



ND COURT OF THE CAYMAN ISLANDS  
ISION

CAUSE NO: FAM 287 OF 2018

5 **BETWEEN:**

**AB**

6

7

**PETITIONER**

8

**AND**

9

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**CD**

11

12

**RESPONDENT**

13

14 **Appearances:**

**Mr. David Holland for the Petitioner**

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**Mrs. Yvonne Mullen for the Respondent**

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17

18 **Before:**

**The Hon. Justice Cheryll Richards K.C.**

19

20 **Heard:**

**28<sup>th</sup> April 2022 and 6<sup>th</sup> May 2022**

21

22 **Submissions:**

**22<sup>nd</sup> and 24<sup>th</sup> May 2022**

23

24 **Draft Judgment:**

**3<sup>rd</sup> January 2023**

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**HEADNOTE**

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*Family Law – Section 19 and 23 of the Matrimonial Causes Act (2005 Revision), Applicable  
Principles on Variation of Ancillary Order; Protection Order – Section 5 of the  
Protection from Domestic Violence Act 2010.*

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## JUDGMENT

1. There are three summonses before the Court. By Summons dated 30<sup>th</sup> August 2021, the Respondent (“the wife”) seeks an order for the payment of arrears of maintenance. The arrears claimed are US \$16,000.00 (\$3,200.00 per month for five months) and are said to be due and owing pursuant to the Final Ancillary Consent Order dated 20<sup>th</sup> August 2019, (“the FACO”). By Summons dated 2<sup>nd</sup> September 2021, the Petitioner (“the husband”) seeks an order for the variation of paragraphs 2, 3, 4 and 13 of the FACO which provide for ongoing child maintenance and spousal maintenance to August 2022. This is sought on a backdated basis to the date when the wife commenced employment in June 2021. By Summons dated 28<sup>th</sup> April 2022, the husband also seeks the restoration of a Protection Order made on the 5<sup>th</sup> May 2021 under s.5 of the ***Protection from Domestic Violence Act 2010***. In the course of this judgment, I shall refer to the parties as wife and husband although their marriage was dissolved in 2019.
2. The parties were married in July 2006. After twelve years of marriage, they separated in November 2018. The husband is now 42 years of age, and the wife is 41 years of age. There are two children of the marriage, E.F. born November 2012, 10 years old and G.H. born June 2015, 7 years old. At the time of the marriage and through to shortly before the birth of their first child, both parties were employed. Thereafter the wife stayed home for about ten years to prepare for the birth and to look after the children. She was self-employed for part of this time and at some point, established a company and started a consultancy business which operated out of the former matrimonial home, (“the FMH”).
3. Both parties are from wealthy family backgrounds. They obtained educational degrees at the university level and have professional qualifications. The husbands’ grandfather established a trust for his descendants (“the Trust”). The husband and the two children are beneficiaries. It is an issue between the parties whether the husband has disclosed

1  
2 all that is received by him by virtue of this family trust. A second issue is whether there  
3 is a trust established by the wife's family from which she benefits or will benefit in the  
4 future. The wife's family denies establishing such a trust. The husband contends that  
5 the wife has and continues to have access to undisclosed funds and that in light of her  
6 income, she does not require financial assistance by way of maintenance payments.  
7 The wife contends that she is solely dependent on income from her employment when  
8 she is employed and on maintenance payments, and that any variation of maintenance  
9 orders should be proportionate to their income levels.

10 **THE FINAL ANCILLARY CONSENT ORDER**

11 4. The FACO contained a number of recitals. These include a recognition of shared  
12 responsibility for the two children of the marriage and the acknowledgement and  
13 confirmation that the wife would follow the recommendations of a Court ordered social  
14 welfare report. The parties also agreed to the continuation of an earlier protection order  
15 in favour of the husband which had been made on the 14<sup>th</sup> June 2019. The agreement  
16 was that this would continue for a period of twelve months after the date of the filing  
17 of the FACO. Both parties acknowledged and agreed that they each had no claims  
18 against the trusts or trust funds established by the other's family.

19  
20 5. At the time of the making of the FACO the wife was unemployed. As to the future  
21 employment of the wife, two of the recitals are as follows:-

22  
23 *“ AND UPON it being acknowledged that the Respondent is a qualified [*  
24 *professional] who is actively seeking employment at the time of the filing of*  
25 *this order and who is planning to re-launch her own [professional*  
26 *business];*

27 *AND UPON the Respondent undertaking to advise the Petitioner of any*  
28 *changes in her employment circumstances and the terms contained at*

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*paragraphs 2, 3, 4, 13 and 14 of the Order shall be varied proportionally in the event of any such changes.”*

6. Paragraph 1 of the FACO provided for a shared residence order in respect of the children and the terms by which residence is shared. The children reside with each parent on an alternating weekly basis. Each party is to maintain the children and meet their general expenses when the children are in their care.

7. By the FACO, the matrimonial property was divided such that the wife received the FMH in her sole name. At the time this was valued at CI \$716,000.00. Her receipt was free and clear of the existing mortgage of CI \$220,000.00, which was to be extinguished by the husband. The husband received a piece of raw land valued at CI \$845,000.00. The husband therefore received about \$90,000.00 less in terms of shared real property. Following transfer of the FMH the wife has sole responsibility for meeting the liabilities of the property. Each party retained their respective pension entitlements.

8. Paragraph 2 of the FACO provided that the husband is to pay US\$3,600.00 per month (\$1,800.00 per child) in respect of child maintenance. By paragraph 3 the husband is responsible for the costs of the children’s school tuition and fees and the costs of any pre-agreed extracurricular activities and holiday camps. By paragraph 4 the husband shall ensure that the children continue to have health insurance and is to cover any uninsured costs while they are in his care and costs which are in excess of US \$350.00 while they are in the care of the wife.

9. By paragraph 10 of the FACO, the husband was solely responsible for paying off their credit card debt. Paragraph 13 provided that the husband is to pay spousal maintenance of US\$3,200.00 per month for up to three years from the date of the Order through to August 2022.

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2 10. Paragraph 6 provided that in the event of future disagreements in relation to general  
3 issues set out in the Order, the parties agree to attempt to mediate before making any  
4 applications to the Court.

#### 5 THE STATUTORY PROVISIONS

6 11. Section 23 of the *Matrimonial Cause Act* (2005 Revision), sets out the Court’s power to vary  
7 the terms of an ancillary order as follows:

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9 *“Either spouse or the personal representatives of either spouse may make*  
10 *application for variation of any order made under section 21 and, the Court, after*  
11 *hearing the parties, may make such variation.”*  
12

13  
14 12. Section 19 of the said *Act* provides that:

15  
16 *“In dealing with all ancillary matters arising under this Law, the Court shall have*  
17 *regard first of all to the best interests of any children of a marriage and thereafter*  
18 *to the responsibilities, needs, financial and other resources, actual and potential*  
19 *earning power and the deserts of the parties.”*  
20

#### 21 THE APPLICABLE PRINCIPLES

22 13. In the case of *VB v. JP*<sup>1</sup>, the English High Court identified a number of propositions with  
23 respect to variation of maintenance arising from the leading case of *Miller v. Miller;*  
24 *McFarlane v. McFarlane*,<sup>2</sup>. The third proposition identified is in part that following the end  
25 of a partnership where the funds are insufficient for compensation to be achieved by way of  
26 division of assets and an award of periodic payments is made, then as an element of fairness  
27 the matter of compensation in respect of relationship-generated disadvantage requires  
28 consideration. To this end, a generous assessment of the wife’s needs is required which is not  
29 restricted to purely budgetary considerations.  
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<sup>1</sup> [2008] EWHC 112

<sup>2</sup> [2006] 2 A.C. 618

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14. The Court stated:

*“Fourth, in cases other than big money cases, where a continuing award of periodic payments is necessary, the wife has plainly sacrificed her own earning capacity, compensation will rarely be amenable to consideration as a separate element in the sense of a premium susceptible of calculation with any precision. Where it is necessary to provide ongoing periodical payments for the wife after the division of capital assets insufficient to cover her future maintenance needs, any element of compensation is best dealt with by a generous assessment of her continuing needs unrestricted by purely budgetary considerations, in the light of the contribution of the wife to the marriage and the broad effect of the sacrifice of her own earning capacity upon her ability to provide for her own needs following the end of the matrimonial partnership. These considerations are of course inherent in s.25(a)(b)(d)(f) of the 1973 Act.”<sup>3</sup>*

15. In the case of **VB v. JP**, the Court considered the application of a wife under s.31 (7) of the (United Kingdom) **Matrimonial Causes Act 1973**. This was for an increase in the amount of periodical payments payable under an earlier consent order. Six years had passed. The application was made on the basis that the sums which were being paid in respect of spousal and child maintenance were inadequate based upon her needs and upon the principle of compensation as detailed by the House of Lords in the case of **Miller v. Miller, McFarlane v. McFarlane**<sup>4</sup>. The applicant claimed an entitlement to a premium over budget, over and above need, for loss of her earning capacity (relationship generated disadvantage).

16. The Court reviewed whether consideration of the issue of compensation is limited to the approach on the original application or also falls to be considered on an application for variation. The argument that this is excluded on the latter application was rejected. The Court stated:

*“I do not accept those submissions. Whether or not they were made to Baron J in Lauder, it was plain to her, as it is plain to me, that the language of the House of Lords is of general application and extends where*

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<sup>3</sup> Ibid, paragraph 59

<sup>4</sup> [2006] UKHL 24

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2 *appropriate to consideration by the court of the overall fairness of an order*  
3 *made upon an application to vary a joint lives periodical payments order.”<sup>5</sup>*  
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5 17. The Court approached the question of a variation by considering the factors under s.25 (2) of  
6 the *Matrimonial Causes Act 1973*.

7  
8 18. In the case of *Morris v. Morris*<sup>6</sup>, the English Court of Appeal considered the extent to which a  
9 review of those factors is necessary on a variation application. The issue on appeal was whether  
10 the trial judge had properly weighed the factors or had used an extremely “light touch” which  
11 focused primarily on the change in circumstances. Counsel on behalf of the appellant argued  
12 that the Court had failed to give proper weight to the factors which would have included taking  
13 into account the husbands’ decreased income and debts and the improved circumstances of the  
14 former wife. It was urged that if the appropriate weight had been given, there should have been  
15 a substantial rather than small reduction in the maintenance payments to be made by the  
16 husband or an adjustment of the term over which the payments were to be made.

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18 19. The Appellate Court dismissed the husband’s appeal and concluded that a court, on a variation  
19 application, is not required to consider the matter *de novo*. The court has the flexibility in line  
20 with the overriding objective to determine what is required in each case and is to conduct an  
21 exercise which is proportionate to the requirements of a case. This may, in some cases, require  
22 a complete review of the factors, but, in others, a *light touch* review may be justified.

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24 20. The Court stated:

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26 *“87. On a variation application is the court required to consider the matter de*  
27 *novo? In my view, the simple answer is that it is not. The court must conduct an*  
28 *exercise which is proportionate to the requirements of the case. They might*  
29 *warrant a complete review but they can also justify, what Mr Duckworth refers to*  
30 *as, a light touch review. In this respect, Mr Duckworth was right to acknowledge*  
31 *that the court can confine its consideration to factors relevant to the variation*  
32 *application.*

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34 ...  
35 92. *The court has “enormous flexibility” to determine the “nature” of the*  
36 *substantive hearing. This includes, as Mr Duckworth accepts, focusing on the*

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<sup>5</sup> Ibid, paragraph 64

<sup>6</sup> [2016] EWCA Civ. 812

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2                   *relevant factors and in my view also, where appropriate, conducting a light touch*  
3                   *review. Specifically, to require the court to undertake the exercise de novo would*  
4                   *be contrary to the overriding objective and the obligation for a case to be dealt*  
5                   *with proportionately.”*  
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8           21.       Additionally, the Appellate Court in considering the case before it, noted that the final order  
9                   had been recently made, only two years earlier in August 2014, as well as the absence of  
10                  sufficiently significant events in the case. With respect to the issue of varying the term of  
11                  periodical payments, the Court stated:

12  
13                               *“Changes in employment and changes in income, as occurred in this case are not*  
14                               *unusual and they are not sufficient to support the need for a substantive review of*  
15                               *this element of the 2014 order.”*  
16

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18           22.       The case of *Morris v. Morris* has been cited with approval in this jurisdiction in the Grand  
19                   Court case of *SD v. AL*.<sup>7</sup> Williams J. provided further guidance in the following terms:

20  
21                               *“Having regard to Morris, the following principles are appropriate as a guide to*  
22                               *the Court in the exercise of its discretion:*

23                               *The practice has developed where the Court looks for a material change in*  
24                               *circumstances since the last order when considering varying periodical payments*  
25                               *order. However the wording of s. 23 and s. 19 MCL give the Court wide powers to*  
26                               *vary its ancillary relief orders and contemplates that there may be other*  
27                               *circumstances other than a change of means which would justify a variation in the*  
28                               *original order;*

29                               *Whilst the Court has a broad discretion when determining variation applications,*  
30                               *such discretion should be exercised in a proportionate manner: proportionate to*  
31                               *the money involved, the cost and complexity;*

32                               *In conducting its s. 23 MCL exercise the Court should have sufficient information*  
33                               *available to it for the relevant issues to be addressed in a way which is fair and*  
34                               *proportionate against eh backdrop of the Overriding Objective. The provision of*  
35                               *information for the exercise is a mutual and reciprocal obligation; and*

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37                               *A full, exhaustive and expensive representation of a final ancillary relief hearing*  
38                               *should be avoided. That would be contrary to public policy, detrimental to the*  
39                               *parties interests and a drain on the limited resources of the Court.”*

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<sup>7</sup> Judgment dated 5<sup>th</sup> September 2017

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2 **APPROACH**

3 23. As I consider this matter, I bear in mind the above statutory and guiding principles.  
4 While there is no requirement to consider the matter *de novo*, the review to be  
5 undertaken should be proportionate to the circumstances. The first consideration is the  
6 best interests of the children of the marriage. Their requirements continue to include  
7 adequate housing, education and on-going general maintenance. Thereafter and to the  
8 extent that it is necessary to do so, consideration is to be given to the responsibilities,  
9 needs, financial and other resources, actual and potential earning power and the deserts  
10 of the parties. I am also mindful of the relevant factors raised in s.25 (2) of the United  
11 Kingdom *Matrimonial Causes Act 1973*. Those factors have been described by the  
12 Cayman Islands Court of Appeal as being not materially different from the factors set  
13 out in s.19 of the *Act* in the Cayman Islands.<sup>8</sup>

14 **THE AFFIDAVITS**

15 24. The evidence before the Court initially consisted of the Affidavits of the wife dated 22<sup>nd</sup>  
16 December 2021 and 4<sup>th</sup> May 2022 and the husband's Affidavits dated 4<sup>th</sup> January 2022  
17 and 26<sup>th</sup> April 2022 together with historical Affidavits filed by both in February, March,  
18 and April 2019.

19

20 25. Following the hearing, where each party gave evidence on oath, there was an indication  
21 that the employment circumstances of the wife has changed. By agreement, additional  
22 Affidavits were filed by the parties on the 4<sup>th</sup> and 14<sup>th</sup> October 2022. The wife is no  
23 longer employed as of September 2022. Notwithstanding this change and the indicated  
24 willingness of the husband to continue paying child maintenance at the level agreed in  
25 2019, a determination is still sought in respect of the period up to September 2022.

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<sup>8</sup> K. v. K. [2017] (2) CILR 682

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2 **THE POSITIONS OF THE PARTIES**

3 26. The wife's evidence is that although she secured permanent employment in June 2021,  
4 up to March 2022, she had no security of tenure as her employment was on a  
5 probationary basis and was therefore uncertain. It is her position that payment of  
6 spousal maintenance should have continued unchanged through to that month to allow  
7 her to get back on her feet after ten years of being out of the job market. She states that  
8 she had no safety net of savings and also had large expenses for the repair of areas of  
9 the FMH and premises. She asserts that the maintenance payment as per the FACO  
10 contained within it an element of compensation. She says that there should be a  
11 compensation factor 'to allow her time to get back on her feet without stress'.  
12

13 27. It is also her position that the FACO provided for variation on a proportionate basis.  
14 Her earning level was 25% of the husband's earnings. Any variation should be from  
15 March 2022 onwards and should reduce spousal and child maintenance by no more  
16 than 25% with 75% to continue to be paid by the husband. She says that she considers  
17 this to be a fair sum and that she is willing to take a slightly lower capital sum in arrears  
18 of spousal maintenance in order to bring this matter to an end.  
19

20 28. The husband's position is that the wife was provided with adequate compensation at  
21 the time of the FACO given its terms. He points out that she received the FMH free  
22 and clear of a mortgage which was to be paid by him. He was also responsible for all  
23 marital debts including credit card bills. His position is also that contrary to her  
24 assertions as to unemployment, the wife has been working in her consultancy business  
25 over an extended period. He says further that in any event her new employment as of  
26 June 2021 provided her with more than enough income to meet her expenses, and that  
27 it would be unjust for spousal support to have continued when all her expenses were  
28 already covered by her own income. The husband thus avers that there was a material  
29 change in circumstances and that the FACO should be varied substantively on a

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2 backdated basis to when the wife commenced employment. The FACO contemplated  
3 that she would secure employment and that the order would be varied upon her doing  
4 so. He says that he stopped making spousal maintenance payments because it was clear  
5 to him that the wife no longer needed the support. As to the children, his position is  
6 that he will continue to meet all their major expenses as he has always done. In his view  
7 it is unreasonable for him to pay a further \$2,700.00 per month or 75% of the current  
8 level in maintenance for the children in addition to meeting all their major expenses.  
9

## 10 THE EVIDENCE

### 11 COMPENSATION TO THE WIFE

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13 29. Both parties began their married life as salaried professionals in the same field. The  
14 husband continued to work in his profession. He has changed jobs on occasion to earn  
15 higher levels of salary and better positions. He is now at the level of a partnership. The  
16 wife has not reached this level. It is the wife's evidence that she has been disadvantaged  
17 because she has been out of the work force for ten years. She testified that for a period  
18 leading up to the birth of the first child, they made the decision that she would not work.  
19 She spoke of the difficulties which they experienced in having children, the specialized  
20 process which had to be adopted and said that she was placed on bed rest. When the  
21 second child was two years old, she began the consulting business referenced above.  
22 According to her this was not an extensive business. At the time of the FACO, she was  
23 not earning income and had gone through her savings. In the intervening period since  
24 the FACO she asserts that she had been searching for permanent employment but this  
25 proved difficult to obtain.

26

27 30. The husband's evidence was that while the arrangements for having children needed  
28 the investment of time, the decision not to work was made not from health difficulties  
29 and anxiety because of the process, as the wife suggests, but from choice. He gave

1  
2 evidence that other women in the wife's position worked and maintained their careers  
3 while going through the same process.  
4

5 31. It did seem to me that whatever the factual circumstances as to the level of difficulty  
6 and anxiety over the prenatal and natal periods, the important point is that both agreed  
7 on a course of conduct which led to the unemployment of the wife for a significant  
8 period of time.

9  
10 32. In the case of *Waggot v. Waggott*<sup>9</sup> the English Court of Appeal considered *inter alia*  
11 the compensation principle. The wife in that case submitted that the principle is  
12 applicable both when the spouse had sustained a financial disadvantage and also when  
13 the respondent had sustained a financial advantage during the marriage.

14  
15 33. The Appellate Court noted that there are invariably factual disputes as to whether or  
16 not the choices made which led to the claimed disadvantage was "a choice freely and  
17 willingly adopted by that party during the marriage and contrary to the wishes of the  
18 other party or vice versa." Lord Justice Moylan expressed the view that such a factual  
19 debate was unnecessary and inappropriate and suggested that:

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21 *".. absent reliance on conduct (which will only exceptionally have any*  
22 *relevance), the court is looking at the financial consequences of what*  
23 *happened during the marriage and those alone."*  
24

25 34. As to the principle of compensation, the Court rejected the argument of the wife and  
26 stated that it is clear from the case of *Miller and McFarlane* that compensation is for  
27 the disadvantage which is sustained by the party who has given up a career.  
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<sup>9</sup> [2016] EWCA Civ 727

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35. The learned Judge stated:

*“However, as a necessary factual foundation the court would have to determine, on a balance of probabilities, that the applicant's career would have resulted in them having resources greater than those which they will be awarded by application of either the need principle or the sharing principle. Further, the court must separately determine whether, and if so how, this factor should be reflected in the award so as to ensure that it is fair to both parties.”*

36. In my view, the evidence in this case does point to relationship disadvantage. There is every indication that the wife having left the work force in order to become a full-time mother, there was a negative financial effect upon her ability to earn and secure promotions as the husband continued to do. While she was self-employed for part of this time and operated her own small business from the home, plainly this was not at the level of high earnings which the husband now enjoys. She remained out of the mainstream work force for ten years and understandably has had difficulty trying to re-enter it.

37. The husband appeared to accept that there was some disadvantage, and that some element of compensation was necessary. However, he urges that the wife was already compensated by the uneven split in capital at the time of the FACO. In cross-examination of the wife, Counsel for the husband suggested that the reality is that she was compensated for relationship disadvantage and that the husband received almost \$90,000.00 less in value than the wife. The wife replied that it is her understanding that the “extra was to equalize her for the value of the property”. She said that the husband wanted the land because it is development land, and it was worth more than the FMH.

38. Counsel for the wife submits that notwithstanding the husband taking on the responsibility of the mortgage for the FMH, there was a disparity because the husband confirmed in cross-examination that the pension which he retained was significantly

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230124 - FAM 287 of 2018: AB v.CD. Coram: Richards J. K.C. - Judgment.

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higher than the wife’s pension. The disparity which is not quantified is not surprising given that he had continued in employment while the wife had not.

#### UNDISCLOSED TRUST INCOME

39. By way of a postnuptial agreement in 2011<sup>10</sup>, each party agreed not to have a claim or interest in their separate properties defined as including all present and future interests in family trusts and inheritances. Each party accuses the other in these proceedings of having undisclosed income by way of family trusts. Each blames the other for failing to provide adequate disclosure. The wife says that there is nothing to disclose. The husband refuses to disclose any recent trust documents to the wife. He says that there has been no change in his family’s trust and that the wife has communicated in a way which is harassing to the trustees and to his family. Counsel on behalf of the wife relies on the case of *NG and SG*<sup>11</sup> and invites the Court to draw certain inferences from non-disclosure.

40. The husband’s evidence is that the wife’s family is very wealthy and that a trust had been established for her and her brother. He has known the wife’s parents for over twenty years. He testified that in the course of the marriage he signed various documents and provided ‘Know Your Customer’ information for the establishment of an offshore trust by the wife’s parents. He said that the wife’s parents spend lavishly on her and the children and that he witnessed this during the marriage. Throughout their marriage there were large financial gifts from her family, expenses were covered, and vehicles and holidays were provided. He said that he himself benefitted from this and that he believes that this has continued to this day. He said that the wife’s father is still involved in the development of one very large building project.

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<sup>10</sup> Exhibit page- 344, Hearing Bundle

<sup>11</sup> [2011] EWHC 3270

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2 41. The husband urges that there has been a failure on the wife's part to disclose her true  
3 financial position and asks the Court to note that it is her position that any benefits she  
4 receives should be ignored. He states:

5 *"The Respondent appears to take the view that any benefits she receives*  
6 *from her own family sources should be ignored and are not applicable to*  
7 *these proceedings. I tend to agree but this means that any family benefits I*  
8 *may receive should be equally inapplicable."*<sup>12</sup>  
9

10 42. He submits that considering the wife's failure to disclose her true financial position,  
11 the focus should be on their respective employment incomes to determine an equitable  
12 sharing of the children's expenses.

13  
14 43. In cross-examination the wife denied that she is in fact wealthy and is seeking to have  
15 the wealth on her side ignored. She agreed that she had referred to having a trust fund  
16 in the FACO but denied being the beneficiary of one. Her evidence is that her parents  
17 had contemplated establishing a trust for herself and her brother but decided against it.  
18 She provided a letter from her father which disavowed the establishment of such a trust.  
19 She says that her parents do have assets but not much income and are now retired. They  
20 live on their pension. Any project work which is currently being done by her father is  
21 on a voluntary basis.

22  
23 44. The husband also pointed to what he said was the lavish lifestyle of the wife while  
24 unemployed as a basis for his assertion that she did not need spousal support and has  
25 hidden wealth. He described this lifestyle as including vacations and several  
26 staycations, having champagne brunches, and buying items. She was able to purchase  
27 a car for her helper and has on occasion employed two helpers at the same time. She  
28 travels first class or business class. The wife sought to explain this lifestyle in part by  
29 saying that the flights were provided by her father and were from using his air miles.

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<sup>12</sup> Paragraph 50, Affidavit of husband dated 4<sup>th</sup> January 2022

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2 45. Counsel for the husband submitted that on the balance of probabilities it would be  
3 appropriate to infer from all the evidence including the lack of disclosure of bank  
4 statements and other material by the wife, that the wife and children are likely  
5 beneficiaries under trusts from the wife's family.

6

7 46. I note that as a practical matter, one would not expect the establishment of a trust to be  
8 contemplated and to be at the stage of the preliminary documents produced as exhibits  
9 by the husband if there was no funding for such a trust. Additionally, if the husband is  
10 correct, the lifestyle of the wife which he describes, is inconsistent with her claim to  
11 have been living entirely on the amount of \$6,800.00 per month provided to her and  
12 the children by the husband which she described as barely making ends meet. It is also  
13 inconsistent with living almost entirely on her new income. The overall impression I  
14 had was that there is apparent inconsistency and questions arise which are not entirely  
15 explained by the answers given by the wife. However, there is insufficient evidence for  
16 me to be able to conclude with some degree of positivity that the wife does have an  
17 alternative source of income, namely a trust fund and more importantly there is  
18 insufficient evidence for me to be able to place some sort of numeric value to this. I do  
19 not think that this means as Counsel for the husband submitted that the wife is to be  
20 rewarded for her own lack of transparency. It means no more than a finding of  
21 insufficient evidence.

## 22 **The Trust**

23 47. It is agreed evidence that the husband and the children are beneficiaries of the Trust.  
24 The husband is a director of the Trust and receives director's fees of US \$32,000.00  
25 per year. He has declared this as part of his income. The wife accepts that she entered  
26 into the FACO knowing about the Trust entitlements and says that she is not now  
27 making a claim in respect of it. Instead, she raises two issues. The first is that because  
28 of the Trust, the children's educational expenses are covered by an 'independent party'.

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It is made for the children’s benefit, (by virtue of their own entitlement under the Trust), whether the husband is alive or not. She states that he should not therefore include this in his income and ought not to be able to list the educational expenses as part of his budget. Secondly, she states that although the Trust is discretionary, the husband receives and has always received throughout their marriage, annual income from it of about US \$60,000.00 per year. It is her evidence that for the 2012 disbursement, he received an additional 16.67% and for the 2017 disbursement he received an additional 18% over the amount provided for in the Trust. She states that while they were married this was paid every year around August and there is no reason to believe that this has ceased.

48. Secondly, she points to the fact that the Trust provides for the children directly in two ways. Each child is to receive the first CAD \$10,000.00 for school fees and thereafter one half of fees up to CAD \$20,000.00. The wife asks the Court to draw the inference that the school fees are in fact paid by the Trust and not by the husband. Additionally, each child receives US \$20,000.00 annually. One half of this is to be invested for their future. The wife states that with this entitlement the children’s expenses for counselling, health and extracurricular activities would be covered, the husband would be reimbursed and would not have to pay these from his budget.

49. It is also her evidence that she believes that in 2021 the Trust was opened for amendments. She says that “she knows for a fact” that there was meant to be an increase for inflation and there is a good chance that the payments have been increased. This is the reason that she asked for disclosure, but the husband has declined to provide any documentary information in relation to the Trust.

50. The husband’s evidence is that there is no issue as to disclosure on his part as the family distribution policy for the Trust has not changed since the Trust deed was made. The wife already has possession of this. He says further that nothing has changed in relation

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2 to the Trust since the FACO was made. He said that he declined to hand over any trust  
3 documents to the wife because of confidentiality concerns. He complains that the wife  
4 has threatened and made serious allegations against his family members on several  
5 occasions.

6  
7 51. His main responsive point is that the Trust is discretionary and there are no set  
8 entitlements. He says that because distributions are discretionary and not guaranteed  
9 income, it would be unjust to take account of his family inheritance. He said that up to  
10 January 2022 he had not received distribution payments for 2021. He testified that over  
11 the last three years, he has received only one payment of trust benefits. During the  
12 marriage, when he did receive any personal benefit (of CAD \$75,000.00), this has  
13 always gone directly into defraying the mortgage. Monies received for the children  
14 were put into a savings account. They were never used for any purpose. They were  
15 never used for extra-curricular activities, or for counselling or healthcare. He said that  
16 the money is not to supplement the income of the parents. His plan is that when the  
17 children are old enough, they will be able to each have an apartment. In cross-  
18 examination he said that he has saved all the distributions which the children have  
19 received and set up another trust for them. He said that the wife is aware that this was  
20 the case during their marriage. He was asked by Counsel for the wife, whether one half  
21 of this could not be used for their ongoing expenses as the Trust permitted this. He said  
22 that both parents have salaries which are large enough to meet the expenses of the  
23 children. There is no need to steal the children's inheritance from them. The money is  
24 for their future.

25  
26 52. In answer to further questions in cross-examination the husband said that he would  
27 receive CAD \$75,000.00 from the Trust per year if the Trust makes a profit. This is not  
28 something that he received every year while they were married. He said that he did not  
29 make any inquiries when he was not paid because of the discretionary nature of the  
30 Trust. He said that he understood that Counsel would be asking the Court to draw  
31 inferences with respect to his monthly budget in the absence of definitive information.

1  
2 53. The husband agreed that legally the wife has parental responsibility over the children,  
3 but he said that he did not agree that having parental responsibility gave her certain  
4 rights and obligations which would include having information about the children's  
5 finances. He said that there are no entitlements for the children, it is a discretionary  
6 trust. He said that he is not willing to provide the wife with any information. He  
7 explained his reason as stated above.

8  
9 54. He accepted that the Trust provides reimbursement of a portion of the children's  
10 education expenses on a discretionary basis. He said that he received this in some years.  
11 He was uncertain as to the exact details and said that the first CAD \$10,000.00 is paid  
12 and then the next CAD \$10,000.00 is 50% and he thought perhaps a further 25% is  
13 paid. He said that the last time he received a distribution as part of the children's  
14 education fund was two or three years ago. He has not asked for information as to the  
15 absence of a distribution even though he is also a director of the Trust. He has refrained  
16 from seeking information because he has abstained from matters which have to do with  
17 him.

18  
19 55. He agreed that he had provided no documentation as to the disbursements by the Trust  
20 but said that likewise he did not have any payments from the wife's trust, from her  
21 parents, from her other employment or anything else. In his view the absence of  
22 disclosure is equal on both sides. He stated that the wife signed a marital agreement  
23 and a final consent order that she has no claim and no rights to any information. He  
24 said that he disagreed entirely with the suggestion that he is the one that is causing or  
25 contributing significantly to the very poor communication between them. He did not  
26 agree to the suggestion that disbursements from his family's trust are necessary to  
27 assess proportionality.

28  
29 56. Counsel for the wife made submissions of some force as to what is described as the  
30 vague answers provided by the husband about when he last received entitlements under  
31 the Trust. Counsel said that given his position as a director of the Trust and that the

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2 Trustees are his brothers, if he truly does not know what disbursements the Trust had  
3 made and the reasons for the decision, it is “because he has sought refuge in willful  
4 ignorance.” Counsel asserts that the husband’s true income position should reflect the  
5 annual Trust payment of CAD \$70,000.00 and that the proposal that he pays all the  
6 children’s direct costs is a false narrative as he receives re-imburement from the Trust.

7  
8 57. For my part, I thought this to be the single area of weakness and question in the  
9 husband’s evidence. Overall, I found him to be an honest and forthright witness. It was  
10 evident that his concern as to what he sees as the wife’s lack of confidentiality and  
11 harassing behavior led to decisions which did not foster transparency and were not  
12 helpful to the Court. During his evidence for example there were occasions when he  
13 offered to provide documents to both Counsel and to the Court if they were not to be  
14 shown to the wife. Yet, even against the background of lack of trust of the wife, it was  
15 surprising that he was not able to speak more definitively as to what disbursements had  
16 been received and when. Given the requests for disclosure, these are questions which  
17 he ought to have anticipated. My assessment of him, having had the opportunity to  
18 observe him as he gave evidence is that he is generally inclined towards precision.  
19 Given his evidence above as to how both trusts should be treated and viewed, I think  
20 his vague answers about the disbursements of the Trust are from a sense of deep  
21 resentment about what he believes the wife is hiding. The reality is that Trust  
22 entitlements on his side cannot be ignored as he suggests. There is evidence of some  
23 strength about the nature and quantum of these receipts. The Trust document is  
24 exhibited by the wife.<sup>13</sup> He gave evidence that there is no change to the entitlements  
25 listed therein. He stressed the discretionary nature of it. However, in contrast to his  
26 evidence that payments were ad hoc, the wife gave evidence that the annual amount  
27 was paid to him consistently every year in August while they were married and that the  
28 children’s educational expenses were also re-imbursed. He gave evidence that he has  
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<sup>13</sup> Page 54 of the Hearing Bundle.

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received and invested all the disbursements made for the children and that he has made the choice that no part of this is to be spent.

58. Counsel for the wife submits that the disbursement to him should be reflected as part of his income. I accept that despite the discretionary nature of it, there is evidence of regularity of payments. I think this means that when his income and expenses fall to be considered, it should be against the background that it is likely that he may have additional funds available to him by way of disbursements from the Trust. I also accept the submissions of Counsel for the wife that as some of the children's expenses may be reimbursed by virtue of their own entitlement under the Trust, the financial weight of this is not entirely upon him.

#### EMPLOYMENT OF THE WIFE

59. The issue of the employment of the wife, the timing of and information about this is a difficult point between the parties. In summary the husband suggests that the wife was not open or responsive about this and questions her motives. The husband's evidence is that he found out that she was employed by doing his own research. He says that in May 2021, there was the first indication from the wife that she was employed and at that time she said it was a short-term contract and that she was only earning \$5000.00 per month. He requested but did not receive official confirmation of this. He requested financial proof, on 10<sup>th</sup> June 2021, 13<sup>th</sup> July 2021, and 14<sup>th</sup> July 2021. On the 28<sup>th</sup> July 2021, the wife advised through her attorneys that she had recently commenced employment. It was not until November 2021 that the wife finally produced a copy of her employment contract shortly before mediation was to commence. This was many months after he had requested it.

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60. The wife’s evidence is that in June 2021 she was offered a job for which she received a salary of US\$135,000.00 per annum or US\$11,250.00 per month. The husband became aware of this and immediately stopped paying spousal support. The job offer was subject to a period of probation which was due to end in December 2021 and was extended for a further period of three months to March 2022. She describes what she says was uncertainty given the probation period. She complains about the immediate cessation of spousal maintenance by the husband without allowing her any time to “get back on her feet,” after ten years of not having a job. She says that she had no opportunity to generate some financial stability, build a cushion for contingencies, deal with her debts and re-orient to working life. She now finally had a chance to fix her house and to get a new car. She said that it had only been ten months. She still had to stabilize her role.

61. She was challenged in cross-examination about the information she had provided to the husband about her employment and the suggestion was made to her that she had not been transparent. She agreed that she had said on 27<sup>th</sup> May 2021 that she had a short-term contract for \$5000.00 and in response to the suggestion this was possibly misleading, she explained that in May 2021, no employment had been confirmed to her. She said that there was nothing official, she had been approached in relation to part time temporary employment and contracted through her consultancy company. She said that she commenced work on the 15<sup>th</sup> June 2021 and had only been told a week before this that she was hired on a more full time basis. There was a higher salary for the more permanent position.

62. She accepted that in July 2021 that she was still referring to her employment as temporary although she had already signed a contract. She explains that her employer still thought it would be a six-month role and at that time “everything was up in the air”. She did not agree to the suggestion that her responses were slightly misleading.

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2 63. She accepted that the husband requested her employment agreement and company's  
3 bank statements in mid-2021 and that she refused to provide them. She said at one  
4 point that she did not agree to provide employment contracts and documents as in her  
5 view this is not a requirement of the FACO. She also said that she did not provide  
6 anything at that point because she needed proper legal counsel to advise her as to what  
7 her rights were. This was despite the fact that she had earlier provided financial  
8 statements in 2019.
- 9  
10 64. She was asked about the reason that despite having an attorney in August 2021, it took  
11 her six months after signing the contract until November 2021 to provide her  
12 employment contract. She replied, "*such is life*". She said that prompt responses had  
13 not been received to her requests because of different things. She said this was her first  
14 job after ten years. She needed to talk to her employer and consider whether any issue  
15 of sensitivity surrounded the provision of the information requested. She denied acting  
16 in bad faith in not providing her contract earlier. She said that she had no legal  
17 obligation to do so. She had done what she had undertaken to do which was to inform  
18 the husband that she had secured employment.
- 19  
20 65. She testified that her company's bank account is still open. She said that the rules  
21 require that it had to have at least \$10,000.00 in it, in order to maintain it. She said that  
22 at the time of the FACO, the account had approximately \$13,000.00. Now it has  
23 \$40,000.00. This is money that she has been trying to save every month to be able to  
24 afford a new car, legal fees, operational costs and her bills. Some of it was saved from  
25 her pension. She denied that the reason that she did not provide the information as to  
26 her account was because she had so much money in the bank.
- 27  
28 66. Having listened and observed the wife as she gave evidence, the unfortunate impression  
29 I had was that there was at least the desire by her to downplay the nature of the  
30 employment if not to conceal the fact and details of it from the husband. Certainly, the  
31 level of income was not confirmed until November 2021. While the wife seeks to

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explain the sequence of events and the reasons behind the responses given, the position taken by her may not have been helpful. The husband's evidence in cross-examination is that he believed that the FACO contemplated that the wife should provide information as to her income in order for a determination as to a proportionate variation to be made. The wife provided some bank statements, but these were not for her main account. He said that he did not see how there could be a proportionate variation if the figures are unknown.

67. There was some cross-examination of the wife as to employment through her company past and present. The wife stated that her consultancy business is no longer in operation and that she is not receiving any income from it. She denied being regularly employed prior to June 2021 and said that in the year leading up to this she did not have work through her own company and did not receive money on a consistent basis. The suggestion to her which she denied was that over the last few years she has worked considerably and has had income. She said that she depended solely on the husband's income for the past nine years. He paid for everything.

68. She was cross examined about her 'LinkedIn' profile in 2021 in which she said that she had operated her own business for more than seven years. She said that she worked if she was able to work and how much money she made was variable. Contracts were sometimes few and far between and she could not charge much as she was competing with other local businesses and her prices had to be competitive. Additionally, because of the divorce she was not able to function. She did not have a consistent flow of work coming in. She had some contracts, but these were open engagements where she was contracted to be available on an as needed basis.

69. She was referred to another 'LinkedIn' page in 2019 in which she said that she had a short-term contract for four months in September 2019. She said that this was on a commission basis through her company. She said that for the short-term contract perhaps she received \$1,000.00 per month. She was earning a fragment of money at

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2 this point. She had no savings and after that nothing came in. She said that she did  
3 inform the husband of this. He confronted her on it but there was no change in  
4 circumstances. She said that she had consultancy work before the FACO was signed.  
5 It was suggested that she was not being transparent that she did have money coming in  
6 as evidenced by her bank account. She said that she does not believe that there was a  
7 lack of transparency. She agreed that she had worked for another entity on a  
8 consultancy basis for eleven months. She said that the \$5000.00 a month which she  
9 earned at that time was on a consultancy basis and it went into filling the land for the  
10 benefit of both.

11  
12 70. The husband testified that during the period when the wife was out of employment and  
13 at home, she worked on and off throughout those 10 years. She received income  
14 through her business. She had large clients, including large hotels on Island and rich  
15 friends. He states that the wife continues to operate her own business and was  
16 employed on several other occasions and has failed to disclose this. In cross-  
17 examination he said that he believes that although the wife was working before June  
18 2021 there was no clarity as to how much she was earning. He believes that there is  
19 now a significant change in circumstances.

20  
21 71. I have considered all the evidence on this aspect. The suggestion that the wife has been  
22 employed before June 2021 and has failed to disclose this, is a conclusion which is  
23 invited to be drawn based on past activity, deposits in her company account and  
24 lifestyle. This is in circumstances where it is also urged that her family is wealthy and  
25 has provided her with generous financial gifts. Her evidence is that the deposits in her  
26 account were in part from her pension. I do not think that the evidence is sufficient to  
27 draw the inference that there was any significant employment before June 2021 or that  
28 her consultancy business generated significant income. To a large extent the husband  
29 appears to accept this, referring as he does to the change in circumstances and the clarity  
30 as to her earnings which he has now obtained.

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**EVIDENCE AS TO THE TERMS OF THE FINAL ANCILLARY CONSENT ORDER**

72. Both parties were cross-examined about their understanding of the FACO. The husband is said to have acted in breach of the FACO by unilaterally discontinuing spousal maintenance. He said that he does not accept that he was wrong to do so and explains that he did so upon finding out about the wife’s employment. He states that he understood the wording of the FACO “*for a period of up to three years*”, to mean that spousal maintenance would cease before three years if the wife had sufficient income. He believed that the spousal support ceased on the date when her earnings began. He stopped making payments because his information was that she was earning some \$180,000.00 a year. His view was that she was doing well and did not need the maintenance. He also thought that child support should have been reduced but he did not do so because he did not want the children to be affected by the relentless conflict any more than they have been. He said that he tried to go to mediation with the wife and initially she refused. In answer to a question from the Court he said that he did not feel that time was needed for the wife to get back on her feet, she had started earning and was living a lavish lifestyle.

73. The wife testified that in her view the purpose of spousal maintenance was that she would have three years to get employment. She said that she made it clear that this maintenance was not to be extinguished once she secured employment. She signed the FACO on the understanding that what was meant, was that spousal maintenance would be reduced proportionately to what she was earning.

74. While both parties sought to give their own understanding of the meaning of the FACO as to spousal maintenance, the first step must be whether there is a plain meaning to the words. This is that upon there being any change to the employment circumstances of the wife, both spousal and child maintenance shall be varied proportionately. In the absence of agreement of the parties, the questions which arise for consideration are as

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2 to the nature of the change in employment circumstances and the impact of this change  
3 on the payments to be made by the husband.  
4

5 **INCOME AND EXPENSES OF THE WIFE**

6 75. The income of the wife from her new employment during the period under  
7 consideration was \$11,250.00 per month. As Counsel for the husband pointed out, this  
8 was more than the spousal and child maintenance combined and that the effect of this  
9 is that the wife has had a 65% increase in her income.  
10

11 76. On the 21<sup>st</sup> December 2021, the wife provided a budget which showed her expenses as  
12 CI\$9,740.80, (US\$11,879.03). On the day before the hearing, the wife produced an  
13 updated budget which showed her expenses as CI\$12,582.45 (US\$15,344.45). Counsel  
14 for the husband in cross-examination of the wife and in submissions noted, that the  
15 earlier budget showed a shortfall of only \$629.00 per month before any maintenance is  
16 received. Counsel submitted that given that the wife was able to manage on \$6,800.00  
17 per month which is about one half of what she was earning she is more than capable of  
18 meeting all their needs without any support.  
19

20 77. The wife was cross-examined about these budgets and what was suggested to her to be  
21 a significant uplift. She agreed that she had initially submitted a budget which showed  
22 the small shortfall noted but said that this did not include legal fees and or the cost of  
23 repairs. She gave evidence that since she started working, she had to spend some  
24 \$10,000.00 on repairs for air conditioning units. She said that there had been inflation  
25 since 2019 when she had set out her expenses as \$8,335.00. She denied claiming “pure  
26 profit” for herself and said that there are emergencies and unforeseen circumstances.  
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2 78. She was challenged about various items on the budgets and the suggestion was put  
3 which she denied that she had changed her budget after reviewing the submissions  
4 received. She also denied that she was just “*massaging the numbers*’ to suit her own  
5 case.

6  
7 79. She was asked to explain the recent purchase of a new SUV motor vehicle at a cost of  
8 over \$47,000.00 and the suggestion was put to her, to which she did not agree, that it  
9 was financially irresponsible for her to make such a purchase at this time. It was said  
10 that she could have obtained a reliable vehicle at a much lower cost. She responded that  
11 she had sought to cut costs by no longer using the services of a nanny. She could  
12 therefore afford a loan against the value of the new vehicle and to do this while she has  
13 income. She said that her old vehicle had become unreliable and had not been  
14 functioning properly. She described the new vehicle as safe for the children and as an  
15 investment for some fifteen years which will hold its value.

16  
17 80. She was asked whether she could not have obtained a loan to pay her legal bills and  
18 she said that she would not be able to obtain such a loan. She denied that she was  
19 effectively asking the husband to pay her legal debts by seeking the payment for arrears  
20 of spousal maintenance.

21  
22 81. As to specific budget items, Counsel for the husband suggested to her that the  
23 supporting evidence provided was ‘woefully inadequate’. For some figures there were  
24 no invoices or receipts. For others such as electricity, she had produced bills for the  
25 months of the year such as August when such bills would be at their highest level. She  
26 had produced estimates for the repair of the fence, but the fence had been repaired by  
27 another entity and she had not produced the actual bill. Her evidence in response to this  
28 was that the final cost was about \$25,000.00 which was about the same as estimated by  
29 the other entities. She agreed that she had not produced documents as to insurance  
30 costs for the current year that the air conditioning issues have been remedied and the  
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2 fence is fully repaired. She said the patio roof still needs to be repaired and requires  
3 annual work.

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5 82. She was asked about her level of spending and justified travelling business class with  
6 the children by saying that there will be no hotel costs at the other end as they will have  
7 free accommodation when they stay with her parents so that she was still within her  
8 allowance.

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10 83. She disagreed with the suggestion that she cannot justify expenses for herself and the  
11 children of more than \$10,000.00. To the suggestion that she could completely survive  
12 on her salary level, she replied that this was not the agreement. She said that the FACO  
13 does not state that if her expenses were covered then spousal maintenance would be  
14 extinguished. She did not accept that she is better off in terms of disposable income  
15 than the husband and gave her view that the amount claimed by her was justified  
16 notwithstanding that the children were in her care for only two weeks per month and  
17 the husband meets all their major expenses and upkeep.

18  
19 84. The two budgets which the wife provided are set out below. Accepting that the car loan  
20 is offset by removing the costs for a nanny, the primary reason for the increase in  
21 expenses appears to be the inclusion of \$2,200.00 per month for legal costs. While there  
22 are small increases for maintenance of the home, utility bills, personal grooming, and  
23 clothing for the children, this is by far the largest monthly increase.

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25 85. I have approached assessment of this budget in a broad way. There is visible room for  
26 savings in some of the items budgeted. For example, there is an item of \$250.00 per  
27 month or \$3,000.00 per year for a chrome book for the children. This appears as a  
28 continuing rather than one off cost. It is also noted that the evidence of the wife in  
29 cross-examination was that her parents had purchased these for the children. She sought  
30 to explain that these may have to be replaced on an annual basis, but this does not

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2 appear to be practical. The figure for groceries has been increased but there is also a  
3 large figure of \$1,000.00 per month for dining out in addition to work lunches of  
4 \$400.00 and lunch for the children. Appreciating and allowing for the standard of living  
5 to which all are accustomed, there is still room for greater economy until circumstances  
6 change. Reductions could be made on the cost of travel in the short term. Utility bills  
7 could be budgeted by reference to the average cost rather than the cost in the height of  
8 summer. There are items such as cleaning supplies which could properly be included  
9 in groceries. I accept also as Counsel for the husband suggested that arrangements can  
10 be made to reduce the monthly payments in respect of the legal debt.

11  
12 86. The reductions suggested below appear to be reasonable and are set out in the  
13 penultimate column.

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15 **TABLE OF WIFE'S EXPENSES**

16

|    | Description                     | December 2021   | December 2021 | March 2022      | March 2022       | Less   | Overlapping |
|----|---------------------------------|-----------------|---------------|-----------------|------------------|--------|-------------|
|    |                                 | Monthly\$       | One-Off \$    | Monthly \$      | One-Off \$       |        |             |
|    | <b>Housing</b>                  |                 |               |                 |                  |        |             |
| 1  | Gardeners                       | 125.00          |               | 125.00          |                  |        | 50.00       |
| 2  | Pest Control                    | 50.00           |               | 50.00           |                  | 25.00  | 10.00       |
| 3  | Air Conditioning                | 100.00          |               | 100.00          |                  | 25.00  | 30.00       |
| 4  | Major Repairs                   |                 | 15,000.00     |                 | <b>25,000.00</b> |        |             |
| 5  | <b>Maintenance of home</b>      | <b>200.00</b>   |               | <b>500.00</b>   |                  | 250.00 | 100.00      |
| 6  | <b>Phone</b>                    | <b>105.00</b>   |               | <b>159.00</b>   |                  |        |             |
| 7  | <b>Water</b>                    | <b>70.00</b>    |               | <b>150.00</b>   |                  | 75.00  | 30.00       |
| 8  | <b>CUC</b>                      | <b>450.00</b>   |               | <b>550.00</b>   |                  | 150.00 | 160.00      |
| 9  | TV/Internet                     | 105.00          |               | 105.00          |                  |        | 42.00       |
| 10 | Cleaning supplies               | 60.00           |               | 60.00           |                  | 60.00  |             |
| 11 | Home insurance                  | 532.80          |               | 532.80          |                  |        | 212.80      |
| 12 | <b>Groceries</b>                | <b>1,000.00</b> |               | <b>1,200.00</b> |                  |        | 480.00      |
| 13 | Dining Out (including children) | 1,000.00        |               | 1,000.00        |                  | 300.00 | 280.00      |
| 14 | <b>Car insurance</b>            | <b>200.00</b>   |               | <b>150.00</b>   |                  | 75.00  | 30.00       |

|    |                                      |                     |                  |                  |                  |                 |                |
|----|--------------------------------------|---------------------|------------------|------------------|------------------|-----------------|----------------|
| 15 | Car maintenance/licensing            | 100.00              |                  | 100.00           |                  |                 | 40.00          |
| 16 | Dog (food,vet)                       | 60.00               |                  |                  |                  |                 |                |
| 17 | Car insurance                        | 200.00              |                  |                  |                  |                 |                |
| 18 | Gas                                  | 250.00              |                  | 250.00           |                  |                 | 100.00         |
|    | <b>Car Loan</b>                      |                     |                  | <b>1,500.00</b>  |                  |                 | (600.00)       |
|    | <b>Personal</b>                      |                     |                  |                  |                  |                 |                |
| 19 | Health Insurance                     | 302.00              |                  | 302.00           |                  |                 |                |
| 20 | Pension                              | 450.00              |                  | 450.00           |                  |                 |                |
| 21 | Work lunch                           | 400.00              |                  | 400.00           |                  |                 |                |
| 22 | <b>Clothing/shoes</b>                | <b>100.00</b>       |                  | <b>150.00</b>    |                  |                 |                |
| 23 | <b>Hair/Nails</b>                    | <b>200.00</b>       |                  | <b>250.00</b>    |                  |                 |                |
| 24 | Medical/Dental                       | 100.00              |                  | 100.00           |                  |                 |                |
| 25 | <b>Medical Prescriptions</b>         |                     |                  | <b>50.00</b>     |                  |                 |                |
|    |                                      | <b>20.00</b>        |                  |                  |                  |                 |                |
| 26 | Vacation (incl. visit family)        | 450.00              |                  | 450.00           |                  | 250.00          |                |
| 27 | Dry cleaning                         | 150.00              |                  | 150.00           |                  | 50.00           |                |
|    | <b>Children</b>                      |                     |                  |                  |                  |                 |                |
| 28 | Lunch money                          | 80.00               |                  | 80.00            |                  |                 | 80.00          |
|    | <b>IT Chromebook</b>                 | <b>250.00</b>       |                  | <b>250.00</b>    |                  | 250.00          |                |
| 29 | <b>Clothes/shoes/toiletries etc.</b> | <b>200.00</b>       |                  | <b>300.00</b>    |                  | 100.00          | 200.00         |
|    | <b>Uniforms</b>                      | <b>35.65</b>        |                  | <b>35.65</b>     |                  |                 | 35.65          |
| 30 | Toys/gifts (incl for parties)        | 250.00              |                  | 250.00           |                  | 50.00           | 200.00         |
| 31 | <del>Nanny</del>                     | <del>1,200.00</del> |                  |                  |                  |                 |                |
| 32 | <del>Nanny Insurance</del>           | <del>198.00</del>   |                  |                  |                  |                 |                |
| 33 | Uninsured Health                     | 50.00               |                  | 50.00            |                  |                 | 50.00          |
| 34 | Vacation (include visit family)      | 583.00              |                  | 583.00           |                  | 383.00          | 200.00         |
| 35 | Legal (including judgment debt)      |                     | 40,000.00        | 2,200.00         |                  | 700.00          |                |
| 36 | Parenting Coordinator                | 400.00              |                  |                  |                  |                 |                |
|    | <b>Total CI\$</b>                    | <b>9,740.80</b>     | <b>55,000.00</b> | <b>12,582.45</b> |                  | <b>2743.00</b>  | <b>2340.45</b> |
|    | <b>Total US\$</b>                    | <b>11,879.03</b>    | <b>67,073.17</b> | <b>15,344.45</b> | <b>25,000.00</b> | <b>3,265.47</b> | <b>2786.25</b> |

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87. With the suggested reductions, the budget of the wife is estimated to be about CI\$9,839.00 or US\$12,079.00. Of this amount, the sum of \$1,500.00 relates to legal debts.

88. Counsel for the husband has helpfully provided a Scott's schedule which shows the overlapping expenses for the children. At the calculation rate of 25% it is suggested that including direct children's expenses at full cost this amounts to US\$2,044.00. I would have thought that the overlapping calculation rate should be higher and closer to 40% given that there are not one but two children and that they reside with the wife for two weeks out of every month. Excluding an overlapping calculation for the loan to purchase the new car, which was not due to start until August 2022, the figure arrived at which is shown in the last column above is US\$2,786.25. This does not include apportionment for one off costs from which the children will benefit such as the repairs to the air conditioning, fencing and the patio roof.

#### INCOME AND EXPENSES OF THE HUSBAND

89. The husband gives his income as US\$300,000.00 per annum and from the directorship mentioned, he receives CAD \$40,000.00 per annum in quarterly payments. In cross-examination he said that in addition to his salary he also receives an annual discretionary bonus of US\$10,000.00. He said that the directorship fees that he receives are assigned to his brother to cover a loan that he is repaying and has not yet discharged.

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2 90. As to his expenses the husband testified that the evidence in his January Affidavit  
3 remains true and accurate to the best of his knowledge except that the schedule of his  
4 monthly expenses has changed slightly. This is because he has taken out a \$100,000.00  
5 loan and consolidated the mortgage, credit card and another debt in respect of legal  
6 expenses overseas. The legal expenses relate to an issue with one of the family trusts.  
7 He said that the wife intervened in this and provided confidential documents to his and  
8  
9 the children's detriment. The first three expense items have been consolidated and  
10 replaced with a payment of US\$1,400.00 per month. Other than this change, his  
11 expenses are the same and he continues to drive a ten-year old car.  
12

13 91. He said that he has continued to pay full child support and all the major expenses for  
14 the children. He says that he has been meeting their needs without issue since 2019. He  
15 paid for school fees of about US\$40,000.00, and all expenses for extra-curricular  
16 activities for three terms in an amount of about \$6,000.00. This will change depending  
17 on the activities being done during a particular school term. He also pays upfront for  
18 counselling and all their health and dental, expenses. He has not been reimbursed for  
19 these by the Trust. In cross-examination he said that he is re-imbursed about  
20 \$15,000.00 for school fees from the Trust when he does get something back. He said  
21 that in addition there were extraordinary expenses which he has had to cover. One child  
22 required expensive surgery because of an abscess in a tooth and had to have two teeth  
23 removed. Both children are attending counselling which he pays for. He said that the  
24 wife had initially agreed to take them to this so that this responsibility was shared but  
25 she has since refused to do so.  
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 2 92. In cross-examination he agreed that he had included spousal support of \$3,200.00 even  
 3 though he had stopped paying it in July 2021. He showed his estimated monthly  
 4 outgoings, as US\$30,351.00. It was put to him that he listed the children’s expenses as  
 5 being something he has to pay and makes no account for distributions that are received  
 6 on their behalf under the Trust that goes towards those school expenses. He agreed  
 7 that he had double counted the child support payment at the bottom of page 12 of the  
 8 hearing bundle in respect of his budget.

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 11 93. He accepted that the wife earned considerably less than he does but said that his  
 12 expenses are high and that she has significantly more than he does at the end of each  
 13 month. As to the distribution by the FACO, he said that he did keep his pension which  
 14 was higher than hers because she had not been working for some time.

15  
 16 94. His monthly income and expenses are shown below. I have included the sum of  
 17 \$10,000.00 which he says that he receives annually as a bonus on a discretionary basis.  
 18

|                       |           |                |
|-----------------------|-----------|----------------|
| <b>Salary US \$</b>   | 25,000.00 |                |
| <b>Directors Fees</b> | 2,667.00  | Paid quarterly |
| <b>Annual Bonus</b>   | 833.33    |                |
| <b>Total</b>          | 28,500.33 |                |

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1 **TABLE OF HUSBAND'S EXPENSES**

2 95. The husband's budget as the hearing date is set out below:-

| <b>Expense</b>  | <b>Monthly Cost CI\$</b>       | <b>Annual Items CI \$</b>  | <b>Notes</b>   |
|---|--------------------------------|--|--|
| <b>Home Expenses</b>  |                                |  |  |
| Rent  | 4,550.00                       |  |  |
| CUC   | 478.00                         |  |  |
| Water   | 159.00                         |  |  |
| Internet/Netflix  | 119.00                         |  |  |
| <b>Children Expenses</b>  |                                |  |  |
| E.F. School   | 1,527.13                       | 18,325.60  |  |
| G.H. School   | 1,173.52                       | 154,082.20   |  |
| Extracurriculars  | 886.00                         | 2,658 Winter. This is one term only.   | 2022 winter ASAs = CI\$1,768 – gymnastics CI\$890 - school |
| Camps (Summer)*<br><br>*Camps and Extracurriculars calculated at CI\$1,200 per month in total below | 1,700.00                       | 3,400 Summer<br><br>2021 Summer = CI\$2,500 for first month<br>CI\$902.44 for second month | Children only did 6 weeks of camp summer                   |
| Health/Dental/Optical   | As needed                      |  |  |
| Toiletries/Prescriptions/Uninsured Health Care  | 50.00                          |  |  |
| Books, Learning Materials, Games, Toys  | 250.00                         |  |  |
| School Uniforms   | 25.00                          |  |  |
| Clothes and Shoes   | 200.00                         |  |  |
| Entertainment/Misc.   | 300.00                         |  |  |
| E.F. Phone  | 30.00                          |  |  |
| Counsellor  | 800.00.00                      | (\$200 each session – bi-weekly sessions for both children                                 |  |
| Helper (pay, gas, and insurance)  | 1,400/100/225.88 =<br>1,725.88 |  | Some additional weeks                                      |
| Life Insurance  | 422.30                         | 5,067.60   |  |
| <b>Personal Expenses</b>  |                                |  |  |

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|--|-----------------------|--|--|
| Work/clothes/shoes/etc.  | 237.61                | 2851.30                                      |  |
| Lunches  | 400.00                |  |  |
| Misc. (dry-cleaning, work related items, personal supplies, pet supplies, gardening supplies, etc..) | 300.00                |  |  |
| Clothes/Entertainment/dining out   | 500.00                |  |  |
| Martial Arts/Gym   | 275.00                |  | \$225 Performance Lab<br>\$50 Gym  |
| Personal Counselling   | 900.00                |  |  |
| Food/supplies  | 1,250.00              |  |  |
| <b>Vehicles</b>  |                       |  |  |
| Vehicles maintenance/licensing   | 378.56                | 2,679.83 – Vehicle 1<br>1,862.91 – Vehicle 2 |  |
| Vehicle 1 insurance  | 62.50                 | 750.00 – Vehicle 1                           |  |
| Vehicle 2 insurance  | 35.42                 | 425.00 – Vehicle 2                           |  |
| Gas  | 200.00                |  |  |
| <b>Debt</b>  |                       |  |  |
| Mortgage – monthly   | 1,312.00              |  | US\$1,600  |
| Loan – monthly   | 902.00                |  | US\$1,100  |
|  |                       |  |  |
| Credit Card  | 990.22                | US\$14,491.01<br>CI\$11,882.63               |  |
| <b>Consolidated debt</b>   | <b>1,400.00</b>       |  |  |
| Personal Loan  | 6,048.79              | CDN\$113,563<br>CI\$72,585.47                | Not included by husband in total below as director fees are being used to pay this |
| Legal costs  | 2,083.33              | CI\$25k+                                     | Over CI\$100k spent to date  |
| Overseas legal costs   | See letter            | See letter                                   | Not included in total below – additional loan needed to pay this.                  |
| <b>Total Expenses</b>  | <b>CI\$25,588.47</b>  |  |  |
| <b>Total in US</b>   | <b>US \$30,462.46</b> |  |  |
| <b>Payment</b>   |                       |  |  |
| Child Support  | 2,952.00              |  | US\$3,600.00   |

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2 96. Excluding income from directors' fees which are put towards repayment of his overseas  
3 debt, his income is US\$25,833.00 per month. His expenses not including maintenance  
4 payments amount to US\$30,462.46 per month. The husband's rental costs have increased  
5 by \$1,000.00 as at November 2022 and mortgage payments are likely to increase. His  
6 expenses are thus likely to be higher.

7  
8 **DISCUSSION**

9 97. In summary, reviewing each of the relevant factors in turn, the first consideration is the  
10 welfare of the two children of the marriage. Their needs require that they have adequate  
11 housing to be provided by both parties given the shared residence order, educational  
12 and related needs, and general maintenance.

13  
14 98. The relative income position of the parties is that the wife was earning about 40%<sup>14</sup> of  
15 what the husband earns. Counsel on behalf of the husband submits that the wife's  
16 income though less is to be considered against the background that she has no mortgage  
17 or rental costs in contrast to the husband.

18  
19 99. In so far as the financial needs, obligations and responsibilities of the husband are  
20 concerned, he has rental and mortgage expenses which have increased or will increase  
21 in the future. He must maintain his new household to include housing and providing  
22 for the children for two weeks per month. He has several debts. His expenses appear to  
23 be more than his income, however as noted above I have found that he does have access  
24 to additional funds under the Trust and of significance, he has been able to meet the  
25 maintenance payments for the past three years.

26  
27 100. The wife has a home free and clear of a mortgage. This is clearly suitable to the needs  
28 of the children and to her needs. This forms the bulk of her capital assets. Her savings  
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<sup>14</sup> 40.6%

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and contingency funds are limited. The capacity to build on this does not appear to be extensive. Savings will likely dwindle in the face of contingencies.

101. The family enjoyed a high standard of living in part funded by the wife's parents. The wife is accustomed to travelling on holidays without regard to economy.

102. Both parties are in their mid-years. This was a marriage of some twelve years. It was a lengthy marriage. The wife cared for the children and worked intermittently from the home while the husband continued in his successful career. Such were his earnings that the family was able to live mainly on them for a considerable period of time. No doubt the husband was able to devote time to his work in part because the wife was then the primary carer for the children.

103. There is no indication that there are health issues which may affect their earning potential. The wife has had difficulty obtaining long term employment and contends that her recent redundancy is in part due to the stress of the continuing issues between them. The husband denies any responsibility for this and each blames the other for communication issues.

104. Each party has contributed to the welfare of the family and are likely to continue to do so for the foreseeable future. The husband has been the main financial provider and ensures that the major expenses of the children are paid. The wife has cared for the children in the home. It was evident in the course of the hearing that both parties deeply love the children and wish the best for them.

105. There are no conduct issues which rise to the level such that it would be inequitable to disregard it.

106. In the context of these circumstances, the first issue is whether there should be a variation in spousal maintenance and if so in what sum. Counsel for the husband points

1 to the wife's ability to meet major repair expenses, to accumulate savings of  
2 \$40,000.00, to purchase first class and business class air fares of about \$10,000.00 over  
3 the summer and to purchase a new luxury vehicle. Counsel submits that all these factors  
4 indicate that the wife has successfully transitioned to financial independence and that  
5 it is just and reasonable that spousal maintenance should cease.  
6

7 107. As to any compensatory element of the spousal maintenance award, Counsel submits  
8 that the terms of the FACO suggest otherwise. It was meant to be no more than a stop  
9 gap until the wife secured employment. The wife has already been well compensated  
10 in a capital sense on the divorce. She has only one large debt which is outstanding  
11 which is legal fees. This is an amount which could be paid off by her from her savings  
12 if she chose to do so. While the wife was firm in her view that the fact that the  
13 employment was initially on probation meant that spousal maintenance should have  
14 continued until the employment was permanent, Counsel for the husband submitted  
15 that the FACO provided for "any changes in her employment circumstances". It did  
16 not refer to permanent employment.  
17

18 108. I accept the submissions of Counsel for the husband in part. The difficulty that I have  
19 in accepting the position put forward by the wife is that she was earning income at a  
20 substantial level during this period, probation or not. While I do understand the concern  
21 as to the uncertainty about the future, she received monthly income consistently for  
22 over a year.  
23

24 109. Counsel on behalf of the wife submitted in response to the submissions made on behalf  
25 of the husband that the order for spousal maintenance must have included an element  
26 of compensation. While it is correct said Counsel that the husband received a net lower  
27 amount in division of assets than the wife (\$845,000.00 less the value of the outstanding  
28 mortgage of \$220,000.00), he also received his pension entitlement which he agreed in  
29 evidence would have been substantially more than the wife's. Counsel also submitted  
30 that there is no evidence that the wife has a trust fund of her own, the level of her

1 estimated monthly expenses must be viewed in the context of inflation and the fact that  
2 the costs of all items are increasing.

3  
4 110. I have considered all the evidence and submissions with respect to spousal  
5 maintenance. I accept that it is fair and reasonable that spousal maintenance be  
6 reviewed given the change in employment circumstances of the wife. The husband  
7 refers to the budget of the wife and urges that from June 2021 she was able to meet her  
8 expenses with only a small shortfall. He thus says that spousal maintenance should  
9 cease as from that date.

10  
11 111. Given my conclusion above that this is a case of relationship disadvantage, it is also  
12 my view that an element of compensation is necessary and that the needs of the wife  
13 must be generously interpreted. The assets available for sharing were limited and it is  
14 evident that the husband did his best and made every effort to be as fair as is possible  
15 to the wife. He is to be commended for this. However, ten years out of the regular or  
16 mainstream work force is a significant setback. The husband has reached the level of  
17 a partner. The wife has not. They are in the same profession. In my view, it is difficult  
18 to accept the proposition that there was adequate compensation by the terms of the  
19 FACO. This is not a case where large sums were available for distribution.

20  
21 112. Additionally, the husband has accepted that his pension funds were higher than the  
22 wife's at the time of the FACO and understandably so. Of note also is that once the  
23 wife commenced employment, instead of being able to build her savings, she was faced  
24 with multiple house and property repairs which were needed following the passing of  
25 Tropical Storm Grace and from general maintenance required to the FMH. While she  
26 has been able to build some savings this would not have been at the anticipated level  
27 due to this spending.

28  
29 113. In the cited case of **VB v. JP**, Sir Mark Potter, President of the Family Division stated:  
30 *“Lord Nicholls has made clear, not only that there is nothing in the statutory ancillary*  
31 *relief provisions to suggest that periodical payments ordered should be limited to*

1  
2 *payments needed for maintenance (see paragraph 38 above), but also that 'needs' or*  
3 *'reasonable requirements' are no longer a determinative or limiting factor in the search*  
4 *for fairness. Baroness Hale has also made clear (see paragraph 40 above) that a wife's*  
5 *budget may properly contain a margin for savings and contingencies, quite apart from*  
6 *questions of compensation.”<sup>15</sup>*  
7

8 114. The learned Judge approached the matter having regard to the element of relationship  
9 -generated disadvantage by taking a generous approach to the wife’s needs and  
10 declining to calculate or quantify a specific premium above needs. Having considered  
11 all the circumstances of the instant case and the submissions made, I consider that it is  
12 appropriate that spousal maintenance by way of periodical payments continue for a  
13 period of six months (June to November 2021), following the commencement of the  
14 wife’s employment. This would amount to \$19,200.00 and would provide the wife with  
15 an amount for savings and contingencies and go some very small way towards the  
16 compensatory element identified above. I accept that beyond this, it is just and  
17 reasonable that spousal maintenance should cease.  
18

19 115. With respect to child maintenance, Counsel for the husband relies on the case of *AL v.*  
20 *NL*<sup>16</sup> in which Williams J. stated:  
21

22 *“It is important, and worth repeating, that the Court must have in mind that,*  
23 *although the father has a much greater income and income capacity than the*  
24 *mother, he has been paying and will continue to pay the substantial expenses that*  
25 *are required to meet the majority of the wider needs of the children. It is also right*  
26 *to have in mind that the mother also has a duty to arrange her finances in such a*  
27 *way so that she also financially contributes to the meeting of the children’s needs.”*  
28

29 116. It is submitted by Counsel for the husband that the trust benefits from the husband’s  
30 family are largely irrelevant to the issues requiring determination because there has  
31 been no material change in circumstances in relation to this. The existence of these  
32 benefits has been known by both parties since 2011 and in particular at the time of the

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<sup>15</sup> Paragraph 81

<sup>16</sup> Grand Court, unreported 21<sup>st</sup> February 2020

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FACO. The husband has and continues to assume responsibility for the expenses of the children. Further, the benefits are discretionary in nature and cannot be relied on as regular income. Counsel also notes that fifty percent of these benefits are to be invested on behalf of the children.

117. Counsel submitted that even if the Court were to consider that the husband has a higher income because of trust benefits, a comparative schedule of the expenses of both shows that the expenses of the husband are significantly higher and any disparity between the two is grossly overstated. Counsel provides a schedule of the two budgets and suggests that there is no actual need or shortfall in the wife's budget such as to merit any maintenance orders at all. Counsel reminded the Court of the accepted general principle with respect to child maintenance. It is meant to be for the children and not for the benefit of the custodial party.

118. The submissions of Counsel for the husband are accepted in part. The husband suggests that the wife has what is now a million-dollar property and less debt, but he too has a significant property in his ownership of development land. He points to his high mortgage and rental costs which the wife does not have and says that his expenses are higher than hers and his disposable income less. There is evidence of a pattern of receipt of Trust funds over the years of marriage. I think the wife is right to point out that although the husband says that he bears the majors costs for the children and should therefore contribute much less to their maintenance, there is every indication that he is subsequently reimbursed for some part of these costs by an independent source. He has made the choice to invest all funds received on their behalf and not to use one half for their ongoing expenses. This is commendable but it does mean that he cannot say that these funds do not exist. They are at least available as a contingency.

119. By my calculations the combined income of the parties is \$39,750.00 per month of which the wife earns 28%. Her monthly income was about 40% of his. Both parents

1  
2 have the responsibility to contribute towards the maintenance of the children in line  
3 with their ability to do so. In accordance with generally accepted principles, it is fair  
4 and reasonable that given the disparity in parental income that the husband, the higher  
5 wage earner should contribute more towards the maintenance for the children. I do not  
6 accept as the husband suggests that this means that the wife would be profiting by  
7 ongoing child maintenance. I have considered the suggestion of Counsel for the wife  
8 that any variation in child maintenance should be limited to the proportionate income  
9 and be in the range of about 25%. However, this is not a case where the children reside  
10 entirely with one party. In my view it is proper to consider that while some educational  
11 expenses may be reimbursed at a later date and some additional funds are received, the  
12 husband does have his own child maintenance costs for two weeks of each month.  
13 There should be some upward adjustment for this. I consider that it is fair and  
14 reasonable that during the period of employment of the wife that the child maintenance  
15 be varied by one third from US\$3,600.00 per month to US\$2,400.00 per month. This  
16 would be \$1,200.00 per month per child. This would amount to about nine percent of  
17 the husband's salary and represents a fair proportion of his available income.  
18 Significantly this is his salary calculated as including only the bonus payment and not  
19 including directors' fees which go towards his overseas debt and excluding the Trust  
20 payment which he denies receiving on a regular basis.

21  
22 120. At the end of July 2022, the wife's position was made redundant. She received three  
23 months' salary by way of severance payment on the 7<sup>th</sup> September 2022,  
24 (US\$37,000.00). This includes for the three months' notice period to December 2022.  
25 The husband has agreed to meet all the major expenses for the children and to continue  
26 to pay the sum of US\$3,600.00 per month by way of child maintenance starting after  
27 the expiry of the three-month notice period. I record my concern about what may likely  
28 be the dwindling resources of the wife in the absence of any spousal payments and the  
29 possible impact upon the children of decreasing resources while the wife searches for

1 alternative employment. In the past securing employment took some considerable time.  
2 It is thus hoped that savings will be carefully conserved.

3  
4 121. With respect to the wife's future employment, orders are sought for the production of  
5 any new employment contract and disclosure of her savings and income sources. I  
6 accept that early disclosure of this may shorten matters considerably in the future.

7

8 **APPLICATION FOR PROTECTION ORDER**

9

10 122. The Order of 5<sup>th</sup> May 2021 in part prohibited the wife from:-

11 *“Intimidating, harassing, pestering, annoying or otherwise engaging or*  
12 *threatening to engage in conduct which would constitute domestic violence towards*  
13 *the Petitioner. For the avoidance of doubt, this includes but is not limited to being*  
14 *prohibited from contacting the Petitioner’s employer, defaming the Petitioner*  
15 *and/or using the Petitioner’s family, helper or other third parties to engage in the*  
16 *aforementioned conduct.*

17

18 *Communicating with the Petitioner by any means either directly or indirectly save*  
19 *in relation to the children of the marriage and financial arrangements;*

20

21 *Approaching or coming within 150 feet of the Petitioner save for the purposes of*  
22 *attending events for or picking-up and dropping off of the children of the*  
23 *marriage.”*

24

25 123. The husband refers to the continuation of threatening, and harassing communication  
26 from the wife and seeks the restoration of the Order. He has exhibited some  
27 correspondence to his January Affidavit. Some of these date back to 2019. It is fair to  
28 say that from the husbands' perspective, these contain threats by the wife to jeopardize  
29 his employment which are still deeply emotionally disturbing to him. He says that over  
30 the years some twenty cease-and-desist letters have been sent to the wife. Twice he  
31 took two of the letters to the Police to make a complaint. This resulted in the arrest of

1 the wife. He has sought protection orders three times previously. This is the fourth  
2 time that he is making such an application.

3  
4 124. For the purpose of this application, I think it right to focus on the more recent material.  
5 I do this bearing in mind the evidence of the wife, that she has changed and much of  
6 this is now behind her. In the course of this hearing, she offered an undertaking for a  
7 three-month period in lieu of a protection order.

8  
9 125. The husband's evidence is that there have been further incidents since April 2021.  
10 Some emails were sent in October 2021 by the wife to the Trustees. At that time the  
11 Protection Order was still in place. There was a cease-and-desist letter sent following  
12 the emails. The documentary evidence is that in response to a letter dated 16<sup>th</sup> October  
13 2021 alleging harassing behavior, the wife's attorney responded on 18<sup>th</sup> October 2021  
14 with an undertaking that the wife would refrain from breaching the terms of the Order.  
15 Nevertheless, by the 25<sup>th</sup> October 2021, further communication had been sent by the  
16 wife which was described as harassing. On the 26<sup>th</sup> October 2021, her attorney wrote:-

17  
18 *“ ...my client voluntarily told me what she had done and had expressed her*  
19 *remorse. She said that she had addressed same with her counsellor and*  
20 *apologised to your client.”*

21  
22  
23 126. On the 4<sup>th</sup> December 2021, the wife sent a message to the husband. It stated in part:

24 *“ Pls have kids call me tomo they didn't tonight – went out tonight as I can – stayed*  
25 *hidden as usual as I need to keep my rep and as I care about my image and who I*  
26 *am and what I am – the people at your [place of work] though holy S...*  
27 *out.of.control. – you are a Partner and I would not want to see that s... under my*  
28 *name – never! Pure embarrassment and you are a Partner to them – just saying I*  
29 *mean it was just – I couldn't even watch, I mean I don't refrain because I have to*  
30 *but because I have a certain degree of class and it matters, because I value myself*  
31 *- as a Partner I think you should value the image your employees represent.”*

32  
33  

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230124 - FAM 287 of 2018: AB v.CD. Coram: Richards J. K.C. - Judgment.

1 127. The husband also states that on the 16<sup>th</sup> March 2022, there was a further email  
2 communication sent by the wife to the Trustees. He became aware of it when the  
3 Trustees wrote to tell him about it. He says that it is not true that things have vastly  
4 improved from before in terms of her conduct. The day before this hearing began, his  
5 brother who is overseas was signed up to receive emails from the Judicial.ky web site.  
6 He assumes that this was done by the wife.

7  
8  
9 128. In cross-examination of the husband, it was suggested to him that the email  
10 communication with the Trustees in March of 2022 is not abusive or harassing, that the  
11 wife was doing no more than asking for information about the children's entitlements.  
12 This was an entirely reasonable and proportionate request for information which she is  
13 entitled to make.

14  
15 129. The correspondence to the Trustees included the following at the fourth to last  
16 paragraph:

17 *“The Court wants disclosure, want to know, are you paying these*  
18 *distributions. How much are my children entitled to. Has there ever been*  
19 *any discrimination. Why is he claiming our children's allowances as*  
20 *income? Is he even asking for reimbursements or basically the .... from the*  
21 *trust from what the Trust is entitled to give. It's not his personal assets.*  
22 *These are my children's income and entitlement”.*

23  
24 130. The wife denied sending any harassing email to the Trustees. She said that she did not  
25 threaten anything. She was told to ask for information which she did.

26  
27 131. In cross-examination the husband was also asked about concerns which he had  
28 expressed about an article in which comments from the wife were featured. He agreed  
29 that he had not been mentioned at all in the article but explained that he responded  
30 because he feared that the wife would have made further statements and referred to  
31 him.

32

- 1       132. The husband stated that this harassing behavior has impacted him personally. He has  
2       anxiety issues, and it affects his sleep. The wife made serious unfounded allegation  
3       against him relative to abusing the children which have been disproved, but his  
4       relationships with friends have suffered and people continue to look askance at him.  
5       He says that his name is tarnished throughout the community. This is something that  
6       he has to live with for the rest of his life. His further evidence is in part that he has  
7       reasonable cause to believe that the wife makes efforts to speak in person to his work  
8       colleagues about him.  
9
- 10      133. With respect to the application for a protection order, Counsel for the wife submitted that  
11      the wife has accepted a number of orders previously and that the historic behavior was  
12      inappropriate. It is accepted that the October 2021 emails were inappropriate in tone and  
13      number. Counsel said that here has been a marked reduction if not cessation in harassing  
14      conduct. The communications relied on include the wife seeking information to which she  
15      is entitled. Counsel said also that the wife's behavior does not exist in a vacuum and that  
16      the husband has exhibited a tendency to absolutist thinking.  
17
- 18      134. Had the evidence remained as it was in May 2022, I would have been less inclined to  
19      conclude that a further order is necessary. Instead, it is fair to say that almost every month  
20      through to November 2022, there have been emails from the wife which appear to fall  
21      within the terms of the *Act*. In his October 2022 Affidavit, the husband produced emails  
22      dated June and September 2022. In a number of these the wife used unpleasant language  
23      in relation to the children and the helper. Some of these implicitly blame the husband for  
24      the children's behavior. The husband stated that in June 2022 the wife complained about  
25      him to the police in relation to child safety concerns. This was a false complaint. In July  
26      2022 the wife complained about him to the Immigration department. This was about only  
27      having two rather than the three passports for the children. This says the husband was  
28      unwarranted given that the two passports which she had, record the children's rights of  
29      residence in the Cayman Islands.  
30

1  
2 135. One of the September emails is as follows:-

3  
4 *Saturday, 3 September 2022 at 12:09am*

5  
6 *“There are a couple of kids that [EF] wants whose parents wont do destination*  
7 *imagination with [EF] who your nanny hangs out with their nannies and as a result*  
8 *they are silent – only them who are hesitating and their parents have confirmed –*  
9 *only any idiot can deduct hat – in the nicest way tell her to shut the f... up and*  
10 *control her urge to gossip-as it effects the kids and I have heard this through*  
11 *parents and nannies that she is gossip central, control that, how does it help the*  
12 *kids. The last nanny I had said she talks so much s... about everyone and the kids*  
13 *and she needs to shut the f... up or get rid of her.”*  
14

15 136. In her October Affidavit, the wife explains that emails sent on the 3<sup>rd</sup> and 4<sup>th</sup> September  
16 2022 were in an attempt to protect her children from the hurtful exclusion from certain  
17 households. She accepts that her language was not ladylike but says that no harassment  
18 was intended.

19  
20 137. In October and November 2022, the husband complained about receiving further  
21 correspondence of a harassing nature. One in October<sup>17</sup> refers to what is said to be  
22 certain personal inadequacies of the husband and contrasts his inadequacies to her own  
23 adequacies.

24  
25 138. I am satisfied that despite the best intentions of the wife communications continue to  
26 be sent by her which caused or are intended to cause emotional or psychological abuse  
27 to the husband. These are communications which are intended to harass or undermine  
28 his emotional or mental wellbeing. Having had the opportunity to observe him as he  
29 gave evidence and to read and hear his responses, I am satisfied that he is deeply  
30 emotionally adversely affected by continued communication of this nature. Given the  
31 conduct of the wife in respect of the false allegations leveled against the husband briefly  
32 referenced above and the communications sent by her in 2019, 2020 continuing into

---

<sup>17</sup> 17<sup>th</sup> October 2022 at 8:49pm

1           2021 and 2022, I am satisfied under both limbs of s.5 of the Act. This is as to the  
2           commission of acts of domestic violence, that such acts are likely to be repeated and  
3           that having regard to all the circumstances, an order is necessary for the protection of  
4           the husband. Consequently, a further protection order is made as in previous terms for  
5           a further period of one year from the date of this judgment.  
6

7           **CONCLUSIONS**

8           139. The conclusions are thus as follows:-  
9

- 10           i) Paragraph 13 of the FACO is varied such that spousal maintenance is to be  
11           paid for a period of six months following the commencement of  
12           employment by the wife, June to November 2021 and thereafter to cease.  
13
- 14           ii) Child Maintenance is varied during the period June to December 2022 from  
15           \$3,600.00 to \$2,400.00 returning to the level of \$3,600.00 per month  
16           thereafter and continuing until varied by agreement of the parties or further  
17           order of the Court.  
18
- 19           iii) Within 30 days of the wife securing further employment, she is to provide  
20           to the husband through his Counsel a copy of her employment contract  
21           evidencing her level of income. The parties are to seek to agree a  
22           proportionate variation in child maintenance.  
23
- 24           iv) A protection order is made under s.5 of the *Protection from Domestic*  
25           *Violence Act* for a period of one year form the date of this judgment.  
26
- 27           v) Each party has liberty to apply.  
28  
29  
30  
31

1

2 140. Should the parties wish to make an application for costs, they may do so within 14 days of  
3 the date of the perfected judgment.

4

5 Dated this the 24<sup>th</sup> day of January 2023



6

7 Honourable Justice Cheryll Richards K.C.  
8 Judge of the Grand Court