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Maarif v. El Fazazi, 2026 ONSC 977

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CITATION: *Maarif v. El Fazazi* 2026 ONSC 977
COURT FILE NO.: FC-25-1541
DATE: 2026/02/20

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
Karim Maarif	Applicant	Fahmida Akhter and Anthony Macri, Counsel for the Applicant
– and –		
Jihade El Fazazi	Respondent	Concillia Muonde, Counsel for the Accused
		Deborah Bennett, Counsel for the Office of the Children's Lawyer
		HEARD: January 27, 28, 29, 30 and 31 and February 2, 3, 4 and 9, 2026 at Ottawa via Teleconference

REASONS FOR JUDGMENT

[1] The respondent mother, Jihade El Fazazi brought Sabrine Maarif, who is five years old, to Ottawa, Canada, from Morocco on March 19, 2025.

[2] The applicant father, Karim Maarif, has brought a motion under the *Hague Convention* requesting the return of Sabrine, whom he alleges was wrongfully removed by the mother, to Morocco.

[3] For the reasons articulated below, the court orders the return of Sabrine to Morocco.

Background Facts

[4] The parties met when the mother was completing her first year in dentistry school in 2013. She was 18 years old, and the father was 31 years old and previously divorced.

[5] They dated for four years and were married on January 2, 2017, in Morocco.

[6] Sabrine was born on September 6, 2020, in Rabat, Morocco. Before coming to Canada, Sabrine lived in various cities in Morocco.

[7] Sabrine has a Moroccan passport and was attending a private international kindergarten and receiving a high-quality education.

[8] The parties were divorced by mutual consent on July 20, 2022, after signing a Mutual Divorce Agreement dated July 18, 2022.

[9] The court heard from three experts who explained the meaning of custody and guardianship according to the Moroccan Family Code, which is referred to as "Moudawana". In Morocco, there are two types of parental rights granted after divorce. The term custody, or "hadana", means "day-to-day care or primary residence" and legal guardianship, or "wilaya", means decision-making.

[10] The divorce judgment dated October 12, 2022, granted the mother custody of Sabrine, and the father access every Sunday from 9 a.m. to 6 p.m. and on the second half of all school, religious and national holidays.

[11] Although not mentioned in the divorce judgment, all the legal experts agreed that, by operation of law, the father, as the non-custodial parent, retained the rights of legal guardianship. This would include the right to supervise the upbringing of the child, the right of daily educational follow-up and the right to request the revocation of custody.

[12] The right to legal guardianship also means that the mother must obtain the father's consent for key administrative actions, such as school enrolment or international travel, unless a court order states otherwise.

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[13] As part of the amicable divorce agreement, the mother waived her statutory pecuniary rights, and the father agreed to pay a monthly child support allowance for Sabrine and her school tuition fees.

[14] After the divorce, both parties began lodging complaints and initiated proceedings against each other in the legal system.

[15] Leading up to the removal of Sabrine from Morocco, the father had lodged a few complaints alleging that the mother was denying access to the child. The mother concealed the child's whereabouts from September 2024 onwards and would not disclose her address to the father.

[16] The child did not attend school in September 2024, and the father's last in-person contact with Sabrine was August 30, 2024.

[17] On April 2, 2025, the father pursued a border closure application, which the mother's lawyer opposed on the basis that she could not legally travel outside the country without his consent. Unbeknownst to him, by that time, the mother had already left with the child,

[18] The lower court in Morocco confirmed her repeated access order violations on February 3, 2025, and revoked the mother's custody on this basis on May 19, 2025. The appeal court is set to hear the mother's appeal of this order on February 2, 2026.

[19] At first, the father thought the child had been taken to the United States but, with the assistance of the American and Canadian authorities, he was informed that Sabrine was residing in Ottawa.

[20] The mother has Canadian permanent residency, and the child is on a temporary visitor authorization. She is sponsoring the child.

[21] Since her arrival in Ontario in March 2025, the father has had only one contact with Sabrine by way of a video conference.

Litigation History

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[22] On August 21, 2025, the father commenced this application seeking the return of the child pursuant to Article 12 of the *Hague Convention on the Civil Aspects of International Child Abduction*, Can. T.S. 1983 No. 35.

[23] The mother was served on August 29, 2025, and filed an Answer dated October 24, 2025.

[24] A Reply was filed by the father.

[25] In accordance with Rule 37.2(5) of the *Family Law Rules*, O. Reg. 114/99, which states that the first meeting of the parties with a judge shall be held not later than seven days after the case is commenced, the court attempted to schedule a first meeting with a judge in this matter for September 4, 2025.

[26] The applicant's counsel indicated that she was not informed of the meeting. The OCL had not yet been provided with a copy of the application.

[27] The parties attended a first appearance in this matter on October 8, 2025, and they were given a case conference date for January 16, 2026.

[28] On October 27, 2025, father's counsel contacted the family court counter asking to vacate the case conference date and requested an expedited virtual focused hearing.

[29] Justice Naik scheduled an appearance before her on October 31, 2025, and dealt with timelines and filing of affidavit materials. She held two further case management hearings on November 6 and 17, 2025. The focused hearing dates for this application were set for three days commencing January 26, 2026, with timelines for examination in chief and cross-examination of witnesses.

[30] The trial commenced on January 26, 2026, and the parties embarked on one and a half days of *voir dire* contesting the admissibility of documents filed by the father. Despite strict timelines imposed by Justice Naik, the parties requested further time for cross-examination and, at the court's discretion, were granted more time. Instead of three days, the trial took eight days to complete. The cross-examinations of the witnesses were extended, and the court heard from three expert witnesses.

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[31] The court heard final submissions on February 4 and 9, 2026.

Father's Position

[32] The father submits that the child's habitual residence was Morocco from birth until her unilateral and unauthorized removal by the mother in March 2025.

[33] Under Moroccan law, the father submits that the mother had the day-to-day care, and the father had legal guardianship, which carries the major decision-making responsibilities including consent to travel.

[34] His expert on family law in Morocco confirmed that the mother required the father's consent or a court order to remove Sabrine internationally.

[35] He argues that, under Article 5(a) of the *Hague Convention*, he has custodial rights and the right to determine the child's place of residence across borders.

[36] The father submits that the mother relocated the child for the sole purpose of being with her partner, whom she has been with since November 2022. In her original pleadings, she claimed she had judicial authorization to leave with the child but in her affidavit, she reframed the departure alleging that it was because of the father's surveillance and harassment.

[37] He argues that the court should draw an adverse inference as the mother failed to respond to the father's questions in Form 20. He had request details of the process and timing of the immigration application and of her cohabitation with her new partner.

[38] He also claims that she failed to meet the rigorous threshold set out in Article 13(b) of the *Hague Convention.*

[39] Regarding the OCL's position that the child wishes to remain in Canada, the father submits that little weight should be placed on the wishes and preferences of a five-year-old child.

[40] Finally, he claims that if the child is not returned, there would be foreseeable harm to her relationship with her father and the bond with her father would be severed.

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Mother's Position

[41] The mother alleges that the father was abusive and exerted control over her. Throughout their relationship and marriage and following divorce, the father has shown a pattern of abusive behaviour and coercive control.

[42] The mother argues that the father cannot invoke the *Hague Convention* as he was not exercising custody rights. She also relies on Article 13(b) of the *Hague Convention*, indicating a return of the child to Morocco would give rise to a grave risk given the incident which occurred in September 2023, where she states that the father struck the child leaving a bruise on her eye. The father denies this incident and he has appealed his conviction.

[43] She submits that the Moroccan system is a traditional system that favours the father and that women are second class citizens. She claimed she and her child would not be protected if they returned to Morocco. If she returned to Morocco, the mother could be jailed and lose custody of the child. It would be very harmful to Sabrine if this were to happen, as her mother is her main caregiver.

[44] She has twice made harassment complaints to the authorities, and they have denied her requests on the basis of lack of evidence. She cannot turn to the authorities, and she has been unable to get a restraining order to protect herself.

[45] She claimed that the father would follow her, have others follow her, and have individuals pose as police officers to harass her. He would have officers attend her dental clinic and embarrass her in the presence of her patients. As well, individuals would take photos of her in public.

[46] When the father struck the child, her lawyer tried to obtain protective orders against the father but was unable to do so.

[47] She says that her and her daughter are doing very well in Canada, where rights of equality are protected. The child objects to the return to Morrocco.

OCL's Position

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[48] The OCL is requesting that the court dismiss the father's application and assume jurisdiction over the parenting issues.

[49] First, the father has no custodial rights, as is required pursuant to Article 3 of the *Hague Convention.*

[50] The OCL submits that a return to Morocco will expose the child to a grave risk of physical or psychological harm or otherwise place her in an intolerable situation. In addition, the child objects to being removed from her mother.

[51] The Moroccan legal system discriminates against women and their inability to protect women and children puts the child in a position of grave risk.

[52] Sabrine is of an age and degree of maturity to express her views, and it is appropriate for this court to consider her views given the impact of a potential separation from her mother.

[53] Sabrine should be given a voice in the process. Sabrine is a vulnerable child, and her wishes should be respected.

[54] The court should find that there are exceptions to returning this child to Morocco as defined in the *Hague Convention* and as articulated by the mother.

Evidence

Documents

[55] The court received the following documentary evidence:

- The father's affidavit dated December 30, 2025, with exhibits (except for the translations of documents 6, 36 and 38, which will be removed);
- With respect to the videos found at documents 28 and 29 of the affidavit, at the *voir dire*, the court admitted the videos as authentically taken by him. The issue remains the date that these videos were taken. The mother's photos were also filed;
- The father's reply affidavit dated January 19, 2026;

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- Affidavit of the father's sister, Hind Maarif, dated December 24, 2025 (except for paragraph 8, which was struck as it purports to offer opinion evidence and she is not qualified as an expert in this hearing). She is supportive of her brother and has a relationship with the child and saw her regularly at the maternal grandmother's residence. She is willing to assist in caregiving;

- Affidavit of father's brother, Foaud Maarif, dated December 24, 2025. He spoke of supporting his brother and saw him and Sabrine regularly when he visited him;

- The expert report of Zahia Ammoumou, the father's expert, dated November 14, 2025, and the supplementary expert report dated December, 23, 2025;

- The mother's affidavit dated January 11, 2026;

- Affidavit of the mother's friend, Maryam Belmahjoub, dated January 8, 2026, without the attachment of the transcript of the father's voicemail messages left on her phone. The father indicated that, according to Moroccan law, consent must be obtained from the individual who was involved in a conversation as it is a private message. The parties could not agree on the Moroccan law and hence the court gave the mother the right to lead evidence regarding this issue, but she did not. Ms. Belmahjoub stated that she saw the father become angry in a car ride and shout at another driver. She admits to having limited contact during the marriage and post birth. She was aware that the father was facing financial difficulties and that he was taking medication for depression. He would complain to her about the mother gaining weight and provided inappropriate intimate details of their relationship. She had limited involvement after the separation.

- Affidavit of mother's youngest sister, Jihade El Fazazi, dated January 7, 2026, setting out her observations of the parents' interactions. She lived with the mother for a period of time after the separation;

- Report of the mother's expert, Kawtar Jalal, dated January 15, 2026;

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- Affidavit of Johanne Colas, a clinical panel member with the OCL, dated January 15, 2026 (except for paragraphs 36 to 74, 83, and 99, which were struck); and

- Report of OCL's Expert, Hossein Raeesi, dated January 13, 2026.

[56] Due to the translation completed by one of the Arabic interpreters of some of the evidence of the father's expert, the court arranged for the audio of her evidence to be sent to counsel. The mother provided a list of certain identified sections of her evidence that she said required proper interpretation.

[57] The court arranged for a different interpreter, suitable to all parties, to receive and review the audio recording and to return to court to provide his interpretation. The parties agreed to this process.

[58] The parties confirmed on the record that they were content with the second interpretation of the questions and answers from the evidence of the father's expert. The parties did not further challenge the translation.

Voir Dire

[59] The court conducted a *voir dire* for one and a half days to deal specifically with the videos purportedly taken by the father on September 3 and 6, 2023, showing Sabrine playing in a playground, and of certain documents that were translated from Arabic into English.

[60] Cross-examination of the father and his interpreter took place.

[61] The parties agree on the authenticity of the videos taken by the father, as it is incontrovertible that he took the videos. The issue is when they were in fact taken. The mother in her evidence at the *voir dire* provided photos that she says were taken on September 6, 2023, on the child's 3rd birthday, indicating that the child was with her that day. Her photos show the child at a hairstylist in preparation for a photo shoot with her mother and aunt, and not at the school playground.

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[62] The father tenders this video evidence to show that the child had no bruising on her left eye which the mother had alleged had occurred due to the father hitting the child.

[63] The mother argues that the father's video clips show her in a diaper, and that she was not three years old in the photos tendered by the father.

[64] The parties ultimately agreed that metadata which purports to record the date a photo or video is taken can be changed by either party.

[65] With regard to the translation of the father's documents, the father concedes that document 6 attached to his affidavit sworn December 30, 2025, shows an error in the translation. It should read that the mother was evicted because her sister was staying out late, and not that the mother was out late. Therefore, document 6 will be removed and the court will rely on the mother's translation for this document.

[66] With respect to document 36 (same document in 38), the mother alleged that a large segment of the text from the original Arabic was missing in the English translation. The parties accepted the mother's translation of document 36.

Attached Documents

[67] Some of the documents attached to the parties' affidavits were hearsay and the court permitted them to be considered as part of the narrative. They are not admitted for the truth of their content, but the parties used them as confirmation that an event took place. It is part of the narrative as the author of the report was not called as a witness and was not cross-examined.

[68] After the divorce, both parties frequently availed themselves of the Moroccan authorities.

2023

- The mother's lawyer sent a notification, dated January 9, to the father objecting to his attendance at her place on January 7, 2023, at 8 p.m. for the reason that it was late for a visit with the child and that he was required to respect times set out in the court order. This is accepted for the truth and contents.

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- The mother sent a notification letter to the father through her lawyer dated January 14, alleging that he had expelled her from her home contrary to the divorce order and provided her new address in Rabat. This is accepted for the truth and contents.

- The mother lodged a complaint dated March 5, alleging that the father subjected her to insult, slander and threat. The complaint stated that, "[f]urthermore, he insults and slanders her honor using defamatory expressions" to her friends and patients. The mother testified at the trial that the authorities did not proceed with the complaint for lack of evidence. This is accepted for the truth and contents.

- On March 7, the court of first instance of Temara rejected the father's application for custody of Sabrine. His application was based on the allegation that the mother refused to provide him access to the child. It was dismissed on the basis that the mother and child resided in Rabat, and the court in Rabat had jurisdiction. This is a court order and is accepted for the truth and contents.

- A complaint by the mother was made to the police dated March 9, that the father committed fraud and deceit in not providing goods to her after she had paid for them. The mother accused the father, as manager of an import/export company, of fraud and breach of trust. She alleged that she had provided a cheque to the father to import medical equipment for her dental practice, but he never delivered the items and still cashed the cheque. This is accepted for the truth and contents.

- The father's declaration dated March 15, responded to these allegations stating that the parties had a prior verbal agreement that he would use the funds provided by the mother to pay for debts of the pharmacy that had been incurred during the pandemic. This is accepted for the truth and contents.

- Reference by the Police Commissioner dated April 4 and 5, regarding the alleged fraud was filed. Documents pertaining to the prosecution of the father dated April 5, were also filed. This is considered as part of the narrative.

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- An order dated May 18, was issued placing the father under supervision because of the fraud complaint. This is accepted for the truth and contents.

- An order for prosecution dated July 31, was issued referring the father for prosecution on charges of fraud and breach of trust, and demanding production. This is accepted for the truth of its contents.

- Emails between the parties from August 28, were filed, where the mother stated that school starts September 4, and asked that he bring the child back on Sunday morning, September 3, so she could prepare child for first day of school. He said OK, notified her that the child had constipation at the beginning of her visit with him on August 1, and explained how he treated it. This is accepted for the truth of its contents.

- A notice from the school to the parents was filed and confirmed that the first day of school was Tuesday, September 5, and that there would be a pre-term day on September 4 from 2:10 to 2:30 p.m., with only one parent allowed to accompany the child. The father then told the mother he would bring the child back on Monday, September 4, at 7 p.m. The mother refused this and demanded the child's return on September 3 at 6 p.m. The father responded that this was not possible. This is accepted for the truth of its contents.

- On September 3, on the request of the mother, there is a bailiff's formal observation that they attended at the mother's residence at 6:00 p.m. and the child was not present. This is admitted as part of the narrative.

- On September 4, there is a note labelled "Minutes of a Simple Formal Observation" obtained by the mother confirming that the father delivered the child at the school at 2:20 p.m. This is admitted as part of the narrative.

- The mother filed an urgent complaint on September 4, as the father failed to return the child and she did not know her whereabouts. She claimed he had deprived the child of school and that there was a possibility of grave harm to her and the child. This is accepted for the truth of its contents.

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- The mother's complaint confirmed that the child was with her father from August 1 to September 4. She had submitted a medical report dated August 1, that showed that the child was in good health. The father was supposed to return the child on September 3, but rather kept her until September 4. The mother noticed signs of bruising under the child's eyes which the child said was due to beating from her father, and this prompted the mother to go to a doctor for a medical report. This is accepted for the truth of its contents.

- Medical certificate dated September 4, from Dr. Malak Boukhzar was filed for narrative purposes only as it was not properly before the court as a business record or opinion evidence.

- The mother made a formal complaint on September 14, ten days after the child was returned, that the father assaulted the child. This is accepted for the truth of its contents.

- The minutes of hearing of the public prosecution dated September 15, indicates that the mother filed a complaint against the father alleging that the father had assaulted and oppressed Sabrine. This is admitted as part of the narrative.

- The mother's bailiff notification that, on September 16, he attended the father's residence and no one was present. This is admitted as part of the narrative.

- A document filed showing the mother's inability to serve a notification letter dated October 31, to the father. This is admitted as part of the narrative.

- The mother's lawyer forwarded a notification, dated October 31, to the father with the mother's change of address to Temara. This is admitted as part of the narrative.

- Statement by the father provided to the prosecutor dated December 4, where he stated that he had intended to return the child to the mother on September 5, 2023, which was the first day of school. When he attended the school on September 4, 2023, the mother accompanied by the bailiff, took the child which "caused fear and distress to my daughter". He denies that he hurt the child. He said that the daughter had dark circles under her eyes, and that

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she was constipated and he had taken care of her treatment. This statement is admitted for the truth of its contents.

- The following medical reports were not admitted for the truth of their contents but only for the narrative:
    - December 4, 2023, report from Dr. Bokhzar that the child is stuttering following a stay with her father alone;
    - December 4, 2023, report from speech therapist saying the child developed stuttering after her stay with her father in August 2023;
    - The undated medical certificate from Dr. Khadija Soufiani regarding medical issues of the child; and
    - October 21, 2024, medical report of Dr. Noura Gnioui regarding the child.
- The July 12, notice from father's bailiff confirming that he would take the child during summer from August to September 3, 2023. This is admitted as part of the narrative.
- A notice from the mother's bailiff dated October 24, was filed confirming that they attended the father's address on October 13, and 18, 2023 and found no one and could not effect service. This is admitted as part of the narrative.
- On November 2, the mother requested authorization to issue the child's passport, and this was granted by the court. A review of the document indicates that she applied the passport for "administrative purposes". The passport was authorized for issuance "as it does not go beyond the scope of obtaining an administrative document". This is admitted for the truth of its contents.
- A criminal judgment dated December 18, was rendered against the mother as she had been accused by the father of taking furniture, household appliances and Sabrine's clothing from the marital home. The mother was sentenced to four months of suspended imprisonment

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and a fine and was ordered to pay compensation to the father. This is admitted for the truth of its contents.

2024

- On January 3, the court convicted the father of breach of trust and sentenced him to five months of suspended imprisonment and a fine and ordered him to pay compensation to the mother. This criminal judgment was upheld on appeal on February 3, 2025. This is admitted for the truth of its contents.

- A notification letter dated September 7, on behalf of the mother's lawyer to the father which confirmed her change address to one in Rabat. This is admitted as part of the narrative.

- The decision by the prosecutor dated October 22, stating that it would not proceed with the mother's allegation of insult, slander and threat "due to denial and lack of evidence". This is admitted as part of the narrative.

- The mother provided a translation that was acceptable to all parties rather than the husband's translation as his translator admitted that he had summarized parts of the document due to time constraints. Her translation clarified that that the mother had provided a medical certificate and medical prescription for the child, dated October 21. This document arose from the mother's denial of access to the father. The document also confirmed the mother's position that: "her former husband takes advantage of her absence from the house, either in case of travel or work outside the city and brings a bailiff in order to establish her failure to comply with visiting schedules". Due to the mother's social circumstances and her lack of prior criminal record, the court imposed a suspended sentence. This document is admitted as part of the narrative.

- The father's complaint dated October 28, alleging forgery of the report of Dr. Malak Boukhzar regarding injuries to Sabrine. The father is concerned that the doctor had, on July 31, 2023, signed a report that the child was in good health before she was being handed over the father for his access in August 2023. He claimed that the mother and the "medical doctor who authored the medical report were preparing fabricated evidence to implicate

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the complainant in the alleged assault of a minor". The previous report of Dr. Khadija Es-Safiani, said that the child only had an injury to the right eye, and this contradicts Dr. Bokhzar's report. This is an attempt to deny him his visitation rights and to imprison him. At the time, the mother took the child on September 4, 2023, the bailiff who was present did not record any injuries nor did the school note any signs of injury on the left eye. This is admitted for the truth of its contents.

- On November 27, the father requested a court order closing the Moroccan borders to the child to prevent the mother from leaving. The court refused the order on the basis of lack of jurisdiction. This is admitted for the truth of its contents.

2025

- The minutes dated January 17, from the mother's bailiff to the father confirming the monies received from the father for Sabrine and her schooling. This is admitted as part of the narrative.

- The mother made a complaint dated January 29, to the public prosecutor stating that she has been the victim of repeated harassment and threats from an unknown person on behalf of the father "with the aim of harming her and intimidating her" and requesting an investigation. This was after she acknowledged she had obtained permanent residency in Canada in October 2024. This is admitted for the truth of its contents.

- The ruling of February 3 found that the mother failed to comply with the order by failing to present the child to the father. The mother was sentenced to a one month suspended sentence and a fine, and the mother had to pay compensation to the father. This judgment was upheld by the Court of Appeal of Rabat on November 13, 2025. This is admitted for the truth of its contents.

- The father sent a request for notification service on February 17, to the mother that he would be visiting his daughter from February 26, 2025, at 9 a.m. to March 3, 2025, at 9 p.m. at her Rabat address. This is admitted for the truth of its contents.

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- Minutes of an observation on February 26, were filed confirming that the father did not attend for a visit with Sabrine. This is admitted as part of the narrative.

- On April 23, the father brought a petition to the court to close the borders to the child as he did not know where the child was and the mother refused to reveal her whereabouts. The petition was dismissed for lack of jurisdiction. This is admitted for the truth of its contents.

- The father obtained a judgment of the Family Justice Division of Rabat dated May 19, revoking the mother's custody and attributing custody to the father. This was granted after the mother had already relocated Sabrine to Canada. She did not file a response within that proceeding. This is admitted for the truth of its contents.

- The mother's request for a stay of the above order was not granted on the basis that the challenged judgment was not enforceable, as the order was not accompanied by provisional execution nor it did not bear an enforceable character. Therefore, the revocation of custody was not subject to execution nor a stay of execution. This is admitted for the truth of its contents.

- A confirmation with the bailiff indicating that the school stated that the child did not attend school on September 9 or 10, or the week before. This is admitted as part of the narrative.

- On September 23, the court found the father guilty of the charges of misdemeanour of assault and violence against Sabrine and sentenced him to one month of suspended imprisonment and a fine and ordered him to pay compensation and the legal costs to the mother. This is admitted for the truth of its contents.

- The criminal conviction is under appeal and a decision has not been rendered. This is admitted for the truth of its contents.

[69] The parties filed their respective factums and submissions.

Discussion

Introduction

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[70] Morocco is a party to the *Hague Convention*.

[71] As a signatory member of the *Hague Convention*, the provisions of section 46 of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, apply and override any conflicting Ontario legislation.

[72] In *Zafar v. Azeem*, 2024 ONCA 15, the Court of Appeal for Ontario held at para. 40 that, "[a]ll parties to the *Hague Convention* share in the view that 'the interests of children are of paramount importance in matters relating to their custody'" and "[w]hen dealing with signatories to the *Hague Convention*, we take comfort from the fact that they, like Canada, are committed to making decisions based upon the best interests of children."

[73] The purpose of the *Hague Convention* is to enforce custody rights and secure the prompt return of a child who has been wrongfully removed or retained: see *Ludwig v. Ludwig*, 2019 ONCA 680, 437 D.L.R. (4th) 517, at paras. 19 and 20. A prompt return protects against the harmful effects of wrongful removal, deters parents from abducting a child with the hope of establishing links with a new country and being awarded custody, and provides for a resolution of the merits of a custody or access dispute in the forum of the child's habitual residence. The *Hague Convention* is not concerned with determining rights of custody on the merits and, in fact, Article 16 expressly prohibits a court charged with a *Hague Convention* proceeding from determining the merits of custody rights until the court has determined that a child is not to be returned: *Ludwig*, at para. 19; see also *Office of the Children's Lawyer v. Balev*, 2018 SCC 16, [2018] 1 S.C.R. 398.

[74] In *Balev*, the Supreme Court of Canada set out the objectives and framework of the *Hague Convention*. It is through this framework that the court must determine this matter.

> [23] The harms the *Hague Convention* seeks to remedy are evident. International child abductions have serious consequences for the children abducted and the parents left behind. The children are removed from their home environments and often from contact with the other parents. They may be transplanted into a culture with which they have no prior ties, with different social structures, school systems, and sometimes languages. Dueling custody battles waged in different countries may follow, delaying resolution of custody issues. None of this is good for children or parents.

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> [24] The *Hague Convention* is aimed at enforcing custody rights and securing the prompt return of wrongfully removed or retained children to their country of habitual residence. The return order is not a custody determination. It is simply an order designed to restore the *status quo* which existed before the wrongful removal or retention, and to deprive the "wrongful" parent of any advantage that might otherwise be gained by the abduction. Its purpose is to return the child to the jurisdiction which is most appropriate for the determination of custody and access. [Citations omitted.]

[75] The Court of Appeal in *Ludwig* provides an excellent analytic framework for a Hague application. According to *Ludwig*, at para. 21, the court must determine the habitual residence of the child, and if the child is found to be habitually resident in the state of the applicant, determine whether one of the exceptions to ordering the return of the child applies. For ease of reference, I will deal with each step set out in *Ludwig*.

Stage One: Habitual Residence

[76] At the first stage of the assessment, the court considers the date that the child was allegedly wrongfully removed or retained and determines the jurisdiction in which the child was habitually resident, according to the factors laid out in *Ludwig*.

1) *On what date was the child allegedly wrongfully removed or retained?*

[77] Sabrine was allegedly wrongfully removed from Morocco on March 19, 2025.

2) *Immediately before the date of the alleged wrongful removal or retention, in which jurisdiction was the child habitually resident?*

[78] In determining habitual residence, the court will apply the hybrid approach set out in *Balev* as, according to the Supreme Court at para. 58, "[t]he hybrid approach best adheres to the text, structure, and purpose of the *Hague Convention.*" The Supreme Court stated:

> [59] The hybrid approach best fulfills the goals of prompt return: (1) deterring parents from abducting the child in an attempt to establish links with a country that may award them custody, (2) encouraging the speedy adjudication of custody or access disputes in the forum of the child's habitual residence, and (3) protecting the child from the harmful effects of wrongful removal or retention.

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> [60] The hybrid approach deters parents from attempting to manipulate the *Hague Convention*. It discourages parents from attempting to alter a child's habitual residence by strengthening ties with a particular state, for two reasons: (1) parental intent is a relevant consideration under the hybrid approach, and (2) parents who know that the judge will look at *all* of the circumstances will be deterred from creating "legal and jurisdictional links which are more or less artificial". [Citations omitted.]

[79] Therefore, in determining the child's habitual residence immediately prior to the removal or retention, in accordance with *Balev* and further articulated in *Ludwig*, the court's task is to determine the focal point of the child's life, namely the family and social environment in which her life had developed: see *Balev*, at para. 43.

[80] Prior to the removal of Sabrine from Morocco, the child was attending school. She had her relatives in the driving vicinity including her maternal aunt and paternal aunt, uncle and grandmother.

[81] The court in *Ludwig*, at paras. 30-31, set out the three kinds of links and circumstances for determining habitual residence, taking into account such considerations as the child's nationality, the duration, regularity, conditions and reasons for the child's stay, and the circumstances of the parents and parental intention.

i. *The child's links to and circumstances in Morocco*

[82] Sabrine's links are to Morocco. She was born there and grew up there, and she is a Moroccan citizen. She has her culture; her languages are French, Arabic and English, which are all spoken in Morocco.

[83] She has both parents' extended family in Morocco, including her father and his mother, sister and brother and their families. Her father wishes her to return to Morocco so that he can have a relationship with her, and he does not oppose her mother being involved in her life. His brother and sister support his request, and both state that they have a bond with the child and are willing to assist the father if necessary, though the brother is admittedly closer to the father and the child and visits more regularly than the sister, who lives far away. As well, the child has some form of connection with her paternal grandmother, though the extent is not clear.

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ii. *The circumstances of the child's move from Morocco to Canada*

[84] The mother has permanent resident status but Sabrine has only temporary visa status. She explains the steps she took to attend the offices to obtain her papers. But she does not provide details of when she applied and what process she underwent. She did not provide answers to the father's "Form 20: Request for Information", requesting information about the dates of her application and her relationship with her new partner.

[85] This non-disclosure prevents the court from determining when the mother commenced the application to obtain Canadian permanent residency and the details of her relationship and its impact on her desire to move to Canada. However, in her oral testimony she confirmed that her and her partner applied at the same time, and that he was accepted as a permanent resident first and left for Canada before her.

iii. The child's links to and circumstances in Canada

[86] The child is living with the mother and her common-law partner and is attending school. She is adjusting to the school and attends swimming and skating lessons.

[87] The OCL reports that she is happy to be with her mother and wishes to stay with her mother in Canada. She has advised the OCL that she likes being with her mother in Canada and she does not wish to return to Morocco and leave her mother.

[88] The mother resides with her partner, and they are not married. She is working and seeking accreditation to practice dentistry in Ontario. The mother seeks to remain in Canada and to break free from the father's abuse and harassment, as she felt that she was under constant stress while in Morocco and particularly after entering a new relationship in November 2022.

[89] The mother expressed willingness to facilitate video calls with the father while she remains in Canada.

End of Stage One

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[90] The court finds that the child's habitual residence is Morocco as she had close connections there until the mother removed the child without the father's consent.

[91] I find that the focal point of the child's life, namely the family and social environment in which her life had developed was in Morocco.

[92] Despite the mother's intention, the overriding concern is the focal point of Sabrine's life immediately before the alleged wrongful removal, not parental intention. In *Balev*, the Supreme Court of Canada directed that parental intention is no longer the lens through which the habitual residence of a child is determined. It is one among all of the factors to be considered, depending on the particular circumstances at issue: at para. 68.

[93] Since I find that the child was habitually resident in Morocco before the wrongful removal, then the *Hague Convention* applies and the court should proceed to stage two of the analysis.

Stage Two: Exceptions

[94] At this stage, the court shall order the return of the child unless it determines that one of the following exceptions applies:

1) The parent seeking return was not exercising custody or consented to the removal or retention (Article 13(a));

2) There is grave risk that return would expose the child to physical or psychological harm or place the child in an intolerable situation (Article 13(b));

3) The child of sufficient age and maturity objects to being returned (Article 13(2));

4) The return of the child would not be permitted by fundamental human rights and fundamental freedoms of the requested state (Article 20); and,

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5) The application was brought one year or more from the date of wrongful removal or retention, and the judge determines the child is settled in the new environment (Article 12): *Ludwig*, at para. 34.

[95] The mother and the OCL argued that exceptions number 1, 2, 3 and 4 apply.

Exception 1: The parent seeking return was not exercising custody or consented to the removal or retention (Article 13(a))

[96] In *Finizio v. Scoppio-Finizio*, 1999 ONCA 1722, 46 O.R. (3d) 226, the court stated that:

> [16] In an Article 3 analysis, the nature of the custody rights of the party seeking an order for the return of children must be determined in accordance with the law of the habitual residence of the children. As expressed by L'Heureux-Dubé J. in *W. (V.) v. S. (D.)*, [1996] 2 S.C.R. 108 at pp. 130-31, 134 D.L.R. (4th) 481:
>
> . . . although the Convention adopts an original definition of rights of custody, the question of who holds the "rights relating to the care of the person of the child" or the "right to determine the child's place of residence" within the meaning of the Convention is in principle determined in accordance with the law of the State of the child's habitual place of residence…

[97] According to the Moroccan Family Code, although the mother had custody of the child, the father retained the right to make decisions regarding the child and the mother required his consent for international travel unless she obtained a court order.

[98] According to the expert evidence heard at the trial, the father was exercising legal guardianship rights of Sabrine. Even though the divorce order was silent on this issue, the father had rights pertaining to the child. The father had the right to choose where the child lives, though the mother could change her residence within Morocco.

[99] The mother did not obtain a court order granting her permission to travel outside Morocco.

[100] In her responses to questions on this issue, the mother was evasive and indicated that she was able to leave the country as there was no court order prohibiting her from leaving with the

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child. She would not directly respond to the question as to whether she had obtained an order permitting her to leave the country with the child.

[101] Under article 5(a) of the *Hague Convention*, the father's rights as a legal guardian represent a custodial right because they confer to him the right to determine the child's place of residence across borders. As stated in *Thomson*, at p. 585, a non-removal or consent restraint is a 'right of custody' under the *Hague Convention* because it vests the power to determine residence, and therefore, removal in breach of this right is wrongful under Article 3.

[102] In my view, the father's right to determine the child's residence and his legal guardianship which provides decision-making over residence, education, religious education, moral guidance and major life decisions are rights that fall within Article 5(a) of the *Hague Convention*. He was actively exercising these rights as evidenced by the multiple legal proceedings he initiated attempting to request border closure, access, and custody.

[103] His failure to have the Moroccan courts order border closure on two occasions does not extinguish or demonstrate an absence of custody rights. These denials did not provide the mother authorization to remove the child from Morocco.

[104] As well, the mother obtained an order to obtain a passport for the child for "administrative purposes". I do not view this order as providing the mother the right to remove the child from Morocco.

[105] I do not accept the mother's position that the father's right of legal guardianship is based on gender and operation of law, and hence should not apply here. As stated by the mother's expert, even if the operation of law designates the roles of the parents upon divorce, the court will still consider best interests.

[106] Therefore, I find that the father, as the child's legal guardian, was exercising his custodial rights which include the right to determine the child's residence. He did not consent to the removal of Sabrine from Morocco.

[107] Therefore, the mother has failed to satisfy the first exception.

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Exception 2: There is grave risk that return would expose the child to physical or psychological harm or place the child in an intolerable situation (Article 13(b))

[108] This question raises the following issues:

1) What is "grave risk of harm or intolerable situation"?

2) Does the application of Moroccan family law not consider the best interests of the children, and if not, does this, considering the mother's allegations, pose a grave risk to the child if returned?

3) Does the prospect of the separation of Sabrine from the mother, who is her primary caregiver currently, pose a grave risk to the child's psychological well-being? This is especially important in the case of a young child, that is, five-year-old child Sabrine, who has an established dependence on her primary caregiver parent who has stated that she is unwilling to return to Morocco.

1) What is "grave risk of harm or intolerable situation"?

[109] Although *F. v. N.*, 2022 SCC 51, [2022] 3 S.C.R. 616, is a non-*Hague* matter, the Supreme Court of Canada spoke of the meaning of "grave risk of harm or intolerable situation" at para. 73:

> The stringency of the standard of "serious harm" under s. 23 may usefully be compared with that of the *Hague Convention*'s grave risk of harm or intolerable situation provided for in Article 13(1)(b) of the *Hague Convention*. Under Article 13(1)(b), only situations that an individual child should not be expected to tolerate meet the threshold that would be a defence to the principle of automatic return. The Court of Appeal for Ontario has helpfully explained that the s. 23 standard is less exacting than that of the *Hague Convention*. In *Ojeikere*, Laskin J.A. observed that the main reason for this lower standard is the difference in language between the two provisions. The words "intolerable situation" in Article 13(1)(b) of the *Hague Convention* are absent from s. 23, and, "[a]s a matter of statutory interpretation, the legislature must be taken to have intended not to use these uncompromising words to qualify 'serious harm'". Significantly, Laskin J.A. added that the s. 23 standard should be less stringent because signatories of the *Hague Convention* can rely on their reciprocal recognition that the ultimate custody decision will be based on the best interests principle. The Court of Appeal for Ontario has also recently noted that even the Article 13(1)(b) analysis "is not meant to become an in-depth analysis of the

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> parties' history". Accordingly, proceedings dealing with Article 13(1)(b) should — like those based on s. 23 of the CLRA — be resolved "quickly and efficiently". [Citations omitted.]

[110] From this passage, it is clear that grave risk as defined in the *Hague Convention* is a more stringent test than "serious harm" under the *Children's Law Reform Act*. Secondly, these *Hague Convention* applications are meant to be dealt with "quickly and efficiently" and the analysis "is not meant to be an in-depth analysis of the parties' history": at para. 73.

[111] The court also stated at para. 64 that "the jurisdiction from which the children have been removed is usually in the best position to determine which arrangement will be in their best interests." The court reasoned that "[t]his is explained by the fact that "the courts of the child's State of habitual residence… generally will have fuller and easier access to the information and evidence" relevant to making a 'comprehensive best interests' assessment'".

[112] At para. 72, the court opined that it is not up to this court to make a general assessment of the society to which they are sent back or to compare the living conditions that each country may offer.

[113] In *Thomson*, the leading Canadian case on the *Hague Convention*, La Forest J. stated the following at p. 598:

> In brief, although the word "grave" modifies "risk" and not "harm", this must be read in conjunction with the clause "or otherwise place the child in an intolerable situation". The use of the word "otherwise" points inescapably to the conclusion that the physical or psychological harm contemplated by the first clause of Article 13(b) is harm to a degree that also amounts to an intolerable situation.

[114] In *Pollastro v. Pollastro* (1999), 43 O.R. (3d) 485 (Ont. C.A.), at p. 496, Abella J.A. (as she was then) stated:

> Although every case depends on its own facts and the onus remains on the person resisting the child's return, it seems to me as a matter of common sense that returning a child to violent environment places that child in an inherently intolerable situation, as well as exposing him or her to a serious risk of psychological and physical harm.

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[115] In *Kirby v. Woods*, 2025 ONCA 601, 178 O.R. (3d) 180, the Court of Appeal for Ontario described "grave risk" as follows:

> [49] The governing case on the meaning of grave risk of harm within the *Hague Convention* is *Thomson*. In that case, the Supreme Court held that to constitute grave risk, the risk must be weighty and substantial, and must place the child in an intolerable situation. The word "grave" modifies the "risk" and not the "harm". The assessment must be undertaken from a child-centred perspective. Stated otherwise, this defence to return will only be met in "situations that an individual child should not be expected to tolerate". This is a high threshold. Consistent with the objectives of the *Hague Convention*, the threshold does not require that children be "pushed beyond the limits of endurance".
>
> [50] The grave risk threshold may be met by the actions or pattern of behaviour of a parent, with or without physical violence against a child. In *Pollastro v. Pollastro* (1999), 43 O.R. (3d) 485 (C.A.), this court held that a continued pattern of escalating abuse, combined with threats against the mother and her family were sufficient to create an intolerable situation for the child, where the child had not, himself, been physically abused by the father. [Citations omitted.]

[116] At para. 89, the Court of Appeal stated that the "life threatening" violence need not be proved as this would be applying a higher threshold than "grave risk" articulated under the *Hague Convention.*

> 2) *Does the application of Moroccan family law not consider the best interests of the children and if not, does this pose a grave risk to the child if returned given the mother's allegations?*

[117] In *K.F. v. J.F.*, 2022 NLCA 33, at para. 71, the Court of Appeal of Newfoundland and Labrador held that the party resisting a return does not bear a burden to show that the return jurisdiction is unwilling or unable to protect the potentially returning child from harm. The court continued:

> [76] In any event, contracting states to the *Convention* can be presumed to have police and child protection services available to those residing within their jurisdictions, unless there is evidence to the contrary, as there was in *D.R.* Despite this presumption, it remains the duty of the courts to assess whether there is grave risk of harm to a child being returned or if the child will be placed into an intolerable situation.

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> [77] In summary, there is no duty on a party relying on an article 13(b) claim to prove that the return jurisdiction is not able to protect a child. To the extent that the Judge placed an onus on V's mother to prove that the Boston authorities would not protect V, she was in error. [Citations omitted.]

[118] First, I will deal with the mother's allegations.

[119] I will then make findings of facts.

[120] Finally, I will deal with the expert evidence on the Moroccan Family Code and its application when dealing with parenting issues.

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Mother's allegations

[121] In her affidavit, the mother made the following allegations against the father:

1) The father exercised a pattern of power and control over her throughout the relationship and this escalated after the birth of Sabrine.

2) His actions during the marriage and after separation demonstrate a pattern of coercive control characterized by unilateral decision-making, restriction of movement, social and family isolation, interference with education and career, financial control, surveillance and regulation of appearance. For example, he bought a residence in Tamesna without consulting her although it increased her commute time.

3) The father relied on Sabrine to induce guilt, devalue her and exert pressure, and showed periods of neglect and disengagement toward the child. Periods of calm or apparent cooperation were followed by blame, devaluation and escalation, including hostile, aggressive and, at times, violent behaviour.

4) He would portray himself as the victim and caused isolation of the mother.

5) She alleges that he urged her to relocate to Dubai despite her objections, and while there he restricted her outings and limited her social and academic interactions and restricted her contact with her friends and family. He interfered with her academic environment,

complaining to the Minister of Education about the university dean and consequently she was unable to attend her graduation ceremony.

6) He retained her bank statements and made deposits on her behalf and insisted on driving her to wherever she was going.

7) He placed surveillance cameras in the home and accessed the clinic's surveillance system without her knowledge.

8) He criticized her appearance and clothing and forbade certain outfits.

9) He bought a pharmacy far from the residence which left her feeling alone and isolated.

10) He escalated conflicts through third-party involvement to the point that she suppressed disagreement and minimized her needs to avoid escalation.

11) He pushed and slapped her, threw objects, and broke household items. On one occasion, he threatened her with a knife and said, "I will stab you if you do not shut up". Once when she was pregnant, he threw objects at her and threatened to beat her. In her attempt to escape, she fell and suffered a partial placenta abruption.

12) He sexually assaulted her. If she did not comply, he accused her of failing as a wife and threatened infidelity. On one occasion, she begged him to stop, and he did not and said that he would ensure that it would be the last time anyone would touch her.

13) After separation, his conduct escalated and he became retaliatory and punitive.

14) He tried to intimidate her by saying Sabrine would be without family and that no one would accept her as a divorced woman, and he initiated a smear campaign discrediting her to her family, friends and professional contacts. He made defamatory statements to her family and his family and said untruths about her.

15) After the divorce, he took the child's documents, including her "livret de famille", passport and vaccination records.

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16) He allowed her to stay in the home so he could maintain control. He let her use the car temporarily.

17) Once he learned that the mother was seeing someone in November 2022, his conduct escalated further, as he began initiating bailiff reports.

18) He had individuals follows her, and she made a formal harassment complaint on March 5, 2023, but it was dismissed on October 22, 2024, on the basis of a lack of evidence.

19) In addition, two other individuals were monitoring the home and this resulted in her second harassment complaint.

20) In addition, he went to her gym, spoke to others about her boyfriend, and attended her residence and engaged in confrontational behaviour towards her.

21) He filed a criminal complaint alleging vandalism.

22) He would attend at Sabrine's school without the mother's consent and at times other than those provided by the court order.

23) After she began a new relationship in November 2022, he initiated bailiff reports.

24) He made a request to revoke custody, which was rejected on July 3, 2023.

25) He initiated a criminal complaint against her after she notified him of her address on January 14, 2024.

26) He would go for long periods without exercising access to Sabrine. He resumed access when the prosecutor deemed he had committed fraud on July 10, 2023.

27) Since the separation between 2023 and 2025, she attended the police station 17 times due to his complaints. They isolated her and subjected her to prolonged questioning.

28) The mother complains that the protective measures in Morocco for children can be ordered only by a judge but that there are no official institutions, procedure or framework to ensure

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the safety of children or to arrange supervised visits in cases involving family violence. However, that runs contrary to the expert evidence discussed below.

Mother's supporting affidavits

[122] The affidavit of the mother's friend, Maryam Belmahjoub, confirms that she saw the parties on limited occasions during the marriage and that the mother did not share details about her marriage. She became aware that the father was experiencing financial difficulties.

[123] After the separation, she was not directly involved but was told that the mother had financial constraints and could not retain counsel.

[124] She says that the father disclosed intimate details about their relationship, including their sex life and her gaining weight after the birth of Sabrine. He would make derogatory remarks about the mother.

[125] She was aware of the further escalation of conflict between the parties, but she was not directly involved in the litigation and her knowledge of the litigation arises only from information from the mother.

[126] The mother's youngest sister, Ikhlass El Fazazi, provided in her affidavit that, during the marriage, the parties had financial issues and she heard the father raise his voice at the mother and speak to her in a demeaning manner.

[127] She observed that the mother's demeanour changed and that she became quieter and more withdrawn and that she appeared fatigued.

[128] She alleged that, during the pregnancy, he said he wanted a boy. He would cook and the odours would cause the mother to be nauseous.

[129] During the pandemic he moved closer to be near the pharmacy, and she was left alone and had no independent transportation.

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[130] During a phone call she heard raised voices and objects striking surfaces, and she says she observed the mother appear frightened in a video call and observed blood on her clothing which the mother explained was the result of falling down the stairs while running away from the father.

[131] Regarding the father's relationship with Sabrine, she stated that he did not wish to hold the child right after her birth. The father said he would have preferred a boy and made remarks about the baby's appearance, and he would not hold her at times. He did not comfort or engage with the child.

[132] After separation, he would attend the home when the mother was not present.

[133] She denies that she and her sister were evicted.

Father's response

[134] He expresses frustration with her denying him access rights to Sabrine. She denied him the ability to attend the school and events, and more generally denied him the ability to be involved in her life. He notes attending the residence with a bailiff on many occasions and she was not present.

[135] He claims she took property and vandalized the matrimonial home when she left in December 2023. She took some items though it is not clear what was "vandalized". It was 1571 square foot duplex home, and he states he paid for the expenses. Her new place was 40km from where he lived, which required extra travel time.

[136] He said he did not go to see the child as his lawyer told him not to in fear of the mother making allegations. He attended Sabrine's school every Friday afternoon for 30 minutes with permission of the school.

[137] He was shocked at the allegation that came ten days after the mother picked her up. He talks of the love his has for his sister and that the need to show respect to his own mother, "the boss", and his sisters.

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[138] He complains that the pediatrician who diagnosed the eye disorder was not an ophthalmologist, and he suggested that the mother has a close connection with him as she had posted a "like" to his Instagram professional promotional video.

[139] He had access on September 10, 24 and 30 and October 1, 2023, but then she disappeared again. He later found the address, but she had been evicted as her sister came home late. He was notified of a new address on November 1, 2023.

[140] Due to the criminal charges, he was advised by his lawyer not to contact her and he only resumed contact on February 11, 2024. Two days later she filed a harassment complaint which was dismissed due to lack of merit. He had access on February 18 and 25, 2024, from February 29 to March 3, 2024, and from August 1 to 30, 2024.

[141] The child did not attend school on September 4, 2024, and he found out on September 8, that she had vacated the premises. The school told him that Sabrine had not returned.

[142] Since he had no contact since August 30, 2024, he made numerous efforts to learn his daughter's whereabouts, including questioning her parents, complaining to the prosecution and requesting for the involvement of the Moroccan police.

[143] He sent numerous notification letters to the mother requesting time with his daughter.

[144] He believes that she only applied for a visiting visa for Sabrine to avoid the need to obtain the father's consent. There was no expert evidence led on this issue.

Findings of Facts

[145] As further elaborated below, the court has concerns with respect to the credibility of the mother's evidence.

Her Pleadings

[146] First, her affidavit for this hearing contained extensive allegations which were not outlined in her original pleading, her Answer. Although her pleading is not evidence, it certainly frames the mother's claims. The Answer does not allege coercive control, extensive physical sexual or

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psychological abuse, or harassment, but rather responds to the father's position set out in his application and states that her position is that she had legal authority to leave Morocco with the child.

[147] In her Answer, she states that, since the father's application to the courts to close the borders to her was dismissed, she is permitted to travel with the child.

[148] She does not raise concerns about the father's caregiving in her Answer and she is silent in her Form 35.1 affidavit on the physical or sexual violence. In her Form 35.1, under the section dedicated to allegations of violence, she states only the following:

- That, one week after the marriage, he left her in Morocco and she felt isolated and vulnerable. She did allege emotional abuse in humiliating her and not allowing her to drive one of the vehicles;

- She alleges that, in 2020, he threw a cup during a minor domestic dispute where she slipped on the stairs. This is the only allegation of physical violence; and

- During Covid she was left without food and transportation.

Supporting Evidence

[149] I find that there may have been some form of domestic violence of verbal abuse during the marriage as witnessed by her sister and her friend.

[150] Her witnesses did speak about verbal arguments and the outburst of the father but not of physical violence.

[151] There is a mechanism in Moroccan courts to bring complaints about harassment. She did complain of harassment but, due to lack of evidence, the police did not pursue it.

[152] Regarding domestic violence and allegations that the father was physically and sexually abusive of her, there are no police reports, no witnesses, and no corroboration that she was a victim.

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[153] Although violence does not have to be witnessed, the fact that the parties had an amicable divorce, and that, other than a police complaint of harassment, there are no lawyer's letters or complaints of physical or sexual abuse throughout the time that she was in Morocco undermines the credibility of the claims before the court.

[154] As stated above, these allegations were alleged for the first time in her affidavit in this hearing. The only previous mention of some physical conflict was the tossing of a cup by the father, as mentioned in her Form 35.1 affidavit.

[155] I find that within months of the mother starting a relationship in November 2022, she made a complaint of harassment against him on March 5, 2023, but it was dismissed on October 22, 2024, for lack of evidence.

[156] The father's reply affidavit responds to the mother's extensive allegations of family violence, coercive control and harassment. He claims that she unilaterally relocated four times within Morocco, and that after each move the father made a bailiff report regarding missed access and that she would respond by sending a notice with her change of address.

Form 20

[157] Next, the mother has failed to provide information about the immigration process. Is this due to her long-term planning or is it motivated by safety concerns? The court is without this information that would assist the court to determine whether she simply sought to reunite with her partner in Canada or whether she had safety concerns.

[158] She will not acknowledge whether she was in a common law relationship in Morocco as she is worried about the repercussions.

[159] I am not prepared to draw a negative inference for her failure to provide this information. However, it does leave the court with a query as to what she was planning and when she began planning to leave Morocco.

Father's Relationship with Sabrine

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[160] Regarding the father's relationship with the child, the mother used strong language in her complaint in September 2023, saying he "assaulted her [the child] by means of beating, insulting and oppressing her".

[161] From her materials, she has nothing good to say about the father as a parent to Sabrine. She says at paragraph 47 of her affidavit that he "expressed disgust toward our daughter, stated that she irritated him and at times referred to her in extreme terms because she cried or moved frequently, behavior entirely consistent with normal infancy".

[162] The father has not seen his child for 18 months and has been permitted only one video call since their move to Canada through a third-party supervision center, at his own cost.

[163] The mother does not acknowledge that he attempted to obtain access to the child when they were in Morocco. She does not acknowledge his assistance or his financial contribution to her after the separation.

[164] In contrast, the child told OCL social worker that the child misses her father and her aunt. There are photos with the father at school activities.

[165] I find that the mother minimizes the father's role in the child's life and does not appear to wish to promote the child's relationship with her father.

Both Parties Used the Legal System

[166] Both parties were constantly involving authorities in their disputes.

[167] The mother showed an ability to navigate the legal system and, like the father, accessed different segments, e.g., requesting a passport, using the bailiff, and bringing complaints, including an allegation of assault against the father on the child.

[168] I find that both parents frequently engaged the legal system to either ask for compensation of some sort, invoke criminal charges, or litigate parental and access issues.

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[169] The issue of child support payments was raised by the mother after her Permanent Resident application was under way and the father had paid some cash payments. The court would only accept that 65 % of the payments had been made, and therefore he paid the 35% balance.

[170] The Moroccan court rejected the father's application on November 27, 2024, to block her from leaving the jurisdiction but that does not mean, as the mother submits, that she retained legal authority to travel internationally with the daughter.

[171] In the father's application on April 23, 2025, the father's request was denied but the mother's lawyer told the court there was no worry of her leaving, when in fact she had already left the country by that time. This appears to be a misrepresentation to the court, though the court is not imputing knowledge of the true state of affairs on the mother's counsel.

[172] In his May 2025 custody order, the father did not advise the court of his prior criminal charges and the evidence of her allegations of abuse and psychological harm through the medical report filed in the criminal process. He did rely on her access order violation dated February 3, 2025.

[173] The court order, according to the mother, is neither final, enforceable nor reliable as it was rendered in the mother's absence, which means that she will have an opportunity to provide her own evidence.

[174] She says that the court would not grant her a protective order for the child but there is no documentary evidence that she requested it and was denied, nor is there a court order indicating why the court denied a protective order.

[175] The father was also assertive in using the legal system. The mother complains that his constant interference with her life was harassing. However, some of his complaints were upheld as he was attempting to obtain access to his daughter. Many instances of the mother's attendance at the police station were to deal with complaints by the father that he was denied access to his child.

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[176] Her custody was revoked due to her repeated interference with the father's access. The father made many complaints of the denial of access and some of her questioning by the police involved this issue.

[177] Therefore, the record shows that both parties used the Moroccan legal system and the father had legitimate reasons for bringing matters and his concerns to court. This is especially so when the father alleges that he was unable to access the child.

General Findings

[178] I found the mother to very articulate and highly intelligent.

[179] As stated above, she refused to answer the question of what authorization she had to leave the country with the child. She answered that she had the right to leave the country. This is contrary to her own expert evidence (as discussed below) on this point.

[180] She has shown through her communications with the father and through the initiation of court processes and bailiffs that she is confident in using the systems available to her and does not shy away from confrontation with the father.

[181] The evidence of the sister certainly portrays a situation where, she believed, her sister was not happy in the marriage.

[182] The friend's evidence is candid regarding her limited interaction with the parties, both during the marriage but especially after their separation, and admits that any information that she has comes from the mother.

[183] The father did show a paternalistic attitude with his comments about how miscarriages happen to young women, and he tried to give himself much credit in the mother's success in obtaining her dentistry degree. His interference with the dean of the university can demonstrate a sign of caring but also can be perceived as controlling.

[184] He spoke of feeling betrayed that she was in a relationship only one month after divorce. This is not an unusual sentiment from a divorced spouse.

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[185] The mother argues that his intent on "clearing his name" regarding the criminal conviction is self-centred. I do not accept that this is a proper characterization of an individual who believes he has been wrongfully convicted.

[186] Some of the father's attitudes are certainly based in his culture and religion, but the court is not here to critique another individual's religious or cultural views. I do not find that the father's beliefs as expressed pose a grave risk to the child.

Father's Conviction of Assault on the Child

[187] The most serious complaint was the mother accusing the father of assaulting the child during the August 2023 summer break.

[188] By way of background, there are communications between the parents that show the father as being polite yet demanding in the exercise of his rights.

[189] The mother's responses are assertive and show her refusing his requests and drawing clear boundaries, e.g., she demanded that he return the child on September 3, 2023, not September 4. She stood her ground.

[190] When he did not bring the child back on September 3, she obtained a bailiff to write a report that the child was not returned and she immediately attended the school next day for a "pre-term" event and took the child from the father in the presence of the bailiff.

[191] Immediately, she accused him of assaulting the child.

[192] The medical reports are not in evidence and the court cannot take them for the truth of their contents but does note that the original medical report regarding the child said there were marks on the *left* eye and the court appointed report (seven months later) said there were marks and medical issues with her *right eye.*

[193] I also note the following:

- The complaint by the mother was made on September 14 (ten days after the child was picked up by the mother);

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- The photos taken by the mother on September 6, 2023 (two days after the child's return from the father) show no marks on the child;

- I do note that the mother's sister indicated that she saw a bruise on the child after her visit with her father in August 2023;

- In addition, the father's access continued and, in fact, he had the child the whole month of August 2024, as per his usual summer schedule. The court would have thought that, if the mother was concerned that the father was physically violent towards the child, she would have made attempts to vary the access order;

- Photos have been filed which include the father's attendance at the school. The father's materials show photos taken of Sabrine at the school on December 5 and 26, 2023, and on February 12, 2024, which show his continued involvement after this allegation;

- The father was present at the parents training session at the school Bee Smart Kindergarten on November 14, 2023; and

- Her Form 35.1 affidavit does not indicate any abnormality on the daughter's eye.

[194] Nevertheless, the court accepts there is a conviction.

[195] Despite hearing evidence that casts doubt on this conviction, this is an issue for the court of appeal in Morocco, not this court.

[196] There is only one act of violence toward the child which resulted in a conviction and is certainly a serious matter.

[197] However, I do not find that this rises to the level of posing a grave risk to the child or of placing her in an intolerable situation should she be returned to Morocco. This was an isolated incident and there has no history of the involvement of child protection or of injuries or previous violence against the child by the father.

Expert Evidence

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[198] The court heard from two Moroccan lawyers who were qualified to provide the court with opinion evidence on Moroccan family law and its application. Ms. Jalal was called on behalf of the mother, and Ms. Ammoumou on behalf of the father.

[199] In addition, a professor at Carleton University, Mr. Raessi, was called on behalf of the OCL.

[200] The parties and the expert witnesses agree on the following on the family law framework in Morocco.

- Currently Morocco has a civil system with a Family Code that has been in force since 2004.

- The experts confirmed that courts in Morocco, in applying the Family Code typically grant "custody" to the mother if she meets the requirements set out in Article 173 of the Family Code, which would include "legal age, moral integrity, ability to raise children and the status of being unmarried". Custody means day-to-day care and primary residence.

- Pursuant to Article 236, the non-custodial father retains rights of legal guardianship, the right to supervise the upbringing on the child, the right of daily educational follow-up and the right to request the revocation of custody. The mother must obtain the non-custodial father's consent for key administrative decisions, such as school enrolment or international travel, unless a court order states otherwise. This is by operation of law as long as the father has not been deprived of such guardianship by a judgment.

- In the event of the father's impediment, the mother is authorized to safeguard the urgent interests of the child.

- In determining guardianship, the court will grant it to the father unless he is deceased; then it goes to the mother.

- Access is seen as the right of the child and it is interpreted as in the child's best interests.

- There is no mechanism for equal joint decision making, but rather the code divides responsibilities between the custodian and the legal guardian. All three experts noted that

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there are currently legislative proposals in Morocco with recommendations regarding joint guardianship and temporary travel of custodial mothers.

- There is a legal framework to protect children and children do not the benefit of autonomous legal representation. Under the Family Code, minors are legally considered incapable and their legal representation is vested in their father, while children who are 15 or older may choose who they wish to assume custody.

- Article 163 states that custody preserves the child from harm and ensures their education and the protection of their interests. The custodian must take all necessary measures to guarantee the physical and psychological security of the child in his or her custody, manage his or her interests in the absence of a legal tutor and act as necessary when the interests of the child in his or her custody are jeopardized.

- Under Article 171, if there is a separation, the custody is granted to the mother as a matter of priority, then secondly to the father, and then thirdly to the maternal grandmother, subject to judicial supervision and the best interests of the child.

- Each parent may request a court order for custody where there has been a change of circumstances and the change is likely to prejudice the child's best interests as provided for in Article 170.

- Under Article 173, to be eligible for custody a person must be over 18 if they are not the mother or father, they must have moral rectitude and be trustworthy, and they must have the ability to raise the child, protect the child's health and ensure their moral, religious and physical well-being and schooling.

- A woman who petitions for custody must not be married except where Articles 174 and 175 allow it. Under Article 174, a non-mother custodian loses custody on remarriage except in specific guardian cases. Under Article 175, if the custodian is the mother, then she does not automatically lose her custody, subject to certain circumstances.

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[201] The experts have commented that in practice, the tribunals consider evidence that does not accord with what Canadian law would consider. For example, the fact that a mother communicated with a man who was not her husband on WhatsApp about what she was wearing and she commented on his perfume would be considered evidence in assessing propriety to maintain custody of a child.

Mother's Expert

[202] Ms. Jalal's affidavit of January 15, 2026, was entered in as expert opinion evidence on Moroccan family law, including on the following: child custody after divorce; rules of attribution; exercise and withdrawal of legal guardianship; the criteria enabling the courts to assess the best interest of the child; analysis of judicial processes relating to violence, abuse and neglect; and the application of Moroccan criminal law to domestic violence and the risks to a women in the event of a relationship outside marriage.

[203] She describes the various legal proceedings between the parties.

[204] She explains that, according to Article 169, "both parents share responsibility for discipline, education, guidance and care… decision-making remains joint between the parents in many matters, notably those involving legal guardianship".

[205] She opines that the father did not have custody rights, but only access rights when the mother left Morocco. However, the mother did not have the right to take the child abroad as the relocation of the minor child abroad falls within acts of major legal guardianship which require either the express consent of the holder of legal guardianship or prior judicial authorization.

[206] At para. 67, she discusses the development of a practice of consulting the mother and seeking her views to assess the best interests of the child regarding the legal representation of minors.

[207] There are cases where the court does not permit the father unfettered rights to be child 's legal representative and oversees this representation to ensure that it is in the child's best interests.

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[208] At para. 71, she states that even though legal guardianship is vested in the father by operation of law, it is subject to judicial control in the interests of the minor. To this end, Article 169 provides that, in the event of a disagreement between a legal representative and the person having custody, the court will resolve the dispute in accordance with the best interests of the child: para. 76.

[209] The return of the mother will result in enforcement of the custody order of May 19, 2025. This order provided for the revocation of the mother's custody. The order will need to be dealt with by the court of appeal as it was not stayed on October 6, 2025, as it was not enforceable. She indicated that there was a procedural contradiction as she believes it was a judgment for which a notice of execution was served.

[210] She spoke of the separation of the child from her mother as a psychological risk and stated that there is no provision for a secure transition.

[211] Upon her return, Ms. Jalal confirmed that Article 163 will ensure the protection of the child’s education and preservation of the child’s interests.

[212] In the application of the law, Ms. Jalal referred to a case where the court considered the fact that a woman had sexual relationship outside marriage in determining propriety to have custody over the child.

[213] Penal code Article 490 penalises a woman if she lives with a partner, which could expose her to the father making a complaint. It should be noted, at the same time, that there are criminal consequences in Canada if a person illegally abducts a child and family law courts may review the custodial arrangements.

[214] There are also implications in civil law, as the father may ask for damages as a result of separation form the child.

[215] Therefore, under the Family Code, a person holding custody may lose custody if unable to ensure the child’s education and protection of their religious, physical and moral well-being by

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compliance with remarriage. Any behaviour exposing the child to a material moral or emotional risk would present a reconsideration of custody.

[216] At para. 133, she states that the Moroccan law provides formal guarantees intended to ensure protection of the rights of parents and the child and the right to a fair trial. The Family Code is governed by the principle of the best interests of the child and provides for the mandatory intervention of the public prosecution in matters relating to minors.

[217] At para. 135, Ms. Jalal indicates that the application of these rules may vary depending on the jurisdiction and the specific circumstances of the case. Family courts have broad discretionary powers and allow for adaptation on the particularities of each case.

[218] At para. 136, she states that the effectiveness and promptness of intervention of the judicial authorities and police services may be affected by structural factors such as court workload, delays in case processing and difficulties in enforcing judicial decisions.

[219] The Moroccan legal framework provides for mechanisms of protection and repression for gender-based violence and abuse against children. In practice, there are difficulties in identification, handling and effective follow-up.

[220] It has been observed that, despite the existence of a formal gender-neutral legal framework, there are differences in treatment based on gender. For example, although the mother is primarily responsible for the care and upbringing of the child, this may be reviewed if she fails to comply with legal and moral requirements attached to the custody. At para. 142, she states that the practical application of the Moroccan law is intended to ensure protection of security and the right to fair trial, but it does not always guarantee fully uniform and effective protection.

[221] At para. 150, Ms. Jalal spoke of transition issues if the child is returned to Morocco. Article 177 of the Family Code imposes on the parties and close relatives to inform the public prosecution service of any harm or risk of harm to which the child may be exposed. The public prosecution may request that the court provide measures for the protection for the child.

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[222] Next, the court could call upon a social worker who can prepare a report regarding housing conditions and moral care and examine the child's educational and emotional environment, which will be an assessment of the child's capacity for adaptation and custodial parent's aptitudes.

[223] Although these measures are variable, this may not be effectively exercised.

[224] In cross-examination, Ms. Jalal agreed that the guiding principle is what serves the best interests of the child. In theory, the court is to determine custody in accordance with the best interests, but in practice there are many interpretations.

[225] Ms. Jalal indicated the public prosecution associated with the family court rarely becomes involved in domestic violence, and they refer parties to the criminal courts.

[226] If the child is returned, Ms. Jalal indicated that it is possible for the parents to agree as to what would happen. At this time, there is a custody order obtained by the father in May of 2025, and it does not provide for access to the mother. Upon the child's return, the father could request the execution of that custody order.

[227] I found her evidence very helpful and although the paramount principle in Moroccan Family Code is the best interests of the child, due to high case load and resources, the authorities are not always to adequately respond.

Father's Expert

[228] Ms. Ammoumou provided a general expert report where she agreed with most pronouncements made by Ms. Jalal. She provided a supplementary expert report addressing some of the questions raised by the OCL.

[229] She confirmed that the mother's removal of the child from the jurisdiction was a legal violation and, as the legal guardian, the father's consent or a court order was required.

[230] She confirmed as well that under, Moroccan law, both parents are responsible for the child's health, moral and educational care.

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[231] She notes that the United Nations General Assembly (and Morocco is a member state) adopted the *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 34/180 ("CEDAW"), on December 18, 1979.

[232] Ms. Ammoumou confirmed that the division of parental roles creates a dynamic that may be perceived as unequal based on gender.

[233] The court would consider the best interests of the child if the parties cannot agree on certain issues but there are practical interpretations. She conceded that there are challenges in judicial discretion, the role of the police, and child protection bodies.

[234] She spoke of efforts by her and others to ensure that women are treated equally in the law and not as second-class citizens. If a woman is seen being beaten on the street, she says no one will intervene as they will assume it is her husband or ex-husband. If there is a complaint regarding the mother having sexual relations outside marriage, then imprisonment is possible. If there is no complaint, then the public prosecutor may not proceed.

[235] Moroccan law accepts the *Hague Convention* but with reservations, including to Article 2 which speaks of gender equality. Morocco will also consider its national law, which includes Sharia law.

[236] As an activist, she was very strident in her views that the Moroccan law must change to allow for more gender equality. She was pointed to a number of articles she wrote where she criticized the Moroccan authorities for not ensuring equality and adopting certain recommendations set out in the CEDAW.

Expert for the OCL

[237] The OCL expert report was prepared by Mr. Raeesi. He is a professor at Carleton University. He longer practices in either Iran or in Ontario. His expertise is in relation to Islamic or Sharia law and Islamic legal systems, including the family law context, as well as international human rights.

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[238] He gave evidence on the application of Islamic law and held that, as a general presumption, those countries do not apply the law equally.

[239] His evidence was admitted but carries less weight than the parties' experts who were trained in Morocco and are practising lawyers in Morocco.

[240] He acknowledged that he is often an expert witness for the OCL and has a view that all Islamic countries are gender biased.

[241] He acknowledged that his expertise is concentrated on the Islamic legal systems operating in countries such as Jordan, Kuwait, United Arab Emirates, Pakistan and Qatar, rather than Morocco.

[242] Nevertheless, his evidence was helpful to the court in understanding the implications of Sharia law, which is incorporated in part in the Moroccan Family Code.

[243] He confirmed that, although it has accepted the principle of CEDAW concerning gender equality, Morocco has stated that this will be subject to their traditional law.

[244] He confirmed that if the child returns to Morocco, the court will determine custody, guardianship and access in accordance with the best interests of the child as their guiding principle.

Conclusion

[245] In my view, Moroccan family law has as its paramount principle the best interests of the child and its application does not pose a grave risk to the child if returned given the mother's allegations.

[246] As stated above, the assault conviction, in light of all the other evidence that I have heard and the Morocco Family Code provisions, does not satisfy the standard of grave risk or intolerable situation if the child returns to Morocco.

[247] I return to *F. v. N. (SCC)*, where the Supreme Court stated at para. 85, "[e]ven amongst parties to the *Hague Convention*, all of whom presumptively agree on the paramountcy of the best

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interests principle, the rules of family law may vary in a way that has an impact on how the best interests principle factors into the ultimate decision on custody and access on the merits."

[248] I am guided by the court when it stated:

> [88] Nonetheless, there may be instances where foreign laws are so profoundly irreconcilable with Ontario law that remitting the matter to the foreign courts would constitute serious harm within the meaning of the CLRA. Drawing the line between what is acceptable and what is not is a delicate exercise. In this case, there is no denying that the expert evidence pointed to gender-based inequalities in UAE law. But as Hourigan J.A. underscored in his reasons, the proper degree of tolerance for differences between foreign and Ontario law remains defined by the threshold of serious harm. Judges who must decide whether to take jurisdiction under s. 23 of the *CLRA* should be wary of their own interpretation of foreign law, in particular given the risk of treating some countries as *de jure* exceptions to the *CLRA* regime. While such a jurisdiction may theoretically exist, Canadian courts must be mindful of undercutting the fundamental premise that return will usually be in a child's best interests (s. 19 of the *CLRA*). Indeed, it should be noted that the dissenting judge in the Court of Appeal was careful to say that the UAE law did not present an "iron-clad" bar to returning children there. The proper approach recognizes that inconsistencies between local and foreign legal regimes will usually not amount to serious harm if the best interests of the child principle remains the paramount consideration in all decisions concerning children. However, if the incompatible rule automatically applies in a manner that supersedes the best interests of the child, this will be a determinative factor in the serious harm analysis, when s. 23 is read in light of s. 19(a) of the *CLRA*.
>
> [89] In this case, the Mother argues that the law of the UAE allocates custody and guardianship on the basis of gender which, she says, is incompatible with Ontario law and means that custody on the merits will not be decided based on the children's best interests.
>
> [90] I agree that equal treatment of parents, irrespective of their gender, is a fundamental precept of family law in Ontario and is tied to the application of the best interests of the child in custody matters. The CLRA embraces this view, as s. 20(1) provides that "[e]xcept as otherwise provided in this Part, a child's parents are equally entitled to decision-making responsibility with respect to the child". As such, in a case where children are to be returned to a jurisdiction where their best interests would be superseded by an inflexible rule that invariably assigns custody or decision-making powers on the basis of gender, the foreign law could be the source of serious harm and the basis for Ontario to take jurisdiction on the merits pursuant to s. 23 of the *CLRA*. Conversely, the risk of harm will be mitigated if the application of the gender-based rule is not automatic but instead depends on

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> the best interests of the child. In sum, the question for the purpose of s. 23 is whether the best interests of the child remains paramount. [Citations omitted.]

[249] In this case, I accept the Supreme Court's principle that "[t]he proper approach recognizes that inconsistencies between local and foreign legal regimes will usually not amount to serious harm if the best interests of the child principle remains the paramount consideration in all decisions concerning children." Morocco's paramount principle is the best interests of the child.

[250] I find it is not enough to point to differences in the law and suggest that a parent may have different rights in a foreign jurisdiction vis-à-vis Ontario.

[251] The court must consider the high standard of grave risk and intolerable situation and the court must not compare the Ontario and Moroccan systems and simply resort to the Ontario courts under the guise of child safety.

[252] Under the Moroccan law, on the initial determination of custody, there are presumptions of custody and legal guardianship based on gender. If the mother were in Ontario she would not be presumed to have day to day custody. In Morocco, the usual order would be that she is appointed custodian and thus granted primary physical custody of the child and the power to make day-to-day decisions on their behalf. The father would ordinarily be appointed as guardian and given the power to make significant decisions.

[253] However, both are tasked with incidents of custody to the child. The Moroccan court still has the overriding power to make determination based on the best interests of the child. This is so even if the father makes a complaint that the mother was living with a man outside marriage.

[254] As stated in *F. v. N.*, 2021 ONCA 614, 158 O.R. (3d) 481, aff'd 2022 SCC 51, at para. 83:

> I also observe that if my colleague's analysis were to be followed, the precedent established would be concerning. Such a decision would send a message to parents living in the UAE that if they unilaterally come to Ontario with their children, they will not be required by the Ontario courts to send their children home. Instead, they can avoid the s. 22 analysis and reduce the s. 23 analysis to a question of whether they would be subject to the law of the UAE. Thus, the underlying objective of the CLRA to reduce child abductions would be jettisoned in the wake of the rather provincial view that unless Ontario law is applied, children will suffer serious harm.

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> As a matter of comity, public policy, and common sense, such a precedent leaves much to be desired.

[255] Therefore, I find that the Moroccan law and its application would not create a grave risk or place the child in an intolerable situation.

[256] Certainly, there will be repercussions to the mother if she returns to Morocco by virtue of her abducting the child and denying access to the father. These will be dealt with in accordance with the Moroccan law.

> *Does the prospect of the separation of Sabrine from the mother, who is her primary caregiver currently, pose a grave risk to the child's psychological well-being?*

[257] In *F. v. N. (SCC)*, the court recognized that there is a question of whether separation can pose a risk to the child's psychological well-being rising to the level of serious harm. This issue should never be considered lightly given "the particular role and emotional bonding the child enjoys" with their primary caregiver: at para. 77. However, the court held that separation, in and of itself without regard to individualized circumstances, does not always rise to the level of serious harm required under s. 23 of the *CLRA.* Otherwise, this could "ultimately defeat the legislative objective of discouraging child abductions of very young children" and may "risk making Ontario a haven for child abductions": at para. 78.

[258] At para. 80, the court continued that if a child is separated from their primary caregiver but is returned to a capable left-behind parent, or other known caregivers, in a safe and familiar environment, "the high threshold of harm may not be met".

[259] The court further considered whether undertakings made by the left-behind parent or "protective measures" could be joined to the return order. The court concluded that "protective measures only attenuate the risk of harm if there is satisfactory evidence that they would be respected and enforceable in the foreign jurisdiction": at para. 81. The court deals with the father's undertakings below as a measure of protecting in the transition when the child returns to Morocco. In this case, there is no satisfactory evidence that it would be enforceable in Morocco. However, as stated the father is genuinely motivated to the return of Sabrine and aware of her need to have contact with her mother.

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[260] The court in *F. v. N. (SCC)* also emphasized caution in response to claims from parents that they would refuse to return with their child if their child was ordered to return. The court stated that, "[i]n general, a parent ought not to be able to create serious harm and then rely on it through their own refusal to return": at para. 82. The court continued, citing Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Oxford: Hart Publishing, 2013) at p. 280, to recognize that "[a]n obvious strategy for the primary carer abductor is to state she is not prepared to return with the child and that the consequent separation from her will cause the child psychological harm. Such claims are almost invariably rejected by most courts…".

[261] The court should generally consider the primary caregiver's refusal to return and as here, allegations of harassment and abuse and could be a justification for refusing to return. However, as a general matter, an unreasonable refusal cannot be said to be in the child's best interests as "the law requires parents set aside their differences, and facilitate contact between the child and their estranged partner. The mere fact of undertaking the wrongful abduction suggests an abductor has lost sight of that idea; the subsequent refusal to return, where not reasonably justified, makes further contact between the child and left-behind parent difficult": at para. 83.

[262] The mother argues that her potential prosecution and possible imprisonment for being in a relationship with a man who she is not married to. This would mean that she would be separated from the child.

[263] The court as heard from experts on this issue that a penalty could include fines and/or imprisonment.

[264] Currently, there is no complaint.

[265] The court cannot speculate on the outcome if a complaint was made.

[266] The court cannot speculate on the prosecution the likelihood of a finding of culpability of the mother.

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[267] Based on the evidence before me, this risk arose after the abduction as there is no evidence that she was living with another man who was not her husband at the time of the child's abduction.

[268] I find that the mother has not met her burden to demonstrate that the child will suffer great risk of physical or psychological harm or otherwise an intolerable situation if returned to Morocco.

Exception 3: The child of sufficient age and maturity objects to being returned (Article 13(2))

[269] This exception under Article 13(2) considers whether the child is of sufficient age and maturity and whether they object to being returned. Following the approach in *Ludwig:*

Has the child reached an appropriate age and degree of maturity at which the child's views can be taken into account?

[270] The child has told the OCL clinician that she does not wish to go back to Morocco without her mother. She wishes to stay with her mother in Canada. These wishes and preferences are consistent and there is no evidence that either parent has influenced her.

[271] I accept that these are her true wishes as it would make sense that she would wish to stay with her main caregiver, her mother, who has been with her since birth. She has lived full time with the mother since separation. As per the divorce order, the mother has been entrusted with the day-to-day care of the child and it should be no surprise that she would wish to stay with the parent she has been close to all her life. Her father has been involved during his access periods and for lengthier periods of time during the summer month of August but the child has lived with the mother for longer periods of time.

[272] There is no minimum age at which a child's wishes ought to be given weight. In *Borisovs v. Kubiles*, 2013 ONCJ 85, at para. 50, the court accepted the objections of an eight-year-old child stating:

> The child in this case is eight years of age. Nonetheless, she is bright and articulate, and was able to express her views and preference to the Children's Lawyer. She is afraid her mother will be harmed by her father. The basis of her

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> fears has been validated by other evidence. She wishes to remain with her mother in Canada. It is appropriate to take account of her views.

[273] In *Zaidi v. Zia* 2026 ONSC 291, the court recognized that in Ontario, children's wishes between ages of 5 and 9 have been considered by the court.

[274] In *X.L. v. C.B.*, 2024 ONSC 3895, a non-*Hague* case, the views of a five-year-old were a significant factor in the court's analysis.

[275] In *M.L.L.C. v. J.L.R.R. Droit de la famille - 2785*, [1997] R.J.Q. No. 10, at paras. 69-71, 82 and 87, the Quebec Court of Appeal met with the child who was eight years old and concluded that he had reached an age and maturity to take his opinion into account. He opposed the return and the court permitted him to remain in Quebec.

[276] Sabrine presents as a happy and healthy five-year-old child and there are no academic concerns. She attends counselling.

[277] She sat with the OCL for 20 to 30 minutes and can tell the difference between the truth and a lie. She is expressive of her day-to-day life and has an age-appropriate ability to describe her emotions with words.

[278] The OCL clinician testified that Sabrine speaks and behaves like a normal five-year-old child.

[279] She has a clear concept of her family in Morocco (father and her maternal aunt) and her family in Canada (her mother and her mother's partner, who she refers to as "Arab papa").

[280] She expresses strong connection with her mother who, as her primary caregiver, is involved in every aspect of her day-to-day life. When asked about a return to Morocco she indicated two thumbs down and spontaneously said "I do not want to leave my mother". When asked about staying in Canada with her mother she gave two thumbs up.

[281] Although the child is only five years of age, the court does not simply dismiss her views as the child should have a voice in the process. The *Hague Convention* gives her a voice. The court has heard her voice. She has no developmental needs or any identified special needs and she

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does not wish to leave her mother. The court accepts that her views and preferences are consistent and independently made for a child who is five years old.

Discretion to Decline to Exercise Discretion to Refuse the Return of the Child

[282] I have the discretion to act contrary to the views of the child, by reviewing key factors, in addition to the age and maturity of the child, the independence of her objection as well as the nature and strength of her objections.

[283] Sabrine appears to being well cared for by her mother and I have evidence from the social worker that she responds and acts in accordance with her age. There is no evidence that she is particularly mature beyond her young age.

[284] It is noted in the social worker's affidavit that Sabrine has transitioned well into her new bilingual school and that she is a social person who enjoys being with others. The teachers remarked that she is adjusting well. She enjoys her home life with her "Arab papa" and pet and participates in swimming and skating lessons. She says she loves her mother and sleeps with her in the same bed.

[285] Sabrine has provided little background to her previous home life or any observation regarding her parents' interactions.

[286] Sabrine gave two thumbs up to remaining in Canada with her mother and not wanting to go to Morocco without her mother. Clearly, her wish is to remain with her mother and objects to a return to Morocco without her mother.

[287] When asked if she wished to have video or phone contact with her father, she gave put one thumb up and then one thumb down. She was not able to explain this reaction.

[288] The *Hague Convention* does not offer a guideline to determine when a child's age and level of maturity is sufficient to tip the balance, particularly when the other defences are not proven.

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[289] In *Zaidi v. Zia*, at 318, the court stated: "But I find that it would have to be the exceptional five and eight-year-old or an exceptional set of circumstances that would make the views and objections of that five- and eight-year-old child determinative in a *Hague Convention* case when the other defences fail. I do not see that exceptionality here."

[290] As in *Zaidi*, I do not find that Sabrine fully appreciates the future consequences of a decision regarding her relocation as she simply happy and content and bonded to her mother and her new living arrangements.

[291] I find that her views and objections are independent and not unusual. The child is close to her mother.

[292] The mother indicates that she will not return to Morocco and clearly that would mean a separation from Sabrine. In a *Hague Convention* case, given my findings above, this cannot be the reason that the court refuses to return the child. If returned to Morocco, the child will be able to reunite with her paternal family, the father, aunt, uncle and paternal grandmother. She spoke well of her father and aunt who she said she misses.

[293] I have considered the nature and strength of the child's objections; the fact that they are authentically the child's own and not the product of the influence of the abducting parent.

[294] I have considered general *Hague Convention* considerations and I exercise my discretion to not respect Sabrine's objections.

Exception 4: The return of the child would not be permitted by fundamental human rights and fundamental freedoms of the requested state (Article 20)

[295] The mother and OCL submit that a return would be inconsistent with fundamental human rights and freedoms in Canada. A return would represent a violation of the child's human rights under the United Nations *Convention on the Rights of the Child* ("UNCRC"), to which Canada is a ratifying party; that is, her best interests are a primary consideration in all actions concerning her (Article 3), respect for her views (Article 12) her right not to be separated from her mother against her will (Article 9) and her right to be free from all forms of violence/harm (Article 19).

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[296] The OCL submits that a return would represent a repudiation of the gender equality that is available in Canada. Canada has both domestic and international obligations protecting every person's rights rest in right to equality under and before the law and equal protection from discrimination on the basis of sex, including the *Canadian Charter of Human Rights and Freedoms*, domestic human rights code, and international instruments which have been adopted, including the CEDAW and UNCRC.

[297] This exception is a rare and narrow ground that requires the mother to show a flagrant incapability that cannot be mitigated.

[298] I do not find that gender-based guardianship rules in a state signatory to the *Hague Convention*, standing alone, would meet the test.

[299] I was not provided with jurisprudence where a court refused the return of a child to Morocco on Article 20. This exception relates to countries where there are serious human rights violations such as torture, war crimes, and crimes against humanity.

[300] Most importantly, I also do not find that there is systemic discrimination in the Moroccan family law that fundamentally ignores the best interests of children. There are also no allegations that Morocco has practices of crimes against girls and women or that there is complete denial of due process. In fact, both Moroccan experts spoke that Moroccan law believes in a fair trial, and that the paramount interest is the best interests of the child and protective measures are available for their protection.

Undertakings

[301] In his testimony, the father indicated that he has no intention to alienate the child from the mother. Rather, he stated that she could see the child anytime she wanted. Also, it is not his intention that the mother be imprisoned.

[302] In *Thomson*, the Supreme Court of Canada indicated that Canadian courts could impose undertakings on parties to deal with the transition period between the time when a Canadian court

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makes a return order and the time at which the children are placed before the courts in the country of their habitual residence. As expressed by La Forest J. at p. 599:

> Through the use of undertakings, the requirement in Article 12 of the Convention that "the authority concerned shall order the return of the child forthwith" can be complied with, the wrongful actions of the removing party are not condoned, the long-term best interests of the child are left for a determination by the court of the child's habitual residence, and any short-term harm to the child is ameliorated.

[303] In the father's reply submissions, he provided a list of undertakings that he was prepared to make in the event that the court returns the child to Morocco.

[304] Although, he had indicated that he was prepared to make undertakings early in the hearing, he only articulated them in reply submissions. The court granted counsel time to consider them and return with their submissions a few days later.

[305] The father proposes the following undertakings and acknowledges that the ultimate custody and guardianship will be determined by the Moroccan court. He acknowledges that these undertakings shall remain in force until varied or terminated by a court of competent jurisdiction in Morocco or for the specific time period set out below, whichever comes first:

- 1) Upon immediate return of the child, the father undertakes to refrain from pursuing the mother with further criminal complaints as long as the mother does not make unlawful actions against the child or the father;

- 2) Although the father has no authority to cancel or withdraw the national search warrant against the mother, he undertakes to support her in resolving the matter lawfully by encouraging her voluntary appearance before the court and assisting in finding legal representation, and he further undertakes to refrain from taking any steps that would increase her criminal exposure;

- 3) The father undertakes to assist promptly and in good faith all immigration, passport, visa, or travel documentation required to affect the return of the child to Morocco;

- 4) The father undertakes to fully cooperate with Moroccan authorities to ensure that the mother is not detained, arrested, restricted, or prevented from entering or leaving Morocco;

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- 5) The father undertakes to pay all reasonable travel costs associated with the return of the child to Morocco including airfare, baggage fees, and ground transportation;

- 6) The father undertakes to ensure that safe and suitable accommodation is available to the child upon return, whether with the father or temporarily with one of his siblings as directed by the court;

- 7) The father undertakes that he will not seek any financial support from the mother for the child, recognizing his responsibility as legal guardian to provide for the child's expenses;

- 8) The father undertakes that he shall not harass, threaten, intimidate, coerce, or exert pressure upon the mother, directly or indirectly, including through extended family members or third parties;

- 9) The father undertakes to comply immediately and fully with any interim or protective orders issued by a Moroccan court concerning the mother or the child;

- 10) The father undertakes that all communication with the mother shall be civil and limited to matters concerning the child (by email or co-parenting apps), unless otherwise agreed in writing or ordered by a court;

- 11) The father undertakes that the mother shall have immediate and meaningful access to the child upon return, pending determination by a Moroccan court;

- 12) The father undertakes to facilitate regular and meaningful virtual communication between the mother and the child, including at least one scheduled video call per day and additional calls on weekends, subject to the child's routine, school schedule, and well-being. The father further undertakes to accommodate additional spontaneous calls when reasonably possible;

- 13) The father undertakes to maintain continuity in the child's education, medical care, and routine, including enrolment in school and access to necessary medical services;

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- 14) The father undertakes to maintain continuity in ongoing medical, psychological, or therapeutic care for the child, pending Moroccan court review;

- 15) The father will have access to the child's health, education, activities, and general well-being, including school reports, medical updates, and other relevant documentation;

- 16) The father undertakes to register the child and himself with a suitable therapist as applicable;

- 17) The father undertakes to support the child's emotional connection with the mother, including by ensuring that the child has access to photographs or personal items including placing photos of the mother and the child in the child's room, that maintain and encourage a healthy bond with the mother;

- 18) The father undertakes to share photos or short videos of the child with the mother on a regular basis, including at least two times a week, through email or a co-parenting app. The applicant further undertakes to share additional photos or videos when reasonably possible, particularly during special activities, outings, or milestones;

- 19) The father undertakes that in the event of his death, the child shall be placed in the care of the mother, unless the child is of sufficient maturity to express a different preference, in which case the competent Moroccan court shall determine the appropriate arrangement;

- 20) The father undertakes to commence or participate promptly in custody and parenting proceedings in Morocco following the child's return, as required;

- 21) The father undertakes to post reasonable security, to be held in trust by counsel Fahmida Akhter or Anthony Macri, as security for compliance with these undertakings, to be released upon confirmation of the child's safe return and initial court access in Morocco; and

- 22) The father acknowledges that these undertakings are binding upon him and that failure to comply may be raised before courts in Canada and Morocco as relevant to credibility and relief.

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[306] The mother submits that these undertakings are not enforceable and does not mitigate the grave risk of harm.

[307] The OCL questions the intent of the undertakings and submits that they are only acceptable in the short term or as a transitory measure. They are not acceptable as a proposal to respond to the heart of the issue, which is to mitigate a grave risk.

[308] In addition, the OCL submits that the court should determine the father's true intentions.

[309] The OCL agrees with the mother's submissions that his actions suggest he wishes to continue the reversal of custody, as evidenced by the multiple court appearances since he first obtained a reversal of custody in May 2025. As such, the undertakings are not enforceable.

[310] Though the father can provide these undertakings, on a careful review of the undertakings it is clear that, ultimately, the Moroccan courts will determine custody and legal guardianship of the child.

[311] In *F. v. N.*, the Supreme Court stated at para. 98 that undertakings can "effectively mitigate less consequential or short-term distress" and "assist in crafting a solution that is in the best interests of the children". It will also address obstacles and provide for transition when the child is returned to Morocco.

[312] In my view, the father's undertakings are only his intention to assist in the transition. Clearly, he acknowledges that they are not enforceable and that the court will determine the parenting issues.

[313] I do note that the mother's expert indicated that the Moroccan courts would only proceed with complaints against the mother if the father brought them. However, as it stands now, there is an outstanding warrant for arrest of the mother given that she abducted the child.

[314] As to whether he is genuine in giving these undertaking, I note from his oral evidence and affidavit materials that he has no intention of alienating the child from the mother. I accept that he is aware that it is in the child's best interests that she have contact with the mother. He also acknowledges in his undertakings that, ultimately, it will be up to the Moroccan courts.

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Conclusion

[315] The *Hague* application is not a custody determination. I have found that the child's habitual residence is Morocco and that the mother has failed to meet the burden of establishing that Sabrine would be exposed to grave harm or otherwise placed in an intolerable situation if returned to Morocco. This is so even though Moroccan law is partially based on Sharia law or may reflect certain traditional views of women's roles in family life.

[316] The courts have emphasized that the *Convention*'s goal is prompt return and operation with respect for international comity and mutual trust: *Balev*. I must ensure that the thresholds of "grave risk" or "intolerable situation" are not reduced to such an extent that they invite the court to enter into an analysis of best interests.

[317] Protective measures are available in Morocco, as evidenced by both parties utilizing the courts on numerous occasions. In this case, there is a system available in which to file criminal harassment cases is available.

[318] I find that Morocco will be able to make arrangements that will protect a child from grave risk of harm if the child is returned there.

[319] Considering the evidence of the parents' expert witnesses, there is no reliable evidence at trial that the court system in Morocco will do anything other than determine custody in accordance with the best interests of the child.

[320] The father has also provided undertakings that should be considered.

[321] While I recognize that the child could face negative emotional effects when separated from their primary caregiver this anticipated risk did not rise to the required level of "grave risk" or "intolerable situation". The child is bonded to her father and her paternal aunt, as she admitted to the OCL social worker that she misses them. She does not cite safety concerns when wishing to stay in Canada with her mother although she did mention that her father "hit" her.

[322] In summary, I do not find that Moroccan Family Code and its application pose a grave risk or create an intolerable situation for the child.

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[323] In my view, a potential disadvantage to the mother in a foreign custody proceeding does not equal grave risk. The *Hague Convention* does not guarantee equal outcomes, only the proper forum based on the child's habitual residence.

[324] This court is not tasked with determining whether the foreign legal system in Morocco is as "progressive" as Canadian law. To do so would undermine the *Hague Convention*, which depends on mutual trust between contracting states. As a signatory of the *Hague Convention*, there is a presumption that its courts are capable of proper adjudication of custody disputes.

[325] The mother has failed to satisfy her onus that she meets any of the exceptions.

[326] I conclude with a final observation from *W. (V.) v. S. (D.),* [1996] 2 S.C.R. 108, where L'Heureux-Dubé J. engaged in an extensive analysis of the *Hague Convention* and of the Quebec statute implementing the *Convention* in that jurisdiction. She stated the following at p. 135:

> The automatic return procedure implemented by the Act is ultimately intended to deter the abduction of children by depriving fugitive parents of any possibility of having their custody of the children recognized in the country of refuge and thereby legitimizing the situation for which they are responsible. To that end, the Act favours the restoration of the *status quo* as soon as possible after the removal of the child by enabling one party to force the other to submit to the jurisdiction of the court of the child's habitual place of residence for the purpose of arguing the merits of any custody issue.

[327] Accordingly, Sabrine will be returned to Morocco and be accompanied by the father, and he will cover all the child's travel expenses.

[328] Pending return of the child to Morocco, the father will have 15-minute video-conference call (Facebook or WhatsApp Videocall or other social media) every Saturday at 10:00 a.m. ET.

[329] The mother will immediately release all of Sabrine's travel documents including passport with counsel for the father.

[330] The father's undertakings listed above are binding on him.

[331] In his application, the father requested police enforcement. He did not particularize what

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police force or the details of the order requested.

[332] In my view, forcible police apprehensions are not in the child's best interests and should not be used to manage the parents' behaviour.

[333] I assume the parties can arrange the orderly return of Sabrine to Morocco without police enforcement.

Costs

[334] Section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, gives this court broad discretion in fixing costs. The governing principles are reasonableness and proportionality: *Beaver v. Hill*, 2018 ONCA 840, 143 O.R. (3d) 519, at para. 12, leave to appeal refused, [2019] S.C.C.A. No. 82.

[335] The Office of the Children's Lawyer did not seek costs.

[336] The father's bill of costs set out the time spent by both Ms. Akhter who was called in 2025 and her hourly rate is $200 and Mr. Macri who was called in 1997 and has an hourly rate of $450. In total, counsel have spent 257.4 hours which includes the initial dealings with the Central Authority and commencement of the application and exchange of pleadings, attendances at case conferences, preparation of affidavits for the hearing, engaging an expert and obtaining an expert report, preparation for trial which included reviewing the mother and OCL's materials and attendance at the 7.5 days hearing.

[337] I do not find that there was extensive duplication of efforts by the two counsel on the file.

[338] The costs claimed by the father on a partial indemnity basis is $34,324.85.

[339] The mother claims costs of $53,901.00 on a partial indemnity basis.

[340] This case raised complex issues of utmost importance to the parties and to the child.

[341] The court heard from an expert from each party and the OCL. This added to the complexity of the case. Each party requested more time than was allotted by the case management judge, which provided for a hearing of three days. This focussed hearing took eight days to complete and

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the parties returned for a short attendance before me on another day to argue the father's proposal for undertakings if the child was returned to Morocco.

[342] At the same time, this matter did not raise novel issue. However, the hearing was complex in that it dealt with a myriad of evidentiary challenges and interpretation and application of foreign law. In addition, there were extensive affidavit with voluminous exhibits filed which would have required time to prepare.

[343] I note that there were no concessions on the findings regarding habitual residence, the Moroccan law, the father's custodial rights and the use of 4 of the 5 exceptions.

[344] All parties fought on every issue including evidentiary issues (1.5 days of voir dire that was not provided for in the case management endorsement), regular rulings on the admissibility of documents, and countless objections. The process was highly charged as there is a lot at stake in these types of proceedings.

[345] This litigation approach taken by all involved is reflected in the bill of costs submitted by both parties.

[346] As the wholly successful party, the father is entitled to costs on a partial indemnity basis.

[347] I also note that his bill of costs is substantially lower than the mother's bill of costs and the amount claimed in not unreasonable.

[348] I have reviewed the bill of costs filed and I find that reasonable and proportional amount of costs should be $34,324.85 payable by the mother to the father.

Justice A. Doyle

Date: February 20, 2026

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CITATION: Maarif v. El Fazazi, 2026 ONSC 977
COURT FILE NO.: FC-25-1541
DATE: 2026/02/20

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ONTARIO

SUPERIOR COURT OF JUSTICE

RE: Karim Maarif, Applicant

-and-

Jihade El Fazazi, Respondent

COUNSEL: Fahmida Akhter and Anthony Macri for the Applicant

Concillia Muonde for the Respondent

Deborah Bennett for the OCL

REASONS FOR JUDGMENT

A. DOYLE J.

Released: February 20, 2026