

III – The Hague Convention

More than 20 years ago, the international community recognized the need for co-operation between countries to find a solution to child custody/abduction problems. The Hague Conference on Private International Law, an international organization based in The Netherlands, accepted in 1976 a Canadian proposal to alleviate some of these problems. Canada, along with some 30 other countries, actively participated in the negotiations that led to the *Hague Convention on the Civil Aspects of International Child Abduction*. Canada was the second country to ratify the Convention, which came into force on December 1, 1983. Canadian involvement in the negotiation and ratification process was co-ordinated closely with provincial and territorial governments. The Convention applies throughout Canada and in 52 other countries.

A. Objectives

The objectives of the Hague Convention are:

- ❖ to secure the prompt return of a child wrongfully removed to or retained in any contracting state, to the environment from which the child was removed; and
- ❖ to ensure that rights of custody and of access under the law of one contracting state are effectively respected in other contracting states.

B. Requirements

The Convention can be of help to you if the following requirements are met:

- ❖ Your child was habitually resident in Canada immediately prior to the removal or retention.
- ❖ The removal was in breach of custody or access rights as determined either in law or by judicial order.
- ❖ At the time of the abduction, the Convention applied to the country to which your child has been taken and/or, in some cases, is travelling through.

- ❖ Your child is under 16 years of age.

- ❖ The removal took place less than one year ago.

C. Application for the Return of a Child

1. What to Do First

If your child has been abducted to or is being retained in a country other than Canada and you are aware of the location, you should contact the office of your provincial Attorney General and/or the Minister of Justice or your territorial Department of Justice. These departments have special sections designated as the central authority for your province or territory, which are responsible for the administration of the Convention. The federal Department of Justice is also a central authority and provides assistance to the provinces and territories. A listing of all the Canadian central authorities is contained in Section VI. The central authority can provide you with information on the countries that are signatories of the Hague Convention, and can advise you on how to proceed with an application.

As of September 1998, the Convention applied between Canada and the following countries:

Argentina, Australia, Austria, the Bahamas, Belarus, Belize, Bosnia-Herzegovina, Burkina Faso, Chile, China (Hong Kong Special Administrative Region only), Colombia, Croatia, Cyprus, the Czech Republic, Denmark, Ecuador, Finland, France, Georgia, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Luxembourg, Macedonia, Mauritius, Mexico, Moldova, Monaco, The Netherlands, New Zealand, Norway, Panama, Paraguay, Poland, Portugal, Romania, Saint Kitts and Nevis, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkmenistan, the United Kingdom, the United States of America, Venezuela and Zimbabwe.

In some instances, the Convention may not apply to dependent territories of these countries. It is, therefore, important to verify whether the Convention will apply to your situation.

The central authority will do some or all of the following:

