

## **Brief summary of Canadian Hague win cases 2022-2024--L Burns--28May2025**

**Droit de la famille — 111062 2011 QCCA 729--** <https://canlii.ca/t/fl24x>—father fabricated evidence for criminal charges against mother to obtain custody of child in Mexico and engaged in conjugal violence and homophobic treatment of mother along w her family

Dismissed appeal of judgment of the Superior Court, District of Montréal (the Honourable Madam Justice Eva Petras), rendered on September 17, 2010 refusing to return the child to Mexico without costs.

[6] Thus, the exception to the return of the child provided at s. 21(2) of the Act, which corresponds to s. 13(b) of the Hague Convention as interpreted in *Pollastro v. Pollastro*, (1999), 43 O.R. (3d) 485 (Ont. C.A.), applies. In other words, if returned to her habitual place of residence, there is a grave risk that the child would be exposed to an intolerable situation.

NOTE: s. 21(2) of the Act refers to Quebec's legislation internalisation of the Hague Convention ratified by Canada.

Trial Judge: Madam Justice Eva Petras

Mother's Lawyers: Me Cory Verbauwhede **SAINT-PIERRE GRENIER** Me Peter Shams

***Harley v. Harley*, 2023 ONSC 2563--**<https://canlii.ca/t/jx24w>--mother and child captives in home bakery case w armchair surveillance father subjecting child "to a wildly excessive array of domestic chores"

[153] For the reasons that follow, I have determined that the respondent has met the high threshold required and established that there is grave risk that returning the child would expose him to physical or psychological harm and place him in an intolerable situation.

[234] For the reasons that follow, I find that the respondent has satisfied this onus on a balance of probabilities. (of the Second Exception - Child of Sufficient Age and Maturity Objects to being Returned - (Article 13(2))

Trial Judge: King J.

Mother's Lawyer: Sarah A. Weisman

***J.C. v. S.K.*, 2024 ONCJ 110—** <https://canlii.ca/t/k321f>--father deceived much younger mother into rel'shp, isolated her in diff town and starved her and child case

[1] ...father's application seeking the return of the parties' child to Portugal pursuant to the Hague Convention. [2] The child was born on [...], 2020 in Portugal, and lived solely in Portugal until she was removed by her mother to Canada on June 7, 2022. She was 1½ years old at the time of her removal. She is now 3 years old.

Judge finds at Para [5]:

- (a) While the child was habitually resident in Portugal at time of her removal, the father did not have rights of custody that rendered the removal wrongful and thus the father's Hague Application should be dismissed.
- (b) Even if the removal had been wrongful, the father's Hague Application should still be dismissed as two of the exceptions to mandatory return apply:
  - (i) The father acquiesced to the removal when his first Hague application was dismissed as abandoned and he waited 7 months to commence the within Hague application; and
  - (i) There is a grave risk that returning the child to Portugal would place the child in an intolerable situation as a result of family violence in the form of a pattern of coercive and controlling behaviour by the father against the mother.

See analysis of grave risk at [69]-[73] and in particular:

[71] Many Hague cases about grave risk are about family violence. And the violence does not have to be directed at the child. The risk of physical assaults on, psychological harm to a child.<sup>10</sup>

[72] Family violence includes a pattern of coercive and controlling behaviour. As the Court of Appeal for Ontario pointed out in *Zafar v. Azeem*,<sup>11</sup> new sections were added in 2021 to both the Divorce Act<sup>12</sup> and the Children's Law Reform Act<sup>13</sup> to define family violence, and to include in that definition conduct that constitutes a pattern of coercive and controlling behaviour. While *Zafar v. Azeem* was not a Hague case, the Court reiterated that even under the more stringent standard of the Hague Convention, risk of harm to a caregiver constitutes risk of harm to a child.

[73] The father denied all of the mother's allegations of family violence. However, I accept her evidence as it was supported by written communication between the parties; photographs; and the evidence of her sister and brother. The following is a summary of the pattern of coercive and controlling behaviour exhibited by the father against the mother in the form of manipulation, financial control, physical control and threats not to contact the authorities.

[97] The mother had no friends, family or support in Portugal. She did not speak Portuguese. She was isolated with the child in a small village which was two hours by bus from Porto where

the father lived. The father told her that if she were to contact the authorities, she and the child would “regret it”. As a result of these threats, she was too fearful and unable to contact the proper authorities to report the abuse.

[101] I find that the child would be at grave risk of psychological harm or would otherwise be placed in an intolerable situation if returned to Portugal as a result of the pattern of coercive and controlling behaviour exhibited by the father against the mother, which includes manipulating the mother; controlling her financially and not providing enough money to adequately clothe and feed her and the child; assaulting her in the presence of the child; and influencing the mother against contacting the authorities in Portugal as she had no legal status there.

Trial Judge: M.B. Pawagji J.

Listed as Mother’s ‘Agent’: Sophie Dhami

***Nacoulma v. Ajiayi*, 2022 ONSC 5819— <https://canlii.ca/t/jtc1g>**--Some of accepted facts: Father 48 yr old US/Burkina Faso dual citizen, mother 31 yr old Nigerian citizen who immigrated to the United States in 2007. Father self-emp’d mechanic and mother no status after stopped school. The parties lived together with the children in the father’s home in Flint until their separation. At the time of the separation, the children were 3 years, 2 years and seven months old. Parties never married and on DOS (Aug 21/18) mother left family home with children, entered Canada and made refugee applications for self and children. The father obtained custody on ex parte basis and an order that the children be returned to Michigan forthwith. Father’s appeal from the December 20, 2019 trial decision of O’Connell J. of the Ontario Court of Justice (OCJ) dismissed.

*The father did not have, nor was he exercising rights of, custody at the time of removal. The removal [of the children by the mother] cannot be seen as “wrongful” within the meaning of the Hague Convention. The trial judge held, in the alternative, that if she was wrong and the father was exercising rights of custody that triggered a wrongful removal, she would have found that there is a grave risk that returning the children to Michigan would expose them to physical or psychological harm or otherwise place them in an intolerable situation. The court therefore denied the father’s application that the children be returned to Michigan based on the exceptions under Article 3 and Article 13(b) of the Hague Convention. Mother awarded costs.*

Appeal Judge: Pinto J.

Mother’s Appeal Lawyer (probably also Trial lawyer): Tricia Simon

***Zafar v. Azeem*, 2024 ONCA 15 <https://canlii.ca/t/k264f>**

*In a case where the parties' conflicting accounts of what occurred were presented only via untested affidavit evidence and where the father's affidavit evidence was commissioned by his father, the Motion J erred and denied the mother procedural fairness and natural justice in deciding the child was habitually resident in Pakistan and faced no risk in ordering her return there. Also erred by ultimately failing to consider whether returning child to Pakistan was in her best interests. Since Canada did not recognize Pakistan as a signatory to the Hague Convention, decided under CLRA where the threshold for engaging the serious harm exception is less stringent – it requires only the risk that the return would cause “serious harm” to a child rather than an analysis of whether returning them would place them in “an intolerable situation” and not with same strict timeline. S. 22 CLRA re habitual residence jurisd'n and s. 23 re jurisd'n in circ's of serious harm. [84] The motion judge erred in concluding that violence towards the mother was irrelevant to the risk of serious harm to A. See paras 81 & 82 for VAW alleg'ns.*

Successful appeal of order of Justice Tami Waters, ONSCJ Ottawa

Mother's Appeal Lawyers: Michael J. Stangarone and Tiffany Guo