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PARENTING LAW AND PRACTICE IN CANADA

Ann Wilton Release No. 4, October 2025

Parenting Law and Practice in Canada guides the practitioner through all aspects of law and practice related to custody and access in Canada, including the impact of the changes to the Divorce Act. The expert commentary covers the stages of a custody access proceeding including interim proceedings, and decisions on the merits, enforcement, variation, and appeals. This work examines the substantive and procedural law as well as negotiation, tactical, and advocacy skills. Alternative dispute resolution methods are considered, as are other topics of current interest such as the expansion of access rights, including access for grandparents, child representation, mobility rights, and the effect of religion upon custody and access.

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What's New in this Release:

In this release commentary has been revised and cases have been added for a comprehensive update of Chapter 16 (Hague Convention on the Civil Aspects of International Abduction).

Highlights:

An outstanding refugee claim does not create a blanket prohibition against a return order. This rationale applies equally to Hague and non-Hague cases. See A.A. v. Z.S.M., 2025 ONCA 283, 2025 CarswellOnt 5513, 15 R.F.L. (9th) 374 (Ont. C.A.).

The abducting party bears the burden of proof that the objecting party has subjectively intended to acquiesce to the retention of the child. See *Thomas v. Thomas*, 2024 ONCA 646, 2024 CarswellOnt 12987, 9 R.F.L. (9th) 263 (Ont. C.A.), reversing 2024 ONSC 615, 2024 CarswellOnt 1532 (Ont. S.C.J.).

An intolerable situation for the abducting parent does not meet the criteria of "intolerable situation" as contemplated by Art. 13. See *MOG v. COG*, 2023 ABCA 19, 2023 CarswellAlta 129 (Alta. C.A.).

The court is not required to adopt an "Indigenous Lens" when considering and applying the test for habitual residence as set out in Balev. See *J.N.C. v. A.G.H.*, 2024 BCSC 1783, 2024 CarswellBC 2879, 6 R.F.L. (9th) 320 (B.C. S.C.).

Where the child was removed from Ukraine to flee the war with Russia two years before the determination of the Hague petition, and it was not possible to restore the status quo, she was "now settled" in Canada and her return was not warranted. See *Kosenkov v. Kosenkova*, 2024 ONSC 3807, 2024 CarswellOnt 10056 (Ont. S.C.J.).

Where the mother agreed to return the child voluntarily, it was appropriate to dismiss the father's Hague petition, even though it had not been decided on its merits. See *Ding v. Law*, 2024 CarswellBC 1594, 2024 BCSC 976 (B.C. S.C.), additional reasons at 2024 BCSC 1686, 2024 CarswellBC 2670 (B.C. S.C.).

Where the father understood that sponsorship to Canada might not succeed, and that the parties might separate, no wrongful removal occurred. See *E.B. v. M.F.P.*, 2024 BCSC 2194, 2024 CarswellBC 3599 (B.C. S.C.).

Where the contracting state had a history of non-compliance with its Hague obligations, the requesting state has jurisdiction to determine the child's habitual residence and make an order for his or her return. See *Mar v. Wu Wu*, 2023 ONSC 281, 2023 CarswellOnt 503, 85 R.F.L. (8th) 35 (Ont. S.C.J.), additional reasons 2023 CarswellOnt 3655, 85 R.F.L. (8th) 47 (Ont. S.C.J.).