In The Supreme Court of Bermuda

CIVIL JURISDICTION

2018: No. 9

BETWEEN:

FATHER

Applicant

-and-

MOTHER

Respondent

RULING

Before:	**Hon. Alexandra Wheatley, Acting Justice**
Appearances:	**Sara Tucker of Trott & Duncan Limited, for the Respondent** **Alma Dismont of Marshall Diel & Myers Limited, for the Applicant**
Dates of Hearing:	**9, 10, 11, 12 and 13 September 2024**
Date Draft Circulated:	**14 May 2025**
Date of Ruling:	**19 May 2025**

Leave to Remove Child from the Jurisdiction; Application for Shared Care and Control by the Father; Interim Access; The Minors Act 1950; Welfare of Child Paramount Consideration; UK Welfare Checklist; Conditional Leave

WHEATLEY, ACTING JUSTICE

INTRODUCTION

1. This is the Respondent's (hereinafter referred to as the **Mother**) application asking the court to grant her leave to relocate to Alberta, Canada with the parties six (6) year old daughter (hereinafter referred to as **A**).

2. The Mother was born in Grenada and is a Grenadian citizen. She relocated to Bermuda in or about 2010, as she was in a relationship with a Bermudian, who she later married. The Mother has a child from this relationship (who shall be referred to as '**B**') and who is 11 years old. That relationship did not endure, and the Mother and her former spouse divorced in or about 2014. The Mother has an Extension of Spousal Rights Certificate (**ESERC**) permitting her to remain in Bermuda until B is either eighteen years old or twenty-five years old if B remains in full-time education. The ESERC also affords her the right to work free from immigration control, as though she is Bermudian. The Mother is also entitled to obtain a PRC Certificate as the mother of Bermudian children once she has resided in Bermuda for fifteen years which she will be eligible for in 2025.

3. The Applicant (herein after referred to as the **Father**) is Bermudian. In August 2021, he married his wife and is the stepfather to her two children from a prior relationship who shall be referred to as '**Y**' and '**Z**' who are aged sixteen years old and eleven years old respectively.

4. The Mother's application dated 10 June 2022 (**Relocation Application**), *inter alia*, seeks the following:

    (i) The Mother be granted leave to permanently remove A from the jurisdiction of Bermuda.

    (ii) The Mother be granted sole custody of A.

    (iii) The Mother be granted sole care and control of A.

    (iv) The Consent Order dated 5 February 2018 be varied.

5. The Mother's affidavit sworn on 26 August 2022 (**Mother's Second Affidavit**) confirmed that she was amending the relief set out in the Relocation Application. Whilst the Relocation Application was not amended, the parties accept this is the relief the Mother is now seeking:

    (i) Joint custody of [A].

(ii) Leave for A to reside with the Mother in Alberta, Canada for a minimum of five years whilst she completes her studies.

(iii) The Father will have access with A each summer and alternating Christmas holidays.

6. Due to the Mother making the Relocation Application, the Father filed an application on 22 June 2022 (the **Opposing Application**), *inter alia*, seeking the following relief:

(i) On an interim basis, and until such time that the [Mother's] application for leave to remove has been determined, the joint care and control arrangement as set out at paragraph 6 of the Consent Order dated 5 February 2018 (the Consent Order) shall be varied so that the [Father] has the care of [A], on an alternating weekly basis.

(ii) That the [Mother's] application be dismissed and there be a final order made confirming that the [Mother] and the [Father] have joint care and control of [A] on an alternating weekly basis.

(iii) There be a social inquiry report conducted in relation to [Mother's] application for leave to [A] from Bermuda and to relocate to Canada up the court social shall also contact the relevant social worker in Canada in order to investigate the proposed arrangements for [A] in Canada.

(iv) That a joint Child psychologist pointed to prepare a joint expert report on the impact the relocation will have on [A] and specifically in relation to the possible impact it will have on [A]'s relationship/quality with the [Father] as well as friends and family in Bermuda.

7. It should be noted that the Opposing Application initially sought for the Father to be granted care and control of A with access to the Mother during the period the Mother would be overseas completing her studies. This was subsequently abandoned as the Mother had later confirmed in her affidavit evidence that if her Relocation Application was denied that she would not be pursuing her education in Canada as she would not leave [A] in Bermuda.

8. The evidence adduced and relied on by the parties for this hearing is a follows:

(i) The Mother's affidavit sworn on 8 June 2022 (**Mother's First Affidavit**).

(ii) The Father's wife's (hereinafter referred to as the **Wife**) affidavit sworn on 8 July 2022 (**Wife's First Affidavit**).

(iii) The Father's affidavit sworn on 18 July 2022 (**Father's Second Affidavit**).

(iv) The Mother's Second Affidavit.

(v) The Father's affidavit sworn on 27 September 2022 (**Father's Third Affidavit**).

(vi) The Wife's affidavit sworn on 27 September 2022 (**Wife's Second Affidavit**).

(vii) The Father's affidavit sworn on 12 October 2022 (**Father's Prohibition Affidavit**).

(viii) The Mother's affidavit sworn on 14 October 2022 (**Mother's Prohibition Affidavit**).

(ix) Home Study Report conducted in Edmonton, Alberta, Canada dated 22 November 2022 (**Home Study Report**).

(x) Social Inquiry Report dated 8 December 2022 (**2022 SIR**).

(xi) An updating social inquiry report dated 16 August 2024 (**2024 SIR**).

9. Both parties and the Wife attended the hearing and provided *viva voce* updating evidence and were each cross-examined by opposing counsel. The Court Appointed Social Worker, Ms Nichole Saunders (**CASW**), also attended and was cross-examined by both Counsel.

HISTORY OF CARE AND CONTROL AND ACCESS

10. These proceedings were initially commenced by the Father in January 2018 (the **Initiating Application**) seeking, *inter alia*, the following orders in relation to A:

(i) The [Mother] or her agents be prohibited from taking or sending out of Bermuda the child, namely [A].

(ii) The [Mother] shall not be permitted to apply for the issue or renewal of [A's] passport.

(iii) Joint custody and joint care and control of [A].

(iv) Interim access with [A] each Monday and Thursday from 5:30 p.m. until 8 p.m. as well as each Sunday from 10 a.m. until 5 p.m.

11. The parties were able to agree a resolution of the Initiating Application by way of Consent Order dated 5 February 2018 (the **2018 Consent Order**). The 2018 Consent Order provided that, *inter alia*, the parties were to have joint custody and joint care and control. Albeit, at this time the Mother was the primary carer with the Father exercising access each Monday and Thursday from 5:30 p.m. until 8 p.m. and each Sunday from 2 p.m. until 7 p.m. There was also

provision for the "*care arrangement*" to be reviewed in six months "*for the purpose of increasing the time that the Applicant has care of [A], it being accepted that the parties will gradually work towards both parties having equal care of her*". The 2018 Consent Order was not listed for a review and neither party made a request to the Court for such a review to be listed.

12. The Father commenced having overnight access with A in 2019. The overnight access was from Thursday afternoons/evenings until Saturday mornings, i.e. two nights per week. No applications were made to the Court regarding care and control or access between the time the 2018 Consent Order was made and when the Mother filed the Relocation Application.

13. On 9 June 2022, the Mother's former attorneys, Bruce Swan & Associates, filed the Relocation Application along with the Mother's First Affidavit. The first return date for the Relocation Application was 23 June 2022. The Opposing Application that was filed the day prior, 22 June 2022, was also listed on 23 June 2022 at the same time as the Relocation Application. The Father did not submit any evidence in support of the Opposing Application by way of affidavit or otherwise.

14. At the first appearance of these applications (23 June 2022), without any evidence being submitted by the Father in either the Relocation Application or the Opposing Application, the Judge varied the care arrangement of A from the Father having her care each Thursday to Saturday to a week on/week off care schedule commencing on 3 July 2024 (**23 June 2022 Order**). The Mother was not given an opportunity to file any evidence in relation to the Father seeking to vary access to a week-on/week-off schedule. At this time A was four years old.

15. On 12 October 2022, the Father filed an *Ex-Parte* Summons (**the Prohibition Application**) seeking an order that "*during the week that [A] is in his care, the Mother be prohibited from attending [A]'s school*", "*for the purpose of attending her drop-off or collection or visiting her in school*". The Father's Prohibition Affidavit was filed in support of the Prohibition Application as well as the Wife's First Affidavit. The Mother's Prohibition Affidavit was filed in opposition to the Prohibition Application but was not in response to the Father's Prohibition Affidavit or the Wife's First Affidavit.

16. The Father's reason for making the Prohibition Application was that he says after the alternating week schedule was granted and A returned to school, the Mother was exhibiting increasingly frequent behaviours that were inappropriate and causing A to suffer emotionally[1]. The Prohibition Application was listed for an *Ex-Parte*, On Notice hearing via audio-visual means on 14 October 2022. Ms Tucker attended for the Mother; however, she made an application for an adjournment for the hearing to be listed on an *inter partes* basis the following week. The

[1] The details of these incidents are set out in the respective affidavits referenced in paragraph 15 above.

adjournment request was denied and the matter continued to be heard on the basis that it was listed *Ex-Parte*, On Notice which meant that the judge only heard from Mrs Dismont for the Father. The Mother was given no opportunity to respond *viva voce* or by way of affidavit to the evidence being relied on by the Father. The Judge found that the Mother's behaviour was concerning and negatively impacting A. As such, it was ordered that the Mother be prohibited from attending A's school drop off and pick up or her classroom during the Father's care week (the **October 2022 Order**). The October 2022 Order also provided the Mother "*liberty to make an application seeking to set aside this Order of the court*". The Prohibition Application was not directed to be listed for an *inter partes* hearing.

THE LAW

17. The overarching legal principle to be applied in a child case, is what is in the best interests of the child, i.e. the welfare of the child is the primary consideration[2]. This was not disputed by Counsel. Bearing the welfare principle in mind, the case of *NJ* v *OV [2014] EWHC 4130 (Fam)* is an important decision in which Mostyn J sets out the guiding principles to be applied in relocation cases. Having reviewed his recent decision of *Re TC & JC (Children: Relocation)* [2013] EWHC 290 Fam, Mostyn J reiterated his summary of the governing principles applicable to relocation applications:

> *"6. In my earlier decision I attempted to summarise the relevant legal principles applicable to this type of case. I referred, in para.10, to the four leading decisions of the Court of Appeal, namely Poel v Poel [1970] 1 WLR 1469; Payne v Payne [2001] Fam 473; K v K [2012] Fam 134, and Re F [2012] EWCA Civ. 1364. In para.11, having considered the principles to be derived from those four principal cases, I attempted to set out the law in the following terms:*
>
> *"I have considered these four cases most carefully and, doing the best I can, I set out shortly what seem to me to be the presently governing principles derived from them for a relocation application:*
>
> *(i) The only authentic principle to be applied when determining an application to relocate a child permanently overseas is that the welfare of the child is paramount and overbears all other considerations, however powerful and reasonable they might be.*
>
> *(ii) The guidance given by the Court of Appeal as to the factors to be weighed in search of the welfare paramountcy, and which directs the exercise of the welfare discretion, is valuable. Such guidance helps the judge to identify which factors are likely to be the most important and the weight which should*

[2] As confirmed by the Learned Justices of the Court of Appeal stated at paragraphs 47 and 48 of *KAB* v *AG and another (Re T and K (Children)(Abduction: Children's Objections)* [2019] CA (Bda) 8 Civ, 12 July 2019.

generally be attached to them, and, incidentally, promotes consistency in decision-making.

(iii) The guidance is not confined to classic primary carer applications and may be utilised in other kinds of relocation cases if the judge thinks it helpful and appropriate to do so.

(iv) The guidance suggests that the following questions be asked and answered (assuming that the Applicant is the mother):

a) Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?

b) Is the mother's application realistically founded on practical proposals both well researched and investigated?

c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?

d) Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?

e) What would be the extent of the detriment to him and his future relationship with the child were the application granted?

f) To what extent would that detriment be offset by extension of the child's relationships with the maternal family and homeland?

(v) Since the circumstances in which such decisions have to be made vary infinitely and the judge in each case has to be free to decide whatever is in the best interests of the child, such guidance should not be applied rigidly as if it contains principles from which no departure is permitted.

(vi) There is no legal principle, let alone some legal or evidential presumption, in favour of an application to relocate by a primary carer. The old statements which seem to favour applications to relocate made by primary carers are no more than a reflection of the reality of the human condition and the parent-child relationship.

(vii) The hearing must not get mired in taxonomical arguments or preliminary skirmishes as to what label should be applied to the case by virtue of either the time spent with each of the parents or other aspects of the care arrangements.'"" [Emphasis added]

18. The guidance set out by Mostyn J in *NJ* v *OV* was followed by Hellman J in the Bermuda case of *FG* v *HJ* [2017] Bda LR 27 and by Justice Stoneham in the case of *PK* v *SKB* [2011] SC (Bda) 34 Div. Notably, in *FG* v *HJ* Justice Hellman addressed the UK cases being required to

follow the statutory welfare checklist that is absent in Bermuda's Children Act. At paragraph 14, Hellman J states as follows:

> "*In England and Wakes, section 1(3) of the Children Act 1989 ("the 1989 Act EW") provides a non-exhaustive statutory checklist of factors which the court should take into account when deciding how best to promote the welfare of the child. As Simmons J pointed out in Re K (Permanent Removal) [2013] Bda LR 66 SC at para 33 the checklist is not binding on a Bermudian court. It may nonetheless be of assistance, as Wade-Miller J Found in E v K, unreported, 31st March 2015 SC at paras 105 – 107. I do not propose to set out all of the factors identified in the checklist, although I have regard to them. They include, among others, the ascertainable wishes and feelings of the child (considered in the light of his age and understanding); his physical, emotional and educational needs; the likely effect on him of any chance in his circumstances; and how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.*" [Emphasis added]

19. Justice Hellman also spoke to there being no discrimination between the parties based on whether there is an order for sole care and control in place compared to when the order is for joint care and control at paragraph 17:

> "*The guidance laid down in the case law is common to all types of relocation cases, although the weight to be given to any given consideration will depend upon the particular facts of the case. It is not right that one set of guidance applies to cases where one of the parents is the primary carer and another to cases where the child's care is shared equally between the parents. See the judgments of Moore-Bick LJ at para 86 and Black LJ at para 144 in K v K, Thorpe LJ at para 57 dissenting on this point; Munby LJ in Re F; and, in Bermuda, Simmons J in Re K (Permanent Removal) at para 38.*" [Emphasis added]

20. In addition to the guidance provided in *NJ* v *OV*, Mrs Dismont submitted that the Court should take a holistic, comparative approach of the parties' respective proposals. The Court of Appeal in the decision of *Re F (A Child) (International Relocation Case)* [2015] EWCA Civ 882, [2017] 1 FLR 979 approved a holistic evaluative analysis to relocation cases. Ryder LJ providing the leading judgment noted the following:

> *"[28]…Parents are to be expected to exercise their autonomy and to respect the autonomy of their children by entering into arrangements that plan for their children's long term welfare by providing for a meaningful relationship between each adult and each child. Where they cannot agree there is likely to be more than one proposal for the court to consider.*
>
> *[29]. In Re W (Care Plans) [2013] EWCA Civ 1227, [2014] 2 FLR 431 at [76 - 78] I held that in relation to public law children proceedings the welfare analysis*

of realistic options that is required would be facilitated by a balancing exercise first recommended by Thorpe LJ in the different context of a medical treatment case in Re A (Male Sterilisation) [2000] 1 FLR 549 at 560. That approach had been identified by my Lord, McFarlane LJ in Re G (Care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965, [2014] 1 FLR 670 at [54]:

> *"What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options."*

It was subsequently approved by Sir James Munby P in this court in Re B- S (Children) [2013] EWCA Civ 1146, [2014] 1 FLR 1935 at [36] and at [46] where the approach was described by him in these terms:

> *"We emphasise the words 'global, holistic evaluation'. This point is crucial. The judicial task is to evaluate all the options, undertaking a global, holistic and ... multi-faceted evaluation of the child's welfare which takes into account all the negatives and the positives, all the pros and cons, of each option"*

[30] That approach is no more than a reiteration of good practice. Where there is more than one proposal before the court, a welfare analysis of each proposal will be necessary. That is neither a new approach nor is it an option. A welfare analysis is a requirement in any decision about a child's upbringing. The sophistication of that analysis will depend on the facts of the case. Each realistic option for the welfare of a child should be validly considered on its own internal merits (i.e. an analysis of the welfare factors relating to each option should be undertaken). That prevents one option (often in a relocation case the proposals from the absent or 'left behind' parent) from being sidelined in a linear analysis. Not only is it necessary to consider both parents' proposals on their own merits and by reference to what the child has to say but it is also necessary to consider the options side by side in a comparative evaluation. A proposal that may have some but no particular merit on its own may still be better than the only other alternative which is worse." [Emphasis added]

21. Mrs Dismont relied on the case of *Re F and H (Children)* [2008] 2 FLR 1667. In this case, the Court of Appeal held that the level of detail required to be provided to the Court was greater where the party is moving to a place they have never resided before and is thus not tried and tested whereas it is less when that parent is returning to a familiar environment. The Court of Appeal held as follows:

> "*(1) The bar as to practicalities to be jumped by a relocation applicant was set at a wide variety of heights depending on the facts and circumstances of the case. In this commonplace category of cross-border family creation, in which the primary carer was returning to a completely familiar environment, the bar was obviously set*

considerably lower than in the case of an applicant who, in pursuit of some dream or ambition, was proposing to take the children to an unknown and untried environment. The bar was set particularly low if the primary carer was returning, as in this case, to a completely familiar home life after a brief absence. The judge had been entitled to conclude that the mother was resourceful and put the children first, and would ensure that there was a proper home with proper schooling, and that she would provide the family with finances (see paras [9], [10]). (2) The judge's focus on the mother's evidence that she would be upset if she had to stay in England rather than returning to her home city had been an exercise of her broad discretion; her conclusion as to the impact of a refusal on the mother w as not open to criticism or challenge (see para [12])." [Emphasis added]

THE INDEPENDENT REPORTS

22. The Court Appointed Social Worker (**CASW**) recommends in both SIR1 and SIR2 the following:

    (i) The parties share joint custody.
    (ii) That the Mother be granted leave and have care and control of A.

    (iii) That the Father's name be included in the medical and education records.

    (iv) A have access to the Father one week after school ends until one week prior to school returning.

    (v) A shall return to the Father on alternate Christmas and summer vacations as well as have liberal access to the Mother daily during those times.

    (vi) The Father is encouraged to visit A in Canada once a year.

    (vii) Liberal virtual communication.

    (viii) The parties engage in mediation to discuss A's future needs.

23. It was submitted by Mrs Dismont that the court put no weight on the recommendations made by the CASW in SIR1 and SIR2 for the following reasons:

    (i) It was clear during the evidence that she was partisan and had lost her objectivity in this matter. She has failed to consider matters she ought to have considered and took into account matters that were irrelevant to her deliberations.

    (ii) She conducted her whole evaluation under the assumption that the options were either she relocates or leaves A in the Father's care.

(iii) There was a plethora of missing details particularly in her SIR2 that she accepted she ought to have considered or added.

(iv) In any event, she had no choice but to accept, albeit most reluctantly, that when looking at the two plans Bermuda vs Cananda, that A remaining in Bermuda was in her best interest.

24. It was argued by Ms Tucker that SIR1 and SIR2 were thorough reports that took into consideration A, her sibling (B) and the family as a whole. The CASW's evidence was that she would not change her recommendations and emphasized that A has a "*fairytale*" idea of how she sees herself spending time with both her parents.

25. The Home Study Report was completed on 22 November 2022 (**HSR**) in relation to where the Mother's sister (**Aunt**) and the sister's husband (**Uncle**) resided in Edmonton, Alberta, Canada in 2022. The Report noted that the property where they resided was a two-bedroom property. The Aunt and Uncle resided in one room and the children in the other, but indicated their home was temporary and that they would be obtaining something bigger. The HSR said the following in relation to the Aunt and Uncle's understanding and motivation for offering to support the Mother and A as follows:

> *"...The couple is hopeful that [the Mother] can come to Canada and benefit from the opportunities around education and employment. They express a deep commitment to supporting [the Mother] emotionally, psychologically, financially, and with tangible support such as childcare. [The Aunt] shared how her sister has helped her financially in the past, and they are glad to be in a position to repay her kindness."*

26. Since the HSR was completed, the Aunt and Uncle have since relocated to Lloydminster and to a two-bedroom home.

27. The Mother also provided evidence that her foster brother and his wife who reside in the United States are willing to support her financially in relation to her university tuition.

28. It was submitted by Mrs Dismont that it does not assist the Court as this was carried out when the Aunt and Uncle were residing in Edmonton and since they have subsequently moved it has little to no value.

PARTIES' POSITIONS

29. Each of the suggested questions that the Court should ask itself in determining the Relocation Application, as set out by Mostyn J in *NJ* v *OV* and *Re TC & JC (Children: Relocation)* and referenced in paragraph 18 above, are addressed in turn below.

A. Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?

30. The Mother's evidence was clear in that she confirmed the Relocation Application is only for the temporary purpose of her being able to complete a bachelor's degree. After which, she says, she will return to Bermuda and the care and control of A can return to a week-on/week-off basis. The Mother drew reference to back in 2018 when she discovered she was pregnant with A, yet due to leave the island permanently in five months. The Mother asserted that had she truly wished to abscond with A, she would have left Bermuda without even advising the Father of her pregnancy. Instead, the Mother's evidence is that she remained in Bermuda as she accepted that A should know and have a relationship with her Father.

31. Ms Tucker submitted that the Mother has career aspirations, and she cannot meet those without furthering her education. Ms Tucker highlighted that the Father gave his own evidence regarding doing courses overseas to "better himself". Whilst the Father has continued to assert that the Mother can complete her degree via an online portal, the Mother's evidence is that she finds it extremely difficult to learn in this fashion. Additionally, the Mother says even if she was able to complete online courses, she would still be required to continue her employment given the high cost of living in Bermuda and so would have little to no ability to actually participate in online courses as well as study and still be required to care for her two children.

32. In contrast, the Father asserts that the Mother is motivated by her competitive nature in that she wishes to follow in her sister's footsteps as well as treat her relationship with the Father and the Wife as a competition. Overall, the Father says that the Mother is motivated by her desire to deprive the Father of having a relationship with A. It was submitted that the following examples of the Mother's behaviour support this position:

    (i) The Mother contested the Father's application for week-on/week-off care and control in June 2022 despite asking the court to grant her leave in August 2022 on the basis that he did not play a vital role.

    (ii) Attending A's school during the start of week-on/week-off care and control when A was with the Father despite what he says was to the obvious detriment of A.

    (iii) Informing B and A about details of the Relocation Application to influence their behaviour. B now resents the Father and will influence A who looks up to her and has a close relationship with her sister. This may affect the Father's relationship with A. The CASW confirmed this behaviour on the Mother's part was inappropriate and there was a risk that it negatively impacted his relationship with A.

B. Is the mother's application realistically founded on practical proposals both well

research and investigated?

33. Applying the guidance set out in *Re F and H (Children)* (see paragraph 22 above), Mrs Dismont argued that the level of detail required to be provided by the Mother is much higher as she is seeking to relocate to a jurisdiction that she is unfamiliar with. Mrs Dismont relied on a 'Comparative Analysis' wherein the Mother's and Father's were set out in a table format which set out the following matters: Housing; Education; Employment/Financial Security; Immigration Status; Health; Access/Holidays; Extra-curricular Activities; Travel; Family/Social; Culture; Climate; Transportation. The Father says that the Comparative Analysis shows that the Mother's proposals are neither well researched, nor practical.

34. The Father says that he offers a far more secure and stable plan for A in terms of education, family, accommodation, culture, familiarity which is in A's best interest. Mrs Dismont emphasized the CASW's *viva voce* evidence where she accepted that she was unable to say that the move to Canada was in A's best interest due to the lack of information provided.

35. The Mother accepts that at this time there is not a concrete plan in place; however, Ms Tucker emphasized that most the Mother's proposed plans cannot be solidified due to the requirements for her to be able to obtain a Student Visa. For the Mother to obtain this, she must obtain the consent of the Father (given B's Father has already confirmed his consent) for A to be able to reside in Canada with the Mother on the Mother's Student Visa. Without the Father's consent, she has not been able to apply to any universities, nor has she been able to advise which school she proposes for A (and B) to attend. Ms Tucker submitted that the Aunt and Uncle as well as her foster brother continue to be in a position to support the Mother financially and otherwise.

C. What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?

36. It was submitted by Mrs Dismont that the refusal of the Relocation Application would not be devastating as she can continue her plans to educate herself and obtain a bachelor's degree through online courses whilst remaining in Bermuda. She also has the option to go for a short period and leave A with the Father who will provide her with maximum access and a return to week-on/week-off when she returns. Mrs Dismont says this is a win-win situation. Moreover, it was highlighted by Mrs Dismont that the Father has said he will consider relocation when she is of a reasonable age which he believes to be between the ages of thirteen and sixteen years old.

37. Additionally, Mrs Dismont submitted that there was a great deal of weight placed on B and her feelings. In the case of *Re Y* it was held:

The impact of the decision on the non-subject child, like the impact of the decision on the family unit, was a fact and/or a value judgment of considerable importance. But that was where it rested. The interests of the non-subject child were not a determinative legal question having regard to the best interests of the subject children (see para [39]).

38. In any event, it is the Father's evidence that he believes the relocation to not be in B's best interest either and is of the opinion that she should also remain in Bermuda. The Father says that he cares about B's wellbeing and hopes that she may participate in their family again as she used to once litigation is over.

39. Ms Tucker asserts that the denial of the Relocation Application would be significantly detrimental to the Mother. Ms Tucker says that if the Mother is denied leave to take A, she is left with two bleak scenarios. One being that the Mother relocates alone without her children or the Mother remains in Bermuda hoping that she can make ends meet in Bermuda which is classed as, one of the, if not the most, expensive places in the world to live. In either scenario, Ms Tucker argued that the impact would be disastrous on the Mother with her limited earning capacity with expenses continuing to rise.

D. Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?

40. The Father avers that his opposition to the Relocation Application is solely motivated and influenced by A's wellbeing and best interest. He says his concerns are based on evidence, the history between the parties and the fact that the plan to relocate causes him a genuine concern for A's welfare in Alberta, Canada. Mrs Dismont reiterated that the plans presented by the Mother are not practical or well researched and therefore not in A's best interest.

41. In contrast, Ms Tucker for the Mother asserts that the Father's motives for opposing the Relocation Application are not genuine. She says that in June 2022, the Father's application to vary his access with A was made without any supporting evidence. Ms Tucker submitted that the Father gave no consideration to the Mother, B or any continuity for A with a dramatic shift from 3 days (3 days with 2 overnights) to week-on/week off (7 days with 6 overnights). This abrupt change ultimately had a profound negative impact on A which was displayed by A's bed-wetting and separation anxiety.

42. Ms Tucker highlighted that the Father's evidence, which was relied on for the Prohibition Application, only outlined three occasions of her attending A's school. Thereby creating further separation and restriction between A and the Mother. The Father also confirmed that he never spoke to A regarding his intentions to have the Mother prohibited from attending her school. Ms Tucker argued that the Father was simply motivated to put himself in the position to be seen

as a joint carer. She submitted the Father's actions have been strategic and made to alienate the Mother as he was only considering what was in his interest.

E. What would be the extent of the detriment to him and his future relationship with the child were the application granted?

43. Mrs Dismont submitted that the impact on the Father's relationship with A and his future relationship would be devastating. The reasons for this she says, can be summarized as follows:

(i) The proposed access is extremely insufficient as it is only once a year in the summer and twice every other year (summer and Christmas). The exact number of days for Christmas visits has not been specified.

(ii) The travel distance and cost makes additional trips impractical. The entire journey takes 15 to 20 hours, including travel from Lloydminster to the airport, layovers, and the flight itself. Round-trip airfare per person ranges from $600 to $1,300. If the Mother does not stay in Bermuda, she will need to fly back to Canada to pick up A at the end of the visit, increasing the cost to between $1,800 and $3,900 in years with summer access alone and between $5,400 and $7,800 in years with both summer and Christmas access. These funds would be better allocated toward A's private school tuition, which the Father hopes A will attend, in consultation with the Mother at the appropriate time.

(iii) The Mother's inadequate access proposal suggests an intent to distance A from the Father and his family. Rather than making every effort to facilitate access—such as offering visits for every holiday or being open to him visiting Canada—she has not shown flexibility. This strongly indicates her true motivation.

(iv) Virtual contact at A's young age (6) is both limited and dependent on others. It cannot substitute for the regular, in-person care arrangement that currently exists. A is still in a crucial stage of development, and the Father wishes to continue his active involvement. Losing this bond would cause irreparable harm to A.

(v) The negative influence of B and the mother on A.

(vi) The already strained relationship will make cooperation and involvement in A's life even more difficult.

(vii) In Bermuda, the Father is often excluded from key aspects of A's life and receives little to no notification of important events. This issue will be even more pronounced if A is moved to Alberta, Canada, where the Mother will have greater ability to withhold information.

44. The Mother does not accept that there would be a devasting detriment to the Father's relationship with A. Ms Tucker submitted that there is no evidence to support there would be detriment to

the Father. It was emphasized that by using audio-visual technology, the Father can remain in frequent contact with A. This is in addition to plans being put in place for physical access in accordance with what has been recommended by the CASW. She also highlighted that the Father appears to be fixated on the apparent vendetta he believes the Mother has against him which is impeding his ability to be open to any reasonable recommendations for physical access.

F. To what extent would that detriment be offset by extension of the child's relationships with the maternal family and homeland?

45. The Father's position is that the detriment to A will not be offset by her relationship with her Aunt, Uncle and cousins in a country that is not their home country and circumstances that are not certain, stable or secure.

46. Conversely, the Mother's position is that her children should be allowed to get to know their maternal family. An opportunity which they would not have if the application were denied. The Mother's evidence is that she and the children currently enjoy a relationship with the Aunt via social media and telephone. Ms Tucker submitted that A and B can further develop these maternal relationships whilst the Mother is getting her education.

FINDINGS AND ANALYSIS

47. Overall, it is unmistakable that both parties greatly care for A and that A has many people who love and care for her. It is also evident that the Father and Mother have very different parenting styles and values, of which I make no judgment in favour of one over the other. However, it does appear that this is a rather significant obstacle in the parties' respective perception of each other. Whatever the outcome, I have little reluctance in stating that A will thrive regardless.

48. During the hearing, the Mother presented as being soft spoken and genuine. In contrast, the Father presented has being inordinately confident and rigid in his thinking. He was unfairly critical of the Mother and placed a great deal of emphasis on himself. Accounts given by the Father regarding spending time with A seemed rehearsed and fanciful rather than being genuine and thoughtful. Likewise, the Wife's evidence, much like the Father, appeared overly and unnecessarily theatrical.

A. Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?

49. The Mother accepts that she did not provide the level of detail which would usually be expected in determining removal applications; however, the Mother should not be heavily criticized for this. I am satisfied that due to the immigration policies in Canada, the Mother must have the consent of her children's (A and B) respective fathers to relocate with her in order for the

Mother to be able to make her application for a Student Visa. This has placed the Mother in a challenging position as great criticism was made throughout the hearing of the lack of information provided for the new location she intends to reside with the Aunt and Uncle.

50. The Mother has been placed between a rock and a hard place due to no fault of her own as she was unable to provide exact details of her relocation plans. It is accepted that the Canadian Government require consent to be given by the non-resident parent for a child to reside in Canada whilst the parent applying is on a Student Visa which prohibited the Mother from being able to provide education and housing information to the Court.

51. The Mother's evidence was clear in that she confirmed the Relocation Application is only for the temporary purpose of her being able to complete a bachelor's degree. After which, her evidence is that she will return to Bermuda. I accept that the Mother was truthful when giving this evidence and does not have any intention of leaving Bermuda with A on a permanent basis.

52. The Father asserts that the Mother is motivated by her competitive nature in that she wishes to follow in her sister's footsteps as well as treat her relationship with the Father and the Wife as a competition. I believe the Mother is genuine and sincere in her motivation to relocate for the purpose of advancing her education in order that she no longer has to struggle financially as well as being able to develop relationships with her maternal family.

53. It was further asserted by the Father that the Mother's motivation is to deprive him of having a relationship with A. He says this is based on her refusal back in June 2022 for joint care and control on a weekly schedule. I am unclear what relevance the position the Mother took regarding her lack of agreement to this, especially when the schedule was changed by the Court on 23 June 2022 without hearing any evidence being tested as there was no evidence submitted by either party in relation to this variation sought by the Father. Consequently, I struggle to comprehend that the Court was in a position to make any findings of fact whatsoever, let alone a finding that this was the Mother's intention.

54. The Mother was also heavily criticized for attending A's school for the first week of A commencing school in September 2022 which resulted in the Father making the Prohibition Application. Mrs Dismont argued that the Court made findings against the Mother in this application (the details of which are set out in paragraphs 15 and 16 above), and therefore this Court cannot go behind them. Whilst not, "*going behind*" the apparent findings, I will say that it is astonishing that the Court would think it appropriate to (1) list the matter on an *Ex Parte* basis at all; (2) deny an adjournment request by Counsel for the Mother who were seeking an adjournment from the Friday to the following week on the Monday; (3) proceed where the Mother was effectively acting in person; (4) make such significant findings without providing the Mother with any opportunity to respond to the Father's evidence. These actions directly conflict with the law of natural justice and accordingly, I fail to see what weight, if any, I can

place on these alleged findings.

55. It was also asserted by the Father that the Mother has attempted to influence A and B by informing B about her desire to relocate to Canada. Whilst I agree, as did the CASW, that it was probably not the best decision for the Mother to inform B prior to getting the Father's consent, I do not accept there was any ulterior motivation by the Mother to indirectly force any influence on A. The fact is that A now knows and nothing can change this. Although there may have been a minimal risk of this negatively impacting the Father's relationship with A, in my view, it is negligible.

B. Is the mother's application realistically founded on practical proposals both well research and investigated?

56. Notably, the case of *Re F and H (Children)* relied on by the Father ultimately addresses an application where the relocation of the children was being sought on a permanent basis. A distinction which cannot be ignored. That being said, I certainly accept the guidance provided in *Re F and H (Children)* would still be applicable as helpful guidance.

57. As stated in paragraphs 49 and 50 above, this fault in the Relocation Application cannot lie at the feet of the Mother. Putting the issue of detail aside, I have no doubt that the Mother will provide for A in such a way that is in her best interests. For example, I do not believe that she would place A (and B for that matter) in a school that would provide A with a substandard quality of education.

58. There was also criticism by the Father of the Aunt and Uncle's means. Mrs Dismont questioned the accuracy of their monthly expenses with the CASW as well as highlighted their level of savings. Firstly, I am not able to make findings where criticism has been made without the benefit of a response from the Aunt and Uncle. Secondly, the fact is the Canadian Government has certain financial requirements in place that any person wishing to obtain a Student Visa are required to meet. If those are met, I do not see what criticism, if any, can be made.

59. I have also borne in mind that the Mother's Foster Brother also agreed to assist her financially whilst she is obtaining her education. His and his wife's bank statements were also submitted.

60. As it relates to Mrs Dismont's overall submission of the 'approved holistic evaluative analysis to relocation cases', I do not accept that the 'holistic' approach has been applied by Mrs Dismont in the proper manner, i.e. in the form of the Comparative Analysis. Most notably, McFarlane LJ in *Re F (A Child) International Relocation Case)* addressed the meaning of his use of the term '*holistic*' in his judgment in *Re G (Care Proceedings: Welfare Evaluation)*. It was emphasized by McFarlane LJ at paragraphs 46 through 50 that his use of the terminology '*a global holistic evaluation*' was not meant to create a new legal test to be applied in

relocation cases:

> *"**[46]** The word 'holistic' now appears regularly in judgments handed down at all levels of the Family Court. This burgeoning usage may arise from my own deployment of the word in a judgment in Re G (Care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965, [2014] 1 FLR 670 where, at para [50], I described the judicial task in evaluating the welfare determination at the conclusion of public law children proceedings as requiring:*
>
> > *'a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare.'*
>
> ***[47]** Having heard argument in this and other cases, I apprehend that there is a danger that this adjective, and its purpose within my judgment in Re G, may become elevated into a free-standing term of art in a way which is entirely at odds with my original meaning.*
>
> ***[48]** In the judgment in Re G my purpose in using the word 'holistic' was simply to adopt a single word designed to encapsulate what seasoned family lawyers would call 'the old-fashioned welfare balancing exercise', in which each and every relevant factor relating to a child's welfare is weighed, one against the other, to determine which or a range of options best meets the requirement to afford paramount consideration to the welfare of the child. The overall balancing exercise is 'holistic' in that it requires the court to look at the factors relating to a child's welfare as a whole; as opposed to a 'linear' approach which only considers individual components in isolation.*
>
> ***[49]** Reference to 'a global, holistic evaluation' in Re G was absolutely not intended to introduce a new approach into the law. On the contrary, such as evaluation was put forward as the accepted conventional approach to conducting a welfare analysis, as opposed to a new and unacceptable approach of 'linear' evaluation which was seen to have been gaining ground.*
>
> ***[50]** In the context that I have described, it is clear that a 'global, holistic evaluation' is no more than shorthand for the overall, comprehensive analysis of a child's welfare seen as a whole, having regard in particular to the circumstances set out in the relevant welfare checklist (CA 1989, s 1(3)...*" [Emphasis added]

61. Therefore, it is evident that the terms 'comparative analysis' and the 'global holistic evaluation' relate to those factors set out in the UK's Welfare Checklist rather than the factors Mrs Dismont addressed in the Comparative Analysis. UK's Welfare Checklist factors can be summarized as follows:

    (i) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

    (ii) his physical, emotional and educational needs;

(iii) the likely effect on him of any change in his circumstances;

(iv) his age, sex, background and any characteristics of his which the court considers relevant;

(v) any harm which he has suffered or is at risk of suffering; and

(vi) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.

62. Furthermore, many of the factors compared in Mrs Dismont's Comparative Analysis are entirely subjective. For example, I cannot see how I can accept that the 'Climate' of one jurisdiction is more favourable than another based on temperatures such that I can conclude that it would be in A's best interests to be in the warmer climate. Similarly, I question the relevance and weight expected to be applied to the other categories such as, 'Transportation', 'Culture', 'Travel', 'Extra-Curricular Activities' and 'Health[3]'. Whilst the headings may seem to speak for themselves, the detail included in the relevant sections is unhelpful.

63. Generally, the Comparative Analysis neither provides the Court with an indication as to how each of the issues should be weighted, nor how each of these components are applicable to the individual factors of the UK Welfare Checklist.

C. What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?

64. The impact of a refusal to relocate would be extremely detrimental to the Mother. In this case we have a Mother who is struggling financially and very limited ability to advance her education in Bermuda. The Mother also has no family in Bermuda save for her two children. The Father placed substantial importance on the ability for the Mother to obtain some of her education via an online platform and completely dismissed the Mother's evidence that she has great difficulty in learning in such an environment. Moreover, the Mother emphasized that if she were to remain in Bermuda and take online courses, when would she have the ability to actually take the courses? As a single mother, she would still be required to work full time as well as care for A and B. I can imagine that it would be immense struggle to advance her education in this way. The Father's response to this is that her family in Canada can assist with supporting her financially if she remains in Bermuda as they are willing to support her should she relocate to Canada for her schooling. This would mean she would not have to work whilst she does her online courses.

[3] Mrs Dismont argued that "Canada's healthcare system is known to have its flaws as it is a universal healthcare system therefore long delays in getting doctor's appointments".

65. Continuing to see the Mother struggle in Bermuda would be detrimental to A, particularly when in comparison, she experiences the opposite when with her Father. The Father has a clear economic advantage over the Mother which can easily be evidenced in the differences between their respective homes in Bermuda. The Mother gave evidence that the last shooting in Bermuda was in front of her home with other instances of gun violence occurring on both sides of the street surrounding her home. She described the neighbourhood as not seeing it "*as the safest place*". This particularly stood out to me as did the manner in which the Father gave his *viva voce* evidence describing his accommodations for A with an air of supremacy.

66. The Father's opinion of what is in B's best interest is irrelevant. The Father is not B's father and B's father has already confirmed his consent for the Mother to relocate with B. In my view, the Father believing that he is in a position to make such an assertion only emphasizes his belief that he is a superior parent to that of the Mother. The confirmation that B will relocate with the Mother and A is significant as she will be able to continue her close relationship with B as well as share the experience of the move together.

D. Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?

67. Whilst I have no doubt of the Father's love and care for A, I do not believe his only intention in opposing the Mother's application stems from this. It was clear to me during the course of hearing the parties' *viva voce* evidence that the Father and the Wife see themselves as being far superior to the Mother in many ways and most significantly as a parent. The Father, in my view, was unfairly critical of the Mother throughout his evidence regarding the Mother's parenting style and the relationship she has with A. A great deal of the Father's evidence focused on the impact that A's relocation would have on him, the Wife and the stepchildren.

68. The Father surprisingly in his evidence criticized the Mother for not acknowledging him in these proceedings for everything that he has done to "*become a better person*". He also unnecessarily stated on several occasions in his *viva voce* evidence that it was the Mother who initiated their intimate relationship and derogatorily referred to it as a "*booty call, hit and fling thing*". Whilst the Father can be commended for his [accolades] the expectation put on the Mother for such recognition is entirely misplaced.

69. Indeed, the Father gave evidence about his travels overseas to complete various training courses, but is effectively suggesting that the Mother should be barred from obtaining similar opportunities or effectively should be punished by not being able to do so by relocating temporarily with A. The success of both the Mother and the Father both have a direct impact on A's wellbeing.

70. Likewise, the *Ex-Parte* Application made in relation to barring the Mother from attending A's school during weeks which he has A in his care, in my view, was baseless and done to overwhelm the Mother as well as to belittle her care and concern for A. Whilst the clock cannot be set back, the manner in which the June 2022 and October 2022 applications were determined by the Court was highly irregular and unprecedented. Regretfully, the Mother was denied her right to be heard in both these applications and decisions made without any evidence whatsoever and/or without evidence being tested. Additionally, on those occasions, the Court should have at the very least turned to the Court Appointed Social Worker and/or appoint a Litigation Guardian for A in circumstances where there was a request to monumentally vary A's day to day when she was just 4 years of age.

71. Moreover, I believe the Father has established a pattern of going to Court whenever it appears to him that he may not be in control. This happened in 2018 when these proceedings commenced, when the Mother filed her application to relocate in 2022 and she was met with the two applications to significantly reduce the Mother's care of A. All of which I believe has been done in an attempt to over power and take advantage of the Mother's weaker financial position.

E. What would be the extent of the detriment to him and his future relationship with the child were the application granted?

72. Will there be detriment to the Father's relationship with A? Yes. The question then becomes to what extent the current relationship is impacted as well as the future of that relationship. I do not accept that the impact on the Father's relationship with A would be "*devasting*". Each of the concerns that the Father raised can sufficiently be remedied in such a way as to minimize the extent to which there could be a detrimental impact on his relationship with A.

73. For example, increasing the CASW's recommended physical access to A whilst she resides in Canada. On this point, the Father has suggested that the Mother is attempting to limit and deprive him of access to A. I do not accept this. Ms Tucker's submissions gave the Court comfort that the Mother was more than willing to agree access outside of the summer and Christmas access that was recommended. I agree that once yearly physical access with A is inadequate. Whilst daily or weekly physical contact would be the ideal scenario, the advancement of technology with audio and visual contact readily available has greatly assisted families who are in such a position.

74. Likewise, extensive transportation systems are readily available so that physical access can occur. I do not accept the Father's complaint about travel costs to exercise his access would be burdensome and difficult to meet. Indeed, the Father has suggested that he can cover the cost of private school for A if she were to remain in Bermuda and has also spent close to $150,000 on legal fees for these proceedings. I will address the issue of legal fees further at

the conclusion of this Ruling as it relates to my determination of costs.

75. The Father's evidence under cross-examination was that he would be opposing the Relocation Application even if the Mother's plans were "*perfect*". He is now asking this court to make an order for costs against the Mother to the tune of $140,000. Yet in the next breath, criticism is given to the potential expense of A travelling to and from Bermuda for access purposes at the cost of approximately $7,800 per annum. Undoubtedly, the expense the Father has incurred opposing these proceedings could have been applied in far more beneficial ways for A. I do not believe that the cost of travel for A, if she were to relocate, would be a burdensome expense for the Father.

76. I do not accept that B and the Mother have had or will have a negative impact on A such as to alienate her from the Father. Furthermore, albeit, the relationship between the Father and Mother is fractured, I believe this fracture has been highly influenced by the Father's negative view of the Mother and can easily be shifted. Both parties will need to communicate amicably and effectively if the true intent is to have A's best interests as their paramount concern.

77. As it relates to the allegation that the Mother has not kept the Father involved regarding important events in A's life, I do not believe this is true. It was and is apparent that communication between the parties is strained; however, based on the affidavit evidence as well as the *viva voce* evidence of the parties, my view is that this strain exasperated by the Father's unpleasant view of the Mother and her intentions.

F. To what extent would that detriment be offset by extension of the child's relationships with the maternal family and homeland?

78. The Father suggests that the detriment of relocation to A will not be offset by her relationship with the Aunt, Uncle and cousins in a country that is not their home country. Conversely, the Mother is not a native of Bermuda and has none of her family in Bermuda. Yes, the Father is Bermudian and has his mother and the Wife in Bermuda, but what is being suggested is that simply because A has not had the benefit of a relationship with the Aunt, Uncle and cousins previously, that her paternal family being in Bermuda is a trump card.

79. It cannot be right that the extension of A's relationships with her maternal family would not offset the detriment to the Father (and ultimately A). The Mother has remained in Bermuda without the support of her own family or the opportunity to have them foster relationships with A. A should not be prohibited from extending her relationships with her Mother's family. Being able to develop relationships with her maternal family would no doubt benefit A and the notion that A should only benefit from forming and developing relationships with her maternal family members via telecommunications or them having to travel to Bermuda is unreasonable when, on the other hand the Father's family is readily accessible to A.

CONCLUSION

80. As already stated, the cases relied on by Counsel are all in respect of permanent relocation applications and therefore can be distinguished; however, I accept that the guidelines provided by the UK cases are of great assistance. I raise this distinction as holistically the weighing of the risk and best interests of A will be vastly different between a temporary relocation compared to that of a permanent one, albeit the most paramount importance is that of the child in all instances.

81. Having made the findings set out in paragraphs 47 to 79 above which, *inter alia*, considered the questions posed in *NJ* v *OV* and *Re TC & JC (Children: Relocation)* as well as considering all of the factors set out in the UK Welfare Checklist, I believe it would be in the best interests of A to temporarily relocate with the Mother to Canada whilst the Mother completes her further education. Indeed, I have struggled to comprehend why the Father does not see or acknowledge the endless opportunities that would be given to A during her time living abroad.

82. Accordingly, I grant the Mother conditional leave to temporarily remove A from the jurisdiction to Alberta, Canada for the duration of the Mother obtaining her degree, commencing in the academic year 2025/2026 (or commencement in January/February 2026 should commencements in August/September 2025 not be available) and shall be for no more than three (3) academic years.

83. This conditional leave is subject to the Mother making her application for her Student Visa and upon approval, the Mother shall produce confirmation to the Father and to the Court. Thereafter, the Mother shall produce confirmation of the following:

    (i) Proof of enrolment in university/college and all pertinent details such as length of course, location to accommodation, etc.

    (ii) Details of her and A's intended accommodation.

    (iii) Details of the school in which she intends to enrol A.

    (iv) School calendar showing all school breaks.

84. The purpose of the Conditional Leave is in order for the Mother to have the ability to apply for a Student Visa which she cannot do unless she obtains permission for A to accompany her.

85. It should be noted that once the Mother submits this information to the Court, the Father will

have an opportunity to respond to the information provided; however, the Father should bear in mind the findings that have already been made in relation to his objections which were not accepted. There will not be a rehearing, but rather a review and consideration of the plans that are being proposed for A are in her best interests and as such satisfactory to the Court.

86. During A's temporary relocation with the Mother, the Father shall have the following access:

(i) Each summer for a period of six (6) weeks with the dates to be agreed by the parties. In the event that the Mother obtains the necessary Student Visa and is given final leave by the Court for her commencement in August/September 2025 for the 2025/2026 Academic Year (or commencement in January/February 2026 should commencements in August/September 2025 not be available), this summer access shall commence in 2026. For the summer of 2025, the Father shall have access with A for a period of four (4) straight weeks leading up to one (1) week prior to A leaving Bermuda.

(ii) With effect from the summer of 2026, the Father shall be responsible for the costs related to A's travel to and from Bermuda for the purpose of summer access.

(iii) The dates for the Father's summer access to A shall be agreed between the parties no later than 31 December 2025, failing which there shall be liberty to apply.

(iv) Subject to confirmation of A's school's calendar, the Father may exercise access with A in Alberta for the duration of the half-term period in or around October 2025.

(v) The Father shall have alternating Christmas Holidays with A, commencing in 2026. For the avoidance of doubt, A shall remain with the Mother for the 2025 Christmas Holidays.

(vi) Subject to confirmation of A's school's calendar, the Father may exercise access with A in Alberta for the duration of the half-term period in or around February 2026.

(vii) Provided that A has a two week break from school over the Easter holidays, the Father shall have access with A in Bermuda on an alternating basis. For 2026, the Father shall have access. The Father shall be responsible for the costs related to A's travel to and from Bermuda for the purpose of Easter access.

(viii) I believe it to be unrealistic to provide the Father with daily audio-visual access to A. As such, the Father shall have audio-visual access with A for a minimum of

three (3) times each week up to one (1) hour. Should the days and times not be agreed the parties, there shall be liberty to apply, although such an application would be discouraged in order for the Mother and Father to start effectively co-parenting A.

87. The parties shall have leave to apply in relation to the timing and implementation of this ruling should it be necessary.

COSTS

88. Mrs Dismont argued that as the Mother only made it known at the end of the hearing that she would like to obtain conditional leave in the first instance and then for the matter to be reconsidered by the Court at a later date an order for indemnity costs should be made against her. As such, it was argued that the way in which the Mother has conducted this litigation there should be an order deviating from the normal order of no costs in family litigation, to the Mother being penalized. Mrs Dismont advised the Court that the Father had spent approximately $10,000 for the *Ex Parte* Application, such costs already being awarded to him in that application, and that he has accumulated approximately an additional $130,000 in legal fees globally for these proceedings.

89. In the Father's evidence in cross-examination, he was unequivocal in his position that he would not agree to any circumstances that the Mother proposed for A's temporary relocation even if those conditions were "*perfect*" due to A's age. The Father's evidence was that this is *"...due to [A] being in her formative years*" (which he said he considered to be between the ages from birth until "*around*" fifteen or sixteen years old).

90. Therefore, no matter what proposal the Mother put forward for determination, he would refuse to provide his consent. Notably, neither was there an indication in any of the three affidavits he filed of this position, nor was there a reference to A's age being a [key] factor at all in opposing the application.

91. The Father's evidence under cross-examination was that he would be opposing the Relocation Application even if the Mother's plans were "*perfect*". He is now asking this court to make an order for costs against the Mother to the tune of $140,000. Yet in the next breath, criticism is given to the potential expense of A travelling to and from Bermuda for access periods at the cost of approximately per annum $7,800 stating that these funds would be better applied to A's private education.

92. I do not accept that the Mother has litigated this matter in a way which would amount to anything close to warrant her being penalized in costs. Moreover, given that the Mother had

advised the Father as far back as June 2022[4] regarding her position that she would not relocate in the event this application was denied, the Father had an opportunity at that time to make this position known. In those circumstances, the Mother would have been able to consider whether she wished to proceed with the application. Consequently, I will grant the Mother her costs in this application to be taxed if not agreed, with the costs order made against her for the *Ex Parte* Application to be set off against the costs of this application which I summarily assess at $6,000.

DATED this **19th** day of **May 2025**

ALEXANDRA WHEATLEY
ACTING JUSTICE OF THE SUPREME COURT

[4] Mrs Dismont made submissions in the hearing of 23 June 2022 that she has now been advised by Mr Swan that the Mother confirmed that she would not pursue her education overseas in the event that the Relocation Application was denied.