

THE HAGUE CONVENTION

**A Practical Guide for
Responding to a Hague
Application**

60 Minutes ...



**are not reliable agents for
international law enforcement**

Civil Aspects of International Child Abduction

1. “Child abduction” is a provocative term
2. Proceedings are typically concentrated in a relatively short time frame
3. High stakes

TECHNICALLY COMPLEX

Signatories should strive to construe the Convention consistently



DONNA WARD

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BRIEF

First consideration:

**Hurry Up and
Do Nothing**

???

Role of the Central Authority

- Perform Australia's obligations, and obtain for Australia any advantage or benefit, under the Convention
- Not to secure "a win at all costs"
- Can include seeking an "amiable return"

A Hague application is not a parenting dispute

- **Welfare or best interests are not the paramount consideration**
- **Pro forma parenting history is usually of no relevance**
- **Do you have the time to dedicate to a new matter?**

STEP THROUGH REGULATION 16

...and put the Central Authority to proof:

- Is it a wrongful removal or retention that is alleged?
 - At what date?
- When was the application filed?
 - Was it unlawful?

Unlawful?

- Child under 16?
- Child habitually resident in a Convention country immediately prior to removal or retention?
- Rights of custody?
- Removal/retention in breach of rights?

Defence?

- Consent or acquiescence?
- Grave risk that return of the child would expose the child to physical abuse or psychological harm or otherwise place the child in an intolerable situation?

Harris v Harris [2010] FamCAFC 221

C v C (Minor: Abduction: Rights of Custody)
[1989] 2 All ER 465

Defence ?

- Child objects

Re T (Abduction: Child's Objections to Return) [2000]
2 FLR 192

Discretion

- **Best interests and set up in Australia**
- **Sibling groups**
- **Comparative suitability of other forum to determine parenting application**
- **Comity**

Resources

• ***International Movement of Children, Practice and Procedure***

Lowe, Everall and Nicholls

- **www.incadat.com**

Char Kway Teow

- Chicken thigh fillets, thinly sliced
- Oyster sauce
- Cornflour
- Peanut oil
- Red birdseye chilli
- Garlic
- Shrimp paste
- Tiger prawns
- Fresh flat rice noodles
- Soy sauce