



**ANDERSONS**  
S O L I C I T O R S

## LawTalk Blog



# Family Law team success using Hague Convention

**Date: Tuesday July 1, 2014**

In late 2013 the Andersons Family Law team was consulted by the father of two children who were living with him in South Australia. The children had been born in Australia and raised here as the parties had lived here throughout their relationship.

The mother had asked the father to live, for a short period of time, in the mother's country of origin and the father had agreed. After being overseas for a short while, the mother ended the relationship and expected that the children would simply live overseas with her from that point on. The father then brought the children back to Australia from overseas.

We advised the father to try to reach agreement with the mother about the future care arrangements for the children however the mother would not compromise on this as she wanted the children to come back to live in the overseas country where she was now residing. We then filed court proceedings seeking orders for the children to live with our client.

The mother reported the matter to the authorities in her home country claiming that our client had "wrongfully removed" the children from the overseas jurisdiction. Those authorities contacted the State Central Authority in Australia who instituted proceedings in the Family Court of Australia seeking a return of the children to the mother's country under the Family Law (Child Abduction Convention) Regulations 1986 (Cth) ("[the Hague Convention](#)"). The proceedings that we had filed were then stayed to await a decision on the Hague Convention Application.

Our client was then faced with a legal battle against our own Crown Solicitor's office in Australia, in order to keep his children in Australia. This was an unusual and difficult matter that required us to research this uncommon area of law and advise our client about what he could do to win his case.

We considered the Application filed against our client and the relevant law relating to it. We advised him that in order to succeed he would need to prove to the court that the children were habitually resident in Australia at the time that he had brought them back from overseas. We then set about the complicated task of putting together sufficient information to provide to the court to prove our client's case.

Many hours were spent taking our client's detailed instructions to get the crucial information to prove this very technical point which we then used to draw up his Affidavits. We gathered extensive supporting evidence from witnesses and relevant documents to corroborate his version of events. These witness statements were prepared as Affidavits and filed in the court prior to the Court hearing.

We carefully considered which barrister to engage to conduct the Trial. We engaged an experienced barrister soon after being instructed in this matter to enable our office and our client to obtain further supplementary legal advice placing our client in the best possible position to succeed in his case.

In March 2014 the Family Court of Australia sitting in Adelaide heard the Crown's Application made under the Hague Convention. We were heavily involved in preparing the matter for the hearing and providing solicitor support to our client and to Counsel during the hearing. We made sure that copies of all required documentary evidence was provided to the court as exhibits and we ensured all the necessary witnesses were ready for court on time to support our client's case. At the conclusion of the hearing our Barrister made submissions asking the Court to give a Judgment in the matter in our client's favour based on the evidence given to the Court and based on the law.

The Judge has now handed down the decision in this matter and found in our client's favour, dismissing the Crown's Hague Convention Application. We have succeeded in supporting our client in defending the Application to send his children overseas.

We are very pleased to see that the experience of our team and the hard work required to assist our client with this difficult matter has resulted in an excellent result for him

---

*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*