

Hague Convention Webinar Q&A

Following our ‘**Hague Convention debate on a short case study**’ webinar during which we examined the legal implications of a [mother’s abduction of her children](#) to New York, our panel of immigration law experts – New York attorney **Valentina Shaknes** (Krauss, Shaknes, Tallentire and Messeri), **Kim Lehal** (RWK Goodman), **Philippa Morgan** (Lyons Davidson) and **Laura Scott** (3PB) recorded their answers to some of the questions asked by our attendees – under the skilful chairmanship of **Stephen Wildblood KC** (3PB).

The questions asked were:

1. Would there be a difference in terms of jurisdiction if the children had dual nationality - British and American?
2. When children have been removed from the UK by one parent to a country, which is a signatory to the 1980 Hague Convention and the other parent wants to make an application in the UK, should a C66 or C67 form be used?
3. How does mediation fit in usually given the urgency of the applications?
4. Why is there a heightened standard of proof for Hague return cases? Is it the same in all countries?
5. When Zak goes to a Solicitor for assistance with the Hague application - does he make that application himself with the advice from Solicitor or do the Solicitors draft the application on his behalf and send it to ICACU?
6. What about if Angie applies the UK court and obtains a temporary order for the children to stay in the US, for example to complete the current school year? Does that happen and what would a court in this country do? Would Zak be given notice of this application?
7. If Angie made a pre-emptive application in the UK before Zak had initiated a Hague Convention application, he would still surely argue for the proceedings in this country to be stayed, pending the application under the Hague in New York?
8. What happens if a parent initially agrees to relocation or agrees only to a specific period of time or for a particular purpose i.e to attend school etc. does that make it difficult then to pursue an application for wrongful retention?

9. What about the role of a Guardian? Should the child be separately represented? Is it the same in the US?
10. If Zac did not have PR for the children, would he be able to seek their return under the Hague convention? Is the focus on the right of custody rather than simply on PR?
11. An independent social worker would be preferred over a local authority social worker – why is that?
12. How important is it to have a social worker who has experience in this area of work?
13. You mention that an application can be filed in the state or federal court. Is there a difference between how those 2 courts would approach those issues under the Convention? Are the judges more experienced in Federal courts?
14. The difference between the general custodial approach to welfare issues in relation to children and the jurisdictional and procedural approach under the Hague Convention is an important one to understand – is it not?
15. If Zac seeks the children's return under the Hague convention, could Angie travel to Canada with the children, and if she managed to do so, would Zac need to make a new application there to seek their return?
16. In your experience do courts consider not just 'enforceability' but actual enforcement which depends on police responses which in turn depends on manpower and on social/cultural attitudes to DV and to women?
17. To what extent is the concept of a safe landing on return (housing, financial support etc) relevant in the US? Is it applied in the US?
18. What if the case is already running in New York when Angie relocates again to Canada?
19. In the US, there are two types of custody: sole physical custody with one parent (usually with the mother); OR JOINT physical custody. Does that make a difference and could you clarify?
20. Is legal aid available in New York. Would Zak get legal aid? And would Angie get legal aid?

21. If the children had been living in New York with Zac and Angie and Angie had brought them to this country (UK), and Zac was trying to enforce Convention rights in this country, would he get legal aid and would Angie get legal aid?
22. If there had been order not to remove (Zak would already have obtained a prohibited steps order against Angie removing the children but she did go on to remove them), should the Convention application be made in the UK or NY?
23. What if a child is removed to a non-Hague Convention country like Egypt? What can be done to return him back to the UK?
24. What happens if the foreign court orders the return of the children and the return is not enforced in that country? What can be done?
25. Have you dealt with abductions from countries where enforcing measures is unlikely to be possible in a timely manner by the authorities there? If so, does that amount to a defence?