



# **In The Supreme Court of Bermuda**

## **CIVIL JURISDICTION**

**2022: No. 391**

**BETWEEN:**

**FATHER**

**Applicant**

**-and-**

**MOTHER**

**Respondent**

**RULING**

---

**Before:** Hon. Alexandra Wheatley, Acting Justice

**Appearances:** The Applicant, In Person (Only Day 1 of hearing)  
Bruce Swan of Bruce Swan & Associates, for the  
Applicant (Day 2 of hearing onwards)

Nicole Cavanagh of MJM Limited, for the Respondent

**Dates of Hearing:** 6, 7, 8, 9 and 12 May 2025

**Submissions:** 19 May 2025

**Date Draft Ruling Circulated:** 15 December 2025

**Date of Ruling:** 18 December 2025

-----

## INDEX

*Sole Custody and Sole Care and Control; Application for Prohibition of Removal  
from the Jurisdiction; Domestic Violence; Welfare of Child Paramount Consideration;  
UK Welfare Checklist*

-----

### **RULING of Acting Justice Alexandra Wheatley**

#### **INTRODUCTION**

1. These are long protracted proceedings surrounding the custody and care and control of a now four-year-old child (hereinafter referred to as **B**). When these proceedings commenced, B was just one year old. There have been several applications made and determined in this matter, in particular two applications made by the Father to prohibit B from being removed from the jurisdiction were determined on 28 August 2024 (**Father's 2024 Prohibition Application**). The reasons dismissing the Father's 2024 Prohibition Application are set out in the Reasons issued on 30 September 2024 (**Reasons**).
2. There is no need to repeat the chronology of these proceedings as they are fully set out in the Ruling at paragraphs 5 to 23; however, it is essential that the said chronology be read in tandem with this decision.
3. The remaining live substantive issues which are to be determined in this matter are those of custody, care and control, and access.
4. The parties filed the following affidavit evidence in support of their respective applications:
  - (i) First Affidavit of the Mother sworn on 30 May 2024 (**Mother's First Affidavit**);
  - (ii) Second Affidavit of the Mother sworn on 24 June 2024 (**Mother's Second Affidavit**);
  - (iii) Third Affidavit of the Mother sworn on 26 July 2024 (**Mother's Third Affidavit**);
  - (iv) First Affidavit of the Father sworn on 27 August 2024 (**Father's First Affidavit**);

- (v) Second Affidavit of the Father sworn on 13 September 2024 (**Father's Second Affidavit**);
- (vi) Fourth Affidavit of the Mother sworn on 3 October 2024 (**Mother's Fourth Affidavit**);
- (vii) Third Affidavit of the Father sworn 13 November 2024 (**Father's Third Affidavit**);  
and
- (viii) Fifth Affidavit of the Mother 4 December 2024 (**Mother's Fifth Affidavit**).

5. Both the Mother and the Father also gave *viva voce*, updating evidence and were cross-examined by opposing counsel. The Court Appointed CASW (**CASW**) was also in attendance at the hearing and was questioned by both Counsel.

## **THE INDEPENDENT EVIDENCE**

6. Two social inquiry reports were completed in relation to B in these proceedings by the CASW. The first was completed on 20 May 2024 (**SIR 1**) and the second was completed on 28 April 2025 (**SIR 2**).

### **SIR 1**

7. SIR 1 was ordered to assist the Court in determining custody, care, and access arrangements in respect of B. Information was obtained from both parents, B's nursery, family members, and collateral sources in both Bermuda and Canada. Police and social service checks were undertaken, and both parents participated in interviews and relevant assessments.
8. The CASW provides outline of the history of the matter, the parents' respective circumstances, their current living situations, and the professional assessment of B's welfare. SIR 1 also sets out continuing conflict between the parents, particularly surrounding access arrangements and communication, and the impact of that conflict on B's stability and emotional wellbeing.

### **The Father's Account to the CASW**

9. According to the Father's statements to the CASW, he reported that he has consistently complied with Court-ordered access arrangements and ensured that B attends nursery regularly during his care. He described maintaining a structured routine, working full-time, and providing for B's needs while residing independently.

10. The Father told the CASW that he was concerned about what he perceived as the Mother's repeated decisions to keep B out of nursery during her weeks, including on Fridays when handovers were scheduled from school at 5:00 p.m. He claimed these actions resulted in breaches of the handover schedule, sometimes requiring intervention by the Family Preservation Team or, on one occasion, the Police.
11. He further stated that, despite paying approximately \$1,000 per month in nursery fees, B frequently failed to attend nursery when with the Mother, and that her explanations for absences were inconsistent or untruthful.
12. The Father expressed frustration about the Mother's communication, alleging that she often ignored his messages or blocked his attempts to coordinate access. He said this led him to seek assistance from the Department to facilitate transitions, particularly around holidays and school closures.
13. He emphasized to the CASW the importance of B's routine, education, and skill development, and asserted that the Mother does not support independence, consistency, or developmental progression in B's daily life.
14. The Father also raised concerns about the Mother's emotional stability, citing what he described as her difficulty separating from B, emotional distress during transitions, and the negative impact of such behaviours on the child.
15. Finally, the Father told the CASW that he opposed the Mother's proposed relocation of B to Canada, stating that she had not complied with prior orders, that her circumstances had not stabilized, and that relocation would significantly diminish his access. He expressed fear that past patterns of instability would recur and that contact would likely be limited to phone calls and occasional visits.

#### **The Mother's Account to the CASW**

16. According to the Mother's statements to the CASW, she asserted that she does not have sufficient time with B under the current access arrangement, claiming that she has "four full days per month." She expressed the view that nursery attendance reduces valuable bonding time and therefore sought more involvement in B's day-to-day care.
17. The Mother told the CASW that the Court Order does not require B to attend nursery full-time and rejected what she described as the Department's expectation that he should do so. She stated that she intended to keep B home on certain days and send him only on Fridays to facilitate the handover.

18. She alleged that B experiences fear, anxiety, and distress associated with transitions to his Father, including night terrors and reluctance to leave her. The Mother further claimed that B made statements implicating the Father in inappropriate behaviour, though she acknowledged these allegations had not been independently verified.
19. The Mother reported emotional difficulty during transitions and expressed distress at being separated from B. She stated that the absence of weekday contact contributes to her emotional strain.
20. She confirmed to the CASW that she plans to return to Canada with B, reside with her mother, and re-enroll B in his former nursery. She asserted that this arrangement would restore stability to B's life and anticipated receiving increased financial support upon her return.
21. The Mother explained that she is presently unemployed and resides with family in Bermuda. She acknowledged that she has not secured employment or taken steps to improve her economic circumstances while in Bermuda, though she indicated a desire to pursue education in the future.
22. With respect to substance use, the Mother reported historic alcohol and cannabis use and was assessed as being in the Pre-Contemplation Stage. She acknowledged concerns raised regarding one incident of possible impairment but maintained that no ongoing pattern exists.
23. Finally, the Mother disputed allegations of non-compliance and asserted that any absences from school were due to illness or logistical issues. She denied that these decisions were contrary to B's best interests.

### **CASW's Observations and Findings**

24. The CASW stated in her reports that B appeared to be well-loved by both parents and extended family, and that he presented as articulate, sociable, and developing appropriately. She reported observing that B enjoys nursery and interacts positively with peers.
25. According to the CASW, transitions occurring directly from school were described as smooth and conflict-free. She noted that difficulties tended to arise when B was kept home by the Mother or when transitions fell on public holidays. On such occasions, the CASW said conflict regarding timing and location was frequent, sometimes requiring intervention by the Family Preservation Team.
26. The CASW indicated that the Mother frequently kept B home from nursery and, in her view, provided reasons that were later found to be unsubstantiated. The CASW expressed the opinion that these decisions appeared motivated more by the Mother's emotional needs than by B's developmental or social needs.

27. She further reported that allegations made by the Mother concerning abuse or mistreatment by the Father were not substantiated during her inquiries. The CASW stated that nursery staff reported no concerns and that home visits to the Father's residence revealed no evidence of harm. She said B was observed to transition to the Father without difficulty, including on one occasion when the Mother reportedly struggled with separation.
28. The CASW described the Mother as having difficulty coping with B's absence and displaying behaviours she interpreted as indicative of emotional overdependence. She noted concerns regarding the Mother's attachment style, emotional regulation, and ability to separate her own needs from the child's best interests.
29. The CASW also reported observing a pattern of conflict involving the Mother, including with her family, the Father, school personnel, and the Department. She stated that reports from extended family suggested such conflict predated the Mother's relocation to Bermuda.
30. In her evidence, the CASW said the Mother had not complied consistently with Court Orders, including failing to file the previous order in Canada and failing to ensure regular nursery attendance. She characterized the Mother's behaviour as avoidant of structure and, at times, manipulative.
31. Conversely, the CASW reported that the Father was assessed as providing stability, routine, and consistent care. She noted that he maintained employment, ensured school attendance, and had appropriate family support. While acknowledging his past cannabis use, the CASW stated that no concerns arose regarding his parenting capacity.
32. Finally, the CASW expressed concern that, notwithstanding her stated plans, the Mother had not demonstrated progress toward improving her circumstances, either in Bermuda or in contemplation of her return to Canada. In the CASW's professional opinion, continued exposure to parental conflict was contrary to B's emotional wellbeing, and structured, consistent care was required to support his development. Accordingly, the CASW made the following recommendations:
  - (i) The parties continue to have joint custody.
  - (ii) The Father have sole Care and Control of B for the next year and B shall remain in Bermuda in the care of the Father.
  - (iii) Each parent shall have virtual access to each parent for up to twenty minutes at a scheduled time that does not conflict with B's activities.

- (iv) B shall visit the Mother and grandmother in Canada during the Christmas holiday and Easter break.
- (v) The Mother shall use this time to enroll in school and obtain employment so that she can provide financially for herself and B.
- (vi) The Mother engage in counselling services *“to understand her emotional response to others, child development and the importance of developing a healthy attachment”*.
- (vii) Whilst B is in Bermuda, Public Holidays shall be shared equally between the parties, *“with the non-resident parent having access for 6 to 7 hours before returning the child”*.
- (viii) The parties attend mediation services to *“learn healthier ways of communicating with each other pertaining to [B] and his needs”*.
- (ix) *“While on island, [the Mother] shall secure employment and assist financially with nursery fees and the care of [B].”*
- (x) *“[B] is to attend nursery daily when in the care of both parents for the entire school day to foster healthy habits, routine, and social development.”*

## **SIR 2**

- 33. SIR 2 was submitted pursuant to an order of the Court dated 23 August 2024 to provide an update since SIR 1 was completed on the welfare, care, and living circumstances of B, as well as to provide recommendations as to future custody and access arrangements between the parties.

## **The Father’s Account to the CASW**

- 34. The Father told the CASW that he was concerned about the Mother’s decision to relocate to Canada with B and her refusal to provide contact details or her current address. He stated that this lack of transparency made it difficult for him to maintain a consistent and meaningful relationship with B. He reported that he continues to experience significant barriers in exercising access and that video calls and other indirect means of contact have been inconsistent and dependent on the Mother’s willingness to facilitate them.
- 35. He reiterated his view that the Mother’s actions have limited his ability to contribute to parental decision-making, including matters concerning B’s education, health, and emotional development. He expressed concern about what he described as instability in the Mother’s living

situation, given her recent relocation and new employment. He maintained that his home in Bermuda remains a more stable and familiar environment for B and said he wished to see B return to Bermuda to resume regular schooling and family contact.

36. Additionally, the Father reported continued frustration with DCFS, stating that his concerns about the Mother's alleged lack of compliance with previous orders have not been adequately addressed. He reaffirmed his commitment to providing for B financially and emotionally and sought greater structure in custody and access arrangements.

### **The Mother's Account to the CASW**

37. The Mother told the CASW that her position focused on ongoing concerns about personal safety and her experience of what she described as past harassment and intimidation by the Father. She stated that she continues to withhold her residential address out of fear that disclosure could expose her and B to renewed distress or interference.
38. The Mother maintained that her relocation to Canada was a necessary step toward establishing long-term stability and self-sufficiency for both herself and B. She reported that B has adapted well to his environment in Canada, attending a home daycare while awaiting a place at a YMCA nursery. The Mother stated that she has secured part-time employment and intends to pursue further education.
39. She said that B has his own bedroom and is settled within a supportive household that includes her partner. The Mother emphasized that she encourages B's relationship with his father but finds direct communication with the Father difficult due to what she perceives as his aggressive and adversarial tone. She also expressed ongoing frustration with DCFS, stating that her prior safety concerns and complaints had not been fully investigated or taken seriously. The Mother indicated that she remains willing to provide her contact details directly to the Court, on the condition that this information is not disclosed to the Father or to DCFS.

### **CASW's Findings and Professional Observations**

40. The CASW reported that B was born in Canada, initially lived with the Mother, and attended nursery there. Following instability in the Mother's living situation, he moved to reside with the Father in Bermuda. From July to October 2023, B lived with both parents; after their separation, he transitioned to an alternating schedule, eventually moving to week-on/week-off to reduce parental conflict.
41. The CASW stated that concerns regarding allegations of domestic violence and child abuse were reviewed. She noted that previous judicial comments highlighted inadequate investigation into the Mother's allegations against the Father. The Mother asserted she suffered a concussion in an October 2023 incident; however, the CASW reported that police records and available



video did not corroborate this. Other alleged incidents were said to be unsupported by police reports. A report of alleged child abuse by the Father in June 2024 was deemed unsubstantiated. The CASW indicated that communications showed episodes of insulting language by the Father and incidents of access interference when the Mother was intoxicated.

42. She noted that although the Court had ordered daily contact, B often had no communication with the parent he was not residing with, due to the parents' conflict. The CASW reported that since the reversal of the access order, B has had limited contact with the Father.
43. Over Christmas, B was in Canada but not in either parent's care, contrary to earlier positions taken by the Mother while in Bermuda. She stated that the Mother is currently unemployed and focused on B's resettlement in Canada, where B is reportedly re-enrolled in nursery, though no proof of attendance was provided.
44. The CASW expressed concerns regarding the Mother's long-term stability, including substance use, noting that recent images and videos suggested ongoing alcohol use. The CASW acknowledged that previous substance assessments found the Father to have mild alcohol and marijuana use but no need for treatment. She reported that both parents have made unilateral decisions despite sharing custody and noted the Father's application for Bermuda Status as significant for facilitating services.
45. The CASW expressed concern that the Mother has demonstrated reluctance to foster B's relationship with the Father and his paternal family, including repeatedly failing to facilitate scheduled virtual contact. She observed that B spent nearly a year in a stable week-on/week-off arrangement before abruptly losing physical contact with the Father, a change likely to have emotional consequences. The CASW noted that limited information was available regarding B's current living circumstances in Canada, whereas the Father's situation in Bermuda appeared stable.
46. In her professional opinion, the CASW stated that B needs consistency and meaningful relationships with both parents. She recommended regular, reliable virtual contact and in-person contact in both Canada and Bermuda, including a defined period of access with the Father and paternal family during the summer.
47. The following recommendations were made by the CASW in SIR 2:
  - (i) That the Father's and the Mother's applications for sole custody be denied at this time.
  - (ii) That the Mother retain primary care and control of B in Canada; however, the Father should be afforded meaningful access, structured to ensure B maintains a relationship with his father.

- (iii) That both parents engage in counselling and parental guidance programs to support cooperative parenting.
- (iv) That B remain enrolled in educational settings appropriate to his age, with continuity of schooling prioritized.
- (v) That both parents be directed to avoid exposing B to ongoing disputes, and communication between them be facilitated through agreed structured channels.
- (vi) That the matter be subject to further review in three to six months.

## THE LAW

48. There was no disagreement between counsel regarding the applicable law in these proceedings. It remains necessary, however, to set out the relevant legal framework so that the Court's findings may be properly considered and assessed against the governing principles.
49. Firstly, the Court derives its jurisdiction pursuant to section 12 of the Minors Act 1950 (**the Act**) to grant orders in relation to custody and care and control as the court may think fit. In making its decision, the court must have "*regard to the welfare of the minor and to the conduct and to the wishes or representations of either parent*". Section 6 of the Act provides as follows:

***"Welfare of minor is first and paramount consideration***

*Where in any proceedings before any court the custody or upbringing of a minor, or the administration of any property belonging to or held on trust for a minor, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father."*

50. Accordingly, the wishes and considerations of each parent are to be considered equally, one not being superior to the other simply based on one being the mother and the other being the father, in conjunction with B's welfare requirements. The 'welfare checklist' can be found in Section 1 (3) of the Children Act 1989 which is a UK statute and states that the welfare of the child shall be the court's paramount consideration:

51(3) *In the circumstances mentioned in subsection (4), a court shall have regard in particular to-*

- (a) *the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
- (b) *his physical, emotional and educational needs;*
- (c) *the likely effect on him of any change in his circumstances;*
- (d) *his age, sex, background and any characteristics of his which the court considers relevant;*
- (e) *any harm which he has suffered or is at risk of suffering;*
- (f) *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;*
- (g) *the range of powers available to the court under this Act in the proceedings in question.*

51(5) *Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.*

51. Whilst the welfare checklist is not reflected or summarized in any Bermuda statute, it is a useful guide which has been confirmed as such and utilized by the Bermuda Courts. The Bermuda Supreme Court case of *PMC v VNL* [2022] SC (Bda) 45 civ (22 June 2022) assessed the evidence before the Court based on the welfare checklist principles before making a decision to grant a father sole custody in that case.
52. Ms Cavanagh also relied on the UK case of *T-D (Children: Specific Issue Order)* [2024] EWCA Civ 793. She submitted that this case is the most recent precedent which helpfully sets out the historic case law relating to termination of parental responsibility orders. This is the UK equivalent of Bermuda's concept of sole custody. Whilst *T-D (Children: Specific Issue Order)* determines that a sledgehammer should not be used to crack a nut, this case addresses the many aspects of the decision-making ability required by the resident parent, i.e. the Mother in this matter. Ms Cavanagh submitted that the Father's actions to make unilateral decisions relating to B's education and schooling, physical appearance, medical procedures as well as his domicile and status supports the granting of sole custody when applying *T-D (Children: Specific Issue Order)*.

## THE PARTIES' EVIDENCE

### The Father

53. The Father confirmed that he has not had direct (either physical or virtual) access with B since September 2024. He attributed the lack of contact to the Mother's conduct. He gave one example of initiating a WhatsApp video call to the Mother to speak with B as it was his birthday (14 March 2025). The Father says he was told B was sleeping so the Mother said she was call back later but she never returned the call. When he attempted to call again later, he says the Mother had blocked him.
54. Under cross examination the screenshots submitted by the Father demonstrate that it was in fact he who had blocked messages from the Mother. Those same screenshots appear to show that several messages had been deleted by the Father. When this was put to him, he accepted that he had deleted certain exchanges. The Father was also referred to evidence filed by the Mother indicating that similar patterns of behaviour had occurred previously, in which the Father had voluntarily restricted or blocked communication. The Father accepted that since his lack contact with B, i.e. September 2024, he had not attempted to contact the Mother to speak with B until his birthday on 14 March 2025.
55. During the hearing, the Father sought to introduce new evidence in the form of screenshots of historic messages between the parties. When asked to explain why this material had not been filed earlier, he stated that it was due to an oversight by his legal representatives.
56. The CASW had referred to materials provided by the Father relating to the Mother's social media activity which were attached to and relied on for the completion of SIR 2. The Father stated that the information had come to him through a WhatsApp group and that a friend had shared the screenshots. When asked to identify the individual who had accessed the Mother's private accounts, he declined to do so.
57. Further evidence was presented suggesting that the Father had, at times, accessed or attempted to access the Mother's social media or electronic accounts. In one exchange, the Mother asked the Father why he had logged into her Twitter account, which he denied.
58. When questioned by the Mother's counsel about his understanding of domestic abuse, the Father stated that he considered his previous use of vulgar language towards the Mother to be "*disrespectful*," but did not recognize it as abusive. He appeared to associate abuse primarily with physical violence and did not appear to appreciate that harassment, verbal degradation, or controlling conduct could also amount to abusive behaviour.

59. The Father gave evidence that his older daughter, C, resides overseas and was expected to visit Bermuda during the summer, although her travel arrangements were not yet finalized. He stated that he contributes to C's expenses on an ad hoc basis but does not pay formal maintenance. In response to the Mother's assertion that she had acted as the primary caregiver for both B and C during the summer of 2023 while the Father was working, the Father denied that the Mother had provided any care for C. He maintained that other family members, including his mother, were present to assist with caregiving during that period.
60. It was denied by the Father that he has been abusive towards the Mother or B. He accepted that their relationship has been "*toxic*" and that he has "*used force against [the Mother]*" but was adamant that he has never hit the Mother but rather any physical contact with the Mother was him defending himself against the Mother. He also stated that there are no videos of B with bruises or welts and that there have never been any reports from B's doctor of such concerns. He also noted that during the last four years the Mother has not been able to produce any police reports evidencing that he has been abusive towards her.
61. As it relates to the incident that occurred on 4 October 2023, the Father denied that he had physically assaulted the Mother and said that it was the Mother who hit him. The Father stated that the Police Report supports his version of events.
62. When asked about counselling and support services, the Father stated that he had not engaged in drug counselling as he did not consider it necessary. The Father's evidence is that he has reduced his marijuana and alcohol use but accepted that there was a time when his daily use of these substances was significantly greater as he was going through a difficult period in his life. He attributed this period to him being involved in a serious road traffic accident. He also said he has reduced his use which he attributed to "*Islam, God*".
63. He was unable to provide details of the Employee Assistance Program sessions he claimed to have attended, including the counsellor's name or the number of sessions. It was put to him that he had been referred to such services following disciplinary action at his workplace, including incidents involving verbal altercations with the Mother and a female colleague. This was denied by the Father.
64. The Father stated that he now intends to seek further counselling following encouragement from family members. He says he continues to reduce his marijuana use by mixing the marijuana leaves with cigarette tobacco and attributed his inability to completely abstain to his nicotine addiction rather than marijuana being the problem.
65. On the issue of maintenance, the Father is required to pay child maintenance in the sum of \$75 per week to the Mother for the benefit of B in accordance with the January 2023 Consent Order, together with one half of the nursery fees in Canada. The Father complied with this Order for a

period but ceased making payments in or around May 2024, coinciding with the completion and distribution of SIR 1. The Father said that he ceased payment because B was spending equal time with him and the Mother as well as because he was required to pay for the nursery fees in Bermuda without contribution from the Mother.

66. At the commencement of the hearing, the Court was advised that a warrant for the Father's arrest had been issued due to arrears in maintenance payments. The arrears, amounting to approximately \$5,500, had accrued over an eleven-month period. Despite an Order of 10 December 2024 addressing the arrears and future maintenance, no payments were received.
67. During cross-examination, the Father described himself as self-employed and denied being formally employed, though his affidavits and supporting documentation refer to previous employment at the Marketplace and subsequently with his father's company. It was put to him that his change in employment status appeared to coincide with the initiation of enforcement proceedings, suggesting an effort to avoid an attachment of earnings.
68. When questioned as to his absence from the child maintenance hearing held on 10 December 2024 (the **Child Maintenance Hearing**), the Father stated that he had been advised by his former counsel that attendance was unnecessary. The Court was presented with correspondence dated 3 December 2024 from Ms. Simone Smith-Bean indicating her intention to come off record, confirming that she had been unable to take full instructions from the Father at that time.
69. The Father stated that he objected to making maintenance payments if he believed that the funds were not being used for the specific expenses identified in the Mother's affidavit. During the course of this hearing, following activation of the warrant, he attended before the Magistrates' Court and agreed to resume payments of \$75 per week.
70. Finally, while the Father initially stated that he was not seeking joint custody and wished only to remain informed of B's welfare, he later indicated that he did wish to pursue joint custody. It became apparent that he did not fully understand the legal implications or practical meaning of joint custody, and he was advised to seek clarification from his legal representative regarding the nature and effect of such orders. He confirmed later in his evidence that he would like to be involved in processes for decision making as it relates to B such as what primary school B attends but said he has no difficulty allowing the Mother to choose the primary school. Additionally, he confirmed he would like telephone/video access three times per week for which he said he is willing to provide B with an Amazon Fire Tablet. He would also like to exercise holiday access by travelling to collect B from Canada to bring to Bermuda and then return him to Canada.

## **The Mother**

71. The Mother declined to disclose her residential address or any identifying details of her whereabouts to the Father or his counsel during the proceedings. She explained that this decision arose from her belief that disclosure might lead to harassment or further distress, referring to what she described as prior incidents involving the Father, including occasions when the police were sent to her residence in both Canada and Bermuda, and alleged interference with Little Picasso nursery. When questioned, she stated that those matters were reported to the relevant authorities, including the Department of Child and Family Services (**DCFS**), and were referred to in her affidavit evidence.
72. In oral evidence, the Mother confirmed that she returned to Canada in January 2025 following receipt of a temporary Canadian permanent resident card. It was established that B had returned to Canada the previous month, in December 2024, in the care of his godfather who is a long-term friend of the Mother and who is also known to the Father, having met him during earlier visits to Canada. Upon arrival, B resided with his maternal grandmother until the Mother's return, after which they resumed living together at the Halifax residence previously vacated in the summer of 2023. The Mother subsequently moved from her mother's home in order to achieve independence, to be closer to a school she wishes to attend, and to become self-sufficient.
73. Evidence was given that the Mother, B, and her partner now reside in the Greater Toronto Area, where B has his own bedroom. He currently attends home daycare and remains on the waiting list for a YMCA nursery placement. The Mother has obtained part-time employment and expressed an intention to pursue further education. The location was chosen, she explained, for its diversity and the opportunities it provides for B.
74. At the time of the hearing, B had not yet been registered with a local medical practice due to the family's recent relocation as no medical attention had been required. The Mother also reported that her relationship with her mother had strengthened following their reunion after a period of approximately eighteen months apart.
75. She further confirmed that B was not yet enrolled in extracurricular activities such as swimming or football, though plans to do so were under consideration.
76. Regarding contact, overnight access took place in August and September 2024. The Mother described some difficulties during that period, which she attributed to the Father's attitude and behaviour. It was noted that the Father subsequently blocked her on social media. Since that time, no further direct contact has occurred, although she, through counsel, proposed arrangements for video contact. The Father initially agreed but later discontinued communication when alternative arrangements were suggested.

77. Concerns for personal safety were said to have been reported to DCFS on several occasions, though the Mother felt these were not adequately addressed.
78. She also indicated a willingness to provide her contact and address details directly to the Court, if required for safety or administrative purposes, on the understanding that the information would not be disclosed to the Father or to DCFS.
79. A complaint of child abuse was reported to the police on 21 June 2024. The respondent appeared uncertain when it was put to her that she had been interviewed on 24 June 2024 as part of a DCFS investigation. Reference to this matter is found in SIR 2. Following a Court direction on 6 May 2025, the relevant documentation was disclosed and filed. These materials record that:
- (i) A report was made to the police by the Mother on 21 June 2024 and preliminary information was taken by the Vulnerable Persons Unit (VPU);
  - (ii) The matter was referred by the VPU to the DCFS Investigations Team;
  - (iii) It was recorded that on 24 June 2024, interviews were conducted with the Father, the Mother, and B by Officer Alafia Woods;
  - (iv) The case was closed by DCFS on 26 June 2024;
  - (v) On 10 July 2024, Detective Constable Raynor interviewed the Mother for approximately one to two hours and indicated that the information warranted further investigation; and
  - (vi) On 12 July 2024, DC Raynor informed DCFS by email that she had been instructed to close the matter on the police side.
80. The Mother denied having been interviewed by Ms Woods but stated that she received a telephone call from a person identifying herself as a police officer who claimed to have interviewed B. She confirmed that she provided this individual with supporting video material. The Mother reiterated her frustration and disappointment in DCFS Investigations Team as well as the CASW for not investigating these allegations at all.

#### Incident of 4 October 2023

81. The Court received evidence regarding an incident that occurred on 4 October 2023, which appears to have precipitated a series of events ultimately resulting in the Mother and B remaining in Bermuda for an extended period of approximately eighteen months.<sup>1</sup>

---

<sup>1</sup> See paragraph 25 (v) and (vi) of the Reasons which address the Mother's inability to travel during this eighteen-month period.



82. According to the Mother's account, she had gone out with a friend earlier that day and consumed alcohol and a cannabis-infused edible prior to returning home. She stated that she returned to the property at approximately 5:00 p.m. to greet B upon his return from a nursery visit. The Mother's evidence was that the Father had become angry after seeing her earlier on the back of a motorcycle with a male friend and that prior to the incident, he had forced open a bathroom window while she was preparing to go out, shouting at her from outside the property.
83. The Mother stated that when she arrived home, the Father and B had already returned from the nursery visit. She described an argument between herself and the Father which began outside and continued inside the residence, culminating in her calling the police. A police report exhibited to SIR 2 records that the emergency call was made by the Mother.
84. In her evidence, the Mother stated that during the incident she was knocked unconscious after falling onto a tiled floor and that upon regaining consciousness she saw the Father holding B. She attributed her disorientation and apparent incoherence when the police arrived to the effects of a head injury sustained during the fall. The police report, however, recorded that the Mother appeared visibly intoxicated and was unable to articulate herself clearly at the time of attendance.
85. The Father's account differed significantly. He stated that he was sober and that the Mother was heavily intoxicated. He alleged that she struck him in the face with B's helmet while his back was turned. He was questioned as to why he did not remove B from the situation and stated that he had not perceived the need to do so.
86. The Father indicated that CCTV cameras outside the property may have captured the incident but explained that the footage had since been automatically deleted by a neighbour's security system after sixty days. He further stated that he retained video footage of the police attending the property but not of any physical altercation.
87. When questioned about the accuracy of his recollection and whether he had sought to influence the Mother's understanding of events, the Father denied attempting to mislead her. The Mother maintained that she did not strike the Father and attributed her confusion at the scene to a head injury rather than intoxication.
88. The Mother confirmed that she did not seek medical attention immediately following the incident but later recognised that she should have done so. She stated that she left the Father's property the following day and subsequently discovered that certain travel documents and B's birth certificate were missing from her belongings. The Mother reported that she spent the following days attempting to locate B and secure his return to her care.

## THE PARTIES' POSITIONS

### The Father

89. Whilst the Father was being cross-examined, he ultimately conceded that B should remain in Canada with the Mother, i.e. the Mother should have primary care and control of B. He maintained his desire to be involved in custodial decision making as well as access.
90. The Father places significant reliance upon the evidence of the CASW. Mr Swan's submissions contend that the CASW's professional assessment provides the only independent, neutral account before the Court of B's welfare circumstances, both historically and currently. Generally, Mr Swan submitted that the CASW's findings materially support the Father's application.
91. It was emphasized by Mr Swan that the CASW produced two detailed reports, each of which sets out her investigative steps, findings, and recommendations. A central theme of Mr Swan's argument is that the CASW in SIR 2 explicitly recorded difficulty in obtaining information from the Mother, which in turn prevented her from reaching a fully informed recommendation as to B's best interests. Mr Swan highlighted the following points attributed to the CASW:
- (i) Non-disclosure of B's residential address in Canada, despite direct requests.
  - (ii) Failure to provide evidence of B's nursery attendance or educational provision in Canada.
  - (iii) Failure to supply details about B's doctor, dentist, or any healthcare registration.
  - (iv) Lack of clarity regarding her own relocation from Halifax to Toronto, including reasons for the move and how it benefits B.
92. According to Mr Swan, he says that these omissions led the CASW to conclude that independent evidence from Canada would be required before she could make any final welfare recommendation. The result, as submitted by Mr Swan, is that the Court should infer that the absence of information lies solely with the Mother and not with any shortcoming in the CASW's process.
93. It is underscored by Mr Swan that the CASW described the parties' co-parenting relationship as "*toxic*", citing extensive hostile or dysfunctional communication. Mr Swan relies on this finding, noting the following:

- (i) The CASW reviewed communications between the parties and found the pattern deeply concerning.
- (ii) The CASW concluded that such communication was not in B's best interests and required substantial improvement.
- (iii) The CASW reportedly found the Father to be more open to engagement and problem-solving than the Mother, who was described as adversarial both towards the Father and towards DCFS personnel.

94. Therefore, it was argued by Mr Swan, that these observations are significant because they undermine the Mother's allegations of domestic abuse. Moreover, he says they suggest that the principal barrier to constructive co-parenting lies with the Mother's conduct rather than the Father's.
95. Mr Swan also raised the CASW's concerns regarding the alleged inconsistency in B's residence while in the Mother's care, along with concerns about B's infrequent attendance at nursery while in Bermuda. The absence of evidence of B's regular attendance at a nursery school in Canada was also raised by the CASW.
96. These matters are put forward by Mr Swan as indicia of instability in B's living arrangements with the Mother. He argues that these concerns are heightened by the Mother's relocation to Toronto, which the CASW reportedly viewed as an additional source of uncertainty for B.
97. Mr Swan submitted that significant weight should be placed on the CASW's conclusion that there was no credible evidence to support the Mother's allegations of abuse, violence, or harassment by the Father. He noted that every allegation raised by the Mother and assessed by DCFS was found to be unsubstantiated, and that the CASW recorded no basis for protective intervention with respect to the Father. He further submitted that the CASW's inability to corroborate the Mother's allegations reflected not any inadequacy in the investigation but the absence of factual support provided by the Mother. Mr Swan contends that these issues are crucial because the Mother relies heavily on these allegations to justify her withholding of information, relocation decisions, and refusal to facilitate contact.
98. It was submitted by Mr Swan that as the Father has admitted to past verbal conflict with the Mother as well as the Father's acknowledgment of prior drug use demonstrates the Father's openness, his acceptance of responsibility, and his stated willingness to pursue support through the Employee Assistance Program. He says this reflects positively on the Father's credibility and maturity.

99. Mr Swan asserted that the attempts made by Ms Cavanagh during cross examination to undermine the CASW's evidence were unsuccessful. He submitted that the CASW consistently maintained that her reports were fair, factual, and impartial, and that she remained firm in her recommendations and factual findings throughout questioning. He further argued that the CASW rejected any suggestion that her assessment had been biased or improperly influenced.
100. Building on this, Mr Swan invited the Court to regard the CASW's evidence as credible, well-founded, and more reliable than the Mother's account, particularly where the Mother's assertions lack independent corroboration.
101. Mr Swan additionally drew the Court's attention to the Mother's educational background. He noted that she has not completed secondary school, has produced no evidence demonstrating enrolment in a program to obtain her high school diploma, and has provided no documentation verifying her claimed pursuit of further education in Canada. In his submission, this absence of supporting material raises concerns about the stability, planning, and long-term viability of the Mother's care arrangements for B.
102. Turning to issues of contact, Mr Swan argued that although the Mother has occasionally expressed a willingness to allow virtual access, her refusal to disclose her residence or B's school information has made meaningful arrangements impossible. He submitted that this conduct amounts to a unilateral severing of B's relationship with the Father and is inconsistent with B's right to maintain meaningful contact with both parents.
103. Mr Swan further pointed out that the Mother has confirmed she resides with her partner, yet has provided no information about the partner's background, employment, involvement with B, or role within the household. He argued that this lack of disclosure creates uncertainty and gives rise to unassessed safeguarding and stability concerns, particularly in circumstances where the Mother continues to withhold essential details.
104. Mr Swan also reminded the Court of its jurisdiction to order B's return to Bermuda should it find that the Mother's removal or retention is not in B's best interests. He observed that, as an officer of the Court, counsel for the Mother may be required to facilitate disclosure of B's current address to allow proper welfare assessments to be carried out. In his submission, the ongoing concealment of this information obstructs the Court's ability to fulfil its statutory duty to safeguard B's welfare.
105. Finally, in advancing the Father's position, Mr Swan urged the Court to make orders that would restore contact, ensure necessary disclosure, and promote B's long-term best interests. The Father seeks immediate virtual access with B, followed by bi-weekly virtual contact, as well as summer and Christmas holiday access in accordance with the Consent Order dated 9 January 2023, including its specific access provisions. Mr Swan additionally asks for an updated Social

Inquiry Report to be prepared within three to four months, contingent upon the Mother's full cooperation, and invited the Court to consider sanctions or adverse inferences in the event of continued non-compliance. He further submitted that joint custody should be maintained or confirmed, given the absence of any independent evidence supporting its removal, and that the Mother should be required to comply immediately with her disclosure.

### **The Mother**

106. Ms Cavanagh submitted that the Mother is seeking a final resolution to these proceedings in order to ensure the well-being and future of B, which she says must be free from further interference, abuse, harassment and/or neglect by the Father. She also highlighted that the Mother is mindful of B's right to have a meaningful and safe relationship with the Father and is committed to doing so as long as it is in B's best interest.
107. It was confirmed by Ms Cavanagh that the Mother seeks sole custody of B not only due to the domestic violence concerns, but also due to the inability of the parties to co-parent and even agree over the arrangements for B. She highlighted that the Mother's evidence raised various concerns including the Father's unilateral decisions relating to religious training, a circumcision appointment, ear piercing, hair cutting, Bermuda Status, and enrolment into a school in Bermuda.
108. Ms Cavanagh noted that the CASW confirmed having received the Court bundles in December 2024 or January 2025 which should have been incorporated in her reports. She highlighted that SIR 1 and SIR 2 were prepared using information gathered from both parents, as well as from the Department of Child and Family Services' Family Preservation Team and certain collateral sources. However, Ms Cavanagh underscored that the evidence revealed limitations in the scope of the CASW's investigation. The CASW accepted that she relied primarily on existing departmental reports dated 5 May 2024 and 17 December 2024, having undertaken only limited independent inquiries. She attributed this to departmental workload pressures and staffing shortages, which she said restricted her ability to review the material more thoroughly and may have led to some matters being overlooked.
109. It was further submitted by Ms Cavanagh that although the earlier inability to appoint an Independent CASW in Canada was due to financial constraints, the CASW nonetheless repeated her recommendation for such an assessment upon the Mother's return to Canada. She explained that this was prompted by the Mother's reluctance to disclose her current address and personal circumstances. However, the CASW did not indicate how such an assessment could be funded where the anticipated cost was \$2,000, a sum neither party is in a position to meet.
110. In relation to the Father's maintenance arrears, Ms Cavanagh pointed out that the CASW stated this was outside her remit and that, although aware from correspondence that the Father had

agreed to recommence payments, she had not followed up prior to filing her report. Attention was drawn to the DCFS December 2024 Report, which records that the Mother had applied for child maintenance and that the Father “*reported*” to the CASW that “[*I*] *refused to pay*”.

111. Ms Cavanagh also noted that the CASW accepted the Father’s account regarding nursery fee arrears at First Church of God and understood this to be based on an agreement for shared costs, despite having obtained no confirmation or documentary support. By contrast, the CASW expressed the view that the Mother should seek employment or further education to improve her financial circumstances, which the CASW referenced as part of the rationale for recommending that B remain with the Father in Bermuda.
112. Regarding the Mother’s housing, Ms Cavanagh underscored that although the CASW referred to past instability, she acknowledged in evidence that the Mother’s current accommodation is secure and suitable. The CASW’s evidence suggested that this was the only continuing concern she held in respect of the Mother.
113. Ms Cavanagh further highlighted that the CASW had not made detailed inquiries into the Father’s employment history or financial position, despite the Father having experienced frequent job changes. The CASW accepted the Father’s explanation that such changes were typical for young people.
114. The Court was reminded by Ms Cavanagh that the Father’s BARC assessment indicated a diagnosis of Cannabis Use Disorder. While the CASW accepted this diagnosis, she stated that no treatment had been recommended and therefore attached limited weight to it. She also acknowledged having made no further inquiries into the Father’s counselling history, its purpose, or duration.
115. Ms Cavanagh also drew attention to the CASW’s acceptance that she had not sought clarification from the BARC team regarding the level of alcohol present in the Father’s system that produced a positive test. BARC correspondence confirmed that alcohol can be detected only within limited timeframes, and precise quantities cannot be determined. In contrast, Ms Cavanagh submitted that the CASW appeared to place greater significance on perceived concerns about the Mother’s alcohol use, notwithstanding that her BARC toxicology results were negative. When questioned, the CASW stated that she believed the Mother might be underreporting her consumption based on a screenshot and video provided by the Father. She also relied heavily on a Police Report of 3 October 2023, which she interpreted as indicating that the Mother was intoxicated on that occasion.
116. It was further noted by Ms Cavanagh that the CASW was aware of historical domestic incidents between the parties, including verbal aggression and at least one physical altercation resulting in injury to the Mother. Although the CASW recommended mediation, she accepted that

allegations of domestic violence had not been fully investigated. She confirmed receiving video and email evidence from the Mother regarding alleged violence inflicted by the Father on both the Mother and B. The CASW characterized these events as a reflection of immaturity rather than ongoing risk and expressed the view that domestic violence was no longer relevant because the parties had separated. She acknowledged that not exploring the Mother's allegations was an "oversight" and stated, "*it couldn't have been that bad as she went back to him*".

117. In her submissions, Ms Cavanagh emphasized that the CASW had suggested counselling for the Mother based on perceived attachment-related concerns derived from a letter from the First Church of God Nursery. The CASW accepted that she had not observed either parent interacting with B for the purpose of preparing SIR 1 or SIR 2.

118. Finally, Ms Cavanagh highlighted that the CASW chose to attach various documents and screenshots supplied by the Father to SIR 2 because the Mother had submitted material in support of her position while the Father had not. The CASW accepted that the evidence provided by the Mother, including her responses to the CASW's own questions, was neither referenced in nor appended to SIR 2. The CASW also confirmed that it is not her usual practice to attach documents provided by the parties to a completed social inquiry report.

119. The Mother therefore seeks the following order:

- (i) B's Bermuda Status obtained unilaterally by the Father shall be revoked.
- (ii) B's original Canadian birth certificate be returned to the Mother by the Father.
- (iii) Sole custody of B to the Mother.
- (iv) Sole care and control of B to the Mother.
- (v) Upon completion of a psychoeducational course relating to substance abuse and individual counselling to address healthy communication, the Father shall have the following access:
  - (a) reasonable video access with B on a fortnightly basis on a day and at a time to be specified;
  - (b) indirect access by way of cards and gifts to be delivered to the Mother's mother who resides in Halifax and can forward on to B so as to not disclose the Mother's residential address to the Father;
- (vi) The case be closed to DCFS in Bermuda.

(vii) The Father shall be responsible for the Mother's costs.

120. Ms Cavanagh further informed the Court that the Mother has confirmed that should her proposals set out in paragraph 119 above occur without difficulties, she will propose additional direct access options to the Father which could include visits to Bermuda during the summer. It was emphasized that further progression of access will be dependent on the Father's behaviour, B's emotional recovery and the Mother's renewed trust in the systems that are meant to protect her and B from harm. Additionally, Ms Cavanagh asked that the Court recognize the Mother's decision to remain in Canada, where she and B have established their lives, and where B's educational and developmental needs are being met.

## **FINDINGS AND ANALYSIS**

121. Firstly, I will address my general findings of the parties' evidence which will be applied against the comprehensive analysis of the factors set out in the UK Welfare Checklist. Each factor of the UK Welfare Checklist will be then be addressed.

### **GENERAL**

122. Overall, I have found that the Father has been manipulative and deceptive. Of particular note was his untruthfulness regarding his employment position and in relation to his non-appearance at the Child Maintenance Hearing.
123. The Father was initially ordered to pay \$75 in weekly child maintenance plus half the nursery fees in Canada in accordance with the January 2023 Consent Order. Upon receiving SIR 1 on 20 May 2024, the Father immediately ceased paying the child maintenance. Up until the first day of this hearing, the Father had failed to make any payments since this date. There were also emails produced by DCFS and also verified by the DCFS Report dated 17 December 2024 wherein it is evidenced that the Father explicitly states he is refusing to pay the ordered child maintenance.
124. It is clear on the evidence provided by the Father, as set out in the Father's Second Affidavit, that he was employed by his father's company, Ocean Interiors Ltd. and from "[he] earn[s] \$770.00 per week after deductions, in the past three months I have been unable to do some overtime hours on Saturdays that has averaged me a weekly sum of \$970.00 per week.". However, under cross-examination his evidence was that he never worked for his father's company earning a regular salary but was rather hired by Ocean Interiors Ltd. as a subcontractor so did not earn a regular salary. Once the Court imposed child maintenance to be paid by way of an attachment of earnings at the Child Maintenance Hearing, when the Father was



subsequently served with the order of 10 December 2024 on 16 December 2024<sup>2</sup>, changed his story to being employed as a sub-contractor rather than an employee. The effect of this was that Ocean Interiors Ltd did not comply with the attachment of earnings and upon the Father's attendance in Magistrates' Court on the Warrant of Arrest, Mr Swan advised the court that it was defective as the Father was self-employed.

125. This was intentional manipulation carried out by the Father and appears to have been facilitated by his own father. The Father's actions were motivated by the sole purpose of avoiding enforcement of the December 2024 Order which addressed not only child maintenance moving forward but also the accrued arrears.
126. Furthermore, the Father's evidence as to why he did not attend Court on the day of the Child Maintenance Hearing was simply unbelievable. I am satisfied the Father had notice of the Child Maintenance Hearing, knowing that Smith Bean & Co would not be appearing on his behalf yet deliberately chose not to attend.
127. I highlight these instances of the Father's untruthfulness as it directly impacts that Father's credibility and forces me to question whether he does have B's best interests as his priority. The deliberate steps the Father has taken to evade payment of child maintenance alone, is telling of his lack of regard for what is in B's best interests. This in itself exhibits abusive behaviour.
128. In addition to the Father's untruthfulness is the behaviour he exhibited towards the Mother not only by being disrespectful and aggressive when attending Court hearings, but it was also evidenced in his communications with the Mother. For example, the Mother provided evidence of the Father referring to her as a "*dumb bitch*". His overall contempt for the Mother was obvious and undoubtedly will impact B in a negative manner.
129. I do not accept that the Mother is being evasive and non-cooperative in these proceedings. The Mother has continued to uphold her undertaking that if she were to return to Canada that she would make herself available to the Court at any time this matter is listed. She has done so. The Mother's reluctance and refusal to provide the CASW and the Father with her current residential address and details in relation to B which would ultimately lead to the Father being able to locate the Mother is in my view justified. The Mother and B have been put through a series of traumatic events in circumstances where the both the Mother's and B's voices were not heard as it relates to the Mother's allegations of domestic violence inflicted against her and B as well as when it related to her ongoing concern of B's regressive behaviours when the week on/week off schedule commenced. Instead, the Mother was met with criticisms and threats by DCFS Investigations Team workers to have her arrested if she did not comply with taking B to nursery school despite these concerns. This will be addressed further below.

---

<sup>2</sup> As evidenced by an Affidavit of Service sworn on 17 December 2024.

130. I make specific reference to the Mother's Third Affidavit from paragraphs 172 to 176 which evidence and I accept demonstrates one example the subpar treatment of the Mother by DCFS as well as what appears to be little to no regard for the welfare of B during these proceedings:

*"172. After months of adhering to this court ordered schedule for my child, I started to notice the negative effects in my son as well as very alarming trauma signs/symptoms. There is no way any child can go through what my son is going through and not be negatively affected. I started recording my son's new saddening and violent episodes. My son would violently kick and scream while crying, "I don't want to go back to daddy's! Why do I have to go back to daddy's? Daddy hits me! I want to stay with mommy!". These episodes happened every week without fail just before he was due to return back to his father's. When I sent these countless disturbing videos of how my son was acting on what he was saying, each time I was dismissed and more often than not, received no response. My family was also concerned by [B]'s episodes and encouraged me to reach out to the social workers, which I did in hopes they use the authority and power they have to make the current schedule for my son, a more humane one for him.*

*173. However, I was told by social worker Dill, "my job is only to enforce the court order". This left me as a mother feeling very helpless due to my son's suffering from a schedule that was very unhealthy for him. The schedule: week on/week off with mother and estranged father, every other week being denied any access to his mom, on weeks with mother, court order to be in the nursery full-time, meaning when [B] is with mother, who he has just recently been separated from for 50% of the time, he cannot spend a healthy amount of time to make up for the separation, as he is court ordered to be in nursery 10 out of the 14 days that child has with his mother a month, meaning [B] I only have 4 uninterrupted days together per month.*

*174. This newly implemented schedule is a drastic change from how [B] was living immediately before this court ordered schedule change, where he was with me every day and night. After completing the social workers who have the power and authority to grant my son some relief from this unhealthy schedule, and showing them the negative toll it has taken on my 2-3 year old son, and thereby seeing the total disregard my child's safety and well-being, I was left with as a mother feeling helpless, defeated and subjected to continue to watch my son suffer from this unhealthy schedule, and try my best to comfort and get him through this in a way that I could. [B] also developed what I believe to be separation anxiety due to recently being separated from his mother. This made it extremely hard, nearly impossible to get him ready for school, he put up a fight whenever it was time for him to go to school, and he would beg and cry, "I want to stay with mommy!". This is because he started to realize his days with mommy were numbered and it was only a matter of days before he would be back at his father's and forced to have no contact with his mother.*

*175. This was when I decided that [B] would no longer be attending daycare regularly to address the separation anxiety which he developed as a result of this court ordered schedule and being newly separated from me. Before putting this decision*

*into effect, I made sure to inform social workers Dill, Walker, Saunders as well as a daycare director of my decision, as well as giving a thorough and detailed explanation email as to how I came to this decision for the sake of my child's safety and well-being.*

176. *Moments after informing social workers of my decision, I was threatened with the power of arrest if I did not take [B] to school every day, despite me doing this to address my child's suffering, again I was threatened by the social workers to be arrested in the presence of my child. [The Father] successfully followed through with that threat, by calling the police to have me arrested in the presence of my child. I received a call from the police on the day while enjoying time spent with my son requesting my location so they could arrest me. I then explained to this officer everything had previously pleaded to social workers Dill and Walker regarding the negative toll the schedule has had on my son. The officer spoke with her Sergeant and they both concluded that they would not be enforcing [B]'s nursery attendance with the power of arrest. On this day the police showed regards for a child's safety and well-being, but I have yet to see from social workers Dill, Walker or Saunders. As a result of the integrity these officers showed this day, I had not received the power of arrest threat from the social workers in regards to [B's] nursery attendance, however I have received a power of arrest threat if I am as little as 5 minutes late for the drop-off, or if I try to propose in convenient drop-off location when [B] is not in school, or the schools close, despite the fact [the Father] successfully proposed drop-off locations that are more convenient for him. There is now produced and marked in exhibit JE-3 on pages 212 to 222."*

131. Similarly, the DCFS Investigation Team and the CASW's 'observation' that the Mother was uncooperative and "manipulative" are entirely misplaced. The Mother's frustration and feeling of helplessness was more than justified in the circumstances of this case. The treatment of the Mother, in particular of the DCFS Investigations Team is astonishing. The fact that the DCFS Investigations Team stated to the Mother that "it was their job to enforce the court order" by monitoring B's attendance at nursery and contacting the police when their view was the Mother was not complying can be described as nothing other than a flagrant abuse of power in circumstances where there was zero authority. During my over eighteen-year long career in the family law arena, DCFS have always been steadfast in their position that their role is not to monitor, manage, or police court orders. Further, the lack of proper investigation into the Mother's allegations of domestic abuse is abysmal, particularly given that it is shown that the Mother was never interviewed by the DCFS Investigations Team in relation to her allegations of the Father inflicting domestic abuse on B and concluding that the allegations were 'historic'. Moreover, when the Mother appeared in the Courts prior to August 2024 and prior to Ms Cavanagh coming on the record as her counsel, she was given no opportunity whatsoever to give evidence as to why she did not accept the findings of the DCFS Welfare Report or even the ability to provide the Court with any evidence at all, whether *viva voce* or by affidavit.<sup>3</sup>

---

<sup>3</sup> Paragraphs 25 (iii) and (iv) of the Reasons cite the following as it relates to the lack of evidence:

132. With this said, I reject the DCFS Investigations Team's and the CASW's characterization of the Mother. Accordingly, where the parties' evidence conflicts, I prefer the evidence of the Mother.

### **UK WELFARE CHECKLIST FACTORS**

133. I will now address the elements of the UK Welfare Checklist below.

#### ***The ascertainable wishes and feelings of B (considered in the light of B's age and understanding)***

134. As I previously addressed in the case of *Mother v Father (Access and Care and Control)* [2025] SC (Bda) 26 civ. (7 March 25), the lack of guidance from social workers regarding age-appropriate guidance on development and attachment is critical information that would assist the Court in making determinations. Paragraph 35 of *Mother v Father (Access and Care and Control)* discussed this issue as follows:

*"As it relates to the recommendations of the CASW, I will say that it appears to be a trend of the Court appointed social workers recommending joint care and control wherein both parents have equal care of the child. Whilst I accept that this may be in the best interests of some children, I have a growing concern that this is a blanket*

---

*"iii) At no point has there been a hearing where parties have been allowed to provide any of his or her own evidence in relation to the content of the Welfare Report, the Family Preservation Team Report dated 5 May 2024 and the Social Inquiry Report. Likewise, the parties were also not given an opportunity to submit affidavit evidence, and no opportunity was given for the evidence to be tested through a fact-finding hearing.*

*In the 12 October 2023 Order, the Judge explicitly set out what she says were "Undisputed Facts" and stated, "Given the above issues are undisputed, the Court has decided that a fact-finding hearing is not needed." It is unclear whether the contents of the 12 October 2023 Order were ever put to or explained to the parties, but from review of the transcripts it does not appear that this was done. Therefore, it is highly unlikely that either party would have a legal understanding of the concepts and consequences of findings being made regarding "undisputed facts" or the concept or consequence of a "fact finding hearing".*

*iv) Week on, week off care was ordered in circumstances where a child of just two years of age and who had been primarily cared for by the Mother in Canada for more than B's first year of life, without hearing from the Mother or the Father. Portions of the transcripts from the hearing held on 19 October 2023, shows the Court's refusal to hear the Mother 4:*

*"[JUSTICE]...it's not a hearing. The court is guided by the professionals, the social workers who do the social work. The court applies the law and our joint focus is to safeguard [B]. Okay?*

*[MOTHER]: May I ask a question?*

*...*

*[MOTHER]: Are you saying I will not get a chance to speak today for my son?*

*...*

*[JUSTICE]: Officer, come in here, please. I'm growing old and short of patience and when I say stop talking, please stop talking. Stop. Yeah? Just stop. I've told you what the purpose is. Recommendations have been made. No, I don't want to hear you..."*

*position the social workers are taking no matter what the circumstances are of the case. It would perhaps be helpful if the social workers would be able to cite some research and/or professional papers which support the notion that whatever the case may be access should always be equal between the parents. I would think that one would be hard pressed to produce that supporting evidence as each child case that comes before these courts must consider the individual needs, characteristics, emotional wellbeing, etc of that individual child. What also would have been helpful for the court social worker to produce is professional evidence of what would be considered appropriate periods of time for a child in a specific age range to be separated from either parent. Mr Caisey's evidence was that how the parents schedule access is a matter for them. To be clear, I am in no way criticising Mr Caisey, I am simply highlighting the difficulties with the Court being able to determine which proposed schedule would be best for this three-year-old child recognising that up until this point the Father has had very minimal access with A since birth."* [Emphasis added]

135. Likewise, the importance as to the history of domestic violence between the parties, perhaps the CASW could have considered and cited the research of the impact of a child's exposure to domestic violence similar to what B has experienced. Data on the potential risks to B being exposed further would also be critical for the Court's consideration. One would also have anticipated that safeguards would have been proposed by the CASW to minimize any risk other than by recommending that parties with a relationship fraught with issues of domestic violence attend mediation to "better communicate". Notably, this was also raised in the Reasons at paragraph 25 (xii) which directly addressed the inappropriateness of the mediation recommendation by DCFS and the CASW as follows:

*"Findings were made that there has been domestic violence between the parties (putting aside whoever was the instigator and/or perpetrator), the Court Appointed Social Worker and the Investigation Team still recommended the parties to attend mediation to resolve parenting issues. This is in direct contradiction of modern litigation practices which acknowledge that in cases where there is domestic violence, parties should not be put in a position to be forced to mediate/negotiate with his or her abuser. For example, in the UK when parties are divorced there is a statutory requirement for the parties to complete a mediation process in relation to finances or any child issues prior to an application being brought before the Court. An explicit exemption for participating in the mediation process is when there are allegations of domestic violence."* [Emphasis added]

136. Again, despite this issue being raised, the DCFS Investigations Team continued to make recommendations for the parties to attend mediation to "learn healthier ways of communicating".
137. Additionally, the length of time it has taken this matter the social inquiry reports to be completed in this matter and then to be listed for a final hearing falls far short of the standards expected in this jurisdiction. I recently commented in the case of *Mother v Father (Access and Care and Control)* [2025] SC (Bda) 26 civ. on my concern for the length of time it was taking

for matters to come to court where SIR reports had been completed. The postscript in *Mother v Father (Access and Care and Control)* states as follows:

*“The timeframe which it took for this matter to be determined is very concerning. Cases where a child is the subject matter of the action and where a critical component of his or her life is such as custody, care and control and access is to be determined, the period of time between the filing of the application and the hearing of the application, in my view, should certainly be no more than six months. In this case, the Father’s Application was filed in October 2022 and not heard until February 2025. The entire landscape of A’s developmental needs during this period fundamentally shifted given that she was 1 year and 5 months old in October 2022 and at the date of the hearing A was 3 years and 9 months old. I will not digress into the reasons for this occurring but will say that the Courts must do better for the children and families of Bermuda.”*  
[Emphasis added]

138. Notably, the CASW’s lack of observation of B with either parent particularly in such a long-standing case was unhelpful to say the least. The CASW spent an inordinate amount of time of what appears to be advocating for the Father rather than playing a neutral role for the Court. This appeared in various forms throughout these proceedings. The following are just a few examples:

- (i) The Court ordered on 23 August 2024 that an updated SIR be completed due to the amount of time that had passed since SIR 1 along with the fact that there had been significant changes since its completion. This matter was initially listed in March; however, *inter alia*, the CASW confirmed that the updated report would not be completed in time for the start date of the trial and requested two further weeks to complete it. The trial clearly could not have proceeded without it. Despite the trial being adjourned due to the incomplete report, the CASW wrote to the Court on 4 April 2025 (**CASW April 2025 Letter**) with allegations that the Mother had intentionally breached Section 85 of the Children Act 1998 as she had allegedly disclosed confidential information on social media. This was received on the heels of Ms Cavanagh sending a letter to the Father advising him of his duty not to disclose confidential information about the case. Unusually, the CASW suggested that she *“wishes to bring to the Court’s attention the behaviour of [the Mother] pertaining to this matter that needs to be urgently addressed by the Court.”* [Emphasis added].

The Court had not had sight of MJM’s letter to the Father until it was sent as an attachment to the CASW’s April 2025 Letter. Notably, the CASW had not made any contact with the Mother to obtain her position regarding the allegations and it undoubtedly appears as if the CASW has embroiled herself as acting as an advocate for the Father. Meanwhile, the trial for this matter had to be adjourned for an incomplete social inquiry report which still had not been completed despite the CASW having an additional two weeks which she requested. I cannot impress upon DCFS enough the importance of ensuring what is presented to the Court only

matters which are relevant to the best interests of the child. Matters such as this, even if they proved to be true, are not matters for a CASW to engage. All efforts should have been utilized in completing the social inquiry report so the matter could proceed to a final hearing.

- (ii) The CASW had no police checks carried out on the Father in Canada or in the UK (where he spent a significant portion of his life), when it was known to her that the Father had resided in both countries. Yet, had police checks and social service checks on the Mother both in Canada and Bermuda. No explanation was given in cross-examination.
- (iii) The Mother informed the CASW regarding the Father's daughter who resides in the UK and provided her with information that the daughter's mother also experienced similar domestic abuse with the Father but no attempts were made to explore this further by the CASW.

139. I raise these issues under this factor of the UK Welfare Checklist as the role of DCFS and the CASW is to represent the voice of the child. Highlighting the above concerns, brings me to the clear conclusion that this was not done in this case.

***B's physical, emotional and educational needs; and  
B's age, sex, background and any characteristics of B which the Court considers relevant***

140. A recurring theme in this matter is the Father's lack of consistent effort to exercise virtual access with B. Although he complains about the absence of contact, he acknowledged in his evidence that he made no attempt to communicate with the Mother for the purpose of arranging such access until B's birthday on 14 March 2025. He asserts that negotiations regarding access between September and November 2024 were unsuccessful yet fails to recognise that opportunities for scheduled virtual access had been offered from the outset of those discussions.
141. It is difficult to comprehend how a parent who has applied for sole custody and sole care and control could make virtually no effort to maintain contact for a period of six months, save for two attempts in November 2024 in which the Father did not answer the Mother's returned calls. Notwithstanding this lack of initiative, the Father raised 'concerns' in December 2024 about B travelling outside Bermuda without the Mother having made no attempts to contact her directly and also submitted purported evidence to the CASW of the Mother consuming alcohol.
142. One would have expected the Father's focus to be on communicating with the Mother in order to maintain a relationship with B, rather than directing attention toward matters unrelated to the child's welfare. Taken together, this behaviour suggests conduct motivated more by retaliation against the Mother than by genuine concern for B.

143. Much criticism was made of the Mother, even by the previous Judge, of her wishing to care for B on a full-time basis. I accept the Mother's evidence that following the breakdown of her attempted reconciliation with the Father in October 2023, her intent had been to return to Canada to reside with her mother again. The CASW received confirmation of this position with the Mother's mother. However, any attempts to return to Canada with B were thwarted as the Judge had ordered that B's passport be held by the Court despite the Father's application for B to be prohibited from leaving the jurisdiction being dismissed. In fact, it was even suggested to the Mother by the Court that she could return to Canada without B (and later included in the SIR 1 recommendations. Despite having access to the Court pleadings, the CASW failed to take into consideration the Mother's Second Affidavit wherein she says that she has always desired to complete her education; however, after becoming pregnant with B and then caring for him until now she has not been able to accomplish this.
144. I believe the Mother is the most capable of meeting B's physical, emotional and educational needs in comparison with the Father. The Father appears to be more focused on the Mother and is unable to behave in an appropriate, non-abusive manner towards her. Even such behaviour has been shown to be displayed in the presence of B.

***The likely effect on B of any change in B's circumstances***

145. It is evident that B has experienced a great deal of upheaval in his young life. I am satisfied that B being with the Mother in Canada will provide him with the stability that he requires moving forward. It would not be in B's best interest to make any significant changes to his daily life for the foreseeable future.

***Any harm which B has suffered or is at risk of suffering; and  
How capable each of B's parents is of meeting B's needs***

146. In what can only be described as horrifying, the CASW's evidence that not looking further into the concerns of domestic abuse raised by the Mother as an "oversight". Even more reprehensible is the fact that the Reasons explicitly criticize DCFS and the CASW for not addressing the domestic abuse allegations issues previously and they failed again to address them. Paragraph 25 (x) of the Ruling states as follows:

*"Serious allegations of domestic abuse have been made and do not appear to have been fully investigated by the Court Appointed CASW (CASW), the Investigation Team, the Family Preservation Team or the Court. For example, the Mother alleges that on 3 October 2023 she contacted the police as the Father had hit her in the head and knocked her unconscious<sup>7</sup>. It was as a direct result of the Mother's assault complaint to the police on this date which ultimately led to the Welfare Report being ordered by the Court. There is no mention of the assault in the Welfare Report and no attempts*



*appear to have been made to make contact with sources that the Mother informed the CASWs would corroborate her allegations of domestic abuse.”*

147. Moreover, the CASW’s response to whether she had been trained in domestic violence her response was, *“It couldn’t have been that bad because she went back to him”*. In SIR 2 this view is also expressed on page 11 as follows:

*“Although the relationship was very unhealthy, based on messages provided to this writer between them, [the Mother] was seeking to maintain a relationship with [the Father].”*

148. Additionally, in SIR 2 under the heading “Domestic Violence/Child Abuse” which highlights the said concern raised in the Reasons (see paragraph 146 above) states as follows:

*“In the Honourable Acting Justice Wheatley’s judgment dated 30 September 2024, titled Reason[s], she expressed concern about the lack [of] investigation into allegations by the Department’s sections regarding Miss Edwards’ allegation of abuse by [the Father].*

*[The Mother] constantly refers to the October 2023 and alleges that she received a concussion; however, there is no mention of such and the police report supplied by [the Father] in fact, it states that she was intoxicated. There’s also video the incident and [the Mother] never mentions being assaulted and receiving a concussion. She also refers to other incidents of being abused. There were no other known police reports but that there was a picture from September 2023, where she had abrasions and in which [the Father] admitted in text messages that have occurred as a result of her continuously hitting him.*

*[The Mother] has alleged that [B] has been abused by his father. The incident that was reported in June 2024 to DCFS investigations team and the VPU DC Raynor was deemed to be unsubstantiated by the investigations team. [The Mother’s] affidavit alleged that Ms Dill and Miss Walker hindered the investigation with the VPU DC Raynor; however, they were not involved in the investigation of this matter.*

*There are several texts where [the Father] has been seen calling [the Mother] names and the time when he denied [the Mother] access when she had been drinking. [The Father] also threatened to involve the police, usually around [B’s] transitions.”*

149. The conclusion that the social workers were not involved in the June 2024 investigation is entirely inaccurate. I am confused as to how the CASW could have reached that conclusion when it wasn’t until the Court ordered the production of all DCFS’ records surrounding this complaint made by the Mother during the hearing that this information would have been available to her.

150. The documentation shows that DCFS informed the VPU that the investigation had been completed and closed, notwithstanding the Mother's evidence that she had not been interviewed in person. The Mother stated that she met with DC Raynor on 10 July 2024 and was told that the matter would proceed. The tone of DC Raynor's subsequent email of 12 July 2024 suggests that she was surprised by the decision to close the investigation. The records indicate that DCFS determined not to pursue the matter further on the basis that the allegations were considered 'historic' and that B showed no visible injuries at the time. There is no detail about what DCFS deems to be 'historic' as no dates are reported. The Court notes the Mother's position that she had raised concerns about B's behaviour with DCFS on several occasions and that those concerns were not acted upon, leading her to make a report to the police. I accept the Mother's position that the most 'historic' the allegations could be at the very earliest from the summer of 2023. Having reviewed the records which the Court ordered to be provided by DCFS, the Mother's version of events are supported in that DCFS were the ones who advised DC Raynor that they had addressed the abuse allegations and as such there was no need for the police to investigate. I must say this is quite concerning as I am not aware of any authority that DCFS has to direct the police not to investigate the matter although I accept there is usually cooperation between the two services. The records also support the Mother's position that no one from DCFS interviewed her about the allegations she made to the police.
151. Additionally, the CASW appears to simply accept what the Father told her and justified the lack of investigation because there were "*no other police reports*". I find this disturbing given that the evidential hurdles in domestic violence cases are notoriously difficult to meet due to incidents occurring in private with no witnesses which is also compounded by the prevalent reluctance of those who are the object of the abuse to make such complaints. This is certainly more common than not.
152. Notably, no other complaints made by the Mother regarding abuse are even referenced by the CASW in SIR 2, albeit the CASW was informed by the Mother directly via email or WhatsApp on several occasions. In particular, the CASW was also aware of the Mother's position to no longer take B to nursery due to her ongoing concerns of B's violent outbursts which she continually expressed and this was not addressed in SIR 2 either.
153. I accept the version of events provided by the Mother as it relates to her being knocked unconscious by the Father in the October 2023 incident. In my view, the police report in relation to this incident does not provide evidence of the Mother being intoxicated other than being "*unsteady on her feet*" and "*slurring her words*". Notably, these symptoms can easily be attributed to those of being concussed. I have also have regard to the fact that there is the absence of any reference by the police to any smell of alcohol.
154. Sadly, I believe B has been exposed to unnecessary trauma since these proceedings commenced. Taking a two-year-old who had been in the primary care of his mother since he was born, to

removing him from her in October 2023 for two weeks each month with no contact whatsoever being available when B was with the Father and the remaining two weeks in which B was in her care the Court imposed a requirement that B must attend nursery school on a full-time basis, i.e. 5 days per week from 9 a.m. to 5 p.m. This translated to the Mother only having B to just four days per month of uninterrupted access. It would not take much for one to conclude that this undoubtedly would have been a confusing and stressful time for B to say the least.

155. However, astonishingly the CASW in SIR 2 stated that *“From October 2023 to August 2024, [B] experienced week on week off between parents. From [B]’s perspective, to go from that no physical contact with his father must have an emotional impact on him and has to be confusing and traumatic.”*. I am at a loss as to why the CASW would not have considered the experience of B suddenly losing his primary carer in the manner that was ordered by the Court (upon the recommendations the DCFS Investigations Team) in October 2023 as being a traumatic experience for B. Particularly, when the Mother continued to raise many concerns regarding B’s behavioural regressions once this access was implemented, yet she was ignored by all services and criticized for not obtaining employment in Bermuda despite her intent to return to Canada. In fact, in SIR 1 the CASW’s recommendation was for the Mother to return to Canada without B so she can *“sure this time to enrol in school and obtain employment so that she can provide finally for herself and [B]”*.

156. Another example of the abuse inflicted on the Mother by the Father which was displayed directly in front of B was evidenced in the Mother’s Second Affidavit at paragraphs 180 and 181 which state as follows:

*“180. On May 24, 2024, social workers Walker and Dill recommended I drop [B] to Pasta Basta. After some back-and-forth we mutually agreed the handover would happen in front of the police station. My Great Aunt and accompanied me to the handover, and [the Father] cursed me out directly in front of her son, my great aunt, police officers and community bystanders directly in front of the Hamilton Police Station. While cursing me out, [the Father] was also pulling my son from my arms amidst our goodbye hug. His behaviour warranted the attention of the police officers and bystanders, which is when a bystander came across the street to support me and my son. I stayed strong and ignored [the Father’s] loud, vile, and vulgar cursing, and successfully was able to complete our goodbye hug before handing B over to his father. [B] was very tired and worn out due to being at the Bermuda Day Parade with me all day, however his father refused to carry his tired toddler the distance to the car, as he firmly believes that at the age of three, he shouldn’t be carried.*

*181. As they walked away, I broke down and confided in the supportive bystanders who witnessed everything and my Great Aunt. As I was being consoled, [the Father] drove by with my son in the back seat, and yelled for the whole street to hear, “Shut the fuck up!”. This act provoked the three police officers to approach me and tell me to report all that had just happened. They also urged*

*me to record every single interaction I have with [the Father] in the future. I went to the police station to make the report, accompanied by the supportive bystander who enlisted as a witness to what just happened. This is not the first time [the Father] has acted in this vile manner for hand-over. There is now produced in JE- 3 on pages 225 and 226 the police report.”*

157. The Father has a documented history of making unilateral decisions regarding significant aspects of B’s life without consulting the Mother. These include taking B to a temple for religious purposes, applying for B’s Bermuda Status, altering B’s physical appearance by cutting his hair, and arranging for his ears to be pierced. Such actions demonstrate a disregard for co-parenting responsibilities and raise concerns about the Father’s ability to respect boundaries and shared decision-making.
158. The CASW failed to address the Father’s positive BARC test results for alcohol and cannabis, while criticizing the Mother for allegedly underreporting substance use without clear justification. During the hearing, the Department of Court Services explained that alcohol can typically be detected in urine for 12 to 24 hours (up to 72 hours after heavy use) and in saliva for up to 12 hours, while cannabis metabolites may remain detectable in urine for up to a month and in saliva for about 12 hours, depending on usage and metabolism. Despite this explanation, it remains questionable that consuming only two beers could result in a positive alcohol test the following day.
159. The Father has shown no meaningful insight into the potential harm associated with his cannabis use. His statement during the BARC assessment indicating that he would only address substance use “*once it becomes a problem*” reflects a lack of awareness and accountability. This concern is compounded by his positive test for alcohol during the same assessment.
160. There is also evidence of parental alienation, as B has already exhibited troubling signs at a young age, such as repeating statements like “*mummy is naughty*.” These behaviours suggest that the Father’s influence may be undermining B’s relationship with the Mother.
161. Further, the Father’s work schedule raises practical concerns about who would provide primary care for B during his working hours, particularly if he begins work early in the morning. The Father’s insistence on prioritizing nursery attendance over time with the Mother, coupled with his refusal to use B’s middle name, a name the child has been accustomed to since infancy, creates unnecessary confusion and emotional harm for B.
162. As stated previously, there have been unfair criticisms made by the CASW and the Father in relation to the Mother being unemployed and not having obtained her GED. It is unimaginable that any mother is being criticized for choosing not to work and raise her young child. In fact, the Father had no criticisms of the Mother’s ability to care for B until these proceedings became

embroiled in October 2023. Of particular note is that the Father filed no evidence whatsoever in support of his originating application.

163. This was further demonstrated by the Father's willingness to agree to the terms of the Consent Order made by the Court on 9 January 2023 (**January 2023 Consent Order**) whereby provision was made for the Mother to return to Canada with B. The Father at no point made any allegations of the Mother's inability to provide and care for B in any evidence he placed before the Court. Indeed, when the Court ordered in October 2023 for the parties to share care and control of B by way of a week on/week off schedule no evidence had been presented to the Court by either party. I am of the firm view that the Father simply jumped on the DCFS band wagon when the Welfare Report filed in October 2023 which was highly critical of the Mother and this continued following the submission of SIR 1.

***The range of powers available to the court under this Act in the proceedings in question***

164. It is accepted that there is a wide discretion available to the Court which must be exercised based on B's welfare being the paramount consideration.

**CONCLUSION**

165. In reaching my decision, I have considered all the evidence before the court, including the oral evidence, the affidavits, SIR 1 and SIR 2 as well as the submissions made on behalf of the parties. I am mindful of the need to determine matters in accordance with B's welfare as the most paramount consideration and have applied the guiding factors set out in the UK Welfare Checklist.
166. Further, whilst not every point raised is referred to expressly in this decision, it has been taken into account. I have had regard to all relevant matters in arriving at my conclusions.

**Custody**

167. The parties shall retain joint custody of B; however, given the history of domestic violence the instability B has experienced since 2023, the Mother shall be at liberty to unilaterally make decisions regarding B's education, healthcare and religion whilst B is residing with her in Canada. For the avoidance of doubt, this means that the Father's consent is not required for the Mother to obtain medical care for B, to enroll B in school or to obtain a renewal of B's Canadian passport.

**Care and control**

168. Having regard to each of the welfare checklist elements individually and collectively, I find that B's best interests require him to remain in Canada with the Mother. I do not have any welfare concerns of B in the Mother's care and as such do not agree that an ISW needs to be instructed to carry out a report in Canada. In any event, this is not an expense the parties would be able to afford.
169. As it relates to the Father having access to B, I believe that in order to ensure both B and the Mother's safety, that at this time, the Father shall have virtual access with B. The said virtual access shall initially be each Wednesday at 7 p.m. Bermuda time for 20 minutes and each Saturday at 5 p.m. Bermuda time for 20 minutes. This shall be with immediate effect and shall be consistently exercised for a period of six weeks. Thereafter, the Father shall receive additional virtual access with B each Monday at 7 p.m. Bermuda time for 20 minutes. This additional virtual access shall continue for a minimum of eight weeks before any consideration is given to the Father having physical access with B.
170. In addition, to the above, the Father shall have virtual Christmas Holiday access with B on Christmas Day at 12 p.m. Bermuda time for a period of 45 minutes and same shall occur on B's Birthday.
171. If the Father wishes for B to have his own electronic device which his willingness to provide the same during the hearing in order exercise his virtual access with B, provision of the said device shall be made through attorneys for the Mother (or such other third-party as the Mother is comfortable with) so as to not disclose the Mother's residential address. Until such time as this device may be provided, the Father shall contact B via the Mother's WhatsApp platform which the Mother shall ensure is available to B during these periods of virtual access.
172. As it relates to physical access with B, provided there are no abusive interactions instigated by the Father directed at either the Mother or B on any of the occasions virtual access is exercised and provided that the Father exercises all opportunities available to him have virtual access with B, consideration will be given by the Mother for the Father to have access with B in Canada.
173. During such access, the Father shall not be permitted to remove B from Canada and shall not be overnight and be for no more than three consecutive days. The daily hand-overs for such access must be in a public place and where possible, shall be facilitated by a third-party giving consideration to the Mother's safety. Should a third-party not be willing and able to assist, the Mother shall request the assistance of the Canadian Police or such other appropriate service such as Canadian Social Workers. The Father must provide all contact information and information about where he will be taking B during the day to the third-party and the Mother prior to any hand-overs.

174. Overnight access in Canada shall only be available to the Father after there has been a minimum of four occurrences of daytime access. This will also be conditional on there being no abusive interactions instigated by the Father directed at either the Mother or B on any of these occasions or during virtual access sessions.
175. No consideration shall be given for the Father to have any access with B outside of Canada until such time he has exercised physical, overnight access with B in Canada on at least four occasions.
176. Should the Father wish to provide B with any Christmas gifts, Birthday gifts or gifts for any other occasion, the Mother shall provide the Father with the mailing/delivery address of a third-party who the Mother deems suitable who is able and willing to forward on the gifts to the Mother upon receipt.
177. I implore the Father to look in the mirror to gain insight of the impact his continued animosity and disdain of the Mother. B is deserving of having both parents playing a significant role in his life; however, where this Court has safety concerns, those concerns outweigh 'the offending party having access with the Child'. People are capable of change, but the first step is having an awareness that change is required. If the Father is truly committed and determined to play a significant and meaningful role in B's life he must put in the work. With this said, the Father should enroll in counseling which at minimum addresses anger management and his substance use. Both parties can benefit from completing a co-parenting course that can provide assistance with navigating high conflict and abuse relationships.
178. It would be essential that the Mother also consider obtaining therapy to address her experienced traumas and for her overall wellbeing. Also, I believe that it would be highly beneficial for B to be enrolled as soon as possible (if not already done so) in appropriate child therapy, whether it be play therapy or something similar that is available to him in Canada. This will assist B in being able to navigate not only what he has experienced thus far in his life but can provide him with critical tools on how to appropriately process and express his emotions. Along with the stability and safety provided to him by being in Canada with the Mother, it is hoped this will



put him on good footing for a bright future.

**DATED this 18th day of December 2025**

**POSTSCRIPT:**

This case clearly shows the urgent need for greater investment in Bermuda's court system and the Department of Child & Family Services. The evidence given by the CASW was troubling, particularly the repeated excuse that "there are only two of us." Courts already face enormous challenges in child cases, where a child's welfare must be the top priority. In domestic violence cases extra care is essential to protect vulnerable children. In such cases, statements like "*I may have missed that*" or "*I may have overlooked that*" are simply unacceptable.

At the heart of this issue is the principle of natural justice, which ensures fairness in decision-making. It rests on two key rules: the right to be heard (*audi alteram partem*) and the right to an unbiased decision-maker (*nemo iudex in causa sua*). These principles guarantee that people affected by decisions can share their side of the story and that those making decisions act impartially. Modern legal systems embed these principles to protect rights and ensure transparency.

Natural justice is especially critical for vulnerable groups such as children, people with disabilities, the elderly, and those facing poverty or discrimination. Without proper safeguards, these individuals risk unfair treatment or exclusion from decisions that affect them. By requiring clear procedures and giving everyone a voice, natural justice helps correct power imbalances.

When government agencies or institutions make decisions about child protection, immigration, or welfare, natural justice demands notice, explanation and a real chance to respond. This is vital for people who may lack legal representation or understanding of the system. Building these protections into public services demonstrates a commitment to fairness, dignity, and respect.

Applying natural justice also builds public trust. Professionals such as CASWs, teachers, and law enforcement officers play a key role by treating people fairly and listening without bias. Doing so protects those at risk and prevents further trauma for those who have already suffered hardship.

In domestic violence cases (especially those involving young children) natural justice is essential. Family court decisions about custody and safety must be fair, sensitive, and informed. Survivors need to feel safe to speak, and courts must create that space through measures like closed hearings or other protective steps. Power imbalances and fear of retaliation often silence victims, so courts must actively remove those barriers.

In Bermuda, natural justice means ensuring that people have the right to be heard and to have decisions made by someone impartial. These rights are particularly important in cases involving



domestic violence, where parents and children may face serious risks and emotional trauma. Judges must remain free of bias or assumptions, especially when a parent accused of abuse seeks contact with a child. While shared parenting can work in some families, it can be harmful where abuse or coercion is present. Natural justice requires careful consideration of all facts to make decisions that truly protect children and survivors.

The court process itself must be clear, respectful, and focused on safety. Protective orders and supervised access should be handled with care. When natural justice is applied with an understanding of trauma and vulnerability, the legal system becomes not just a place of rules, but a place of protection, dignity, and justice.

For parents and children who have experienced violence, court can be frightening and confusing. Natural justice requires that their voices are heard fully and safely, and that courts listen with care and without bias. Laws alone are not enough; we need resources. Judges and magistrates must have time, training, and support to understand family violence and make protective decisions. Courtrooms must be equipped to ensure safety and dignity for survivors.

CASWs also play a critical role. In Bermuda, they assess risk, speak for children, and support families through the legal process. But they can only do this effectively if they are properly trained, treated fairly, and given time to build trust. When CASWs understand domestic violence, act without bias, and listen carefully, the system becomes safer and more just. If they are overworked or poorly trained, the system fails the very people it is meant to protect.

This case highlights the consequences of having only two CASWs responsible for all social inquiry reports for both the Magistrates' Court and the Supreme Court. Bermuda is one of the most affluent countries in the world yet lacks critical resources to protect its most vulnerable. Without immediate funding to hire more CASWs and provide ongoing training, the impact will be catastrophic.

Bermuda must invest in strong support systems for courts and those who work alongside them. This includes hiring enough CASWs, offering proper domestic violence training, and ensuring courts have the tools to make thoughtful, protective decisions. Providing these resources shows that Bermuda values fairness, safety and human dignity. For families in crisis, that investment can make all the difference.