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***The Supreme Court rules that a court in the UAE can decide the custody of two resident children who travelled to Ontario with their Canadian mother.***

The parents were married in 2012 in Pakistan and then moved to Dubai in the United Arab Emirates (UAE) where the father works. Both are citizens of Pakistan but the mother is also a Canadian citizen. Their daughter was born in 2016 and their son in 2019. The mother has always been the primary caregiver and her residency in Dubai has depended on the father. In June 2020, the mother travelled to Ontario with the children to visit her family. The father agreed to the trip but he remained in Dubai. A few weeks later, the mother informed the father that she would not be returning to Dubai with the children.

The father started legal proceedings in Ontario for the children to return to Dubai. He invoked Ontario's *Children's Law Reform Act* (CLRA), which can apply in cases of international child abduction by a parent. The mother responded by saying she would not return to Dubai. She asked the Ontario court to decide the custody of the children, instead of a court in the UAE.

The mother claimed the children would suffer serious harm if they returned to Dubai and that staying with her in Ontario was in their best interests. Before the hearing, the father offered to settle their dispute. He promised to ensure the mother's independent residency status in Dubai by buying her a property in her name. He also agreed to allow the children to reside there primarily with her.

Under the CLRA, Ontario courts typically do not exercise jurisdiction on custody issues when children have been wrongfully taken from their home in another country and end up in the province. However, there are exceptional circumstances when an Ontario court may act. Under section 23 of the law, a court can act when children are physically present in Ontario and the court is convinced they would suffer serious harm if removed from there.

In this case, the Ontario court declined jurisdiction. The judge was not convinced the children would suffer serious harm if they returned to Dubai. He declared that the mother had wrongfully kept the children in Ontario and that they should be returned to UAE with or without her. The judge gave the parties an opportunity to make further submissions on whether to include the father's settlement proposal in his order. The mother made no submissions in this regard and the settlement offer was not included. The mother appealed the order to Ontario's Court of Appeal, where it was dismissed. She then appealed to the Supreme Court of Canada.

The Supreme Court has dismissed the appeal.

**The "serious harm" threshold required under the CLRA was not met.**

Writing for a majority of the judges, Justice Nicholas Kasirer explained that as a general rule in Canadian family law, the best interests of children are measured from the children's perspective and are the paramount consideration for all decisions that concern them. While separating young children from their primary caregiver could certainly cause them psychological harm, it will not always rise to the level of "serious harm" required under the CLRA. Justice Kasirer said the trial judge in this case made no reviewable error in deciding that this level was not met. As a result, the custody of the children should be resolved by a court in the UAE.

While the majority judges found no reason to interfere with the trial judge's assessment, they said the father should be bound by his initial settlement offer if the mother decides to return to Dubai.

In this case, the legal question focused only on jurisdiction. As Justice Kasirer said, the case was not "a comprehensive comparison of the child's life in the two jurisdictions", nor a "broad-based best interests test" as is conducted on the merits of a custody application.

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**Breakdown of the decision:** *Majority:* Justice [Kasirer](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Côté](#), [Rowe](#) agreed) | *Dissenting:* Justice [Jamal](#) would have allowed the appeal, as he agreed with the majority on the applicable legal principles, but disagreed on how the law should be applied to this case (Justices [Karakatsanis](#), [Brown](#) and [Martin](#) agreed)

**More information (case # 39875):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [judgment](#) (Ontario Superior Court of Justice) | [appeal](#) (Court of Appeal for Ontario) | [appeal](#) (Court of Appeal for Ontario)

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