

## International Child Protection Projects

### 6<sup>th</sup> World Congress on Family Law and Children's Rights "Building Bridges From Principle to Reality"

17 – 20 March 2013, Sydney, Australia

#### "International Judicial Initiatives Dealing with Cross Border Child Protection"

By The Honourable Justice Robyn M. DIAMOND, Court of Queen's Bench of Manitoba, Winnipeg, Canada<sup>38</sup>

I had the honour and privilege of attending and participating in the 6<sup>th</sup> World Congress on Family Law and Children's Rights held in Sydney, Australia, March 17 – 20, 2013. This Congress was attended by 425 individuals from 32 countries from every continent in the world. These individuals represented a broad range of disciplines whose common focus was the promotion and protection of children's rights. Approximately 380 papers were presented at the Congress, some of which can be accessed through the Congress website at <http://www.lawrights.asn.au/>. As a result of numerous plenaries and panels, the Congress passed 21 sets of Resolutions which appear immediately following this article.

This article will give the highlights of the discussions of a panel that I participated in entitled "International Judicial Initiatives Dealing with Cross Border Child Protection". This panel which was chaired by The Hon. Donna Martinson, retired Superior Court Judge, British Columbia, Canada, also included three other International Hague Network Judges: Judge Graciela Taigle of Argentina; Judge Mary Sheffield of the United States of America; and, Justice Victoria Bennett of Australia.

The panel compared the different approaches taken in each of our jurisdictions with respect to procedural protocols for improving the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention), judicial networking, direct judicial communication concepts, education and training for judges

and principles for relocation reform.<sup>39</sup>

Six resolutions flowed from the panel and are set out as Resolution No 11. I will briefly summarize the discussions that led to each of these resolutions.

#### Jurisdictions which have not appointed an international Hague Network judge should be encouraged to do so.

The participants were given a history of the International Hague Network of Judges (IHNJ.) specialising in family law, established in 1998 at least initially under the auspices of the 1980 Child Abduction Convention on the Civil Aspects of International Child Abduction established in 1998. The IHNJ presently includes more than 80 judges from over 55 States from all continents. The IHNJ has been extremely successful in facilitating communication, collaboration and cooperation between judges at the international level. This has assisted and ensured the effective operation of the 1980 Child Abduction Convention. However, it was noted that not all jurisdictions that are signatories to the 1980 Child Abduction Convention have designated an International Hague Network Judge and this has caused serious problems in ensuring that return applications are dealt with in a prompt and efficient manner as contemplated by the Convention.

#### Where appropriate, jurisdictions should be encouraged to establish a national network of regional and decentralised judges (the Argentinean and Canadian National Networks being effective models).

In 2006, the Argentine Republic created the National Network of Judges Specialising in International Abduction of Children and Cross Border Arrangements. This was the first National Network of Judges established in Latin America. This National Network of Judges provides direct support based on the geographical proximity to the judges seized of cases. Their task is to advise on the correct application of the 1980 Child Abduction Convention and urge judges to resolve matters promptly. Upon a request from the judge, collaboration is provided immediately by the National Network Judge or, if it is necessary, by the International Hague Network Judge.

The Canadian Network of Contact Judges was established in April 2007. This Network, which I chair, is made up of trial judges representing every provincial and territorial Superior Court in Canada who have been appointed by their Chief Justice. This Network complements the work of the two Canadian International Hague Network Judges who are part

<sup>39</sup> Originally it was contemplated that this panel would deal with emerging international themes and approaches. Due to a serious lack of time it was not possible to do so and the panellists were restricted to commenting on their own jurisdictions. However, it is recommended that readers look at three relevant documents prepared by the Permanent Bureau on the Hague Conference on Private International Law being 1) "Emerging Guidance Regarding the Development of the International Hague Network of Judges and General Principles for Judicial Communications, Including Commonly Accepted Safeguards for Direct Judicial Communications in Specific Cases, within the Context of the International Hague Network of Judges", 2) "Guide to Good Practice Under the Hague Convention of 25 October 1988 on the Civil Aspects of International Child Abduction" and 3) "Preliminary Note on International Family Relocation. These documents can be found on The Hague Conference website at following Internet address: < [www.hcch.net](http://www.hcch.net) >.

<sup>38</sup> The author is a Member of the International Hague Network of Judges for Canada.

of the IHNJ in cases of international parental child abduction. The two Canadian International Hague Judges are the point of contact and facilitate incoming and outgoing requests on Hague Abduction Convention cases including requests for international judicial communication. Upon receipt of an incoming request, the Network judge would then channel the request to the appropriate judge in his or her jurisdiction.

The United States of America International Hague Network Judges have been working towards establishing an American Intra-National Judicial Network. However, this poses quite a challenge due to the District Judges and the State Court Trial Judges of the 50 states having concurrent jurisdiction to determine cases filed by "left behind parents" pursuant to the 1980 Child Abduction Convention.

In Australia, as there are 31 Judges who could potentially hear Hague child abduction matters, a Network of Judges is not necessary.

**Jurisdictions should be encouraged to have specialised judges, or if that is not possible, judges who have the benefit of effective training in Hague abduction matters. Jurisdictions who have developed training programs should share those programs with other jurisdictions.**

In Argentina, Provincial and Regional Training Conferences on the 1980 Child Abduction Convention have been presented. The International Hague Network of Judges throughout Latin America meet regularly for training sessions.

In Canada, an Educational Module has been developed dealing with cross border child protection issues. An integral part of the educational initiative is the Hague Convention Electronic Bench Book (EBB) which has been distributed to the Canadian judiciary by the National Judicial Institute of Canada. It has also been made available to members of the international judiciary through the following email account: thehague@nji-inm.ca. Justice Bennett commented that she has found this EBB to be a useful tool when dealing with Hague matters.

**Judges should be encouraged to use judicial communication in cases of international child protection.**

All of the judges on the panel gave positive experiences of the use of judicial communication in expediting matters under the 1980 Child Abduction Convention.

**Judges in each jurisdiction should establish judicial communication guidelines. Such guidelines should be, as far as legally possible, internationally consistent. The Canadian guidelines for judge-to-judge judicial communication provide a helpful model for such judicial communication guidelines.**

The Congress was told how judicial communication, co-operation, consultation and collaboration have resulted in international cases of child abduction being resolved in an efficient and speedy manner as contemplated by the 1980 Child Abduction Convention. There was agreement that there is a need for consistent guidelines to be followed wherever

possible.<sup>40</sup> In February 2009, the Canadian Network of Contact Judges approved a document entitled "Recommended Practices for Court-to-Court Judicial Communications" which has proven to be very effective in resolving matters in a fair and expedited manner. The full document is attached to the paper I prepared for the Congress.

**The international family law community should be encouraged to develop child relocation guidelines to achieve, wherever possible, consistency of approach between jurisdictions in collaboration with judicial and legal representatives, academics, social scientists and other interested stakeholders.**

There was agreement that the problem of relocation is one of the most difficult issues facing family law judges and practitioners throughout the world. Although there was no agreement as to how to reform the area of relocation, it was agreed that there is a need for inter-disciplinary collaboration and dialogue within the international family law community in pursuit of the development of relocation guidelines.<sup>41</sup>

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### Resolutions

#### Resolution 1

That in considering the permanent placement of a child regard should be had to the best interests of the child, balancing the right of the child to his or her cultural, ethnic, and linguistic identity and heritage, and the child's right to have his or her views taken into account appropriately. The right of the child to know his or her biological parents should be facilitated when such a process is in the child's best interests.  
(Intercultural adoption)

#### Resolution 2

That any inter-country adoption process should be supported by a proper monitoring and reporting mechanism between governments of sending and receiving countries.  
(Intercultural adoption)

#### Resolution 3

That this Congress supports work to promote objective methods of assessment of parenting capacity that take account of:

- the use of the assessment including whether it is for private law or public law purposes.

<sup>40</sup> Please see footnote No 39, document No 1. This document was endorsed at the Sixth meeting of the Special Commission held in June 2011 to serve as a model for the development of good practice for judicial communications.

<sup>41</sup> See footnote No 39, document No 3.

- the need for courts to understand the ramification of the assessment and what underpins it.
- the need to establish standards of training and competence for social scientists when presenting expert analysis evaluations.

#### **Resolution 4**

That the Attorney-General's Department should fund ongoing research on the effectiveness of the Hague Convention in the Australian context and publish the results on their website.

#### **Resolution 5**

That willingness to donate organs should be indicated on drivers' licences.

#### **Resolution 6**

That, acknowledging the harmful effects of family violence and also acknowledging that holding perpetrators of such violence accountable in a criminal context is often challenging and traumatic for victims, this Congress encourages the use of a less adversarial approach to criminal cases involving family violence and together believe that children and other victims of violence will be served better by a more inquisitorial approach.

#### **Resolution 7**

That jurisdictions should be encouraged to provide for judicial education with regard to family and domestic violence.

#### **Resolution 8**

That the issue of a re-examination of the United Nations ("UN") Convention on the Rights of the Child ("CRC") should be referred to the World Congress Board to consider how this issue could be pursued through the UN or state parties.

#### **Resolution 9**

That the next World Congress should be encouraged to examine the desirability of a statement of the duties, obligations and responsibilities of parents, communities, governments and the world towards children.

#### **Resolution 10**

That, with a view to prioritising family reunification, the Congress supports the implementation of the Western Australian "Signs of Safety" program and the establishment of Family Drug Treatment Courts similar to the US and UK models with a view to making the use of less adversarial court processes available for the benefit of children.

#### **Resolution 11**

That:

- jurisdictions which have not appointed an international Hague Network judge should be encouraged to do so.
- where appropriate, jurisdictions should be encouraged to establish a national network of regional and decentralised judges (the Argentinean and Canadian National Networks being effective models).
- jurisdictions should be encouraged to have specialised judges, or if that is not possible, judges who have the benefit of effective training in Hague abduction matters.

Jurisdictions who have developed training programs should share those programs with other jurisdictions.

- judges should be encouraged to use judicial communication in cases of international child protection.
- judges in each jurisdiction should establish judicial communication guidelines. Such guidelines should be, as far as legally possible, internationally consistent. The Canadian guidelines for judge-to-judge judicial communication provide a helpful model for such judicial communication guidelines.
- the international family law community should be encouraged to develop child relocation guidelines to achieve, wherever possible, consistency of approach between jurisdictions in collaboration with judicial and legal representatives, academics, social scientists and other interested stakeholders.

#### **Resolution 12**

That this Congress encourages governments, state and national, to implement consistent policies, and to support existing frameworks for the protection of children, and to take responsibility cooperatively for addressing generational dysfunction perpetuated by poverty and family violence.

#### **Resolution 13**

That this Congress:

- encourages arbitration as an innovative and useful means and opportunity for resolving private international family law disputes, whenever possible and appropriate, and alongside other dispute resolution methods.
- invites the EU and the Hague Conference to incorporate arbitration as dispute resolution within future family law measures; and supports the creation and sharing of good family law arbitration practice between jurisdictions and professions.

#### **Resolution 14**

That in family law proceedings, to build a bridge when customary/indigenous law matters are at stake, we need to develop functionally and culturally relevant guidelines to be applied in these matters which:

- uphold international children's rights.
- uphold the paramountcy of the best interests of the child.
- provide for the right of the child to be heard.

#### **Resolution 15**

That the Congress should encourage interdisciplinary exchanges of ideas and views between judges, lawyers, social workers and therapists.

#### **Resolution 16**

That this Congress resolves to:

- pursue interdisciplinary dialogue and sharing of knowledge to strengthen collaboration and education between the legal, social science and education disciplines to improve practice frameworks and better outcomes for children and families engaged in family law decision-making.

- support and assist in research that shall focus on the experiences of adult children who have been the subject of family law decisions as children.
- explore ways and means by which children can safely and effectively participate in family law decision-making.

#### Resolution 17

That the Congress:

- recommends that a national symposium be convened in key jurisdictions to discuss and resolve pressing legal issues and potential law reform concerning youth cybersafety, such as those related to 'sexting' and cyberbullying.
- proposes the development, through relevant government agencies and NGOs, of a common evaluation framework to determine the efficacy and future evolution of youth cybersafety/digital citizenship programs, and for it to be adopted within nation states.
- advocates for multi-faceted research and development around cybersafety and its programs focussing on relationships and behaviours.
- calls for genuine and ongoing consultation with youth as a vital component of developing effective education and incident prevention measures in relation to cybersafety and digital citizenship.
- recommends the removal of artificial boundaries between the online and offline worlds when approaching research and development in relation to societal attitudes and behaviours, as young people themselves do not make a distinction.
- recommends a consistent whole-of-community approach to cybersafety and well-being, aimed at creating lasting cultural and behavioural change, with key organisations working to the same goals.

#### Resolution 18

That the Board of World Congress should further consider the question of whether it is feasible to encourage jurisdictions not to prosecute children in criminal proceedings other than in respect of serious crimes, unless diversionary measures have first been attempted and have demonstrably failed to produce an outcome acceptable to all parties.

#### Resolution 19

That judicial officers who, either in the exercise of their discretion or otherwise, are required to interview or communicate directly with children (especially in circumstances where the child's views and wishes are factors to be considered by the court in determining the welfare of the child) should be provided with the requisite training.

#### Resolution 20

That all countries should consider adopting the 2007 Hague Convention on International Enforcement of Child Support and Other Forms of Family Maintenance and the 1996 Hague Child Protection Convention.

#### Resolution 21

1. The Congress commends those states that have not previously done so but are now considering the introduction of child friendly justice systems in accordance with the CRC and other relevant international instruments.
2. The Congress urges all states that have not done so to consider passing specific Juvenile Justice Laws advancing the principles of the CRC and other relevant international instruments as soon as is practicable for them to do so.



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