

HONG KONG / JUDGMENT

FCCV v. LSY**[2025] HKFC 111****COURT**

Family Court

DECIDED

19 June 2025

CASE / FILE NUMBER

FCMP203/2020

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FCMP 203 / 2020

**[2025] HKFC 111 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 203 OF 2020**

BETWEEN FCCV Applicant (Father) and LSY Respondent (Mother)

Coram : Deputy Judge Robin Egerton in Chambers (Not Open to Public) Date of Hearing : 8-13
January 2025 Final Submissions : 28 February 2025 Date of Handing Down of Judgment : 19 June
2025**J U D G M E N T****Introduction**

The Parties are the unmarried parents of an 11-year-old girl, C, who was born in October 2013; I shall refer to them as Father and Mother. The Father was born in 1955, the Mother in 1973. The Father was previously married, his wife passed away in 2009; they have two sons, B born in 1987 and G born in 1996. The Father and Mother formed a relationship in around 2011, leading to cohabitation until separation in around 2020. On 2 December 2020, in HCMP 2154 of 2020, the Honourable Madam Justice B Chu made the following order (“the High Court Order”): (i) C do cease to be a Ward of the Court of First Instance (ii) The Father do have all the rights and authority over C that the law would allow him as a father if C were legitimate (iii) The Father and Mother do have the joint custody, care and control of C (iv) The Father do have defined interim access to C (v) The proceedings under the Guardianship of Minors be transferred to the Family

Court From the solicitors' correspondence, it is apparent that the Parties have been engaged in discussions over access since the making of the High Court Order, including exchanging various versions of consent summonses relating to the arrangements for C, in particular access, communication, ECA's and overseas travel. By his summons dated 19 December 2023, the Father applied to vary the High Court Order seeking inter alia increased access by reference to the Guardianship of Minors Ordinance (Cap 13) ("the GMO") ("the Application"). The following are the relevant general principles of the GMO which are not in dispute: "3. General principles

- (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of the income of any such property—
 - (a) in any proceedings before any court (whether or not a court as defined in section 2) the court —
 - (i) shall regard the best interests of the minor as the first and paramount consideration and in having such regard shall give due consideration to— (A) the views of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and (B) any material information including any report of the Director of Social Welfare available to the court at the hearing" Recent chronology On 1 March 2024, Master Stanley Ho inter alia ordered a Social Investigation Report ("SIR"), which was filed with the Court on 2 July 2024. On 3 July 2024, Her Honour Judge T. Kwan made an order that the Father do have the following interim access to C: (i) Staying access on alternative weekends, from Saturday at 8:30 a.m. to Sunday at 8:30 p.m. (ii) During C's school holidays, dinner access on every Tuesday from 6:00 p.m. to 9:00 p.m. (iii) During C's school term, access on every Tuesday and Thursday to take C to school, thereafter to collect C from school At the Child Dispute Resolution hearing ("CDR") on 21 October 2024, I ordered that the Father do have the following interim access: (i) Staying access on alternate weekends, from Saturday at 8:30 a.m. to Sunday at 8:30 p.m. from 26 October 2024 (ii) The Father to have Friday dinner access in alternate weeks (i.e. when he has no staying access) from 6:00 p.m. to 9:00 pm. to commence on 1 November 2024 (iii) During C's long school holidays, dinner access on every Tuesday from 6:00 p.m. to 9:00 p.m. (iv) During C's school term, access on every Tuesday and Thursday to take C to school, thereafter to collect C from school An updated SIR was filed on 23 December 2024 with a memo on 27 December 2024. The substantive issues to be determined at Trial The substantive issues to be determined in the trial were: (i) The access schedule including holidays (ii) C's ECAs and the Father's consultation thereof (iii) Communication between the Parties (iv) Renewal of C's Canadian passport During the Trial, the Parents' differences narrowed, as illustrated by the updated Annex A to the Father's Closing Submissions. Furthermore, subsequent to the Closing Submissions, by his solicitors' letter of 7 March 2025, the Father confirmed that the Mother had contacted the Canadian consulate in relation to C's passport application, that it had been approved, that the Canadian passport would be sent to him shortly and that "this issue is now resolved". In addition to which: Following the Consent Order of 28 March 2025, the

Mother travelled with C to the Maldives and Singapore Following the Consent Summons of 3 June 2025, the Mother will travel with C to Mainland China in July 2025. Notwithstanding these positive developments, the unfortunate history leading up to the Trial was fraught with challenges, in particular, with regard to ECAs and the Father's overseas holidays with C. An example of the difficulties is illustrated by the aborted proposal for the Father to take C for an overseas holiday in the later part of 2024. Following the suggestion of the Court on 3 July 2024 that the Father should take C for a short overseas trip, the Father's solicitors wrote on 22 July 2024 suggesting such a trip either during the October term break or Christmas. The Father invited the Mother to express a preference. She did not do so, notwithstanding some 7 letters from the Father's solicitors. The Mother's solicitors' correspondence was unhelpful, disingenuous and tainted with obfuscation. On 14 October 2024, either just before or after the October break, the Mother's solicitors disclosed that she had arranged a holiday for herself and C from 14 December 2024 to 23 December 2024. The effect was to frustrate the Father's plans for an overseas trip with C. It would also appear that, although the Mother waited until 24 October 2024 to disclose her Christmas plan, she had in fact made her hotel booking on 25 July 2024, 3 days after the Father's initial request for an overseas holiday at either the October or Christmas break. I am unclear who is culpable for, in effect, sabotaging the overseas trip in 2024; whether it was the Mother, her solicitors or a combination of the two. I note that shortly after the CDR on 21 October 2024, when I had expressed concern as to the solicitors' correspondence and overseas holiday arrangements or lack thereof, the Mother filed a Notice to Act in Person on 4 November 2024. The Social Investigation Reports In his report dated 2 July 2024, Mr. Lau, the Social Welfare Officer ("SWO"), stated as follows: "68. (8) There are not huge differences between 'the Father's' application and 'the Mother's' counter-proposal. Both agree to access on every Tuesday schooldays and Thursday schooldays, in the manner of bringing 'C' from home to school and, after school, from school back to home. Both agree to dinner access each Friday (in 'the Father's' application, presented as dinner access alone on alternative Friday and included in staying access on alternate weekend). For access over alternate weekend, 'the Father' requests staying access from Friday to Sunday, whereas 'the Mother' requests full day access on Tuesday and extended staying access on alternate weekend, to make up for no access on Tuesday and Thursday during long school holidays, is considered reasonable in terms of the reason and the extent of increase and is therefore supported.

- (9) The recommendation as stated in item (8) above, nevertheless, may face 'C's' further resistance. While on-going effort by both 'the Father' and 'the Mother' is required to motivate 'C' to attend access, the IO would suggest that 'the Father' has to be flexible and be ready to accept 'C's' 'No' answer to individual access sessions to avoid escalation of her resistance.
- (10) That 'the Father' and 'the Mother' share the single public holidays and special/festive occasions on equal, alternative basis, or in other manner mutually agreed to by them, is supported.

- (11) That ‘the Father’ and ‘the Mother’ had the same number of holiday trips (out of Hong Kong) with ‘C’, regardless of the number, or in other manner mutually agreed to by them, is supported.” By reference to her school reports, paragraph 17 of the SIR dated 2 July 2024, records that: “C was described to be a delightful, organized, caring and helpful student, always striving to do the right thing and having a strong sense of responsibility.” In his updated SIR dated 23 December 2024, Mr. Lau stated: “36. Based on the updated views of both parents and other parties concerned as well as observations of the IO in this investigation, the IO maintains the comments and recommendations as stated in points (1)-(10) in para. 68 of SIR dated 2.7.2024 and has additional comments below:
- (1) As stated in point (3) in para. 68 of SIR dated 2.7.2024, there were times when ‘the Father’ and ‘C’ did things separately with no interaction during access, which might not be desirable if it exceeded the time of doing things together as conducive to their relationship building. Nevertheless, the IO has no adverse comment if ‘C’ wants to have private time of her own. It is understandable that ‘C’ may simply want to do things of her own at ‘the Father’s’ home during access.
- (2) ‘C’s’ somewhat negative saying about ‘B’ (during interview by the IO and as said by ‘the Mother’) did not go along with observations by the IO. The IO appreciates that ‘B’, and his girlfriend ‘A’ as well, have been helping to facilitate ‘the Father’s’ access to ‘C’.
- (3) ‘The Mother’s’ concern that her relationship with ‘C’ will be affected if she pushes ‘C’ too hard for access by ‘the Father’ is understandable. Nevertheless, for children showing resistance to access, effort by both parents is required to tackle the children’s resistance. The IO supports ‘the Mother’ continuing her effort to motivate ‘C’ to attend access.
- (4) ‘The Father’s’ latest proposal of access is less than what he has originally asked for (para. 2 of this Updated SIR). The IO maintains the view as stated in points (8) - (9) in para. 68 of SIR dated 2.7.2024 and supports ‘the Father’s’ proposal of access as stated in points (A), (B) & (D) in para. 18 of this Updated SIR. As to annual special days and overseas holidays, the IO maintains the view as stated in points (10) - (11) in para. 68 of SIR dated 2.7.2024 and supports ‘the Father’ and ‘the Mother’ (i) sharing the single public holidays and special/festive occasions on equal, alternate basis, or in other manner mutually agreed to by them, and (ii) having the same number of overseas holiday trips with ‘C’, regardless of the number, or in other manner mutually agreed to by them.” The Parents’ respective cases The written evidence relevant to the application is as follows: Father’s 2nd Affirmation 19 December 2023 Mother’s 2nd Affirmation 28 March 2024 Mother’s Form J 28 March 2024 Father’s Form J 28 March 2024 Father’s 3rd Affirmation 26 April 2024 Father’s 4th Affirmation 11 November 2024 Mother’s 3rd Affirmation 13 November 2024 Father’s 5th Affirmation 25 November 2024 Mother’s 4th Affirmation 25 November 2024 The Father’s case The underlying basis of the Father’s case is that: (i) The Mother failed to co-operate with the Father in crystalising the arrangements for C so that no order could be made (ii) He seeks an order so there is “structure and certainty” in the arrangements for C The Father’s major complaint being: “... from the Father’s perspective, one of the biggest hurdles in this case has been the Mother’s

mindset, which continues to be extremely negative about the Father, to the extent that her Affirmations contain numerous allegations against the Father that are simply untrue, and are provably untrue. It is impossible to believe that this mindset is not transmitted to 'C', who ends up trapped in the "miserable middle", and unable to demonstrate any affection for, or engagement with, her father lest this incurs her mother's disapproval." The Mother's case In her written evidence, the Mother stated: "I have encouraged access between 'the Father' and 'C' at all times but 'C' is showing resistance towards 'her Father' and reluctance to have staying access" and "Moreover 'C' is reluctant to see her father because the access sessions are not child focused but father orientated." In the conclusion to her Opening Submissions dated 20 December 2024, the Mother stated: "37. I understand when 'C' is involved, even for access, the paramount consideration is the welfare of the child (Guardianship of Minor Ordinance, Cap.13). Let us look at the conduct of the Applicant: 37.1.1. His so-called close relationship with 'C' is rebutted by the Social Investigation Report; 37.1.2. The Applicant is lying at least in saying that he is not informed of piano competition; 37.1.3. He is negligence and reckless in looking after 'C' not even noticed the obvious bandage; 37.1.4. He made no complaints on many points and now suddenly making complaints. For example the communication with secretary. 38. One must ask whether allowing further access as I stressed further access because the Applicant has confirmed that he has access and just wants to comfort himself. 39. I believe the arrangement or agreement before the Applicant is good enough." In her Open Proposal, the Mother inter alia stated as follows: "6. My Proposal I like 'C' and it is in her best interest that her travel restrictions will be removed. 'C' will have to travel with her friends and school mates for school trips. It is her most embarrassing moment that she has to be taken to another room, separated from her friends and schoolmates. After a while she is brought back. It will be even more embarrassing when her friends and school mates ask her what happened." In her Reply Submissions, the Mother stated that her influence on C "... is purely imaginative" and "It is the attitude of the 'Father' that makes 'C' feel that she is "forced" to be with the Father." In her Closing Submissions, she stated: "59. The most important evidence in the present proceedings must be from Mr. Lau two Reports as well as his oral evidence given during the hearing. The Reports, in a nutshell, stated that there is little interaction between the Applicant and 'C'. The Respondent has not obstructed access by the Applicant. 'B' could communicate with 'C' and the Applicant needs help from 'B' to communicate with the Applicant. The Applicant basically was watching television while he has access. Or the Applicant went out for hours. The Applicant gave different account of events from 'C'. A Court Order would not assist this family. Both Miss. Irving and the Respondent had not challenged the genuine account of the Reports. There is no need for more access. ... 81. The question would be upon hearing of the self-conflicting evidence of the Applicant, is it or is it not for the benefit of 'C' to be accessed more by the Applicant? Or the access as it is? It is humbly submitted that the Summons ought to be dismissed with costs to the Respondent." The oral evidence Mr. Lau, the SWO Mr. Lau came across as a very experienced SWO, with over 30 years of experience. I found his reports to be helpful, and his oral evidence to be incisive, measured, and informative. In his oral evidence, he said: "Regarding the dispute over access or the child's willingness for the

access. To be frank or to be blunt, the problem won't be solved solely by the order of the court. Not mistakenly, I'm not saying that there is no need for a court order. I'm just saying that only a court -- by only a court order, the matter of the dispute of access or the unwillingness of the child will not be resolved. Of course you can say that order is a condition that we must have, but it may not be a sufficient condition. It's necessary but not sufficient. After all, I also express similar views or the same views in these two reports and my other reports in the similar methods. It also relies on the efforts put by both parents." and "Do not forget that our focus, the main, is the child, what the child thinks. This is also one reason that was brought up by a party many times that the child is unwilling to do that. This is the part that was most challenging, most couldn't handle. From my experience and from what I can think of, we have to strike a balance when the parents is facilitating the access, but we cannot completely ignore the feelings of the child. If not, we would have adverse effects. Let me give you an example. The father actually cancelled his Christmas vacation with the daughter. The father at that time also explained that it was because 'C' did not want to go. But of course, the father would be very disappointed in such circumstances. But to a certain extent, the father was actually respecting how 'C' felt. So for access, it really depends on the effort put in by the parents and to look at the circumstances of the child, she or he is resisting it or not. Or maybe on the mother's side, when she encourage 'C' to go on a trip with her father next time, maybe the wording she used may be stronger next time or maybe by that, 'C' would be angry at the mother for a few days. But maybe for the father, if he is to invite 'C' to join a trip next time, maybe the trip will have to be arranged in a more detailed manner." The Father's oral evidence The Father's oral evidence was consistent with his written evidence. I have no doubt he is a devoted parent who has clearly reflected on Mr. Lau's comments and suggestions; I anticipate he will continue to do so. The Mother's oral evidence From the Mother's oral evidence, I have no doubt she also is a devoted parent. It would appear that C is very much the centre of the Mother's world. Unfortunately, the Mother's intense focus on C has, on occasion and in certain circumstances, made it more difficult for the Mother to objectively encourage the Father's involvement in C's life; in addition to which the Mother has permitted her own opinions of the Father to permeate her approach to the access arrangements. The Mother's evidence revealed that she feels a "power imbalance" as between herself and the Father, both as to financial and legal resources. This may well have led to her being unreasonably defensive and or cautious in the discussions as to access and the finalisation of such arrangements. It is of note that Mr. Lau recorded that the Mother is concerned that pressuring C to have access with the Father, particularly overnight access and holidays, may adversely affect her own relationship with C.

Analysis

As the Mother identified in her Closing Submissions, Mr. Lau's evidence, both written and oral, is particular important as it illustrates the underlying challenges: "... the problem won't be solved solely by the order of the court." "Do not forget that our focus, the main, is the child, what the

child thinks.” “So for access, it really depends on the effort put in by the parents and to look at the circumstances of the child, she or he is resisting it or not.” The challenge for both Parents is to be firm yet sensitive with C to ensure that the access arrangements work as agreed and in a timely manner. While taking into account C’s views, C’s “availability and unwillingness” are not prerequisites to arrangements as stated in paragraph 3 of the Mother’s Opening Proposal. It is important for the Mother to respect the terms of the court order to be made, as indeed the Father. As the parent with C’s care and control, it is the Mother’s responsibility to proactively ensure that C understands and complies with the access arrangements, and for the Father to be sensitively alive to C’s wishes. The Mother has articulated C’s resistance to travel restrictions as it causes C embarrassment when she is separated at immigration from her friends and schoolmates. C’s feelings are understandable, I intend to specifically take them into account. I am aware that the Father’s Wardship proceedings were commenced in 2020, as he was then concerned that the Mother was planning to remove C from the jurisdiction of Hong Kong. For the avoidance of doubt, C’s habitual residence is Hong Kong. Although there have been difficulties in the arrangements for overseas holidays, I do not consider either Parent to be a flight risk. With the appropriate undertakings in place, which will be recorded in the order, the travel restrictions shall be lifted. The Father asks for an order for parenting counselling, “with a report provided every 6 months in the first year after the order, for a review of the access arrangements. ... a report which will be part of the review, and a mechanism to assist in determining whether the Order made is effective”. I do not propose to follow such suggestion although I understand and appreciate its purpose. The Parents have been in litigation for approaching 5 years, since C was 7. Prolonging the proceedings with monitoring reports and review in court may be counterproductive to encouraging the Parents, as this judgment intends, to take the responsibility for C’s arrangements themselves through constructive interaction and communication. This is consistent with the Parents’ ability to narrow their differences as they have recently demonstrated. In addition to which I consider it is C’s best interests for her life to be “normalized” as much as possible without further reports and special immigration processes. In the event of differences, the Parents may, as they have done before, engage the services of a Parenting Coordination Service and or an experienced family mediator. They will also be aware from what is said below of the cost consequences if the matter returns to court by reason of either Parent’s unreasonable stance and or conduct. Conclusion: Undertakings & Order Having heard the Parents and having considered the evidence and submissions, and in addition to the written and oral evidence of Mr. Lau, I propose to make the orders as recorded in Annex A. Both Parents have in the past proffered various undertakings to each other and the Court; where appropriate, these are included in the recital to the intended order. As the undertakings and orders are extensive, for ease of reference, they are set out in Annex A to this judgment. Costs My overall impression is that the manner in which the Mother historically addressed the Father’s requests for access, together with her solicitors’ correspondence, unreasonably obstructed the potential access arrangements, thereby causing additional and unnecessary costs to be incurred. I propose first to deal with the question of Order 62 rule 8 and then with costs as between the Parties. By reason of concerns as how the proceedings have evolved since the commencement of the High Court proceedings, I directed each party to provide details of their respective costs. The

Father's solicitors' signed statement of costs dated 28 February 2025 records the following: (i) Wardship proceedings HCMP 2154 of 2020: HK\$439,333 (ii) FCMP 203 of 2020: HK\$3,022,266 (including mediation fees of HK\$46,432) (iii) Within the figure in (ii) above, the costs up to and including the CDR on 21 October 2024 were HK\$1,658,728, and the costs from the CDR up to the conclusion of the Trial were HK\$1,343,538 (iv) I calculate that the Father's costs of both proceedings were HK\$3,461,599 Rather than providing a breakdown of her costs, the Mother attached to her Closing Submissions, various solicitors' bills, counsel fee notes and receipts for costs on account between November 2020 and July 2023 relating to three firms of solicitors, totaling HK\$386,000. The Mother provided no details of her subsequent costs between July 2023 and 4 November 2024, when she filed a Notice to Act in Person. The Mother has therefore failed to disclose her costs since the Father's summons of 19 December 2023, notwithstanding that she was represented by solicitors and Counsel until 4 November 2024, in addition to which the Mother stated in her Closing Submissions dated 28 February 2025: "1. I have sought certain legal advice which I could barely afford to assist me in the preparation of this submission." I have had an opportunity to read the inter-solicitor correspondence. The Father has instructed one firm of solicitors throughout, whilst the Mother has instructed five firms. As referred to above, numerous consent summonses aimed at reaching an overall agreement were exchanged together with the assistance of an experienced mediator; unfortunately, no agreement was reached, hence the Trial. It is an unfortunate feature of the proceedings that the Mother's solicitors' correspondence from at least October 2023 was most unhelpful. Reading such correspondence, the inevitable conclusion is that it was, in all probability, a hindrance to settlement rather than a help. Specifically, the Mother's solicitors' correspondence failed to recognise that, although under section 3(1)(a)(i)(A) of the GMO, the Court shall have regard to: "... the views of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so." this does not mean a child should be so involved in the proceedings that he or she is burdened with the decisions that are the Parents' responsibility, and in the event of no agreement, the Court's responsibility. By way of illustration, the following are examples from the correspondence succinctly summarised in the Father's Opening Submissions, paragraphs 29 to 32. "Involvement of 'C' 29. A very important issue that has been raised with the Mother's solicitors on several occasions is the fact that 'C' is being involved in these proceedings in a manner that is inappropriate and unhelpful for a child of her age. It is said in the Mother's correspondence that "we have clarified from 'C'..." (about a potential trip to Bangkok with the Father), and "we need to enquire from 'C' whether any undue influence has been taken place" [C3/569 at 570 and 571]. In the letter of 12 December 2023, it was said that 'C' had "not consented" to the access proposal but that it would be "communicated with 'C' whether 'C' will agree and/or consent to such proposal" [C3/598]. When it was pointed out that it was not for a child to agree or consent to an access proposal, which should be dealt with by the adults [C3/604], the response was, "We strenuously disagree that it is not for a child to agree or consent to arrangements of access. Your notion, with our greatest respect, is against all existing legal principles and/or practice in matrimonial cases" [C3/610 at 614]. 30. The Father's position is that adopted in the Family Court, that whereas the child's "views" will be listened to and taken into account, the child will not make the decisions, which will be made by the parents, or if they

cannot agree, by the Judge. All indications are that ‘C’ continues to be embroiled in matters concerning her time with her Father. It is unkind to this young child to put her in the middle of issues between her parents and cause this loyalty conflict. 31. As has been noted frequently, the tone and style of the correspondence from the Mother’s former solicitors is hostile in the extreme, with multiple instances of words and phrases being written in bold, capitals and underlined. C3/623 serves as a good example of an extremely unhelpful letter, which went as far as to accuse the Father of lying. This correspondence not only failed to help resolve matters between the parties, it presented actual obstacles to reasonable discussion, such as the repeated demands for maintenance for the Mother as well as ‘C’, the refusal to reply to important issues, such as delivering ‘C’s’ passport for the Father’s trip, and the insistence that ‘C’s’ consent was required to arrangements. 32. When invited to temper the tone of their correspondence [C3/629], the response of 22 January 2024 was, “This is precise reason that we NEED to “in capitals, bold and underlined” to ENSURE you to understand the seriousness of our client’s complaints and dissatisfaction” (original emphasis) [C3/633].” A pivotal characteristic of family proceedings is that they invariably focus on the future rather than determining the rights and wrongs of historical events; this is particularly the case when parents are discussing the future arrangements for their children. These discussions are often conducted through solicitors’ correspondence. It is therefore essential that such correspondence is courteous and transparent; disagreements will invariably arise, but that is not a reason for solicitors’ correspondence to be disagreeable in form and or tone. The sad reality of many cases, and the present is no exception, is that hostility in correspondence frustrates productive discussion and potential agreements. The result is that, far too often, inappropriate solicitors’ correspondence “contaminates” the discussions and significantly and substantively increases the costs incurred by the parties and the time required in court to unravel and determine the issues. Cases of this nature can and should be resolved much earlier and at less expense with practical common sense, constructive engagement and the overarching recognition that the guiding principle of the GMO is the ‘best interests’ of the child, not the personal interests of either or both parents. In light of the manner in which the Mother and or her solicitors have conducted this litigation, which relates to the best interests of C, I consider it appropriate to consider whether or not to invoke RHC Order 62 rule 8, which states as follows: “8. Personal liability of legal representative for costs—wasted costs order (O. 62, r. 8)

- (1) The Court may make a wasted costs order against a legal representative, only if—
 - (a) the legal representative, whether personally or through his employee or agent, has caused a party to incur wasted costs as defined in section 52A(6) of the Ordinance; and (b) it is just in all the circumstances to order the legal representative to compensate the party for the whole or part of those costs.
- (2) A wasted costs order may—
 - (a) disallow the costs as between the legal representative and his client; and
 - (b) direct the legal representative to—

- (i) repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or (ii) indemnify other parties against costs incurred by them
- (3) The Court shall give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make the order.
- (4) When the Court makes a wasted costs order, it shall—
 - (a) specify the amount to be disallowed or paid; or
 - (b) direct a master to decide the amount of costs to be disallowed or paid.
- (5) The Court may give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and is as simple and summary as the circumstances permit..” “8B. Stages of considering whether to make a wasted costs order (O. 62, r. 8B)
- (1) The Court shall consider whether to make a wasted costs order in 2 stages—
 - (a) in the first stage, the Court must be satisfied that—
 - (i) it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and (ii) the wasted costs proceedings are justified notwithstanding the likely costs involved; and
 - (b) in the second stage (even if the Court is satisfied under sub-paragraph (a)), the Court shall consider, after giving the legal representative an opportunity to give reasons why the Court should not make a wasted costs order, whether it is appropriate to make the order in accordance with rule 8.
- (2) On an application for a wasted costs order, the Court may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the Court should not make a wasted costs order. In other cases the Court shall adjourn the hearing before proceeding to the second stage.
- (3) On an application for a wasted costs order, any evidence in support must identify—
 - (a) what the legal representative is alleged to have done or failed to do; and
 - (b) the costs that he may be ordered to pay or which are sought against him.” In evaluating whether or not to invoke the Order 62 rule 8, I have considered a number of authorities, in particular *Yau Chiu Wah v Gold Chief Investment Ltd & Another* [2003] 3 HKLRD 553. I have in mind the following observations in the judgment of Hon Ma JA (as he then was): “ 32. The duty owed to the court means that a solicitor, like a barrister, has a critical role to play in the administration of justice. As Sir Thomas Bingham MR said in *Ridehalgh v Horsefield* [1994] Ch. 205 at 227 C-D, “The court’s jurisdiction to make a wasted costs order against a solicitor is founded on breach of the duty owed by the solicitor to the court to perform his duty as an

officer of the court in promoting within his own sphere the cause of justice". This passage was cited with approval by the Court of Appeal in *K.B. Chau & Co.* at 573. In litigation, the courts rely on solicitors to facilitate their arriving at a just result in any given dispute. As I have said above, a solicitor must not do anything to undermine or in any way obstruct the administration of justice. Obviously, he must not do anything to mislead or deceive the court. Courts have to rely on the integrity and honesty of solicitors. In addition, a solicitor must not use his position to obtain an unfair advantage for his client. One often hears a reference to litigation "tactics" but this must not be misunderstood. While everyone would accept that a solicitor should act at all times in the best interests of his client, he must also be scrupulously fair to the other side. He must not mislead, deceive or otherwise act unfairly, for litigation in the courts is a serious legal contest, not a game." and "38. In *Ridehalgh*, Sir Thomas Bingham MR recognised the problem and said this at 237:- "The respondent lawyers are in a different position. The privilege is not theirs to waive. In the usual case where a waiver would not benefit their client they will be slow to advise the client to waive his privilege, and they may well feel bound to advise that the client should take independent advice before doing so. The client may be unwilling to do that, and may be unwilling to waive if he does. So the respondent lawyers may find themselves at a grave disadvantage in defending their conduct of proceedings, unable to reveal what advice and warnings they gave, what instructions they received. In some cases this potential source of injustice may be mitigated by reference to the taxing master, where different rules apply, but only in a small minority of cases can this procedure be appropriate. Judges who are invited to make or contemplate making a wasted costs order must make full allowance for the inability of respondent lawyers to tell the whole story. Where there is room for doubt, the respondent lawyers are entitled to the benefit of it. It is again only when, with all allowances made, a lawyer's conduct of proceedings is quite plainly unjustifiable that it can be appropriate to make a wasted costs order.'" Having considered the above and when there is no application under Order 62 rule 8 and when I have not heard submissions from the Parties on costs, I do not propose to take the Order 62 rule 8 matter further. I now turn to the question of costs as between the Parties. I have in mind the approach to costs in children's cases as succinctly stated by Hon Poon J (as he was then) in *Re LB (Wardship: Costs)* [2012] 1 HKLRD 266: (I consider the approach in Wardship to be equally applicable to proceedings under the GMO). "Applicable principles 21. I first set out the general principles applicable to the costs between the Mother and the Father. 22. In wardship proceedings, as is the case for children cases generally, the court's usual practice is to make no order as to costs. 23. This practice emanates from the special nature of the proceedings. Wardship is a discrete and ancient aspect of the inherent jurisdiction of the High Court. In the exercise of this jurisdiction, the court acts in a parental, administrative and inquisitorial manner. Its purpose is to protect the property and/or the person of the ward. Its duty is to act in a way that is best suited to serve the true interests of the ward, always bearing in mind that welfare of the child is the first and paramount consideration. The court expects the parties to the proceedings to act bona fide and reasonably in the best interest of the child. They are entitled to put forward before the court their views, reasonably and honestly held, as to what

is for the welfare of the child. They should not be penalized in costs for failing to persuade the court to accept their views. For the court does not wish the prospects of a costs order to discourage those with a proper interest from participating reasonably in the proceedings and the debate. Another reason in support of the practice is that an order for costs may exacerbate tensions between the parents and diminish the likelihood of future co-operation between them, to the disadvantage of the welfare of the child. 24. Exceptionally, the court may depart from the general practice and make a costs order. In so doing, the court will take into all the relevant circumstances of the case, including : (a) Whether a party has a proper interest in participating in the proceedings. This is self-explanatory. (b) Whether a party has acted bona fide in the best interest of the child. This is similarly self-evident. (c) Whether a party has been motivated by any ulterior motive in participating in the proceedings. As noted, the court's primary concern is the welfare and best interest of the child. The court will not allow the parties to manipulate the wardship proceedings for their own agenda, say, to gratify one's wounded pride, to spite the other party or to take revenge on him or her. If a party is so motivated in participating in the proceedings, the court will punish him or her with costs relentlessly. (d) Whether it is necessary to invoke the court's wardship jurisdiction. The jurisdiction will only be exercised when there is a real, imminent or immediate need to afford protection for a child when that protection may not be readily derived from any other source. If the child requires no such protection, the applicant may be held liable for the costs of the proceedings wrongly invoked. (e) Whether a party has been guilty of unreasonable conduct in relation to the conduct of the proceedings." In the context of this case, the following paragraphs of Poon J's judgment, which I repeat for emphasis, are of particular relevance and application: "23. ... They should not be penalized in costs for failing to persuade the court to accept their views. For the court does not wish the prospects of a costs order to discourage those with a proper interest from participating reasonably in the proceedings and the debate. Another reason in support of the practice is that an order for costs may exacerbate tensions between the parents and diminish the likelihood of future co-operation between them, to the disadvantage of the welfare of the child." and "24. (c) Whether a party has been motivated by any ulterior motive in participating in the proceedings. As noted, the court's primary concern is the welfare and best interest of the child. The court will not allow the parties to manipulate the wardship proceedings for their own agenda, say, to gratify one's wounded pride, to spite the other party or to take revenge on him or her. If a party is so motivated in participating in the proceedings, the court will punish him or her with costs relentlessly." As referred to above, the Parents are now not far apart, in addition to which the issue of the Canadian passport has been resolved, and further arrangements for the Mother's overseas travel with C have been agreed. Notwithstanding the above, it however appears that Mother has historically allowed, consciously or subconsciously, her feelings towards the Father to detrimentally affect her communication with the Father and, more significantly, the manner in which she has presented possibilities and arrangements for access to C. Equally, it should be clearly recognised, respected and acknowledged that the Mother in the recent past has had the primary responsibility for C's upbringing. Whilst not in any way diminishing the importance of the role and contribution

of the Father's care and nurture now and in the future, I anticipate C is who she is today, a flourishing young adolescent, due in particular to her mother's care and nurture. The adjudication of costs in this case, therefore, requires and rightly demands very careful consideration, inter alia balancing paragraph 23 with paragraph 24 (c) of Re LB. Having considered all the circumstances of the case and specifically deliberated on the guidance in Re LB, I am of the opinion that, and I accept this is unusual, there should be a costs order against the Mother. I propose to significantly discount the amount of costs. In doing so, I wish to place a warning marker that in the future, if either Parent conducts themselves in a manner which unreasonably frustrates practical access arrangements, I anticipate that the court may well make a costs order against the offending parent without such a discount. In coming to such conclusion and the quantum of costs, which I intend to summarily assess, I have taken note of the following factors: The costs order I propose to make will apply post the CDR on 21 October 2024; there will be no order as to costs prior to such date, including all costs reserved I have not heard submissions on costs; it will therefore be an order nisi I do not have any information as to the Parents' relative financial circumstances In the SIR dated 24 July 2024, I have some information of the financial support provided by the Father to the Mother; I do not know the current financial arrangements The Father's costs from the date of the CDR are HK\$1,343,538 I do not have any information from the Mother as to her costs post-CDR A party and party costs order (approximately 65% of HK\$1,343,538) would be in the region of HK\$870,000. I propose to significantly reduce this to the sum of HK\$40,000 (approximately 5% of such sum) to be payable by the Mother to the Father within 42 days of this judgment. As referred to above, this costs order is nisi and shall not become absolute until 28 days after this judgment the effect of which is that either Party may inform the court in writing within 28 days whether they wish to be heard on costs as to liability, quantum and or an application under Order 62 rule 8. In such event, directions will be given and the issue will, in all probability, be determined by paper disposal. The Father's solicitors shall have conduct of drawing up the orders, which shall be in two separate documents, one relating to the undertakings and access orders, which will be served on the Director of Immigration, and the other which will only deal with the costs. For the avoidance of doubt, C is not to be informed directly or indirectly of the form and or contents of the order for costs. (R N Egerton) Deputy District Judge Ms. Frances Irving instructed by Messrs. Henry Lam & Associates for the Applicant (Father) Respondent (Mother) appeared in person. Annex A Undertakings and Order UPON the Applicant and Respondent undertaking to each other, as appropriate, and to the Court that: Extracurricular Activities/Tuition To consult with each other at the start of every school term to determine which activities/tuition the Minor will be engaged in for that term. Once agreed, neither Party shall change the agreed schedule or add new activities without prior consultation and agreement. The Respondent shall not schedule any learning activities or play dates for the Minor, or accept invitations for events such as birthday parties during any agreed period of access, including holiday access, without the Applicant's prior consent in writing. The Respondent will, in writing, provide the Applicant with the contact details of the Minor's tutors/educational institutions (email, WhatsApp and/or telephone) to enable the Applicant to make direct contact with such

institutions. The Respondent shall inform the Applicant in writing of any special events, such as piano competitions, examinations and/or performances, within 3 days of the date of such events being known to the Respondent to facilitate the Applicant attending such events, including school presentations and/or performances. Medical Each Party shall notify the other Party immediately whenever the Minor is unwell and shall allow the other Party to visit the Minor and/or to accompany the Minor to attend medical appointments. The Minor shall be taken for diagnosis and treatment to a Western-trained medical practitioner; this does not preclude a Chinese medical practitioner being consulted. The Applicant and the Respondent shall be involved in the discussions of any treatment plan and be kept informed of the progress of such treatment(s). Both Parties are at liberty to attend medical appointments with the other Party, and to spend time with the Minor if she is in hospital. Overseas Trips Each Party shall give the other Party 4 weeks' prior notice in writing of any proposed dates and itineraries. The travelling Party shall, in writing, provide a detailed itinerary of the trip, to include flight and hotel details, and contact details, as soon as practicable and in any event no later than 14 days before the commencement of the trip. The Minor's passport(s) and other necessary travel documents shall be passed to the travelling Party no less than 7 days before the date of travel. When not needed for travel, the Minor's Canadian Passport shall be held by the Applicant and the Minor's HKSAR Passport shall be held by the Respondent. Prior to the overseas trip, the travelling Party shall file a written undertaking with the Court and serve a copy on the other Party that: they acknowledge that Hong Kong is the place of the Minor's habitual residence for all purposes, including The Hague Convention on Civil Aspects of International Child Abduction; they will not seek to rely on Article 13(1)(b) of the Hague Convention on Civil Aspects of International Child Abduction to claim that the Minor would be at grave risk of harm if returned to Hong Kong; they will return the Minor to the jurisdiction of Hong Kong in accordance with the itinerary and/or in the event of being called upon to do so by the Court; save in an emergency, they will not make any changes to the itinerary without the prior written consent of the other Party, the consent to which shall not be unreasonably withheld; they will keep the other Party updated immediately if any changes to the itinerary are needed due to unforeseen circumstances; and they will facilitate the other Party to have access to the Minor by telephone, or other means of electronic communication at all times within reason. Make Up Access In the event that any of the Applicant's access, including Special Day access, cannot take place due to the Respondent's travel with the Minor, there be make up access to the Applicant at a time to be agreed between the Parties. IT IS ORDERED THAT : There shall be the following arrangements for the Minor: During School Term The Applicant will have access to the Minor on: Tuesday and Thursday to take the Minor to school and return her home after school. Alternate Friday night dinner from 6:00 p.m. to 9:00 p.m. Alternate weekend staying access from Saturday at 8:30 a.m. to Sunday at 9:00 p.m. During School Holidays The Applicant will have access to the Minor on: Tuesday dinner from 6:00 p.m. to 9:00 p.m. Alternate Friday evening dinner from 6:00 p.m. to 9:00 p.m. Alternate weekend staying access from Friday at 6:00 p.m. to Sunday at 9:00 p.m. Annual Special Days The Applicant will have access to the Minor on: The birthday of the Minor (2 October), from 5:00

p.m. to 9:00 p.m., or another day before the actual day, as agreed between the Parties. The birthday of the Applicant from 5:00 p.m. to 9:00 p.m., or another day before the actual day, as agreed between the Parties. The birthday of the Minor's half-brothers, B and G, from 6:00 p.m. to 9:00 p.m., or another day before the actual day, as agreed between the Parties. Father's Day from 10:00 a.m. to 9:00 p.m. Public Holidays/Festivals from 10:00 a.m. to 9:00 p.m. as set out below. In the event that it is not the Applicant's year to have access with the Minor on Lunar New Year Eve, the Minor's birthday or Winter Solstice, the Applicant shall have additional access from 5:00 p.m. to 9:00 p.m. on another day close to and before the actual days as agreed between the Parties. The Respondent will have full-day access with the Minor on: The birthday of the Respondent; and Mother's Day. Public Holidays/Festivals Special days/festive days (in alternate years) Even year Odd year Remarks Unless otherwise stated, the Applicant's access is 10:00 a.m. to 9:00 p.m. New Years Day (1 January) Respondent Applicant Lunar New Year Eve Applicant Respondent 5:00 p.m. to 9:00 p.m. or if not the Applicant's access day, on another day before the festival to be agreed. Lunar New Year Day Respondent Applicant The Applicant's access either 9:00 a.m. to 12 noon, or 10:00 a.m. to 9:00 p.m., depending on whether the Minor is joining an annual family trip. Ching Ming Festival Applicant Respondent Buddha's Birthday Respondent Applicant Dragon Boat Festival Applicant Respondent HKSAR Establishment Day (1 July) Respondent Applicant Mid-Autumn Festival Applicant Respondent 5:00 p.m. to 9:00 p.m. unless it is public holiday. Day after Mid-Autumn Festival Respondent Applicant The Minor's birthday (2 October) Applicant Respondent 5:00 p.m. to 9:00 p.m. or if not the Applicant's access day, on another day before the birthday to be agreed. Cheung Yeung Festival Respondent Applicant Winter Solstice Applicant Respondent 5:00 p.m. to 9:00 p.m. or if not the Applicant's access day, on another day before the festival to be agreed. Christmas Eve (24 December) Applicant Respondent Christmas Day (25 December) Respondent Applicant New Year Eve (31 December) Respondent Applicant Telephone Access Each Party to have reasonable telephone/electronic contact with the Minor when she is in the care of the other Party. Upon filing their respective undertakings as set out in Recital C, the Applicant and the Respondent be at liberty to take the Minor on overseas trips on an alternating basis. Upon the Applicant and the Respondent filing respectively general undertakings to the Court to return the Minor to the jurisdiction of Hong Kong if called upon by the Court to do so, there be general leave to the Applicant and the Respondent to each individually temporarily remove the Minor from the jurisdiction of Hong Kong from time to time. Leave be given to serve this order upon the Director of Immigration. Liberty to apply.

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