No. 71130-0-I
Court of Appeals Division I
of the State of Washington

In Re: Petition for Return of Children
under the Hague Convention on the Civil Aspects of
International Child Abduction

Marie-Catherine Smith,

Petitioner / APPELLEE

v.

Elika Kohen,

Respondent / APPELLANT

On Appeal From the
Snohomish County Superior Court
Cause No. 13-2-08326-2

The Honorable Richard T. Okrent, Judge

Appellant's Repy Brief[1]

Oct. 14, 2014

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1 Bases: RAP 10.1 (b)(3)

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I. INTRODUCTION

1. The Hague Convention's mandate to safeguard the Children, Anya-Marie and Lydia-Maayan, is surrendered, if the Appellate Court affirms Ms. Smith's actions of abusing the Hague Convention to move the Children to a more advantageous forum—especially so, if the Appellate Court grants her motion to dismiss this appeal;

2. Mr. Kohen's earnest desires are: **a.)** that the Children are not separated or alienated from either parent; **b.)** to have the status quo returned in custody proceedings; **c.)** for the Appellate Court to order a Mediation or Settlement Conference for establishing a Choice of Court agreement.

II. REPLY TO STATEMENT OF THE CASE AND PROCEDURAL HISTORY

II.1. THE CHILDREN WERE WELL-SETTLED IN THE UNITED STATES

3. Sep 12, 2010 – Feb 8, 2012: **a.)** Anya-Marie was born in Seattle Washington, on the same day as her older brother, CP 147. **b.)** Anya-Marie and her older brother are U.S. Citizens, having access to health insurance, education, and surrounded by a huge community, CP 19.

4. Sep 12, 2010 – Feb 8, 2012: **a.)** Ms. Smith, in Response, confirms that Mr. Kohen is a retired veteran, having access to V.A. educational benefits, and as an Enterprise Architect, was able to remain home and care for the

Children, occasionally taking contract opportunities with technology companies to supplement income as needed, (CP 147-148);

II.2. Ms. Smith Proved the Family was Not Well-Settled in Quebec

5. Ms. Smith Responded to the Appellate Court, falsely stating: **a.)** "*There is no doubt this family was well-settled in the meaning of the Bates case*, (pg. 20-21);" **b.)** Ms. Smith's claim is conclusory, and unsubstantiated by any evidence; **c.)** In fact, analysis under the *Bates* case irretrievably fails: By her own declarations, Ms. Smith proves that this family had no well-settled purpose in Quebec—*except to back to the United States* :

6. Ms. Smith's own declarations prove that there was no Well-Settled Purpose for the Family to remain in Quebec: Ms. Smith declares all of the following, (CP 148-149) : **a.)** There was a circumstance, [disputed], that led her and the Children to visit at her parents house in Quebec—while Mr. Kohen worked in New Jersey; **b.)** Mr. Kohen left Washington State, to work in New Jersey; **c.)** Mr. Kohen missed the birth of his daughter, Lydia-Maayan; **d.)** Mr. Kohen would frequently travel back and forth between New Jersey and Bristol Quebec; **e.)** Mr. Kohen stayed home with the children; **f.)** the Children's brother was not enrolled in school; **g.)** Mr. Kohen did not have authorization to work or study in Quebec; **h.)** As Mr.

Kohen, Anya-Marie, and her brother, only have U.S. Citizenship, their Temporary Visas in Canada were expiring, and Ms. Smith applied to extend visitors visas—*rather than sponsor their immigration*; **i.)** The Visa applications were subsequently denied for insufficient payment—Mr. Kohen and the Children *had to leave* Canada;

7. Feb 8, 2012 – Mr. Kohen consented for Ms. Smith to Remove the Children from the United States to *Visit* their Grandparents: **a.)** Mr. Kohen showed that the Children, (Anya-Marie and her brother), left the United States, to visit their grandparents, substantiating this claim with tickets from British Columbia, Canada, to Ottawa, Ontario, on Feb 8, 2012, (CP 134); **b.)** Mr. Kohen did in fact consent for the Children to leave the United States, to visit Ms. Smith's parents, specifically so he could establish a residence for the family in the U.S., near the Canadian Border, (CP 30); **c.)** Ms. Smith affirms that she and the Children left Seattle, went to Quebec Canada, and stayed with her parents. (CP 148);

8. Feb 21, 2012: **a.)** Ms. Smith affirms Mr. Kohen began working in New Jersey, CP 148, proving that Mr. Kohen was not immigrating to Canada.

9. Jun 23, 2012: Ms. Smith implored Mr. Kohen to get her out of Quebec, CP 480, disproving any settled purpose to remain in Quebec.

10. July 26, 2012: **a.)** Mr. Kohen acquired a residence for the family, in

Atlanta, Georgia, near his own family, pursuant to Ms. Smith's request to get her out of Canada, (CP 24); **b.)** One way Travel tickets from New York/Jersey substantiate this move, (CP 136).

11. Feb 8, 2012-Jul 30, 2012: Mr. Kohen had been assisting Ms. Smith immigrate to the United States with the Children, (CP 479);

12. Jul 30, 2012. (approx) - To the Campbell's Bay Police, Quebec: **a.)** Ms. Smith tried to return the Children to the United States but denied entry at the U.S./Canadian Border, (CP 25); **b.)** Shortly after returning to her parents' house, Ms. Smith reported to the Campbell's Bay Police, (CP 25), and to Mr. Kohen, that the Children had been abducted by her mother, and aunt; **c.)** *The abduction allegedly Breached Ms. Smith's Tutorship Rights of Custody under Article 80 of the Civil Code of Quebec,*

13. Aug 2-4, 2012 – Mr. Kohen Entered Canada for the Specific purpose of Recovering Anya-Marie for her safety: **a.)** The Children's alleged abduction prompted Mr. Kohen to fly to Canada to Return Anya-Marie, (in lap), to the United States for her safety, and substantiated by Round-Trip Travel Tickets returning two days later, (CP 136); **b.)** However, after Mr. Kohen relocated Ms. Smith and the Children away from the alleged threat, Mr. Kohen consented to remain in Quebec until all three Children could be returned together, and to ensure Ms. Smith could immigrate, (CP 25).

14. Aug 2-Nov. 4, 2012: **a.)** The family was very unsettled, and they stayed in temporary housing, (CP 25).

15. Aug 2, 2012 – Jul 2, 2013: **a.)** The family moved into an apartment, intending on leaving Canada around March, 2013, following Mr. Kohen's income tax return, (CP 25); **b.)** Because Mr. Kohen was salaried, $130,000, annually, and because he left to intervene in Quebec, Mr. Kohen anticipated a tax refund of $10,000 in March, 2013, which would be sufficient to return all the Children returned together, and Ms. Smith could immigrate as well, (CP 25).

16. Feb 22, 2013: Ms. Smith arranged for the Children's brother to travel to family in the United States, affirming her own plans to return soon to the United States, by planning his departure from—"not Quebec", CP 478.

17. Mar. 11, 2013: As the income tax return was delayed, Ms. Smith submitted applications to *extend visitors visas*, CP 478.

18. Jun 25, 2013: Ms. Smith substantiates Mr. Kohen's claim that he received $9,749, CP 149, consequently of the delayed Income Tax refund;

19. Jun 29, 2013: Ms. Smith affirms the joint purchase of round-trip tickets, (CP 137) for Mr. Kohen and the Children: departing from Quebec, Canada, July 2nd, 2013, with a return date on Oct. 2nd, 2013.

20. Jul 2, 2013: *After the purchase of the tickets*, Ms. Smith proved well-

settled intent to immigrate and rejoin the family in the United States, by her executing an FBI CJIS Background Check for immigration, having her fingerprints taken, (CP 125-128).

21. Jul 2, 2013: Mr. Kohen, and the Children, returned to the United States, following Ms. Smith's consent and desire for the family to immigrate, (move permanently), to the United States, (CP 149).

II.3. MS. SMITH DEMONSTRATED WELL-SETTLED INTENT TO RETURN

22. Jul 2, 2013: Just three days after the purchase of the Tickets, Ms. Smith began the process of immigrating to the United States, initiating an FBI CJIS Background Check for immigration, CP 341-344.

23. July 2nd, 2013: **a.)** Ms. Smith consented to the Children's Return to Washington State, United States, for immigration, (CP 117, CP 149).

24. Jul 2-24th, 2013: In view of the breakdown of the Marriage, Mr. Kohen waited with the Children, staying in 5 different hotels, to move into an apartment, CP 352, to ensuring that Ms. Smith was still determined.

25. Jul. 2–Sep. 2, 2013: Despite the breakdown of the marriage, Ms. Smith continued to assure Mr. Kohen and the Children, through countless emails and voice and video calls, that she was in fact leaving Quebec, to rejoin the family—or at least come to British Columbia first, (CP 56-62, et al).

26. Jul. 16, 2013: Ms. Smith provided notice to vacate the family

residence, stating that she was moving out Oct. 31st, 2013, CP 358.

27. Jul 18, 2013: The United States Customs and Immigration Service received Ms. Smith's application for Immigration, CP 337.

28. Aug 4, 2013: a.) Ms. Smith continued to confirm her intimate relationship with her boyfriend/co-worker, CP 468;

29. Aug 7, 2013: a.) Ms. Smith confirmed her consent and acquiescence for the Children to be in Washington State with Mr. Kohen; b.) Ms. Smith confirmed that she had rented a room in the apartment, and that Mr. Kohen and the Children't couldn't return—even if they wanted to, CP 460.

30. Aug 9, 2013: a.) Ms. Smith again confirmed her extra-marital affair; b.) Ms. Smith asserted that her boyfriend desired to separate the Children from their father and brother, CP 469;

31. August 12th, 2013: a.) Ms. Smith *executed a Power of Attorney* in Montreal, Quebec, CP 333; b.) Ms. Smith explicitly declared that she was temporarily absent from the United States, pending her immigration to the United States, and appointed Mr. Kohen as Attorney-In-Fact confirming his authority to have the Children domiciled with him.

32. Aug 18, 2013: Ms. Smith confirmed that she would send cold and rain weather necessities to Mr. Kohen, CP 523.

33. Aug 23, 2013: United States Customs and Immigration Service

received the request to expedite Ms. Smith's immigration, citing Emergent Need, CP 339.

34. Aug 25, 2013: **a.)** Ms. Smith stated her own fears of how she will affect the children; **b.)** Ms. Smith confirmed she was coming back and her plans to live separately from Mr. Kohen, with a friend, CP 470.

35. Aug 26-27, 2013: **a.)** Ms. Smith proves her intention for the family to not return to Quebec, stating that she will help with rent, (in the U.S.), in Nov, (CP 60); **b.)** Ms. Smith states that it didn't look like she would be back in the U.S. by Nov. 1, 2013, and even after be explicitly asked about divorce, confirms that she was *coming back,* (CP 475, CP 476).

36. Aug 27, 2013: **a.)** Ms. Smith appeared to start pursuing reconciliation with Mr. Kohen and even implied she would resume treatment, CP 459;

37. Aug 28, 2013: Ms. Smith wrote to Mr. Kohen, stating that she could not prioritize the Children, that he could have the Children, (CP 468).

38. Aug 30, 2013: Ms. Smith received notice from the property manager, that her notice to vacate was unacceptable, CP 358.

39. Sep 2, 2013@17:57: Ms. Smith directed and consented for Mr. Kohen to Petition for Legal Separation in Washington State, (CP 429, CP 462).

40. Sep 2, 2013@18:25: Ms. Smith stated that she wanted to pursue separation, leave Quebec and move to Vancouver British Columbia, and

wanted to separate the Children from their brother and father, CP 470.

41. Sep. 23, 2013: **a.)** Ms. Smith affirmed knowledge, (CP 43), of the Court's Restraining Order, (CP 201-202), prohibiting Mr. Kohen from removing the Children from Washington State without her consent.

42. Sep. 25, 2013: **a.)** Ms. Smith had provided $1428.03, to care for the Children in the U.S., but stopped, (CP 458), to cause legal disadvantage.

II.4. MS. SMITH HARASSED MR. KOHEN WITH CAPRICIOUS AND ARBITRARY ALLEGATIONS

43. Oct 2-3, 2013 - To the Quebec Central Authority: **a.)** After the Return of the Children to the United States, on Jul 2, 2013, Ms. Smith vexatiously alleged, but abandoned this claim, that on Oct 2, 2013, Mr. Kohen Wrongfully Retained the Children in the United States, (CP 43); **b.)** *Ms. Smith implied the Retention was in Breach of her Tutorship Rights of Custody, when she referenced the Civil Code of Quebec*[2];

44. Oct 30, 2013 - To the Trial Court: **a.)** Ms. Smith vexatiously changed her allegation, claiming that the Return of the Children to the United States on July 2, 2013, was wrongful, because Ms. Smith did not consent or acquiesce to the Children's Removal from Canada, (CP 198); **b.)** *Ms. Smith was certainly implying a Breach of her Ne Exeat Right of Custody*

2 See Appendix: V.3, Laws of Domicile and Residence in Quebec, pg. 35

under Common Law;

45. Nov 1-3, 2013 - To the Trial Court: **a.)** To obscure false statements, Ms. Smith fabricated an ambiguous allegation—without any basis in law, claiming that: Although Ms. Smith had consented to the Children's Return for immigration, (to move permanently to the United States), Mr. Kohen failed to return—thus Wrongfully Removing them, (CP 8, 149); **b.)** *It is not possible to reasonably infer which Right of Custody would be breached in this circumstance, nor provide a defense*;

46. Sep. 17, 2014 - To the Appellate Court: **a.)** Even in Ms. Smith's Response to the Appellate Court, she contradicts her own story—again: "*Mr. Kohen left Canada on July 2, 2013 for Seattle, with Ms. Smith's Consent*, (pg. 4),"—BUT then states, "*Ms. Smith did not acquiesce or consent to the children's removal from Canada*, (pg. 13)"; **b.)** Ms. Smith now includes a vague claim that this Removal was Wrongful under Canadian Law; **c.)** Again, *It is not possible to reasonably infer which Right of Custody would be breached in this circumstance, nor provide a defense*. **f.)** *Moreover*, it is Notable that this claim is vexatious, and ambiguous—on its face: *Canadian Civil Law*, and *Quebec Civil Law*, are often two very different things—exemplified by the fact that Quebec has directly implemented the Hague Convention, and has its own Central

Authority, (R.S.Q. c. A-23.01);

III. ARGUMENT

III.1. REPLY TO ISSUES NO. 1, 4, BURDEN OF PROOFS[3]

47. Ms. Smith responds to the Appellate Court, vexatiously, stating: **a.)** "*Mr. Kohen did not show that Ms. Smith failed to demonstrate that her rights of custody were breached, [under Canadian law]*, (Brief of Respondent, pgs. 8-9);" **b.)** Mr. Kohen's argument is an argument from silence—dispositively proven by the fact that even the Trial Court's order makes no finding that the Removal or Retention of the Children breached her rights of Custody—*under any law*: **c.)** Ms. Smith did not state before the Trial Court, nor now before the Appellate Court, that: which Right of Custody was attributed to Ms. Smith under Quebec Law, how she exercised that right, tried to, and how the Removal or Retention of the Children was in beach of that Right.

48. Candidly, Ms. Smith did not exercise Rights of Custody, or try to, because she was trying to make Mr. Kohen fail: **a.)** Ms. Smith did not inform Mr. Kohen that she decided to remain in Quebec; **b.)** Ms. Smith never tried to reschedule the flight; **c.)** Ms. Smith did not release Mr. Kohen from the restraining order by providing written consent for the

3 See Appendix, V.5, Required Burden of Proof, pg. 37

Children to Return; **d.)** Ms. Smith did not allow access to the family's residence in Quebec—though she had abandoned it; **e.)** Ms. Smith never tried to come get the Children herself; **f.)** Ms. Smith never discussed meeting at the U.S./Canadian Border to exchange the Children.

49. Assume, for expediency, that Ms. Smith's claims were construed to imply their strongest meanings: *Perhaps* Ms. Smith was claiming either: **a.)** Mr. Kohen's Return of the Children to the United States breached her Ne Exeat Right of Custody, under Common Law; *or perhaps* **b.)** Mr. Kohen's Retention of the Children breached Ms. Smith's Right to Determine the Residence of the Children under Article 5 of the Convention; *or perhaps* **c.)** Mr. Kohen's Retention of the Children breached Ms. Smith's Right of Custody to Care for the Children, also under Article 5 of the Convention; *or perhaps* **d.)** Mr. Kohen's Retention of the Children breached Ms. Smith's Tutorship Right of Custody, under Article 80, C.C.Q. :

50. Without *also* Demonstrating that Ms. Smith exercised those rights of custody, or tried to, Ms. Smith's Petition is Meritless: even after a year, **a.)** Ms. Smith still refuses to state which Right of Custody was attributed to her under Quebec law; **b.)** Ms. Smith still refuses to state how she was exercising those rights; **c.)** Ms. Smith still refuses to show how she tried to

exercise those rights, but was obstructed by Mr. Kohen;

51. Ms. Smith's allegation that Mr. Kohen refused to return the Children—is unsubstantiated—*and* without merit, (Brief of Respondent, pg. 5): **a.)** Ms. Smith produced no evidence for the Trial Court to demonstrate any instance, or pattern of refusal—instead, what Ms. Smith confirms to the Appellate Court was that she rushed a Hague Convention application over a one-time occurrence, without discussion with, or knowledge of Mr. Kohen, (ibid, pg. 10); **b.)** Even so, *even if* Mr. Kohen had refused, the Children's domicile was properly changed to Washington State, under Quebec Law, and refusing to return the Children would not have breached Ms. Smith's Rights of Custody under Quebec Law[4].

52. The Burden of Proof Still Lies with Ms. Smith: **a.)** Ms. Smith argued that the Habitual Residence of the Children was in Quebec, pursuant to the UCCJEA's Home State Analysis, and that they resided in Quebec for more than 6 months; **b.)** In Reply, Mr. Kohen produced evidence that the Children had in fact been in Quebec for over a year—but injected the issues that the Children were still Habitually Resident in the United States, never becoming so in Canada, under the Hague Convention, (CP 102-103); **c.)** Further, Mr. Kohen produced evidence to show that under

4 See Appendix: V.3, Laws of Domicile and Residence in Quebec, pg. 35

Shared, Well-Settled Parental Intent, the Children's Habitual Residence changed back to the United States even if it had changed to Quebec, (CP 103);" **d.)** Mr. Kohen substantiating both of these claims by producing evidence acceptable under Judicial Notice—including, Ms. Smith's Power of Attorney, Immigration confirmations, records of email conversations over the previous year, etc; **e.)** Therefore, the Burden of Proof shifted back to Ms. Smith to exclude these two possibilities—this pattern of returning the Burden of Proof is also demonstrated in Criminal Cases:

People v Dupree 486 Mich 693, 709-710; 788 NW2d 399 (2010)
once the defendant injects the issue of self-defense and satisfies the initial burden of producing some evidence from which a jury could conclude that the elements necessary to establish a prima facie defense of self-defense exist, the prosecution bears the burden of proof to exclude the possibility that the killing was done in self-defense

53. Proving Habitual Residence is a Threshold Matter: **a.)** Ms. Smith must prove, by the preponderance of evidence that the Children's Habitual Residence was in fact Quebec, Canada, by the time of their Removal and/or Retention, (depending on her allegation); **b.)** THEN Ms. Smith must prove which Rights of Custody were attributed to her under the law of Quebec; **c.)** Then, Ms. Smith must prove which Right of Custody was Breached by the Removal or Retention; **d.)** Then, Ms. Smith must prove she exercised *THOSE* Rights of Custody, or would have but was somehow

obstructed by the Removal or Retention; **e.)** *Only Then*, does the burden shift to Mr. Kohen to assert affirmative defenses.

III.2. Reply to Issue No. 2, Choice of Court

54. Ms. Smith does not directly Respond to this issue: **a.)** Mr. Kohen argues that Under Article 4, of the Hague Convention (15) on the Choice of Court, the agreement to pursue Legal Separation in the United States takes precedence; **b.)** Ms. Smith responds by falsifying court records regarding the Legal Separation.

55. The Trial Court Record demonstrates that Ms. Smith never denied the Choice of Court Agreement: Mr. Kohen produced evidences to substantiate there was such an agreement (CP 64-65, CP 389).

56. Ms. Smith falsified that Mr. Kohen Requested Jurisdiction for the Children under the UCCJEA's Home State Analysis: **a.)** Ms. Smith presents the falsified, unsubstantiated allegation, that Mr. Kohen requested jurisdiction of the Children under Home State Analysis, quoting Mr. Kohen out of context, "*the Children have no other potential home state elsewhere*"; **c.)** Mr. Kohen FULLY disclosed that the Children were domiciled in Quebec AND Washington State—and the Children had no other potential home state; **d.)** Further—Mr. Kohen did NOT request jurisdiction under Home State Analysis; **e.)** Instead, Mr. Kohen requested

Temporary Emergency Jurisdiction, and presented argument, at length;

57. Ms. Smith falsifies the Court Record claiming that Mr. Kohen requested a Temporary Restraining Order to Justify the abduction of the Children **a.)** The Circumstance with the Restraining Order is Dispositive Proof that Ms. Smith did not exercise Rights of Custody to Determine the Residence of the Children; **b.)** Ms. Smith used this restraining order to obstruct Mr. Kohen from returning with the Children: **c.)** Mr. Kohen *did not* request this Restraining Order—it was issued automatically, and by Court Rule—Mr. Kohen had no say, (CP 201); **d.)** The Restraining Order constrained Mr. Kohen from removing the Children from Washington State without Ms. Smith's written consent, (CP 202); **e.)** Ms. Smith did not exercise her Right of Custody to provide "written consent"; **f.)** Ms. Smith in fact feigned written consent, waiting to email Mr. Kohen, until just three hours before the Return Flight was scheduled, knowing that it would be impossible to make the flight, and knowing that Border Services would not accept email as written consent, (CP 432); **g.)** Even after the missed flight, Ms. Smith refused to communicate with Mr. Kohen to reschedule the flight, or provide written consent; **h.)** Even after the Petition for Legal Separation was dismissed on Oct 11, 2013, under Article 16 of the Hague Convention, and after the Restraining Order was no longer in effect, Ms.

Smith still refused to communicate with Mr. Kohen, or exercise any Right of Custody regarding the residence of the Children.

III.3. Reply to Issue No. 3, Habitual Residence[5]

58. Ms. Smith must prove by the preponderance of evidence that she didn't agree for the Children to take up residence in the United States, and that Mr. Kohen agreed for the Children to abandon their Habitual Residence in the United States, to take up residence in Canada, (MOZES v. MOZES, 239 F.3d 1067, 1076 (9th Cir. 2001);

59. Ms. Smith Must First Prove that the United States is Not the Children's Habitual Residence: **a.)** Ms. Smith must prove that Anya-Marie lost Habitual Residence in the United States, while visiting Quebec, AND **b.)** Ms. Smith must prove that Lydia-Maayan had not acquired Habitual Residence in the United States when she was born in Canada, *THEN*, **c.)** Ms. Smith would have to prove that the Children's Habitual Residence became Quebec, Canada; **d.)** Then finally, Ms. Smith must proved that their Habitual Residence did not change back to the United States upon their Return, (*see Previous footnote, esp. re new-borns and Residence*);

60. Ms. Smith must prove Rights of Custody were *still* attributed to her, either under Common, Quebec, or Hague Convention Law related to the

5 See Appendix: V.6-V.9, pgs. 38-40, Habitual Residence and the Convention.

Removal, Retention, or Residence of the Children;

61. Ms. Smith must then prove, by the preponderance of evidence, that she exercised *THOSE* rights of Custody, or tried, but was obstructed;

III.4. Reply to Issue No. 7, Shared, Well-Settled Intent

62. Ms. Smith Responds by Misrepresenting the Hague Convention to the Appellate Court, stating: "*Courts in the United States sometimes find it helpful to compare the "habitual residence" concept to the "home state" concept of the ... UCCJEA*, (pg. 19);" b.) "*Mr. Kohen also argues that the Hague Convention does not preclude parents from acting together to change ... habitual residence. This argument is irrelevant to the issue before this court.*"

63. Parental Cooperation to change Habitual Residence of the Children IS Materially Relevant[6]: **a.)** The Children retained Habitual Residence in the United States because Mr. Kohen and Ms. Smith did not work together to change the Children's Habitual Residence FROM the United States; **b.)** Under the Hague Convention, Ms. Smith does not have authority to unilaterally change their Habitual Residence to Quebec; **c.)** Therefore, the Children retained Habitual Residence in the United States during their

6 See Appendix: V.6-V.9, pgs. 38-40, Habitual Residence under the Hague Convention.

temporary stay in Canada; **d.)** As Ms. Smith is aware, the Ninth Circuit court has been pivotal in establishing the importance of Shared, Well-Settled Intent, in the finding of Habitual Residence—especially in young children.

64. Ms. Smith wrongfully pleads Habitrual Residence in view of the duration of domicile: **a.)** Before the Trial Court, and before the Appellate Court, Ms. Smith argues that since the children were in Canada for more than 6 months, they acquired Habitual Residence; **b.)** This is inapposite and contrary to the Hague Convention—which precludes would-be abductors from relying duration of domicile to change custody proceedings to a more advantageous forum[7]—as Ms. Smith has done; **c.)** Further, the UCCJEA has no authority in Quebec, and does not attribute Rights of Custody where Ms. Smith alleges the Children were habitually resident, under Article 3 of the Hague Convention.

65. Ms. Smith contradicts earlier arguments before the Trial Court, dispositively proving that her Motion to Order Sanctions was vexatious: **a.)** Before the Trial Court, Ms. Smith cited Court Rule ER 401, CP 364, claiming that, *"Discussions between the parties concerning immigration and relocating anywhere are irrelevant,"* CP 365; **b.)** Now, in Ms. Smith's

7 See Appendix: V.4, Application of the UCCJEA Contravenes the Convention, pg. 36

Response, she affirms Relevance, falsely stating, "*Mr. Kohen provided no evidence to the trial court that he and Ms. Smith were working together to change their habitual or that of the children, (Response, pg.8).*"

66. Ms. Smith requested the Trial Court to Sanction Mr. Kohen to suppress evidences of Settled Intent—Ms. Smith vexatiously argued: **a.)** "*Evidences of Smith's and Kohen's discussions regarding immigration and relocation are irrelevant, and not admissible*, (CP 308)"; **b.)** "*Mr. Kohen's evidences are not properly executed, and inadmissible*, (CP 308)"; **b.)** and therefore Kohen should be sanctioned, and charged $1,000; **c.)** Though Mr. Kohen has been the primary caregiver of the Children, and unemployed, he should pay a bond of $10,000; **d.)** Summary Judgment should be granted, because Mr. Kohen's evidences are not formatted well.

III.5. Reply to Issue No. 12, Due Process & Summary Judgment

67. Ms. Smith Responds: "*Mr. Kohen further argues that because there are issues of fact as to ... habitual residence, the court erred in making such a determination. Mr. Kohen provides no legal authority to support this position argument*, (Brief of Respondent, pg. 22)."

68. Within the Hague Convention, it is well established that Summary Judgment is improper, where: **a.)** "Wrongfulness" has not been established, (i.e., a breach of Rights of Custody attributed under the law of

Quebec); **b.)** where there is a dispute of material fact, etc[8].

69. Ms. Smith's Response is Vexatious: **a.)** After researching case law regarding Summary Judgments, Mr. Kohen contends that any argument by an attorney is vexatious—*on its face*—which demands a pro se litigant to cite a Legal Authority regarding the propriety of Summary Judgments when material facts are in dispute, (nevertheless, precedent is cited in the previous footnote).

70. The Trial Court's order is clearly erroneous—on its face: in just the finding of "Wrongful Removal," there are three clear errors : "*the Children were Wrongfully* Removed *from their Habitual Residence of* Canada *on or about* Oct 3*, 2013*, (CP 13); **a.)** First and foremost, the Trial Court concludes that the Children were "Wrongfully *Removed,*" a finding that necessarily implies a Breach of Ne Exeat Rights of Custody—a finding that the Trial Court does not conclude—but has been a determinative issue that Ms. Smith has used to great advantage in Montreal to deny Mr. Kohen Rights of Access and Custody before the Montreal Superior Court; **b.)** Secondly, the Trial Court finds that Children's Habitual Residence was Canada—not Quebec; this precludes

8 See Appendix: V.1, Summary Judgment Precluded by Disputes of Material Fact, pg. 31

determinations of which Rights of Custody were attributed—as Quebec and "Canada," do not exactly share the same laws; **c.)** The Trial Court mixes up the dates and accusations—the Children in fact Returned from Canada July 2n, and did not return on Oct 2—this is another ambiguity that Ms. Smith successfully used for legal advantage, getting thousands of dollars in child tax credits—for all three children—back dated to July because of the Wrongful *Removal*, but at the same time uses the Oct 2, 2013 in Superior Court, to preclude analysis of the Power of Attorney, which has legal effect in Quebec, dated on Aug 12, 2013;

71. The Trial Court's Order is clearly erroneous because it contravenes Court Rules: not designating evidences brought to its attention—such as the Power of Attorney :

Washington State Superior Court Civil Rules, Rule 56 (h)
Form of Order. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.

72. Merit of Mr. Kohen's Appeal, Under the Convention is Apparent: **a.)** The Trial Court did not find that the Removal/Retention of the Children breached *any* right of Custody attributed to Ms. Smith, *(a Ne Exeat Right, the Right to Care for the Children, the Right to Determine their Residence, Rights of Tutorship, etc)*;

73. The Trial Court's Erred Concluding Evidence was not Admissible: **a.)** The Trial Court contravened 42 U.S. Code § 11605, finding that evidence Mr. Kohen submitted was not admissible, not properly authenticated:

> 42 U.S. Code § 11605 - Admissibility of documents
> *With respect to any application to the United States Central Authority, or any petition to a court under section 11603 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be,* no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

74. The Trial Court Contravened the Hague Convention: **a.)** The Trial Court agreed with Ms. Smith that email evidences of her intentions, consent, or acquiescence, were not relevant, (CP 365);

75. The Trial Court's Order Sanctioning Mr. Kohen, was clearly in error: **a.)** Ms. Smith cited RCW 7.21.030(3), Contempt of Court, as the basis for the Sanction, arguing that Mr. Kohen's Motion to Dismiss, [Defense], is frivolous—because he filed the motion, alleging that Mr. Kohen *knew* he obstructed Ms. Smith's parental rights [of custody]; **b.)** Ms. Smith's accusation was conclusory, and unsubstantiated; **c.)** Ms. Smith's application of RCW 7.21.030(3) is misplaced—falsifying that Mr. Kohen's alleged infraction was willful, arguing the Court had authority to order sanctions on the grounds of disobedience to a lawful order, comparing Mr.

Kohen's Motion to BERING v. SHARE, a Civil Contempt case, (*Ironically, the same case in context precludes Mr. Kohen's actions from being considered Sanctionable under these bases):*

BERING v. SHARE,106 Wn.2d 212, 721 P.2d 918

members of an antiabortion organization ... picketing in front of the building and harassing patients and staff when entering and leaving the building ... and uttering the words "kill" and "murder" and their derivatives in conjunction with persons and activities within the building.

... To recover fees, the contempt must be of a lawful order and have been committed willfully. STATE EX REL. LEMON v. COFFIN, 52 Wn.2d 894, 898, 327 P.2d 741, 332 P.2d 1096 (1958).

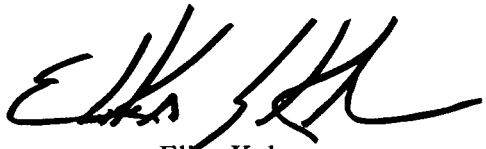
IV. CONCLUSION

76. For the foregoing reasons, and in the Appellant's Opening Brief, Mr. Kohen respectfully requests the Appellate Court to Reverse the Trial Court's Decisions, Remand the case for Trial in Montreal, or if Remanded in Washington State, to facilitate written or video arguments, including hearing before a new judge.

77. In addition, Mr. Kohen requests the Appellate Court to Order BOTH parties from using the Appellate or Trial Court's decisions under the Convention in Custody proceedings in Montreal, under Article 19 of the Hague Convention. Further, as there is question over the Rights of Custody attributed to Ms. Smith under Quebec Law, if the Removal or Retention of the Children Breached those rights, Mr. Kohen requests that if necessary, to request information on the Law of Quebec, under Article 15 of the Hague Convention.

Dated this 14th of October, 2014.

RESPECTFULLY SUBMITTED,



Elika Kohen

Appellant, Pro Se

V. APPENDIX

V.1. SUMMARY JUDGMENT PRECLUDED BY DISPUTES OF MATERIAL FACT

SHALIT v. COPPE, 182 F.3d 1124, 1126 (9th Cir. 1999)

Upon consideration of the parties' cross-motions for summary judgment, the district court granted Coppe's motion for summary judgment, finding that Shalit failed to establish that Coppe's retention of Yarden was "wrongful" under the Hague Convention. We agree and affirm.

TSARBOPOULOS v. TSARBOPOULOS, NO. CS-OO-0083-EFS (E.D. Wash. Nov 19, 2001)

on November 17, 2000, the Ninth Circuit Court of Appeals tiled a Memorandum reversing the order granting summary judgment to Dr. Tsarbopoulos, finding genuine issues of material fact on the question of habitual residence. The Ninth Circuit also found genuine issues of material fact precluding summary judgment on the issue of "whether there is a `grave risk' that returning the children to Greece would expose them to physical or psychological harm or otherwise place them in an intolerable situation." The latter issue, if proven by clear and convincing evidence, would trigger the exception to return of the children found in Article 13(b) of the Hague Convention.

SHALIT v. COPPE, 182 F.3d 1124, 1127 (9th Cir. 1999)

We review the district court's grant of summary judgment de novo, Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998), and the denial of a motion for reconsideration for an abuse of discretion, Fireman's Fund Ins. Cos. v. Alaskan Pride Partnership, 106 F.3d 1465, 1470-71 (9th Cir. 1997). In a case brought under the Hague Convention, we review the district court's findings of fact for clear error and its conclusions about United States, foreign, and international law de novo. Friedrich v. Friedrich, 78 F.3d 1060, 1064 (6th Cir. 1996) ("Friedrich II") (citing, e.g., Fed R. Civ. P. 44.1; Echeverria-Hernandez v. INS, 923 F.2d 688, 692 (9th Cir. 1991) (question of international law reviewed de novo)).

BALISE v. UNDERWOOD, 62 Wn.2d 195, 199-200, 381 P.2d 966 (1963)

[1-7] We, in company with other courts and text writers, have frequently cultivated the field of summary judgment. At the expense of repetition, our disposition of this case renders another walk around the field desirable. The following principles we conceive to be well established.

(1) The object and function of the summary judgment procedure is to avoid a useless trial; however, a trial is not useless, but is absolutely necessary where there is a genuine issue as to any material fact. Preston v. Duncan, 55 Wn. (2d) 678, 349 P. (2d) 605.

(2) Summary judgments shall be granted only if the pleadings, affidavits, depositions or admissions on file show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Rule of Pleading, Practice and Procedure 56, RCW Vol. 0; Capitol Hill Methodist Church of Seattle v. Seattle, 52 Wn. (2d) 359, 324 P. (2d) 1113.

(3) A material fact is one upon which the outcome of the litigation depends. Capitol Hill Methodist Church of Seattle v. Seattle, supra. Zedrick v. Kosenski, ante, p. 50, 380 P. (2d) 870.

(4) In ruling on a motion for summary judgment, the court's function is to determine whether a genuine issue of material fact exists, not to resolve any existing factual issue. Thoma v. C. J. Montag & Sons, Inc., 54 Wn. (2d) 20, 337 P. (2d) 1052.

(5) The court, in ruling upon a motion for summary judgment, is permitted to pierce the formal allegations of facts in pleadings and grant relief by summary judgment, when it clearly appears, from uncontroverted facts set forth in the affidavits, depositions or admissions on file, that there are, as a matter of fact, no genuine issues. Preston v. Duncan, supra.

(6) One who moves for summary judgment has the burden of proving that there is no genuine issue of material fact, irrespective of whether he or his opponent, at the trial, would have the burden of proof on the issue concerned. Preston v. Duncan, supra.

(7) In ruling on a motion for summary judgment, the court must consider the material evidence and all reasonable inferences therefrom most favorably to the nonmoving party and, when so considered, if reasonable men might reach different conclusions the motion should be denied. Wood v. Seattle, 57 Wn. (2d) 469, 358 P. (2d) 140.

(8) When, at the hearing on a motion for summary judgment, there is contradictory evidence, or the movant's evidence is impeached, an issue of credibility is present, provided the contradicting or impeaching evidence is not too incredible to be believed by reasonable minds. The court should not at such hearing resolve a genuine issue of credibility, and if such an issue is present the motion should be denied. 6 Moore's Fed. Prac. (2d ed.) ¶ 56.15(4), pp. 2139, 2141; 3 Barron & Holtzoff, Fed. Prac. and Proc. § 1234, p. 134.

V.2. IMMIGRATION AS PROOF OF INTENT TO CHANGE RESIDENCE

MOZES v. MOZES, 239 F.3d 1067, 1081 (9th Cir. 2001)

While an unlawful or precarious immigration status does not preclude one from becoming a habitual resident under the Convention, it prevents one from doing so rapidly. See Clive, note 7 supra, at 147. It is also a highly relevant circumstance where, as here, the shared intent of the parents is in dispute. See, e.g., In re Morris, 55 F.Supp.2d. 1156, 1158-59 (D.Col. 1999) (noting that the family lacked Swiss citizenship and passports, and rejecting the mother's testimony that she intended to abandon habitual residence in Colorado when moving from there to Switzerland). Conversely, had Arnon helped Michal obtain a permanent residence visa for herself and the children, we could infer his consent to a residence of indefinite duration.

DUARTE v. BARDALES, 526 F.3d 563, 576 (9th Cir. 2008)

To determine whether a child is settled in his new environment, a court may consider any factor relevant to a child's connection to his living environment. These factors generally include: (1) the age of the child; (2) the stability of the child's residence in the new environment; (3) whether the child attends school or day care consistently; (4) whether the child attends church regularly; (5) the respondent's employment and financial stability; (6) whether the child has friends and relatives in the new area; and (7) the immigration status of the child and the respondent. Lops v. Lops, 140 F.3d 927, 945-46 (11th Cir. 1998); Koc v. Koc, 181 F.Supp.2d 136, 152-54 (E.D.N.Y. 2001).

V.3. LAWS OF DOMICILE AND RESIDENCE IN QUEBEC

Article 75, C.C.Q.

The domicile of a person, for the exercise of his civil rights, is at the place of his principal establishment.

Article 76, C.C.Q.

Change of domicile is effected by actual residence in another place coupled with the intention of the person to make it the seat of his principal establishment. The proof of such intention results from the declarations of the person and from the circumstances of the case.

Article 77, C.C.Q.

The residence of a person is the place where he ordinarily resides; if a person has more than one residence, his principal residence is considered in establishing his domicile.

Article 78, C.C.Q.

A person whose domicile cannot be determined with certainty is deemed to be domiciled at the place of his residence. A person who has no residence is deemed to be domiciled at the place where he lives or, if that is unknown, at the place of his last known domicile.

Article 80, C.C.Q.

An unemancipated minor is domiciled with his tutor. Where the father and mother exercise the tutorship but have no common domicile, the minor is presumed to be domiciled with the parent with whom he usually resides unless the court has fixed the domicile of the child elsewhere.

R.S.Q. c. A-23.01, Article 4

In addition to the cases contemplated in section 3, the removal or the retention of a child is considered wrongful if it occurs when proceedings for determining or modifying the rights of custody have been introduced in Québec or in the designated State where the child was habitually resident and the removal or retention might prevent the execution of the decision to be rendered.

V.4. APPLICATION OF THE UCCJEA CONTRAVENES THE CONVENTION

MOZES v. MOZES, 239 F.3d 1067, 1080 (9th Cir. 2001)

As these considerations illustrate, the broad claim that observing "la réalité que vivent les enfants" obviates any need to consider the intent of the parents, Y.D., R.J.Q. at 2523, is unsound. It also runs counter to the idea that determinations of habitual residence should take into account "all the circumstances of any particular case."

HOLDER v. HOLDER, 305 F.3d 854, 869 (9th Cir. 2002)

Although there may be some overlap between the second and third questions and the determinations under California law of a child's "home state," see Cal. Fam. Code §§ 3402, 3421, and of the best interest of the child, the Hague Convention inquiries are nevertheless distinct. In Mozes, we suggested that "habitual residence" has its own meaning, uniform among signatories to the Convention and distinct from local legal concepts. See Mozes, 239 F.3d at 1071. We also distinguished "wrongful removal" under the Hague Convention from more holistic custody inquiries regarding the best interests of the child,

MOZES v. MOZES, 239 F.3d 1067, 1071 (9th Cir. 2001)

Clearly, the Hague Conference wished to avoid linking the determination of which country should exercise jurisdiction over a custody dispute to the idiosyncratic legal definitions of domicile and nationality of the forum where the child happens to have been removed. This would obviously undermine uniform application of the Convention and encourage forum-shopping by would-be abductors. To avoid this, courts have been instructed to interpret the expression "habitual residence" according to "the ordinary and natural meaning of the two words it contains[, as] a question of fact to be decided by reference to all the circumstances of any particular case."

V.5. REQUIRED BURDEN OF PROOF

Article 3, Hague Convention (28)

The removal or the retention of a child is to be considered wrongful where - a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

FRIEDRICH v. FRIEDRICH, 983 F.2d 1396, 1403 (6th Cir. 1993)

For the foregoing reasons, we REVERSE the district court's denial of the petition and REMAND the case to the district court with instructions to determine whether, under German law, Mr. Friedrich was exercising his custody rights over Thomas at the time of the removal and to consider any affirmative defenses Mrs. Friedrich might raise.

SILVERMAN v. SILVERMAN, 338 F.3d 886, 897 (8th Cir. 2003)

The removal or the retention of a child is to be considered wrongful where — a) it is in breach of rights of custody attributed to a person . . . under the law of the State in which the child was habitually resident immediately before the removal or retention; and b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

FEDER v. EVANS-FEDER, 63 F.3d 217, 221 (3d Cir. 1995)

For purposes of the Convention, "`rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence[.]"

V.6. CHANGES OF HABITUAL RESIDENCE

SILVERMAN v. SILVERMAN, 338 F.3d 886, 908 (8th Cir. 2003)

The Ninth Circuit, the font of many decided cases in this difficult area of law, makes it crystal clear that the question of whether the parents of minor children have a joint, settled intention to abandon a habitual residence is a question of fact. This must, of course, be determined by the district court and reviewed by our court on the clearly erroneous standard.

MOZES v. MOZES, 239 F.3d 1067, 1076 (9th Cir. 2001)

In these cases, the representations of the parties cannot be accepted at face value, and courts must determine from all available evidence whether the parent petitioning for return of a child has already agreed to the child's taking up habitual residence where it is. The factual circumstances in which this question arises are diverse, but we can divide the cases into three broad categories. On one side are cases where the court finds that the family as a unit has manifested a settled purpose to change habitual residence, despite the fact that one parent may have had qualms about the move. ... Most commonly, this occurs when both parents and the child translocate together under circumstances suggesting that they intend to make their home in the new country. When courts find that a family has jointly taken all the steps associated with abandoning habitual residence in one country to take it up in another, they are generally unwilling to let one parent's alleged reservations about the move stand in the way of finding a shared and settled purpose.

TSARBOPOULOS v. TSARBOPOULOS, NO. CS-OO-0083-EFS (E.D. Wash. Nov 19, 2001)

The Court concludes as a matter of law that the Hague Convention does not apply because the parents did not share a settled intent to change the family's habitual residence from the United States to Greece. Therefore, Mrs. Tsarbopoulos did not remove the children from their habitual residence, so the removal was not actionable in a Petition for Return under the Hague Convention. Accordingly, the Petition is DENIED.

V.7. RETENTION OF HABITUAL RESIDENCE AND SABBATICALS

HOLDER v. HOLDER, 392 F.3d 1009, 1018 (9th Cir. 2004)

In the middle rest cases where a parent "had earlier consented to let the child stay abroad for some period of ambiguous duration." Id. The Holders' case presents yet another marker on the continuum.

*This case falls closer to the end of the continuum marked by moves for "specific, delimited" periods of time, id., such as sabbaticals and other conditional stays. See, e.g., Ruiz, 2004 WL 2796553, at *11 (deferring to district court's finding that there was no shared intention to abandon the prior United States habitual residence based on the conditional nature of the move to Mexico); Tsarbopoulos v. Tsarbopoulos, 176 F.Supp.2d 1045,1055-56 (E.D.Wash. 2001) (finding "no objective evidence contradicted the notion that the move to Greece was only for a [two-year] sabbatical" and concluding that the "couple did not share an intent to make Greece the [family's] habitual residence");*

Holder v. Holder, 392 F.3d 1009, 1014 (9th Cir. 2004)
[INCADAT cite: HC/E/USf 777]

United States habitual residence retained after 8 months of an intended 4 year stay in Germany;

Ruiz v. Tenorio, 392 F.3d 1247, 1253 (11th Cir. 2004)
[INCADAT cite: HC/E/USf 780]

United States habitual residence retained during 32 month stay in Mexico;

Tsarbopoulos v. Tsarbopoulos, 176 F. Supp.2d 1045 (E.D. Wash. 2001)
[INCADAT cite: HC/E/USf 482]

United States habitual residence retained during 27 month stay in Greece.

V.8. HABITUAL RESIDENCE ACQUIRED BY NEW-BORNS

HOLDER v. HOLDER, 392 F.3d 1009, 1020 (9th Cir. 2004)

The younger son's youth adds a twist to the analysis. When and how does a newborn child acquire a habitual residence? The place of birth is not automatically the child's habitual residence. See Delvoye v. Lee, 329 F.3d 330, 334 (3rd Cir.), cert. denied, 540 U.S. 967, 124 S.Ct. 436, 157 L.Ed.2d 312 (2003) (holding that a child born in Belgium was nonetheless habitually resident in the United States because the mother "traveled to Belgium to avoid the cost of the birth of the child and intended to live there only temporarily"); see also Beaumont McEleavy, supra, at 112 (suggesting that, at times, a child may be without a habitual residence because "if an attachment [to a State] does not exist, it should hardly be invented").

V.9. HABITUAL RESIDENCE FOR YOUNG CHILDREN

Redmond v. Redmond, 724 F.3d 729, 746 (7th Cir. 2013)

In the final analysis, the court's focus must remain on "the child[ ]'s habitual residence." Holder, 392 F.3d at 1016 (emphasis added). Shared parental intent may be a proper starting point in many cases because "[p]arental intent acts as a surrogate" in cases involving very young children for whom the concept of acclimatization has little meaning. Id. at 1016–17. "Acclimatization is an ineffectual standard by which to judge habitual residence in such circumstances because the child lacks the ability to truly acclimatize to a new environment." Karkkainen, 445 F.3d at 296. On the other hand, an emphasis on shared parental intent "does not work when ... the parents are estranged essentially from the outset." Kijowska, 463 F.3d at 587. In short, the concept of "last shared parental intent" is not a fixed doctrinal requirement, and we think it unwise to set in stone the relative weights of parental intent and the child's acclimatization. The habitual-residence inquiry remains essentially fact-bound, practical, and unencumbered with rigid rules, formulas, or presumptions. See Kijowska, 463 F.3d at 586;Karkkainen, 445 F.3d at 291;Friedrich, 983 F.2d at 1401;Re Bates, No. CA 122/89.

V.10. NEUTRALITY OF HAGUE DECISIONS IN CUSTODY

Article 19, Hague Convention (28)

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

MOZES v. MOZES, 239 F.3d 1067, 1079 (9th Cir. 2001)

The function of a court applying the Convention is not to determine whether a child is happy where it currently is, but whether one parent is seeking unilaterally to alter the status quo with regard to the primary locus of the child's life.

SILVERMAN v. SILVERMAN, 338 F.3d 886, 899 (8th Cir. 2003)

The district court also failed to consider that Julie initially contemplated a divorce in Israel, although the record supports this fact, especially given her testimony that her reluctance was not based upon living in Israel but upon the viability of her marriage. When she contacted an attorney in Israel, however, she was told that she would lose custody of her children in the Israeli Rabbinical courts. In Rydder v. Rydder, 49 F.3d 369,372 (8th Cir. 1995), this court addressed a "habitual residence" issue by referring to the primary purpose of the Hague Convention: "to restore the status quo ante and to deter parents from crossing international boundaries in search of a more sympathetic court." This court upheld the district court's decision to return children to their father in Poland after their mother, who was having marital difficulties, took them to the United States, without the consent of her husband, to obtain a divorce and custody. Id. This case is analogous. After speaking with her attorney in Israel, but without filing for a divorce or custody there, Julie moved to the United States and promptly obtained the desired custody decision here. This appears to be the sort of forum shopping addressed in Rydder that the Convention was designed to prevent.

V.11. BASES FOR MOTION FOR INFORMATION ON QUEBEC LAW

R.S.Q. c. A-23.01, Article 8 (5)

The Minister of Justice, either directly or through any intermediary, shall take all appropriate measures ...

(5) to provide information of a general character as to the law of Québec in connection with the application of this Act;

R.S.Q. c. A-23.01, Article 28

In ascertaining whether there has been a wrongful removal or retention, the Superior Court may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the designated State in which the child is habitually resident, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Hague Convention (28), Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

R.S.Q. c. A-23.01, Article 38

No charge shall be required from the applicant in relation to proceedings instituted under this Act. ...