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THE LAW OF DOMESTIC CONFLICT IN CANADA

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This resource covers the complex intersection of family law, civil law and criminal law in cases of domestic violence, balancing substantive law and the practice of law. The work covers topics such as evidentiary issues in criminal proceedings, sentencing principles, common offences such as assault, uttering threats, and stalking and defences advanced such as self-defence and provocation.

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Highlights

This update includes the following:

Case Law updates:

- In *Mehralian v. Dunmore*, 2025 SCC 20 (S.C.C.), the Supreme Court of Canada, Cote, J., dissenting, clarified the procedure where the one of the parties seeks to involve the jurisdiction of a state that is not a member of the 1980 Hague Convention on the Civil Aspects of Child Abduction on January 24, 2014, in order to secure the return of a child to that state. Not all states are signatories to the Hague Convention and conversation about status continues; for example, Japan became a signatory as late as January 14, 2014. The test is under these circumstances is where the child is habitually resident and is determined by reference to provincial legislation or to the *Divorce Act* if the other state is not a signatory. In *Dunmore*, the child was born in Ontario where he resided with both parents. However, the father returned to Oman for employment purposes, where the family unit once resided, and commenced divorce proceedings. The very next day the mother commenced divorce proceedings in Ontario. Oman is not a signatory to the Hague Convention.
- *Kirby v. Woods*, 2025 ONCA 601 (Ont. C.A.), additional reasons 2025 ONCA 744 (Ont. C.A.), leave to appeal refused 2026 CarswellOnt 5795 (S.C.C.), addresses the interesting theoretical and practical issue of a child who has refugee status granted by the RPR and is also the subject of a Hague Convention application. The intersection of these two distinct yet interrelated legal statuses will likely be increasingly relevant as international dynamics compel consideration of a child's status by domestic courts. In *Woods v. Kirby*, the Ontario Court of Appeal stated:

This court first grappled with the intersection of refugee status and the *Hague Convention* in *A.M.R.I.* The approach taken therein was confirmed more recently in *A.A. v Z.S.M.*, 2025 ONCA 283. In *A.M.R.I.*, the court relied on the Supreme Court's decision in *Németh* to conclude that, "a determination of refugee status must be treated by a *Hague* application judge as giving rise to a rebuttable presumption of a risk of harm when determining whether to grant an order of return in respect of a refugee child": at para. 78.

Accordingly, when a child has been recognized as a Convention refugee by the IRB, a rebuttable presumption arises that there is a risk of persecution on return of the child to his or her country of habitual residence that engages the grave risk of harm exception: *A.M.R.I.*, at para. 74.

While noting the differences between court and IRB procedure and treatment of evidence, and reminding judges to be alert to any apparent attempt to misuse the refugee system, this court in *A.M.R.I.* directed at para. 74, that:

[W]hen a child has been recognized as a Convention refugee by the IRB, a rebuttable presumption arises that there is a risk of persecution on return of the child to his or her country of habitual residence. A risk of "persecution" in the immigration context clearly implicates the type of harm contemplated by art. 13(b) of the Hague Convention. [Emphasis added.]
- **Appendix A-M:** The legislation had been reviewed and updated in this release.
- **Appendix IF: Issues in Focus**—The following memo has been updated: § IF:8—What do recent cases say about parallel parenting arrangements and how much conflict is too much for the purposes of a joint custody arrangement? Alberta—TVA—Jan 1, 2026