

## **The 2<sup>nd</sup> International Family Law and Practice Conference 2013**

### **Abstract**

#### **Why Do International Courts and Appeal Courts Get It Wrong in Hague Convention and Relocation Cases?**

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It is now recognized that some courts having international jurisdiction have difficulty in understanding the fundamental principles of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the Hague Convention), and that the question posed by Professor Linda Silberstein in her Paper "The Hague Convention on Child Abduction and Unilateral Relocations by Custodial Parents: Has the European Court of Human Rights Overstepped its Bounds?" has to be answered in the affirmative.

But it appears that appeal courts in many countries also have difficulty with two of the main foundations of the Hague Convention: the very strong presumption that the courts of the child's habitual residence are the appropriate forum for considering the welfare of the child, and not the courts of the country to which the child has been taken; and the need to act promptly.

In addition, appeal courts may not be aware of the arrangements which need to be made to ensure the welfare of the child, including contact arrangements, when a child is returned after abduction, or by relocation with one parent to another country, leaving the other parent behind.

This paper will attempt, by reviewing selected judgments of courts having international jurisdiction and appeal courts in various countries, to understand why these errors have become widespread, and to suggest ways to remedy the situation.