**What is habitual residence?**

Australia is a signatory to the Convention on the Civil Aspects of International Child Abduction (“The Hague Convention”). Many other countries are signatories to the convention but it is important to understand that there are alot that aren't. The principal object of the Hague Convention is to secure the prompt return to its home country of a child who has been wrongfully removed from one convention country to another, or who has been wrongfully retained in a convention country.

For a court to order the return of a child an application must be made within one year of the removal or retention of the child and the court must be satisfied that the removal or retention was wrongful. The removal or retention will be wrongful if the child was under 16 years of age at the time of the removal and the child had habitually resided in the convention country immediately before the child’s removal.

In a recent case the Court had to determine whether the children's "habitual residence" was in Australia or Canada, following separation occurring 3 months after the move overseas.

**The Facts**

* The mother was born in Canada. The father was born in Australia. The parties met when the mother was on a working visa in 1999, after she returned to Canada they maintained a long distance relationship with the parties marrying in 2000. The mother obtained a spousal visa and moved to Australia. She eventually obtained permanent residency.
* There were two children of the marriage, aged 8 and 6, both were born in Australia.
* The parties travelled to Canada on 8 occasions with the children accompanying them on three of these visits, each trip lasting between 3 to 6 weeks.
* In 2012, due to a financial downturn with their farming business the parties decided to move to Canada. The mother secured 12 months unpaid leave from her employment and a leave of absence from the children’s schools. The father arranged for his younger brother to manage the farm and livestock in his absence.
* The mother travelled to Canada with the children in June 2013. The father joined the family 3 weeks later after attending to matters on the farm.
* On 14 October 2013, the mother advised the father that she was not returning to Australia and that she wished to separate. The father refused to return to Australia without the children and the mother refused to allow the children to leave Canada.
* Without the mother’s consent or knowledge the father purchased flights for himself and the children before removing the children’s original passports from their covers and replacing them with copies. The father and the children returned to Australia on 21 October 2013.
* The mother brought an application seeking the children be returned to Canada following their alleged wrongful removal. The father sought for the application to be dismissed on the basis that the family had only temporarily moved to Canada and the children were 'habitually resident' in Australia.

**Court Found**

* The Court found that the mother had failed to establish that the children’s 'habitual residence' had changed from Australia to Canada. At the time that the children were removed by the father from Canada there was no shared intention for the children to reside in Canada permanently.

**Court Ordered**

* The mother’s application was dismissed.