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# Child Relocation 2025

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**Canada: Law & Practice and Trends and Developments**

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# CANADA


## Law and Practice

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**MacDonald & Partners LLP** is located in the heart of downtown Toronto and is a distinguished law firm of about 20 lawyers who specialise in all aspects of family law, including but not limited to international custody and abduction cases. The firm has handled numerous complex proceedings under the Hague Convention on the civil aspects of international child abductions and under Ontario's Children's Law Reform Act. The firm frequently represents clients in high-conflict cross-border cases involving the wrongful removal or retention of a child from their habitual residence, appearing at all levels of court in Canada, including at the Supreme Court of Canada in Dunmore v Mehralian. The firm's lawyers provide strategic counsel in the face of urgent applications for the return of a child, often working with international counsel. MacDonald & Partners LLP provides expertise in this highly specialised area of law, ensuring that its clients receive exceptional advocacy during urgent and emotionally challenging legal disputes.

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MacDonald & Partners LLP
FAMILY LAW PRACTITIONERS

## 1. The Care Provider's Ability to Take Decisions About the Child

### 1.1 Parental Responsibility

In Ontario a parent's decision-making power is defined as responsibility for making significant decisions about a child's well-being, including with respect to health, education, culture, language, religion and spirituality, and significant extra-curricular activities. This is commonly referred to as "decision-making responsibility" and is set out in Section 18 (1) of the Children's Law Reform Act (CLRA).

### 1.2 Requirements for Birth Mothers

A birth parent is the person who gives birth to the child. This person is automatically considered a parent (Section 6 (1) of the CLRA) and therefore has parental responsibility, which includes the right to make important decisions for the child. This provision does not, however, apply to surrogates who give birth to a child (Section 6 (2) of the CLRA).

However, having decision-making responsibility is not necessarily permanent, or an unimpeachable right. Any person with decision-making responsibility for a child must exercise this responsibility carefully. A court can order that a parent relinquish that responsibility if doing so is in the best interests of the child.

### 1.3 Requirements for Fathers

If a child was conceived from sexual intercourse, the biological father may automatically be recognised as the parent of the child, if any of the following circumstances apply (Section 7 (2) of the CLRA):

- He was married to the birth parent at the time of the child's birth.
- He was married to the birth parent, but the marriage ended (by death, annulment or divorce) within 300 days before the child was born.
- He was living in a marriage-like (conjugal) relationship with the birth parent before the child's birth, and the child was born within 300 days after that relationship ended.
- He registered the child's birth as a parent under Ontario's Vital Statistics Act, or under a similar law in another part of Canada.
- A court outside Ontario has legally recognised him as the child's parent.

If the biological father is recognised by law as the parent of the child, he is equally entitled to decision-making, and does not have to meet any other requirements.

### 1.4 Requirements for Non-Genetic Parents

#### Non-Genetic Parent

In Ontario, the term "parent" can mean different things depending on the law being used. Different acts outline different rights.

For example, in Ontario's Family Law Act (FLA), a parent is not only someone who is biologically related to a child. A person can be considered a parent if they show a clear and ongoing intention to treat the child as their own (Section 1 (1) FLA). Note that the Family Law Act does not govern child relocation; the definition of parent is used to determine child support obligations.

Further, under Ontario's CLRA, a person does not have to be a parent or biologically related to the child to have decision-making responsibility. Someone who is not the child's parent can apply to a court for a parenting order, and it may be granted if a court determines that it would be in the best interests of the child. This could be a distant relative, such as a grandparent or a step-parent who does not wish to proceed with the formal adoption process.

#### Assisted Reproduction

If a child was conceived using assisted reproduction such as surrogacy or artificial insemination, certain special considerations apply. For example, if the birth parent conceived the child using assisted reproduction and had a spouse at the time of conception, that spouse will be recognised as a parent. The same is true if the birth parent conceived through insemination using a donor; the spouse at the time of conception will be recognised as a parent.

This provision will not apply if the spouse did not consent to be a parent, or did consent but withdrew said consent before the child's conception.

### 1.5 Relevance of Marriage at Point of Conception or Birth

The impact of the mother and father being married at the time of conception will differ depending on how the child is conceived.

See **1.3 Requirements for Fathers**; the father automatically obtains parental responsibility if married to the birth parent at the time of the child's birth.

See **1.4 Requirements for Non-Genetic Parents**; the relevant time, in terms of obtaining responsibility, for parents who use assisted reproduction is the point of conception.

### 1.6 Same-Sex Relationships

In 2005, Canada enacted the Civil Marriage Act. This legalised same-sex marriage across Canada and granted same-sex couples equal rights to heterosexual couples. A same-sex couple may become parents through many of the same ways that a heterosexual couple can, including adoption and assisted reproduction.

See **1.4 Requirements for Non-Genetic Parents** and **1.7 Adoption**.

### 1.7 Adoption

The requirements to become an adoptive parent vary from province to province. However, an adoptive parent must be over 18, a resident of the relevant province, and pass criminal record and child welfare background checks.

Adoptive parents in Ontario must obtain an adoption order under Section 199 of the Child, Youth and Family Services Act. This is a final order from the courts. From the date of the order, the adopted child becomes the adoptive parents' child, and the parents assume decision-making responsibility.

## 2. Relocation

### 2.1 Whose Consent Is Required for Relocation?

Rules and requirements for relocating a child are regulated provincially. In Ontario, if one parent plans to move to a new home with the child, and they have decision-making responsibility, they must give written notice to the other parent 60 days before the proposed move. This notice must include:

- the date they plan to move;
- the new address; and
- updated contact information for themselves and the child.

This notice must be given to anyone who has decision-making responsibility or parenting time with the child. If the non-relocating parent does not respond or object after receiving the notice, their silence is treated as consent.

### 2.2 Relocation Without Full Consent

If the relocating parent cannot obtain consent or acquiescence from the non-relocating parent, or other person with decision-making responsibility for the child, they may bring an application to a court with jurisdiction over the child.

Under Ontario's CLRA (and equivalent legislation in the other provinces), the court with jurisdiction over the child will be the one in the place where the child is habitually resident. Habitual residence in Ontario is defined as where the child last lived with both parents, unless there is a separation agreement or the child permanently lives with a person who is not a parent. A court will only grant this order if it is in the best interests of the child to do so.

### 2.3 Application to a State Authority for Permission to Relocate a Child

#### 2.3.1 Factors Determining an Application for Relocation

The factors that determine an application for relocation are enumerated in the relevant legislation. In Ontario, this is the Children's Law Reform Act, and the factors include:

- the reasons why the parent wants to move;
- how the move will affect the child;
- how much time each person with parenting time has spent with the child, and their level of involvement in the child's life;

- whether the relocating parent has followed the rules requiring notice to the other parent or persons involved;
- if there are any other orders, family arbitration awards or agreements that specify where the child should live;
- whether the relocating parent's plan to change the parenting arrangement is reasonable; and
- whether everyone involved has been following their legal obligations and agreements, and if they are likely to keep following them.

### 2.3.2 Wishes and Feelings of the Child

Canada has ratified the United Nations Convention on the Rights of the Child (CRC). One of the critical elements of the CRC is respecting the wishes and feelings of a child, and their right to participate in decisions that affect them. Therefore, courts in Canada will take a child's wishes into consideration. This does not mean that because a child expresses a wish, the courts will immediately grant this. Rather, it is one element of the court's analysis to determine whether the relocation is in the child's best interests.

### 2.3.3 Age/Maturity of the Child

When the court is conducting a best interests analysis and the child has expressed a certain preference, one part of the court's role is to decide how much weight to place on their wishes. The way to do this is to assess on a case-by-case basis the age and maturity of the child. For example, a six-year-old may have a preference, but the court will take a mature 13-year-old's preference more seriously.

### 2.3.4 Importance of Keeping Children Together

Like all other decisions involving children, this factor is only one of many that courts in Canada will consider when deciding whether to grant an order to allow a parent to relocate with a child.

### 2.3.5 Loss of Contact

In allocating parenting time, the Divorce Act maintains that the court shall give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of the child. While the phrase "maximum contact" is no longer explicitly stated in the Divorce Act, Justice Charney in *Kirichenko v Kirichenko* affirmed that "the social science literature continues to recognize the value, in most cases, of significant involvement of both parents in the lives of their children after separation". Courts have interpreted this to mean that a child should have contact with both parents, unless there is a real risk that the child would be harmed by this, either emotionally or physically. Thus, when parents have lost contact with the child, the courts will make their decision with the parenting time factor in mind. However, the parent who has lost contact with the child will likely have to prove that they made significant efforts to maintain the relationship, contact or locate the child.

### 2.3.6 Which Reasons for Relocation Are Viewed Most Favourably?

Each application for relocation is unique; as such, it is difficult to predict which reasons will be sufficient to convince a court to permit the move. However, parents have successfully argued the following reasons many times:

- to pursue a job opportunity that would provide better financial support for the child;
- to move the child closer to their extended family to promote a sense of community and create a larger support system; and
- to pursue educational opportunities not available in the parent's current place of residence.

This is because the crux of the argument is that the move has to be in the child's best interests. All of the reasons above are compelling before a court that the relocating parent is making the move with the child in mind.

### 2.3.7 Grounds for Opposition to Relocation

The non-relocating parent does not have to raise any specific grounds to oppose the child's relocation. If they have parental rights, such as decision-making responsibilities, parenting time, or are subject to a contact order, they can make various arguments for why it would be in the child's best interests not to relocate. Compelling reasons to oppose the relocation might be similar to those listed in **2.3.6 Which Reasons for Relocation Are Viewed Most Favourably?** as they could include that the child has always lived in the original jurisdiction, that they are fully settled and

surrounded by family and friends, and that they would be disadvantaged by being displaced.

#### 2.3.8 Costs of an Application for Relocation

Depending on the court and the subject matter, fees may be required to file an application or an answer. These costs are not prohibitive.

The real financial burden an applicant will need to take on is the legal fees associated with making an application. Lawyers, depending on their expertise and year of call, can vary widely in price, and it is common for people to be self-represented because, for many, lawyers are not affordable.

Moreover, Ontario is known as a "loser pays jurisdiction", meaning that the person who receives an unfavourable result from the court may have to pay for the other party's legal fees. In practice, getting an award for all the costs of the proceedings is rare. The court will determine if there is "divided success" between the parties, and if successful, the "winner" is more likely to win substantial costs rather than full.

#### 2.3.9 Time Taken by an Application for Relocation

There are no set timeframes for relocation proceedings, and it can take several months for the matter to be heard by the court. However, the courts will generally try to prioritise relocation motions so that the parties can make appropriate arrangements. For example, if one parent receives a job offer in a foreign country, the court may prioritise hearing the issue if the parent has an impending starting date.

#### 2.3.10 Primary Caregivers Versus Left-Behind Parents

Neither party before the court in a relocation application has an inherent advantage over the other. The court must always choose what is in the best interests of the child, considering the enumerated factors in the relevant legislation. That being said, if one parent has been acting as the primary caregiver for the child their entire life (meaning this is the parent who takes on most of the child-rearing responsibilities like taking the child to doctors' appointments, helping them with homework, cooking their meals, etc) the court will weigh that factor heavily when making its decision. For example, if the child is extremely young and has never been apart from their primary caregiver, the court will be more hesitant to order the child's return to the other parent.

### 2.4 Relocation Within a Jurisdiction

The distance between the child's current residence and the proposed site of relocation does not impact the standards the court must apply. However, it may impact which factors are given more weight. For example, the further the child will be from the non-relocating parent, the more likely it is that this will influence the child's relationship with the non-relocating parent, making it difficult for them to build or maintain a strong relationship. This is likely to carry significant weight in the court's decision as to whether to grant the relocation application. In practice, the shorter the distance of the proposed move, the more likely it is that the application will be granted.

## 3. Child Abduction

### 3.1 Legality

If the relocating parent has not given the required notice to the other parent or other persons with decision-making responsibility for the child, the removal of said child from the jurisdiction will be considered wrongful. This is more commonly referred to as "abduction", and upon application of the non-relocating parent, the court will most likely order the immediate return of the child.

### 3.2 Steps Taken to Return Abducted Children

If the child has been taken out of Canada, the first step is to locate the child. Some contacts that can assist in this are:

- the local police (ask them to contact the RCMP's National Centre for Missing Persons and Unidentified Remains);
- consular services at Global Affairs Canada;
- the Passport Program;
- Canada Border Services Agency; and
- non-government organisations, such as the Canadian Centre for Child Protection and the Missing Children's Network.

The second step is to determine if the country the child is located in is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, since Canada is a signatory to this. If the country is not, the left-behind parent can bring an urgent application to the local court to apply for the return of the child. The CLRA provides that a court may make an order to ensure the return of the child if it is satisfied upon application that the child was unlawfully withheld or removed.

If the country is a signatory to the Hague Convention, the left-behind parent can apply to have the child returned to Canada. The left-behind parent or the counsel acting on their behalf should contact the central authority, which will file an "Article 16 notice", which provides notice of wrongful removal or retention of a child. In Ontario, the central authority is the Ministry of the Attorney General. The central authority will, if satisfied that this is a case where the Hague Convention is operative, forward the application to the central authority in the foreign jurisdiction where the child is being retained. After the left-behind parent commences a Hague Application with the central authority or contacts the central authority, the applicant parent can bring an urgent motion to obtain a chasing order on a without-notice basis, which will enable the applicant parent to obtain an order that will assist in enforcing any return order made when the child is back in Canada.

However, a court may refuse to return a child under the Hague Convention for a number of reasons if the situation falls within its list of exceptions.

### 3.3 Hague Convention on the Civil Aspects of International Child Abduction

Canada is a signatory to the 1980 Hague Convention.

This means that if an abducted child is taken to Ontario the following applies:

- The central authority does not typically represent the left-behind parent/applicant, but it will provide other services free of charge. More commonly, it will facilitate the process of finding a lawyer. Depending on the parents' financial circumstances, some attorneys may offer their services for reduced fees.
- Ontario and more generally, Canada, rigorously apply the underlying principle of the Hague Convention on the immediate return of the child. They often give deference to the contracting state to respect the importance of international comity and acknowledge that the exceptions listed in Article 13 are to be interpreted narrowly. It is on the abducting parent to establish the high threshold required by Article 13.
- Typically, Hague applications are heard on an expedited basis, being dealt with in six weeks, consistent with Article 11. Some cases may take longer, particularly where a parent files for an appeal. The cost considerations for making a Hague Application are substantially the same as in Section 2.3.8; the largest cost associated with the application is the legal fees parties are bound to incur.

If an abducted child is taken to a country that is not a member of the Hague Convention, the following applies:

- The steps that a parent should take if their child has been abducted to a foreign jurisdiction that is not a member of the Hague Convention are listed under Section 3.2. If the parent is bringing an urgent motion to obtain an order for the immediate return of the child, they will have to do so under the relevant provincial legislation (in Ontario, the CLRA). The moving party will still have to establish that the child was habitually resident immediately before the wrongful removal or retention. The primary difference between an application under the CLRA and the Hague Convention is that Ontario courts have more discretion when deciding whether to assume jurisdiction over the matter. Ontario courts do not have to assume that non-signatory countries have the appropriate protections in place for children if they are returned. In short, there is a lower threshold for Ontario courts to refuse an application for a return order to a country that is not a member of the Hague Convention than to one that is a member of the Hague Convention.

### 3.4 Non-Hague Convention Countries

This is not applicable, as Canada is a signatory to the 1980 Hague Convention.

# Trends and Developments

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## International Child Abduction

### *Overview*

This article will demonstrate the differences in proceeding with a court application where the child has been wrongfully removed or retained from either: (i) a country that is not a contracting state to the Hague Convention; or (ii) a country that is a contracting state to the Hague Convention.

### *Non-Hague Convention cases*

In Ontario, the Children's Law Reform Act (CLRA) is the relevant legislation for the left-behind parent who is seeking a return order for a child who has been taken without permission to a country that is not a signatory to the Civil Aspects of International Child Abduction (the "Hague Convention"), or where the dispute is inter-provincial within Canada.

Under the CLRA, Ontario courts can assume jurisdiction and make a parenting order for a child under any of the following provisions:

- Section 22 (1)(a), if the child is "habitually resident" in Ontario at the time the application is commenced;
- Section 22 (1)(b), if the child is physically present in Ontario at the time the application is commenced, and other requirements of the section are met;
- Section 23, if the child is physically present in Ontario and would, on the balance of probabilities, suffer serious harm if removed from Ontario; and
- Ontario has parens patriae jurisdiction under Section 69.

### *Habitual residence*

The CLRA defines habitual residence as the place where the child lived in whichever of the three circumstances occurred most recently: (i) with both parents; (ii) if the parents are living apart, and one parent has custody or care of the child through a separation agreement, with the other parent's consent (express, implied or by acquiescence) or under a court order; or (iii) with another person who is not a parent but the child is living with them on a permanent basis. To remove the child without the consent of everyone with decision-making responsibility for the child will not change the child's habitual residence unless there has been acquiescence or undue delay in commencing the proceedings.

In December 2024, the Supreme Court of Canada heard the case of *Dunmore v Mehralian* and provided clarity for how courts should deal with the issue of habitual residence, stating:

"[Section 22 of the CLRA and its subsections] serve Part III's purpose of dissuading the abduction of children as an alternative to due process. They ensure that if a child has been wrongfully removed or withheld before the commencement of the application, it is generally their residence before the wrongful act that is determinative of jurisdiction.

The proper interpretation of the word 'resided', grounded in the text, context and purpose of Part III, is simply living in a place as opposed to merely visiting it.

[F]or very young children who may not have clear objective ties to a place, the ties of those who are taking care of them are likely to weigh more heavily in the analysis. Very young children rely on the adults in their lives to create a home for them, and the ties of those adults to a jurisdiction, including their inten-

tions about the family's residence, therefore become relevant.

Courts asking where the child is at home should look to 'all relevant links and circumstances'. [...] Attornment of the parents to a foreign jurisdiction is, by itself, irrelevant to where the child is residing for purposes of s.22 (2) and (3) of the CLRA."

These provisions are not unique to Ontario. In fact, most other Canadian provinces and territories define habitual residence in their provincial legislations, ensuring some degree of consistency.

*Not habitually resident*

The court in Ontario may still decide to exercise jurisdiction when a child is not habitually resident in Ontario, if all the requirements listed under Section 22 (1)(b) of the CLRA are satisfied.

**Section 23 CLRA**

If the court is satisfied that the child would suffer serious harm if they were removed from Ontario, the court might assume jurisdiction. "Serious harm" is not defined in the CLRA, but the Ontario Court of Appeal in *Ojeikere v Ojeikere* stated that the standard of harm required by Section 23 of the CLRA is less stringent than the standard under Article 13 (b) of the Convention (see below).

Although the court in *Ojeikere* did not define serious harm, it did provide a list of relevant factors to consider. Some potentially relevant factors the court may use to determine if the child is at risk of "serious harm" are: the risk of physical harm, the risk of psychological harm, the views of the children, and a parent's claim that they would not return home even if the children were required to do so.

*Hague Convention*

The objectives of the Hague Convention are outlined in Article 1 and include securing the prompt return of children who have been wrongfully removed or retained in a contracting state, and ensuring that rights of custody and of access under the law of one contracting state are respected in the others. The objectives of the Hague Convention are better understood when read in conjunction with the preamble.

The preamble of the Convention states that "the interests of children are of paramount importance in matters relating to their custody". In short, the Convention recognises that the wrongful removal or retention of a child in a foreign jurisdiction can cause significant harm. Therefore, courts should presume that the children will be better served by their immediate return to their habitual residence.

It is important to emphasise that the Hague Convention is not a means by which parents can resolve custody issues. This is articulated in Article 16 of the Convention, which states that the authorities of the contracting state to which the child has been removed or retained will not decide the merits of the custody issue until after they have determined that the child should not be returned to the left-behind parent. A return order is simply designed to restore the status quo that existed before the wrongful removal or retention so the relocating parent cannot gain a tactical advantage in litigation.

In *Office of the Children's Lawyer v Balev* ("*Balev*"), the Supreme Court of Canada weighed in on the importance of ordering the prompt return of children who have been wrongfully removed or retained in a foreign jurisdiction. The prompt return serves three related purposes, namely, protecting against the harmful effects of wrongful removal or retention, deterring parents from abducting a child with the hope of settling in a new country to get custody, and expediting the process to resolve the merits of the custody or access dispute in the child's habitual residence.

Each contracting state must establish a central authority. Federal states like Canada must establish a central authority in each province. The central authority plays an important role in facilitating the Convention's objectives. It assists with individual cases, but more than that, it educates the public and co-operates with law enforcement, social services and non-profit organisations. Although the central authority in Canada does not act for the applicant in the proceedings, it can assist them with locating the child or guiding parents through the application process.

*Conditions for a return order*

There are three conditions to satisfy before a court can order a return order, unless one of the narrow enumerated exceptions applies. The moving party has to prove that:

- the child was habitually resident in a contracting state immediately before any breach of custody or access rights;
- the applicant has custody rights to the child that were being exercised at the time of the wrongful removal or retention; and
- the child was wrongfully removed or retained.

There are a few things the left-behind parent should keep in mind before proceeding with a Hague application. The Convention does not apply to children who are 16 years old and above. Additionally, pursuant to Article 12, the left-behind parent must file the Hague application within one year of the wrongful removal or retention. Promptness is key; delay can have serious consequences on the outcome of the case.

*Habitual residence*

The determination of whether a child is "habitually resident" in a country is the crux of the legal analysis required to order their return. However, the term "habitual residence" is not defined anywhere in the Convention. That means it is up to the courts in each contracting state to develop the tests and guiding principles to interpret the meaning of habitual residence. In Canada, this issue was determined by the Supreme Court in *Balev*.

In *Balev*, the Supreme Court adopted a "hybrid" approach, which now dominates the analysis in Canadian courts. The hybrid approach requires courts to consider all the relevant factors of the case at hand, and shift the primary focus away from parental intention or the child's acclimatisation to their new home. The challenge for the application judge is to determine the focal point of the child's life, family and social environment immediately prior to the removal or retention. There are no "rules" for the application judge to follow, and no single factor will make or break the case.

*Exceptions to a mandatory return order*

Once a parent has successfully proved that the child was habitually resident in a foreign jurisdiction immediately prior to the wrongful removal or retention, the court is required to order the child's return, unless one of the narrow exceptions applies.

The exceptions are articulated in Article 13. They are intended to be very limited in scope, and the threshold to apply the exceptions is extremely high. If it were easy to establish the existence of an exception, Canada would be viewed as a "safe haven" for child abduction.

**Article 13a**

Courts are not required to order the return of a child where the relocating parent can establish that the left-behind parent either acquiesced or consented to the removal or retention. If the left-behind parent consented, then no custody or access rights were breached, and thus the Convention does not apply. Here, consent would not apply if one parent permitted the other to take the child to a foreign jurisdiction for a limited period (eg, a vacation to visit family in another country).

What does "to acquiesce" mean in this context? Essentially, it means to agree, silently or passively, to something. The courts take inaction as a means to imply consent. It is determined by the parents' words and conduct, which includes silence. Meaning, if a child is wrongfully removed or retained, but the left-behind parent does not make their opposition known, the court is not required to order the child's return.

**Article 13b – grave risk of harm**

Article 13b is the grave risk of harm exception. Courts do not have to order a child's return if in doing so they would be exposing that child to physical and/or psychological harm, or placing them in an intolerable situation. The question then becomes: how do we define what "grave risk" means?

The Supreme Court of Canada answered this question in *Thomson v Thomson*. The word "grave" must be read together with the words "otherwise place the child in an intolerable situation", which led the court to the conclusion that the risk must be more than an

ordinary one; that it must "not only be a weighty one, but that it must be one of substantial and not trivial psychological harm".

For Article 13b, a grave risk of harm can only occur in two situations. First, where the return of the child would place that child in immediate danger, before the custody issue can be resolved in court (eg, if ordering the child's return meant they were going to return to a war zone). Second, where the child would be at risk of suffering serious abuse and/or neglect, or where the court in the country of habitual residence is incapable or unwilling to provide the child with appropriate protections.

**Article 13 (2) – child's objections**

Article 13 (2) provides an exception for when the court finds that the child objects to the return and has "attained an age and degree of maturity at which it is appropriate to take account of its views". In *Balev*, the Supreme Court of Canada provided some clarity on how courts should treat a child's objections. The application judge can refuse to order the child's return if the child is of an appropriate age and/or level of maturity.

This can be a difficult issue, and judges must be careful to ensure that the child's objections are authentically theirs, not a result of parental influence. Nonetheless, a child's objections should not determine the outcome of the case. Courts must still consider the Convention's objectives.

**Article 12 – settled into new environment**

If the left-behind parent commences the proceedings a year or more after the alleged wrongful removal or retention and "it is demonstrated that the child is now settled in its new environment", the court does not need to order the child's return.

Before the court can apply the exception, it must first determine where the child's habitual residence is. Subsequently, the court must assess the child's present ties to the new country. The court will consider factors such as social and cultural integration, stability, and the child's emotional well-being. In *Balev*, the Supreme Court of Canada stated that the "settled intention" exception simply ensures that the court considers what is in the best interests of the child before they are displaced again.

### *Conclusion*

In short, there are significant differences between an application under the CLRA or the Hague Convention, but the guiding consideration is always the child's best interests. When dealing with an international child abduction, the questions to ask are relatively similar. Regardless of which framework will govern the case, the courts will attempt to balance international comity, deterrence and prioritising the child's well-being.

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