

Institution: University of Aberdeen
Unit of Assessment: UoA 20 - Law
Title of case study: International Child Abduction
<p>1. Summary of the impact</p> <p>This case study concerns a book by Paul Beaumont and Peter McEleavy that was submitted in RAE 2001: <i>The Hague Convention on International Child Abduction</i> (Oxford University Press, 1999). The book has been cited by leading courts in Australia, Canada, Germany, Hong Kong, Ireland, New Zealand, South Africa, the UK and the USA as a leading authority on the interpretation of the Hague Child Abduction Convention 1980. The Convention was concluded in 1980 and as at 26 July 2013 is in force in 90 States. At the time the book was written there were 51 State parties to the Convention. As the only comprehensive monograph in English on the Convention, it seems reasonable to claim that it has assisted in widening its ratification. The Convention is one of the most successful private international law treaties in history and seeks to reduce the suffering caused by the wrongful removal/retention (the legal terms for abduction) of children away from the country of their habitual residence. In particular the book has helped to lead to judicial decisions favouring a wide interpretation of “custody rights” and a late date for “wrongful retention” thereby increasing the number of children covered by the Convention. These children will usually be returned by the authorities in the country to which they have been abducted to the country in which they were habitually resident before the abduction. The book has also helped judges in several countries to arrive at their decisions on the meaning of “settled” under Article 12 of the Convention preventing too many returns of children in cases where a summary return is not possible because the Convention return proceedings were not launched within one year of the abduction.</p>
<p>2. Underpinning research</p> <p>The 1999 Oxford University Press (OUP) Monograph on <i>The Hague Convention on International Child Abduction</i> was the first, and to date only, comprehensive monograph to be published in English on that Hague Convention. The book was the idea of Beaumont. He was approached by Peter Carter, Wadham College, Oxford University to see if he would offer a book in the new OUP series of Monographs on Private International Law of which Carter was the Series Editor. Beaumont had been teaching and researching on the Convention for a number of years and had identified the need for a thoroughly researched monograph on the subject. OUP indicated that they would be interested in this and Beaumont decided that he could best achieve this by recruiting a PhD student to work with him in producing the book. Beaumont obtained funding from the University of Aberdeen Research Committee in 1994 to fund a 3 year full cost PhD studentship with a view to the student (McEleavy, who had studied in Surrey and was granted the studentship after a publicly advertised process) and Beaumont (Professor from 1 April 1995) co-authoring a book with OUP once the student had completed the PhD (which he did at the first attempt in 1998 with no corrections under the external examinership of Sir Peter North, Oxford University). The University provided funding for McEleavy to work in the University in 1998 as a research fellow after he completed his PhD in order that he and Beaumont could prepare the monograph for OUP on the topic. The original research conducted by McEleavy for the PhD, under the supervision and direction of Beaumont, involved painstaking analysis of all the <i>travaux préparatoires</i> of the Convention, of all the then academic writings on the Convention, all the case law in the English and French speaking worlds (the two official languages of the Convention) and some interviews with key drafters of the Convention (eg Adair Dyer, formerly of the Permanent Bureau of the Hague Conference on Private International Law, who was the official who oversaw the drafting of the Convention and Professor Sandy Anton who was the Chairman of the Special and Diplomatic Sessions in The Hague that drafted and concluded the Convention and who at the time of the research was an Honorary Professor in this Law School). The book drew on McEleavy’s PhD which had been influenced by Beaumont’s insights but did not use parts of the PhD and added various new elements at the instigation of Beaumont (for example, chapter 14 on interpretation). The book did not simply explain the historical development of the Convention and describe the leading case law on it but also carefully analysed each provision giving a view as to how it should</p>

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be interpreted and concluding with suggestions for reform. It took full account of the changed sociological position from the time of the drafting of the Convention, whereby most abductions were by then (and still are) committed by primary carer mothers rather than non-primary carer fathers, and of the increased rights of children brought about by the UN Convention on the Rights of the Child. The suggestions for reform in the conclusions (pages 261-266) are sensitive to the need to preserve the Child Abduction Convention as a quick summary return mechanism while, as far as possible, avoiding harm to the children involved and being fair to the parents. The final version of the book was one that fully reflected the views of both of the authors and benefited from the knowledge, research and insights of both authors in relation to the Convention.

3. References to the research

Paul Beaumont and Peter McEleavy, *The Hague Convention on International Child Abduction* (1999, Oxford University Press).

4. Details of the impact

The book has had, and continues to have, a significant impact on the interpretation and application of the Hague Convention on Child Abduction by courts in various countries in the world including, unusually, **civil law and mixed legal systems** eg Germany (Supreme Court, Bundesgerichtshof, XII Zivilsenat Decision of 16 August 2000, BGHZ 145), Quebec (Court of Appeal, *F.(R.) v G. (M.)* [2002] RDF 785 and the Superior Court, *EA v LM* 2010 QCCS 4390) and South Africa (Supreme Court of Appeal, *Pennello v Pennello* 2004 (3) BCLR (SCA)). The pre-2008 cases continue to be influential in the development of the relevant jurisdictions' case law on this issue.

The impact of the book on case law in the **United States of America** is very significant. The book has been described by two US Circuit Court of Appeals as 'the leading treatise on the Convention' (*Mozes v Mozes* (9th Cir. 2001) 239 F. 3d 1067 and *Delvoye v Lee* (3rd Cir. 2003) 329 F.3d 330) and the book continues to be relied on by US Circuit Court of Appeals (eg on the meaning of "settled" in Article 12 of the Convention in *In re: B. Del C. S. B. (minor)* (9th Cir. 2009) 559 F. 3d 999 and on the appropriate use of undertakings and safe-harbour orders in *Baran v Beaty* (8th Cir. 2008) 526 F. 3d 1340. The book's treatment of "settled" has also been influential in some decisions of US state courts of appeal, see the Court of Appeal of California in *Esquivelzeta v Sohn*, 2013 Cal. App. Unpub. LEXIS 1792 and by the Court of Appeal of Florida in *Wigley v Hares*, 82 So. 3d 932; 2011 Fla. App. LEXIS 11786. Finally for the US, the book continues to be cited positively in first instance decisions on child abduction, often due to its extensive citation in earlier decisions of higher courts like *Mozes*, above, and *Gitter v Gitter* (2nd Cir. 2005) 396 F. 3d 124, eg in *Headifen v Harker*, 2013 U.S. Dist. LEXIS 80819, judgment of 7 June 2013 and *White v White*, 2012 U.S. Dist. LEXIS 104044, judgment of 20 July 2012.

The view that the book is the "leading treatise" on the Convention has recently been reiterated by several courts in **Australia** in the course of giving significant weight to a variety of points made in the book (see the Full Court of the Family Court of Australia in *Harris v Harris* [2010] FamCAFC 221, paras. 33, 35 and 152 and in *Zotkiewicz v Commissioner of Police (No.2)* [2011] FamCAFC 147, paras. 80-82 and 104; Bennett J in the Family Court of Australia in *State Central Authority and Camden (No 2)* [2011] FamCA 666, para. 117; and by the Family Court of Western Australia in *Soysa and Commissioner, Western Australia Police* [2012] FCWA 28, paras. 153-156).

In **Canada** the Ontario Court of Appeal has placed reliance on the book in several cases including (*Jackson v Graczyk*, 2007 ONCA 388, paras. 3-39; *Cannock v Fleguel*, 2008 ONCA 758, para. 26; and *Ellis v Wentzell-Ellis*, 2010 ONCA 347, para. 20) and the British Columbia Court of Appeal made significant use of the book in *Kubera v Kubera*, 2010 BCCA 118, paras. 38 and 90, to give a balanced construction on the meaning of "settled" and other matters in Article 12 of the Convention.

The book has been cited by the **highest courts** in Australia, **New Zealand** and the **UK** (*DP v Commonwealth Central Authority* [2001] HCA 39, paras. 35, 38, 84, 102, 124, and 125; *Secretary for Justice v HJ* [2006] NZSC 97 at footnotes 93, 103 and 104; *In re M and another (Children) (Abduction: Rights of Custody)* [2008] 1 A.C. 1288, para. 22; *In re E (Children) (FC)* [2011] UKSC

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27; [2012] 1 AC 144 in the judgment of the Court given by Lady Hale and Lord Wilson, para. 6). Again, the earlier cases, as leading authorities, have been influential in the development of the jurisprudence in these countries in the REF census period (see, for example, the Australian decisions above and the English and New Zealand decisions below).

The book has also been cited by the English Court of Appeal in *Re W (Minors)* [2010] EWCA Civ 520, para. 17 (cited in turn by Cobb J in *LCG v RL* [2013] EWHC 1383 (Fam), para. 79), by the Irish High Court in *P v P* [2012] IEHC 31, para. 29, by the New Zealand Court of Appeal in *C v H* [2009] NZCA 100, para. 25 and by the New Zealand High Court on appeal in *RCL v APBL* [2012] NZHC 1292, para. 96.

One specific example of a judge being influenced by the book to give an interpretation that widens the application of the Convention by giving a later date to when a 'wrongful retention' takes place and thereby protecting the rights of left behind parents to get their child back is *RS v KS, LS (By his Guardian Marion Werner-Jones)* [2009] EWHC 1494 (Fam): [2010] 1 FCR 338. Macur J said:

"37 In that [case Wall J] decided as a matter of law that an intention to wrongfully retain does not have to be communicated to the left behind parent/custodian in word or deed for the purpose of the twelve month period which triggers a prospective exception to summary return on the basis of 'settlement', I respectfully disagree. I adopt the argument of Beaumont and McEavy, in The Hague Convention on International Child Abduction at page 41, that this approach would "threaten certainty" and "penalise an applicant by commencing the limitation period before he could [or, I insert, should] have been aware that his rights had been breached."

In the first case on the Hague Child Abduction Convention to be heard by the US Supreme Court, *Abbott v Abbott*, 130 S. Ct. 1983 (2010) the petition for a writ of certiorari contained references to arguments from the book on pages 29-30. This case was an attempt to get a uniform interpretation of Article 5 of the Convention on the important point that a person who simply has a right to object to a child leaving a country has a custody right for the purposes of the Convention and can get his or her child back under the Convention if the child is removed from one Contracting State to another without that person's consent (or authorisation of a court in that country). The book argued in favour of this interpretation at a time when views were divided and this has helped push the argument in favour of this approach in the courts of several countries that have analysed the issue (eg Australia, Germany, Ireland, New Zealand, South Africa, Switzerland and the UK) and was the view adopted by the majority of the US Supreme Court in *Abbott*.

As of 26 July 2013 the Convention is in force in 90 States in the world, see above. The book is frequently cited in the notes on the cases in the official database on the Convention (INCADAT) that is available to everyone free of charge, see <http://www.incadat.com/index.cfm>

As a result of his acknowledged expertise in the area Beaumont was a consultant to the UK and Scottish Governments from 1996 to 2013 on private international law. He represented the UK at the Special Review Commission on the Hague Child Abduction Convention 2006 and advised the UK delegation to the 2011 Special Review Commission to help develop Recommendations and Good Practice in relation to the Convention. He has also given advice to those Governments on submissions to the Court of Justice of the European Union on the appropriate interpretation of provisions of the Convention which have been given effect to in EU law by the Brussels IIa Regulation (eg Case C-195/08 PPU *Rinau v Rinau* [2008] ECR I-5271; Case C-211/10 PPU *Povse* [2010] ECR I-6673; and Case C-497/10 PPU *Mercredi v Chaffe* [2010] ECR I-14309).

The research contributed to and flows from Professor Beaumont's membership of the UK Private International Law Advisory Committee (since 1997) and his role as a lead negotiator for the UK on Hague Conference on Private International Law Conventions (Choice of Court Agreements Convention 2005, including the Working/Expert Groups on a possible sister convention on recognition and enforcement of judgments in 2013 and Maintenance Convention 2007, including the Special Commission of 2009 on that Convention) and of EU Regulations (Brussels I (including the recast in 2012), Rome I (2008), Rome II (2007), Succession (2012) and Maintenance (2009)).

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His role in creating these important new private international law instruments is inextricably linked with his research and they feed on each other.

This impact study concerns the impact on the law of international child abduction of the OUP monograph on that Convention of 1999 based on Paul Beaumont's co-authored contribution to it.

5. Sources to corroborate the impact

1. The following are a selection of the many cases in which the book has been used by the court (further examples referenced above):
 - *In re: B. Del C. S. B. (minor)* (9th Cir. 2009) 559 F. 3d 999
 - *Harris v Harris* [2010] FamCAFC 221, paras. 33, 35 and 152
 - *Cannock v Fleguel*, 2008 ONCA 758, para. 26;
 - *P v P* [2012] IEHC 31, para. 29
2. The book is referred to in the standard treatises on private international law:
 - L Collins (ed), *Dicey, Morris and Collins The Conflict of Laws* (15th ed, 2012, Sweet and Maxwell) p.1163, 1171 and 1186.
 - J Fawcett and J Carruthers, *Cheshire, North and Fawcett Private International Law* (14th ed, 2008, Oxford University Press) p.1104
 - P Beaumont and P McEleavy, *Private International Law, Anton* (3rd ed, 2011, SULI/W Green) pp.818 and 834.
 - D McClean and K Beevers, *Morris The Conflict of Laws* (8th ed, 2009, Sweet and Maxwell) p.309.
3. Emeritus Professor of Law, Sheffield University, can corroborate information provided in Section 4.
4. Legal Staff (lawyers, contact details available on request), UK Ministry of Justice, can corroborate the information provided in the second last paragraph of Section 4.