

## Ascertaining the “Voice” of the Child in the International Context – The ‘Objection Exception’ under Article 13 of the Hague Convention

By

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### Purpose of Convention

*The Hague Convention on the Civil Aspects of International Child Abduction (“the Convention”)*<sup>3</sup> provides a uniform law that countries may adopt to compel the return of a child wrongfully removed from his or her habitual residence. It does not determine the merits of an underlying custody claim but rather provides a right of action for a party to seek the return of a child or children to a requesting state. The child must be under sixteen years of age and must have been wrongfully removed to, or is being wrongfully retained in a haven state. Both countries must be signatories to the Convention.<sup>4</sup>

The *Convention* seeks to secure the prompt return of children wrongfully removed or retained in a Contracting state to the state of their habitual residence. It also attempts to ensure that rights of custody and access of one Contracting state are respected in the other Contracting states (Article 1). The Convention presumes that the interests of children who have been wrongfully removed are ordinarily better served by immediately repatriating them to their original jurisdiction where the merits of custody should and, but for the abduction, would have been determined<sup>5</sup>.

### Public Policy Considerations

The strong policy of the Convention in favour of ordering the immediate return of children is intended to deter the abduction of children by depriving fugitive parents of any possibility of having their custody of the children recognized in the country of refuge and thereby legitimizing the situation for which they are responsible. The foundation of the Convention is the rapidity of the mandatory return process and the principle that the merits of issues related to the custody of children who have been wrongfully removed or retained are to be determined by the courts of their habitual place of residence.<sup>6</sup>

### Defences

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<sup>3</sup> (November 1980) 19 I.L.M. 1501

<sup>4</sup> For a list of the signatories to the Convention, see:  
[http://www.hcch.net/index\\_en.php?act=conventions.status&cid=24](http://www.hcch.net/index_en.php?act=conventions.status&cid=24)

<sup>5</sup> *Thomson v. Thomson* [1994] 3 S.C.R. 551 (S.C.C.), at paras. 39-49

<sup>6</sup> *A. (J.E.) v. M.(C.L.)* 2002 CarswellNS 425 (N.S.C.A.), at para. 28

There are several defences available under the Convention to a wrongful removal or retention. They are as follows:

1. More than a year has elapsed between the removal and the commencement of judicial proceedings and it can be demonstrated that the child is now settled into his new environment (Article 12);
2. The person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention (Article 13(a));
3. The person ... having the care of the person of the child had acquiesced in the removal or retention (Article 13(a));
4. There is a grave risk that his or her return would expose the child to physical or psychological harm, or otherwise place the child in an intolerable situation (Article 13(b));
5. The child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take into account of its views (Article 13);
6. The return of the child would "not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms" (Article 20).

There is a limited scope for the operation of any of the exceptions in the Convention. Canada cannot be seen as a "haven" for abductors, and the effect of the Convention cannot be diluted. In *Garelli v. Rahman*<sup>7</sup>, MacKinnon J., states that:

...deterrence of abduction is enhanced by certainty that return will be ordered. Refusal to order return detracts from that certainty and therefore detracts from the deterrence intended by the Convention. This consideration supports, in general, a rather limited scope for the operation of any exceptions. Consistent with this view, the Supreme Court of Canada has stated that a "**narrow interpretation should be given to the exceptions to ordering return.**"

In *F.(R.) v. G.(M.)*<sup>8</sup>, Justice Chamberland stated, "the Hague Convention is a very efficient tool conceived by the international community to dissuade parents from illegally removing their children from one country to another. However, it is also, in my view, a fragile tool and any interpretation short of a rigorous one of the few exceptions inserted in the Convention would rapidly compromise its efficacy."

### **The Article 13 Objection Exception - General Comments**

Article 13 of the Convention provides that the judicial authority may refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. It does not require a judge to automatically accede to the child's stated wishes even if he or she finds the child has

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<sup>7</sup> *Garelli v. Rahma*, 2006 CarswellOnt 2582 (S.C.J.) (WL) (obtained 25 November 2009), (2006), 28 R.F.L. (6th) 455 (Ont. S.C.J.), para. 76

<sup>8</sup> *F. (R.) v. G. (M.)*, 2002 CarswellQue 1738 (C.A.) (WL) (obtained 25 November 2009), [2002] R.D.F. 785 (Que. C.A.), para 30

attained a degree of maturity. In this way, the Convention recognizes that the objecting child should have a voice, but not a veto in the process of deciding whether he or she will be returned.

The court shall determine how much weight should be afforded to the objection. The party who removed the child must establish this defence in accordance with the civil burden on the balance of probabilities or on a preponderance of the evidence.<sup>9</sup> A child's objection is important but not presumptive or determinative. A child's objection may be heard but first there must be "gateway findings" prior to the court taking the objections into account<sup>10</sup>. The weight to be given, if any, to the objection then must be determined.

A child's objection to the return can be an independent exception under the Convention which, on its own, may support the exercise of discretion to refuse to order a return.<sup>11</sup>

### **Application of the Defence – General**

In *Wilson v. Challis*<sup>12</sup>, an early case decided under the Convention, the father had custody of the child in the United Kingdom. The child's mother had died. The maternal grandparents, who lived in Ontario, refused to return the child to the father. The child objected to being returned and he had reached a sufficient degree of maturity, at age 11, for the court to take his views into account. The court refused to order the return of the child. The issue of grave risk was raised because of misconduct of the father and the views of the children were raised in conjunction with the grave risk defence. The Court stated that it must first ascertain if the child objects to being returned, and if so, whether the child has attained an age and a degree of maturity which would make it appropriate to take into account the views. The court then must make a decision as to whether it is exercising its discretion or not.

### **Application of the defence - definition of "objects"**

The Court in *Wilson v. Challis* cited the English decision of *Re R.* [1992] 1 R.F.L. 105 in which Justice Bracewell stated that an objection is to be more than "a mere preference, it must be a strength of feeling which goes beyond wishes in a custody case"<sup>13</sup>. This definition is often cited in cases where the "objection" defence is raised.<sup>14</sup> In contrast, Justice Balcolme in *Re S.* [1993] F.A.M. 242 at 250, stated that the word objection should be given its ordinary meaning with no additional gloss.

These varying interpretations were referred to in *Garelli v. Rahma*<sup>15</sup>. In that case, the mother refused to return to Italy with the children after traveling to Ontario to visit her family. The Father was aware of the trip and the return date. However, the Mother did not return and

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<sup>9</sup> *A. (J.E.) v. M.(C.L.)* supra, at para 53

<sup>10</sup> *Mitchell v. Mitchell* 2009 CarswellOnt 911 (S.C.J.) para. 72

<sup>11</sup> *A. (J.E.) v. M.(C.L.)* supra, at para. 46

<sup>12</sup> 1992 CarswellOnt 1504 (Ont.C.J. (Prov. Div.), at paras. 4,5 and 12

<sup>13</sup> *Wilson v. Challis*, supra, at para 12

<sup>14</sup> For example, see *Riedel v. Thompoulos-Danilov* CarswellOnt 6448(Ont. SCJ), at para 28

<sup>15</sup> 2006 Carswell 2582 ( Ont. SCJ) at paras. 35-36

notified him of her intention to remain in Ontario with the Children. The parties shared joint custody pursuant to a court order in Italy. The Court found that “objects” should be given its usual and ordinary meaning, of expressing disapproval, disagreement and opposition to something. Within the context of the Convention, the objection must be to returning to the country of habitual residence, and not an expression of a preference to the custodial parent.

In *De Silva v. Pitts*<sup>16</sup>, the Court of Appeal was asked to order the child’s return to Oklahoma after the court in the United States had already decided against ordering the child returned to Ontario on the basis of the Article 13 objection. The Court of Appeal found that the United States decision merited deference in spite of the fact that the objection was described as a “desire” by the Oklahoma judge. The Ontario Court of Appeal stated “in these circumstances a fair conclusion is that Jonathon’s “desire” to stay in Oklahoma comprehends an objection to returning to Ontario, at least at this point in his life”. If the court did not do so they would have to have found there was a clear misinterpretation of the Hague Convention and that the Oklahoma court did not fail to meet a minimum reasonableness standard.

#### **Application of defence – Age and degree of maturity and reasons for objection**

The court must consider the reasons provided by the child. If a child has attained an age and degree of maturity at which it is appropriate to take account of his or her views, effect should be given to their objections, if the child gives valid reasons for objecting to return such as giving specific examples of the other parent’s misconduct. For example, in the *Wilson v. Challis* case<sup>17</sup>, the child gave reasons for objecting to return to England and these reasons centered around his perception that: (a) his father traffics in and uses non-medically prescribed drugs;(b) he drinks alcohol to excess;(c) he has used physical discipline on one or two occasions;(d) he brings home female friends and that there were a number of them and that he could hear them having sexual intercourse in another room and (e) he doesn't pay very much attention to him. In *Szalas v. Szabo*<sup>18</sup> the child complained of excessive corporal punishment by the mother.

The child must not only be articulate in expressing his or her opinion but the child must be able to assess the competing advantages and disadvantages of his decision. This was stated by Seppi J. in *Riedel v Thompoulos-Danilov*. In that case, the child was adamant that he would not go back and there even was a video of the child insisting he would not go back to California with his father.<sup>19</sup>

#### **Application of defence – Weight to be given to objection and influence of abducting parent**

The objections of children are not determinative. The weight given to the objection will vary greatly from case to case. The Court must determine whether the child is expressing strength of feeling that goes beyond the child’s views and wishes and whether the views expressed by the child are of his own free will and choice. A judge, after taking into account a

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<sup>16</sup> *De Silva v. Pitts*, 2008 CarswellOnt 41 (O.C.A.), at para. 48

<sup>17</sup> *Wilson v. Challis*, supra, at para 25

<sup>18</sup> *Szalas v. Szabo* 1995 CarswellOnt 889 (Ont. CJ) at para. 50

<sup>19</sup> *Riedel v Thompoulos-Danilov*, supra at para 32

child's objections, then must decide how much weight to give to their objection. If a judge were to just "give in" to the expression by a child, it would virtually mean that in every case the child could simply state, "he or she did not wish to be uprooted and wanted to stay where they were" and that such an expression would prevail. To do so would seriously undermine the purposes of the Convention. As stated above, the Convention gives the child a voice, not a veto. An objection by a child is not an absolute bar to a return as that would delegate the ultimate decision to the child as to which jurisdiction the issue of his or her custody should be determined.<sup>20</sup>

In *Crnkovich v. Hortensius*<sup>21</sup>, the mother argued that there was sufficient evidence of the child, Bradley (age 11)'s age and maturity to warrant taking his wishes into account. She argued that he strongly objected to returning to Indiana. The Court disagreed, declared a wrongful removal and ordered the child home to habitual residence in Indiana. While the evidence was not substantial, the Court found that Bradley met the criteria under Article 13 that "...he has attained an age and degree of maturity at which it is appropriate to take account of his views".

The Court in *Crnkovich* stated that "to meet the 'objects' criteria, it must be shown that the child displayed a strong sense of disagreement to returning to the jurisdiction of his habitual residence. He must be adamant in expressing his objection. The objection cannot be ascertained by simply weighing the pros and cons of the two competing jurisdictions, such as in a best interests analysis. It must be something stronger than a mere expression of preference."

The Court found that there was scant evidence of Bradley's alleged objection to returning. The Mother argued that he told a doctor, Dr. Begum, that he wished to continue living with her even if she were to relocate. However, Dr. Begum's notes of her interview with Bradley reveal simply that his preference would be to stay with his mom. The Court stated that a 'preference' implies he would be happy with either parent but that if he had to choose he would stay with mother. A preference falls far short of objecting to returning to Indiana to live with his father.

The mother further argued in *Crnkovich* that either the Office of the Children's Lawyer or a private assessor should be appointed to ascertain whether Bradley objected to returning. The Court declined to make that Order as there has already been a significant involvement of professionals probing into and reporting on Bradley's life, and the most he had said or done was to express a preference. The Court further noted that the appointment of a professional at the stage of the proceedings ran the risk of producing a skewed result as Bradley was living with his mother, who was extremely anxious to continue the status quo. She might be significantly tempted to influence Bradley in what position he should take during his interviews. The Court had more confidence that the results of the interviews and assessments completed at a time when the parties were not focusing on, or perhaps were not even aware of, the provisions of the Hague Convention. The mother failed to show that Bradley objected to returning to his habitual residence in the circumstances.

The *Crnkovich* case makes clear that one must take a careful look at the background leading up to the expression of a child's objection. The question often is whether it is the genuine

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<sup>20</sup> *Wilson v. Challis*, supra at paras. 17; *Szalas v. Szabo* supra, at para 69; *A. (J.E.) v. M. (C.L.)*, supra, at para. 41

<sup>21</sup> 2008 CanLII 60701 (Ont.S.C.J.)

view of the child, or has the child been influenced by some party or person in contact with the child. The concerns raised by the child are often no more than those doubts which a child would normally express about being uprooted. Often the child is stating an expression more of what is expected of her and indeed, consciously or unconsciously, demanded of her by the abducting parent. A child's objection often should not be given great weight because of concern that the objection had been strongly influenced by the abducting parent, and by the circumstances arising from the abduction itself and may not be the expression of the child's own free will. A judge must always assess how independent the objection is and the degree to which it appears to be influenced by the abducting parent and the circumstances. In deciding how much weight to give the objection, the judge has to consider the whole context in which it came to be expressed.<sup>22</sup>

The issue of undue parental influence is canvassed in the Article, *The Child's Right to Object to Return; Article 13(2)*<sup>23</sup>. In this Article, the author acknowledges that the fear of a child being subjected to undue influence was at the root of many of the initial objections to the provision of 13(2) being included in the drafting of the Convention. Judges have concluded that once one finds that there has been influence on the child, little or no weight should be given to children's objection to return. The authors reference the following quote from a British case:

*inevitably in the best regulated household, pending litigation is a matter of such importance that inevitably there will be discussions of it, and the views of custodial parents will be transmitted to children in such a way that they will inevitably influence the children in their own thinking". In this case, it is obvious that the child has seen court papers, heard discussions about the litigation and has been talked to directly by adults with respect to the case.*

Often the child has been solely with the abducting parent for a period of time and there is often great opportunity to influence a child, either tacitly or directly, and thus influence the child's opinion. An awareness of the parental conflict can often be enough to trigger an objection. The influencing need not to be found to be intentional. In *C. (J.R.) v. M. (L.C.)*<sup>24</sup>, it was clear from the evidence that the child did not wish to return to Louisiana. Again, the concern was that her objection may not be based upon her own independent assessment of the situation. The evidence disclosed that the child was privy to much of the marital discord between her two parents. She was in the company of her mother when the mother put her own spin on things that allegedly happened during the relationship. While the judge was not prepared to find that there has been intentional influence by the mother, he did conclude that there was a reasonable likelihood that this child has to some degree been influenced by her mother's views.

In *Toiber v. Toiber*<sup>25</sup>, the court stated that a court should be cautious in assigning undue weight to a child's objection given almost inescapable conclusion that the sentiments expressed

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<sup>22</sup> *Riedel v Thompoulos-Danilov*, supra, para 29

<sup>23</sup> Article, *Child's Right to Object to Return; Article 13(2)*, page 197

<sup>24</sup> *C. (J.R.) v. M. (L.C.)*, 2003 CarswellNfld 280 (Nfld. S.C.), at para 29

<sup>25</sup> *Toiber v. Toiber* 2005 CarswellOnt 8366 (Ont. S.C.J.), at para 36

no doubt mirror some of the abducting parents' sentiments. Objectively read, the sentiments expressed by the child in that case were found to be no more than those often expressed by a child caught in the vortex of a custody battle. This decision was affirmed by the Court of Appeal. Often an objection is no more than a reluctance to change a status quo that has been established. In these cases children are often quickly integrated into the new environment in order to build a case to demonstrate that the child is settled and doing well.

In *Reidel v. Thompoulos-Danilov*, the child's objection was found to be the result of the mother's powerful influence on him. The evidence overwhelmingly supported how a child is extremely vulnerable to an abducting parent's influence. The child was able to clearly articulate his strong objections, but he was not able to show that he had an ability to assess the competing advantages and disadvantages of his decision, nor was he able to discern how he was "drawn into his mother's psyche".<sup>26</sup>

In *Mitchell v. Mitchell*<sup>27</sup>, Justice Polowin of the Ontario Superior Court found that the mother had wrongfully removed the child who was 10 years old from Florida to Ontario. The mother deposed that his maturity was evidenced by the fact that he is extremely intelligent. The Court stated that while the child was bright, that did not necessarily equate to maturity. The Court adopted the concern raised by Justice Hoilett in *Toiber* that the court should be cautious in assigning undue weight to a child's objections, given the almost inescapable conclusion that the sentiments expressed no doubt mirror the mother's. The Court in *C. (J.R.) v. M. (L.C.)* found the same vulnerability with respect to the child without first making a finding that there was any intentional influencing.

The scheme of the Hague Convention is that in normal circumstances it is considered to be in the best interests of children generally that they should be promptly returned to the country whence they have been wrongfully removed, and that it is only in exceptional cases that the court should have a discretion to refuse to order an immediate return. That discretion must be exercised in the context of the approach of the Convention as it gives the court a duty to order a child's return. In the *Garelli* decision mentioned above, the judge placed significant weight on the reasons for his objection, namely one child's ties to the community, rather than to any specific complaint about his father, or objection to Italy and ordered the return. He also ordered the other sibling returned as his preference to remain in Canada was related to his mother's presence here, and not to any objection to being returned to Italy, per se. He would return to Italy if his mother went too.<sup>28</sup>

### **Application of the Objection Exception – Recent Jurisprudence**

#### **Beatty v. Schatz**

In June 2009, the British Columbia Court of Appeal in *Beatty v. Schatz*<sup>29</sup> squarely

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<sup>26</sup> *Riedel v. Thompoulos-Danilov*, 2005 CarswellOnt 6448 (S.C.J.) (WL) (obtained 11 November 2009), (2005), 21 R.F.L. (6th) 167 (Ont. S.C.J.), paras. 29, 32

<sup>27</sup> *Mitchell v. Mitchell*, supra, para. 74-77

<sup>28</sup> *Garelli v. Rahma*, supra, at para 38

<sup>29</sup> *Beatty v. Schatz*, 2009 CarswellBC 2016 (C.A.) (WL) (obtained 25 October 2009), [2009] B.C.W.L.D. 6227

addressed the issue of the application of Article 13. In that case, a 10 year old child was brought to Canada by his father. After his vacation, he was to be returned to his mother, in Ireland, pursuant to a sworn undertaking. The child was not returned. He was objecting and wanted to stay in Canada with his father. The father was concerned that the child would be frustrated and could try to take matters into his own hands. There was evidence that the child had said, “I have committed no crime, the authorities cannot make me get on a plane”. He also said that “nobody could force him to get on a plane that he would hold on to something and would have to be dragged on to the plane”.

In *Beatty*, the trial judge found that the child had been given a message, albeit subtly, that the father did not want him to return to Ireland. The trial judge in *Beatty* concluded that although the child could express his wishes, she did not find him mature enough to understand the subtleties of what was occurring and the long term consequences on his well being. The trial judge ordered the child to return. The father appealed.

The appeal judge found that this was a case where the policy considerations underlying the Convention were particularly important. She emphasized the deterrence aspect of the Convention and the importance that a message must go out to potential abductors that there are no safe havens among contracting states. She confirmed that the Irish Court was to decide where the child was going to live and that not returning the child would send the message that it would be acceptable to wrongfully retain a child, if the child says that he or she does not want to return. The Court of Appeal agreed with the trial judge and found that she did consider the child’s objections, but concluded that the child’s wishes, as far as they impacted on the best interests of the child should be left to the court in Ireland.

### **Christodoulou v. Christodoulou**

In *Christodoulou v. Christodoulou*<sup>30</sup>, Justice Gilmore of the Ontario Superior Court held that the parties’ son, George, who was 9 years old at the time, had reached an age and degree of maturity such that his objections to returning to Cyprus were sufficiently articulated to form a defence under Article 13. Her Honour allowed the child to have veto power, rather than a voice, in contravention of the policy considerations of the Convention pursuant to Article 13 of the Convention.

In *Christodoulou*, the parties were married in Canada on July 6, 1997 and resided here until August 2007 when they relocated to Cyprus. The parties separated on January 16, 2009. At the time of the Wife’s removal of the children, the children were enrolled in school and extracurricular activities in Cyprus. The Husband testified at trial that the children had close extended family in Cyprus. They fit in very well at the Greek schools, spoke Greek fluently, and had lots of friends. Emails sent by the Wife and the parties’ son, George confirmed this fact.

The parties had sold their home in Ontario and in 2009 were residing in their newly built jointly owned matrimonial home in Cyprus at the time of the removal. Both were employed in Cyprus.

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(C.A.)

<sup>30</sup> 2009 CarswellOnt 6275 (Ont.S.C.J.)

On or about January 16, 2009, the Wife left matrimonial home with the children, allegedly to take them to soccer. She did not return home. On January 18, 2009, the Wife's brother advised the Husband that the Wife and the children were in Ontario and that she had no intention of returning to Cyprus.

The evidence of the social worker of the Office of the Children's Lawyer (OCL) at trial with respect to George was that he had a lot of adult information and he was 'to some extent manipulated by both sides.' The social worker testified that, '*...I think emotionally he's probably equivalent to his own age, and he seems very hurt by the separation*'. Under cross-examination, the social worker confirmed that George was manipulated more by his maternal side about custody issues. He saw the court papers and even knew about the court date. She admitted that since the child was in Canada, the Husband had had only had two telephone calls with George, both of which were monitored by the Wife, and two visits with him.

The emails from George marshaled as evidence before the trial illustrate that the child was settled and doing well in Cyprus and no independent evidence indicated otherwise at the trial. There was no such suggestion of misconduct on the part of the Husband at trial.

The fact that George did not like his paternal grandmother's food or Greek school are not the type of objections that should have been given weight by the Court. George's views on whether a Canadian or Cyprian lifestyle was better were not relevant. In her direct examination, the OCL social worker testified that George had used the words 'not civilized' to mean that people in Cyprus were rude, "*people yelled at each other for no reason, cars honked at red lights all the time, people double parked in parking lots, the grocery stores ripped you off, you had to check your receipts...*" The Wife's third party affidavits describe George's objections in adult language and relate mostly to one incident in which George and his father had a disagreement. George's alleged objections about the food and living conditions in Cyprus mirrored the Wife's own objections in her affidavit sworn April 6, 2009.

Notwithstanding the evidence and the type of objections made by George, Justice Gilmore held that the objections raised by the 9 year old were such that a defence under Article 13 were met.

With respect, the decision in *Christodoulou* sets a dangerous precedent and should be met with caution. Her Honour's decision effectively permitted a 9 year old child to determine the outstanding issues, and misapprehended the definition of 'objection' under the Convention.

The trial judge in *Christodoulou* also failed to consider the June 2009 *Beatty* decision, which was before her. That decision was powerful authority that the defence should not have succeeded in that case. In *Beatty*, the judge referred to a House of Lords decision which states that once the discretion to consider the child's objection comes into play, the court may consider the nature and strength of the objections, the extent to which they are "authentically" the child's, or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations relevant to the child's welfare, as well as Convention considerations. It was made clear that the older the child, the greater the weight to the objections.

The decision in *Christodoulou* provides the child's objection far too much evidentiary weight and fails to consider that the child was manipulated by both sides in the words of the OCL social worker.<sup>31</sup>

**I.(A.M.R.) v. R.(K.E.)**

In the recent Ontario Court of Appeal decision of *I.(A.M.R.) v. R.(K.E.)*<sup>32</sup>, the appellate court dealt with the question of the rights of affected parties on an application under the Convention for the return of a child to her country of origin, when the child had been accepted in Canada as a Convention refugee by reason of abuse by her mother. The child in question was 14 years old. The Court of Appeal found that she was clearly of an age and potential maturity such that her objection to return to Mexico had to be considered. The Court held that the views of a child gain greater importance in the context of a child refugee.

The Court of Appeal held that given her age, the nature of her objection, her status as a Convention refugee, the length of time that she had been in Toronto, and the absence of any meaningful current information regarding her actual circumstances in Toronto at the date of the hearing, her views concerning a return to her mother's care in Mexico were a proper and necessary consideration.

Of note, the Court of Appeal stated at paragraph 125 that where serious issues of credibility are involved, fundamental justice requires that those issues be determined on the basis of an oral hearing, and this 'applies with equal force to the determination of serious credibility issues in Hague applications involving refugee children'. This statement appears to contradict the stated policy considerations of the Convention to provide for the expeditious return of wrongfully removed children in a summary fashion.

The Court of Appeal did state that it has repeatedly recognized that the receipt of *viva voce* evidence on a Hague application should occur only in exceptional circumstances. Time will tell whether the appellate decision will open the 'floodgates' with respect to oral hearings and/or OCL involvement or private assessments being ordered as a matter of course in the context of what should be a summary Hague application, or whether oral hearings will be restricted to exceptional cases such as those involving child refugees. Given the serious credibility issues, the fact that the lower court judge did not ascertain the child's objections, and the unusual facts before the Court of Appeal in *I.(A.M.R.) v. R.(K.E.)*, it is likely that the latter approach will prevail in the end in accordance with the policy considerations of the Convention.

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<sup>31</sup> *Riedel v. Thompoulos-Danilov*, supra, para 29

<sup>32</sup> 2011 CarswellOnt 3972 (Ont. C.A.)