

HONG KONG / JUDGMENT

PFH v. CMS

COURT

Family Court

DECIDED

17 October 2007

CASE / FILE NUMBER

FCMC9655/2005

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bjbj FCMC 9655 of 2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 9655 OF 2005

BETWEEN PFH Petitioner and Respondent CMS

Coram : Her Honour Judge Chu in Chambers (Not Open to Public) Dates of Hearing : 10-13, 16, 18
April 2007 and 13-15, 21-23 August 2007 Date of Final Submissions : 17 September 2007 Date of
Handing Down of Judgment : 17 October 2007

J U D G M E N T

INTRODUCTION

1. This is a custody dispute over two children in a high conflict family.
2. There was an earlier judgment given in September 2006 (Ouster Judgment) by Deputy Judge Melloy, as she then was, whereby a non-molestation order and an ouster order was made against the Respondent () on the application by the Petitioner ().
3. Under s. 6 of the Domestic Violence Ordinance, an ouster order shall only have effect for an initial period of not exceeding 3 months, and can only be extended a further 3 months, i.e. a total of 6 months. There is no expiration period in relation to any non-molestation order under the said Ordinance.
4. The ouster order was extended once to 26th March 2007. It has now expired. H has declined to give any undertaking not to enter the former matrimonial home, but so far, there have not been any attempts by him to do so.

BACKGROUND

5. W was born and brought up in Guangzhou. She is now 35. H was born and brought up in Hong Kong. He is now 38.
6. H and W cohabited in Shenzhen for about 6 years before they registered their marriage in Hong Kong at end of January 1998. After their marriage, W continued to reside in Shenzhen for awhile and visited Hong Kong from time to time on a visitor s visa. It is not disputed that W eventually obtained a resident permit (single entry visa) in December 2004.
7. W gave birth to the two children of the family HY and TK in Hong Kong. HY, a girl, was born on 11th April 1999, now 8, and TK, a boy, was born on 25th September 2000, now 7. It is W s case that she has been the main carer of the children after their birth, but this is disputed by H. I will deal with this issue later in this judgment.
8. HY came to Hong Kong to start schooling at the end of May 2002 when she was 3 years old, and thereafter, W would often commute between Hong Kong and the Mainland with TK, and was almost de facto living here.
9. Whenever W was in Hong Kong, she resided with H and the children resided at his parents home, a public housing unit in Kwun Tong (Kwun Tong Home) until W and H were allocated their own unit in Tin Shui Wai.
10. On about 27th January 2005, the parties and TK moved to their own unit in Tin Shui Wai (Tin Shui Wai Home). In order not to disrupt HY s schooling, it was agreed between the parties that HY should remain living in the Kwun Tong Home for about 6 months until July 2005 with H s family, for her to finish her term at her then school in Kwun Tong. HY would, however, spend her weekends at the Tin Shui Wai Home.
11. Difficulties in the marriage began to surface even before W obtained her resident permit, initially mainly over H s financial problems. W alleged that she had lent money to H to pay off his credit card debts sometime in 2002, and that H had pawned two of her bracelets without her consent. Anyway, it is not disputed that in 2003, H owed a sum of about HK\$160,000 to loan sharks in Macau over a gambling debt, and he had to borrow from W s family and his own family to pay off the loan sharks. Apart from financial problems, there were numerous incidents involving violence and harassment beginning from sometime in 2003.
12. In March 2005, less than two months after the parties moved to their Tin Shui Wai Home, due to financial difficulties, W started to apply for social security assistance (CSSA) for the children. She herself was not entitled to apply for CSSA as she had not been a Hong Kong resident for 7 years.

13. The parties relationship continued to deteriorate after their move. In February 2005, W reported an incident of assault to the police. This was the first time that W reported an incident of assault to the police. On 29th June 2005, there was another incident, after which W and TK had to move temporarily into a shelter for battered women.
14. W eventually issued divorce proceedings on 31st August 2005 against H based on his unreasonable behaviour and on 14th November 2005, H was charged and bound over for one year following another incident of assault. Subsequently, W obtained a Decree Nisi on 29th November 2005.
15. Notwithstanding the issue of the petition and the granting of the Decree Nisi, the parties were then still living under the same roof with the children at the Tin Shiu Wai Home.
16. This Court called for a social investigation report in November 2005. The report was received in February 2006, the social worker recommending at that time that W be granted custody of both children.
17. Thereafter, there were a number of incidents including, in particular, two incidents involving H accusing W of feeding what H called wrong medicine to HY (Wrong Medicine Incidents). I will deal with these incidents later in this Judgment. After the 1st Wrong Medicine Incident, on about 19th February 2006, H arranged for his mother, Madam Tse, to move into the Tin Shui Wai Home.
18. This turned out to have further aggravated the situation at home which was becoming more and more unbearable and tense. W first applied, on ex parte basis, for a non-molestation order and an ouster order on 30th March 2006. And this Court granted her application for a non- molestation order on the same day. The ouster application was adjourned to a return date on 4th April 2006. On the return date, H instructed solicitors to appear on his behalf. Directions were given for the contested custody trial be fixed in August, and on the same day, the ex-parte order was discharged upon mutual undertakings given by the parties not to assault, molest, harass each other. Nonetheless, there was no peace at home.
19. The 2nd Wrong Medicine Incident took place on 19th May 2006 and as a result of this incident, HY was admitted to hospital for 4 days at the Tuen Mun Hospital until 23rd May 2006. H accused W of child abuse by feeding HY expired fever medication, and after HY was released from the hospital, HY was taken to the Kwun Tong home, without the consent of W. On 1st June 2006, a multi-disciplinary case conference (the Conference) was held in respect of HY s hospitalization incident and it was concluded that there had been no child abuse on the part of W, but HY was suffering from emotional abuse due to the situation at home. Thereafter, HY has continued to reside at the Kwun Tong Home.
20. The day after the Conference, on 2nd June 2006, W made her second application, inter-partes, for a non-molestation order, ouster order, and an interim custody order for both HY and TK.

21. The incidents of violence and H's harassment were set out in a Timeline of Important Events annexed to the Ouster Judgment. I will not go into details of these incidents. Suffice to say, Judge Melloy heard oral evidence from the parties and Madam Tse at the time and accepted most of W's evidence regarding H's conduct and eventually granted W the non-molestation order and the ouster order she was seeking.
22. The custody trial was originally scheduled to be heard at the same time as W's application for non-molestation and ouster on 11th August 2006. H's then solicitors applied to cease to act for H and an order was granted on 10th August 2006, the day before the trial was due to begin. As H had applied for legal aid shortly before the commencement of the trial, the custody part of the trial was subsequently adjourned by Judge Melloy pending the result of H's legal aid application, which was later rejected. Thereafter, unfortunately, W's solicitors' letter requesting for early dates was not brought to my attention until the commencement of the trial in April this year. As the trial could not be completed within the initial 6 days allocated in April, it had to be further adjourned to another 6 days in August. Thus, there were two parts of this trial.
23. When adjourning the custody trial, Judge Melloy made an interim order in relation to access on 25th August 2006 (1st Interim Access Order). As it was then during the children's summer holidays, under the 1st Interim Access Order, initially the parties were to bring the children to the offices of the Social Welfare Department in Kwun Tong to enable supervised access to take place every day. Thereafter, after the commencement of the new school term, the same arrangements were to continue at the offices of Social Welfare Department in Tin Shui Wai instead.
24. Thereafter, on 28th August 2006, the social worker who was involved in preparing the social investigation report, Ms Lee, helped the parties to arrange for access. The parties at first agreed that there would be two hours access to be carried out at the Social Welfare Department Family Social Services Centre in Kai Ping, which was later changed to the centre in Kwun Tong. As neither party trusted the other to be alone with the children, they were with the children throughout the access visits.
25. In September 2006, the children started school again, HY primary 2 and TK primary one. They were attending the same school in Tin Shui Wai.
26. As HY was living in the Kwun Tong Home, and each day had to be taken by H's father to her school in Tin Shui Wai, access was then arranged for after school. Due to the long distance of travelling, subsequently, according to Madam Lee, H requested for the daily access to be suspended, and W agreed. Thereafter, W attempted to visit HY during class recess at the school, but this was resisted by HY, and therefore this arrangement stopped. Eventually, access was arranged to take place on alternate weekends, and the parties also agreed that the social worker needed not be present on every occasion. This was largely the access arrangement up until the commencement of this trial in April this year.

27. On 16th October 2006, without the consent of W, or with leave of court, H unilaterally arranged for HY to change to a primary school in the same estate as the Kwun Tong Home, whereas TK has remained at the same school in Tin Shui Wai.
28. HY has always been a good student. She has continued to do well after changing school. During the 2nd term of 2006 / 2007, she was selected by her classmates to be class leader. She has now just started attending Primary 3 in September 2007 at her school in Kwun Tong
29. TK has not performed as well as HY academically. He has just started attending Primary 2 in September 2007.
30. At the last day of the first part of the trial in April this year, I made a further access order on 18th April that H and W each is to have supervised access to the child in the care and control of the other party (2nd Interim Access Order). As W had no opportunity to be with HY alone during the previous access arrangements, under the terms of the 2nd Interim Access Order, I ordered that each access session was for two hours, the first hour for each parent to be with both children, and the second hour for each parent to be with only the child in the care of the other parent on a one-to one basis. Unfortunately, access has not been smooth due to HY s extremely hostile attitude towards her mother and also the distrust the parties towards each other.
31. W is now seeking custody of both children to be granted to her, while H seeks that custody of both children be granted to him. One matter which is not disputed between the parties is that both children should be together. MAJOR FACTUAL ISSUES
32. H and W have made many allegations against each other. In the Ouster Judgment, Judge Melloy has already made findings against H over the incidents involving harassment and / or violence. In my view, the relevant factual issues in this trial are the following : (I) Whether W was the primary carer of HY and TK during the earlier year (II) Whether W was / is an unfit mother (III) If H were granted custody of both children, who would be their primary carer (s) (IV) Whether H was financially irresponsible, violent and volatile ? (V) Whether H and / or Madam Tse and / or Miss Chau has been alienating HY from W W s CASE
33. W s case is a simple one. She said she was the primary carer of HY since her birth, up until HY was removed unilaterally from her care at end of May 2006. As for TK, she has always been his primary carer since his birth.
34. According to W, H s lack of time to care for the children, irresponsible conduct relating to finances, undesirable and violent behaviour and volatile personality all contribute to render him unsuitable to have custody of the children.
35. H further has to rely on his mother and / or his sister in his care of the children.
36. W queried the long-term feasibility of Madam Tse and / or H s sister Ms Chau to assist H in caring for the children.

37. It is also W's case that H and / or his mother Madam Tse has been brainwashing HY or alienating HY from W, as HY is now turned completely against her mother. If TK goes to live with H and Madam Tse, he may be subject to similar alienation and may be turned against W as well, and therefore it is in the children's best interests and welfare for them to live with W.
38. W has filed a total of 7 affirmations in support of her case, and attended trial to give evidence and was cross examined by H. She did not call any other witnesses. H's CASE
39. H's case was that after the children's birth, they were mainly looked after by him and / or his mother Madam Tse.
40. H alleged that W's past behaviour had put the children at risk and that W had neglected the children. Basically, H's allegation is that W is an unfit mother.
41. As it is HY's wish to remain living with him and his mother Madam Tse at her Kwun Tong Home, H says such wish should be taken into account.
42. Further, TK has not indicated that he does not wish to live with his father, and as it is in the children's best interests and welfare for both of them to live together, thus both children should live with him and his family.
43. H has filed a total of 4 affirmations in support of his case and attended trial to give evidence and was cross-examined.
44. H has also filed 3 affirmations from his mother Madam Tse, and 2 affirmations from his sister Ms Chau. Both Madam Tse and Ms Chau were called by H to attend the trial and to give oral evidence on behalf of H and they were cross-examined. SOCIAL WORKERS AND THE PSYCHOLOGIST
45. Ms Lee, the main social worker in charge of this case, prepared a total of 4 reports, namely a report dated 14th February 2006 (1st Report), a further report dated 31st July 2006 (2nd Report), a report dated 27th March 2007 (3rd Report) and an updated report dated 18th June 2007 (4th report).
46. On 7th June 2006, after the 2nd Wrong Medicine Incident, Ms Lee also sent a memo to this Court (The Memo). Ms Lee attended trial twice, once in April, and once in August to give oral evidence and to answer questions.
47. As Ms Lee went on leave on 20th June 2007, her colleague Mr. Chan prepared a report dated 31st July 2007, mainly updating this Court in relation to access arrangements. Mr. Chan also attended trial to give oral evidence and to answer questions.

48. This Court has further asked for psychologist reports, and they were prepared by a clinical psychologist Ms Pak. The first one was dated 28th July 2006 (1st Psychologist Report), and second one was dated 31st July 2007 (the 2nd Psychologist Report). Ms Pak also attended trial twice, once in April and once in August, to give oral evidence and to answer questions.

FACTUAL FINDINGS

49. For the avoidance of doubt, insofar as the matters set out in this Judgment differ from the evidence of the H or W or the other witnesses, this is because I have preferred the evidence of the other party or witness, as I have had the chance of observing the demeanour of the parties and the witnesses, or because I consider that the documents produced confirm my finding of fact. (I) Whether W was the primary carer of HY and TK after their birth
50. It is W's case that after giving birth to the children, they were mainly living with her in the Mainland and were cared for by her until May 2002, when HY had to come to Hong Kong to start schooling. H disputed this saying that after their birth, they were mainly living in Hong Kong being looked after by him and / or his mother, and W only visited them from time to time until she obtained the single entry permit in December 2004. H's case was supported by his mother. Madam Tse said she was the primary carer of the children after their birth.
51. In order to help clarify this issue, at the suggestion of the Court, W went to the Immigration Department to apply for the travel records of herself, HY, and TK. These were subsequently produced as PP-2 (W's record), PP-3 (HY's record), and PP-4 (TK's record). W's solicitor, Mr. Li, has helpfully prepared 3 tables, beginning from the year in which HY was born until 10th February 2005, by which time it is not disputed that the parties and TK had already moved into their Tin Shui Wai Home, while HY remained in the Kwun Tong Home for another 6 months.
52. It appears from the 3 tables and the travel records of W, HY, and TK that :
- (i) After giving birth to HY on 11th April 1999, W left Hong Kong about 2 months 3 weeks later on 2nd July 1999 (ii) HY also left Hong Kong on 17th July 1999, about 2 weeks after W left (iii) HY only returned to Hong Kong for short periods of time during the 8 or 9 month period from 17th July 1999 until 5th March 2000 when both W and HY returned to HK and W was then pregnant with TK (iv) After W and HY came to Hong Kong together on 5th March 2000, W remained in Hong Kong for about 8 1/2 months.
 - (v) W gave birth to TK on 25th September 2000. (vi) W and TK left Hong Kong together about 2 months afterwards on 24th November 2000. (vii) HY left Hong Kong about 16 days later, on 10th December 2000. (viii) During the period of about 19 months between 10th December 2000 and 30th May 2002, HY was out of Hong Kong for periods totaling about 15 1/2 months, and TK was also out of Hong Kong for periods totaling about 15 1/2 month, although such periods did not always overlap. (ix) On 30th May 2002, HY came to Hong Kong to start schooling. This time, she stayed for almost 12 months continuously.

- (x) After HY came for schooling on 30th May 2002, W and TK arrived on 24th June 2002, and thereafter, W and TK left on 4th July, but then both of them came again on 6th July, largely staying in Hong Kong for more than 2 months in the summer, until 22nd September 2002.
- (xi) Thereafter, W and TK came to HK very frequently until W finally obtained her single entry permit in December 2004.
53. W did not dispute that during the period between 30th May 2002 and before the parties moved to Tin Shui Wai in January 2005, Madam Tse did help look after the children, during the periods when W was not in Hong Kong or that Madam Tse did help to look after HY for the 6 months after the parties moved to Tin Shui Wai.
54. It was not denied by H that in December 2003, his family had moved out of the Kwun Tong Home, to Chaiwan, to allow the parties and their children to live in the Kwun Tong Home by themselves. During this time, although W had not yet obtained her single entry visa, she was almost de facto living here, only travelling to Mainland for short periods to renew her dual-entry permit. W agreed that during such time that she was in the Mainland to renew her permit, Madam Tse would then return to stay over in the Kwun Tong Home to help care for the children, as W said H was often returning home late during weekdays, and that during week-ends, he was not returning home at all.
55. Madam Tse, however, claimed that after she moved to Chaiwan, she was still returning to Kwun Tong Home every day during daytime, and would only go to Chaiwan to sleep at night. W, on the other hand, said that Madam Tse would only drop by to visit the children whenever she had to return to the United Christian Hospital in Kwun Tong to attend medical check-ups, about once a month. Chaiwan and Kwun Tong are quite far apart. Having heard their evidence, I am of the view that what W said was probably more reflective of the true situation, i.e. during the time when Madam Tse was living in Chaiwan, Madam Tse would only go to Kwun Tong Home to look after the children during the short periods when W had to return to Mainland to renew her visa; otherwise, Madam Tse would only visit them occasionally.
56. In about January 2005, Madam Tse moved back to Kwun Tong Home, when H, W and TK moved to Tin Shui Wai Home, to look after HY for her remaining school term.
57. According to the report from HY's school in Tin Shui Wai (part of W-1), when HY was attending the school, she would take the school bus to and from home. W was the one who delivered lunch to the school for HY, and it was also W who took part in most of HY's school activities.
58. To summarise, I am satisfied that from the time the children were born, they spent most of their infant years in the Mainland being looked after by W, until end of May 2002, when HY was about 3 years old. Thereafter, HY was brought to Hong Kong to start schooling, but W was almost de facto living in Hong Kong thereafter. W was either with the children in Hong Kong or returned to the Mainland to renew her visa. TK was with her most of the time. During the gap periods, which were mostly short, when W was in the Mainland renewing

her visa or not with the children or either of them, Madam Tse did help with the child caring responsibilities. Thus, W continued to be the children's main carer after HY came for schooling at end of May 2002.

59. Notwithstanding that Madam Tse moved into the Tin Shui Wai Home after the 1st Wrong Medicine Incident, as set out in the social welfare reports, I am satisfied that W continued to be the overall main carer of BOTH children until when HY was taken to Kwun Tong Home without W's consent.
60. Since 23rd May 2006, the children have unfortunately been separated. W has, however, remained the main carer of TK. (II) Whether W was/ is an unfit mother
61. H has made numerous allegations against W being an unfit mother. Such allegations included accusing her of :
 - (a) Neglecting / causing harm to the children :
 - (i) Being irresponsible and on one occasion causing HY to suffer a fall (s Fall Incident) (ii) Leaving the children in the lift (Lift Incident) (iii) Playing mahjong and leaving the children unattended to (Children Unattended To incidents) (iv) The Two Wrong Medicine Incidents, as mentioned earlier in this judgment
 - (v) Physically abusing the children, in particular HY (Physically Abusing Children) (vi) Ignoring the children's wishes, and in particular HY's feelings (Ignoring the children's wishes)
 - (b) allowing pregnant relatives from the Mainland to stay at the Tin Shui Wai Home, thereby depriving the children use of one bedroom.
 - (c) Not being able to assist / teach / supervise the children in their homework due to W's education level (s education standard)
 - (d) Being mentally unstable
 - (e) Misappropriating CSSA, and was using the money to play mahjong.
- (a) Neglecting / causing harm to the children
 - (i) HY's Fall Incident
62. This incident took place on 12th June 2005. According to H, an argument took place between the parties as W wanted to go out to play mahjong which he objected, and she left with the children in a hurry. After leaving home, H said the children told him that W was busy talking on her mobile phone to her friend, and walking fast, thus neglecting the children who were trying to follow her. As HY was trying to catch up, she fell. H further claimed that when he arrived at the scene, he claimed W was squatting beside HY, trying to stop the bleeding by putting a tissue-paper over HY's wound. H initially alleged that as a result of this incident, HY received 7 stitches at the Pok Oi Hospital.

63. H blamed W for not only causing HY to have a permanent scar on her chin, but also trying to shift the responsibility of the incident onto the children, namely blaming TK for causing HY to fall. This resulted in serious injury to HY, both mentally and physically, as HY knew throughout why the incident took place, namely that her mother neglected her and her brother and was rushing to go to play mahjong with friends. H said W should not lie and blame the children instead for the incident.
64. W's version was that H was at the time betting on horse races at home, and she left home with the children, planning to take them to the library. She was talking on her mobile friend to arrange to meet a friend at the library. W said while she was on the telephone, the children were running along, and TK pulled HY's skirt, causing her to fall over. W then telephoned home immediately, and when H came down, he was very angry and slapped her once on her face, before taking HY to the hospital. W said HY did not receive 7 stitches but only 4 stitches.
65. What was not disputed was that W was going out with the children and that H was at home at the time. Whether W was hurrying to go to play mahjong or not, H did not stop the children from going out with her. W admitted that she was talking on the phone. At the time, HY was 6, and TK was about 4. TK has always been an active little boy. It all happened very quickly. I agree that perhaps W should have been more watchful with young children around, and perhaps she should have held on to both children whenever they went out, but accidents do often happen with young children.
66. W's solicitors eventually had to obtain a medical report from the hospital, after the adjournment of first part of the trial in April, as the number of stitches received by HY was in dispute. From the hospital report, it is clear that HY received only 4 stitches and not 7 as alleged by H. HY was admitted only to a 24-hour clinic of the hospital, and was discharged after receiving the 4 stitches and wound dressing.
67. Obviously it was not a pleasant incident so far as HY was concerned, but it was clearly an unfortunate accident. H had produced photographs in relation to some skin disease HY had, but the alleged scar is not apparent in these photographs. From the medical report, the laceration on the chin was 1.5 cm only. Whatever scar HY has, it is likely to become fainter with years. I am of the view that the incident had been exaggerated by H.
68. Apart from blaming W for causing HY to fall, H had also criticized W in two other respects, firstly that W did not accept blame and instead blamed TK over this incident, and secondly W did not know what to do after the incident, as he found her only squatting near HY and trying to place tissues on her wound. The incident took place very near home, and as H said in his 1st affirmation, W called him only about 5 minutes after leaving home. W had two young children with her, and it was natural for her to immediately call home to seek help or support. I find H's criticisms not justified. Further, I do not think it is fair of H to accuse W of blaming TK as I believe she was only trying to explain as to how the incident happened.

69. I accept that W was probably not watchful or careful enough while talking on the mobile phone but it is not necessary to exaggerate the effect of this accident. I do not think it is a positive attitude to try and put blame on any one. One should try and think of ways forward as to how to avoid similar accidents. H's attitude has not been helpful, as it seems two years after the accident, he is still trying to make an issue out of who was to be blamed. Unfortunately, like H, HY now blames her mother for causing her to have a scar, and her attitude is reflective of H's attitude. (ii) Lift Incident
70. There was apparently an occasion when HY was in kindergarten, when W and the children were about to enter a lift, W's mobile phone rang, and while she was answering the phone, the children entered the lift alone. Apparently, after this incident, HY has since refused to go into a lift alone.
71. The incident happened some time ago. There is no medical evidence that this incident has caused any psychological effect on HY. There is no sufficient evidence that HY now refuses to go into a lift alone. Certainly, there is no evidence that TK, who was younger at the time, has been in any way affected. Again, I believe that H has exaggerated the effect of this incident. (iii) Playing Mahjong and Children Unattended Incidents
72. H alleged that W frequently played mahjong, and she would sometimes take the children with her to play, or would leave them unattended to children at home. H alleged that during 2005 and 2006, W often left HY and TK alone in the Tin Shui Wai home, and HY was scared and she had telephoned H and Madam Tse, and W's behaviour resulted in the children to losing a sense of security when with W. W said she only played mahjong occasionally, and she denied that she had neglected the children due to her mahjong playing.
73. There was a social enquiry report dated 1st June 2006 prepared by a Ms Wong, a social worker who was earlier involved with the family over domestic violence incidents. This report was prepared in connection with the alleged child abuse matter after the 2nd Wrong Medicine Incident (Ms Wong's Report). According to Ms Wong's Report, HY was interviewed alone on 28th February 2006, and HY had said that her mother had on a few occasions brought her to her friends home, and HY was left idle there or to play with the children of her mother's friends, while W would play mahjong, and that she did not like her mother's frequent mahjong playing without paying her more attention. Further Ms Wong gave evidence during the ouster proceedings, and she said at that time that HY told her that her mother played mahjong many times, but HY was unable to say how many times or any exact number of times.
74. When asked about W's mahjong playing, in answer to H's questioning, the current social worker Ms Lee had said during the trial that the children had told her that their mother had on occasions took them to play mahjong at friends flats, where they could play with the children or watch television. According to Ms Lee, HY told her on one occasion, she was with her mother until almost 2 : 00 a.m. before going home. HY said she was very tired, and wanted to go home earlier, but her mother did not wish to. Ms Lee said later when HY's

relationship with her mother deteriorated, HY would often repeat this same incident as evidence that her mother did not take good care of her.

75. Ms Lee told this Court that she did investigate into H's allegations of W's frequent mahjong playing, but Ms Lee noticed that the Tin Shui Wai Home was kept very clean and tidy, and that W was preparing 3 meals a day for the children, including taking lunches to the school for the children. Ms Lee also told this Court that the previous social worker Ms Wong had told her that whenever Ms Wong called W at home in the evenings, she was able to contact W. Further, Ms Lee had made enquiries from the children's school, and there was no evidence that the children had been going out late or that they lacked sleep, and or their school work had been affected by any late nights. Thus, although W did play mahjong on occasions as a social game, it was not to the extent H and / or his mother, and / or HY, was portraying.
76. On one occasion in January 2006, H complained that W was playing mahjong at home and left the children unattended to in the lift lobby. That day, H happened to return home early. He said he saw the two children alone at the lift lobby in the building of their Tin Shui Wai home. According to H, W just told the children to go and play in the nearby park by themselves while she was playing mahjong at home. W, however, claimed that by the time H returned, she had already finished playing mahjong, and her friends had already left. She said she was going to clean the window, and had arranged for her neighbour Mrs. Wong to take the children to the park, and that the children were waiting for Mrs. Wong at the lift lobby.
77. Whether W was playing the mahjong or cleaning the window, I am of the view that if she had indeed arranged for a neighbour to take the children to the park, she should have handed the children over to her neighbour personally. She should not have left them, who were about 7 and 5 at the time unattended to in the lift lobby. In any event, W herself had admitted during the trial that she was wrong to ask the children to go down by themselves.
78. H alleged that on another occasion on 18th March 2006, he had left home early to go to meet his lawyer, and after had gone out, his mother also had to leave home to take HY to a violin lesson. According to H and Madam Tse, W then also left home, leaving TK alone at home and followed Madam Tse and HY out of the flat. According to Madam Tse, she told W to return home immediately, but apparently W refused, answering she could do whatever she wished. Madam Tse then telephone H, and H then telephoned the police to report the matter. Apparently, when W knew H had telephoned the police then she decided to return home. The police did arrive and later left, after warning the parties. This incident in fact led to another report to the police made by W later that day, alleging assault / threat by H.
79. Madam Tse gave evidence over this incident during the ouster proceedings, and Judge Melloy accepted Madam Tse's version and found that W was indeed in the wrong for leaving TK unattended to and that W had probably exaggerated the subsequent assault incident.

80. Whatever reasons W gave to explain this incident, I agree with Judge Melloy that W was wrong to leave TK alone at home, no matter how short a period it was.
81. There were allegations made in Madam Tse's 1st affirmation that HY was given a key of the Tin Shui Wai Home, so she could often let herself in after finishing school, as W had to go to play mahjong. W explained that she only gave the keys to HY on one occasion, i.e. 15th November 2006 as she had to attend her solicitors office to sign some papers that day. According to W, Madam Tse had initially agreed to help her look after the children, but suddenly that day, Madam Tse said she was unable to do so. W gave the keys to HY to let herself into the flat after HY got off her school bus, just in case W was late. W said she was on the phone constantly with HY while she was at her solicitors office.
82. I appreciate that it is difficult for W to care for two young children, without any support, particularly with litigation going on. However, I am of the view that W should try and make other arrangements for supervision of the children, or cancel her appointment with her solicitors. I find that in the past W had on occasions left the children unattended to at home. I accept that they were isolated incidents, but it is still unsafe to leave young children unattended to at home at any time. (iv) The two Wrong Medicine Incidents 1st Wrong Medicine Incident (18 / 2 /2006)
83. I now come to deal with the two so called Wrong Medicine Incidents. The 1st incident took place on 18th February 2006, 4 days after the issue of the 1st Report. HY was apparently suffering from some skin disease, and it was H's allegation that W neglected her, and did not take her to see a doctor. On that day, H took HY to see a Chinese Herbalist. HY was given some Chinese medicine which needed to be boiled. After H and HY returned at about 4 : 00 p.m., H put the medicine in a pot to boil, and then he said he went into the bedroom to be with TK. Anyway, W gave the medicine to HY, not realizing that it was for external use, and not for internal intake. When H found out, he took HY to hospital.
84. W's explanation was that no one had told her that the medicine was for external use. She said H went into the bedroom to take a nap and told HY to wake him up at about 6 : 00 p.m. HY tried to wake him but failed, and W then decided to feed HY the medicine. HY was at the time having a private lesson with her tutor. She complained about the medicine being bitter, but as W thought as all Chinese medicine would be bitter, she coaxed HY into taking it. After the incident, W said she did apologize to HY, and HY accepted her apology.
85. During cross-examination by Mr Li, H denied that he went into the bedroom to take a nap. He said HY's private tutor turned up at about 4 : 00 p.m., and as TK was being noisy, he took TK into the bedroom and tried to make TK take a nap. He only went into the bedroom to be with TK. However, when asked by Mr. Li as to how long the medicine was supposed to be boiled, H answered for one hour, and then he had a slip of tongue and mentioned something about HY was to wake him. He later then changed his evidence and HY did not try and wake him. His evidence was clearly inconsistent, and I do not accept H's evidence. I believed that he did fall asleep.

86. H blamed W for not asking him first and not finding out what the medicine was for, that she was on the telephone all the time, and that there was neglect on her part. W blamed H for not explaining to her how the medicine should be applied, and then just left the medicine boiling and fell asleep.
87. After hearing their evidence, I am of the view that the incident was again another unfortunate event which resulted from the parties hostile attitude towards each other. They were not able to communicate or talk to each other, due to their strained relationship. Both were equally at fault, and if one has to cast blame, then both should be blamed. Unfortunately HY was the victim but fortunately, there were no serious physical ill effects.
88. After this incident, as mentioned earlier in this judgment, H arranged for his mother Madam Tse to move into the Tin Shui Wai Home. This, however, did not help to calm the situation at home, as was hoped for. W said she initially thought that Madam Tse was moving in only for a short period, but then she stayed for months. The atmosphere at home turned into almost a battlefield, with W alleging harassment and violence, and H alleging provocation. 2nd Wrong Medicine Incident (19th May 2006)
89. The 2nd incident took place on 19th May. HY returned home from school at about 3 : 30 p.m. and she told her mother she was not feeling well. W took her temperature and found that HY had a fever. W then gave her some medicine which was prescribed for TK several months ago by a Dr. Chan. W claimed that she had also given HY this medicine on an earlier occasion on 12th May 2006 when HY also had a fever that day. Madam Tse knew about this earlier occasion, and did not object. After taking the medicine, HY took a nap, and W went to collect TK from school. Later, after she and TK returned home, HY woke up and was asking Madam Tse to play games with her. HY then said she was hungry, and was given a biscuit and a 7-up by Madam Tse. HY then shortly thereafter complained of a stomach ache and that she wanted to vomit. Madam Tse telephoned H, who returned home immediately.
90. According to W, after H returned, he and his mother told her that they were taking HY to see a doctor nearby, but later it turned out that they had taken HY to the Tuen Mun Hospital. While at the hospital, HY apparently told the hospital that she was given some medicine prescribed for TK.
91. H then went home to retrieve the medicine and then he made an allegation that W had given HY some expired medicine. According to the Nursing Report dated 28th May 2006 prepared by the Supervising Nurse Nursing Report (part of), H then reported the incident to the police and blamed W for giving expired drug to their daughter, and alleged W had abused his daughter and queried that W had mental illness.
92. Anyway, HY was admitted to hospital that day without W's knowledge. W said that no one in H's family answered the home telephone or their mobile telephones when W tried to call and ask about HY. No one told W where HY was taken to, and W told this Court that eventually, she telephoned her solicitor who suggested her to make enquiries from nearby hospitals. It was only when W telephoned around to make enquiries that she found out that

HY was admitted into the Tuen Mun Hospital. W tried to visit HY the following two days, i.e. on 20th and 21st May but did not manage to see HY as HY was already granted temporary home leave and H took her to the Kwun Tong Home, again without telling W. W eventually met HY in the hospital ward on 22nd May.

93. According to the Medical Report from the Tuen Mun Hospital, HY had fever of 39.6 degrees C, and had a cough and a running nose for one day. It was recorded that the medication she received was acetaminophen (which I understand to be Panadol), which was labelled for TK, and her grandmother noticed HY having shortness of breath after taking the medicine.
94. HY was eventually formally discharged from hospital on 23rd May.
95. As a result of H's complaint of suspected child abuse, the Social Welfare Department arranged for the Conference which was later held on 1st June 2006.
96. All the members who attended the Conference agreed that since the medicine taken by HY had not expired and had no adverse effect on HY's physical health, the case was not a case involving physical abuse. However, according to the report, the members noticed that owing to the parents' custody dispute and repeated conflicts over the child care and child discipline on HY, she obviously was very often caught in the middle among the adult family members and had been confronted with conflict of loyalty. Her emotions at that time had become unsteady with ambivalence towards her mother. After thorough discussion, the members then apparently came to the consensus that the case was categorized as a high risk case of emotional abuse although no psychological test had been conducted for HY until then. The case was to be registered at Child Protection Registry and follow up service was to continue to be rendered by Family and Child Protective Services Unit.
97. The members also recommended to maintain HY's then living arrangements, and Ms. Lee, the social worker responsible for social investigation on the child custody issue in the Family Court was to assist to arrange access for W, and in view of HY suffering from emotional distress, the members agreed to refer HY for assessment and treatment by a clinical psychologist. Ms Lee was to suggest to the Family Court to call for a Psychologist Report.
98. Since her formal discharge, HY has been residing at the Kwun Tong Home.
99. Having heard the evidence, I could not understand why H would deem it necessary to make a report that W had abused HY over this incident. Madam Tse was present throughout the incident. There was no evidence that W had physically abused HY. No physical abuse of HY was found, and that the case was categorized as a high risk case of emotional abuse as a result of conflicting condition at home. Thus, H and W, and Madam Tse had to certain degree all been responsible for causing the emotional abuse to HY due to the situation at home. As stated in the Minutes of the Conference (part of), not only W, but also H, and Madam Tse and Ms Chau were seriously advised to stop the never ending dispute in front of the children since the adverse emotional impact imposed on HY was already obvious at that time.

100. I do not find H s behaviour in making a report that W had abused HY to be at all reasonable and I am of the view that the incident only reflected H being manipulative. (iv) Physically abusing the Children
101. While giving oral evidence, Madam Tse told this Court that she had noticed HY having bruises under her arms and on her inner thighs on one occasion in about August 2005. According to Madam Tse, HY told her that W had pinched her under her arm and on her inner thighs, causing these bruises. Madam Tse also told the Court that often during showers, if HY answered back to W, W would hit her with a hanger in the bathroom. Madam Tse did not refer to these incidents in her three affirmations. Madam Tse said it was HY who told her about these incidents. There was reference to these allegations having been made in the report by the school provided to the Committee in charge of the Conference (part of). However, I find Madam Tse s allegations vague, and there was no sufficient evidence to support these allegations.
102. Madam Tse also told this Court that HY did not like her hair being washed under the shower, and that HY would always scream when her mother tried to press her head down for the hairwash. I do not think this could be considered to be ill treatment of HY.
103. Madam Tse also said that if the children were slow in having their meals, W would hit their head with her chopsticks as she wanted to rush out to play mahjong, and as HY was always slower than TK, HY would often be hit by W in this way.
104. In Ms Wong s Report, HY told the social worker that she recalled her mother beating her with a clothes hanger when she behaved badly or ate too slowly, but according to HY, those incidents happened long time ago.
105. W herself had admitted disciplining the children physically when they were naughty. She said these incidents took place when the children were much younger, and it clearly appears from Ms Wong s Report that there has been no evidence of any recent incidents of W inflicting any physical punishment on the children.
- (v) Ignoring the children s wishes
106. H alleged that W often took HY and TK with her to her friend s place to play mahjong, even when HY did not wish to go, and therefore W ignored the children s wishes, particularly HY. According to H, HY told him that she had wanted to stay at home to do her homework, but W ignored her wishes and insisted her going with her, and often W played mahjong until midnight, leaving HY with no time to do her homework. W said that there was only one occasion, when HY and TK went with her and that she only played mahjong until about 11 : 00 p.m.
107. According to H s own evidence, he would go home at about 6 : 00 p.m. after work. If this was indeed the case, then he could have stayed home with HY or TK and not allowed W to go out with them if the children did not wish to.

108. H also accused W of not being able to understand HY's feelings, such as during the access on one occasion in March earlier this year, HY was very pleased to see TK, but when W suddenly appeared from behind HY, HY went over to her father. H then told HY not to be afraid since he was present, upon which W then apparently said in a loud voice to HY, in presence of strangers, that as she was her mother, there was nothing for HY to be afraid of. W then scolded H for about 10 minutes, until HY cried. When the social welfare officer, Ms Lee, was giving evidence the second time on 22nd August, H had asked the social welfare officer whether she thought there was any problem about him comforting HY not to be afraid of W on such or similar occasion and yet W had made a complaint about his trying to comfort HY. Ms Lee had answered that what H had said was not helpful. I clarified the answer with Ms Lee, and it was clear to me that what H said was not what W was hoping for, and what W was hoping for was that H could have said words such as your mother had not caused you any harm, and there was nothing to be afraid of. I agree with Mr. Li's submission that what H said in fact appeared to reinforce HY's fear, and I can very well understand W's frustration on such occasions.
- (b) allowing pregnant relatives from the Mainland to stay at the Tin Shui Wai Home
109. H had alleged that W had allowed her pregnant relatives from the Mainland to stay at the Tin Shui Wai Home, so that they can give birth in Hong Kong, and there was one of them who even overstayed.
110. The three pregnant women came at various times in about 2005, the first one was W's niece, who arrived in about March 2005, staying about 3 months, the second one was also a niece of W's sister, who came in May 2005, staying for less than one month, and the third one, also kind of a niece, came in about September 2005 for about a week. The first two visits were when HY was living at the Kwun Tong Home, although HY would be at the Tin Shui Wai Home during weekends. As the first one overstayed, W was charged and had to pay a fine of HK\$500 for allowing an overstayer to reside at her home. H denied that he agreed to these women staying at the Tin Shui Wai Home. W said H did agree to the arrangements as her family had helped him by lending him money. In fact, during the time when the first niece was there, it appears that the niece was helping to look after the children, which allowed W to find some part time work. W further said that H took the niece and the children to the Peak for sight seeing.
111. According to what H said in paragraph 31 of his 1st affirmation, it was only when the 3rd pregnant woman came after one week that he strongly objected, and the woman then left. Thereafter, there were no other such visitors. H now claims that he showed his strong dissatisfaction at the time but having heard W's evidence, it appears to me that notwithstanding what he now says, at the time, H must have acquiesced in the arrangement, otherwise, W would not have been able to allow these women to stay for such long periods.
- (c) W's education standard

112. W was educated to Form 5 level. H, on the other hand, after finishing Form 5, went on to attend the then Open Learning Institute (now called the Open University). H had criticized W by saying she did not know any English. W admitted that she did not know any English, but she had earlier this year taken a short course in basic English. Mr. Li had submitted that H's own academic achievements were not great, and not much better than W
- s. However, according to H, he was able to read and understand Mr. Li's Opening and Closing Submissions and the pleadings and the Ouster Judgment, which were in English, and I am satisfied that H did achieve a higher level of academic studies than W.
113. I accept that in terms of supervising the children's homework, H would be in a better position than W. It appears, however, that H was not really supervising the children's homework himself, as before HY was removed from Tin Shui Wai Home, H had employed a private tutor to help the children with their school work rather than doing it himself.
- (d) W's mental condition
114. H alleged that W was suffering from psychiatric illness. W did suffer from adjustment disorder, but according to a medical report 7th February 2006 which she exhibited in her 5th affirmation, she was then mentally stable, and mentally fit for child care. After reading her medical report, and observing her during 12 days of trial, I cannot detect any evidence that W is not suitable for caring for children due to any mental condition.
- (e) misappropriating CSSA payments
115. W was granted CSSA for the children on about 19th April 2005. H alleged that W had spent her CSSA payments on mahjong gambling. The CSSA payments were for the children only. The amount only covered half of the total monthly rent, and only about 70% of TK's kindergarten fees. After paying YK's kindergarten fees, and rent, it appears that W was left with about HK\$1,800 to HK\$2,000 per month to cover all other expenses. According to W, H was then only paying for utilities. He did not pay for rent or any other household expenses. What W was left with was hardly enough for food and other family expenses.
116. W did try and find some part time work to supplement her income. At about end of 2005, W also attended two short training courses organized by the Hong Kong Re-training Centre, one on computer, and one on sales, in order to improve herself in the job market. In the circumstances, I do not think W would have much money to gamble on mahjong. I am satisfied that she did not misappropriate CSSA payments. Conclusion on whether W was/is an unfit mother
117. To summarise, although I accept that W had in the past left the children alone and unattended to, there is no evidence that she has done this frequently. I find that the incidents complained of by H and / or Madam Tse and / or HY were isolated incidents. I also accept that W had also sometime in the past inflicted some corporal punishment to discipline the children, but they were not serious. Apart from the two Wrong Medicine Incidents, most of the other incidents / matters complained by H occurred before the 1st

Report, and yet, H was prepared to leave the children in W's primary care until about 4 days after the 1st Report was received. The 1st Report was received on 14th February 2006, and the 1st Wrong Medicine Incident took place 4 days later, on 18th February, and on 19th February, H arranged for Madam Tse to move in. There were then numerous incidents thereafter, as set out in the ouster proceedings.

118. After the 2nd Wrong Medicine Incident on 23rd May 2006, Madam Tse and HY went back to live in the Kwun Tong Home, leaving TK at the Tin Shui Wai Home in the primary care of W. Although H claimed that he was there, as mentioned later in this judgment, I believe he was mostly out during the day. After she left the Tin Shui Wai Home, Madam Tse only saw TK briefly on two occasions on 26 and 28 June 2006, when she went with HY to attend access sessions. I would have thought if Madam Tse were indeed concerned over W's child caring ability, she should have visited TK, if only just to make sure he was properly looked after, particularly after H was ousted. Furthermore, I would have thought that if H were indeed concerned over W's child caring ability, he would be as anxious as W to proceed with the custody trial as soon as possible, but instead he decided to act in person and to apply for legal aid only shortly before the commencement of the custody trial, as a result of which considerable delay was caused to the proceedings.
119. I accept that W was not a perfect mother in the past, but this does not make her an unfit mother. In fact, on 22nd August, when the social welfare officer, Ms Lee, was recalled, I asked her specifically whether W was fit to have custody of TK, Ms Lee's answer was yes. In Ms Lee's 1st Report in February 2006, she had referred to H complaining to her about W playing mahjong, and leaving the children alone at home, or allow them to go by themselves to parks nearby to play, or to bring them to W's friends home to play mahjong until late at night. Notwithstanding these complaints from H, Miss Lee at that time concluded that the information she received and the record kept in the social welfare department indicated that the children had been receiving appropriate care from their mother, and her then recommendation was that it was in the greatest interest of BOTH children for W to have their custody. Even after HY went to live in the Kwun Tong Home after the 2nd Wrong Medicine Incident, in Miss Lee's 2nd Report submitted in July 2006, she commented that W appeared reasonable in child care and discipline, and in general, she could perform the parental functioning adequately. Ms Lee at that time in fact reiterated her recommendation for W to have custody of both children.
120. In the above circumstances, notwithstanding the numerous allegations that H and / or Madam Tse had made against W, I find that W is not an unfit mother. (III) If H granted custody of the children, who would be their primary carer (s)
121. H has told this Court that he is presently the primary carer of HY with the assistance of Madam Tse. It is his case that he has not had much work since about 2002 / 2003. W, however, alleged that H was all along working, and he frequently was not at home due to his work.

122. When asked by this Court his current daily living pattern, H claimed he would get up at 7 : 30 a.m. to have breakfast, and that he would HY to her summer activities, and then they would have lunch, and after lunch, they would go home. H claimed he would buy a lot of books for HY and would help her study. HY then would take a nap from 2 : 30 p.m. to about 4 : 00 / 5: 00 p.m., and during this time, he would go out to look for work. H would then return home for dinner, which was cooked by Madam Tse or his father. After dinner he would play with HY and then HY would take a bath and would go to sleep about 9 : 00 to 10 : 00 p.m. On Saturdays / Sundays, he would take HY to the Library, to visit his cousins and his grandmother in Chaiwan, to Ocean Park, to Disneyland, and to other activities.
123. During school term time, H said either he or Miss Chau would take HY to school, and Madam Tse would collect her after school, and if he had no part-time work, he would collect HY, and when HY was at school, H said he would manage his documents, contact friends, prepare proposals for market survey, read newspapers, and help his parents with house work.
124. H s above evidence and his evidence that he had not worked much since 2002 / 2003 was not consistent with the evidence of Madam Tse and / or Miss Chau and / or the social workers. According to Madam Tse, H would only return home after work about 7 : 00 p.m. Madam Tse herself maintained that she was the one who looked after the children as both H and W were out. During the trial, Madam Tse also clearly said that H was working in 2004. She was then vague about whether H was working in 2005 or not, saying she could not recall. Madam Tse then claimed that it was only in 2006 and 2007 that H had no steady work, but before that he had his business. H s sister, Miss Chau, told the Court that it was her parents who looked after HY and H would only look after HY after work.
125. According to the 1st Report Ms Lee submitted in February 2006, H was busy working during the day, and some times, only returned home very late at night. He very seldom took part in the children s daily life, and he did not spend much time with the children. At that time, he had employed a private tutor to help the children with their school work. Further, in the 1st Psychological Report in July 2006, HY herself had told Ms Pak that H was often away from home.
126. In Ms Lee s 2nd Report, which was in July 2006, and after HY had gone to live in the Kwun Tong Home, Ms Lee stated that H had limited involvement in the children s day-to-day activities due to his work engagement. Ms Lee commented that if H were to have custody, he would have to rely on his extended family to provide child care support.
127. As H claimed in the first part of the trial in April that he was not working, I then made an extensive access order, which is the 2nd Interim Access Order, which involved access sessions about 3 times a week over part of the children s summer holidays. When the trial resumed in August, both H and Madam Tse said this order had prevented H going out to work. When Madam Tse was giving evidence, her attitude was that the access order resulted in H not being able to go to work. This Court then had to explain to her that it was because H

maintained that he was not working that the 2nd Interim Access Order was made, since if he indeed was not working, then he would have plenty of time to attend access sessions.

128. Towards the end of the trial in August, H indicated that he intended to seek a regular job after the conclusion of the proceedings. Whether he seeks a regular job, or continues to run his business, it is clear to me that he has not been at home during the day time as much as he has tried to portray. Madam Tse considers herself to be the primary carer of HY, and I agree that since HY went to Kwun Tong Home, her primary carer has been Madam Tse. Further if H were granted custody of both children, I find that Madam Tse would in fact be the primary carer of the children. (IV) Whether H was financially irresponsible, violent and volatile Financially irresponsible
129. H told this Court during the trial that his career history was as follows :
- (i) From 1983 until 1995, he had held various jobs including being a waiter, an office boy, a computer technician, hawker, a clerk etc.; (ii) During 1993-1995, he worked in a factory making spectacles in Hong Kong and in Shenzhen (iii) In 1995, he joined an engineering company as a clerk, but later was promoted to an administration supervisor. He worked for this engineering company for about 7 years until 2002, when the company was wound up. (iv) H claimed he was not able to find work in 2002 / 2003 during Sars.
 - (v) Then he started his own business () buying and selling machinery.
130. H claimed initially that his business TG was formed on 17th March 2003, and from March 2003 to December 2003 he received only enquiries but no orders, and that until December 2003, there were only losses. In 2004, he borrowed HK\$100,000 from Miss Chau to inject into the business, and although he received one order but he did not receive any payment in the end, as the principal sub-contractor disappeared, and he incurred losses totalling HK\$120,000 for that year, and again in 2005, he only had losses. H claimed that TG held no bank accounts. Although he did have personal accounts at one stage, by 2004 / 2005, all his personal accounts have been cancelled. H told this court that all his dealings were in cash, and he claimed there was no record of any dealings.
131. I then queried as to how he could conduct a business without any sort of record. H then produced some notebooks (RR-2), which contained little information. He then claimed there were some accounts notebooks still at Tin Shui Wai Home. W was told to look for and bring the documents described by him, but no such accounts notebooks were found. What was found by W were exhibits PP-11, which clearly indicated that H was sending out invoices as early as March / April 2002 in TG s name, a year before TG was formed. H then tried and explained that these were sample invoices, but in my view, they were clearly not samples, and I reject H s evidence in this respect.
132. According to H, his net income since 2003 has been :

- (i) 2003-2004, HK\$4,000 per month to HK\$5,000 per month (ii) 2004-2005 HK\$5,000 per month (iii) 2005-2006 HK\$1,000 / HK\$2,000 per month (iv) 2006-2007 HK\$2,500 to HK\$4,000 per month
133. H was involved in a loan shark incident in March 2003, as a result of which H made a report to the police. He gave a statement to the police on 20th March 2003, in which he stated he was then working as an engineering supervisor, earning HK\$15,000 per month. Thus, what H said initially during the trial about his income in 2003 was certainly not consistent with what he told the police in March 2003. When Mr. Li pointed this out to H, H then admitted that in March 2003, he was still earning about HK\$15,000 per month.
134. According to his Form E filed in February 2006, H said he was unemployed at that time and claimed that his income was only HK\$4,500 per month, and yet he stated in his Form E that his monthly expenses at that time were about HK\$26,000. Notwithstanding the losses H was telling the Court that TG had been incurring, H continued paying for the Business Registration until earlier this year.
135. It is W's allegation that H has all along been working for a Mr. Chan and / or Mr. Chan's company, as a Purchasing Manager. According to W, between 2002 to 2003, H was paid by cash cheques of about HK\$15,000 each by Mr. Chan's company, and that on 3 or 4 occasions, he had given the cheques to W and asked her to go to collect cash, and that it was from such cash that H repaid W the monthly instalments for the gambling loan from her family. H agreed that he did ask W to cash some cheques but said he could not remember how many cheques. H then explained that he was only a sub-contractor for Mr. Chan's company. As he had to pay first on behalf of Mr. Chan's company for purchases, these cash cheques were reimbursements. When asked when he got the cash from to pay in the first place, H said the cash was kept by him at home.
136. Mr. Li put to H that when W had telephoned the said Mr. Chan's company at lunch time one day during the trial, asking for H, the answer from Mr. Chan's company was words to the effect that Mr. Chau had not yet returned to the office and this indicated that H was working there or had an office there. H tried to explain by saying that he had been using Mr. Chan's addresses as correspondence addresses from May / June 2002 onwards. I do not find H's answer satisfactory, as normally if a person has no connection with a company, the company's receptionist's reply would be there is no such person there.
137. I must say that I find H's evidence regarding his work and income since 2002 / 2003 not credible. H has produced no documentary / supporting evidence to support what he said. With his qualifications, education level, and knowledge and understanding of English, I cannot believe that H has had only little work since 2002 / 2003 or that he has only been earning the various small amounts he claimed he earned. Further, H's evidence that he had not had much work / business since 2002 / 2003 was not supported by his mother's evidence or by the social welfare reports or by the psychological reports.

138. On one hand, H claimed that he had little work or income since 2002 / 2003, and yet, on the other hand, it is H's case that he did pay various sums to W for household maintenance / repayment of loans to her family.
139. The loan shark incident was in March 2003. H incurred gambling losses, and it is not disputed that he ended up owing loan sharks a total sum of HK\$160,000, being principal and interest. H was then accompanied by a loan shark to go back to Kwun Tong Home to raise funds for repayment. According to W, she lent at least 100,000 RMB to H which was borrowed from her family in the Mainland. She had exhibited a copy of a note signed by H on 21st March 2003, acknowledging that he had borrowed HK\$95,000 (which was then about 100,000RMB) from her. W said H had promised to repay HK\$5,000 per month, which he did in 2003 and 2004, but ceased repaying in 2005, and up until now, H still owed 57,000RMB. Although H disputed this amount, I find no evidence to doubt what W said.
140. In relation to the loan from W's sister for payment of his gambling debts, H said that was repaying monthly instalments of HK\$5,000 towards the loan since September 2003 until full repayment. As H has told this Court that since 2003, he has been earning only HK\$4,000 to HK\$5,000 per month or less, this would be just enough to repay the monthly loan instalment, and thus he would not be able to have any extra money to pay any maintenance for W and the children.
141. It is W's case that H has been financially irresponsible to the family. According to W, H stopped giving her regular financial support for her and the children since about 2000, and that from then on, he would only pay irregular sums. W told Madam Tse about her financial difficulties, and Madam Tse would give her sums from time to time when situation was tight. W applied for CSSA in March 2005.
142. H alleged that W did not tell him when she started to receive CSSA, and he only found out from the Social Enquiry Report (W-1) in July 2005. As he did not know that W was receiving CSSA, for the months between March and July 2005, H claimed he was borrowing money and working part time at constructions sites and restaurants, to pay enough money for children's school fees and also maintenance for the family. Madam Tse also complained that W was cheating her money, as Madam Tse was giving W sums from time to time when W was already receiving CSSA.
143. H's own evidence that he had borrowed money and worked on construction sites from March to July 2005 to support his family is again inconsistent with what he stated in a declaration dated 1st September 2005 made by H to support continuation of W's application for CSSA for the children. H claimed in his declaration that he only gave W HK\$3,000 in April / May 2005 for his family to buy some furniture and for some emergency repairs, and no other payments were made by him from W's receipt of CSSA up until at least September 2005. Further, according to paragraph 6 of the Social Enquiry Report in relation to the 2nd Wrong Medicine Incident (W-1), H had written a letter to the Social Welfare Department earlier in February 2005 to say he was unable to provide maintenance to W and his children.

I therefore do not believe that he was paying any sums for W or the children in 2005.

144. Further, after HY went to live at the Kwun Tong Home, H failed to pay the outstanding private tuition fees to HY's private tutor, who had to lodge a claim against H in the Small Claims Tribunal. It is still uncertain as to whether H settled the amount in the end.
145. I find H's evidence as to his financial situation since 2003 vague, evasive, and full of inconsistencies. I believe H was working and earning an income more than he claimed, and I also believe he has not been providing adequate financial support for W and the children, probably due to his various debts. In the circumstances, I find that H has been financially irresponsible towards his family. Violent and volatile
146. During the trial, H presented himself well. He was calm, collected, meticulous, clever, and conducted the proceedings almost professionally, even though acting in person. Notwithstanding being cross-examined at length, he did not once lose his cool.
147. There obviously was another side of H. A copy of the transcript of the audio recording made by W of conversations between her and H on various dates between 10 May 2006 and 17 May 2006 was exhibited by W. In relation to the taped conversation on 17th May 2006, obviously, H did not know what he said was being taped, and to certain extent as H was saying, W was indeed provoking him. I accept that W could be provoking him, but there was no reason for H over-react. He clearly lost control, and was subjected to living harassment and violence. In the Ouster Judgment, Judge Melloy accepted most of W's evidence, and made an ouster order against H.
149. These incidents indicate that H could be of a volatile and violent nature, if provoked. Sexual dalliance
150. During her oral evidence, W described how the children told her that H had taken another woman back to the matrimonial home whilst W was staying in a women's shelter in mid 2005. W also said in her affirmation that TK told W that when he woke up, he saw H with a woman in the next bed. W also claimed that she saw some used women's items at the Tin Shui Wai Home. H denied these allegations.
151. W had produced a photograph of H being with a young girl Miss Sin. H's explanation that he was merely tutoring Ms Sin, who was then a Form 5 student. Mr. Li queries H's academic ability to tutor another Form 5 student. Anyway, the photograph speaks for itself. H and Ms Sin had their arms round each other, and they were in an intimate manner.
152. From the above, although I find there was no sufficient evidence to say that H had indeed indulged in any extra-marital affairs, I must say I do not find H's evidence about his relationship with Miss Sin satisfactory. If indeed they were having a tutor-student relationship, this makes H's conduct even more improper. (V) Whether H and/or Madam Tse has been alienating HY from W

153. It is W's case that after the 2nd Wrong Medicine Incident, HY was akin to being kidnapped by H and / or Madam Tse and HY has now been brainwashed by H and / or Madam Tse, and that she may be suffering from what is known as Stockholm Syndrome . 154. Brainwashing is a form of parental alienation. According to Wikipedia, (i) Parental Alienation is defined as any behaviour by a parent, a child's mother or father, whether conscious or unconscious, that could create alienation in the relationship between a child and the other parent. (ii) Most researchers believe that any alienation of a child against (the child
- s) other parent is harmful to the child and to the target parent. (iii) Alienating parents often use grandparents, aunts / uncles, and elder siblings to alienate their children against the target parent. 155. Stockholm Syndrome is, according to Wikipedia, a psychological response sometimes seen in an abducted hostage, in which the hostage shows signs of loyalty to the hostage-taker, regardless of the danger (or at least risk) in which the hostage has been placed.
156. Parental Alienation is now a frequent allegation in custody / access disputes.
157. Here, in this case, I note the following :
- (i) This Court first called for a social investigation report on 30th November 2005. Thereafter, HY was interviewed by the social worker, Ms Lee, during the period between December 2005 and 14th February 2006. The 1st Report was dated 14th February 2006. This would be after the HY's Fall Incident and the Lift Incident. In fact, it was also after the incident when HY was taken out by W until late when W was playing mahjong, and after the incident that W left the children in the lift lobby. These complaints of H's were referred to in the 1st Report. I also note that interviews with HY conducted by Ms Lee would be about 4 months after alleged physical abuses / bruises on HY allegedly seen by Madam Tse in August 2005. (ii) Yet, in the 1st Report, Ms Lee reported that the children indicated emotional attachment and trust in their mother, and obedience and co-operation towards their mother's discipline. Both HY and TK indicated to Ms Lee that they did not want to be separated from their mother but they also did not want to be unable to see their father. Ms Lee confirmed during the trial that from her observations at that time, there was no hostility between HY and her mother. HY addressed W as mummy and did not use any bad language or call W a bitch {kkQFZ) Ms Wong's Report, which was prepared for the Conference, Ms Wong disclosed that HY was interviewed individually by her on 28th February.
- (v) 2006, which was about 14 days after the 1st Report, and 10 days after the 1st Wrong Medicine Incident. According to Ms Wong, HY was very upset over her parents never ending conflict and fighting. During this interview, HY told Ms Wong that she preferred to live in the Kwun Tong Home, and that she regarded her father, paternal grandmother and paternal aunt were the best persons in the world. Ms Wong described HY's attitude as ambivalent . (vi) According to the Timeline of Events in the Ouster Judgment, H's campaign of harassment and intimidation was mounted against her after the incident on 18th March 2006. All these incidents took place at home, and in presence of the children. (vii) From the report of the

school submitted to the Conference, W attended the Parents Day on 29th April 2006, and was apparently in tears when she was discussing with other parents as to HY's changes, and that W was experiencing family and discipline problems. W was then arranged to talk with the school social worker Ms Ma. During her meeting with Ms Ma, W explained her marital problems with H, and W hoped that the school would pay attention to HY's emotions. (viii) Early May 2006, the school had also contacted H, and H also asked the school to pay attention to HY's emotions. HY apparently had asked her teachers, in the presence of her teachers and class mates, to pray that her parents would not quarrel at home. (ix) On 12th May 2006, HY met with the school social worker Ms Ma for the first time. HY told Ms Ma about the custody matter, and that she was unhappy as her parents were frequently quarrelling at home. She indicated that she would prefer to live with her father, as her mother would not know how to teach her do homework. It was also during this interview that HY mentioned that she did not like her mother playing mahjong, scolding her, hitting her with a hanger during showers, forcing her to wash her hair and the incident when she fell on the street, but HY herself told the school that these incidents were in the past.

- (x) The next thing that happened was the 2nd Wrong Medicine Incident which took place on 19th May 2006, and HY was admitted into hospital on 19th May 2006 without knowledge of W. HY was granted home leave from hospital on 20 and 21 May 2006, and was taken to the Kwun Tong Home. (xi) W eventually met HY on 22nd May 2006. According to the Nursing Report (part of), there was an argument between Madam Tse and W about guardianship of HY, and HY was quiet but seemed to be not afraid of her mother. (xii) HY was apparently discharged from hospital on 23rd May 2006 and taken to school that day by H and Madam Tse. At the school, H told Ms Ma about the 2nd Wrong Medicine Incident and that he had reported the incident to the police. (xiii) According to the report from the school (part of W-1), HY was observed to be unhappy at school on 23rd May 2006, and when her teacher asked her, HY burst into tears. Both W and Madam Tse delivered lunch to HY. HY had lunch with her teacher and told her teacher as to what happened in the past two days. In the presence of Ms Ma, HY met with the social worker Ms Wong. After school, Madam Tse turned up to collect HY planning take HY back to Tin Shui Wai Home. As Madam Tse had turned up, HY did not board the school bus. Apparently, HY indicated to the school that she was scared that her parents would quarrel at home again and that she was scared of her mother, and therefore she did not wish to return to the Tin Shui Wai Home. In the meantime, W telephoned to ask why HY was not on the school bus, and thereafter both H and W then contacted Ms Ma. (xiv) As H and W could not reach agreement, HY was kept at the school for almost 2 hours, and, according to the school, eventually HY followed Madam Tse back to Tin Shui Wai home. However, according to Madam Tse, as it was HY's wish not to return to the Tin Shui Wai Home, HY was then taken to Kwun Tong Home. (xv) The following day, i.e. 24th May 2006, according to the school, HY was arranged to talk to Ms Ma regarding her seeing her mother. HY indicated that she would be happy at school, and did not wish to see her parents quarrel at home. (xvi) On 26th May 2006, W was arranged to see HY at the school social worker's office during class intermission in the presence of Ms Ma.

HY was initially a bit hesitant, but W gave her a present, and HY was happy when playing, but she refused any physical contact with her mother. After school, HY told her teacher that she felt like facing a big , saying that when she was in the presence of her grandmother, she would not dare talk to her mother, as her grandmother would be displeased; and in the presence of her mother, she would not dare talk to her grandmother, as her mother would then be displeased; and when with both her parents, the situation would be worse. (xvii) On 30th May 2006, when Ms Ma visited HY at her classroom and mentioned her mother's visit, HY lowered her head and cried, and was emotional. When HY calmed down, she indicated she was happy playing with her mother at the school social worker's office, but did not wish to see her mother at home, as her mother would be fierce and would scold or physically discipline her at home. But HY then said she did not wish to see her mother at school. When asked, HY said she agreed what she said was strange, but said she could not explain. HY said she did not miss her mother, but miss her brother. Later, W turned up at class recess to see HY, but as HY did not wish to see her, W was upset and emotional with tears and she later left. Ms Ma then telephoned Ms Wong due to HY's emotions whereupon Ms Wong telephoned H and W and Madam Tse immediately but apparently H and Madam Tse refused to be interviewed. Eventually it appears that only Madam Tse and H's sister, Miss Chau, were interviewed. (xviii) Ms Wong's Report was submitted on 1st June 2006 for the Conference. Her remarks in the report were that HY's emotional problems seemed to have arisen from her parent's never-ending disputes, and that HY obviously encountered the conflict of loyalty, and was caught in the middle among the adults. Ms Wong opined that HY's emotional attachment towards her grandmother seemed to be great and it was believed that her willingness to stay in her grandmother's home was to avoid the adults' conflict at home. (xix) During the Conference, the members all agreed that the case was not a physical abuse one, and they noted that owing to the parents' custody dispute and repeated conflicts over child care and child discipline on HY, HY obviously was very often caught in the middle among the adult family members. Should the conflicting condition still be continued without improvement, there would be adverse emotional impact imposed on HY. The case was then categorized as a high risk case of emotional abuse though no psychological test had been conducted. Apparently, Ms Wong had proposed to place HY in a foster home temporarily rather than to witness the never-ending conflicts of her parents and grandmother until the completion of the custody proceedings. W agreed but H and Madam Tse strongly objected, and HY also indicated clearly that she preferred to live with her grandmother at the Kwun Tong Home. (xx) The day after the Conference, on 2nd June 2006, W issued her application for non-molestation and ouster orders, and for interim custody of the two children. On 21st June 2006, this Court allowed W supervised access to HY and set the application down for trial in August and called for a clinical psychologist report on HY. (xxi) Thereafter, HY remained at the Kwun Tong Home. W was then arranged to have supervised access to HY on 5 occasions, the first one being on 26th June 2006 and the last one being on 5th July 2006. Throughout these access occasions, HY indicated her reluctance to see her mother, and played temper tantrums and expressed indignation and outrage towards her mother, and was yelling at her mother. (xxii) The psychologist Ms Pak first saw

HY on 7th July 2006 and prepared the 1st Psychologist Report on 28th July 2006. Ms Pak saw HY in July 2006 for psychological assessment. HY was then aged 7 years and 2 months. (xxiii) According to Ms Pak, HY was at first cheerful, at ease and spontaneous, but once the purpose of the assessment was mentioned, HY became serious, angry and readily listed several wrongdoings of her mother repeatedly. She addressed her mother as that person (

- r. At first, HY refused to attend a play observation session for her and her mother, later she softened her stance and agreed to attend this session on condition that Ms Pak would keep secret about her agreeing to come to see her mother. When Ms Pak explained that she would have to disclose what she said, HY later did not want to see W. (xxiv) Ms Pak's conclusions in the 1st Psychological Report were that HY was well aware of the longstanding parental conflicts, and HY had identified her grandmother as a caring and concerned figure, and that her stay with Madam Tse was a leeway for a temporary relief and that HY knew that this leeway could be sustained on the condition that she was compliant with her grandmother. In fact, during trial, Ms Pak said that HY had told her that if she was obedient, grandmother would be with her (bOVN1\ further of the view that it was under such family dynamics that HY kept making derogatory statements about her mother and rejected her mother. In fact, HY had told Ms Pak that she did not mean to annoy her mother, and that she longed for her mother's understanding and accepting of her. (xxv) Then, in the 2nd Report, Ms Lee said that HY was obsessed with the hatred of her mother. HY was not even able to recall any positive relationship with her mother. What she said mirrored the allegations made by H and Madam Tse. HY talked in extreme statements that her mother treated her badly and always shouted at her when she was left with W only. Ms Lee noted that HY's allegations appeared flimsy and not appropriate for her age. While HY was repeating her complaints against her mother, out of the blue, HY had apparently slipped out a statement that her grandmother did not want her to see her mother. Ms Pak then noticed HY was shocked after her slip of tongue and immediately tried to correct herself and said it was she of her own will did not wish to see her mother.

158. From the above, it would appear that HY and her mother had a close and normal relationship up until the time of the submission of the 1st Report. Soon after the 1st Report and the 1st Wrong Medicine Incident, there was evidence that HY was becoming ambivalent, in that she was not sure whether to live with her mother or her father. At that time, HY was not even 7 years old, and she had already been subjected to a lot of emotional pressure by the events at home. By end of April, HY's attitude was causing her mother distress. When HY left the school on 23rd May 2006, the school thought she was being taken back to the Tin Shui Wai Home. Madam Tse said HY later refused to go back. It is clear from the above the HY was caught between the conflict of the adults, and the 2nd Wrong Medicine Incident was probably the last straw for HY. It is not surprising, as Ms Pak described it, that HY chose to stay at the Kwun Tong Home for peace and quiet, as a leeway or a temporary measure.

159. Mr Li suggested that HY was kidnapped . There was, however, no evidence that Madam Tse or H had used force to take HY to the Kwun Tong Home, or that HY had been kept at the Kwun Tong Home against her wishes. Thus, I am of the view that there was not sufficient evidence to say HY was kidnapped .
160. It is clear from the above that, however, notwithstanding HY was becoming ambivalent after the 1st Report, she was not hostile towards her mother. At the hospital when she saw her mother for the first time after the 2nd Wrong Medicine Incident, HY s reaction was normal. Even when HY saw her mother the first time at the school social worker s office on 26th May, about 3 days after she left the hospital, she was happy playing with her mother. Yet, on 30th May, she was contradictory, first saying she preferred seeing her mother at the school, and then refusing to see her mother, but still she was not hostile. On the contrary, she was emotional, which was an indication she was under great pressure.
161. Then, by the time Ms Lee and Ms Pak saw her at end of June/ early July, her attitude towards her mother had become extreme.
162. When Ms Lee was asked by Mr. Li, Ms Lee agreed that she was surprised by HY s 180 degree change when she saw HY again during access with her mother.
163. As mentioned above, Ms Lee had said that HY s frustration with her mother mirrored the allegations made by her father and her paternal grandmother, and also her allegations appeared flimsy and not appropriate for her age. Ms Lee had also said that In view of HY s strong alienation, the mother had no way to approach her and improve the relationship . Ms Lee said she understood that HY s alienation was caused by the splitting within the family.
164. The words HY used to describe her mother were extreme and completely inappropriate. In fact, it was inappropriate for HY to use such words to describe any one. I find it surprising that on the surface, HY appears to be a good student with conduct at school, and yet her behaviour as described by Ms Lee and Ms Pak could hardly be described as such. It is without doubt that the words used by HY echoed words which had been used by her father. Her father had used abusive language when scolding her mother, calling her a bitch {kkQFZ) rong Medicine Incident, and 2nd Wrong Medicine Incident, and other incidents, which had caused distress to HY. It is clear that HY has aligned herself with H.
166. As pointed out by Ms Lee and Ms Pak, HY s allegations mirrored s and MadamTse s allegations, and HY repeated them mechanically. Having considered all the circumstances, I am of the view that there has been parental alienation and that H has been influencing HY and causing her to be alienated from W, from as early as soon after the 1st Report was received.
167. I have found that HY was not really kidnapped . Thus, if any syndrome is being suffered by her, it would appear to me to be more likely Parental Alienation Syndrome rather than Stockholm Syndrome .
- THE LEGAL PRINCIPLES

168. Having dealing with the major factual allegations, I now turn to deal with the legal principles.
169. Under s. 19 of the Matrimonial Proceedings and Property Ordinance (MPPO), this Court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of 18 in any matrimonial proceedings.
170. The general principles in relation to the custody or upbringing of a child have been set out in s. 3 (1) (a) (i) of the Guardianship of Minors Ordinance (), namely that in relation to the custody or upbringing of a child, the court shall regard the welfare of the child as the first and paramount consideration and in having such regard shall give due consideration to (A) the wishes of the child, if, having regard to the age and understanding of the child 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.
171. Under s. 48 C of the Matrimonial Causes Ordinance, the general principles set out in s. 3 of the Guardianship of Minors Ordinance apply to custody applications in matrimonial proceedings.
172. In other jurisdictions, such as England and Australia, there are statutory checklists of factors which the court is required to consider in children s cases.
173. In our Family Court, Judges have sometimes found such checklists helpful. In a judgment dated 1st December 2006 in L v F FCMC 8266 of 2005, the then Deputy Judge Remedios has referred to the checklist of factors set out in section 1 (3) of the English Children Act 1989.
174. In Mr. Li s Closing Submissions, he has referred this Court to a recent judgment dated 6th August 2007 in Y v L FCMC 4933 / 2006, in which Judge Melloy set out her own list of factors when considering issues relating to custody, care and control and access and the welfare of children generally.
175. The Law Reform Commission of Hong Kong has published a report on Child Custody and Access in March 2005 in which it has recommended the introduction of a statutory checklist to assist judges in exercising their discretion (Recommendation 3). The checklist recommended by our Law Reform Commission is broadly based on section 1 (3) of the English Children Act 1989 as well as including certain additional factors set out in s. 68 F (2) of the Family Law Act 1975 in Australia. I understand that the recommended statutory checklist is to include the following factors :
 - (a) the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding);
 - (b) the child s physical, emotional and educational needs;
 - (c) the nature of the relationship of the child with each of the child s parents and with other persons;

- (d) The likely effect on the child of any change in the child's circumstances;
 - (e) The child's age, maturity sex, social and cultural background and any other characteristics which the court considers relevant;
 - (f) The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents
 - (g) Any harm which the child has suffered or is at risk of suffering;
 - (h) Any family violence involving the child or a member of the child's family;
 - (i) How capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
 - (j) (a broader formulation along the lines of) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
 - (k) The range of powers available to the court under this Ordinance in the proceedings in question.
 - (l) Any other fact or circumstance that the court thinks is relevant .
176. So far, the recommendations in the Law Reform Report have not yet been introduced, and thus at present, there is no statutory checklist in Hong Kong. Each custody case is different and the factors in a checklist may not be exhaustive, but I agree that they can be helpful in considering the welfare and best interest of the child. **THE CHILDREN'S WISHES AND THEIR RELATIONSHIP WITH THEIR PARENTS AND/OR GRANDPARENTS**
177. HY is now 8 1/2 years old. HY has stated a clear preference to continue living with her father and Madam Tse and has shown strong rejection to her mother. From all accounts, HY is very attached to her paternal grandmother, and she is close to her father. I understand that she is also close to her paternal grandfather and aunt Miss Chau.
178. TK, now 7, is close and attached to his mother. In the recent 4th Report, Ms Lee has stated that TK has expressed his wish not to leave his mother. He appears to be also close to his father. His father knows that TK likes to play games, and during access, H had brought along the latest Play Station Portable (PSP) for TK to play with HY. This would no doubt make TK happy every time he saw his father.
179. TK was at one stage also close to his grandparents too, but by now, he has not seen them for over a year. Thus, his present relationship with his paternal grandparents and / or his aunt Miss Chau is not clear.
180. Both children have expressed their wish to live together, and they have always been close to each other.

181. Mr. Li has referred me to the English Court of Appeal case of *Re W (Minors)* (Residence Order) 1992 2 F.C.R. where the children in question were aged 12 and 10. It was held in that case that it was the duty of the court to assess whether children were of an age and understanding sufficient for their opinions and wishes to be given any weight at all. In that case, the court came to the conclusion that those particular children's wishes should be taken into consideration.
182. Mr Li has also referred me to the case of *WSM v FSJ (A minor : custody appeal)* CACV 352 of 2004, where both children were below the age of 10. In that case, the younger child had threatened to jump off a building if he were forced to live with his mother. The Court of Appeal upheld the trial Judge's decision that the mother should have the custody of the two children. In his judgment, Hon Cheung JA indicated that that as the child was only 8, what he had said must be considered in a proper context, and the father acting responsibly should explain to the child what was right and what was wrong and why he should not do any act which was harmful to himself.
183. I was further referred to the case of *M v H (FCMP 19 / 2004)* where the parties in dispute were the mother and the paternal grandparents. The two children had been living with their paternal grandparents for about 5 years after the accidental death of their father. The 2 children had become accustomed to living with their grandparents and showed a strong rejection for their mother. They were the 6 and 7 year old. After considering their welfare, Judge Bruno Chan ordered that their custody be granted to their mother.
184. I have found earlier that HY has been alienated from her mother. Now that she has been under H's and Madam Tse's care and influence for about 16 months, it is not surprising that it is her wish to remain under Madam Tse's care. However, her wish must be seen against the background of my findings. From the reports, it is clear that HY has adopted an inflexible attitude towards her mother. She has not been able to recall anything positive about her relationship with her mother. She has been unable to explain her attitude towards her mother other than repeating the allegations mechanically which her father and her grandmother made against W. She has demonstrated extreme attitude, such as her father and grandmother are all good, and her mother all bad. She had uttered words which were completely not appropriate for a girl of her age, and her behaviour, such as shouting at her mother and making faces at the social worker Mr. Chan have demonstrated her immaturity.
185. Having considered the circumstances and the ages of HY and TK, I am of the view that they are not mature enough to understand what is best in their long term interest. I therefore do not intend to attach much weight to their wishes. SIBLING UNITY
186. The children are only about one year apart, and have been mostly together since TK's birth. It has been said in *C v C (Minors: Custody)* 1988 2 F.L.R. at p. 291 that : Following a divorce of their parents, young brother and sister should, wherever possible, be brought up together in the same household so that they were an emotional support to each other in the break-up of the family unit. Unless there are strong factors to warrant so doing, an order giving custody

of one child to one parent whilst giving custody of another child to another parent should not be made .

187. From all accounts, HY and TK are very close to each other, and one of the very few matters which H and W are NOT in dispute is that they should live together. I see no strong factors in this case why TK and HY should be separated. THE CHILDREN s PHYSICAL, EMOTIONAL AND EDUCATIONAL NEEDS/HOW CAPABLE OF EACH PARENT AND MADAM TSE IS OF MEETING THE CHILDREN S NEEDS
188. HY is presently residing with H, H s parents and sister in the Kwun Tong Home. The flat is about 30 sq. m., with no partition. HY sleeps with her aunt, Miss Chau, on a single bed. I understand that if H is granted custody of the children, he intends to apply for a larger public housing unit for the entire family. In H s written Closing Submission, he has said that his family and sister would apply to the Housing Authority for a joint unit with him and the children, if their custody were granted to him. He has futher said that there are larger 6 to 8 persons units available in the same estate where they are now living. H has, however, not provided any evidence to support what he has said, such as a letter from the Housing Authoirty. There is also no evidence as to how long such applications will take to process. There is no evidence that H and and his family members will be definitely be granted a larger single unit, rather than two small units. In the latter case, it would result in H and the children living separately from the rest of his family. It is also not certain as to where the new unit is going to be. If the new unit is not going to be in Kwun Tong, the children will not be able to attend school in the Kwun Tong area.
189. TK has remained living with his mother at the Tin Shui Wai Home, which is about 40 sq. m. There are 2 bedrooms and one living room, a bathroom, and a kitchen. The decoration and furnishing was relatively new and the flat is clean and tidy. At the time of the 1st Report, W and HY were sharing one bed, and H and TK was sharing the other bedroom. Now, apparently, W and TK shared the same bed, as W said TK liked to share her bed.
190. If HY returns to reside with her mother and TK, she will return to her former school at Tin Shui Wai, which is the same school that TK is now attending. With HY s academic achievements, it appears that there should be no problem for her to adjust to a change of school. H said HY might be embarrassed to go back to her former school, as the teachers and students there knew of the previous incidents. From the report of the school submitted to the Conference, it appears that HY s former teachers and the school social worker were all supportive of her, and I believe that they will continue to show their support. Anyway, there was no evidence to support H s allegations. On the other hand, TK is not as academically strong as his sister, and if TK were to go to reside with his father and grandmother in Kwun Tong, this would involve in him changing to a completely new school. Whether he will be able to cope academically is an unknown factor.

191. So far as financial support is concerned, W is now receiving CSSA of about HK\$3,800 per month for her and TK. If HY were to return to live with them, W would receive about HK\$2,000 per month more. W has been making every effort to improve her earning capacity, and has previously worked part-time to help with the family finances. She hopes to be able to find suitable work in the vicinity of the Tin Shui Wai Home between 9 : 00 a.m. and 2 p.m. so as not to affect her taking the children to and from school. She says she may be able to employ a private tutor for the children, with some additional income. W had also said that if she required any financial assistance, she could also rely on her siblings in the Mainland to help. It is not disputed that W's relatives had lent her a large sum of money to help pay H's gambling debt. It is interesting to note that notwithstanding what H said about his family support, it was W who helped him most in the end to repay his gambling debt.
192. It appears that HY is no longer receiving CSSA after she has gone to live in the Kwun Tong Home. Notwithstanding his meagre income, H has not applied for CSSA. Clearly, H and / or his family members are capable of supporting HY.
193. H is riddled with debts, as submitted by Mr. Li, with amounts owing to banks and finance companies, and now his liabilities have increased by the costs of the ouster proceedings which were ordered against him. Nonetheless, I believe that if custody of both children were to be granted to H, with the help of his sister and / or his parents, he should be able to support the children. Miss Chau has informed the Court that she has no plans to get married in the immediate future. I find that there is no evidence that she is about to get married or is about to move away, as submitted by Mr. Li.
194. Although Mr. Li has submitted that there is not much difference in the educational achievements of the parties, I have found that H has received higher education than W and that he would be more capable of meeting the children's academic needs than W, if he is able to spend time teaching them. H had claimed that his mother also knew English and that both her and his Miss Chau could also help the children with their homework. Madam Tse was a primary school teacher previously for a few years before she got married, which was a long time ago. After her marriage, she has remained a housewife until now and during the trial, she has admitted she does not understand much English. H's claim in this regard is again exaggerated. Miss Chau said during the trial that she could only read simple English.
195. W had joined various courses to improve herself, whether to be better able to assist the children with their studies, or to help herself to find part-time work. For this, I give W credit. W also indicated to the Court that she could always ask her friends with children in secondary school for help. I am satisfied that on the whole, although H and his family would be more capable of meeting the children's academic needs if W were given custody of both children, she would do her best to help or to seek help, if necessary, for the children's academic needs.

196. Education, however, is not restricted to the achievement of academic excellence at school. It also involves the guidance to a child's development. W had complained that H never supported her in disciplining the children and undermined her instructions to the children. W also complained that both H and Madam Tse played video games with the children, and that there was not much guidance from H to the children. By way of example, W said that during one access occasion when TK was not obedient, H would only threaten TK with not allowing him to play with his PSP game, whereas she would repeat her instructions to TK patiently. Mr. Li pointed out that Mr Chan, who took over access arrangements when Ms Lee was on leave, had observed that HY was scolding her mother on one of the access occasions, calling her bad gal {kkQFZ) who gave birth to her. W tried to explain to HY that what she said was not correct and that it was W who gave birth to her. Mr. Chan told this Court that as he was present, he also told HY what W said was correct, whereupon HY was then displeased, and she made faces at Mr. Chan. Mr. Chan felt that HY's behaviour was rude. There was no subsequent apology by HY. Notwithstanding HY obtained for her conduct at school, it seems not only was she rude to her mother, she was also rude to Mr. Chan. On the other hand, although TK is an active boy and has hit his mother in moments of frustration, there is no evidence that TK was rude to others or used any bad language.
197. Further, what this court is concerned with is not only the children's educational needs, but also their physical and emotional needs. HY has obviously been suffering considerable emotional turmoil, and she clearly needs help. After the 1st Psychologist Report, Ms Pak's conclusion was that, without the adults involvement and concerted effort, it would not be of much help to HY if she were just to offer HY individual treatment in relation to her resistance of seeing W. What has caused me concern is that H and / or Madam Tse did not seem to appreciate this. Although W was agreeable to see Ms Pak, it was only after the first half of this trial in April that H and Madam Tse agreed to attend psychological assessment.
198. Notwithstanding his agreement to see Ms Pak, H did not really took such psychological assessments seriously. Ms Pak complained that he was late for half an hour to one and half hour for all his appointments with her. There was no reasonable explanation. Ms Pak had suggested various directions of psychological intervention for each of H, W, HY and TK. W had said during the trial that if custody of both children were granted to her, she would be willing to attend psychological counselling. There was no such indication from H.
199. At the end of the recent assessment with Ms Pak, H was still firmly refusing to communicate with W and preferring everything to be decided by the court whereas W claimed to have let go her anger towards H, and indicated that she was willing to talk with H over issues of childcare. Madam Tse has also firmly refused to have any further contact with W. Also according to Ms Lee, H rejected talking or communicating with W. I do not find the attitude of H and / or his mother conducive to resolving any emotional problems the children may have. There is no evidence that H will be willing to separate his own feelings about the marriage and W from HY's needs. Although Ms Lee opined that HY's attitude towards W had improved somewhat between Ms Lee's 3rd and 4th Report, from Mr. Chan's report relating

to access over the summer, HY seems to be still suffering still from serious emotional problems.

200. I have found that if custody of the children were given to H, then Madam Tse would be their primary carer. Madam Tse is retired and 60 years old this year. She has diabetes, and high blood pressure, and sometimes suffers pain in her feet, as a result she cannot walk for long. On 31st March 2006, shortly after this Court granted the first non-molestation order, Madam Tse was so stressed over the events of the day that she felt great pain in her chest and had to be admitted to hospital in an ambulance. She was told that the pain in her chest was caused by very high blood pressure. She has been suffering from high blood pressure for many years, and she now has to attend regular follow up at the hospital.
201. Madam Tse and HY have maintained a close relationship. On the other hand, her relationship with TK is uncertain at this stage as she has not seen TK now over a year, since 28th June 2006.
202. When Madam Tse attended trial to give evidence, she was clearly on H s side. Further, she initially appeared to be impatient and to certain extent somewhat annoyed or irritable and spoke in a loud voice. This could be due to the fact that W was present in Court.
203. It is Madam Tse s case that all along she was good to W, and had helped her to look after the children. Madam Tse said she had helped W financially but W did not tell her when W obtained CSSA, and that W was deliberately hiding this from Madam Tse so that W could obtain more money from Madam Tse. She displayed great distrust and hostility towards W.
204. Hon Justice Rogers V.P has stressed the importance of one of the natural parents being the primary carer in the case of L v C (CACV 333 / 2003), paragraph 20 thereof, that : What seems to me to have been overlooked in this case was the importance of one of the natural parents being the primary carer of the child. In this case it is quite clear that, albeit both parents work and have similar working patterns, that if the mother were to be given custody she would be the primary carer whereas if the father were given custody the paternal aunt would fulfil that role. Without in any way suggesting that the paternal aunt does not devote full care and attention to the child, the importance of the natural parent being the primary carer must not be lost sight of. Coupled with that if the parent proposed to be the primary carer is the mother, this too, is highly significant because of the natural role of the mother in the rearing of very young children. In this respect I would add that the Judge does not appear to have considered the role of the mother in a child s life in comparison to that of a paternal aunt, however devoted she may be .
205. In L v C, the child concerned was about 5 years old at the date of the appeal.

206. I have found that if custody of both children were granted to H, Madam Tse would be their primary carer. By all accounts, HY is a less active child than TK, and may be easier to discipline, but TK is an active boy, and it is uncertain whether Madam Tse would be able to cope with looking after both children, with one of them being an active boy, particular in view of her age and high blood pressure.
207. During the course of the trial, I have found that H is financially irresponsible, and can be volatile and violent when provoked. I also find that H is manipulative, and that he has over reacted and exaggerated the effect of most of the incidents to try and portray W as being an unfit mother. H also blames and criticizes W and never accepts that he himself could also be in the wrong. There is clearly a lack of insight on the part of H of HY s needs to develop and maintain her relationship with her natural mother. I do not find this attitude helpful to the upbringing and educating the children. Further, since HY has been under the care of H and Madam Tse, she has displayed an extremely inappropriate attitude towards her mother, now almost 17 months, and this is also an indication that H and / or Madam Tse has not been able to control or discipline HY.
208. Although I accept that W is not a perfect mother, and that she would also require psychological counselling in helping her to care for the children, and to rebuild her relationship with HY, having compared both parents character, and their child care plans, I find that W is generally more suitable and capable than H and / or Madam Tse in meeting the children s physical, emotional and educational needs and in a better position to look after the children. DOMESTIC VIOLENCE/ANY HARM WHICH THE CHILDREN HAVE SUFFERED / ARE AT RISK OF SUFFERING
209. There has been a history of harassment and domestic violence in this family, most of the incidents took place in the presence of the children.
210. TK, although younger than HY, appears to be of a stronger character. So far, he has not shown any rejection or hostility towards his father. If TK were to go and live with his father and paternal grandparents, Mr. Li submits that there is a real risk that his attitude towards his mother may change, as he may be subjected to similar alienation, like his sister. I agree.
211. At present, W does not wish to leave TK alone with HY and H, for fear that TK may be influenced by HY and H and turn against him. W s fears are understandable in view of HY s behaviour. However, I believe if custody of both children is granted to W, with counselling, she may feel more relaxed about access in future.
212. The situation regarding HY is different. At the conclusion of the Conference, the members were of the view that HY was already then subject to emotional abuse. I have found that H has been alienating HY from W. Parental alienation is regarded by some experts as a form of emotional abuse. If HY remains with H and Madam Tse, she may be continue to be subject to such alienation and emotional abuse. It seems that without H and Madam Tse changing their attitude and to receive counselling, HY s attitude towards her mother is likely to continue to be inflexible and hostile, which is extremely unhealthy for a girl of her age.

213. On the other hand, if HY were to go and live with her mother and TK, she would no doubt have a very strong reaction initially and she would need psychological counselling and / or treatment. Thus, whether HY were to live with her father, or her mother, in my opinion, she would still need psychological help. W has said she is willing to undergo psychological counselling herself if she has custody. I find W s attitude generally more flexible than H s and I thus believe that she would help HY and to undergo counselling and/or treatment to overcome HY s problems and to rebuild their relationship. STATUS QUO / LIKELY EFFECT OF CHANGE
214. The social worker, Ms Lee, and the psychologist, Ms Pak have both supported the present status quo.
215. W s solicitor, Mr. Li, has referred this Court to a number of authorities and cases, four of which were decisions in Hong Kong. In all these four cases, the Court of Appeal / the trial Judge had decided to alter the then status quo of the child / children concerned and made an order for custody in favour of the mother.
216. In *Naziya Aslam and Rafaqat Ali CACV 144 / 2003*, there were three children of the family, namely a girl, aged about 8 at the time of the proceedings, and two boys, then aged about 5 and 4. By the time of the appeal, the mother, having left the children in Pakistan, had been living in London about a year and 9 months, and the children returned to Hong Kong at about the time the mother left for England, and they had been living with their father in Hong Kong, together with their father s younger sisters, then aged about 20 and 19. The mother sought custody of the children and leave to go and live with her in England. In that case, the trial judge did not have a chance to see or hear the sisters, and the social welfare officer did not appear to have had any meaningful interview with the sisters. The Court of Appeal overturned the trial judge s decision and allowed the mother to have custody. Mr. Justice Rogers, VP, did not consider that the period subsequent to the children s return to Hong Kong and prior to the hearing was sufficiently long that a change of environment would be unduly disruptive.
217. In the case of *L v C*, which was earlier referred to, as both parents were working, after the child concerned was born, he was largely looked after by the father s aunt and later a maid. When he was about 2 years and 9 months old, the marriage broke down, and the father went with the child to his parent s home, whereas the mother moved to another flat. By the time of the appeal, the child, who was then about 5 years old, had been separated from his mother for about 2 years. The Court of Appeal again overturned the trial judge s decision and granted custody of the child to the mother, stressing the importance of one of the natural parents being the primary carer.

218. In the case of WSM V FSY, which was also earlier referred to, the two children involved were two boys, aged about 10 and 9 years old. When the parties separated, the mother moved out with the elder boy, and the young boy remained living with the father and grandparents. The social welfare officer recommended that the father should have custody of the younger boy, and the mother should have custody of the older boy. The trial judges ordered that custody of both boys be to the mother, and the decision was upheld by the Court of Appeal.
219. In M V H, the two boys, aged 6 and 7 years were left in the care of their paternal grandfather for 5 years, after the accidental death of their father. The boys had settled well, and showed a strong rejection of their mother, who was applying for their custody. Judge Bruno Chan allowed the mother s application for custody.
220. The circumstances of each case are of course different. In the present case, HY and TK have now been separated for almost 17 months.
221. Mr. Li has submitted that the delay in having the custody trial is due to H s conduct firstly by applying for an adjournment when he made an application for legal aid in August last year, just when the trial was about to commence, and then by not willing to undergo a psychological assessment by Ms Pak. The delay has caused great prejudice to W.
222. Whatever the reasons were for the delay, the fact remains that HY has been living with Madam Tse for almost 17 months at the Kwun Tong Home, H moving there after the Ouster Judgment, while TK has remained with his mother at the Tin Shui Wai Home.
223. Mr. Li submits that prior to the separation, the status quo had been fluid , with HY having looked after mainly by W and by Madam Tse in relative shorter periods whilst HY was attending school at Kwun Tong, namely during the 6 months after W moved to Tin Shui Wai, and that thereafter, HY moved to Tin Shui Wai, and switched to being looked after by W.
224. I have found that W has been the primary carer for most of the time since the children were born. If HY were to return to live with W, she would not be moving to a new environment in that the Tin Shui Wai Home and the school she would be attending are not to her. Whereas, if custody were to be given to H, although TK had lived in the Kwun Tong Home when he was younger, he would have to live in rather cramped condition for the immediate future, and would have to attend a school in Kwun Tong. As mentioned earlier, there is uncertainly as to when H will obtain another unit, and where the unit will be. If the new unit is not in Kwun Tong, this would result in HY and TK having to move to a home in a area, and a school. In particular, for TK, it might involve in him changing school twice.
225. Mr Li has submitted in his Closing Submissions that the facts in M v H bear certain similarity to those of the present case, except that the children in question had been living with their grandparents for 5 years after their mother left them and after the accidental death of their father. In that case, it was ordered by Judge Bruno Chan that they go and live with their mother, who was experiencing great difficulties in access and rejections from them. In particular, one of two boys would run away from his mother, and would scold her

with all sorts of accusations, and made rude and derogatory remarks about his mother. Both the social worker and the psychologist in that case concluded that the then access arrangements were unable to help to rebuild the mother-sons relationship. Judge Chan held that the younger child's attitude was caused by the influence of his grandfather and his family.

226. Judge Chan remarked that the status quo argument is only useful where existing arrangements are satisfactory, as Ormrod LJ said in *S v W* (1980) 11 Fam law 81, CA, and he quoted the following passage in his Judgment in *M v H*, namely : the status quo argument depends for its strength wholly and entirely on whether the status quo is satisfactory or not. The more satisfactory the status quo, the stronger the argument for not interfering. The less satisfactory the status quo, the less one requires before deciding to change .
227. The social worker herein, Ms Lee, had made 3 different recommendations in her 4 reports, namely in the 1st Report, she recommended that custody of both children to W. This was also Ms Lee's position in the 2nd Report although by then HY was living at the Kwun Tong Home. In the 3rd Report, Ms Lee recommended that custody of both children to H, and lastly in the 4th Report, Ms Lee recommended that the present status quo remains.
228. Ms Lee has admitted during the trial that in maintaining the present status quo, there is a grave risk that HY's relationship with W might not be repaired, and to the contrary, that it might even get worse over time.
229. Very often, social workers' recommendations could be helpful to the courts, but such recommendations are not binding on the courts. As pointed out by Rogers V P in the case of *Naziya Aslam v. Razaqat Ali* that s. 3 (1) (a) (i) (B) of the Guardianship of Minors Ordinance makes no reference to recommendations , and the Court is only required to give due consideration to any material information including any report of the Director of Social Welfare .
230. It appears to me that Ms Lee's recommendations were made on the basis of the then prevailing situation at the time of each report, as in the 3rd Report, Ms Lee was of the view that in the best interest of the children at that time, H should have their custody. When Mr. Li put to Ms Lee that her recommendations were based on the then situation of the children, she replied that there would be many changes in the long term and she needed to continue to observe before deciding on the long term plan. I do appreciate that with the passage of time, circumstances may change. However, when one looks at the welfare and / or best interest of the children, one cannot merely look the situation at the time of making a report. I am of the view that one needs to consider the long term interest and welfare of the children.

231. So far as Ms Pak is concerned, her main role is to carry out psychological assessment on HY. It was only at the end of her evidence during the first half of this trial that she indicated to the Court that she could provide information on custody from a psychologist point of view as well as to carry out psychological assessment on HY's parents and grandmother. This Court agreed for her to proceed on that basis. On reflection, it is not really a psychologist's role to provide information or recommendation on custody.
232. In her 2nd Psychological Report, Ms Pak recommended that status quo to be maintained, with H having defined access with TK, and W's access to HY to be suspended. When it was pointed out to her during the second half of the trial that her recommendations of suspension of access by W to HY appeared to be indefinite, she clarified that the situation would have to be monitored and reviewed. Her recommendation in this regard in fact was, however, not supported by Ms Lee. Ms Lee recommended that there be reasonable access to both parties, although Ms Lee suggested cancelling the 2nd Interim Access Order whereby each parent was allowed time alone with the children, in the absence of the other party. However, it seems that the social worker who took over the access arrangement during Ms Lee's leave, Mr. Chan, was of a different view, namely that without an opportunity of being alone with the children, it would be even more difficult for W to re-build a relationship with HY.
233. I do appreciate that both Ms Lee and Ms Pak have spent considerable time and effort in helping this family. Their task has not been an easy one. In my view, both Ms Lee and Ms Pak appeared to be more concerned over HY's present attitude towards her mother, and their recommendations were based mainly on HY's present attitude. Naturally, HY's present attitude has caused them concern, but it seems to me that Ms Lee and Ms Pak have not given sufficient consideration to the children's long term welfare and interest.

CONCLUSION

234. Having considered the welfare and the best interest of the children, and all the circumstances of this case, I am of the view that HY should return to live with her mother and her brother. I therefore grant W custody, care and control of the children.
235. I do appreciate that HY may be upset by comments in that case over such threats. What HY said must be considered in a proper context. H, if he is a responsible parent, should explain to HY what is right and what is wrong, and he should be able to prevent HY to do any harm to herself. I will also direct the Director of Social Welfare to help explain to HY and to help to arrange for her move back to the Tin Shui Wai Home as soon as practicable, before the end of this month. So far as access is concerned, initially H's access to the children is to take place in the presence of a social worker. Once HY has settled down in the Tin Shui Wai Home, H would be entitled to reasonable access including staying access to both children.

236. I will also make a supervision order by the Director of Social Welfare for a period of 12 months from the date of this judgment. A progress report is to be submitted in Chinese in 3 months time.
237. In relation to costs, W has sought an order for costs against H. As H has not dealt with this issue in his Closing Submissions, I will reserve the question of costs and direct that W is to submit her Written Submissions within 1 month from today, and thereafter H is to submit his Written Submissions in opposition within 1 month thereafter. W is to submit her Written Submissions in Reply within 14 days thereafter. ORDER
238. My order is as follows :
- (i) The Petitioner be granted custody, care and control of the two children of the family; (ii) The Respondent is to hand over the elder child of the family to the Petitioner as soon as practicable, before the end of October 2007, through and with the assistance of the Director of Social Welfare. (iii) After handing over, the Respondent is to have access to the children in the presence of a social worker. (iv) There be a supervision period of 12 months from the date of this order by the Director of Social Welfare. An updated report be submitted in Chinese in 3 months time.
 - (v) There be liberty to apply on short notice in relation to the implementation of this order. (vi) Costs reserved. The Petitioner is to submit her Written Submissions within 1 month from today, and thereafter the Respondent is to submit his Written Submissions in opposition within 1 month thereafter. The Petitioner is to submit her Written Submissions in Reply within 14 days thereafter. (Bebe P Y Chu) District Judge Mr. Li of Messrs Joseph Li & Co for the Petitioner The Respondent acting in person PAGE - PAGE - &`#\$~!P] j% Td ,f@- sy \$?i:!
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