**Neutral Citation Number: [2026] CIGC (Civ) 10**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CIVIL DIVISION**

**Cause no: G 2026-0044**

**BETWEEN**

**CLIVE FITZPATRICK**

**Applicant**

**AND**

**THE DIRECTOR OF CUSTOMS AND BORDER CONTROL**

**Respondent**

**CHAMBERS**

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| **Coram:** | **Hon. Mrs. Justice Marlene Carter** |
| **Appearances:** | **Ms. Martha Rankine appears for the Applicant, *amicus curiae***<br>**Ms. Heather Walker, Crown Counsel for the Respondent** |
| **Heard:** | **23 February 2026** |
| **Delivered in Draft:** | **24 February 2026** |
| **Final Judgment Circulated:** | **27 February 2026** |

**EX TEMPORE JUDGMENT**

**Introduction and Background**

1. The Applicant was convicted on 5 September 2024 and subsequently sentenced to a term of imprisonment of 33 months for various offences against the Customs and Border Control Act. The

Applicant entered the Cayman Islands with his wife and infant daughter. His wife was also sentenced a term of imprisonment and is currently still serving that sentence. There are ongoing family proceedings in the Grand Court concerning the Applicant's infant daughter. These proceedings concern the return of the infant to the United Kingdom.

2. The Respondent is seeking the removal of the Applicant from the Islands to the UK. The Respondent's position is as follows:

> "*12. Given the length of the sentence imposed, and the fact that the Applicant is neither Caymanian nor a permanent resident, the Applicant is a prohibited immigrant pursuant to section 109(h) of the CBC Act, which provides as follows*:
>
> *"109. The following persons, not being Caymanian or permanent residents, are prohibited immigrants-*
>
> *....*
>
> *(h) a person who, not having received a free pardon, has been convicted in any country of an offence for which a sentence of imprisonment of or exceeding twelve months has been passed otherwise than for non-payment of a fine*."

3. The Applicant's earliest date of release was 04 January 2026. The Applicant appeared before the Conditional Release Board on 19 December 2025 and was approved for release. Consequently, a removal order was first issued on the 23 December 2025. On 24 December, the Applicant gave notice that he intended to contest his removal. On 27 January 2026 the applicant indicated that he was willing to consent, and the Respondent proceeded with arrangements for his removal. A removal notice dated 10 February 2026 was issued for the Applicant's removal on 21 February. However, on 17 February 2026 the Applicant wrote to the Respondent retracting this consent to removal.

2. On the afternoon of 20 February 2026, the instant application was filed as an ex parte application for an injunction.

4. The Applicant seeks the following relief:

> "*1. An Interim Injunction restraining the Respondent, the Director of Customs and Border Control ("CBC") whether by himself, his servants or agents, from removing, deporting, expelling, detaining for removal, or otherwise requiring*

*the Applicant to depart the Cayman Islands pursuant to the Removal Notice dated 10 February 2026.*

2. *An Order staying execution of the Removal Notice requiring the departure of the Applicant from the Jurisdiction on 21 February 2026.*
3. *An Order restraining the Respondent from activating any restriction on re-entry pursuant to section 109(h) of the Customs and Border Control Act pending determination of these proceedings.*
4. *Such further or other relief as this Honourable Court considers just.*
5. *Costs."*

3. Given the nature of the orders sought and the relevant timelines, this court ordered that the matter would be heard on notice and instructed counsel for the Applicant to serve the application and affidavit in support on the Respondent.

4. The Respondent through Crown Counsel indicated that they were prepared to give an undertaking not to remove the Applicant from the Islands pending hearing of this application. The hearing was then set for 11:00am on 23 February 2026 with further instruction that the Respondent was permitted to file affidavit evidence in response by 10:00 am on that date.

**The Applicant's arguments**

5. Counsel for the Applicant stated at the outset of the application that the Applicant was not seeking an indefinite right to remain in the Cayman Islands but only that the status quo be preserved by him being permitted to remain in the Islands pending the hearing in the family proceedings.

6. Counsel submitted that all of the applicable principles for the grant of an injunction were satisfied in this case. She stated that there was a serious issue to be tried with regard to the Applicant's Section 9 Rights under the Constitution.

(i) That there were pending family proceedings in which the court had directed psychological assessments and there was a need for the Applicant to be present for these assessments.

(ii) That the Applicant's removal from the jurisdiction would affect his ability to actively participate in these ongoing family proceedings.

(iii) That the Applicant could at present visit with his daughter at least once per month and that his removal would have an impact on his being able to do so.

(iv) That the Respondent's decision to remove the Applicant was not proportionate.

(v) That the Respondent had failed to consider relevant factors including the ongoing proceedings, the supervised contact between the applicant and his daughter, the Applicant's medical conditions as detailed in his affidavit in support of the instant application and the consequence of the Applicant being removed and declared an illegal immigrant which

would prevent his re-entry into the islands to participate in the family proceedings, if so required in the future.

7. Counsel submitted the circumstances were such that the Applicant could not be compensated in damages for not being able to be present at the proceedings.

8. Counsel further submitted that the balance of convenience lay in granting the application, as the Applicant's removal would only be deferred for a short time, that the balance of convenience lay with the Applicant and his child and that the Respondent would suffer no prejudice beyond a delay of a matter of weeks while the family proceedings were determined.

**The Respondent's arguments**

9. Counsel for the Respondent objected to the matter being considered by this court on the basis that the Applicant did not refer to or indicate what the underlying cause of action was in this case. Counsel referred to GCR Order 29 r .1 and submitted authorities *Kelly and Four Others v Fujigmo Limited, Port Authority and Attorney General* [2012 (2) CILR 222] and *Brennini Sabre Inc v Pirates Caves Limited et al* G 121/2011 (unreported Judgment of Quin j dated 28 April 2011) to support her argument that an application for an injunction must not be made in isolation and must be referrable to a cause of action. Counsel for the Respondent argued that the legal or equitable right of the Applicant that the Applicant alleged was threatened or infringed was unclear in this case. In this regard counsel noted that the Respondent was not a party to the family proceedings and therefore counsel for the Applicant's reference to those proceedings as being the basis of the submission that there was a serious issue to be tried was not a relevant consideration.

10. Counsel took the above as her main point in response to the application but also addressed the submissions of counsel for the Applicant.

11. Counsel took the court through a chronology of the events leading up to the Applicant's release from custody and the filing of the instant application. Counsel submitted the following:

(i) The court in the family proceedings made no order for psychological assessments and none were pending contrary to what counsel for the Applicant had stated to the court. The Applicant had been advised that he could make an application for an expert which the court would hear. That application was to have been made by 04 February 2026. No application for an expert has been made up to this time.

(ii) That at the last hearing in the family proceedings on 21 January 2026 the court was well aware that the Applicant had been granted early release from custody. The court made no order that the Applicant is required to be physically present for the upcoming proceedings.

(iii) That in any event there was provision in the Customs and Border Control Act for an application to be made for a person deemed a prohibited immigrant to re-enter the jurisdiction. If the court in the family proceedings deemed the Applicant's presence necessary in the future, there was an avenue that could be explored for his re-admittance.

(iv) That there was no bar to the Applicant participating in the proceedings via electronic means. That the Applicant had previously participated, via electronic means, in related proceedings regarding his daughter, which were conducted in the UK, and there was nothing stated by counsel for the Applicant that could be regarded as an impediment to the Applicant being able to participate in the same way, from the United Kingdom, at the hearing in March 2026.

(v) That the Respondent had never had notice that the Applicant had a medical issue which could affect his transportation from the Islands by air in all the time that he had been in the custody of the Respondent. That this was a new matter raised by the Applicant. The affidavit of Joey Scott at paragraph 27 records:

> "*In respect of the matters outlined in the letter of 17 February 2026 CBC stands by its position as set out in the letter of 30 January 2026. The only new issue that I can see relates to the medical condition which the Applicant claims to have. I note that this was never mentioned in any of the Applicant's earlier, and extensive, correspondence. It was not mentioned in his objections to the Notice of Intent issued on 23 December 2025, and nor was it mentioned in his letters of 27 December 2025, 19 January 2026, 27 January 2026 and 15 February 2026. The Applicant has not, to my knowledge, ever made CBC aware of having a brain aneurysm, whether at the time of his detention by CBC between 14 May 2024 and 5 July 2024 or in relation to recent exchanges over his planned removal. I have confirmed that position with Officer Marco Thompson who has conduct of the removal.*

(vi) That the Applicant had previously consented to his removal. In advance of this removal the Applicant had assisted the Respondent in obtaining a travel document to aid his removal. The affidavit of Joey Scott records at paragraph 24::

> "*I understand that, up until 17 February 2026, the Applicant had been cooperating with my CBC colleagues to give effect to the removal process, including with respect to obtaining the ETD. Indeed, on 15 February 2026 the Applicant wrote a letter addressed to CBC and HM Passport Office UK confirming that he was not contesting his removal from the Cayman Islands and that he would require a travel document."*

(vii) That the Applicant had sent a request on 11 February 2026 to see his daughter on 17 February in advance of his planned removal on 21 February.

(viii) That as late as 17 February 2026 the Applicant was in communication with counsel for the Respondent and raised none of the issues now set out in the application.

> *"I further understand from Crown Counsel Heather Walker in the Attorney General's Chambers who has conduct of the Family Proceedings, that as recently as 17 February 2026 (which was the very same day on which the Applicant wrote the Pre-Action Protocol Letter) the Applicant had indicated that, whilst he does not currently have an active email address or contact number, he would be happy to share those details as soon as they were established and asked for a corresponding contact details for the Chambers. The Applicant's position was reflected in correspondence Ms Walker has had with prison staff with a view to ensuring the Applicant's continued participation in the Family Proceedings."*

(ix) That the present application appeared to be no more than an elaborate attempt to frustrate the removal process and/or frustrate the family proceedings.

**Court's considerations:**

12. At the hearing the court had the following documents before it:

a. Ex parte Notice of Motion for Interim Injunctive Relief
b. Affidavit of Clive Fitzpatrick
c. First Affidavit of Joey Scott, Assistant Director, Customs and Border Control.

13. The applicable principles for the grant of an interim injunction are succinctly set out in *Kelly and Four Others v Fujigmo Limited, Port Authority and Attorney General*, [2012 (2) CILR 222]:

> *"(2) The court set out the proper approach to interim injunction applications. First, it would consider whether there was a serious issue to be tried and whether it had a real prospect of success. This inevitably involved some degree of assessment of the evidence, but it was not appropriate to reach conclusions on the merits—difficult conflicts of evidence and questions of law would remain to be resolved at trial. The court would therefore recognize only obvious strengths or weaknesses in either party's case. Secondly, the plaintiffs had to prove that damages would not be an adequate remedy if they were to succeed at trial; but, even if they discharged this burden, they could still be required to give an undertaking to indemnify the defendants for any damage found wrongfully to have been caused to them by the injunction, if the defendants were to prevail at trial. Thirdly, taking into account all the circumstances of the case, the court would assess whether the "balance of*

*convenience" lay in favour of granting the application. These basic principles applied equally to the grant of mandatory interim injunctions."*

14. GCR O.29, r.1 states:

> *"(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.*
>
> *(2) Where the applicant is the plaintiff and the case is one of urgency such application may be ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.*
>
> *(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.*

15. In *Brennin Sabre Inc. v Pirate Caves Ltd* et Ors, Quinn J. noted the following:

> "*54. As has often been cited the grant of injunctive relief is dependent upon the existence of a cause of action forming the legal substratum of the claim for relief.*
>
> *55. This Court has followed the long-established principle famously laid down by Lord Diplock in the case of The Siskina [1979] A.C. 210 where he stated at page 256:*
>
> > '*A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent on there being a pre-existing cause of action against the defendant rising out of an invasion, actual or threatened by him, of a legal or equitable right of the Plaintiff for the enforcement of which the Defendant is amendable to the jurisdiction of the Court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertaining by the Court of the rights of the parties and the grant to the Plaintiff of relief to which his cause of action entitles him, which may or may not include a final injunction.'*

*In this case, the Plaintiff has failed to issue a writ of summons or even provide a draft writ of summons, and this Court cannot identify any cause of action against the Second and Third Defendants."*

16. This court raised the issue of the underlying cause of action in this case with counsel for the Applicant. I am unable to understand what the underlying cause of action would be and counsel for the Applicant could not articulate it beyond that there were family proceedings pending where the Applicant should be present; if he was prevented from being so present by dint of his removal from the jurisdiction by the Respondent his right to family life would be infringed. No draft of originating process was presented to the court, and none has been filed.

17. This court must consider whether there was a serious issue to be tried and whether it had a real prospect of success. This inevitably involves some degree of assessment of the evidence. This court cannot properly assess the evidence of the Applicant, to determine whether there is a real prospect of success without reference to an underlying cause of action. Given what counsel has articulated this court has reached its ultimate determination in the manner set out below.

18. The matters that the Applicant has highlighted do not suggest that there is a serious issue to be tried in this case. Regarding the removal order, there is no discretion in the Respondent to not declare the Applicant a prohibited immigrant. This is the law that applies once a person who is not a Caymanian or permanent resident has been convicted and sentenced to a term of imprisonment in excess of 12 months pursuant to the Customs and Border Control Act.

19. The Applicant has failed to establish that the matters that he refers to in his affidavit had not been considered by the Respondent when the Removal Order was made. Some of those issues are not relevant, there is no psychological assessment ordered or pending as the Applicant alleged. The Applicant's medical issue is a recent revelation not previously stated by the Applicant. If this had been a matter that required consideration it is telling that it was not raised previously or highlighted for the Respondent's consideration.

20. There is no question that the issue of the removal of the Applicant's daughter from this jurisdiction is a serious one in which the court is presently engaged. There is also no issue that the Applicant should be a part of those proceedings. However, counsel for the Applicant has raised nothing before this court that supports a view that the Applicant is being or will be prevented from being part of

those proceedings by the Respondent's legal action in removing him, as a prohibited immigrant, from the jurisdiction now that his sentence of imprisonment has been served.

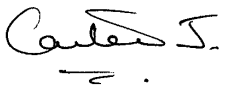
21. Counsel for the Applicant's bare assertion that there is a breach of the Applicant's right to family life is not sufficient in this case. It is not the case that the Applicant is in constant contact with his daughter and that this relationship will be ruptured if he is removed from the jurisdiction. Counsel for the Applicant indicated that he sees his daughter once per month, although the Applicant indicated that he had seen her twice in the last two weeks. The hearing in the family proceedings is scheduled to be heard in just over one month. As this court understands it, the application before the court, in the family proceedings, involves the removal of the child to the United Kingdom.

22. Ultimately, the Applicant's stated concern is not being able to attend the hearing in person. Nothing has been offered to show that he will not be able to address the court and make representations by electronic means thereby preserving his rights at the hearing from the United Kingdom, the place that he is to be sent via the Removal Order. As stated above, the matter that he has raised concerning the psychological assessments has been shown to be irrelevant as no such assessments have been ordered.

23. It does seem to this court that the Applicant appears to have had a change of heart, not that he has been adversely affected by the Respondent's actions or indeed that the Respondent has in some way infringed his rights or has acted in a manner in which such rights are likely to be infringed. The Applicant's vacillation surrounding his consent or non-consent to removal and his actions once the removal notice of 10 February 2026 was known to him are all matters which concern this court in its determination of whether there is a cause of action or a serious issue to be tried.

24. In all the circumstances, there is no need for this court to go on to consider whether damages are an adequate remedy or where the balance of convenience lies. These factors could only be properly considered if this court was satisfied as to the first principle, that an applicant for an interim injunction must establish that there is a serious issue to be tried with a real prospect of success. There is nothing before the court to support this proposition.

25. The application is dismissed. There is no order as to costs.



**Hon. Justice Marlene I. Carter**
**Judge of the Grand Court**