

HONG KONG / JUDGMENT

SNC v. CCS

[2021] HKFC 36**COURT**

Family Court

DECIDED

9 February 2021

CASE / FILE NUMBER

FCMC3741/2014

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bjbj FCMC 3741 / 2014

**[2021] HKFC 36 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 3741 OF 2014**

BETWEEN SNC Petitioner and CCS Respondent

Coram: Her Honour Judge Sharon D. Melloy in Chambers (Not open to public) Dates of Hearing: 4
6 August 2020 Dates of Closing Written submissions: 30 September and 6 October 2020 Date of
Reply Submission: 19 October 2020 Date of Judgment: 9 February 2021

J U D G M E N T (Variation of maintenance and discharge of undertaking)

Introduction

There are two applications before the court that now require adjudication namely a) the
Petitioner wife s summons dated the 13 December 2018, seeking an upward variation of the
husband s monthly contribution towards the children s maintenance, to include an increased
amount for accommodation plus an order that the husband do pay half of the costs of the elder
child s UK boarding school education. It is of note that originally the first two payments were
made by virtue of an undertaking in the original court order dated the 18 August 2014. For the
avoidance of doubt the wife s summons states as follows:

1. There be a variation of the Children Support and other relevant children maintenance provisions as contained in the Order made by Her Honour Judge Melloy of the District Court on 18th August 2014 (the Order), to the effect that: -
 - (a) The Respondent s monthly contribution to the children s maintenance (see Clause 4B of the Settlement Agreement embodied in the Order) be increased from the sum of HK\$36,000 to HK\$53,000 or such other sum as this Court deems fit;
 - (b) The Respondent Monthly Accommodation Contribution (see Clause 4E of the Settlement Agreement embodied in the Order) be increased from HK\$14,000 to HK\$16,000 or such other sum as this Court deems fit; and
 - (c) The Respondent do bear half of the costs of the UK boarding school education for our eldest son, CJCH [J], since September 2017;
2. Costs of this application be provided for. Although not explicitly stated therefore it seems that the wife is seeking an order that the original undertakings be discharged and that an order now be made for maintenance for the children. This summons was followed by b) the Respondent husband s summons dated the 8 May 2019 which states as follows:
 1. There be a variation of Children Support as contained in Clause 4 of the Mediation Settlement Agreement dated 14 July 2014 (the Settlement Agreement) as attached to the Order made by Her Honour Judge Melloy dated 18 August 2014 (the Order) to the effect that:- The Respondent s monthly contribution to the children s maintenance at the total sum of HK\$50,000 (comprising of HK\$36,000 of monthly children maintenance pursuant to Clause 4B of the Settlement Agreement and HK\$14,000 of monthly accommodation contribution pursuant to Clause 4E of the Settlement Agreement) be varied to a monthly contribution of HK\$40,000 or such other sum as this Court deems fit; and
 2. Costs be to the Respondent. In other words, the husband is asking to be discharged from his original undertaking and he offers in its stead an undertaking to pay the sum of HK\$40,000 per month. This was not accepted by the wife. In summary the parties agree that at the time of the original mediated agreement, it was agreed that the children s expenses would be split 50:50 and that the husband would also contribute towards the wife s accommodation costs on the premise that the children would be based with her. The parties also agreed joint custody of the children with care and control to the wife and reasonable access to the husband to include staying access. At the time both parties were practicing medical professionals, the husband being a dentist in private practice and the wife being a Dr with the Hospital Authority. In broad terms the mediated agreement meant that the husband would be contributing HK\$50,000 per month towards the children s expenses. Background to the marriage The husband sets out the background to the marriage in his affidavit dated the 8 May 2019 as follows:

8. The Petitioner and I were married on XX October 1999. The Petitioner was a Medical Doctor specialising in geriatric employed by the Hospital Authority. She is allegedly to have turned private practice recently.
9. I was and still am a Dentist in private practice.
10. During the marriage, we resided at ABC, Mid-Levels, Hong Kong (the C Mansion) which is and was around 1,300 sq. ft. with 4 bedrooms. We had two domestic helpers to help take care of household chores and the Children. We led a comfortable life, and certainly did not lead an extravagant lifestyle.
11. The Petitioner filed a Divorce Petition on 26 March 2014 after she confessed to having an affair in 2012. The case was settled by way of Consent Order dated 18 August 2014 (the Order) after the Petitioner and I entered into the Mediation Agreement.
12. The Petitioner is now living in a property known as DE, Ho Man Tin, Kowloon () which is registered under her name. During the marriage the parties had three children, J, a boy, who was born on the XX August 2002 and is now 18 years of age, A, a girl, who was born on the XX July 2005 and is now aged 15 and D, a second boy who was born on the XX October 2010 and who is now 11 years of age. Under the terms of the mediated agreement dated the 14 July 2014, it was envisaged that the husband would have regular contact with the children to include weekend staying access and access on Tuesday s and Thursdays after school and staying access over half of the school holidays. Infact, this did not happen. Both give different reasons for this, but the fact remains that in reality the husband had spasmodic contact with the children at best. Relations between the parties remained very strained and it seems that they were unable to talk or to discuss matters relating to the children or indeed to communicate about anything very much at all. It is the mother s case that this has meant that she has ended up bearing the brunt of the children s expenses as in reality she has them for longer periods than expected i.e., a further 140 days per year. The decree absolute was pronounced on the 5 September 2014. Shortly thereafter, on the XX April 2015 the husband remarried and, on the XX September 2015, his second wife had a further child, E. E is now 5 years of age. Under the terms of the original mediated agreement the husband also retained the former matrimonial home and the wife moved out with the children and lived in a rented property. The wife for her part retained another property under that agreement, namely an office space. In December 2016 the mother purchased a property in her sole name in which she and the children currently reside. In September 2017 J began studying at a boarding school in the United Kingdom. It is the husband s case that this was done without his express consent. The wife says that his consent can be implied. It is of note that the wife relied on the following clause in the court order dated the 18 August 2014:
 2. Leave be granted to the Petitioner and the Respondent to remove any and all of the Children out of the jurisdiction of Hong Kong for vacation and/or education purpose at any time; It is of note that the wife did not seek the further leave of the court for J to attend school in the UK for educational purposes. She now asks that the husband pay half the costs of J s

overseas education. On the 20 November the wife started to work in private practice and it is her case that her salary has decreased as a result. She issued her application for an upward variation a month later. It is the husband's case that his income has also decreased, in part because of the protests and the COVID 19 pandemic which has meant that people are not travelling to Hong Kong for dental treatment as they once were. He also complains of ill health. He says that he sold his business in November 2019, but he continues to work from the same premises by agreement with the new owner i.e., he rents a chair. Both parties claim to have taken out loans from time to time to help pay for their daily expenses and other items. According to the wife this includes borrowing on occasion to pay for J's school fees. It is also the position of the wife, that the husband's present wife has an earning capacity and that this is something that can and should also be taken into account by the court. Each party's open proposals By the time that this matter came on for trial, the husband had started to act for himself. He had not prepared his open proposals for the court's consideration and time was given for him to do that prior to the commencement of the trial. In any event each side's respective proposals are as set out below: The wife's open proposals The wife proposed as follows: Open Proposal of the Petitioner Mother

1. The Respondent's monthly contribution to Children Expenses be increased from HK\$36,000 to HK\$53,000 (i.e. HK\$38,000 + HK\$15,000) (P Summons 1(a)):
 - (1) Inflation Adjustment based on CPI: HK\$36,000 1.03 (year 2015) 1.024 (year 2016) 1.015 (year 2017) = HK\$38,539.5 (rounded off as HK\$38,000);
 - (2) Extra costs and expenses borne by the Petitioner on account of the Children staying overnight with her throughout the year instead of 140 days with the Respondent as contemplated under the Settlement Agreement: HK\$38,000 140 days/30 days/12 = HK\$14,777 (rounded off as HK\$15,000).
2. The Respondent's monthly accommodation contribution be increased from HK\$14,000 to HK\$16,000 (P Summons 1(b)):
 - (1) HK\$14,000 / HK\$31,000 HK\$35,000 = HK\$15,806 (rounded off HK\$16,000).
3. The variations in paragraphs 1 and 2 above be backdated to:
 - (1) From June 2018 onwards (by reason of the date of the Petitioner's 1st pre-action letter of demand dated 7 May 2018 [D1/288-291]); or alternatively,
 - (2) From January 2019 onwards (by reason of the date of the Petitioner's, Summons filed on 13 December 2018).
4. The Respondent to reimburse the Petitioner half of the costs of J's [J's] UK boarding school education which commenced in September 2017 in the sum of (P Summons 1(c)):
 - (1) If the variation orders in paragraphs 1 and 2 are backdated to June 2018: HK\$179,955.70 (half of 1 school year's costs [01/10-12]); or alternatively

- (2) If the variation orders in paragraphs 1 and 2 are backdated to January 2019: HK\$245,323.30 (half of 1 school year plus 1 school term's costs). In her closing submission the wife increased her claim to HK\$64,700 per month (please see paragraph 40 below). The husband's open proposals For his part the husband proposed as follows: Open Proposal I consider my reasonable monthly contribution (inclusive of both Monthly Children Maintenance contribution and Accommodation) as \$32613.5. See P. 61 of Bundle B&C. I object to reimburse the Petitioner the expenses incurred on J's [J's] overseas study because I have never consented to that. I object to pay any extra money to the Petitioner if the Children are not staying with me. Their expenses are already calculated as a lump sum in Consent Order. The husband maintained this basic position in his closing submission i.e., that his total contribution towards the children's expenses should be no more than HK\$40,000 per month in total. The issues It seems then that the issue can be summarized as follows: Should the husband be obliged to contribute towards the expenses of J's education in the UK, given the circumstances? Should the husband continue to contribute towards the accommodation costs of the children given that the wife has purchased a property in which to live and that this would mean in effect that the husband is contributing towards her mortgage repayments? How much should the husband contribute towards the maintenance costs of the children? The law Variation of maintenance Both parties have approached this case on the basis that it is an application to vary. The wife, who is legally represented has referred *inter alia* to section 11 (7) of the Matrimonial Proceedings and Property Ordinance Cap. 192, which provides that:
- (7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates For the avoidance of doubt I accept that in considering a change of circumstances, the court may look at a case *de novo*. In other words, the court is not necessarily fettered by the existence of a previous order. The court may look at the situation *afresh* and make an order based on the parties existing financial circumstances. (See Ch 3.131 Jackson's Matrimonial Finance and Taxation, 7th edition). It is also true that there would normally be a reason for the application to vary or what some might call a trigger. The court has a very wide power, including a power to terminate payments and to backdate the variation ordered. The overall objective is to achieve a fair outcome (see *M v M*, FCMC 4070 of 1990, dated 12 May 2006, unreported). The wife has also referred to the leading Court of Appeal case on variation namely *AEM v VFM* [2008] HKFLR 106. In that case the Hon Cheung JA made the following point when setting out the law. Referring in particular to agreements reached by consent, as here, he said:

8. At the same time the basis and intended effect of the original order are relevant factors to which the Court on variation should pay regard and there should not be a radical departure from the approach taken by the parties themselves when they had entered into an agreement embodied in a consent order: *Boylan v. Boylan* [1988] FLR 282. The law Discharge of undertakings
21. In so far as the undertakings are concerned, it is not disputed that the court cannot impose an undertaking on a party nor can it vary an undertaking of its own motion. The court may accept an undertaking; it may discharge an undertaking and it may, in some circumstances refuse either to accept an undertaking or to discharge it. This is particularly relevant to the issue of the school fees
22. This issue was recently reviewed by the UK s Supreme Court in the case of *Birch v Birch* [2017] WLR 2959. Lord Wilson, who gave the lead judgment, essentially reiterated what has been said in the above paragraph, namely that the court has no power to vary an undertaking. It may however release a party from an undertaking upon the offer of a new one, which may look like a variation but it is not. At paragraph 5 he said as follows: A court has no power to impose any variation of the terms of a voluntary promise. A litigant who wishes to cease to be bound by her (or his) undertaking should apply for release from it (or discharge of it); and often she will accompany her application for release with an offer of a further undertaking in different terms. The court may decide to accept the further undertaking and, in the light of it, to grant the application for release. Equally the court may indicate that it will grant the application for release only on condition that she is willing to give a further undertaking or one in terms different from those of a further undertaking or one in terms different from those of a further undertaking currently on offer. In either event the court s power is only to grant or refuse the application for release; and, although exercise of its power may result in something which looks like a variation of an undertaking, it is the product of a different process of reasoning.
23. With respect I agree. It is also true that it is always possible for a court to make an order for maintenance for children. In this case, it seems to me that in truth both parties are asking for the original undertaking given by the husband to be discharged, unless I accept his proposal of paying HK\$40,000 per month, which as will be seen I do not. Discussion Should the husband be obliged to contribute towards the expenses of J s education in the UK, given the circumstances?
24. The difficulty with the wife s case is that she registered J in a boarding school in the United Kingdom without first obtaining the husband s express consent to that course of action. I accept that the relationship between the parties was very tense at the time and that there was virtually no communication between them, notwithstanding the fact that on paper at least they had joint custody of the children. In the event, however that there was no express agreement between them concerning a major decision such as this, then it was incumbent upon the wife to return to the court to seek leave to remove J from the jurisdiction of Hong Kong for educational purposes. If there was an issue with respect to the cost of the proposed

relocation, then that should have been raised then. It was not sufficient for the wife to ask J to raise this with his father direct, or for the wife to give the husband an ultimatum and to assume consent when he did not respond. The fact that the school contacted the father direct and that the husband took J to get a suit made before he left for the UK, is with respect neither here nor there. It seems that the husband took a passive approach. He did not consent, but he decided not to make a fuss about it either. Some criticism can also be made of him in this respect. Had he not agreed then he should also have brought the matter back to the court, instead of simply ignoring the issue. He believed however, that given the fact that he had not expressly consented that the wife would be responsible for the cost.

25. The other difficulty is that the wife relied on a clause in the consent order dated the 18 August 2014, which was not meant for this purpose. At paragraph F each party undertakes to return the children to the jurisdiction of the court when called upon to do so. Order 2, as set out in paragraph 9 above, allows the children to be removed from the jurisdiction of Hong Kong from time to time. This is a standard order, allowing each party to take the children away for holidays or for the children to go overseas for educational purposes such as school trips and the like. The husband says that this is what he understood by those clauses. I accept what he says in that respect, because that is the clear intention behind them. These clauses were not meant to allow either side to unilaterally withdraw a child from school in Hong Kong and to enrol them in a school outside of the jurisdiction.
26. With respect this is a decision that the wife seems to have taken unilaterally. I repeat consent in a situation like this cannot be inferred. Consequently, therefore, I accept that the husband cannot be held liable for the costs of J's overseas education. This was a decision that the wife took, most probably with the best of intent, but she did so without seeking the leave of the court or the husband's express consent and I am afraid therefore that she must bear the consequences.
27. Lastly on this point, the wife said during her evidence that A also wished to have the opportunity of either studying overseas or of going to an alternative school in Hong Kong. I am told that A is a very good student. It goes without saying that if the parties are unable to agree on the future education of either A or D, then they must return to the court and seek a further order in that respect. Should the husband continue to contribute towards the accommodation costs of the children given that the wife has purchased a property in which to live and that this would mean in effect that the husband is contributing towards her mortgage repayments?
28. There is also some difficulty with the wife's request for an increase in the amount to be contributed towards her accommodation costs. It seems that the original intention was that neither party would claim maintenance from the other. This can be seen from the mediated settlement agreement and in particular from section 5 which states as follows:

5. SPOUSAL MAINTENANCE A. The Parties do not claim any periodic maintenance (including nominal maintenance) from each other and hereby irrevocably waive their respective right to claim such maintenance (if any).
29. It follows that there was no order for maintenance and this was reiterated in paragraph Q of the order which states as follows: (Q) AND UPON the parties [agreeing?] not to claim any periodic maintenance (including nominal maintenance) from each other and irrevocably waive their respective right to claim such maintenance
30. However, in the dismissal of claims, all of the husband s claims for ancillary relief are dismissed, whereas only the wife s capital claims are dismissed. Given the clear indication given above, namely that neither side was going to claim any maintenance, not even nominal maintenance, it is not clear why this should be the case. Orders 3 and 4 state as follows:
 3. Upon the Respondent s full compliance with his obligations under the recitals and orders to be made herein, the Petitioner s claims against the Respondent and/or his estate for the forms of ancillary relief and/or or other financial provision including lump sum or sums order, settlement of property or sale of property order shall be dismissed;
 4. Upon the Petitioner s full compliance with her obligations under the recitals and orders to be made herein, all the Respondent s claims against the Petitioner and/or her estate for all forms of ancillary relief and/or other financial provision including maintenance pending suit, periodical payments, secured periodical payments, lump sums or sums order, settlement of property or sale of property order shall be dismissed;
31. In addition, the related paragraph in the preamble, at paragraph D only refers to capital. (D) AND UPON the Petitioner and the Respondent agreeing and acknowledging that the terms as set out herein are in full and final settlement of all the claims that the parties may have against each other or his or her respective estates for lump sum or sums, transfer and/or settlement of property order and/or sale of property order and/or variation of settlement order whether under the Matrimonial Causes Ordinance (Cap.1 lation in any other jurisdiction. As I have said, it is not clear why the consent summons was drafted in this way, given the clear intention that there should be a clean break between the parties.
32. It is the husband s case that he agreed to contribute HK\$14,000 towards the accommodation costs of the wife, in the original mediated agreement, because under the terms of that agreement he was going to retain the former matrimonial home and the wife was going to retain the office space. Clearly the wife needed somewhere to live with the children and the husband agreed, in those circumstances, to contribute towards her rental costs. He says that he never imagined that the wife would buy a further property in which to live and that this was not discussed or contemplated at the time. I accept what he says in this respect. The difficulty then is that the wife is seeking funds to contribute towards her mortgage when the intention was that she should not receive any maintenance for herself and that there should be a clean break between the parties.

33. Counsel for the wife says that as the husband does not suggest that he should pay nothing towards the wife's mortgage that the court should not take this stance either. In her closing she says, *inter alia* as follows: G. Issue 6: Should R Monthly Accommodation Contribution in the sum of HK\$14,000 be Varied? If so, By How Much?
53. P's primary case is yes. Her financial liability for providing a roof for the Children has increased. R's undertaking on such contribution is for the benefit of both P and the Children. The mere fact that P has since decided to utilize R's contribution to discharge part of the monthly mortgage repayments for GC flat should not disentitle her from receiving any contribution. This is not the stance taken by R either.
54. R has acknowledged on affirmation that he is willing to bear half of the Children's notional share of the mortgage repayment obligation (i.e. of monthly mortgage repayment) (R-1 99 [8/54]). But contrary to R's misunderstanding, P's monthly repayment amounts to HK\$53,000 instead of HK\$22,461.20 only. Applying the exact same formula proposed by R himself, R's contribution should be varied to HK\$19,875 (i.e. HK\$53,000).
55. In the further alternative, R's open position is that he should contribute HK\$9,000. Such agreement should be embodied in the form of an undertaking. There is no reason for his contribution to be reduced to a sum below HK\$9,000.
34. With respect this is not accepted. The Family Court has an inquisitorial role, especially as here, where one party is acting in person. It is not accepted that the husband's maintenance contribution towards the children's expenses should include a portion towards repayment of the wife's mortgage, especially when the original intent was that the husband would contribute towards her rental costs only. The husband should not be expected to contribute to the acquisition by the wife of a capital asset held in her sole name, following a clean break financial settlement.
35. The court is left then with a determination of the appropriate amount to be paid by the husband for the children's actual expenses. How much should the husband contribute towards the maintenance costs of the children? Each party's earning capacity
36. It seems to me that both parents have a significant earning capacity and one that they must now fully realize in order to properly provide for both themselves and their children. In the original mediated agreement, the parties agreed to be equally responsible for the children's expenses. I accept that this is a reasonable stance and one that should be adopted going forward. Again, it is also in keeping with the principles that were reiterated in *AEM v VFM* as set out in paragraph 20 above.
37. Both parties state that their actual earnings have reduced significantly in the more recent past. The wife says that this is because she has recently set herself up in private practice and her income has plummeted as a result and the husband because he has fallen on hard times, in part because of matters outside of his control such as the protests and the Covid 19 pandemic and his gouty arthritis. It seems that both sides were looking to the other to pick

up the flack. It was also interesting to note, as the hearing progressed, that the husband quickly came to the realization that neither side had the ability to fund an overseas education for J. Certainly, had the parties still been married it seems likely that they would have cut their clothe according to their means and made decisions accordingly.

38. The wife also relies on the earning capacity of the husband s second wife, Mdm S. Leave was sought very late in the day, i.e., on the first day of the trial, for permission for the wife to produce a 5th affidavit in which certain claims were made with respect to Mdm S s earning capacity. Permission was granted for that affidavit to be filed. It would be fair to say that the husband was very reluctant to discuss financial matters pertaining to his second wife. In her closing, counsel for the wife stated inter alia as follows:
40. P repeats 85-88 of her Opening. Ms. S was admittedly a Director of Legal & Compliance Department before she left her job in May 2016, earning around HK\$50,000 a month (R-3 19 [8/101]). Taking P s case to its lowest, Ms. S clearly has earning capacity which she can utilise to contribute to the outgoings of their household (as well as to alleviate R s stated burden of contributing HK\$10,000 to her as a fully dependent housewife). E has already started nursery and is due to start kindergarten; their household continues to employ the service of 2 domestic helpers. Ms. S s full-time assistance at home can be dispensed with as a matter of choice. This is accepted. I should add that just as it seems to me that the parties must do everything within their power to increase their earning capacity, that the same could also be said for Mdm S.
39. In broad terms though it is clear, even if the wife s case was put at its highest, that Mdm S earning capacity is probably no greater than HK\$50,000 per month. In comparison both the wife and the husband have a far more significant earning capacity. It was the mother s choice to go into private practice. I accept that the reasons for this are varied and are not only concerned with her income. But the fact remains, if her private practice does not generate sufficient income, then she does have other options available to her, including returning to the public sector. The husband for his part is also well educated and resourceful. His other main source of income, in addition to his surgical dental practice, is writing expert opinions, mainly for court purposes. He also has a law degree. In such circumstances it seems to me that it is appropriate for the parties to continue to split the children s actual expenses on a 50:50 basis, as had been originally agreed. What are the reasonable expenses for the children?
40. The wife sought just under HK\$65,000 per month for the children s actual expenses as follows:
2. On the basis of the witness testimony in the 3-day trial, P submits that:

- (1) R s Monthly Children Maintenance Contribution should be increased to HK\$64,700(rounded-off). The variation should be backdated to 01.06.2018 or alternatively, 01.01.2019: Item Calculation Sub-total (HK\$) Half of Children s Expenses HK\$103,862 51,931 Half of Children s share of costs of domestic helper HK\$5,000 1,875 Half of Children s share of household expenses (Utilities, management fees, food and household expenses) HK\$(4,000 + 3,146 + 15,000 + 7,000) 10,929.75 Total 64,735.75
41. In the wife s opening submission she repeats her claim that the cost for the children s actual expenses for the year May 2019 May 2020 amounted to just over HK\$100,000 per month as follows: Item Annual Expenses (HK\$) Average Monthly Expenses (HK\$) School fee [E4/861-872] (428,238.40) (35,687)
- D (W Preparatory School)
 - A (X School)
 - J (Y s School; Z s Oxford) 3,859.50 1,250.00 (423,128.90) Extra Tuition fees [E4/874-936] 109,512.50 9,126
 - D (P; Learning Culture; Putonghua; S Education Centre)
 - A (S Education Centre; Inspire Classroom) 81,975.00 27,537.50 School books and stationery [E4/938-963] 12,272.30 1,023
 - D
 - A
 - J 4,831.30 6,842.00 599.00 Transport to school (including school bus) 2,570.40
 - D (\$3.4 per bus trip 126 days)
 - A (\$6.8 per bus trip 126 days) (* School suspended since Jan 2020 due to COVID-19) 856.80 1,713.60 Medical / Dental [E4/965-989] 95,940.00 7,995
 - D (Psychiatrist, Hospital Authority, Counselling)
 - A (Psychiatrist, pediatrician, orthodontist)
 - J (Hospital Authority) 18,740.00 77,120.00 80.00 Extra-Curricular Activities [E4/991-1019] 139,683.72 11,640
 - D (Drawing, choir, summer course)
 - A (ISMUN HK, HKUST Dual course, WS Club (Sydney, USA), Piano)
 - J (Rugby) 18,317.00 121,066.72 300.00 Entertainment / presents [E4/1021-1044] (Christmas gifts, toys, concert and movie tickets, online games, DVD, others) 29,233.00 2,436 Holidays [E4/1046-1059] (95,802.40) (7,984) Clothing / Shoes [E4/1061-1080] 30,004.40 2,500
 - D

- A
 - J 1,413.00 16,929.00 11,662.40 Insurance premia [E4/1082-1092] 45,185.71 3,765
 - D
 - J 42,854.71 2,331.00 Lunches and pocket money 70,340.00 5,862
 - D (\$40 per day for school days; \$80 per meal for non-school days; \$2400 pocket money per year)
 - A (\$420 per week for school days, \$80 per meal for non-school days; \$6,000 pocket money per year)
 - J (\$120 per day for non-school days; \$5000 pocket money per year) Other Transport (for extracurricular activities) 22,658.80 1,881 Child minding fees Uniform [E4/1094-1095] 3,617.00
 - D
 - A 1,584.00 2,033.00 Others Guardian fee, via fee, study aboard insurance, flights, reading books summer holidays courses, school donations, eye glasses, mobiles phone service fee, electronic products, piano examination fee and miscellaneous (161,376.28) 13,448
 - D
 - A
 - J 8,735.44 21,447.13 131,193.71 Total 1,246,344.91 103,862
42. Of these expenses I have placed in brackets those items that prima facie should not be included in this calculation, namely J's school fees and other related items. I have largely accepted the remainder of the expenses, reducing only the provision for holidays largely because no one is really going on holiday at present, unless staycations are accepted as holidays! I have allowed HK\$2,500 for provision for this at present. I should add that, it seems to me that all things being equal both sides should be responsible for their own entertainment/presents for the children and for the costs of their own holidays with them in due course. In saying this I also accept that consideration should be given in time (and post Covid) for the parties to enter into a different arrangement for the younger children's holidays and access arrangements during term time. There is also an argument with respect to the cost of extra tuition fees and ECA
- s. However, I accept that these are necessary expenses at present and I have not reduced them. There is also a further argument with respect to medical/dental expenses. The children all have some health issues, the boys in particular and I do not think the parties should scrimp on this if at all possible. I will allow this expense in full. For the avoidance of doubt I accept that it is reasonable, in the circumstances, for the children to go to private practitioners.

43. Thus, it seems to me that the children's actual expenses are just under HK\$60,000 per month as follows: School fee [E4/861-872] 425.80
- D (W Preparatory School)
 - A (X School)
 - J (Y's School; Z's Oxford) Extra Tuition fees [E4/874-936] 9,126
 - D (P; Learning Culture; Putonghua; S Education Centre)
 - A (S Education Centre; Inspire Classroom) School books and stationery [E4/938-963] 1,023
 - D
 - A
 - J Transport to school (including school bus)
 - D (\$3.4 per bus trip 126 days)
 - A (\$6.8 per bus trip 126 days) (* School suspended since Jan 2020 due to COVID-19) Medical / Dental [E4/965-989] 7,995
 - D (Psychiatrist, Hospital Authority, Counselling)
 - A (Psychiatrist, pediatrician, orthodontist)
 - J (Hospital Authority) Extra-Curricular Activities [E4/991-1019] 11,640
 - D (Drawing, choir, summer course)
 - A (ISMUN HK, HKUST Dual course, WS Club (Sydney, USA), Piano)
 - J (Rugby) Entertainment / presents [E4/1021-1044] (Christmas gifts, toys, concert and movie tickets, online games, DVD, others) 2,436 Holidays [E4/1046-1059] 2,500 Clothing / Shoes [E4/1061-1080] 2,500
 - D
 - A
 - J Insurance premia [E4/1082-1092] 3,765
 - D
 - J Lunches and pocket money 5,862
 - D (\$40 per day for school days; \$80 per meal for non-school days; \$2400 pocket money per year)
 - A (\$420 per week for school days, \$80 per meal for non-school days; \$6,000 pocket money per year)

- J (\$120 per day for non-school days; \$5000 pocket money per year) Other Transport (for extracurricular activities) 1,881 Child minding fees Uniform [E4/1094-1095]
 - D
 - A Others Guardian fee, via fee, study aboard insurance, flights, reading books summer holidays courses, school donations, eye glasses, mobiles phone service fee, electronic products, piano examination fee and miscellaneous 10,000
 - D
 - A
 - J Total 59,668.80 I accept that the husband should be responsible for half of this sum or say HK\$30,000 per month.
44. The wife s general expenses, according to her Form E and less the mortgage repayments, amount to just under HK\$30,000 per month. Of this I accept that the husband shall be responsible for half of the children s share i.e., HK\$30,000 x = say HK\$11,250.
45. I further accept that the husband should be responsible for half of the cost of the domestic helper or HK\$2,500 per month and that this cost should be included as part of the children s expenses.
46. In total then it seems to me that the husband should prima facie be contributing HK\$43,750 per month towards the children s actual expenses (i.e. HK\$30,000 + HK\$11,250 + HK\$2,500 = HK\$43,750).
47. In the husband s proposal set out in his affidavit dated the 8 May 2019, he also offers to contribute HK\$4,675 per month towards J s education and other related expenses, on the premise that he was still being educated in Hong Kong. I accept that the husband should be contributing something, notwithstanding the fact that in reality J has been studying in the UK, although presumably this is being undertaken remotely at present. I will therefore increase this sum to HK\$6,250 per month. In total then the husband shall continue to contribute HK\$50,000 per month towards the children s expenses. Can the husband afford to pay this sum?
48. It seems to me that with a little economizing the husband should be able to pay this sum as he has done in the past. As indicated above, although the husband has experienced some financial difficulty more recently, I accept that he has a good earning capacity and that his household should also benefit from Mdm S s financial contribution. Costs
49. This is a case that should and could have settled. At the end of the day, I did not come down wholly in favour of either of the parties. Given all of the above I shall exercise my discretion and make an order nisi to be made absolute in 28 day s time that there be no order as to costs. Final orders/directions

50. Consequently, I shall order as follows: The undertakings contained in paragraphs G and H set out in the court order dated the 18 August 2014 shall be discharged. The Respondent do continue to pay to the Petitioner periodical payments for the three children of the family in the sum of HK\$50,000 per month (or HK\$16,666.66 per month per child) with effect from the 1 March 2021 until each child's 18th birthday or cessation of full time education, whichever is the later or until further order. There shall be an order nisi to be made absolute in 28 days time that there be no order as to costs. (Sharon D. MELLODY) District Judge Ms. Jacqueline Law instructed by Messrs Lo & Lo for the Petitioner The Respondent appeared in person
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Prepared on 28 October 2026 · Esheria