

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**
3 **FAMILY DIVISION**



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6 **CAUSE NO. FAM. 53 OF 2014**

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8 **BETWEEN:**

9 **ANDREW NICOL MILLER**

10 **PETITIONER/RESPONDENT**

11 **AND:**

12 **AMANDA LEANNE MILLER**

13 **RESPONDENT/APPLICANT**

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15 **BEFORE: Hon. Justice Hall (Actg.)**

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17 **Appearances:**

18 Petitioner represented by David McGrath instructed by McGrath/Tonner

19 Respondent represented by David Holland instructed by KSG Attorneys-at-
20 Law.

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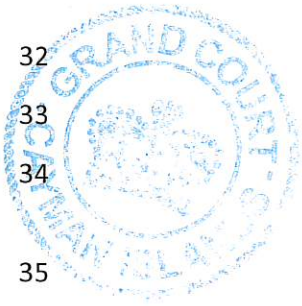
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JUDGMENT

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1. The divorce between the parties hereto was finalized on 9th February 2016. However for ease of reference throughout, and with no lack of respect to the parties, the former husband will be denoted as "H" and the former wife will be denoted as "W".

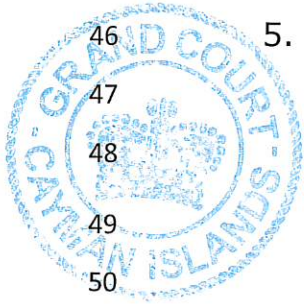
2. On September 21, 2015, following a trial, a Decision was issued as to ancillary matters. It was formalized on 5th January 2016 as follows:



"1. A Residence Order is granted to the Respondent/Wife with respect to" (R, J and I) ("the children of the marriage");

3. The Petitioner/Husband shall have liberal contact with the children of the marriage at such times as agreed between the Petitioner/Husband and the Respondent/Wife. Failing agreement either party shall be at liberty to return the matter to the Grand Court for determination;

4. The Petitioner/Husband shall pay child maintenance of CI \$1,500.00 per month per child until the child ceases full-time education or reaches the age of 21 years whichever is the later;



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5. The Petitioner/Husband shall pay the school fees and agreed extra-curricular activities of each child until the child ceases full-time education or reaches the age of 21 years whichever is the later;

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6. The Petitioner/Husband shall pay the health insurance and additional medical/dental/article expenses for each child until the child ceases full-time education or reaches the age of 21 years whichever is the later;

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7. The Petitioner/Husband shall contribute an additional sum of CI \$3,500.00 per month towards the housing needs of the children of the marriage. Such payments to continue until the last child ceases to reside with the Respondent/Wife, ceases full-time education or attains the age of 21 years whichever is the earlier;

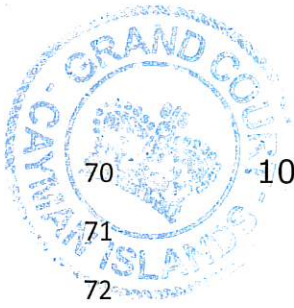
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8. The Petitioner/Husband shall pay spousal support to the Respondent/Wife in the sum of CI \$3,000.00 per month for a period of three (3) years commencing 1st October 2015;

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9. The previous 50/50 division of the proceeds of sale of the real estate owned by the parties to the marriage is noted and approved;

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10. The Respondent/Wife shall retain ownership of the Mazda motor vehicle and the Petitioner/Husband shall retain ownership of the Porsche and Toyota motor vehicles outright.”

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11. The eldest child of the marriage, R, is now 19 years of age. She attends University in Australia, the birthplace of W. R and her mother W currently reside in Australia with W’s parents. The two younger children are residing in the Cayman Islands with H and his wife Paola.

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12. W originally filed an application to relocate to Australia with the two younger children of the marriage, J and I. The application in respect of J was withdrawn at the start of these proceedings because he turned 16 years of age on 12th November 2019 and, therefore, the Court did not have jurisdiction to make the order which had been sought. Given J’s age and his expressed desire to remain in the Cayman Islands and do his GCSE examinations in June 2020 the current application before the Court only relates to the youngest child, I, who is seven years of age.

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13. W’s Summons filed on the 15th day of June 2018 also seeks the following Orders:

1. That H shall have such contact with the child as the Court deems appropriate, both in the Cayman Islands and Australia;
2. That the duration of W’s spousal maintenance be extended for a further period of three years.



97 14. These applications are opposed by H.

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99 15. W's Summons had previously included the request for a legal costs
100 allowance, however that application was dealt with in September
101 2018 and was unsuccessful.

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103 16. Also before the Court was H's application dated August 15, 2018.
104 That Summons sought a variation of the Order for final ancillaries
105 in the following terms:

- 106 1. That there be a Sole Residence Order in respect of H with
107 respect to the two youngest children of the marriage;
- 108 2. That W be granted generous contact with the two youngest
109 children of the marriage;
- 110 3. That the Order for child maintenance be varied;
- 111 4. That the Order for the housing needs of the children be
112 varied;
- 113 5. That the applications for Cayman Islands passport for the
114 two youngest children be signed by W or alternatively, the
115 Court.

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117 17. It must be stated from the outset that a great deal of evidence was
118 adduced in this case on behalf of both parties. This included live
119 testimony from W, H and the two Social Workers: Ms Amelia
120 McDermott (Australia) and Ms. Kernita Bailey (the Cayman
121 Islands). There was affidavit evidence from H's wife and W's father
122 and also a Report speaking to R's issues from Dr. Marc Lockhart.



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Counsel also made very detailed submissions. While this material was considered it was not possible to reproduce all of it here.

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126 **Background**

127 18. The following matters are not disputed and are relevant to the
128 applications before the Court.

129 1. W obtained a work permit and started to work at a
130 Montessori school in the Cayman Islands in September
131 2017.

132 2. It was the desire of R to pursue university studies in
133 Australia.

134 3. There was no dispute that R had had struggles with anxiety
135 and mental health issues for some time.

136 4. W and R moved to Australia at the end of July 2018, W
137 having left her job to do so. R started University in 2019.

138 5. The youngest children, J and I remained in the Cayman
139 Islands living with H and his wife Paola.

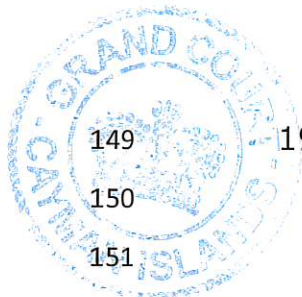
140 6. Throughout the marriage to H and prior to moving to
141 Australia, W had been the primary caregiver for the three
142 children of the marriage.

143 7. The youngest child, I reacted very badly when told of the
144 imminent departure of W and R, to Australia without her.

145 8. For the first two years of I's life, H had no overnight contact
146 with her at all.

147 9. R and H have a strained relationship.

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149 19. H, a prominent attorney-at-law, had been on "gardening leave"
150 from his old law firm for six months when J and I came to reside
151 with him.

152 10. Obtained employment with another law firm.

153 11. W's application for relocation was originally scheduled to
154 be heard in early November 2019 but in August 2019, H
155 successfully obtained an Order to vacate those dates on
156 the basis of his extensive work commitments.

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158 **Welfare Reports**

159 20. Two Welfare Reports each were prepared by Social Worker Ms.
160 Kernita-Rose Bailey of the Department of Children and Family
161 Services (DCFS) in the Cayman Islands and Social Worker Ms.
162 Amelia McDermott of International Social Service (ISS) in
163 Australia.

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165 21. In Ms. Bailey's Report dated September 28, 2018 she reported that
166 it was J's desire to reside in the Cayman Islands with H while I who
167 was 5 years of age desired to go to W in Australia. Ms. Bailey
168 recommended that Orders be made to that effect.

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170 22. Ms. Bailey also stated that DCFS requested a report from
171 International Social Service in Australia. That report was requested
172 to address:

- 173 1. Details about the home and neighbourhood in which W
174 intended to reside;

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2. Information about the schools that the children would attend, if the Court were to approve their relocation, including school population, average class size and curriculum;
3. Available social support systems, including family support and wider social support;
4. Training and employment opportunities for W.

23. In Ms. Bailey's Second Report dated September 18, 2019 she flagged certain issues.

24. She referred to listening to a taped recording between I and W provided to her by H. It involved a discussion between W and I about I going to live in Australia. Ms. Bailey considered the recording to be a matter for concern because she believed that I was being pushed to make a choice between her parents. H was present during the conversation and W was present via the internet. Ms. Bailey submitted that such conversations can have a significant negative emotional effect on a child.

25. Ms. Bailey made reference to two referrals which were made to the Multi-Agency Safeguarding Team (MASH) in respect of J. In one, J had allegedly been hit some years previously. Nothing came of this. In the second, J had apparently videotaped an inappropriate video of one of his young friends. H dealt with J. This is still being investigated but the particular relevance of this matter is that W



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was later to complain that H did not inform her about the second incident and H admitted that he had not done so.

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26. Ms. Bailey reported that J informed her that he wanted to remain in the Cayman Islands and do his GCSE exams there in May/June 2020. He stated that after completing his exams he wished to travel to Australia. He stated that if he enjoyed Australia he would be interested in staying there; otherwise he would return to the Cayman Islands and pursue his Advance Level exams. Ms. Bailey flagged the fact that J would attain the age of 16 years in November 2019. Under the Children Law (2012 Revision) the Court could not make an Order affecting Residence/Contact in relation to J.

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27. Ms. Bailey reported that I, who was now 7 years of age had told her that she wanted to remain in the Cayman Islands with H. Ms. Bailey recommended that an Order be made to that effect.

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28. Having been requested to do so by the DCFS in the Cayman Islands a Home Study Report was prepared by Ms. Amelia McDermott and Ms. Aga Duc of International Social Service (ISS) in Australia and it was filed on October 1, 2018. The Social Workers flagged the fact that they had not met H prior to the preparation of the Report. The recommendation of that Report was that I be granted relocation to Australia to live with W and R. While the Report recommended that J be relocated to Australia, it was felt that given his age and maturity, weight was to be given to his own views.

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229 29. Ms. McDermott also provided an updated Home Study Report
230 dated September 18, 2019, as requested by DCFS. The new Report
231 stated that the mandate for the second assessment was to find out
232 if anything had changed for W and her plans for the relocation of I
233 and J and what impact the intervening year between the two
234 assessments had had on those plans.

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236 30. Once again Ms. McDermott flagged the fact that she had not
237 communicated with H. She reported that W's plans for housing,
238 schooling, daily living etc remained unchanged and that there
239 existed no concerns relating to the logistics of the move to
240 Australia. Once again the age and maturity of J was referenced
241 with a recommendation that his opinion be given weight in
242 determining where he should reside. Ms. McDermott speculated on
243 the possible effect on I were she to be separated from J now or in
244 the future. She also stated that she had no concerns about W's
245 ability to be a full time parent for both I and J. She indicated
246 however that due to the restrictions of the assessment process she
247 could not recommend a final outcome for the case but expressed
248 confidence that if relocation took place it would be it would be into
249 a welcoming and loving environment.

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251 31. During cross-examination Ms. McDermott was challenged by
252 Counsel for H for her failure to speak to H, I or J. She explained
253 that her remit from DCFS just required her to do a report in relation
254 to W. She testified that she requested an opportunity to speak to

255 the persons in the Cayman Islands but this request was refused by
256 DCFS.

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258 **Additional Matters**



259 32. It was W's expressed belief that it was in R's best interests that
260 her mother remain close to her to provide ongoing emotional and
261 parental support. While this belief was not disputed, H challenged
262 it as being the sole reason for W going to Australia. Reference was
263 made to earlier expressions by W about moving to Australia.

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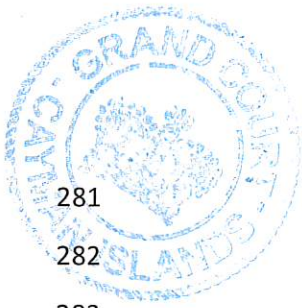
265 33. The timing of the move was also challenged as being particularly
266 early given the date that the University school year began. It was
267 submitted on behalf of W that the expiration of W's lease at the
268 end of July 2018 coincided with the period in which R had to leave
269 in order to settle in Australia. It was W's testimony that the
270 decision to leave her two youngest children behind was an
271 agonizing one for her to make.

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273 34. H has not paid any of the Court Ordered housing allowance to W
274 since she left the Cayman Islands. He pays her \$1,500.00 per
275 month as maintenance for R and \$350.00 per month each as
276 maintenance for I and J.

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278 35. While not denying that W had been the primary caregiver for the
279 three children of the marriage, H contended that there had been
280 occasions in the past when he had been the sole carer for the



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children due to W's absences or dereliction. He suggested that he had reluctantly agreed to the Sole Residence Order being granted to W at the end of the marriage because he himself had no settled residence.

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36. According to H, the coincidence of I and J coming to reside with him while he was on required "gardening leave" resulted in him having an epiphany. He re-prioritised his relationship with his children and vowed to work for less hours and reduce his work related travel.

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37. As expressed throughout his evidence and as indicated to Ms. Kernita-Rose Bailey, H holds W responsible for his estrangement from R. He has expressed fears that if they lived in Australia with her, she would similarly influence J and I. Reference was made to his request that W satisfy certain conditions prior to him sending the younger children to visit her in Australia for holidays. This included the signing of a declaration that she would return the children at the end of the visit and a declaration that the Cayman Islands had sole jurisdiction over the issue of custody. He referenced her refusal to do these things as evincing an intention of preventing them from returning. While testifying H demonstrated strong resentment towards W.

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38. Currently, I and J communicate with W via Skype/phone/etcetera. There is some dispute about the frequency. W accused H of monitoring these "visits" and not allowing the children to speak



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Counsel's Submissions on behalf of W

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39. Counsel for W submitted that the domestic background to the case was of vital importance. He put forward the following as facts which were confirmed by oral evidence:

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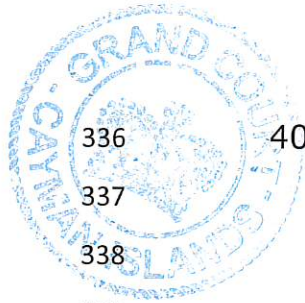
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freely with her at all times. She referred to the tape recorded conversation of herself and I as evidence of this. This incident, she said was taken out of context and that if she truly attempted to influence I, H would have been able to provide more than one tape recording as evidence of this. H denied the accusation stating that J as a teenager communicated with his mother when he was alone in his room. He also stated that he could not help overhearing I's conversations because of the openness of the area in his condo where she usually conducted her conversations.

1. H is a father who (by choice) for the first two years of I's life had no overnight contact with her at all;
2. For the next almost four years of I's young life, she resided primarily with her mother, her big sister (R) and her brother (J);
3. During those almost four years, H only had contact with I for a few hours on a Wednesday evening and overnight on Saturdays and at no point prior to these proceedings did H seek to vary those contact arrangements, save to extend his return time on Sundays to 4:00 p.m. (and initially that did not even apply to I);
4. H has always travelled significantly for business purposes and continues to do so.



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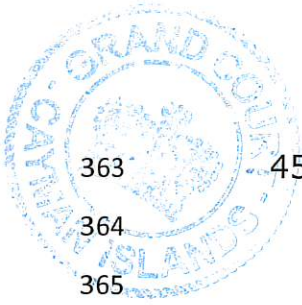
40. Counsel submitted that the delay in getting this matter to trial strengthened H's position. Essentially, the longer that I remained in the physical custody of H and his wife, the greater the bond between H and I became. He asserted that if the matter had proceeded in October 2018, both social worker reports had been firmly in favour of I relocating to Melbourne, Australia with W.

41. Counsel referred to the stance taken by Ms. McDermott when her recommendation was challenged during cross-examination. He submitted that she strongly stood by her original Report recommendation pointing to the fact that I's primary caregiver for the first six (6) years of her life had been her mother.

42. She pointed to the strength of I's attachment to her mother as a primary caregiving figure and suggested that there was ample empirical evidence in support of the recommendation she made. Counsel also referred to Ms. Bailey's initial conclusion about the relocation of I.

43. Counsel argued that the Court should consider whether things had changed so significantly that relocation was no longer in I's best interests.

44. Counsel submitted that all the evidence in the case suggested that I still had a significant and important attachment to her mother and big sister. Further, there was some uncertainty about where J would be in the future which had not been there in October 2018.



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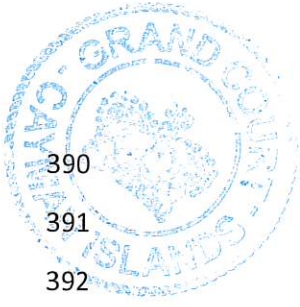
- 45. Counsel asserted that H was still a busy lawyer with significant business development and business travel commitments. Counsel also submitted that H’s reluctance to readily facilitate direct contact to W over the past year posed a risk to I’s attachment to her mother and to her emotional welfare generally.

- 46. Counsel pointed out that both Social Workers asserted that I still had a very significant primary attachment to her mother by virtue of her being her main caregiver for the first 6 years of her life. The change in circumstances is that H has now strengthened his attachment with I.

- 47. Counsel submitted that it should provide reassurance to H and the Court that I’s bond with her father is now secure even if she were to relocate. This would limit the risk of any future loss of relationship between the two. In so submitting, Counsel acknowledged that despite his work commitments, H has managed to strengthen his bond with I.

- 48. Counsel submitted however, that the attachment to a primary care giving stay at home mother over a six year period is somewhat different to the attachment with a father who spent a couple of hours with a child on week days in between business trips and business development commitments.

- 49. Counsel for W emphasized that Ms. Bailey gave evidence that her latest recommendation was made “with caution”. The Court was



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urged to approach her recommendation cautiously. Counsel argued that Ms. Bailey's second Report is the only expert evidence before the Court that is not supportive of I relocating to Australia with her mother.

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50. Counsel noted that Counsel for H placed a great deal of weight on this second Report. Counsel for W criticized the evidence of H in relation to the Report. He argued that conveniently, when it suited his argument H promoted Ms. Bailey's recommendation to the Court. Otherwise, he criticized Ms. Bailey's evidence. In relation to Ms. Bailey's opinion that she felt that W would promote the relationship between I and her father, H described her as being "a little bit naïve".

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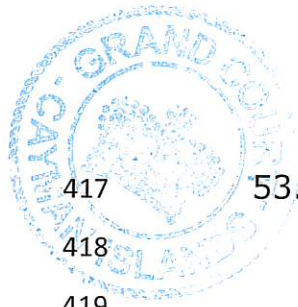
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51. In comparing the Reports and testimony of the Social Workers, Counsel for W submitted that it was hypocritical of H to argue that the Reports and testimony of Ms. McDermott were effectively useless to the Court as she did not speak with H. He pointed out that the Report that H sought to rely on, was prepared by Ms. Bailey on the same basis.

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52. Ms. Bailey did not speak with W at all when preparing her second Report. It was noted that Ms. Bailey had spoken with W for her first Report and she had not been operating under the same imposed restrictions as ISS Australia. It was argued that Ms. Bailey could have reached out to W at any point and that she should have done so "in her function as the eyes and ears of the Court".

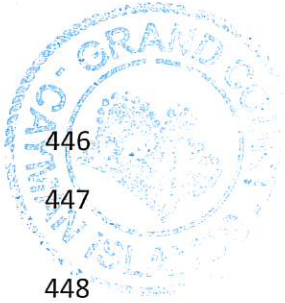


417 53. Counsel argued that as she testified, this was Ms. Bailey's first
418 relocation case. He argued that she placed disproportionate weight
419 on I's latest expressed wishes when making her second
420 recommendation. Further, she failed to give sufficient (or any)
421 weight at all to the direct contact difficulties that W has suffered
422 and the uncertainty surrounding J's future in Cayman. He further
423 submitted that while she testified that she had read the **B v B** case,
424 there was no evidence of this in her reports; and she did not
425 address the relevant questions set out in **B v B**.

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427 54. Counsel submitted that Ms. Bailey's final recommendation should
428 be disregarded by the Court, or at the very least, treated with a
429 great deal of caution.

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431 55. Counsel for W argued that Ms. McDermott was by far the more
432 impressive social worker witness despite the limitations of her
433 Report. He submitted that in contrast to Ms. Bailey's guarded
434 responses; she was forthcoming in her opinions and clear and
435 balanced in her responses. He also commended her experience of
436 dealing with one or two relocation cases every three or four
437 months.

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439 56. Counsel further argued that the criticism of Ms. McDermott's
440 Reports was unfair. He submitted that she performed the Home
441 Study function she was asked to do and did so extremely well. The
442 Reports dealt with the plans and arrangements in place for I in
443 Australia in some detail and provided assurance to the Court that
444 W had put in place appropriate arrangements. It was asserted that
445 Ms. Bailey also ultimately relied on Ms. McDermott's Reports for



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her investigations and that she had indicated her satisfaction with the arrangements in Australia.

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57. Counsel for W addressed the issue of where J will be after June 2020 and the effect that that would have on I.

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58. Counsel took the view that J has clearly indicated that he intends to visit Australia after his GCSE exams in June 2020 and that it was a possibility that he may decide to stay there permanently. Counsel argued that the evidence clearly established that even if J returned to the Cayman Islands after the summer of 2020, he would be leaving in two and a half years to attend university. Under either scenario, I would be the only sibling left in the Cayman Islands.

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59. Counsel argued that I could find herself living a lonely existence in the Cayman Islands. Her mother, sister and maternal family would be in Australia. Her brother would be away at university, possibly in Australia and her paternal family would be in London and New Zealand. I would be in the care of her father and his wife. It was argued that despite his love for I, the reality is that H would be unable to spend significant quality time with her given his work commitments.

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60. Counsel referred to Ms. McDermott's evidence that I being in such a position was not a good idea. He cited Ms. McDermott at page 122 of her second Report stating that for I, there seemed to be "*some undeniable benefits to relocation to Melbourne, the most*

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evident of those being support from a wider extended family network.in particular, having more people around her as she grows up would be beneficial."

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478 61. During cross-examination on this point Ms. McDermott stated that
479 it was important to have a long term plan in place for children.

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481 62. Counsel argued that Ms. Bailey in her second Report, recognised
482 that I's situation may have to be revisited in June 2020 depending
483 on what J decided. He submitted that a further waiting game would
484 not provide any certainty for I. He pointed to the fact that the
485 experts agreed that if I relocated now, she would adjust given
486 her young age.

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488 63. Counsel submitted that given all the circumstances of this case a
489 decision for I to remain in the Cayman Islands at this juncture
490 would not provide her with any certainty for the long term and this
491 would be contrary to her best interests.

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493 **Contact & Co-Parenting**

494 64. Counsel for W pointed out that in their Reports and viva voce
495 evidence both of the independent Social Workers were of the
496 opinion that W would promote the relationship both between H and
497 I if the latter was to be relocated.

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501 65. Quoting Ms. Bailey:

502 *"There was no evidence that" (W) "would seek to turn the*
503 *children against their father. While she shared various*
504 *concerns, she was able to consistently balance the negative*
505 *comments with more positive comments. Additionally, it is*
506 *believed that" (W) "played a role in influencing" (J) "to*
507 *rekindle his relationship with his father."*

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509 66. From Ms. McDermott came:

510 *(W) "demonstrated her commitment to the children*
511 *maintaining a strong relationship with" (H) "should the*
512 *relocation be granted; in the years since their separation*
513 *she has made efforts to ensure the children continue*
514 *spending time with" (H) "regularly."*

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516 67. Counsel pointed out that H even admitted in cross-examination
517 that he had never experienced any issues having contact with I
518 and J.

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520 68. Despite the foregoing, at no point in his affidavit evidence nor in
521 his oral evidence did H say positive things about W as a mother. It
522 was submitted that this was surprising considering that W had
523 been the primary caregiver to all three children for the best part
524 of two decades which had allowed H to commit fully to his career.

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526 69. Counsel for W submitted that it was clear from his oral evidence
527 that H blames W for his difficult relationship with the eldest child



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R. He stated that H appeared to harbour a great deal of resentment towards W as a result and that this came across during H's oral evidence which it was submitted was often adversarial in nature.

It was submitted that the evidence showed that H has been the author of his own destiny when it comes to his relationship with R and that W could not be blamed.

70. Counsel made reference to a message exhibited by W which was from H to I's godmother. In it he refused to allow I's godmother to see her and stated of W:

"my ex who has taken legal proceedings with the vengeful intent of adding" (I) "to the list of children I will never have any contact with ever again I will have to maintain a degree of distance until after the conclusion of those proceedings."

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71. Counsel submitted that H worryingly still viewed W's application as simply being driven by 'the vengeful intent' to exclude I from his life. This was despite the fact that W was originally from Australia, had all of her extended family living in Australia and had previously raised the issue of relocating, including a court application. Further, R was presently attending university in Australia. It was submitted that H's view was completely misguided and according to the experts, wrong.

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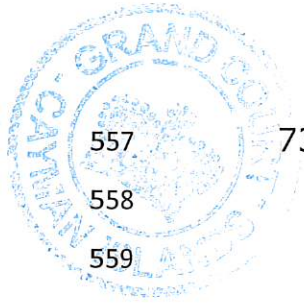
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72. It was strongly submitted that H's resentment towards W should cause concern for the Court if I was to remain in the Cayman Islands. It was argued that H had made it difficult for W to have direct contact with I and J for the past 16 months. It was suggested that if anyone was at risk of parental alienation, it was W.



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73. It was also submitted that any concerns on H's part that W would not properly promote the relationship between I and H if she were in Australia, were completely unfounded.

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74. It was submitted that all of the witnesses, including the parties themselves, acknowledged the differing parenting styles and characteristics of the parties. W was described as being more flexible.

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75. It was submitted that where a child had parents residing in two different jurisdictions, a flexible approach such as W's would ultimately be in I's best interests. It was argued that it would not be in I's best interests to be in the care of a father who holds resentment towards her mother and who takes a rigid and often difficult approach to contact arrangements.

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76. The Court was asked to consider this background when assessing the weight to attach to the email sent by W to H in which she invited his proposals as to what the contact arrangements would be if she were to be in Australia without the children. It was argued that at trial, H sought to place great emphasis on this email which was one line in length, amongst thousands of pages of paper in this case. It was argued that W was the only parent who considered all options and all possible compromises in a difficult and stressful situation. This email, it was submitted, served to highlight that W is the more flexible parent who wants open lines of discussion.

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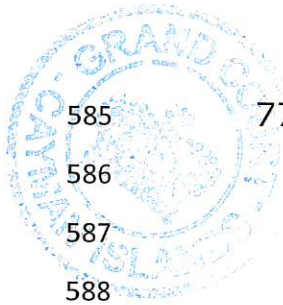
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585 77. Counsel made reference to the incident involving the MASH unit
586 which was the second one involving J. H did not inform W about
587 this second incident. Additionally, on the evidence, safety concerns
588 were raised by neighbours regarding I being left unsupervised at
589 the pool of H's condo complex. H suggested that there had been
590 mistaken identity regarding I at the pool. However, despite
591 requests for evidence of any strata complaints (including videos)
592 H and his advisors did not provide this.

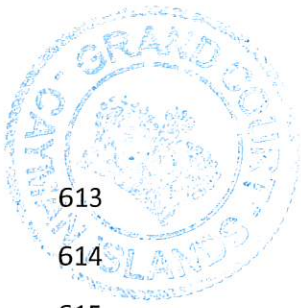
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594 78. Counsel submitted that these were examples of H's unwillingness
595 to co-parent with W. The Court was invited to draw adverse
596 inferences.

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599 **Financial Orders**

600 79. Counsel for W submitted that the child maintenance orders will be
601 impacted by the outcome of the relocation application. It was
602 argued that W requires some form of ongoing maintenance
603 regardless of where the children are located. It was submitted that
604 W will still have to care for the children during significant periods
605 in school holidays. It was argued that given H's high income level,
606 it would be reasonable that he pay for all of the children's travel
607 expenses.

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609 80. It is not disputed that H has not paid to W the court ordered
610 housing allowance of CI\$3,500 per month since she left the
611 Cayman Islands. It was submitted that H is now indebted to W in
612 the sum of CI\$56,000 in housing allowance and the Court was



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invited to require H to remedy his breach of the final ancillary order and make payment to W of either all or some portion of the outstanding housing allowance.

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81. H's contention that the housing allowance was for the benefit of the children and the youngest two children are not presently residing with W was noted. However it was argued that regardless of the Court's decision on relocation, W required appropriate accommodation to house all three children when they are with her. The funds would greatly assist W in establishing a home for her and the children in Australia.

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82. It was further submitted that W still had one of the children residing with her who was still subject to that aspect of the final ancillary order. It was argued that H should have been contributing something towards housing for the past 15 months rather than unilaterally deciding that there was no need for him to comply with the Court Order.

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83. It was submitted that regardless of the decision on relocation the Court should continue the Order for housing allowance. It was argued that this was in the children's best interests regardless of their primary country of residence.

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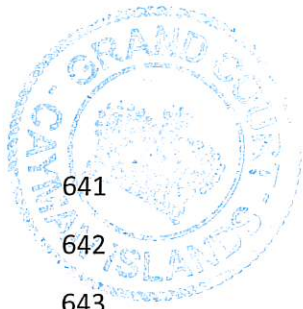
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84. With regard to the application for the extension of spousal maintenance, citing authorities, Counsel for W submitted that no exceptional justification was required for an extension. The reasoning behind the original final ancillary order is a relevant

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circumstance to be considered as well as whether the purpose of that original Order had been fulfilled. This was the transition to independence, and based on W's current financial position, it was submitted that it had not.

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85. Counsel for W submitted that there had been undeniable uncertainties surrounding W's immigration status in the Cayman Islands post-divorce. She incurred additional time and costs dealing with her legal proceedings and moving countries. She had been unable to update her qualifications as was envisaged by the Court.

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86. Ms. McDermott's observations regarding W were commended to the Court. Counsel submitted that she is on the ground in Australia and has had the most contact with W in recent months. Both W and Ms. McDermott gave evidence regarding W's efforts to have her Montessori qualification recognised in Australia with Ms. McDermott commenting that the process was not quick. Ms McDermott also commented on how W kept herself busy.

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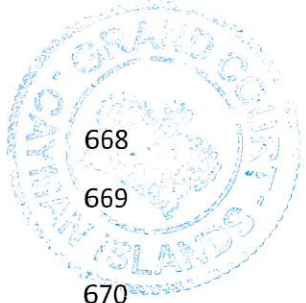
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87. Counsel submitted that it was unfair to suggest that W had not made efforts to find her feet since the final ancillary hearing. It had been a difficult and complicated few years and W has not been able to re-establish herself as yet.

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88. Counsel for W commented on opposing Counsel's comments about W's Butterfield bank account which had a balance of CI\$20k



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(equivalent to AUD\$36k). It was submitted that this was indicative of the fact that W did not need any ongoing support from H.

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89. Counsel for W pointed out that W's oral evidence and her Counsel's explanation upon disclosure; had established that a significant portion of those funds (CI\$14k) represented months of accumulated child maintenance for I and J. These were funds that W has deliberately kept aside to fund travel, accommodation and general expenses when the children are with her. It was submitted that just prior to the Trial an updated statement was disclosed showing a balance in that account of CI\$14,202.35 as at 29th November 2019.

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90. It was submitted that W did not have sufficient funds at her disposal to update her qualifications which would open up new job prospects for her. She had been living with her parents out of necessity and had to conserve such maintenance funds that she received from H for when she has direct contact with the children.

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91. It was argued that as a result of moving countries, long distance travel expenses and significant legal fees, W had not yet been able to transition to independence from H.

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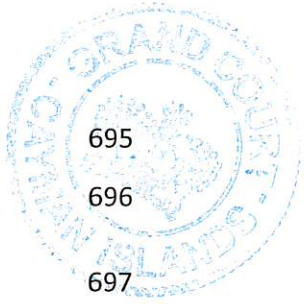
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92. It was argued that the disparity in the parties' financial positions was clear. H earned a significant income from his employment, resided in a luxurious condo, had a second home in Miami and travelled frequently. While H was criticized for not making timely



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disclosure of his true financial position, it was argued that his ability to pay any of the orders sought should not be in dispute.

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93. Counsel submitted that the fact that the original Order was not specifically made on a non-extendable basis suggests that there was always the possibility that W may need to vary that term. It was submitted that given the homemaker role that W fulfilled during the marriage, her extensive care giving responsibilities for the children and her immigration uncertainties, the need for her to extend that term was always a real prospect.

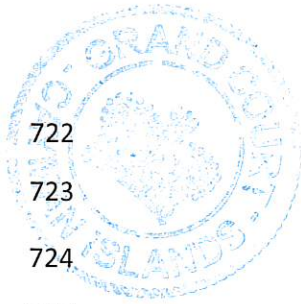
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94. It was submitted that W's spousal support should be extended for a further 3 years, or such period as the Court may deemed appropriate.

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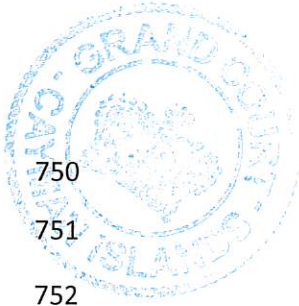
95. In summary, W invited the Court to make the following final orders:

- i. An order permitting I to relocate to Melbourne, Australia;
- ii. A Shared Residence Order whereby I resides primarily with W in Melbourne and subject to H's schedule, I will reside with H as follows:
 - a) *For 2 weeks every Easter;*
 - b) *For 2 weeks during last week June/first week July school holiday every year;*
 - c) *For 2 weeks during late September school holiday every year;*



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- d) *For 4 weeks during school Christmas holidays (incorporating Christmas Eve and Christmas Day on alternating years);*
 - e) *The above arrangements can be facilitated in Cayman, Australia, New Zealand or any other location that is convenient for H;*
 - f) *Regular indirect Facetime/Telephone contact (daily if H wishes) at 4:00 p.m. Cayman time or such other time as can be agreed and anytime between 5:00 and 11:00 p.m. on weekends;*
 - g) *H should be responsible for the travel costs of facilitating contact regardless of the court's decision.*
- iii. *That H shall pay to W child maintenance in the sum of CI\$1,500 per month each for I and R and CI\$350 per month in respect of J (pending his own decision on relocation);*
- iv. *That H shall pay to W a housing allowance in the sum of CI\$3,500 per month for her and the children of the marriage (regardless of the decision on I's relocation);*
- v. *That H shall repay the housing allowance arrears (or at least some portion of same) that have been accrued in the past 16 months;*
- vi. *That there shall be an extension of W's spousal maintenance in such quantum and for such period as the Court may deem appropriate;*



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vii. *An order that H shall repay the Legal Aid Fund in respect of the costs incurred under W's legal aid certificate.*

753 **Counsel's Submissions on behalf of H**

754 96. Counsel for H opened his closing submissions by stating that it was
755 a fact that J will be staying with his father. It was argued that this
756 fact was not open for debate or speculation. As such the Court
757 must proceed on the basis that this will impact substantially on the
758 Court's determination concerning I. The Court was referred to the
759 evidence of Ms. Bailey that despite the age difference, the two
760 children were close and that the preservation of this unit should be
761 carefully contemplated

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763 97. Counsel commented on the evidence that J had expressed to W
764 and to Ms. Bailey that he may, at some point in the future consider
765 the possibility of living in Australia. In contrast it was H's evidence
766 that J had expressed unequivocally to him that he will be staying
767 in the Cayman Islands at least until after his A levels in 3 years'
768 time.

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770 98. Counsel submitted that the evidence from W and Ms. McDermott
771 about what might happen to the sibling bond in the future if J
772 decided to leave was a pointless and speculative exercise. He also
773 submitted that Ms. McDermott's opinion that if this occurred I may
774 live a solitary life was baseless and inappropriate. He submitted
775 this demonstrated an entirely inappropriate bias on the part of Ms.
776 McDermott. Instead he commended the approach of Ms. Bailey,



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that if J relocated, a new application may be necessary given the separation of the sibling unit.

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99. He submitted that the Court should not accept the speculative factual premise put forward on behalf of W. The Court should not assume that J will be leaving the Cayman Islands and acquiesce to the relocation of I from now as a result. Instead the Court should consider that J will reside in the Cayman Islands for the foreseeable future. If the factual circumstances changed in the future, then that would be the time for an application to consider the effect of the new circumstances.

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100. Counsel for H greatly commended the evidence of Ms. Bailey to the effect that J and I were being well cared for in the Cayman Islands by parents who loved them. They were settled and doing well in school and had many friends. They had adjusted well since the departure of W from the Cayman Islands and enjoyed significant contact with her via telephone/Facetime/WhatsApp.

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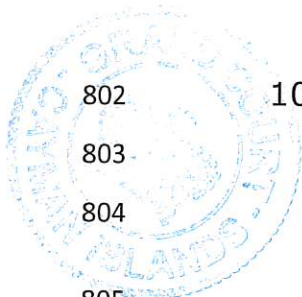
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101. Counsel for H submitted that the Court would have to find the most overwhelmingly compelling reasons to reject Ms. Bailey's recommendations so as to make an order which required I to leave the Cayman Islands and to live in Australia. It was argued that such reasons do not exist.

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802 102. Counsel argued that Ms. Bailey’s reports were full and that her oral
803 evidence was relatively fresh. When cross-examined, she accepted
804 none of the critical propositions which were put to her.

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806 103. The Court was invited to conclude that her evidence was
807 measured, mature, astute, professional, objective and that she
808 reached her conclusion after fairly exhaustive and considered
809 research. It was submitted that the fact that she recognized the
810 “altered domestic and welfare dynamics in the year between her
811 first and second reports” was testament to the fact that she
812 recognised the need to assess a new status quo and how that
813 impacted upon I.

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816 104. In contrast, Counsel for H urged the Court to reject the Reports of
817 Ms. McDermott. She had recommended that I be granted
818 relocation to Australia to live full time with W and R.

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820 105. Her work was criticized on the basis that she made that
821 recommendation without:

- 822 1. Meeting with or speaking with either J or I;
- 823 2. Meeting or speaking with H;
- 824 3. Meeting or speaking with Paola, the children’s step-
825 mother;
- 826 4. Meeting with or speaking to either of the children’s
827 school’s
- 828 5. Knowing anything about the children’s lives in the
829 Cayman Islands except as reported by W;

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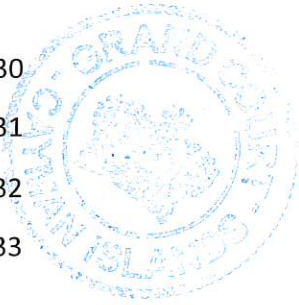
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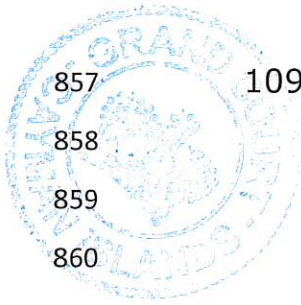
- 6. Knowing anything about the statutory or jurisprudential criteria that the Court must apply;
- 7. Ever having been asked to make any such recommendation.

106. Counsel conceded that Ms. McDermott provided some useful background corroboration about W’s life in Melbourne, her family there, her employment and attempts to find work, the Melbourne school system, and the infrastructure that a big city like Melbourne offered. However it was submitted that in terms of actually assisting the Court on the core issue about where and with whom I should live, her Report and her opinion were of marginal utility.

The Evidence of W

107. Counsel for H highlighted certain elements of W’s evidence.

108. Counsel criticized W’s evidence that she could see absolutely no downside whatsoever to J relocating to Melbourne. He pointed out that in October 2019, when J was 15 years and 11 months old, he had expressed on several occasions to Ms. Bailey and W that he wanted to stay in the Cayman Islands. Further, W had insisted that J undertake a video interview with a Melbourne school and she still intended to pursue the application against his wishes. W did not accept that not having daily contact with his father might be a downside to J. Additionally, when pressed on the issue of whether the fact that the Court had no jurisdiction over J was the only reason she was not pursuing the application, she had said ‘yes’.



857 109. Counsel submitted that the foregoing were symptomatic of "(a)
858 an inability properly to take into account the wishes and feelings
859 of others, (b) an inability to approach question(s) from a child-
860 centric perspective, and (c) an unassailable belief that she is the
861 only person equipped to make decisions about" J's future.

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863 110. It was accepted that it is of benefit to R to have her mother around
864 as she settled into a new life in a new country. However it was
865 submitted the high-water mark of Dr. Lockhart's report is that he
866 speaks of M's presence being of benefit to R as opposed to crucial,
867 essential or a necessity.

868

869 111. It was argued that R's move to Australia is not the sole basis for
870 W wishing to move there. Her own case is that she mentioned it to
871 H as long ago as 2013, she filed but did not pursue a Grand Court
872 application in 2015 and in January 2017. W also wrote to H
873 enquiring:

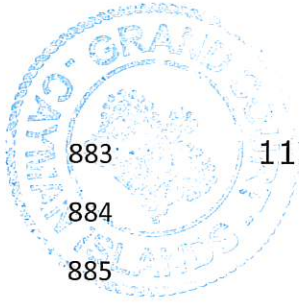
874 *"..... Could I please have your proposal on if the kids lived*
875 *with you and I went back to Australia.*

876 *Thanks"*

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878 112. According to Counsel, when asked about this, W stated that she
879 never countenanced any intention to move back to Australia
880 without the children. The one-line e mail to H, was referenced in
881 making the submission that W's answer was demonstrably untrue.

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883 113. Counsel submitted that relocation to Australia was a choice which
884 W made for her own reasons. In 2018, she was employed, had
885 resolved her immigration issues, was the beneficiary of income
886 provision and a housing allowance but she elected to move to
887 Australia. This was partly for R but partly, according to W, in the
888 hope for a better life and better opportunities for herself.

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890 114. The Court was invited to consider whether the ensuing 16 months
891 have proven successful for W in her pursuit of a better life.

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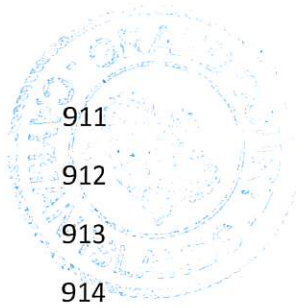
893 115. It was asserted that while R had some introductory university
894 administration in mid-February 2019, she did not actually start
895 university until March 2019. As this was seven or eight months
896 after W's departure from the Cayman Islands, Counsel questioned
897 her rationale for departing when she did.

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899 116. On the evidence, her hopes for a Montessori teaching position were
900 not realized because her qualification was not recognised. Further,
901 between August 2018 and April 2019 it appeared that W was not
902 employed. Counsel reviewed W's evidence about her employment.
903 Taken together, Counsel submitted that W had "a tendency to
904 make plans without the ability to follow them through, to make
905 statements and assertions without backing them up, to approach
906 the exercise of life planning without an appropriate level of care,
907 research or realism".

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909 117. Counsel questioned her ability to properly, sensibly and
910 appropriately to plan for all of the aspects of her and I's life in



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Melbourne. It was conceded that W was a loving, devoted and nurturing parent. However it was argued that these qualities alone cannot substitute for the essential ability to plan for, organize and finance the logistics and stability in a child's life.

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The Evidence of H

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118. Counsel for H commended the findings of Ms. Bailey concerning the home that H and Paola had made for J and I and her recommendations in relation to I. Where there were any factual dispute between the evidence of W, H and Ms. Bailey, the Court was invited to prefer the evidence of H and Ms. Bailey.

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119. Counsel submitted that the children have transitioned extremely well to living with H and Paola who have put in place an enviable quality of life for them. H proposes and intends a continuation of the *status quo* with respect to maintenance, housing, school and extracurricular activities which are working well for the children.

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120. According to the plan, Paola will continue to be responsible for transporting the children to their after-school activities. H and Paola will jointly care for the children in the mornings pre-school and H will continue to drop both children to school. At the weekends, the family unit will continue to engage in its normal array of activities.

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936 121. It is proposed that the children will continue to have liberal and
937 generous Facetime/WhatsApp contact with W. It was submitted that
938 in I's case, the Court may feel inclined to fix the time of such
939 contact.

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941 122. H proposed that W has physical contact with I, and J if that is his
942 wish, for up to 7 weeks in the summer and alternative Christmases
943 in Australia. Given that the children have largely been with W for
944 the better part of the last two months, H proposed that the first
945 such Christmas contact in Australia be in 2020. W could however,
946 visit the children in the Cayman Islands.

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948 123. It was submitted that H has adjusted his professional life and, with
949 the assistance of Paola, has put in place a desirable life and routine
950 for J and I.

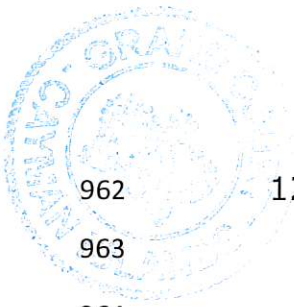
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952 124. Counsel commended the aspects of H's live evidence wherein he
953 testified that while on six months gardening leave he bonded
954 closely with J and I and re-evaluated his priorities. It was his
955 evidence that while he continues to work at his new law firm, it is
956 not in the same way that he worked at his previous firm. It was
957 submitted that H has undertaken an exercise in prioritization
958 where J and I are above all else and he bears the sole and heavy
959 financial responsibility for all three children.

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125. Counsel for H submitted that W had not established a case for the extension of spousal support.

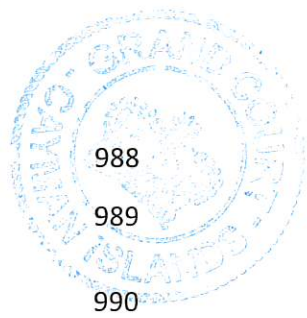
126. It was argued that the starting point was the rationale behind the three-year term of spousal maintenance in the final ancillary order. This was so that W could "find her bearings".

127. H did not accept any of W's evidence about the immigration issues which she alleged prevented her from working and even after she had been granted a full work permit, left her in a state of immigration confusion.

128. During the currency of the spousal support W secured employment as a Montessori teacher. It was argued that for reasons which do not hold up to scrutiny, W resigned from that position. She then undertook no gainful employment for nine months. Thereafter, she took up an ad hoc 2 day a week baby-sitting job.

129. On the evidence, several months later, W found another ad hoc job which involved babysitting and caring for/sponsoring a recovering alcoholic. This position has come to an end.

130. While testifying, W advised the Court that she had an interview for a teacher's assistant position but the Court was not advised of the outcome of that interview. She further advised the Court that she



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is embarking upon an on-line business which may involve also teaching yoga.

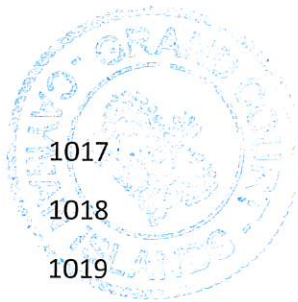
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131. On behalf of H it was submitted that W had done nothing to help herself, had not properly tried to find her feet, and has purported to make plans which are flakey and opaque. W had not tried and that could not be a basis for exercising a discretion in her favour.

132. It was submitted that the term could not be extended based on the hopeless and elusive state of W's evidence. It was submitted that relevant questions were: has W "obtained another job? Is she likely to? What became of the teaching interview? If she gets it, how much will she make? How much will she make from the on-line business and yoga teaching which is about to go ahead? Will she retain the babysitting job indefinitely? What is a reasonable budget for herself? Can it be said that she has maximized her earning potential during the three-year term?"

133. Counsel argued that W requested the same level of spousal support for three more years, without referencing how she quantified it at that level or the reason for requiring it for that long. She was asserting, without more, that she needed the equivalent of AUS\$6,231 per month or AUS\$74,780 per annum to meet her needs.

134. It was submitted that the application was wholly without merit. It was further argued that extending spousal support at the requested rate and for the requested term in circumstances where W has not demonstrated any attempt to cut financial ties from H



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would be wrong and would send a message that the Court will be inclined to exercise a discretion in favour of parties who ignore the rationale behind the order and simply do not get on with their own lives.

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135. Submissions on finances were made by H based on the possible outcomes of the relocation application.

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136. If I remained in the Cayman Islands, the following was submitted:

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1. As recommended by Ms. Bailey, H would be responsible for the cost of I's flights to and from Australia each summer and every other Christmas. The flights should be organised and booked not less than three months before I travels.

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2. During the time that I is with W in Australia, H pays to W child maintenance at the weekly rate of CI\$250. This equates to AUS\$445 per week or AUS\$1,929 per month.

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3. The same principles and figures should apply equally to James.

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4. The monthly child maintenance payments would cease on the basis that there is no logical reason for H to pay child maintenance to W when the children are living with him and he is meeting every expense in their lives.

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137. In relation to the housing allowance the following submissions were made by H.

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1. This provision is expressly for the children, not for W. H recognised that R is still technically a child for the purposes

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of the Matrimonial Causes Law until 3 January 2021 when she will turn 21. If/when R is living in rented accommodation, presumably living with W, H proposes that the housing allowance payable in respect of R only is at the rate of CI\$1,200 per month (equates to AUS\$2,137) and such allowance would expire as a child related periodic payment on or about 31 December 2020.

2. Were the Court to accede to H’s proposal, it would mean that H would be paying ‘child maintenance’ in respect of R at the rate of CI\$2,700 per month (AUS\$4,807 per month) or AUS\$57,688. This is in addition to her university fees and would be fair and reasonable, if not generous.

138. If I left the Cayman Islands, the following was submitted:

1. Child maintenance should be reduced to approximately two thirds of its current rate on the basis that the literature provided in W’s affidavit tends to suggest that the cost of living/basket of goods in Melbourne versus Cayman is at about 65%. H therefore proposes child maintenance at the rate of CI\$1,000 per month (AUS1,781) or AUS\$21,366 per annum. In making this proposal, the Court would also bear in mind that H would be funding the significant additional cost of travel to and from Australia. That figure has to be accounted for.
2. Likewise, were J to elect to leave, H proposes the same figure.

1071 139. In relation to the housing allowance the following submissions
1072 were made by H.

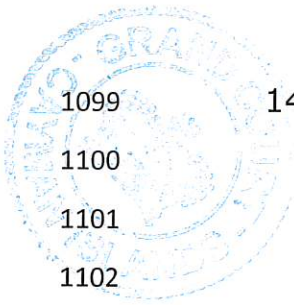
1073 1. This would obviously depend upon how many children were
1074 living with M. H worked on the basis that J would definitely be
1075 in Cayman and that any housing allowance in respect of R
1076 would expire as a matter of law in a year from now (technically
1077 on 2 January 2021). H does not pretend that there is any
1078 arithmetic formula to his proposal but on the basis that W
1079 would require a three bedroom property during the calendar
1080 year 2020, H proposed a housing allowance in the sum of
1081 CI\$2,200 per month (AUS\$3,917). This figure would, as a
1082 matter of law, have to reduce from 1 January 2021 because R
1083 would be an adult and beyond the age where a Court can make
1084 provision under the Matrimonial Causes Law by way of periodic
1085 payments.

1086 2. It was submitted that it would, be far easier to address these
1087 matters once the parties are aware of the decision on
1088 relocation. As such, if the Court preferred to deal with the child
1089 maintenance and housing allowance parts of the application
1090 after its substantive decision, H was happy to do so. He would
1091 also be able to address the economics with a bit more certainty.

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1093 **The Law**

1094 140. The paramount consideration in determining these applications is
1095 the welfare of the child. Section 3 of the Children Law (2012
1096 Revision) sets out the welfare checklist. The factors for
1097 consideration will be set out hereafter.

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141. The leading permanent removal authority in this jurisdiction is the decision of **B v. B [2013] (1) CILR 271**. This is the decision of Mr. Justice Williams, who summarized the English authorities on the subject. The Court of Appeal approved this decision in **B v. B [2014] (2) CILR 234**.

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142. I have set out both the Welfare checklist and the **B v B** principles and indicated my responses thereto.

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143. Applying the principles in **B v B**:

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1. 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?

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I am satisfied that W does not have a desire to exclude H from I's life. She genuinely wants her youngest child to live with her and given that for the first several years of I's life she had been her primary carer she wishes to maintain that bond.

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I am satisfied, based on the evidence that W would take all steps to ensure that I maintained contact with H, if I relocated to Australia.

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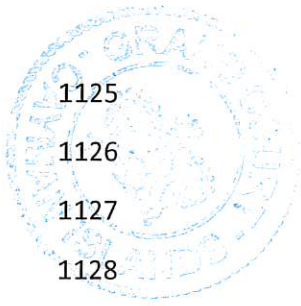
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144. *Is the father's opposition motivated by a genuine concern for the future of the child's welfare or is it driven by some ulterior motive?*

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I am satisfied that H has come to form a stronger relationship with I than he had previously. I do not doubt that he genuinely wants her to remain in the Cayman Islands with him.

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It is troubling however that H strongly blames W for his strained relationship with his eldest child, R. He repeatedly expressed the view that if I relocated to Australia, W would cause an alienation between himself and I.

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It is concluded that some element of his motivation to oppose the application, is to prevent this suspected alienation by the use of limited physical contact and Orders of the Court. However, the evidence does not support the premise that W is the source of the problems between he and R and there is no requirement for tactics to prevent W from alienating him from his other children.

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On the evidence, H in the past has taken a rigid attitude to contact between the younger children and W. It is of concern that based on H's views on alienation and past behaviour, he could seek to obstruct W's contact with I.

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145. *What would be the extent of the detriment to the father and his future relationship with the child were the application granted?*

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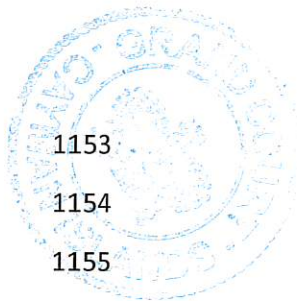
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It is accepted that H would be devastated if I relocated to Australia. However, the evidence has established that he and I now have a much closer bond than they had when I was younger. Such a bond is not easily fractured. This close bond taken together with the

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contact that W will facilitate electronically, as well as in-person visits would ensure that there was limited detriment to H's relationship with I.

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146. *To what extent would the detriment to the father, if the application were granted, be offset by extension of the child's relationship with the maternal family and, if applicable, homeland?*

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There can be no suggestion that a relationship with her maternal family can replace I's relationship with her father. I has spent quality time with her Australian family in the past but regular contact with her extended maternal family including the maternal grandparents can only be a positive thing. It is noted that I already has an existing good relationship with her older sister R who is in Australia. The extension of these relationships would be of benefit to I.

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147. *Is the mother's application realistic and founded on practical proposals well researched and investigated?*

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This question is answered in the affirmative based on the two Home Study Reports prepared by Ms. McDermott of ISS, Australia. It is noted that the success of W's plans require the continuation of financial assistance from H.

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148. *What would be the impact on the mother of a refusal of her realistic proposal? The weight placed on this will increase if the child resides with the mother.*

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As is the case with H, W would be devastated if the relocation application is refused. It cannot be overlooked that I resides with her father and that this must be given weight. However the fact that for several years I resided with and was cared for by W, with significantly less contact with H must also be a factor for consideration. This was no doubt the reason that I had such a strong reaction when told that her mother was moving to Australia without her. She did however, eventually adapt to the change in her circumstances.

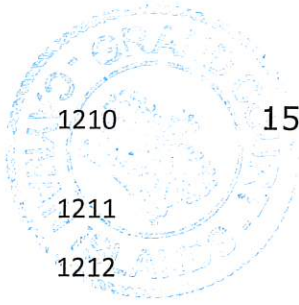
It would be extremely detrimental to W and I, should H, as has been previously mooted, place any obstacles between contact between W and I.

149. The Court must next consider the Welfare Checklist.

A. The ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding);

In her first Welfare Report, the Social Worker, Ms. Bailey placed weight on I's expressed desire to go to live with her mother in Australia. I was then five years of age. In her second Report Ms. Bailey has placed significant weight on I's expressed desire to remain in the Cayman Islands with her father. I is now seven years old.

It is considered that either age is too young for the Court to place much weight on the expressed views.



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150. A. *'The child's physical, emotional and educational needs;*

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I's physical, emotional and educational needs are currently being met. However, despite his testimony, given the nature of H's work commitments, there is some doubt that he can provide the same level of one-to-one attention to I that W has provided in the past and can still provide in the future.

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The Reports establish that were she to relocate to Australia, I's physical, emotional and educational needs would continue to be met, particularly given her young age. All Reports asserted that given her age, she would swiftly adapt to change. It must be stated however that I requires contact with both of her parents in order for her emotional needs to be met.

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151. *The likely effect on her of any change in her circumstances;*

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The importance of stability is recognized. However the greatest factor that favours change for I is her extremely young age.

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I has only been living in her present circumstance for about eighteen months. As testament to how well she has been cared for, she adapted well to the change in her previous circumstances. It has already been stated that she will adapt speedily to change given her young age.

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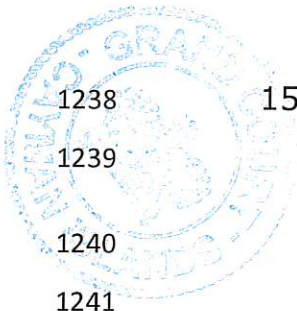
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I should be able adapt rapidly and settle into a new environment as long as her introduction to any changes is done gently and with sensitivity.

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152. *Her age, sex, background and any characteristics of hers which the court considers relevant;*

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Again, I's age suggests that the present is ideal, should any change be made.

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As a young female, I would benefit from the presence of her mother and sister as she grows up. This observation however does not in any way overlook the benefits that I has had due to her physical proximity to her father's wife.

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I has lived all her life in the Cayman Islands, however she is aware and has had contact with many of her extended family who live outside the jurisdiction. Her upbringing as a Caymanian does not pose a barrier to her living elsewhere. Especially in circumstances where it would be possible for her to visit the Cayman Islands.

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153. *Any harm which she has suffered or is at risk of suffering;*

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Despite flagging her concern about the recorded conversation which she heard between I and W, Ms. Bailey's Reports raised no concern about any harm that I has suffered or could suffer at the hands of either parent.

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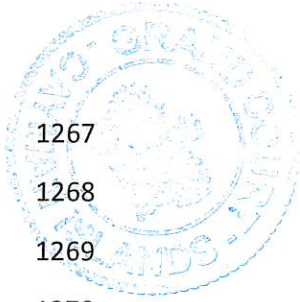
The close relationship between I and J was raised in the Reports of the Social Workers and the desirability of maintaining this bond. However while this was considered, that issue was approached with caution. The possibility of J moving to Australia is a matter for speculation and it is not considered appropriate to relocate I to

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Australia at this time *solely* to meet that future circumstance. That speculative possibility was not given any weight.

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Counsel for W raised the issue of H's lack of disclosure in relation to the second MASH incident and the complaint about I's safety at the condo pool. Communication about all relevant details is key in co-parenting. Allowing a child to speak freely and openly to the other parent is also key and the facts suggest that H monitors I's electronic conversations with W. A continuation of such behaviours could inflict future emotional harm on I.

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It is felt that there is further greater risk of emotional harm to I as elaborated upon below.

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154. *How capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs;*

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It is considered that H does and can continue to meet I's physical needs. W has met I's physical needs in the past and if she is put in the financial position to do so, she will continue to meet I's needs in the future.

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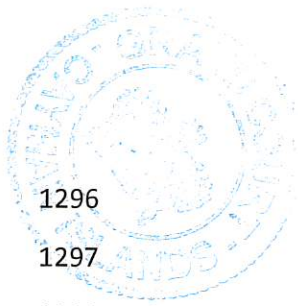
While it is accepted that H and his wife love I, an important element of I's emotional needs is the maintenance of contact with **both** parents.

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It is a matter of great concern that H's strongly expressed resentment towards W and his past behaviour showing a rigid



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approach as it related to contact between W and the younger children, could lead him to obstruct contact between I and her mother if he retained custody. Particularly direct physical contact. This would undoubtedly be detrimental to I's emotional needs and overall development.

On the evidence, there is no concern that if I relocated, W would seek to prohibit her contact with her father. This is essential to I's emotional development.

Based on the history of W being I's primary care giver for such a long period of time after her birth, taken together with the concern that H would restrict contact between child and mother if he retained custody, it is concluded that it is in the best interest of I that she is allowed to relocate to Australia with her mother.

155. *The range of powers available to the court under this Law in the proceedings in question.*

Consequent on the granting of the relocation application, further orders are made below.

Child Maintenance

156. It follows from the foregoing that upon I's relocation to Australia, H must resume paying the previously Court Ordered Maintenance of \$1,500.00 per month to W for her. As a Corollary, as long as J resides with his father in the Cayman Islands, H is not required to pay maintenance for him to W. Whenever J is in the care of W,

1324 whether in the Cayman Islands or Australia, H must pay the
1325 previously Court Ordered Maintenance of \$1,500.00 per month for
1326 him, pro-rated based on the period of custody, for example: one
1327 week or two weeks.

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1329 **Housing Allowance**

1330 157. Rather than unilaterally ceasing to pay the housing allowance, H
1331 should have presented the facts to the Court and sought a variation
1332 of the Order. As worded, W was entitled to expect those monthly
1333 payments in order to set up a new home for herself and the
1334 children. However, this Order would have been adjusted had the
1335 Court been advised that she and the eldest child were living rent-
1336 free with her parents.

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1338 158. W is entitled to arrears but using its discretion, the Court will remit
1339 a portion of this. H is ordered to pay the equivalent of four months
1340 arrears at the Court Ordered rate of \$3,500.00 per month.

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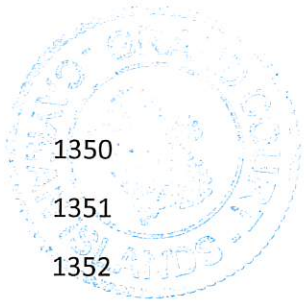
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1343 159. Once a home in Australia is found for the children, H is to resume
1344 the payment of the housing allowance of \$3,500.00 per month to
1345 W, according to the terms of the original Order.

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1347 **Spousal Support**

1348 160. W has not established a case for the extension of Spousal Support.
1349 It is accepted that she has no money of her own and obviously H



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has funds. However, the Spousal Support had been specifically ordered so as to allow her to get back on her feet. No evidence has been adduced of concrete plans which commenced but were not concluded, requiring further funds. That application fails.

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1355 **Contact Orders**

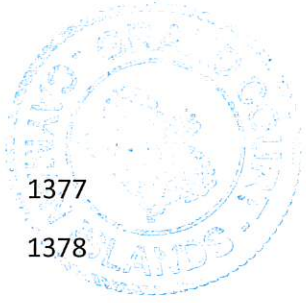
1356 161. Both sides have requested that the Court make specific Orders
1357 concerning contact. I will adopt the submissions made on behalf of
1358 W and do so make orders incorporating same. They are:

- 1359 1. W is permitted to relocate with I to Melbourne, Australia;
- 1360 2. I will have physical contact with H as follows:
 - 1361 a) For 2 weeks every Easter;
 - 1362 b) For 2 weeks during the last week June/first week July
 - 1363 school holiday every year;
 - 1364 c) For 2 weeks during the late September school holiday
 - 1365 every year;
 - 1366 d) Starting 2020, for 4 weeks during school Christmas
 - 1367 holidays (incorporating Christmas Eve and Christmas
 - 1368 Day on alternating years);

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1370 The above arrangements can be facilitated in the Cayman Islands,
1371 Australia, New Zealand or any other location that is convenient for
1372 H;

- 1373 3. I will have regular indirect Facetime/Telephone contact daily
- 1374 at 4:00 p.m. Cayman time or such other time as can be
- 1375 agreed and anytime between 5:00 and 11:00 p.m. on
- 1376 weekends;



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4. H is responsible for the travel costs of facilitating physical contact.

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Supplementary Orders

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162. It was considered important to make the foregoing Orders with some urgency. However, in recognition that the change in jurisdiction means that there is a change in currency and details on living costs, both sides have leave to return and make applications for variations to the financial Orders as it relates to the change in currency.

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Costs

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163. H is ordered to repay the Legal Aid Fund in respect of the costs incurred under W's Legal Aid certificate.

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Nova Hall

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Judge of the Grand Court (Acting)



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30th December 2019.