

SUPREME COURT OF NOVA SCOTIA

Citation: *Palackamthundathil v. Paul*, 2025 NSSC 288

Date: 20250912

Docket: *Syd* No. 134672

Registry: Halifax

Between:

George Palackamthundathil

Applicant

v.

Jency Paul

Respondent

Judge: The Honourable Justice Shannon B. Mason

Heard: June 23 and 24, 2025, in Sydney, Nova Scotia

Written Release: September 15, 2025

Final Written Submissions: Applicant – June 30, 2025
Respondent – June 30, 2025

Counsel: George Palackamthundathil, Applicant - Self-Represented
Amber Routledge, for the Respondent

By the Court:

Introduction

[1] Adam George just turned two years old. His mother, Jency Paul, is facing deportation. She has been Adam's primary caregiver since his birth. She wants to relocate with Adam to her home country of India. Her Visa expires on November 1, 2025.

[2] Adam's father, George Palackamthundathil, strongly opposes his son relocating to India. He asks that Adam be placed in his primary care if Ms. Paul cannot stay in Canada.

Issues

[3] In this decision, I will address the following issues:

1. **Who bears the burden of proof?**
2. **Is relocation in Adam's best interests?**
3. **If so, what parenting arrangement is in Adam's best interests?**

Background Information

[4] Mr. Palackamthundathil and Ms. Paul are citizens of India. They married in India on July 15, 2021. It was an arranged marriage. At the time of the marriage, Mr. Palackamthundathil had been in Canada since 2019 on a student Visa. Shortly after the parties' wedding, he returned to Cape Breton to continue his studies and to work. In May 2022, Ms. Paul arrived in Cape Breton under a spousal visa. She remains in Canada currently on a work permit.

[5] When Ms. Paul was 7 months' pregnant with Adam, the parties moved to British Columbia to reside with Mr. Palackamthundathil's family so that the family could provide support to the parties.

[6] Adam was born on August 23, 2023.

[7] In September, 2023, the parties' relationship began to deteriorate. Ms. Paul and Adam left Mr. Palackamthundathil's family home and went to the Mizpah Transition House in Dawson Creek, where they stayed for 7 days. Ms. Paul claims that the environment at Mr. Palackamthundathil's family home was unhealthy, and that she experienced verbal and mental abuse, physical violence and exposure to alcohol use and second-hand smoke by members of Mr. Palackamthundathil's family. Mr. Palackamthundathil denies these allegations. Nevertheless, it is not disputed that the parties mutually agreed to move back to Nova Scotia as they wanted

to give their marriage another chance. Ms. Paul and Adam travelled to Nova Scotia in early October and Mr. Palackamthundathil joined them approximately one month later.

[8] After the parties returned to Nova Scotia, their relationship improved for a for a short time before deteriorating again. The parties separated for a final time in February, 2024.

[9] Mr. Palackamthundathil commenced a relationship with Alyssa MacNeil within a month of the parties' separation. They started living together in May, 2024.

[10] In March 2024, Mr. Palackamthundathil agreed that Ms. Paul could travel to Dubai with Adam to visit her sister. Ms. Paul returned to Nova Scotia with Adam in May 2024 and resided in the family's apartment. Mr. Palackamthundathil moved to an apartment in an adjacent building.

[11] On July 29, 2024, Ms. Paul contacted police to report that Adam was in his father's care and she had observed Mr. Palackamthundathil outside of his apartment without Adam. Ms. Paul reported being fearful for Adam's safety as she believed he had been left alone in the apartment. Ms. Paul went to Mr. Palackamthundathil's apartment to retrieve Adam, but Mr. Palackamthundathil refused to return Adam to

her and held her by the arm to prevent her entry. Police confirmed that Ms. MacNeil was present in the apartment watching Adam. Police returned Adam to Ms. Paul.

[12] On August 1, 2024, Ms. Paul texted Mr. Palackamthundathil to advise that she had relocated permanently with Adam to Toronto. She provided Mr. Palackamthundathil with her address.

[13] On August 8, 2024, Mr. Palackamthundathil obtained an Interim Ex Parte Order requiring Ms. Paul to immediately return Adam to the Cape Breton Regional Municipality. The order further stipulated that once Adam was returned to CBRM neither party was to remove him from Cape Breton without further order of the court. Ms. Paul was ordered to surrender Adam's passport and it was to be held "in trust" by the Sheriff's office. The passport was later transferred to Candee McCarthy Law office to be held in trust pending a final order. Ms. Paul was also prohibited from applying for any travel documents for Adam pending further order of the court.

[14] Mr. Palackamthundathil also applied for an order for primary care of Adam or alternatively, shared parenting, and an order preventing Adam's relocation.

[15] Ms. Paul returned to Cape Breton within days of being served with the ex parte order. She retained counsel and filed a Response on August 27th seeking primary care, child support and authorization to relocate with Adam. Her Response

was accompanied by an affidavit detailing her request to relocate with Adam should she be required to leave Canada.

[16] Mr. Palackamthundathil's father travelled to Cape Breton from B.C in August 2024 to help Mr. Palackamthundathil care for Adam during his parenting time.

[17] On September 3rd the parties appeared in court for a conference. An Interim Order was granted on a without prejudice basis placing Adam in Ms. Paul's primary care. Mr. Palackamthundathil was granted reasonable parenting time as discussed between the parties upon reasonable notice to Ms. Paul. Mr. Palackamthundathil was ordered to pay child support in the amount of \$300.00 per month, based upon his 2023 income of \$35,221.00.

[18] In September, Ms. Paul started working at the Sydney Call Center. She enrolled Adam in Whitney Pier Day Care in October.

[19] Difficulties arose between the parties as it related to Mr. Palackamthundathil's parenting time. The parties appeared in court for a settlement conference on March 6, 2025 and agreed to a further interim order confirming Ms. Paul as Adam's primary caregiver and providing specified parenting time for Mr. Palackamthundathil from 9 am to 6 pm on either Friday or Saturday each week, and from 9 am to 12 pm one morning each week. Mr. Palackamthundathil was required to notify Ms. Paul in

writing by Sunday each week as to which days he intended to exercise his parenting time. The order also required Mr. Palackamthundathil to respect Adam's nap and feeding schedule, to ensure Adam's personal hygiene was maintained, and to transport Adam at the start and end of his parenting time.

[20] A contested hearing proceeded on June 23 & 24, 2025 by way of cross examination on affidavits. Ms. Paul was represented by counsel, Ms. Routledge. Mr. Palackamthundathil was self represented. In addition to the parties, evidence was received from Alyssa MacNeil (Mr. Palackamthundathil's common law partner), Melvin Reni and Justin Jose (cousins of Mr. Palackamthundathil) and Arshdeep and Narender Singh (friends and co-workers of Ms. Paul).

[21] Final written submissions were received by both parties on June 30, 2025. Mr. Palackamthundathil filed "revised final trial submissions" on July 7, 2025. Ms. Paul's counsel wrote to the court on July 8 objecting to these revised submissions on the basis that they attempted, among other things, to adduce new evidence. Mr. Palackamthundathil filed further submissions on July 15, 2025.

[22] On July 22, I instructed Mr. Palackamthundathil to file a Motion, Affidavit and brief by July 29th if he sought to re-open the hearing to admit fresh evidence. Ms. Routledge was directed to respond by August 5th. On July

29, submissions were received from Mr. Palackamthundathil confirming that he was not seeking to re-open the hearing to admit fresh evidence. He stated that his revised trial submissions were an attempt to clarify and organize his existing arguments. Ms. Routledge's written response dated August 1, 2025 reiterates her client's prior objection to the contents of Mr. Palackamthundathil's revised submissions on the basis that those submissions present new arguments to which her client could not cross examine or respond.

[23] By letter dated August 19, 2025, I advised the parties that I would be basing my decision only on the evidence tendered under oath at the hearing and that I would consider the parties' final submissions only to the extent that they referred to the evidence that was presented at the hearing. I clarified that any new or additional information or argument contained in the final submissions that was not presented at the hearing would not be considered.

Analysis

1. Who bears the burden of proof?

[24] Before I determine whether the proposed relocation is in Adam's best interests, I must first decide who bears the burden of proof. Section 18H(1A) of the *Parenting and Support Act* states:

(1A) The burden of proof under subsection (1) is allocated as follows:

(a) where there is a court order or an agreement that provides that the child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child, unless the other party is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(b) where there is a court order or an agreement that provides that the child spend the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child, unless the party who intends to relocate the child is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(c) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child;

(d) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child;

(e) for situations other than those set out in clauses (a) to (d), all parties to the application have the burden of showing what is in the best interests of the child.

[25] The term “vast majority” is not defined in the *Act*. In *Manuel v. Crawley*, [2024 NSSC 262](#), Justice Doucet referred to the Ontario Superior Court of Justice decision of *Rygiel v. Mathes*, 2024 ONSC 33, which provides guidance in defining the term:

[18] In considering the interpretation of “vast majority” in the provisions of the Children's Law Reform Act R.S.O. 1990 c.12 that mirror those of the [Divorce Act](#) provisions at issue here, Monahan J. (as he then

was) in *Credland v. Cymbalisty*, [2022 ONSC 433](#) stated as follows (footnotes omitted):

[178] This provision does not define the threshold above which a child could be said to be spending the “vast majority of time” with one parent. However, given that s. 9 of the Federal Child Support Guidelines describes a 60/40 split in parenting time as one of “shared custody”, in my view a child would need to be spending significantly more than 60% of their time with one parent in order to cross the “vast majority of time” threshold in s. 39.4(6) of the CLRA.

[179] Furthermore, the relatively few cases interpreting this provision have held that a parent has crossed the “vast majority” of time threshold only when they have a child in their care for more than 80% of the time. For example, in *KDH v. BTH, Lema J.* held that where an order provided that the mother had the children in her care for 12 out of every 14 nights, or about 85% of the time, “the order indeed provided that the children spend the ‘vast majority of their time’ with her [the mother].” Similarly, Professor Rollie Thompson, a respected authority on these issues, has opined that “a range of 75 to 87 per cent is a reasonable representation of “vast majority”, but I would personally peg it at 80 per cent”, noting that this is consistent with the opinions he obtained through a canvass of family law professionals.

[180] In my view, interpreting the “vast majority of time” threshold in s. 39.4(6) in this manner gives meaningful effect to the burden of proof that it contemplates, without giving undue effect to the burden and thereby skewing the “best interests” assessment in a particular direction.

[19] The applicant relies on Professor Thompson’s explanation for the underlying premise of the “vast majority” burden provision, that where one parent is the “predominant primary caregiver of the child, the central figure in the child’s life, the parent whose presence and care is critical to the child’s well-being” and that person intends to relocate the continuity of that predominant primary parent becomes critical”: Rollie Thompson, *Legislating About Relocating*, Bill C-78, NS and BC (2019) 28th Annual Institute of Family Law Conference at p. 20. It is just before this quote that Professor Thompson states that he would personally “peg” the “vast majority” at 80 per cent of the time, and that he relies on the policy reason above to explain his position. He then explains that in some cases “the other parent is much less important, and their minority of the time reflects that too”, and “one parent is much more important to the child than the other.”

...

[22] I find that in this case, the parenting arrangement falls between the “vast majority” of the time and “substantially equal” time. As Professor Thompson describes it at p. 21, these cases include “active non-primary parents”, an apt description of the situation here. Therefore, s. 16.93(3) applies, and each

party has the burden of proving whether the relocation is or is not in the best interests of the child.

[Emphasis added]

[26] There is no dispute that Ms. Paul has been Adam's primary caregiver since his birth. This reality is reflected in the two Interim Orders that have issued. Under the current order, Mr. Palackamthundathil has Adam for a total of 12 hours of parenting time each week, or 7 percent of the week. Ms. Paul has care of Adam for 92 percent of the week. Prior to the issuance of this order, Mr. Palackamthundathil had parenting time from 9am-12 pm Monday to Friday, and some Saturdays from 9 am to 6 pm, for a total of 24 hours per week, or 14 percent of the week. I therefore find that Adam spends the vast majority of time with Ms. Paul. Section 18H(1)(b) is applicable. The burden of proof rests with Mr. Palackamthundathil to show that the proposed relocation is not in Adam's best interests.

[27] S. 18(H)(1)(b) states that this burden does not apply if Ms. Paul is not in substantial compliance with an order or agreement. As I will discuss in more detail later in this decision, the evidence discloses that Ms. Paul has substantially complied with all court orders that have issued to date. Mr. Palackamthundathil's burden is not displaced by way of non-compliance with an order.

The double bind question

[28] Section 18H (3) of the *Act* prohibits me from asking or permitting Ms. Paul being asked, if she will relocate to India without Adam if I prohibit Adam from moving. However, it is clear that Ms. Paul will have no choice but to relocate to India with or without Adam if she receives a deportation order. Therefore, I will first decide if it is in Adam's best interests to relocate with his mother to India. If the answer is yes, Adam will relocate and remain in Ms. Paul's care. If I deny Adam's relocation, the practical reality will be that Mr. Palackamthundathil will have primary care of Adam.

2. Is relocating to India in Adam's best interests?

Position of the Parties

Ms. Paul

[29] Ms. Paul believes that it is in Adam's best interests to relocate with her to India if she is unable to obtain permanent residency status for the following reasons:

- (a) she has always been the primary care parent and consistently puts Adam's needs ahead of her own;

- (b) she can continue to meet all of Adam's needs regardless of where they reside;
- (c) she has a solid plan for she and Adam in India, which includes family support, child care, appropriate housing and job opportunities;
- (d) She has property and savings in India;
- (e) She will foster and encourage the relationship between Adam and Mr. Palackamthundathil to the best of her ability;
- (f) She is more likely to follow court orders than Mr. Palackamthundathil;
- (g) She has concerns regarding Adam's safety if he is placed in Mr. Palackamthundathil's primary care;
- (h) Mr. Palackamthundathil's own Visa is set to expire in November 2025 and his future plans are uncertain.

[30] Ms. Paul's work permit expires on November 1. After a requisite 6 months on the job, her employer nominated her for permanent residency under the provincial nominee program. The application was submitted in March, 2025 but it is her unrefuted evidence that processing times are very lengthy. An email to Ms. Paul from the Department of Labor, Skills and Immigration dated May 29, 2025 was tendered by consent, and confirms that her application is waiting for "completeness

check.” Ms. Paul has also applied for permanent residency under humanitarian and compassionate grounds.

[31] Ms. Paul maintains that she hopes to be able to obtain permanent residency status prior to the expiration of her visa. She acknowledges that moving with Adam to India will impact his relationship with his father. However, she believes that the impact on Adam will be far worse if Adam is removed from her primary care.

[32] On cross examination, Ms. Paul was asked about applying for a student visa. Ms. Paul’s evidence was that this would provide only a temporary solution. In addition, she stated that a student visa would limit her ability to work, which she must do to support Adam.

[33] Ms. Paul also seeks an order to permit her to apply for Overseas Citizenship of India (“OCI”) for Adam. She testified that this will permit Adam to travel in and out of India as frequently as he wishes and for as long as he wishes. Ms. Paul testified that this will benefit Adam as it will allow him to visit India freely in the event that he and Ms. Paul remain in Canada. It would also make it easier for Adam to visit Mr. Palackamthundathil in Canada and will allow Adam to maintain his Canadian citizenship.

Mr. Palackamthundathil

[34] Mr. Palackamthundathil believes that it is in Adam's best interests to be placed in his primary care if Ms. Paul is required to leave Canada for the following reasons:

- (a) The move will negatively impact his relationship with his son;
- (b) He has the support of family in both Cape Breton and British Columbia;
- (c) He and Ms. MacNeil have a stable relationship;
- (d) He is doubtful that Ms. Paul will follow a court order for his parenting time if she is permitted to relocate with Adam;
- (e) He is equally capable as Ms. Paul in meeting all of Adam's needs;
- (f) Adam is well-adapted to his current routines and life in Nova Scotia;
- (g) Moving to India could negatively impact Adam's emotional and social development.

[35] Mr. Palackamthundathil's visa also expires in November, 2025. Ms. MacNeil testified that she plans to sponsor Mr. Palackamthundathil so that he can stay in Canada. Ms. MacNeil estimated that the sponsorship application would be filed by the end of June or early July. Mr. Palackamthundathil testified that he had applied

to the Atlantic Immigration Program (AIP) as a skilled worker though his position at East Side Mario's restaurant as Front of House Manager. He testified that his employer was required to submit further information in October 2024, and he has received no update on the status of his application since that time. After his application was submitted, Mr. Palackamthundathil took a lower paying job as a server with reduced hours. Mr. Palackamthundathil testified that he did so because he was finding it difficult to manage his job duties while also caring for Adam and dealing with the court proceedings. He testified that he has now essentially given up on his AIP application and is instead focussing on a spousal sponsorship to remain in Canada. Mr. Palackamthundathil testified that it was his understanding that the processing time for such applications is 4-8 months and agreed that the wait times are unpredictable. He is also of the belief that once the sponsorship application is filed, he may be able to stay in Canada while the application is being processed, although he may be restricted from working.

[36] He confirmed that he does not have certainty of status in Canada past November 2025.

Law

[37] Although the parties are married, the pleadings were filed under the *Parenting and Support Act* (the *Act*). A Petition for Divorce had not been filed at the time the matter was heard, so the matter proceeded under the *Parenting and Support Act*.

[38] Section 18(H)(1) of the *Act* requires me to give paramount consideration to the best interests of the child when considering a request to relocate. All other considerations are secondary.

[39] A request to relocate with a child must be considered through a child-centered lens. Section 18(H)(4) sharpens the inquiry through consideration of the following factors:

(4) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including

(a) the circumstances listed in subsection 18(6);

(b) the reasons for the relocation;

(c) the effect on the child of changed parenting time and contact time due to the relocation;

(d) the effect on the child of the child's removal from family, school and community due to the relocation;

(e) the appropriateness of changing the parenting arrangements;

(f) compliance with previous court orders and agreements by the parties to the application;

(g) any restrictions placed on relocation in previous court orders and agreements;

(h) any additional expenses that may be incurred by the parties due to the relocation;

(i) the transportation options available to reach the new location; and

(j) whether the person planning to relocate has given notice as required under this Act and has proposed new decision-making responsibility, parenting time and contact time schedules, as applicable, for the child following relocation.

[40] In *Weagle v. Kendall*, [2023 NSCA 47](#), Justice Beaton confirmed that the best interests of the child is the sole focus of relocation cases:

1 Relocation cases are driven, like all parenting cases, by the question of the best interests of the child(ren). In its recent decision in *Barendregt v. Grebliunas*, [2022 SCC 22](#) the Supreme Court of Canada recognized the burden presented to judges in cases of relocation:

[8] Determining the best interests of the child is a heavy responsibility, with profound impacts on children, families and society. In many cases, the answer is difficult -- the court must choose between competing and often compelling visions of how to best advance the needs and interests of the child. The challenge is even greater in mobility cases. Geographic distance reduces flexibility, disrupts established patterns, and inevitably impacts the relationship between a parent and a child. **The forward-looking nature of relocation cases requires judges to craft a disposition at a fixed point in time that is both sensitive to that child's present circumstances and can withstand the test of time and adversity. [emphasis added].**

[41] The Supreme Court of Canada confirmed both the highly contextual nature of a best interests inquiry along with the necessity of a child-centric analysis in *Barendregt v. Grebliunas*, 2022 SCC 22:

[97] But, even with a wealth of jurisprudence as guidance, determining what is “best” for a child is never an easy task. The inquiry is “highly contextual” because of the “multitude of factors that may impinge on the child’s best interest”: Canadian Foundation for Children, Youth and the Law, at para. 11; Gordon, at para. [20](#).

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[152] The crucial question is whether relocation is in the best interests of the child, having regard to the child’s physical, emotional and psychological safety, security and well-being. This inquiry is highly fact-specific and discretionary.

[42] In deciding whether the proposed move is in Adam's best interests, I am required to balance and compare the advantages and disadvantages of each proposed parenting plan: *DAM v. CJB*, [2017 NSCA 91](#).

[43] The *Act* also requires me to give effect to the principle that Adam should have as much contact with each parent as is consistent with his best interests: s.18(8).

[44] I now turn to the factors as set out in the *Act* and, to the extent possible based on the evidence provided by the parties, compare and balance the competing parenting plans. I will start with a consideration of the factors listed in s. 18(6)(a) of the *Act*, as required by s. 18(H)(4) of the *Act*.

The child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development

[45] Neither party gave much evidence about Adam's particular needs, although it is acknowledged by both parties that Ms. Paul has been primarily responsible for meeting all of Adam's needs since his birth. It is not disputed that she has provided good care to Adam.

[46] Ms. Paul testified that Adam is very attached to her and that Adam is still breastfeeding and co-sleeping with her. She believes that it would be very difficult for Adam if these practices were discontinued. Her evidence is that she breastfeeds Adam each morning and again immediately upon leaving daycare. Mr. Palackamthundathil did not dispute this evidence, except to say that once Adam turned two breastfeeding should stop.

[47] Ms. Paul expressed concern regarding Adam's physical safety and well-being when in the care of Mr. Palackamthundathil. She cited examples such as exposing Adam to second hand smoke, transporting Adam in a car without an approved car seat, returning Adam to her care in stained clothing and unchanged diapers, texting while driving with Adam in the car, and general lack of supervision. Arshdeep testified that she also observed Adam return from his father's care in soiled diapers and smelling of smoke. Both Arshdeep and Narender Singh testified that they observed Adam to appear to be very hungry after returning from his father's home, and that Adam would eat large amounts of food very quickly. It is not clear from the evidence whether this was a one time occurrence or whether it happened more frequently.

[48] Police records were tendered by consent and show that on May 25, 2024, Cst. McNamara responded to a call that Mr. Palackamthundathil was driving with Adam

on his lap in the driver's seat. Mr. Palackamthundathil advised the officer that he had only driven with Adam in his lap for a few meters to park the car, and that it would not happen again. Cst. McNamara made a referral to child welfare as a result of this incident. Child welfare took no action.

[49] Mr. Palackamthundathil acknowledged that he has made some parenting mistakes but states that he corrected them as soon as they were brought to his attention. While Ms. Paul's concerns are legitimate, I agree that the concerns appear to have largely resolved and do not weigh heavily in my analysis and comparison of the competing parenting plans.

[50] Mr. Palackamthundathil's evidence is that he is fully capable of meeting Adam's needs. Mr. Palackamthundathil testified that his father could return to Cape Breton to help care for Adam if necessary and that his father would live at his apartment, along with Ms. MacNeil and his cousin Melvin Reni, who moved into the apartment in May, 2025. Mr. Palackamthundathil did not address long-term sleeping arrangements in this 2 bedroom apartment if Adam is placed in his primary care, although he did say that when Adam has naps at his home currently, he sleeps in the same room as Mr. Palackamthundathil and Ms. MacNeil. He also testified that he may look for a bigger home if Adam and his father were to move in.

[51] Based on the limited evidence provided, I conclude that Adam is a happy and healthy little boy whose needs are being met. Although I am left with questions about the living arrangements at Mr. Palackamthundathil's home, I am satisfied that both parents are able to meet Adam's physical, emotional, social and educational needs.

Each parent's willingness to support the relationship with the other parent

[52] Much of the evidence presented at the hearing surrounded this issue. Mr. Palackamthundathil acknowledged that in the initial months after the parties separated, he was seeing Adam regularly. However, Mr. Palackamthundathil claims that Ms. Paul eventually started withholding Adam from him and refused his requests for additional parenting time.

[53] This claim is hard to reconcile with Mr. Palackamthundathil's affidavit evidence wherein he provides screenshots of text messages between himself and Ms. Paul where they discuss parenting time. On no less than 15 occasions between June, 2024 and January 2025, Ms. Paul either agrees to requests from Mr. Palackamthundathil for parenting time, or offers Mr. Palackamthundathil parenting time. Similarly, Mr. Palackamthundathil's own evidence is that from May, 2024 to July 2024, he frequently spent time with Adam. I find that Ms. Paul relied upon

Mr. Palackamthundathil as much as she could for childcare once she started working in September, at one point offering him daily parenting time from 8am to 5 pm. Difficulties with scheduling parenting time arose in October 2024, which lead to Ms. Paul enrolling Adam in day care.

[54] In his affidavit dated February 28, 2025, Mr. Palackamthundathil confirms that at that time, he had Adam from 9am-12pm Monday to Friday, along with some Saturdays from 9 am to 6 pm, if Ms. Paul was working. He had additional parenting time with Adam on occasion and cites an example of caring for Adam for a full day when Ms. Paul travelled to Halifax for a language test. It appears that from the time that Ms. Paul returned from Toronto in June until the March 2025 order issued, both parties did the best they could to arrange parenting time around their respective work schedules.

[55] Mr. Palackamthundathil also alleges that Ms. Paul refused attempts by his family members to see Adam. He claims that Mr. Reni was excluded from Adam's first birthday party when Mr. Reni came to Sydney for a visit in August, 2024. A text exchange between the parties shows that Ms. Paul had invited only Mr. Palackamthundathil to the party at her home. During cross-examination, Mr. Reni acknowledged that he did not inform Ms. Paul that he was in the local area, instead relying on Mr. Palackamthundathil to advise her. Ms. Paul testified that she was

unaware that Mr. Reni was in town, and that her text was meant to exclude Ms. MacNeil only. Mr. Reni was able to have a visit with Adam on August 28.

[56] Mr. Palackamthundathil provided another example from July, 2024. His cousin, Justin Jose, had travelled from Montreal to Cape Breton to meet Adam. Similarly, Mr. Jose did not advise Ms. Paul that he was in town visiting, instead relying upon Mr. Palackamthundathil to do so. Mr. Jose testified that at one point during his visit, Ms. Paul “blocked” Mr. Palackamthundathil from communicating with her by phone. When asked during cross examination whether he would permit Mr. Palackamthundathil to use his phone to contact Ms. Paul, Mr. Jose said no, as that was his personal phone. Mr. Palackamthundathil acknowledged during cross examination that Ms. Paul had advised him on the third day of Mr. Jose’s visit that Adam was unwell.

[57] I accept Ms. Paul’s uncontradicted evidence that she had no knowledge that either Mr. Reni or Mr. Jose were in the local area.

[58] Mr. Palackamthundathil also relies upon Ms. Paul’s unilateral decision to relocate with Adam to Toronto in as an example of her attempt to undermine his role as a father. The evidence conflicts as to the motivation behind this move. Ms. Paul’s evidence is that this was a temporary move. She was unemployed at that time, Mr.

Palackamthundathil was not paying child support and she had a job opportunity in Toronto that would allow her to work in her chosen field of study. Ms. Paul holds a Bachelor of Science degree in Aircraft Maintenance Engineering and is required to complete an apprenticeship before she can work in this capacity in Canada. Her evidence is that this was a temporary move. She also testified that she was experiencing a great deal of emotional turmoil at the time from the breakdown of her marriage which she viewed as being caused by infidelity on Mr. Palackamthundathil's part. Mr. Palackamthundathil disputes any infidelity, and claims that Ms. Paul took Adam to Toronto solely because she was upset over his new relationship with Ms. MacNeil and she wanted to interfere with his relationship with Adam. Regardless of the reason, Ms. Paul has acknowledged that her actions in this regard were wrong and as noted above, has complied with all court orders since her return.

[59] Finally, Mr. Palackamthundathil alleges that Ms. Paul will not permit him to have any additional parenting time outside of his court ordered time. Ms. Paul conceded this point, testifying that she wanted to strictly follow the terms of the order. I find that Ms. Paul's rigid adherence to the terms of the order have prevented Mr. Palackamthundathil from having additional parenting time with Adam. However, the terms of this order were consented to by Mr. Palackamthundathil at a

settlement conference. Both parties agreed that the “reasonable” parenting time was not working and sought specified times to eliminate confusion.

[60] Mr. Palackamthundathil acknowledges that when Ms. Paul travelled to Dubai with Adam to visit her sister, she consistently informed him of Adam’s well-being through videos and updates.

[61] I accept that Ms. Paul fully understands and appreciates the importance of Adam having a close and loving relationship with his father. If permitted to relocate, Ms. Paul’s evidence is that she intends to facilitate communication between Adam and Mr. Palackamthundathil on a regular basis through FaceTime, Skype, Messenger or any other electronic means. If she travels to Canada, she will ensure that Adam has parenting time with Mr. Palackamthundathil. She will also accommodate in person parenting time for Mr. Palackamthundathil in India, upon reasonable notice. Mr. Palackamthundathil confirmed that his family owns a home in India that he could occupy if he travelled there.

[62] Ms. Paul believes that Mr. Palackamthundathil will not encourage an ongoing relationship between her and Adam if Adam is placed in Mr. Palackamthundathil’s primary care. Attached to her June 2025 affidavit is a screenshot of a text message from Mr. Palackamthundathil telling Ms. Paul that Adam calls Ms. MacNeil

“mommy.” Ms. MacNeil testified that Adam does not call her “mommy” yet her evidence offered little in terms of how she would assist in maintaining Adam’s relationship with his mother if Adam is placed in their care, aside from confirming that she would encourage it.

[63] In his final submissions, Mr. Palackamthundathil testified that if Adam is placed in his primary care, he will facilitate video calls between Adam and Ms. Paul. He also states that if he were to travel to India, he would permit Adam to spend the majority of the time with Ms. Paul. I accept his evidence in regard.

The history of care for the child, having regard to the child’s physical, emotional, social and educational needs

[64] The history of care of Adam is well established. Ms. Paul has been Adam’s primary caregiver both prior to and after the parties’ separation. Ms. Paul is the parent responsible for taking Adam to hospital and tending to him when he is sick. She arranged day care for Adam so both parties could work and has established a stable daily routine for him.

[65] Mr. Palackamthundathil has not cared for Adam overnight since the parties’ separation in February, 2024.

The plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs

[66] As noted above, I have little information about Adam's current physical, emotional, social and educational needs. I have no evidence that Adam has any special health or educational needs. If permitted to relocate to India, Ms. Paul's plan would see her and Adam live at her family's 4 bedroom home. Her parents still reside at that home and there is plenty of room for her and Adam. She testified that she would have no need for regular childcare, as she would be working in a management position at her father's electronics store. She would have flexible work hours so that she could care for Adam while also working. She testified that she and her father have future plans to transfer ownership of the store to Ms. Paul. She testified that if she did require child care on occasion, her family would assist. She testified that she previously worked as a flight attendant in India and could also return to that profession, although her preference and plan is to work in the family business.

[67] Mr. Palackamthundathil proposed plan offers less specificity. His evidence is that he would remain in his 2 bedroom apartment if Adam was placed in his care. One bedroom is occupied by he and Ms. MacNeil and the other by his cousin Melvin Reni. He offered no evidence on how the sleeping arrangements would work, except

to say that if his father were to return to live with him, he might look for another residence. He confirmed that he would keep Adam enrolled in day care. He plans to remain working as a server at East Side Mario's restaurant, as they offer him flexible hours.

[68] The most problematic aspect of Mr. Palackamthundathil's plan is that it is premised entirely on the approval of a spousal sponsorship application to allow him to stay in Canada that has not yet been submitted. Mr. Palackamthundathil expressed confidence that even if the sponsorship application isn't granted by his visa expiration date in November, he can stay in Canada pending its' approval. Mr. Palackamthundathil provided no evidence to support this belief. I heard no details of Mr. Palackamthundathil's parenting plan if Adam were placed in his primary care and he is required to leave Canada in November. I will expand upon these concerns later in this decision.

The child's cultural, linguistic, religious and spiritual upbringing and heritage, including the child's aboriginal upbringing and heritage, if applicable

[69] Neither parent gave much evidence about this factor. In her June 9th affidavit, Ms. Paul asserts that Adam's quality of life would be enhanced though engagement

with his culture and history in India. However, I accept that both parents are capable of teaching Adam about his Indian culture and heritage.

The child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can be reasonably ascertained

[70] This factor is not applicable given Adam's age.

The nature, strength and stability of the relationship between the child and each parent

[71] I find that Adam has a strong and positive relationship with both parents. The evidence is unrefuted that Adam enjoys the time he spends with Mr. Palackamthundathil and that he is generally happy, comfortable and excited when he is with Mr. Palackamthundathil. Both Ms. MacNeil and Mr. Reni testified that they have observed the close and loving bond that Mr. Palackamthundathil and Adam share. However, the evidence is clear that Adam's world revolves primarily around his mother.

The nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life

[72] I heard little evidence from either party on this issue. I accept the evidence of Ms. MacNeil that when Mr. Palackamthundathil's father was living with them, he and Adam became close. However, Mr. Palackamthundathil's father relocated to BC in May. I heard no evidence about the nature of Adam's relationship with Mr. Reni. I heard little evidence regarding the nature of Adam's relationship with Ms. MacNeil, although I accept that she cares for Adam and supports him being placed in Mr. Palackamthundathil's primary care. Ms. MacNeil also testified that she has 4 siblings, aged 6-12 and these children get along well with Adam and enjoy playing together on occasion. Ms. Paul has no immediate family in the local area.

[73] The limited evidence presented by both parties regarding this factor leaves me unable to conclude, given Adam's age, that the relationships that he may have with extended family members or others are such that Adam would be impacted should he relocate to India with his mother.

The ability of each parent to communicate and co-operate on issues affecting the child

[74] A review of the text messages between the parties tendered at the hearing shows an ability to communicate respectfully and in a child-focussed manner when discussing Adam's needs. An example is seen from a text exchange between the

parties in October, 2024. Ms. Paul was in the emergency room with Adam as he had fallen ill. Ms. Paul gave Mr. Palackamthundathil frequent updates on how Adam was doing and on developments in his care. Mr. Palackamthundathil delivered baby supplies to Ms. Paul at the hospital. Another example is from September 9, 2024. Text messages between the parties show Ms. Paul providing updates to Mr. Palackamthundathil regarding Adam's illness. Mr. Palackamthundathil offers to assist and asks to see Adam. Ms. Paul offers for him to come to her home to see Adam. Although I accept that communication between the parties turned hostile on occasion, I am satisfied that both parents are able to put aside their differences to communicate appropriately on issues affecting Adam.

Any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child

[75] There are no civil or criminal proceedings involving either parent.

The impact of any family violence, abuse or intimidation

[76] I am satisfied find that there has been no violence, abuse or intimidation in relation to these parents.

[77] I will now consider the remaining relocation-specific factors listed in s. 18(H)(4) of the *Act*.

Reasons for relocation

[78] Ms. Paul is facing possible deportation. This is the singular reason why she seeks permission to relocate Adam to India. There is no evidence that she wishes to move in order to reduce Mr. Palackamthundathil's parenting time with Adam. In fact, she testified that if she were to acquire permanent residency status, she would stay in Canada to allow Adam to continue to have in person parenting time with Mr. Palackamthundathil. However, she maintains that it is in Adam's best interests to remain in her primary care, regardless of where they live.

Effect of child on changed parenting time

[79] If I permit Adam to relocate to India, this will significantly impact Mr. Palackamthundathil's parenting time. I find that this will have a negative effect on Adam. I accept the evidence of Mr. Palackamthundathil and his witnesses that Adam enjoys the time he spends with his father and that Adam is comfortable in his father's home.

[80] If I do not permit Adam to relocate to India, I accept that the impact on Adam will be profound, given his age and the history of care for the child since his birth. I will address this factor in more detail later in this decision.

Effect on the child on child's removal from family, school and community

[81] Mr. Palackamthundathil's immediate family resides in B.C. Aside from Mr. Palackamthundathil, the only biological family member of Adam's currently living in Cape Breton is Mr. Reni. As noted above, I heard no evidence about the nature or strength of Adam's connection with Mr. Reni. I heard little evidence about Adam's connection to friends or the wider community. Even without such evidence, I accept that any impact on Adam from losing such connections would be minimal.

Appropriateness of changing parenting arrangements

[82] The evidence is unrefuted that Adam has done well in the primary care of Ms. Paul. Although Mr. Palackamthundathil opposes Adam's relocation, he expressed no concerns about Adam's care, and offered no evidence to show that Ms. Paul would be unable to continue to meet all of Adam's needs, whether that be in Nova Scotia or India.

Compliance with previous court orders and agreements

[83] Ms. Paul was served with an ex parte order requiring her return to NS with Adam in August, 2024. She promptly complied with this Order. Two subsequent parenting orders have issued and I find that both parties have substantially complied with the terms of these orders.

[84] In addition, the parties had a prior agreement that Ms. Paul could travel with Adam to Dubai in March 2024. She returned to Canada with Adam at the conclusion of her trip, as agreed to by the parties.

Any restrictions on relocation in previous orders/agreements

[85] The ex parte order prohibited Ms. Paul from removing Adam from the Cape Breton Regional Municipality pending further order of the court. The March 2025 interim consent order replicated the terms regarding non-removal.

Additional expenses incurred by the parties

[86] I heard no evidence on this point, but I accept that if Adam is permitted to relocate to India, additional travel expenses will be incurred if in-person parenting time occurs.

Transportation options

[87] I heard no evidence on this point, but I accept that air travel is the only transportation option between Nova Scotia and India.

Has the relocating parent given notice and proposed new decision making responsibility and parenting time for the child following relocation

[88] It is not disputed that Ms. Paul has satisfied the notice requirements in relation to her intention to relocate pursuant to ss.18E(2) and (3) of the *Act*.

[89] As outlined previously, her proposal for parenting time for Mr. Palackamthundathil includes regular virtual contact and in person parenting time, should either party travel to the other's location.

Decision

[90] Neither party called witnesses on the issue of deportation. As a result, I am left with only the evidence of the parties. I accept that Ms. Paul will be deported, absent approval of her application under the Provincial Nominee Program (PNP) or her application for permanent residency based on humanitarian and compassionate grounds. I accept her evidence that she was in contact with her local MLA and MP for assistance and obtained employment as soon as she could so that she would be eligible for PNP. I am satisfied that Ms. Paul has been proactive and has taken all

reasonable steps available to her to try to stay in Canada, as she realizes the significant impact that her visa expiration will have on Adam.

[91] The same cannot be said for Mr. Palackamthundathil. His evidence is that he has applied to AIP as a skilled worker. He has received no decision on his application. As noted above, Mr. Palackamthundathil's parenting plan is entirely contingent upon him being able to stay in Canada under a spousal sponsorship. However, this application has not been submitted. Mr. Palackamthundathil testified that he was confident that he would be able to stay in the country pending a decision on sponsorship but offered no evidence upon which to base this confidence. During cross examination, Mr. Palackamthundathil was asked what would happen if he heard nothing from AIP by the November deadline and the spousal sponsorship (assuming it gets filed) is not approved. His reply was that he did not see why the sponsorship application wouldn't be approved.

[92] As noted previously, I heard no details about Mr. Palackamthundathil's parenting plan should he be required to leave the country in November 2025.

[93] I am cognizant of the fact that there is a critical piece of information that is unknown at present: the status of Ms. Paul's application for permanent residency.

The only evidence before me on this issue is the email Ms. Paul received from the Department of Labour, Skills and Immigration which states as follows:

Hello Jency Paul,

Nova Scotia is experiencing a high volume of applications, and we are prioritizing applications from a few key sectors: healthcare, social assistance, and construction.

Status: Waiting for Completeness Check

We understand that you may be concerned about your expiring work permit. Work permits are issued only by Immigration, Refugees and Citizenship Canada (IRCC). As of today, Nova Scotia is not participating in IRCC's temporary public policy to facilitate work permits for Provincial Nominee Program (NSNP) candidates before they are nominated. This means that we do not issue a Letter of Support (LoS) for a work permit (or extension) until a candidate has been nominated (NSNP) or endorsed (Atlantic Immigration Program) for permanent residence in Nova Scotia.

You may be able to apply for a work permit under the Temporary Foreign Worker Program with IRCC. To do so, your employer will first need apply for a Labour Market Impact Assessment (LMIA) with Employment and Social Development Canada (ESDC).

Applicants receive a Case Number once their application has been checked for completeness. If you received a Case Number, this does not mean that your application has been assessed and it does not mean that you are eligible for nomination or endorsement. Even if you meet all eligibility criteria, we cannot guarantee that your application will advance any further. We hope this information makes out process – and your status within the process – clearer and gives you the information you need to make decisions about your next steps.

Thank you for your continued interest in immigrating to Nova Scotia.

[94] I am satisfied that Ms. Paul has no way of knowing when she will receive further information regarding the status of her application. In the circumstances, this information would not change my decision in any event, for the reasons that follow.

[95] I remain mindful that I must consider Adam's best interests as a whole and not just from the perspective of the child's relationship with one parent. The *Act* requires me to perform a comprehensive assessment of all Adam's relationships, connections and circumstances.

[96] I have compared and balanced the competing plans put forth by the parties. I have thoroughly reviewed all of the evidence, the written submissions of the parties and the applicable legislation and case law. I find that Mr. Palackamthundathil has not met the burden of proving on a balance of probabilities that relocation is not in Adam's best interests.

[97] In his final submissions, Mr. Palackamthundathil states that Adam deserves love and to be able to build relationships with both sides of his family. I agree. Adam also deserves stability. It is clear that Mr. Palackamthundathil loves Adam very much. Adam will be negatively impacted by the loss of regular in person parenting time with his father. However, I find that the negative impact of losing this parenting time is outweighed by the profound impact on Adam should he be separated from his mother. Adam is only 2 years old. Ms. Paul has been his primary caregiver for the entirety of his young life. Mr. Palackamthundathil has not cared for Adam overnight since separation. It is unclear from the evidence that he ever requested to have Adam overnight, or if the parties even discussed it.

[98] Ms. Paul's plan to preserve Adam's relationship with Mr. Palackamthundathil is sound. She has offered parenting time that is reasonable, given Adam's age. I am satisfied that she will keep Mr. Palackamthundathil updated on Adam's health and well-being, as she has always done.

[99] I find that Mr. Palackamthundathil's concerns that Ms. Paul will not abide by a court order are without merit. She complied fully with the terms of the ex parte order. She accommodated reasonable parenting time for Mr. Palackamthundathil when she received reasonable notice. The March 2025 order has been substantially complied with. I am satisfied that Ms. Paul will comply with future orders.

[100] There is certainty and stability built into Ms. Paul's plan if she must leave Nova Scotia, as compared to Mr. Palackamthundathil's plan. She has appropriate housing, employment and child care arranged. Mr. Palackamthundathil's plan is a hopeful plan, built on an uncertain and tenuous foundation. It is based entirely on an ability to stay in Nova Scotia past November, 2025. I am mindful of Justice Beaton's comments in *Weagle v. Kendall*, supra, that I must craft an order that is sensitive to Adam's current circumstances but that will also "withstand the test of time and adversity." Ms. Paul's plan does just that.

[101] In her June 9th affidavit, Ms. Paul states that should she be permitted to relocate with Adam, she would not seek child support, so that those funds can be used by Mr. Palackamthundathil to assist with the cost of travel, should he choose to visit Adam. Mr. Palackamthundathil offered no evidence on this issue and did not file an undue hardship application. No evidence of potential travel costs was tendered. Child support remains payable by Mr. Palackamthundathil.

3. What parenting arrangement is in Adam's best interests?

[102] Ms. Paul's request to relocate Adam to India is granted. Ms. Paul is permitted to apply for Overseas Indian Citizenship for Adam, without requiring the consent of Mr. Palackamthundathil.

[103] Ms. Paul shall have primary care of Adam.

[104] Ms. Paul shall consult with Mr. Palackamthundathil regarding major decisions pertaining to Adam's health, education and general welfare. In the event of a disagreement after meaningful consultation, Ms. Paul shall have final decision-making authority.

[105] Mr. Palackamthundathil shall be entitled to access information from all third parties involved in the care of Adam, including, day care providers, teachers, medical professionals etc. without requiring the consent of Ms. Paul.

[106] Ms. Paul must provide Mr. Palackamthundathil with the name, address and telephone number for Adam's physician, dentist, and any other third party professional involved in Adam's care within 30 days of relocating, and she must add Mr. Palackamthundathil's name to the list of authorized persons on those files.

[107] Mr. Palackamthundathil shall have virtual parenting time with Adam a minimum of 3 times per week. The parties shall discuss and arrange appropriate times for these calls.

[108] Mr. Palackamthundathil shall have flexible and generous parenting time upon reasonable notice if he travels to India.

[109] Mr. Palackamthundathil shall have generous and flexible parenting time with Adam if Ms. Paul and Adam travel to Nova Scotia.

[110] Within 14 days of relocating, the parents must provide each other with their choice of email address for all communications regarding Adam, as well as a phone number for emergency contact between the parents, and they must immediately notify each other if that information changes.

[111] Ms. Paul shall provide Mr. Palackamthundathil with monthly written updates on Adam's growth, development, extra-curricular activities, or other special

occasions. She must also provide photos and/or videos of Adam to Mr. Palackamthundathil monthly.

[112] Mr. Palackamthundathil supplied pay stubs for his position as a server which indicate that he will earn approximately \$32,000.00 in 2025. Child support is payable in the amount of \$274.00 per month. Payments shall commence on October 1, 2025 and shall continue on the first day of every month thereafter until otherwise ordered.

[113] Ms. Routledge is asked to draft the Order.

Mason, J.