THE APPLICATION OF THE HAGUE CONVENTION WHERE THERE IS MORE THAN ONE HABITUAL RESIDENCE

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INTRODUCTION

1. Thesis Statement

In *Convention* applications dealing with global families the courts will increasingly find dual or serial habitual residences. Consistent application of intuitive and rational guidelines in accordance with the purposes of the *Convention* will contribute to the success of this international instrument.

Overview

In 1976, Canada noted an increasing number of violations of trans-border custody orders and recommended that the Hague Conference on Private International Law draft a treaty on international child abduction. The resulting *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Can. T.S. 1983 No. 35, came into force on December 1, 1983.[1] There are currently 82 states party to the *Convention*.[2] It is the only multilateral agreement, which provides assistance in cross-border abduction.[3]

Among its main objectives, the *Convention* seeks to deter unilateral action and unilateral selection of a forum for custody litigation.[4] Further, the *Convention* aims to deter child abductions and to promote co-operation among countries and their respective authorities; and to ensure the prompt return of abducted children to their home countries.[5] *Hague* applications, therefore, turn on the matter of habitual residence. Once an adjudicator has determined habitual residence, the *Convention* rules provide that the abducted child be returned there for a decision of the courts of that country as to the best interests of the child. Remarkably, the *Convention* does not provide a definition for "habitually resident".[6] In Canadian case law it has been decided that since the *Convention* contains no definition of 'habitual residence' the definition must be

interpreted using the definition of the term found in provincial legislation.[7] For example, section 22 (2) of the Ontario *Children's Law Reform Act* provides:

> (2) A child is habitually resident in the place where he or she resided,
>
> (a) with both parents;
>
> (b) where the parents are living separate and apart, with one parent under a separation agreement or with the consent, implied consent or acquiescence of the other or under a court order; or
>
> (c) with a person other than a parent on a permanent basis for a significant period of time, whichever last occurred**.**

Further, the *Convention* does not contemplate the possibility of dual or serial habitual residences.[8] Articles 3 and 15, as well as the Preamble, all refer to 'the state of a child's habitual residence' not 'a State.' Article 13 refers to 'the central or other competent authority of the child's habitual residence' and not 'of a habitual residence of the child.'[9]

Article 16 of the *Convention* clarifies that the state being asked to return a child "shall not decide on the merits of rights of custody". Instead, the purpose and intent of the *Convention* is to restore the *status quo*, which existed prior to any abduction so that the full merits of custody can be determined in the jurisdiction where the child is habitually resident. [10]

Some international voices have suggested that dual or serial residence may exist despite the failure of the *Convention* to address this concept. For example, E. M. Clive in his article, 'The Concept of Habitual Residence', indicates that given certain circumstances the courts could find that dual or serial residences exist.[11] This finding is emerging in a growing number of international family law cases. For example, the Court of Appeal in

England has accepted, in the context of divorce jurisdiction, that it is possible for an adult to be habitually resident in two places simultaneously.[12]

Recently, several Canadian courts have considered the possibility of dual or serial habitual residence with respect to *Convention* applications.[13] In particular, on March 19, 2010, the writer appeared before the Honourable Madam Justice C. LaFreniere in the Ontario Superior Court of Justice, Family Court, in Hamilton, Ontario, as legal counsel for the Respondent in the matter of John Dilellio (Applicant) vs. Susan Kyrk Dilellio (Respondent) (the "Dilellio Matter").[14]

Both parents were dual citizens of Sweden and Canada. The Dilellio children were born in Sweden, but, at approximately the ages of two weeks, the family returned to Hamilton where the Dilellio's had resided from the time of their marriage. The family lived together in Hamilton until 2001, when they moved to Sweden in September of 2001 (the children were then three and four).[15]

The family lived continuously in Sweden until August of 2009. The children attended school exclusively in Sweden since the age of six. The family lived in Sweden as an intact family until 2009. From September 2001 until June 2009, the parents and the children travelled to Hamilton as a family and stayed for extended periods of time in the home owned by Mr. Dilellio prior to the marriage. The majority of time spent in Hamilton was during the children's school vacations.[16]

The mother consented to the father and the children spending time in Hamilton from the period of June 12th to August 15th, 2009. She did not consent to the children being away from their home in Sweden for any other period of time. However, Mr. Dilellio notified the mother on August 19, 2009, that he did not intend to return the children to Sweden but planned to keep the children in Hamilton with him. Mrs. Dilellio brought a *Hague* application within two weeks in Sweden.[17]

Justice LaFreniere found that the children were habitually resident of Sweden and directed that they be returned to their home in Sweden forthwith.[18]

2. Questions Raised

Justice Lafreniere based her decision in the Dilellio Matter in part on the fact that "case law does not support a child of an intact family having two habitual residences."[19]

The Dilellio Matter raises several important questions:

a) Is it possible, under certain circumstances for a court to find that a child has dual or serial habitual residences?

b) Is the matter of dual habitual residency handled consistently between jurisdictions?

c) Where do the best interests of the child fit in? Theoretically? In practice?

I. BRIEF ANSWERS

a) *Is it possible, under certain circumstances for a court to find that a child has dual or serial habitual residence*s? Yes, some examples of dual or serial habitual residence include global families who live throughout the year in more than one country.

b) Is the matter of dual habitual residency handled consistently between jurisdictions? No, this fact is a threat to the ultimate success of the operation of the *Hague Convention*.

c) Where do the best interests of the child fit in? Theoretically? In Practice? The principles invoked should be consistent or the protection that the *Hague Convention* has promised to provide will fail.

II. ANALYSIS

1. Is it possible, under certain circumstances for a court to find that a child has dual or serial habitual residences?

In 2005, the Court of Appeal of Ontario reviewed the principles respecting the determination of habitual residence in *Korutowska-Wooff* v. *Wooff*. [2021]. These principles were expressed as follows:

- The question of habitual residence is a question of fact to be decided based on all of the circumstances;
- The habitual residence is the place where the person resides for an appreciable period of time with a "settled intention";
- A "settled intention" or "purpose" is an intent to stay in a place whether temporarily or permanently for a particular purpose, such as employment, family etc.; and
- A child's habitual residence is tied to that of the child's custodian(s).[22]

However, this decision puts into conflict some of the international decisions that currently exist including the decision of *Ikimi*,[23] a United Kingdom matter in which the Court decided that it is possible to be habitually resident in more than one country at any one time. This would indicate that the courts are willing to accept that if a person divides their time between two different countries and it can be said that they live in both with a settled purpose, it will be held as a matter of domestic law that they are habitually resident in both.[24]

Two other European cases – namely *Armstrong* v *Armstrong*[25] and *C* v. *FC* indicate that concurrent or serial habitual residence may exist.[26]. Further, in a recent Canadian case, *Wilson* v *Huntley*,[27] Justice Mackinnon considered a *Convention* application and indicated that it was quite possible that the child could have more than one habitual residence:

> "In my view, it is possible for a person, including a child, to have consecutive, alternating, habitual residences in two different States, at separate times. It is a question of fact in each individual case."[28]

However, in a recent European case, *Marinos* v *Marinos*[29] the court found that dual or habitual residences could not be found despite the decisions in *Ikimi, Armstrong* and *C.* v. *FC*.

Given the uncertainty within the jurisprudence of *Convention* signatories, it is consistent with the need for a common interpretation of the *Convention* that the same principles be adopted in all

Hague applications. To do otherwise creates the situation where the court is applying different tests according to the requesting state and potentially coming to different conclusions as to the habitual residence of a child (undoubtedly intended to be an issue of fact) because of different legal tests being applied.[30]

The need for uniformity in the interpretation of the Convention among state parties was stressed by Lord Browne-Wilkinson in *Re H*. [1998] AC 72 at 87:

> "An international Convention, expressed in different languages and intended to apply to a wide range of differing legal systems, cannot be construed differently in different jurisdictions. The Convention must have the same meaning and effect under the laws of all contracting states."[31]

2. Is the matter of dual habitual residency handled consistently between jurisdictions?

We have already seen that international courts are not in agreement over whether a child can have more than one habitual residence. Further, the courts differ in how they handle cases in which the court must consider whether the child has more than one residence. In *Hanbury-Brown* and *Hanbury-Brown*; *Director General of Community Services*,[32] the Family Court of Australia agreed that the notion of dual habitual residence was inconsistent with the wording and the spirit of the *Convention*. However in *Re V (Abduction: Habitual Residence)*[33], United Kingdom Justice Douglas Brown found that it was possible for habitual residence to change periodically if "that should be the intended regular order of life for parents and children." In *Re V (Abduction: Habitual Residence*) the father and mother had, for ten years or more, lived in Corfu during the tourist season and in London during the winter. In March 1995, after the father had returned to Corfu, the mother remained in London with the two children of the marriage. The father then sought the children's return to Greece, asserting that the family's habitual residence was Greece. The mother's case was that the parties were habitually resident in both Corfu and

England concurrently or, alternatively, that their habitual residence was consecutive, changing according to the family's seasonal movements, and had been England on the relevant date.[34]

Justice Brown stated that the notion of dual habitual residences did not fit easily into the scheme of the *Convention*.[35] However, there was sufficient continuity in the parents' residence in each of London and Corfu to find that the family did have alternating habitual residences. The father's application for the children's return failed, as it was found that at the time when the mother was due to take the children to Greece they were habitually resident in London.[36]

The question arises as to which way the court would have decided if the mother had brought the custody application one month later, after the seasonal period of the children's stay in London had lapsed. Pursuant to the reasoning of Justice Brown in *Re V*, habitual residence would have shifted to Corfu and the father's *Hague* application would have succeeded.

The rule that emerged from *Re V* was that where there are serial or seasonal habitual residences the habitual residence that applies is the one in which the child would normally reside at the time the application for custody is brought. Thus in *Re V* the seasonal pattern of habitual residence put the children in London at the time of the mother's custody application and, as such, was an appropriate forum. The difficulty with this rule is that it allows a deceptive parent (as in *Re V*) to forum shop. An alternative principle would be to return the child to the stay behind parent. Consistently applied principles with respect to the interpretation of custody and access rights will assist the courts where dual or serial habitual residency is at issue.

Similarly, in *P.* v *Secretary for Justice* the courts grappled with the fact that the children had consecutive alternating habitual residences between New Zealand and Australia.[37]

Often the court must take into consideration custody and access rights when making decisions with respect to *Convention* applications. A liberal interpretation with respect to rights of custody and access will assist the court where the issue of consecutive alternate habitual residency

threatens to interfere with the operation of the *Convention*. For example, in *Re C (A Minor)(Abduction),* the English Court of Appeal found that an injunction which prevented the custodial parent removing a child from Australia without the consent of the access parent created a right of custody within the meaning of the *Convention*.[38]

English courts tend to favor a liberal construction of 'rights of custody' based on humanitarian grounds. In *Re B (A Minor)(Abduction*), Justice L. Waite said:

"The purposes of the *Hague Convention* were, in part at least, humanitarian. The objective is to spare children already suffering the effects of the breakdown in their parents' relationship the further disruption which is suffered when they are taken arbitrarily by one parent from their settled environment and moved to another country for the sake of finding there a supposedly more sympathetic forum or a more congenial base. The expression 'rights of custody' when used in the *Convention* therefore needs to be construed in the sense that will best accord with that objective. In most cases, that will involve giving the term the widest possible sense."[39]

In *D*. v. *C.*,[40] the Court of Appeal of New Zealand took a similar approach, and found that in order to have a right of custody, it was not necessary for the access parent to establish that he or she had the right to determine the child's place of residence, as long as he or she had "rights relating to the care of the person of the child". Justices Henry, Keith and Tipping, held that the provision in Article 5(a) of the *Convention*:

> "does not have to be read as requiring that the claimants in question have the right to determine the child's right of residence. Rather, it can be read in this alternative way: claimants may succeed if they show that they have any qualifying rights relating to the care of the person of the child, one of which rights may be the right to determine place of residence. That particular right, on this reading, is just one of the qualifying

> rights of custody, or, to adapt a common expression, the existence of that right is sufficient but not necessary."[41]

However, in *Thomson* v *Thomson*,[42] the Supreme Court of Canada adopted a narrow interpretation that would appear to undermine this approach. La Forest J, with whom the other members of the court agreed, found that the effect of a Scottish court's insertion of a non-removal clause in an interim custody order was to retain a right of custody in the Scottish court within the meaning of Article 3 of the *Convention*. However, the interim nature of the mother's custody was emphasized and the court further clarified its position:

> "I would not wish to be understood as saying the approach should be the same in a situation where a court inserts a non-removal clause in a permanent order of custody. Such a clause raises quite different issues. It is usually intended to ensure permanent access to the non-custodial parent. The right of access is, of course, important but ... it was not intended to be given the same level of protection by the *Convention* as custody. The return of a child in the care of a person having permanent custody will ordinarily be far more disruptive to the child since the child may be removed from its habitual place of residence long after the custody order was made. The situation also has serious implications for the mobility rights of the custodian."[43]

Two years later in *W(V)* v *S(D)*[44], the Supreme Court of Canada held that the *Convention* clearly distinguishes between rights of access, which includes the right to take a child for a limited period of time to a place other than the child's habitual residence, and custody rights, which are defined as including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence. It was held that the prior proceedings in the Court of Appeal had confused the concepts of custody and access rights by stating that any removal of a child without the consent of the parent having access rights could

set in motion the mandatory return procedure, and thus indirectly afford the same protection to access rights as it affords to custody rights.[45]

W(V) v *S(D)* has been criticized by scholars of the *Convention* both within Canada and elsewhere.[46] It places such severe restrictions on the courts that it endangers the successful operation of the *Convention* and threatens the humanitarian purposes of the treaty.

3. Where do the best interests of the child fit in?

The Honourable Madam Justice Kay, a Judge of the Appealing Division Family Court of Australia, Melbourne, has written that the *Convention* has come under criticism because it: "...focuses too much on the general evil of international child abduction and not enough on the individual needs of the particular child."[47] However, she sees the *Convention* as serving a wider community need.[48] The *Convention* was drafted on the premise that the best interests of children are served by their return to the country of habitual residence, so that the courts in that country can make the decisions.[49] However, it appears from a random review of international case law, the courts are tempted to address the best interests with respect to the particular child when considering challenging *Convention* applications. For example, a closer inspection of Justice Mackinnon's judgment in *Wilson* v. *Huntley* reveals that the particular best interests of the child may have been part of underlying motives for the direction of her analysis[50] In this case, Justice Mackinnon found that the factual finding of dual habitual residences trumped the terms of a custody agreement.

While Justice Mackinnon found that the father's retention of his daughter in Ontario was in breach of the mother's rights of custody in both Canada and the United Kingdom she denied the mother's request to have her daughter returned under the *Convention*.[51] Justice Mackinnon indicated that this was due to that fact that Canada was the child's habitual residence. Justice Mackinnon came to this conclusion based on the fact that the little girl had been in Canada for

over six months and that her father had the right to decide habitual residence. She indicated that this was so because there was joint custody and indicated that Canada would be the best country to decide custody since the parties had resiled from the custody agreement. [52]

This decision is a strong argument against anyone agreeing to joint custody where there are foreign elements. According to Justice Mackinnon ordering or agreeing to joint custody in mobility cases may make the stay-behind parent's rights more enforceable under the *Convention*, but it also makes the move-away parent's position far more vulnerable, which means few move-away parents will agree to joint custody.[53]

Most courts have taken the position that not even a custodial parent is allowed to unilaterally change a child's habitual residence to determine custody jurisdiction.[54] However, this was not an issue in *Wilson* v. *Huntley* because the parties shared joint custody and had agreed to share major decisions, which included changing the child's habitual residence.[55]

Article 3 of the *Convention* refers to the point in time immediately before a child was removed or retained to decide whether a child was wrongfully removed and as a corollary, to decide the State of the child's habitual residence.[56] However, this does not make sense in wrongful retention cases where a child has consecutive alternate habitual residences. For example, in *Wilson v. Huntley,* on the date immediately before the father refused to return the child to the mother, according to their custody agreement the child was still residing with the father in Ontario pursuant to that same agreement and habitually resident with the joint custodial father.[57] Thus, slavishly following the language of Article 3, the father had not wrongfully retained the child. Yet, he was in breach of the custody agreement.

Justice Mackinnon stated that the fundamental *Convention* objective — the deterrence of abduction — is strengthened when courts routinely return children to the care of the person entitled to exercise care and control in the place where the child ought to be residing according to

the operative custody order or agreement.[58] The father, who deliberately refused to return the child to the mother, who was entitled to exercise rights of custody, was held not to have violated the *Hague Convention*, but even if he had, he did not have to return the child although none of the *Convention* exceptions applied. Having found that the child had rotating habitual residences, Justice Mackinnon then allowed one parent to unilaterally prevent the resurrection of the child's habitual residence by his or her wrongful actions. By holding that a child has consecutive habitual residences but that one parent can prevent the shift from one to the other by a wrongful act, Justice Mackinnon permitted the father to circumvent the policy objectives of the *Convention* while apparently overlooking that by doing so, she promoted self-help by disgruntled parents, which is precisely what the *Convention* was intended to discourage.

The *Wilson* decision is an example of the concern that, given the option, every country will make a determination in favor of their domestic law and their domestic system. Presumably, the adjudicators in a country are not going to say: "We think it's a grave risk to the child to be raised under our system." This presents a real challenge to the successful operation of the *Convention.*

In *Wilson,* if Justice Mackinnon had based her decision on the reasoning in *Re V* she would have found that the father brought his application for custody too late and would have ordered that the child be returned to the mother pursuant to the agreement setting out consecutive habitual residence time periods. That is because he brought his application after she was supposed to return to her mother.

In considering the purpose of the *Convention* and its underlying object to protect children it is humane that the child should have maximum contact with both parents. What we have in *Wilson* was a unilateral decision to take away the child from one of the parents and it is just not humane to the child to be able to do that. It is a terrible thing for a child to be taken away from

one of their parents. Sometimes these things cannot be avoided but we should try to keep the child in a place where he or she can have maximum contact with both parents. Neither the move-away parent nor the stay-behind parent should have the right to make that decision unilaterally. A court in the jurisdiction may very well decide that they can move away with the child but it is for that court to decide. That is the proper process - it is such a wrenching moment for the child and it is very important to go through that process.

Looking at serial habitual residence and you really are considering two jurisdictions that have the right to decide custody and the child is familiar with two places in which they ordinarily live and in a sense both jurisdictions have a *parens patriae* authority over that child. If we look at an intact family that is breaking apart – which one of those two legitimate states will exercise jurisdiction over the child? In the absence of a written agreement Justice Brown's method from *Re V* is helpful. Whenever you have a family that breaks apart – that place of breaking will be the jurisdiction that gets to decide and unfortunately there may be some allowance for forum shopping. The only way to avoid this is to have a written agreement. However, from a practical perspective that is rarely going to happen in an intact family.

In fact, a recent decision out of the United States deals with this issue. The court in *Abbott* v. *Abbott*[59] found that even *ne exeat* rights could invoke the return mechanism of the *Convention.* The Supreme Court of the United States stated:

> "Otherwise the *Convention* would be rendered meaningless in many cases where it is most needed since *ne exeat* rights can only be honored with a return remedy because these rights depend on the child's location being away from its habitual residence; The Convention's purpose of deterring child abductions by parents who are looking for a friendlier custody forum would otherwise be compromised; and International case law favoring such an interpretation should be respected."

Where the courts have decided that a parent with access rights has, at the very least, the custodial right to veto the removal of a child from the country of habitual residence, then *a fortiori*, a parent with joint custody should have that same right.

Finally, in Canada, there are no appellate decisions which have considered the issues of whether there can be two habitual residences or how the *Hague Convention* would apply to that situation. The recent decision of the Ontario Court of Appeal in *Ellis* v. *Wentzell-Ellis*[60] overturned a decision in which the lower court judge found that the child had two habitual residences and as such that *Hague Convention* did not apply. While the Court of Appeal noted that the issue of two habitual residences had been decided by the lower court, they found it unnecessary to consider this issue in their decision. Thus the issue of more than one habitual residence remains open at the appellate level in Canada.[61]

III. CONCLUSION

The need for consistent application of operating principles with respect to *Convention* applications in the international community cannot be adequately emphasized. The Court of Appeal in *Ellis* v. *Wentzell-Ellis* underscored this at paragraph 35 of the decision:

> Although foreign case law is not binding, the court should nevertheless take care to ensure consistency with the interpretations adopted by the courts of other states parties, particularly where a consensus has emerged from among them. To do otherwise would, in my view, not only weaken the *Convention* but also run contrary to the will of the legislature which has chosen to enact it into domestic law.[62]

It is clear that the *Convention* does not contemplate more than one habitual residence and was not intended to deal with such a circumstance. In absence of a custody agreement or other agreement in which the parties have attorned to a specific jurisdiction and where courts encounter

facts that clearly indicate more than one habitual residence, the jurisdiction in which the child seasonally or normally would be present should exercise authority with respect to the best interests of the child.

As such, the writer is in favour of adopting the reasoning set out in *Re V*. One may argue that this rule is nitpicking, since both jurisdictions could legitimately decide the issue of custody, depending on where the child was at a particular point in time. Why not just say that the jurisdiction that governs is the one where the child resides at the time of an application for custody? Both rules allow for forum shopping. In fact, the mother in *Re V* was clearly forum shopping.

The writer favours the rule in *Re V* because there is the opportunity for intact families to naturally separate in one of two habitual residences, and the factual inquiry as to seasonal residence, limits the possibility of snatching a child from one jurisdiction to the next purely for the purpose of forum shopping. There is also a bit more respect for the child, and the seasonal pattern that the child has come to expect. Finally, although this rule slavishly follows the rule of habitual residence, it is consistent with the theme of the *Convention*.

Given that the *Convention* does not contemplate more than one habitual residence, it may be necessary to amend the *Convention* to clarify situations in which the court finds consecutive alternate habitual residences. The *Convention* still has a role to play in these situations, because of the need for consistent governance for the best interests of the child and forum selection for families with more than one habitual residence.

Where there is an agreement between the parties as to custody of the child, as in *Wilson v. Huntley*, or an agreement between parents of an intact family that attorns to a particular jurisdiction, that agreement should be enforced. Such an application honours the intention of the

parents, discourages litigation, and upholds one of the objectives of the *Convention*, namely to discourage inappropriate forum shopping.

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[11] The Hon. Emile R. Kruzick Superior Court Ontario, Canada "International Child Abduction and The Canadian Law" at 1.
[2] HCCH Status Table, online: Hague Conference on Private International Law Conférence De La Haye De Droit International Privé <http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=24> (last modified 1 December, 010).
[3] The Hon. Emile R. Kruzick Superior Court Ontario, Canada "International Child Abduction and The Canadian Law" at 1.
[4] *Wilson* v. *Huntley* [2005] W.D.F.L. 2824, 13 R.F.L. (6th) 435 at 47.
[5] *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Can. T.S. 1983 No. 35 ("*Hague Convention*").
[6] *Ibid.*
[7] See *Hawke* v. *Gamble* (1998), 43 R.F.L. (4th) 67, and *Bielawski* v. *Lozinska*, [1997] O.J. No. 3214, affirmed, [1998] O.J. No. 22 (Ont. Div. Ct.).
[8] For the purposes of this paper, serial habitual residence is where the child spends fixed period of time in more than one state where that state becomes its habitual residence during the fixed period. Concurrent habitual residence is where the child has more than one habitual residence at any given time.
International law serves a high purpose when it underwrites the determination by nations to rely upon their domestic courts to enforce just laws by legitimate and fair proceedings.
[9] *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Can. T.S. 1983 No. 35
[10] *Ibid.*
[11] Clive E. M. *'The Concept of Habitual Residence' Juridical Review'* (1997), at 137.
[12] See:: *Ikimi* v. *Ikimi* [2001] EWCA Civ 873, [2002] Fam 72.
[13] See *Wilson* v. *Huntley* [2005] W.D.F.L. 2824, 13 R.F.L. (6th) 435.
[14] *Dilellio* v *Dilellio* (19 March 2010), Hamilton FC-09-1525 (ON S. C. J.).
[15] *Ibid* at 1.
[16] *Ibid* at 2.
[17] *Ibid.*
[18] *Ibid* at 22.
[19] *Ibid* at 4-5.
[20]See *Korutowska-Wooff* v. *Wooff*, [2004] O.J. No. 3256.
[21] The Supreme Court of Canada refused an application for an extension of time for leave to appeal.
[22] *Korutowska-Wooff* v. *Wooff*, [2004] O.J. No. 3256 at para. 8.
[23] *Ikimi* v *Ikimi* [2001] EWCA Civ 873, [2002] Fam 72, CA; also see *Armstrong* v *Armstrong* [2003] EWHC 777 (Fam), [2003] 2 FLR 375, FD).
[24] *Ikimi* v *Ikimi* [2001] EWCA Civ 873, [2002] Fam 72, CA at para. 41.
[25] [2003] EWHC 777 (Fam), [2003] 2 FLR 375, FD.
[26] (Brussels II: Free-Standing Application for Parental Responsibility) [2004] 1 FLR 317, FD; see also *Re* V *(A Minor)* (Abduction: Habitual Residence) [1995] 2 FLR 992.
[27] *Wilson* v. *Huntley* [2005] W.D.F.L. 2824, 13 R.F.L. (6th) 435.
[28] *Ibid* at para. 32.
[29] [2007] EWHC 2047 (Fam).
[30] Nicolas Allen, "Where does our client live? Habitual Residence and Residence under Brussels II (Revised) after Marinos" (01 Nov 2008) online: Family Law Week <http://www.familylawweek.co.uk/site.aspx?i=ed1176>.
[31] *Ellis* v. *Wentzell-Ellis*, 2010 ONCA 347 at para. 18.
[32] (1996) F.L.C. 92-671 (QL) (Aust.Fam.Ct.).
[33] [1995] 2 FLR 992.
[34] *Ibid* at para. 46.
[35] *Ibid* at 40.
[36] *Ibid* at 46.
[37] [2003] NZLR 54.
[38] [1989] 1 FLR 403.
[39][1994] 2 FLR 249 at 260 at 19.
[40] [1999] NZFLR 97
[41] *Ibid*

[42] *Thomson* v *Thomson*, [1994] 3 S.C.R. 551.
[43] *Thomson* v *Thomson*, [1994] 3 S.C.R. 551 at para. 69.
[44] (1996) 2 SCR 108 at para. 84.
[45] *Ibid at paras. 38 - 43.*
[46] Linda Silberman, "The Hague Child Abduction Convention Turns Twenty: Gender Politics and Other Issues" (2000) 33 New York Journal of International Law and Politics 221 at 232.
[47] Honourable Justice Kay (A Judge of the Appealing Division Family Court of Australia, Melbourne) An update on a paper first delivered to a Family Law Conference in Adelaide in 1994 Updated for the Canadian National Judicial Institute International Judicial Conference on The Hague Convention on the Civil Aspects of International Child Abduction July 2004 La Malbaie (Québec) (Canada) "THE HAGUE CONVENTION – ORDER OR CHAOS?" Sub nom "The Special Commission recognises that the Convention in general continues to work well in the interests of children and broadly meets the needs for which it was drafted." Are they kidding themselves? at para. 286.
[48] *Ibid* at para. 287.
[49] *Abbott* v *Abbott* No. 08-645 at 15.
[50] *Wilson* v. *Huntley* [2005] W.D.F.L. 2824, 13 R.F.L. (6th) 435 at paras. 49-52.
[51] *Ibid at paras. 49 – 52.*
[52] *Ibid.*
[53] *Ibid* annotation at p 3.
[54] See *Bedard* v. *Bedard,* 2004 CarswellSask 494, 3 R.F.L. (6th) 1 (Sask. C.A.).
[55] *Wilson* v. *Huntley* [2005] W.D.F.L. 2824, 13 R.F.L. (6th) 435 at para. 52.
[56] *Hague Convention* Article 3.
[57] *Wilson* v. *Huntley* [2005] W.D.F.L. 2824, 13 R.F.L. (6th) 435 at 3.
[58] *Ibid* at oara. 74.
[59] No. 08-645.
[60] *Ellis* v. *Wentzell-Ellis*, 2010 ONCA 347.
[61] *Ibid* at para. 35.
[62] *Ibid* at para. 20.