be a better approach to the conduct of the proceedings and what follows hereafter is an exercise of those considerations.

### **Risk of Harm, Contamination, and Undue Influence**

[16.] The Father and the proposed Litigation Guardian’s request that the boys “have a say” risks more than mere domestic expression in these highly contested proceedings. Replete with allegations of domestic violence and active protection orders, direct participation may potentially expose the two children to adult conflicts that may contaminate their views and render them vulnerable to undue influence. Moreover, while it is true that the wife’s report to the police spoke to incidents involving assaults against her by AN, clearly she made no formal complaint against the boys, but her account of the incidents were to explain that the children’s behaviour was being caused by the husband’s influence and at his direction. The wife’s request that the Department of Social Services (DSS) intervene to assist in ameliorating the situation with ZN does not introduce a novel approach or request, since the

DSS is already engaged at the request of the court. They have already launched their investigations and have already supplied the court with two (2) interim reports. The DSS is the court-appointed independent voice of the children. The reports the DSS provided and will provide to the court must necessarily address the interests, motivations, and wishes of the children, the exact mandate that Mr. M is seeking to satisfy.

[17.] As this Court's jurisdiction permits intervention for the protection of infants qua infants in **Re Spence** (1847) 2 Ph 247, the court must prioritize the children's welfare and guard against processes that could cause lasting emotional harm. Given the intensity and adversarial nature of the issues, the safer course is to protect the boys from direct adversarial participation, which by necessity will occur if a litigation guardian becomes involved, while ensuring their interests are independently represented through the appropriate welfare inquiries, assessment by the Court and the Department of Social Services, and by taking their views in a manner proportionate to their ages and maturity.

#### **Competence of Litigation Guardian**

[18.] **S. 23.6 and 23.8 CPR** requires that the Litigation Guardian be "fit and proper," able to act fairly and be free of any interest adverse to the child. Those statutory standards embody the core impartiality and independence essential to preserve procedural fairness and the appearance of justice. As *Lord Hewitt C.J.* advocated for in **R v Sussex Justices, ex p McCarthy** [1924] 1 KB 256, "*that not only must justice be done, but it must be seen to be done.*" I am of the view that any decision rendered by this Court, considered to be nebulous at best, is counter to that principle.

[19.] The evidence before the Court indicates the proposed litigation guardian is being remunerated by the husband, and, on the material filed to date, to justify the appointment of Mr. M as litigation guardian, there is cause for concern. Of particular concern is that Mr. M appears to adopt positions that mirror the husband's narrative of the events. This is borne out by looking at the chronology of the events leading up to his application for the appointment as litigation guardian. Kara Neely swore an affidavit on behalf of the wife. The contents speak to the several concerns of the wife:

*"I, KARA NEELY, of the Southern District of the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas, MAKE OATH and say as follows that:*

*1. I am a Legal Assistant with the firm Gail Lockhart Charles and Co., the attorneys of record for the Respondent, Mrs. M.S.N. The facts and matters stated in this affidavit are personally known to me, derived from my knowledge of the proceedings gained in my capacity as a Legal Assistant assisting Mrs. Gail Lockhart Charles KC, who is lead counsel having carriage of this matter on behalf of the Respondent, and from my review of the documents and records in this matter.*

*2. ....*

*3. This Affidavit is sworn in support of the Respondent's Notice of Application seeking, among other things, an order that Ms. Erin M. Hill attend Court for cross-examination on her Affidavit sworn 27 January 2026, filed in support of the application by Notice of Application filed 26 January 2026 ("the Moree Notice of Application") to appoint Mr. Sean N.C. Moree KC as litigation guardian for the minor sons of the parties. The Moree Notice of Application and supporting Affidavit of Erin Hill were served on our Chambers on 27 January 2026 (However, that version of the Affidavit was incomplete as an exhibit was omitted, and a corrected version of the Affidavit was subsequently served on our Chambers yesterday).*

#### *Background*

*4. On 3 June 2025, the Petitioner filed an Originating Application for the appointment of a Guardian for the children pursuant to Section 20A of the Child Protection Act.*

*5. On 15 December 2025, Mr. Sean N.C. Moree KC wrote to the Court stating that he had been retained by the Petitioner to represent the interests of the parties' sons, Z [ ] and A[ ], in the captioned proceedings and/or other proceedings. In that letter, Mr. Moree KC also set out his description of events said to have occurred on 12 December 2025, including assertions concerning the circumstances at the family home and the involvement of persons present that day. A true copy of Mr. Moree KC's letter dated 15 December 2025 is exhibited KN-2[1-3].*

*6. By letter dated 18 December 2025, our Chambers wrote to the Court responding to Mr. Moree KC's letter and drawing attention to the Respondent's affidavit evidence disputing factual characterizations and asserting that Mr. Moree KC's account was inaccurate in material respects. A true copy of the said letter is exhibited at KN-2 [4-10].*

*7. By letter dated 24 December 2025, the Petitioner's attorneys wrote to the Court in relation to the Petitioner's Originating Application filed 3 June 2025 for the appointment of a Guardian for the children pursuant to Section 20 A of the Child Protection Act. In that letter, Mr. Robert Adams KC asserted:*

*[...] the guardianship application has been overtaken by events that have recently transpired and which required the urgent appointment of counsel to represent the children.*

*[J] Mr. Sean Moree, KC, has therefore been duly engaged to provide separate independent representation for the children. Our position is, as we believe her Ladyship anticipated, that as Mr. Moree is now representing the children in these proceedings, the guardianship application should be stayed until further order.*

*[...] A true copy of the said letter is exhibited at KN-2 [11-12].*

*8. On 29 December 2025, our Chambers wrote further to the Court responding to the assertions in Delaney Partners' letter dated 24 December 2025 that the guardianship application had been "overtaken by events" and objecting to the unilateral appointment of Mr. Moree KC by the Petitioner as an allegedly "independent" representative of the children, including on the basis of neutrality and the Court-directed DSS process. A true copy of our Chambers' letter dated 29 December 2025 is exhibited hereto at KN-2 [13-17].*

*9. On 8 January 2026, Mr. Moree KC wrote to the Court asserting, inter alia, that DSS involvement does not prohibit independent representation; disputing concerns about his objectivity; stating that his understanding of the events of 12 December 2025 lacked input from the Respondent because the Respondent and counsel refused to speak with him; and stating that his account was based on discussions with his clients and information provided by the Petitioner's counsel. A true copy of Mr. Moree KC's letter dated 8 January 2026 is exhibited hereto at KN-2 [18-20].*

*10. On 13th January 2026, our Chambers wrote to Mr. Moree KC stating, inter alia, that he did not have the Respondent's approval or consent to meet or speak with the children in relation to these proceedings, that no Court order had authorized him to act in any capacity on behalf of the children, and calling upon him to cease holding himself out as the authorized representative of the children. A true copy of the said correspondence is exhibited hereto at KN-2 [21-25].*

*11. On 19th January 2026, Mr. Moree KC wrote to the Court criticizing correspondence being addressed to the Court and expressly invoking the principle that evidence should be adduced by affidavit or orally under oath so that it may be tested by cross-examination. A true copy of Mr. Moree KC's letter dated 19 January 2026 is exhibited hereto at KN-2 [26-27].*

*12. On 26 January 2026, Mr. Sean N.C. Moree KC filed in these proceedings a Notice of Application seeking an order appointing him as litigation guardian for the minor sons of the parties, Z[ ] and A[ ].*

*13. On 28 January 2026, our Chambers received service of the said Moree Notice of Application together with an Affidavit of Erin M. Hill filed 28 January 2026 (the "Hill*

Affidavit").

14. *The Hill Affidavit states, among other things, that Ms. Hill is a partner in Messrs. McKinney, Bancroft & Hughes, and that she is authorized to swear the Affidavit on behalf of the minor sons of the parties in support of an application for an order appointing Mr. Moree KC as their litigation guardian.*

15. *The Hill Affidavit further states that the minor sons require independent legal representation and a litigation guardian to be assigned to advise them and intervene in these proceedings on their behalf.*

16. *The Hill Affidavit also refers to a series of letters to the Court said to relate to Mr. Moree KC's involvement, including letters dated 15 December 2025, 29 December 2025, 5 January 2026, 8 January 2026, and 19 January 2026. The Moree Notice of Application is the latest in a series steps taken by Mr. Sean Moree purportedly on behalf of the minor children.*

17. *The facts stated in the Hill Affidavit are disputed and the Respondent wishes to have such evidence tested under cross examination such cross examination to occur on the date fixed for hearing of the Moree Notice of Application. Based on the records that I have reviewed no hearing date has yet been fixed for the hearing of the Moree Notice of Application. I am informed by Mrs. Lockhart Charles KC that the appointment of Mr. Moree as Litigation Guardian for the minor children or any of them will be heavily opposed on numerous grounds including the following grounds which I am informed by Mr. Lockhart Charles will be advanced in opposition to the Moree Notice of Application:*

*i. Custody determinations*

*+focus on the welfare of the child as paramount, but the children themselves are not litigants.*

*ii. The court (can gather information on their needs, wishes, and circumstances through alternative, less intrusive methods, such as social welfare reports from the Department of Social Services. psychological evaluations, or private interviews with the children in chambers (as allowed under the Child Protection Act and Matrimonial Causes Rules).*

*iii. Involving minors as parties via a litigation guardian would expose them to the stress of litigation and unnecessarily draw them into the adversarial conflict.*

*iv. Mr. Moree was initially engaged by the father and claims to represent the children, raising serious impartiality concerns.*

*v. Mr. Moree cannot act independently if influenced by the father, especially given the allegations of parental alienation tactics deployed by the father*

*against the mother.*

*vi. The appointment of Mr. Moree could harm the minors by entangling them in the dispute, potentially alienating them from one parent or causing emotional distress.*

*vii. The mother has provided affidavit evidence of the father's controlling behavior and maintains that this application appears to be a tactic to manipulate the proceedings rather than protect the children.*

*18. The Contents of this affidavit are correct and true. To the best of my information, knowledge, and belief.”*

[20.] Mr. M admits to an existing relationship with the husband since May 2025. He acknowledges the agreement for the husband to pay Mr. M to take on another and/or different role for the children. When taken together with what seems to accord with the views of the husband, it gives rise to a reasonable doubt about Mr. M's impartiality. The wife's contention that there are also other legal relationships between Mr. M's partners and his firm, MBH, adds to the need for proceeding with caution. Such a relationship, if the appointment occurs, risks undermining the very protection of impartiality, which the institution of a litigation guardian is intended to afford. While this court accepts, through its' own observations, (which accords with Mr. Ms' view) that the children are **Gillick** competent, together with the admitted existing remuneration arrangement made with the husband, without any reference to the wife, together with the alleged events of 12<sup>th</sup> December 2025, which mirrored the husband's narrative of the incident, but which the wife disputes, is a cause for focused vigilance.

[21.] That focused vigilance led to considerations of the following factors;

- a. Mr. M's letter to the Court was dated 15<sup>th</sup> December, 2025, 3 days after the event of 12<sup>th</sup> December, 2025 (“the 12<sup>th</sup>”). It spoke to instructions he received from persons, whom he described as his clients. In the first paragraph of his letter, Mr. M alleged that the wife had “lodged criminal complaints against AN (at the time he was 11 years old) with the Royal Bahamian Police Force alleging abuse/assault.” While the children were involved in the incident that

occurred on the 12<sup>th</sup>, no account of the events from any party or counsel indicated that the children attended the police or were at any time interviewed by the police in connection with the incident. The question then is, where did their instructions to Mr. M about what was in the wife's report to the police come from? I suspect it was the husband since he engaged Mr. M and agreed to pay his legal fees.

- b. Any discussion after 18<sup>th</sup> December, 2025, which engaged the children about a police report being made by the wife was done in contravention of an existing order of the court not to share information about the divorce proceedings with the children.
- c. If one were to consider the contents of the Police Report, notwithstanding that it was prepared after Mr. M wrote to GLC and assuming the report is reflective of what was reported to them by the wife, the children's instructions do not accord with that report, so Mr. M's account could not be attributed to information obtained from the police before the release of their official report.

[22.] By this process of elimination, I am confident that Mr. M's instructions, when it is reduced to its core, emanated from the husband. This exacerbates the situation. However, Mr. M's Notice for the Appointment as Litigation Guardian came more than a month after the incident. It was filed on 26<sup>th</sup> January, 2026. Mrs. Hill's affidavit in support was filed on 27<sup>th</sup> January 2026. In her Affidavit, she makes the point that the wife had taken an "adverse position" to the children and that she had accused them of "*crimes so that any decision of this court with respect to these allegations would significantly affect these young men now and in the future.*" Mrs. H was, of course, speaking for Mr. M., considering the context in which the wife recounted the interactions between herself and the children. It was essentially a complaint against the husband and his campaign of parental alienation (as she describes it). The Court is curious as to what decision was in Mr. M's contemplation that the court could or would make adverse to the children in these proceedings and in the DVPO applications in particular. Given that, notwithstanding the wife complaining about the children's behaviour,

she had asked the court for a protection order against the husband for herself and the children. There was no criminal complaint against the children before the court in these or any other proceedings. Definitions under the Domestic Violence (Protection Orders), Chapter 99A, help to clarify the respective roles of the parties:

- S. 2 In this Act — “child” includes an adopted child, a stepchild, or a child who is a member of the household of the complainant and is treated as such by the complainant and the complainant's spouse or partner; “complainant” means a person who applies under this Act for a protection order; “respondent” means the person referred to in section 4(2);
- 4. (1) An application for a protection order in accordance with Form 1 in the Second Schedule may be made by way of complaint by —
  - (2) The person against whom the order is sought shall be the respondent to the application.

[23.] To suggest that a criminal complaint had been made against the children was disingenuous. Certainly, if the term complaint could in any way be attributed to the wife, it would be for Social Services to intervene. In speaking for Mr. M, his application does not demonstrate objectivity or a desire to be, notwithstanding that, by this time, the wife had already filed her Affidavit outlining her account of the events of the incident on 12<sup>th</sup> December 2025.

[24.] Another position of Mr. M's is that the recordings of the children intended to be used by the wife in these proceedings contravene the Interception of Communications Act 2018 (“the ICA”) Subsections 28(2) and (3). He asserts that they are inadmissible as the wife did not get leave to adduce them into evidence, and ought not be adduced in evidence. Again, this reflects the husband's position. Mr. M provided an authority for his position and commended

to the Court *Klein J's* exposé in **Alana Major v Family Guardian Insurance Company Ltd.** 2021/CLE/gen/00181;

*"[27] ...Section 28, on the other hand, prohibits the communication or publicizing of a private conversation by any person to whose knowledge it might come, or even by a party to the conversation, unless it can be brought within one or more of the exceptions at s. 28(3). In other words, the exception of privacy is not necessarily breached by a part recording a private conversation which is not disclosed or disclosed to another party, it is only breached when the recording is made by an unauthorized third party or communicated to any other person in circumstances which do not fall into any of the exceptions."*

[25.] Mr. M also asserts that **Article 16 of the UNCR** provides;

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honor and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

[26.] He continues that the court ought to be guided by *Jackson J*, who said in **M v F (Covert Reading of Children)** [2016] EWFC 29;

*"1. It is almost always likely to be wrong for a recording device to be placed on a child for the purpose of gathering evidence in family proceedings, whether or not the child is aware of its presence. This should hardly need saying, but nowadays it is all too easy for individuals to record other people without their knowledge. Advances in technology empower anyone with a mobile phone or a tablet to make recordings that would be the envy of yesterday's spys..."*

This matter, while forming part of Mr. M's justification for the application to become the children's litigation guardian, has yet to be heard.

[27.] It is because of these stated objections that Mr. M seeks to justify his appointment as the children's litigation guardian. When the purpose or intent for the use of these recordings and transcripts is examined, one cannot avoid the fact that the wife is seeking to demonstrate to the court the negative impact visited upon the children through the husband's attempts to alienate the children against her. The recordings are not being used to bring any type of proceedings against the children, which might require them to have a litigation guardian. But Mr. M's application is in no way objective or stated in a manner that shows any appreciation of the wife's concern and plea for the involvement of social services to intervene as a means to curtail the alleged activities in the home, which have caused the competing DVPO applications.

[28.] Contrary to Mr. M's contention that including the children in the DVPO proceedings makes them parties to the divorce proceedings and that means he does not need leave from the court to represent them, that is not the Court's view. Formal recognition to represent them in this court in these proceedings is necessary. CPR Rule 23.1 (1) (a) is clear as to how a person becomes a litigation guardian, and that is by application made to the court. Given that the children are not deemed as of right to be parties to these divorce proceedings, because they are children and their direct involvement in their parents' divorce is being sought, the court is mandated by the Child Protection Act to ensure that appointing a litigation guardian intended to involve them in the divorce proceedings is in their best interest. Firstly, regard is had to the arguments advanced by opposing counsel with respect to the children's competency to instruct counsel. The wife's counsel and Mr. M referenced **Gillick** and also referred to **Re C** per *Jackson LJ* as authority for testing the competency of the children to instruct a solicitor. **Mahon v Mahon** [2005] EWCA Civ 634 also speaks to a child's ability to instruct a solicitor and also concerns the children's competency and what considerations must be applied. But it is important to emphasize that while this is an important factor, just as important are the issues of impartiality and independence of the litigation guardian.

[29.] I am of the view that the children's interests are not served by a representative whose neutrality is reasonably doubted. Caution is taken that appointing such a guardian would risk contaminating the process and denying the children the independent advocacy and protection

the role requires. The Court must guard against appointing a guardian whose independence is reasonably doubted. It must also consider the value to the proceedings of the appointment.

*Baroness Hale* in **Re M (Children) (abduction: Rights custody)** [2007] UKHL 55, [2008] 1 AC 1288 sub nom **Re M (Abduction: Zimbabwe)** [2008] opined:

*“In all other cases [ than those of alleged settlement], the question for the directions of the judge is whether separate representation of the child will add enough to the court’s understanding of the issues that arise under the Convention to justify intrusion, the expense and the delay that may result. I have no difficulty in predicting that in the general run of cases it will not.”*

Notwithstanding Mr. M’s protestations that this case does not apply to the present situation, as it involved abduction, I am of the view that *Baroness Hale’s* reference to the Convention and her statement that she has no difficulty in predicting that, in the general run of cases, separate representation of the child will not add enough to the court’s understanding of the issues to justify the expense of delay is in total consistency with the principle of the overriding objectives in the CPR.

[30.] The danger in this case is whether the children are being influenced by the husband in the giving of their instructions to Mr. M, who, the wife alleges, is also the husband’s lawyer and is also the proposed litigation guardian. This court will not consider it in the best interest of the children to be unduly influenced by one party to these proceedings. The factual dispute with regard to the wife’s allegations that the husband is engaged in a program of parental alienation in which he has weaponized the children against her are special circumstances where the court must seek to ensure objectivity in who might be advising and representing the children should it become necessary. Mr. M. is not the person.

[31.] In these circumstances, the Court must decline to appoint the proposed litigation guardian. If it is considered at any point in these proceedings that the children require a litigation guardian, which I do not foresee, such counsel must be devoid of any semblance of partiality. They must obviously be independent and appointed or approved by the Court, with remuneration orders, so as to avoid the appearance of partiality.

### **Less Intrusive and More Reliable Alternatives Exist**

[32.] The Court affirms its competence to make and direct decisions for these children, in consultation with the established, independent mechanism, the Department of Social Services, is considered to be independent experts. Direct judicial management of the welfare steps without immediate recourse to party-funded representation in open court aids in expediting the proceedings and promotes the objectives of dealing with the case expeditiously, fairly and justly and allotting to it an appropriate share of the Court's resources, a methodology which I have adopted from the Supreme Court Civil Procedure Rules (CPR), notwithstanding that family matters are excluded specifically from the rules. Provision is made in Rule 68 of the Civil Procedure Amendment Rules for its application where the Matrimonial Causes Rules do not adequately provide. The Court will ensure that the children's views are obtained in the appropriate manner for children of their age. Judicially supervised private interviews and DSS social-work reports where impartiality is assured, provide for more cost-effective and practical measures which ensure the best interest of the children. It is incumbent upon the court that the children receive counselling help from relevant professionals to guarantee the best outcomes for them, given the breach occurring in their family. Between the DSS welfare reports and the psychological assessments anticipated since the parties have agreed on a psychologist to counsel the children, there is a recipe for a better outcome for the children than to involve them in their parents' highly contested, acrimonious divorce proceedings.

### **Judicial Competence and Available Alternative**

[33.] **S.3 (1) CPA** rightly places the children's welfare and best interests as paramount. That statutory mandate sits comfortably with the Court's *Parrens Patriae* jurisdiction. *Lord Cottenham* held in **Re Spence (1847) 2 Ph 247**, the court intervenes for the protection of infants qua infants, a power exercised to safeguard welfare rather than to rubber-stamp parental claims. I have considered these provisions and have determined that it is in the best interest of the children not to involve them in any way to their parents' divorce proceedings

through a litigation guardian. Mr. M's appointment as litigation guardian of the children is also not in their best interest. **[Emphasis Mine]**

[34.] Courts are trained and institutionally equipped to discharge that duty. Judicial experience, established protocols and routine cooperation with the Department of Social Services and qualified experts enable the Court to: (a) elicit and assess children's views in private, non-adversarial settings; (b) obtain independent welfare, psychological and forensic reports; and (c) direct in-camera evidence or use intermediaries to save children from adversarial exposure. Those mechanisms more reliably protect the collective interests of these children. It can also avoid the chance of contamination and undue influence that open, party-driven participation can produce.

[35.] International and domestic principles support this approach. The **Convention on the Rights of the Child (Article 3)** and our domestic welfare imperative require procedures that secure substantive protection, not merely formal participation. Modern authority recognizes that as children mature, their views attract weight, but that maturity must be assessed and taken in context; direct courtroom involvement is not invariably the best method of giving effect to those views.

#### **Less Intrusive and More Reliable Alternatives Exist**

[36.] The Court affirms its competence to make and direct decisions for these children, in consultation with the Department of Social Services and independent experts, without immediate recourse to party-funded representation in open court. Safeguards must, however, be observed. The Court will ensure that the children's views are obtained in the appropriate manner for children of their age. Judicially supervised private interviews, DSS social-work reports, where the instance of impartiality is more likely to provide for more cost-effective and practical measures which ensure the best interests of the children.

## **Proportionality and Case Management**

[37.] The Welfare principle requires that measures taken be proportionate. Direct participation would likely lengthen and complicate the proceedings and increase stress to the children without demonstrable benefit on the present material.

[38.] It is for all of the foregoing reasons that this court has decided the matters in the manner that it has. The welfare of these minor children is paramount, not the wants and desires of any particular parent. That should also be the view of their parents, the husband and wife in these proceedings. This should be at the forefront of their intentions as this matter proceeds.

## **CONCLUSION**

[39.] Having considered the applicable statutes, the authorities (including **Re Spence (1847) 2 Ph. 247** and the **Gillick** line of authority, the children's private interviews, and the evidence on file, the Court concludes as follows:

[40.] The welfare and best interests of AN (13) and ZN (15) are paramount as provided for in **S.3 of the Child Protection Act**. Although the boys are highly intelligent and articulate, the Court is not satisfied on the present evidence that they possess the requisite freedom from undue influence to participate directly in these highly contested proceedings without real risk of contamination and lasting emotional harm.

[41.] The Court affirms its "**parens patriae**" competence, a concept mirrored by the provisions in this jurisdiction by the CPA, to protect and determine the children's welfare, using judicially supervised, non-adversarial procedures in concert with the Department of Social Services and independent experts to elicit and weigh the children's views.

[42.] For the reasons given, including the apparent financial relationship and apparent alignment of the views between the proposed Litigation Guardian and the husband, and the probability that such an appointment could be viewed through any lens as nebulous, the appointment of Mr. M as litigation guardian is refused on the present record. **CPR 23.6** and

**CPR 23.8** require a guardian who is demonstrably impartial and independent. The requirements have not been met.

[43.] Less intrusive and more reliable alternatives are available and will be used- private interviews, court-ordered independent welfare/psychological assessments, and engagement of the Department of Social Services. If, on further independent evidence, the Court concludes that a Litigation Guardian is necessary, any renewed application must demonstrate unequivocal independence, absence of party funding or influence, where possible, and a clear plan to prioritize the children's interests.

## **DISPOSITION**

The Court makes the following orders with respect to this application:

- 1) The application dated 26<sup>th</sup> January, 2026, for the appointment of Mr. Sean N. C. Moree, KC (Mr. M), as Litigation Guardian is refused.
- 2) Costs of the Application to the Respondent/Wife to be taxed if not agreed.

Dated the <sup>m</sup>18 Day of May, A.D. 2026



**The Honourable Madam Justice C.V. Hope Sirachan**

