SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Naik v. Naik*, 2026 NSSC 94

Date: 20260401
Docket: HFD No. 138240
Registry: Halifax

Between:

Mitul Naik

Applicant

v.

Dattika Naik

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Samuel Moreau
Heard:	October 17, 2025, January 19 and 20, 2026 in Halifax, Nova Scotia
Final Written Submissions:	January 27, 2026
Released to the Parties:	April 1, 2026
Written Decision:	April 2, 2026
Subject:	*Hague Convention* Application
Summary:	Mr. Naik filed an application under the articles of the *Hague Convention*, requesting that the child of the marriage be returned to her habitual residence forthwith. Mr. Naik alleged Ms. Naik abducted and subsequently concealed the location of the child.
Issues:	Was the child wrongfully removed from her habitual residence or wrongfully retained in Nova Scotia? Should the Court order the return of the child to her habitual residence?

Result: The Court found that the child was wrongfully retained in Nova Scotia. Based on the governing legislation evidence relating to the child's assimilation could be considered. The Court also found that the parent requesting return of the child is no longer resident at the habitual residence nor in the country in which the habitual residence is located. The application is dismissed.

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Written Release:	April 2, 2026
Counsel:	Ryan Cutcliffe for the Applicant Rachel Parsons for the Respondent

By the Court:

Introduction

[1] Mitul Naik makes an application under *the Convention on the Civil Aspects of International Child Abduction* (1980) herein referred to as the *Hague Convention.*

[2] Mr. Naik maintains his estranged spouse, Dattika Naik, wrongfully removed the child of the marriage, A., (born in 2018) from her habitual residence.

[3] Mr. Naik asks that I order A.'s immediate return to her habitual residence, which he considers to be Lewisville, Texas, United States of America (USA). Ms. Naik requests that A. be permitted to remain in this jurisdiction (The Halifax Regional Municipality, HRM).

Issues

- Was A. wrongfully removed from Lewisville, Texas, or, has she been wrongfully retained in Nova Scotia?

- If A. was wrongfully removed from Lewisville, Texas, or wrongfully retained in Nova Scotia, should I order her return, or do the circumstances

present require consideration of the *Hague Convention's* exceptions to the return mandate?

Background Information

[4] Mitul Naik and Dattika Naik are nationals of India. They met in early June, 2017 and were married some four days later on June 15, 2017. The marriage was arranged by their families.

[5] In January, 2018, Ms. Naik joined Mr. Naik in Michigan, USA, where he was employed on a temporary H-1B Visa. Ms. Naik entered the USA on a dependent H-1B Visa. A. was born in Michigan in October, 2018. Both parties hold bachelor's degrees obtained in India in the field of engineering. As well, Mr. Naik has an MBA in marketing and a master's degree in mechanical engineering, both obtained in the USA.

[6] In October, 2021, the family relocated to Lewisville, Texas. Lewisville is close to Dallas, Texas. On May 17, 2024, Ms. Naik and A. travelled by air to Toronto and then to Halifax. She and A. have been resident in this jurisdiction since then, staying with Ms. Naik's sister and brother in-law.

[7] Ms. Naik says she left Mr. Naik (and Lewisville) because she "endured emotional, financial, sexual and physical abuse" from him. She says A. witnessed the abuse.

[8] Ms. Naik states that Mr. Naik isolated her (he did all the shopping for groceries and other items). She was not allowed to work outside of the home, except for a six-month period in 2023. She says Mr. Naik did not permit her to obtain a driver's license and the parties lived in separate bedrooms. A. and herself could not enter Mr. Naik's bedroom or bathroom. She was not allowed to open a bank account and Mr. Naik controlled the family's finances.

[9] I comment on the following incident as law enforcement came to be involved. Ms. Naik recounts that on August 30, 2021, a maintenance worker attended at their residence for a water leak under the kitchen sink. The worker noticed bruises on Ms. Naik's neck and hand and after leaving contacted the police. Ms. Naik says in order to placate Mr. Naik she told the police everything was fine and that her injuries were caused in another manner.

[10] At paragraph 37 of his Response Affidavit, Mr. Naik replies on the answers provided by Ms. Naik to the police as to the cause of her injuries. He provides the same exhibit as Ms. Naik (Exhibit "C" of his Response Affidavit and Exhibit "E"

of Ms. Naik's Affidavit sworn on December 22, 2025), which appears to be a police officer's report (County of Oakland, Office of the Sheriff, Michael J. Bouchard) formulated upon an interview of Ms. Naik.

[11] Under cross-examination, Mr. Naik testified he was not aware of the incident, nor was he present when the police officer attended at their home and interviewed Ms. Naik. He maintained there were no altercations between the parties during the marriage and he had never been aggressive in the home.

[12] Ms. Naik says that on May 16, 2024, the parties engaged in a "heated argument." Mr. Naik wanted a male child, but Ms. Naik refused to have another child with him as she felt A. was "suffering." She says Mr. Naik told her to leave the home as he did not wish to see her or A. again. She says he threatened to kill them. Ms. Naik further states she was terrified and contacted her mother who in turn contacted Ms. Naik's sister, who lives in the HRM. Her sister and brother in-law purchased airline tickets for A. and herself. She comments that when Mr. Naik returned home from work on May 16, "he laughed meanly, saying we did not have the courage to leave, that we are completely dependent on him, and we can't go anywhere, because we have nowhere to go."

[13] Mr. Naik categorically denies all abuse allegations made against him by Ms. Naik. In paragraphs 13 to 67 of his Affidavit filed in response to Ms. Naik's December 22, 2025, Affidavit, he provides detailed responses to Ms. Naik's allegations. To summarize he articulates that Ms. Naik's allegations are false, baseless and untrue.

Procedural History

[14] July 18, 2025 – the following documents were filed by Mr. Naik's then legal counsel, Paul Chudnovsky:

- Originating Notice (*Hague Convention* Application).
- *Ex Parte* Motion (Family Proceeding), requesting an Order that A. not be relocated from this jurisdiction pending the outcome of the *Hague Convention* Application.
- Mr. Naik's Affidavit in support of the *Ex Parte* Motion. The first sentence of the Affidavit reads "I, Mitul Naik, of Lewisville, Texas, make oath/affirm and give evidence as follows." The Affidavit was sworn on July 11, 2025.

[15] July 31, 2025

- Ex-Parte Motion Hearing. Mr. Chudnovsky appeared in person at the Devonshire Courthouse. Upon request, Mr. Naik was permitted to attend by video conference as he was in India.

- On July 31, 2025, the Court granted an *Ex Parte* Order, the substantive provisions of which are as follows:

> Non- removal from Jurisdiction
>
> 1. The Respondent, Dattika Keneshbhai Naik, shall not remove the child, A. from the Province of Nova Scotia pending the determination of the Hague Convention application.
>
> Residence Requirement
>
> 2. The Respondent, Dattika Keneshbhai Naik, and the child, A. shall remain within the municipal boundaries of Bedford, Nova Scotia, until further order of this Court.
>
> 3. The Respondent, Dattika Keneshbhai Naik, shall keep the Applicant informed of any changes to the child, A.'s place of residence, until further order of this Court.
>
> Surrender of Travel Documents
>
> 4. The Respondent, Dattika Keneshbhai Naik, shall immediately surrender to the Court or designated authority all passports, travel documents, and identification documents of both the Respondent and the child, A.
>
> Law Enforcement Assistance
>
> 5. This Order shall be enforced with the assistance of Halifax Regional Police; Royal Canadian Mounted Police, Canada Border Service Agency, or any other applicable law enforcement agency, to ensue compliance and prevent removal of the child from the jurisdiction.
>
> Substituted Service and Mandatory Court Appearance
>
> 6. The Applicant's Notice of Application, *Ex Parte* Motion and Order shall be served on the Respondent forthwith. Service of this Order may be

> effected by substituted service on the Respondent by way of email **** and WhatsApp message to ****.
>
> 7. This matter is scheduled for a conference to be held on August 1, 2025, at 2:00 pm at the Supreme Court of Nova Scotia, Family Division, located at 3380 Devonshire Avenue, Halifax, Nova Scotia. The Respondent is hereby ordered to attend said conference and respond to this *Ex Parte* Order.

[16] August 1, 2025

- Mr. Chudnovsky appeared in person and Mr. Naik via video conference from India.

- Mr. Chudnovsky detailed the attempt to personally serve Ms. Naik. The Court confirmed receipt of correspondence from Ms. Naik, dated August 1, 2025, acknowledging she received notice of the August 1, 2025, Court appearance and requesting time and an opportunity to respond to Mr. Naik's filings.

[17] September 17, 2025

- Mr. Chudnovsky appeared in person and Mr. Naik by telephone. Ms. Naik appeared in person with her legal counsel, Rachel Parsons.

- Counsel informed there was no realistic chance of resolution on the *Hague Convention* Application and requested the matter be scheduled for trial, which as per the governing legislation was required to be on or

before October 29, 2025. It was determined the matter would require two days of trial time. Given the Court's schedule and with the parties' agreement, the matter was set down for a Pro-Forma Start to the trial on October 17, 2025, and continuation on January 19 and 20, 2026.

- Filing deadlines (Affidavits, Briefs, Exhibit Books) were provided.

- The Court directed that both parties (in their trial submissions) clarify their current immigration status/circumstances.

- Ms. Parsons informed Ms. Naik had filed a Petition for Divorce and wished to have Mr. Naik served. The Court directed Mr. Chudnovsky to take instructions from Mr. Naik on Mr. Chudnovsky accepting service of the Petition for Divorce.

[18] October 17, 2025

- Mr. Chudnovsky appeared in person and Mr. Naik by telephone. Ms. Parsons and Ms. Naik appeared in person.

- The Pro-Forma start to the trial was effected with the tendering of Exhibit 1 (Mr. Naik's Book of Exhibits). Mr. Chudnovsky informed Mr. Naik would not attorn to this jurisdiction in relation to Ms. Naik's

Petition for Divorce. Ms. Parsons indicated Ms. Naik sought child support from Mr. Naik. Mr. Naik disputed Ms. Naik's child support request as he was of the belief the child was wrongfully removed from his care.

[19] November 12, 2025

- Both parties and legal counsel appeared by telephone.
- The Court clarified that the *Hague Convention* Application would be heard prior to any motion regarding Ms. Naik's Petition for Divorce.
- Mr. Chudnovsky indicated Mr. Naik's income fell below the threshold amount to pay child support, however he was willing to pay $200 per month. Ms. Parsons requested full financial disclosure from Mr. Naik which was to be filed by December 1, 2025.

[20] December 10, 2025

- Mr. Chudnovsky appeared in person and Mr. Naik via video conference. Ms. Parsons and Ms. Naik appeared in person.

- Subsequent to the last appearance, Ms. Parsons filed a Notice of Motion for Interim Relief under the *Parenting and Support Act* seeking child support from Mr. Naik.

- After a review of the materials filed and upon hearing counsels' submissions, the Court imputed income to Mr. Naik in the annual amount of $67,512 (CDN) and granted the issuing of an Interim Order compelling child support payments in the guideline amount of $568.61 per month commencing on December 1, 2025, pending further order of the Court.

[21] December 11, 2025

- A Notice of Intention to Act on One's Own was filed by Mr. Naik.

[22] January 19, 2026

- Mr. Naik appeared in person with legal counsel, Ryan Cutcliffe. Mr. Cutcliffe had filed a Notice of New Counsel on January 19, 2026. Ms. Parsons and Ms. Naik appeared in person.

- Mr. Cutcliffe informed he had been recently retained.

- During the preliminary stage of the trial, the Court drew attention to Mr. Naik's late filings. The Affidavits of three witnesses Mr. Naik intended to call were not permitted as they had been filed beyond the deadline previously imposed.

- It was also noted Mr. Naik made late filings despite his request to do so being denied by the Court. Further it was observed that Mr. Chudnovsky provided materials from or on behalf of Mr. Naik (December 29, 2025), subsequent to the Notice to Act on One's Own (December 11, 2025) being filed. It was unclear whether Mr. Chudnovsky continued to represent Mr. Naik.

[23] The trial proceeded on January 19 and 20, 2026. The final set of written submissions were filed on January 27, 2026.

[24] During the trial, I did not permit and struck the Affidavit of one of Mr. Naik's witnesses, Promodhai Naik. Prior to striking the Affidavit, I questioned Promodhai Naik on whether he swore an Affidavit dated December 12, 2025, for the purposes of this proceeding. He could not recall providing an Affidavit for this trial. I further questioned him on whether at any point in time he provided an Affidavit in relation to this matter. He said he provided an Affidavit in

"September", he could not recall the specific year. Based on the responses by Promodhai Naik to my questions, I was not convinced the Affidavit attempted to be tendered as Promodhai Naik's Affidavit dated/sworn December 12, 2025, was indeed his. I was not convinced he ever had knowledge of an Affidavit from himself being provided for this trial. He clearly could not recall executing an Affidavit some 41 days earlier.

[25] Additionally, admission of Promodhai Naik's "Affidavit", would not have altered or changed the outcome of this trial or the Court's decision in any material way.

Credibility

[26] After a careful and thorough review of the evidence, I have determined the credibility of the parties must be weighed. Mr. Naik was not a believable witness. Later in this decision, in my concluding comments, I make further submissions on the credibility and reliability of Mr. Naik's evidence. Where his evidence conflicts with Ms. Naik's (including the evidence of their witness(es)) I accept Ms. Naik's evidence. In assessing the parties' credibility, I reference and rely on the oft quoted test articulated by Justice Forgeron in *Baker-Warren v. Denault,* 2009 NSSC 59.

Analysis

Law

[27] Articles 3, 12 and 13 of the *Hague Convention* reads:

> **Article 3**
>
> The removal or the retention of a child is to be considered wrongful where –
>
> a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
>
> b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
>
> The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.
>
> **Article 12**
>
> Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.
>
> The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.
>
> Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.
>
> **Article 13**
>
> Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -
>
> a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal

> or retention, or had consented to or subsequently acquiesced in the removal or retention; or
>
> b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
>
> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
>
> In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

[28] In *Ludwig v. Ludwig,* 2019 ONCA 680, Justice Tulloch (as he then was) aptly articulates a framework within the following synopsis, providing guidance on a *Hague Convention* Application analysis:

> **(c) Summary of the Governing Analytical Framework for *Hague Convention* Applications**
>
> [40] For ease of reference, I will summarize the governing analytical framework for *Hague Convention* applications below.
>
> Stage One: Habitual Residence
>
> 1) On what date was the child allegedly wrongfully removed or retained?
>
> 2) Immediately before the date of the alleged wrongful removal or retention, in which jurisdiction was the child habitually resident? In determining habitual residence, the court should take the following approach:
>
> a) The court's task is to determine the focal point of the child's life, namely the family and social environment in which its life has developed, immediately prior to the removal or retention.
>
> b) To determine the focal point of the child's life, the court must consider the following three kinds of links and circumstances:
>
> i) The child's links to and circumstances in country A;
>
> ii) The circumstances of the child's move from country A to country B; and
>
> iii) The child's links to and circumstances in country B.

c) In assessing these three kinds of links and circumstances, the court should consider the entirety of the circumstances, including, but not restricted to, the following factors:

i) The child's nationality;

ii) The duration, regularity, conditions and reasons for the child's stay in the country the child is presently in; and

iii) The circumstances of the child's parents, including parental intention.

End of Stage One: Two Outcomes

1) If the court finds that the child was habitually resident in the country in which the party opposing return resided immediately before the alleged wrongful removal or retention, then the *Hague Convention* does not apply and the court should dismiss the application.

2) If the court finds that the child was habitually resident in the country of the applicant immediately before the wrongful removal or retention, then the *Hague Convention* applies and the court should proceed to stage two of the analysis.

Stage Two: Exceptions

At this stage, the court shall order the return of the children 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));

a) Has the party opposing return met the threshold to invoke the court's discretion to refuse return?

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

ii) Does the child object to return?

b) Should the court exercise its discretion to refuse to return the child? In considering whether to exercise its discretion to refuse return, the court should consider:

i) The nature and strength of the child's objections;

> ii) The extent to which the objections are authentically the child's own or the product of the influence of the abducting parent;
>
> iii) The extent to which the objections coincide or are at odds with other considerations relevant to the child's welfare; and
>
> iv) General *Hague Convention* considerations.
>
> 4) The return of the child would not be permitted by fundamental human rights and fundamental freedoms of the requested state (Article 20); or
>
> 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).

Habitual Residence

[29] It is undisputed Ms. Naik removed A. from the family's home in Lewisville, Texas, on May 17, 2024, and subsequently travelled to this jurisdiction. Consistent with the hybrid approach articulated by the Supreme Court of Canada in *Office of the Children's Lawyer v. Balev,* 2018 SCC 16, and considered in subsequent jurisprudence, A.'s habitual residence immediately prior to the removal was Lewisville, Texas. I make that determination for the following reasons:

- The family moved to Lewisville, Texas, in October, 2021. A. was almost 3 years old at that time. For the following 3 years the focal point of the child's life was in Lewisville as borne out by the evidence.

- The relevant timeframe for determining the habitual residence of a child is immediately prior to the alleged wrongful removal or retention. *Gonzalez v. Aldana,* 2026 NSSC 12.

[30] Having determined A.'s habitual residence, I shall now proceed to the next step of the analysis which directs I order A.'s return forthwith if a period of less than one year has elapsed from the date of wrongful removal or retention to the date of Mr. Naik's *Hague Convention* Application. The evidence in this matter (Affidavit and Viva Voce) dictates I consider the exceptions to the return mandate as set out in Articles 12 and 13.

Exceptions to the return mandate

Article 12

[31] A. was wrongfully removed or wrongfully retained on May 17, 2024. Mr. Naik's *Hague Convention* Application is dated June 9, 2025. On its face, it appears Mr. Naik's application was made subsequent to the one-year timeline prescribed in Article 12, thus triggering consideration of the second paragraph of that Article.

[32] Mr. Naik maintains subsequent to May 17, 2024, Ms. Naik concealed her location and that of the child. Indeed Ms. Naik testified that after arriving in

Canada (on May 19, 2024) she changed her telephone number and obtained a new WhatsApp account. Also, she did not respond to emails from Mr. Naik.

[33] Mr. Naik's assertions on concealment informs his argument that it was not possible for him to complete a *Hague Convention* Application as he had no knowledge of the child's exact location/address. In support of this position he references email correspondence to Mr. Chudnovsky dated May 2, 2025, from the central authority (with respect to *Hague Convention* Applications) in Nova Scotia.

The evidence of Ms. Naik's father on the issue of concealment

[34] Notwithstanding the above mentioned, I am not convinced Mr. Naik was always unaware of A.'s location subsequent to May 17, 2024. Ms. Naik's father, Keneshkumar Dinubhai Naik (for ease of reference I shall refer to Ms. Naik's father as Mr. Keneshkumar) provided Affidavit evidence and testified that in early July, 2024 and on July 13, 2024, Mr. Naik and his father attended at his residence in India. Mr. Keneshkumar says Mr. Naik and his father did not ask about Ms. Naik and A.'s location. Mr. Keneshkumar states "Nonetheless, I informed them that Dattika and A. are safe in Canada and were staying with my younger daughter in Bedford, Nova Scota."

[35] At paragraphs 17 and 18 of his Affidavit sworn December 22, 2025, Mr. Keneshkumar states:

> 17. We then arranged to have a proper meeting in the presence of a relative to discuss the situation between Mitul and Dattika. This meeting took place on 13 July 2024 at the Hare Krishna Hotel, Navsari. My relative Rajeshkumar Ambelal Desai was present. During that meeting, at I repeated to Mitul and his father that Dattika and A. were residing safely with Krishna in Bedford, Nova Scotia, Canada. When I then questioned Mitul about his abusive conduct, Mitul created a disturbance and left.
>
> 18. Except for these two occasions, both in July 2024, I have had no communication with Mitul on or after May 16, 2024.

And at paragraphs 21 and 22:

> 21. **In response to paragraph 38 of Mitul's July Affidavit:** Mitul did not need to hire a private investigator in early 2025. He already knew where Dattika and A. were living as of July 2024.
>
> 22. From October 2024 to June 2025, Mitul participated in video calls with A. These calls took place in the presence of a mediator/supervisor, Vikrambhai Mehta due to concerns about misrepresentation and conflict. Photos of some of the calls with the mediator are attached as Exhibit "A".

Correspondence to Mr. Naik from Ms. Naik's lawyer

[36] Court Exhibit 5 is correspondence dated July 18, 2024, from Shawn Scott (Ms. Naik's legal counsel at the time) to Mr. Naik. Mr. Scott informs he represented Ms. Naik in "separation proceedings" and references an attached draft Separation Agreement. He asks that Mr. Naik review the draft and "advise on or before August 1, 2024, whether the proposed draft is satisfactory."

[37] Clearly stated/printed at the bottom of the correspondence is Mr. Scott's address and website:

380 Bedford Highway
Halifax, Nova Scotia, B3M 2L4
www.brookshirelawoffice.com

[38] At paragraph 35 of his Affidavit sworn July 11, 2025, Mr. Naik confirms receipt of Mr. Scott's correspondence. At the very least this confirmation verifies Mr. Naik's knowledge of the geographic and civic location of the lawyer retained by Ms. Naik and the purpose for Mr. Scott's retention.

The Community panel

[39] In accordance with cultural customs, a panel of community members was convened (in India) to attempt to mediate the situation between the parties.

[40] The parties' evidence conflicts on the purpose or workings of the community panel. Mr. Naik's evidence (and that of his witness) suggests that the primary purpose of the panel was to locate Ms. Naik and A. Mr. Keneshkumar's evidence suggests the purpose of the panel was to mediate an agreement (which I take to mean a separation agreement) between the parties. Court Exhibit 10, is a copy of the "Divorce Deed" tendered by Ms. Naik, which Mr. Naik's witness, Nimeshbhai Naik, acknowledged receiving (A PDF copy of the document).

[41] Nimeshbhai Naik claims to have been a member of the community panel. Mr. Keneshkumar disputes that Nimeshbhai Naik was a member of the community

panel but acknowledges he was present at the last meeting held on March 21, 2025. It appears Nimeshbhai Naik received the PDF copy subsequent to the March 21, 2025, meeting. I accept the Divorce Deed was drafted by or for the use of the panel and sets out the circumstances of the parties' separation. It provides for A.'s care (to remain in the "permanent custody" of Ms. Naik) and also for division of assets, spousal support and "maintenance payments" (which I take to mean child support). Essentially the agreement states the parties have exchanged valuables and Ms. Naik waives all future claims to spousal support and maintenance payments. Interestingly, paragraph 7 of the agreement states Ms. Naik "shall not file any cases against" Mr. Naik and his family members "under section 125 of the CRPC and the *Domestic Violence Act,* nor shall she file any "court cases or police complaints" against Mr. Naik and his "family members." I understand the intent of the agreement to signal that if Ms. Naik were to make any such complaints, it would "be deemed null and void."

[42] Unfortunately, the community panel was unable to achieve resolution between the parties. As mentioned, the last meeting was held on March 21, 2025.

Concluding comments on concealment

[43] Ms. Naik summarizes on the concealment issue at paragraph 30 of her November 5, 2025, Affidavit, where she states that Mr. Naik had known since July 13, 2024, that A. was living in Bedford, Nova Scotia.

[44] When assessing the evidence in this matter, the standard of proof I must adhere to is the burden of proof utilized in civil cases, which is proof on a balance of probabilities. *F.H. v. McDougall,* 2008 SCC 53.

[45] On a balance of probabilities, I find Mr. Naik has been aware of A.'s and Ms. Naik's location since July 13, 2024.

[46] Given the finding above, I am satisfied it is appropriate to consider whether A. was wrongfully removed from Lewisville, Texas, or wrongfully retained in Nova Scotia. The distinction may appear negligible, however in my view, given the circumstances present, it speaks to the intentions of the parties. Needless to say, a conclusion and/or finding of wrongful removal, buttresses Mr. Naik's argument on abduction and concealment.

[47] On the whole of the evidence, I find A. was wrongfully retained in Nova Scotia and not wrongfully removed from Lewisville, Texas. I am also satisfied the evidence establishes it was not Ms. Naik's intention to "abduct" and "conceal" A.

from Mr. Naik. I accept her actions were precipitated by a reasonable perception of a need for A.'s safety and her own.

Consideration of A.'s assimilation into her new environment

[48] I find Mr. Naik's *Hague Convention* Application was made subsequent to the one-year period as prescribed in Article 12, therefore evidence on A. and how/if she has settled into her new environment can be considered.

[49] I accept Ms. Naik's Affidavit evidence as set out in paragraphs 62 to 84 of her Affidavit sworn on December 22, 2025. A summary of that evidence is as follows:

- A. is enrolled in a school which has had a positive academic and social impact. Ms. Naik has seen a change for the better in the child's comportment and well being.

- A. has "developed a love for school and looks forward to attending everyday." The report(s) attached as exhibit "J" to Ms. Naik's Affidavit portrays A. as a good student.

- A. has formed "meaningful friendships" at school. She has adjusted well socially and interacts with her friends outside of the school environment.

- Through school instruction and interaction with her peers, A.'s speech and communication skills have improved resulting in better articulation and a boost in her confidence.

- A.'s overall health is well maintained. Specifically, she has regular dental check ups which has improved her dental health "significantly, and she now has a clean, healthy smile."

- A. has formed a close bond with Ms. Naik's sister, her sister's spouse and the Maternal Grandparents who have taken turns visiting Canada in order to aid with the child's care and supervision. Ms. Naik's father, Mr. Keneshkumar, has taken early retirement and currently extended his stay in Canada to help care for A.

- A. is engaged in extracurricular activities such as swimming, dancing and bowling. Ms. Naik says she approaches these activities with "enthusiasm and confidence."

- Ms. Naik engages A. in cultural activities within the local Indian community.

- Ms. Naik engages A. in out of school activities local to this Province (i.e. Blueberry and apple picking, going to the beach etc.)

[50] The evidence demonstrates A. has assimilated into her home and school environment. She is thriving. I make a finding of fact that A. is well settled into her new environment.

Article 13(b)

[51] I shall now address Article 13(b). The essence of this subsection provides that I am not bound to order A.'s return if it can be established "there is a grave risk" which would expose the child "to physical or psychological harm" or otherwise place her in an "intolerable situation."

[52] As noted, the parties are Indian nationals. Under cross-examination Mr. Naik testified he left the USA in 2024 (June 9, 2024) and has not been back to that country since. The evidence establishes that Mr. Naik is employed in India. He provided conflicting evidence on his Green Card status. He testified he is able to apply for a Green Card (under EBIA, "for exceptional individuals") and that his employer is in the process of making the Green Card application on his behalf. He says he became eligible to apply for a Green Card in January, 2026. He later

testified (on redirect examination) that he has a USA Green Card approved. Based on the sum of the evidence, Mr. Naik's immigration situation in relation to the USA is unclear. The gist of my commentary here is that even if I were satisfied A. should be returned to her place of "habitual residence", upon her return, whose care would she be returned to? Ms. Naik does not have a Green Card and requires a visa to enter and reside in the USA. I am without any evidence which would lead me to conclude there is/would be a responsible adult (relative etc.) to receive and care for A.

[53] I find that the parent requesting A.'s return to her "habitual residence" (Lewisville, Texas) is no longer resident there (or even resident elsewhere in the USA) and has not been since June, 2024. I find there is a grave risk that A.'s return to Lewisville, Texas, would place her in an intolerable situation. *Taddeo v. Ouellet,* 2025 BCSC 2050 (Can LII).

Conclusion

[54] The findings summarized below underscores my prior comments on the issue of credibility. Mr. Naik's evidence is problematic in several areas, lacking credibility and reliability. I am satisfied he was strategic, evasive and biased in his testimony. Ms. Naik testified in a straightforward and forthright manner. She was

candid and made admissions against her interests. I note the same for Mr. Keneshkumar.

[55] I have made the following findings of fact:

- A. was wrongfully retained in Nova Scotia and not wrongfully removed from Lewisville, Texas;
- Mr. Naik has been aware of A. and Ms. Naik's location since July 13, 2024;
- Mr. Naik's *Hague Convention* Application was made subsequent to the one-year period as set out in Article 12;
- Mr. Naik is no longer a resident of Lewisville, Texas, or the USA;
- A. is well settled into her new environment; and
- There is a grave risk that A.'s return to Lewisville, Texas, would place her in an intolerable situation.

[56] I find Mr. Naik has failed to establish the grounds necessary for me to order A.'s return to Lewisville, Texas. A. shall remain in this jurisdiction in the care of Ms. Naik.

[57] Mr. Naik's *Hague Convention* Application is dismissed.

[58] The *Ex Parte* Order issued on July 31, 2025, is voided and the provisions of same are no longer of any force and effect.

[59] Counsel for Ms. Naik shall draft and provide the appropriate form of Order.

Samuel C.G. Moreau, J.