

**INTERNATIONAL CENTRE FOR FAMILY LAW, POLICY AND PRACTICE
'GENDER, INCLUSIVITY AND PROTECTING THE 21st CENTURY FAMILY'
LONDON 2019
CONFERENCE CONCLUSIONS AND RESOLUTIONS**

The 2019 Conclusions and Resolutions are dedicated to the memory of the late Sir Peter Singer, Retired Judge of the Family Division of the High Court of England and Wales, and previous Rapporteur of this Conference, who sadly died in December 2018.

Between 3 and 5 July 2019, over 250 specialists (including judges, lawyers, clinical and forensic psychologists, mediators, academics, researchers, research students, Central Authorities and government officials, and representatives of NGOs and the Hague Conference on Private International Law), met in London to discuss the conference themes of Gender, Inclusivity and Protecting the 21st Century Family, and related family law topics.

The conference delegates (including 133 speakers) were from the following 35 jurisdictions: Australia, Belgium, Brazil, Canada, Croatia, Czech Republic, Denmark, Dubai, England and Wales, Ethiopia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, India, Ireland, Israel, Italy, Jamaica, Japan, New Zealand, Norway, Pakistan, People's Republic of China, Russia, Scotland, Singapore, South Africa, Sweden, Switzerland, The Netherlands, United States of America.

The Conference Plenary Sessions were chaired (in order of appearance) by: The Honourable William Alstergren, Chief Justice of the Family Court of Australia (Australia); Sir Mathew Thorpe, Retired Lord Justice of Appeal (England and Wales); Diahann Gordon Harrison, Children's Advocate of Jamaica and National Rapporteur on Trafficking of Persons (Jamaica); Sir Andrew Moylan, Lord Justice of Appeal and Head of International Family Justice of England & Wales; Sir Andrew McFarlane, President of the Family Division (England and Wales); Sir Jonathan Baker, Lord Justice of Appeal (England and Wales); Henry Setright QC, 4 Paper Buildings (England and Wales); Professor Lisa Webley, University of Birmingham (England and Wales); and Alex Verdan QC, Head of Chambers, 4 Paper Buildings, London (England and Wales).

The conference was supported administratively by Victoria Stephens and Laura Culshaw, and by student ambassadors Ama Tekyi-Berto, Yassmin Elmi, Telli Aydin, and Bia Van Heerden.

The conference Rapporteur was Professor Stephen Gilmore, King's College London, assisted by Annabel Barrons, Miriam Best, Paige Campbell, Kate Ferguson, Leah Hauser, Laura Hunter Watkins, Jessica Johnson, Shabina Begum, James Netto, Patrick Paisley, Anna Sutcliffe, all of counsel or family law firms of solicitors.

The conclusions and resolutions drafting committee was chaired by Stephen Gilmore (England and Wales) and comprised:

Karolina Zoi **Andriakopoulou** (Greece)
Diana **Bryant** (Australia)
Frances **Burton** (England and Wales)
Stephen J. **Cullen** (United States and Scotland)
Zenobia **Du Toit** (South Africa)
Marilyn **Freeman** (England and Wales)

Mikiko **Otani** (Japan)
Nicola **Taylor** (New Zealand)
Rollie **Thompson** (Canada)

The following provisions were agreed at a meeting reporting on the outcomes of the conference sessions:

The Ageing Society

1. A number of conference presentations converged on the theme of the ‘ageing society’, highlighting an increasing burden on state welfare provision, and a consequent increase in private family care arrangements which may produce a gendered impact on family members. We encourage further research and evidence-based policy debate in this area, which takes careful account of cultural factors and impact upon gender.

Surrogacy and Legal Parentage

2. We note the Hague Permanent Bureau initiative in establishing an Experts Group to investigate status issues arising from surrogacy, but while the Experts Group is deliberating we note and welcome the current focus at this conference on the difficulties in definitions of legal parentage and citizenship issues in various jurisdictions and encourage jurisdictions to work towards common definitions and cross-border recognition of parentage.
3. We also encourage states to give urgent thought to amending laws that prevent surrogate children from obtaining citizenship and surrogate parents from being recognised as legal parents in their jurisdictions.
4. We also note the concern expressed by delegates at the conference that lack of specific laws acknowledging and permitting surrogacy (with appropriate safeguards) in many jurisdictions, has the effect that many children are born in surrogate arrangements with the assistance of an anonymous egg donor. States are encouraged to consider how this might not meet Article 7 of the United Nations Convention on the Rights of the Child, and to consider that, as with adoption and sperm donations, many children will, on reaching adulthood, wish to know their genetic heritage and identify their egg donor. States are encouraged to consider regulating ‘egg banks’ with identifiable donors in the same way that ‘sperm banks’ operate, to meet this growing concern.

Child Participation

5. Many conference presentations highlighted the importance of offering children opportunities to be involved in dispute resolution processes and proceedings that concern them; and the diverse ways in which jurisdictions achieve this in light of their national

law and practices, resourcing, and the range of professionals tasked with hearing children. We note and acknowledge this as reflective of a global trend of increased emphasis on child participation, including the hearing of children, and that a substantial body of research evidence supports the value of child participation for the child, the family, the family justice system, and society.

6. We also note and acknowledge the growing understanding of the importance of children's participation in proceedings under the 1980 Child Abduction Convention specifically in relation to Article 13 (objections to return), Article 13(1)(b) (grave risk of harm or intolerable situation), questions around 'habitual residence' and 'settlement', and also generally regarding all relevant provisions of the 1980 Convention. Jurisdictions are encouraged to consider the use of best practices to ensure that children's participation is genuine, effective, and respectful in Hague Abduction proceedings and all family law proceedings that concern them.
7. We encourage further interdisciplinary and cross-jurisdictional discussion, collaboration and research in order to identify: (i) when, how, and by whom children are best engaged in these matters; and (ii) the purpose of such participation and how (if at all) it is given effect to in the decision-making process.
8. We commend the call for training of professionals tasked with hearing children and supporting their participation in the family justice system.

Child Abduction

9. We support the work of the Working Group on the Guide to Good Practice on Article 13(1)(b) of the 1980 Child Abduction Convention and recognise and appreciate the efforts of the Working Group thus far. We recognise the challenges of incorporating into the Guide the practices and views of numerous States Parties, in particular as it relates to domestic violence. We encourage further negotiations and revisions with an aim to finalise a Guide that will greatly benefit practitioners, judges, and families.
10. We express our appreciation of the fact that the courts and government institutions of Japan tasked with implementing enforcement of 1980 Hague Convention return orders have taken a proactive approach to make necessary changes to strengthen their enforcement mechanisms.

11. We recognise the potential for positive outcomes for children who are able to participate and make their views and objections known in Hague Abduction Convention proceedings. We appreciate that a wide variety of methods have been implemented by States Parties to facilitate putting children's views before the courts and that a wide variety of standards have been created by the courts of States Parties. We respectfully encourage the judges handling child abduction matters to make use of the variety of methods available to ascertain the views of the children involved to ensure the children feel heard and feel that their views have been considered. We recognise that this leads to more positive outcomes for the children involved regardless of the court's decision on the merits of the case.

12. We draw attention to the increasing relevance of the immigration status of children and families in child abduction matters. There is a need for decisions (for instance in determining the habitual residence of a child or undertakings and ameliorative measures relating to return) to be approached and concluded being mindful of collateral immigration consequences for the children and families involved.

Immigration and Cross-border Issues

13. We note more broadly that, against a background of large-scale, and often forced, migration in some parts of the world, immigration status and issues are increasingly impacting upon family law matters.

14. We note the lack of uniformity and difficulties within jurisdictions with respect to enforcement of orders, which impact detrimentally on families involved in cross-border litigation.

15. We also note with concern the use of unilaterally imposed 'self-help' custody and parental separation strategies whereby a parent (most usually a mother) is left abandoned and stranded in her country of origin without access to the means and without the documentation essential to enable her to maintain links with her children in another State.

16. We highlight these issues as subjects requiring further consideration by researchers, policy-makers and law-makers, in order to ensure the best outcomes for children and families affected.

Relocation with Children

17. We recognise the need to consider the gender implications of relocation law, in light of the fact that a very high percentage of parents proposing to relocate are women. While there is no basis for a general presumption either for or against relocation, there is the potential to give more structure to the determination of best interests in these cases, to reduce conflict and litigation and to increase predictability of outcomes. The recent changes to Canada's divorce relocation law offer an attempt to achieve these policy goals.

Domestic Abuse

18. Several conference presentations drew attention to the problem of domestic abuse in various jurisdictions and its gender aspects and impacts. We welcome work on broadening the definition of domestic abuse so as to capture the scope of such pernicious behaviours, but caution that definitions must be kept within limits so as not to undermine the seriousness of the issue of domestic abuse.

Criminalisation

19. We acknowledge the important place for the criminal law power in family law matters, for society to condemn certain conduct in the family setting, especially domestic abuse. In some cases (e.g., abduction cases) the availability of reasonable defences and prosecutorial discretion is critical to their proper administration. We recognise that the criminal law is a blunt instrument, to be used carefully in matters affecting children.

Transgender Issues

20. Several conference presentations addressed transgender issues, some of which focused on issues relating to transgender children. We note ongoing debates in some jurisdictions concerning the age at which children may seek legal confirmation of their trans gender, and support the call for reasoned, evidence-based responses. While some positive legal and policy changes for transgender persons have been achieved (and continue to be advocated in order to challenge stereotypical understandings), we note that there remain many challenges for transgender persons to integrate fully in society in their trans gender. It is encouraging to note that the World Health Organisation has resolved to remove gender identity from its global manual of diagnoses and not to list it with mental disorders.

Reform of Family Justice Systems and Access to Justice

21. Noting in several jurisdictions reforms to family justice systems and to access to justice, we express our deep concern about the reductions in funding of legal aid in family law matters in some jurisdictions, with resultant increases in litigants in person and deleterious impacts on the efficiency and effectiveness of the family justice system. We

urge that, when jurisdictions are contemplating reforms, it is important to adopt an evidence-based approach and to ensure that changes result in appropriate functioning of the family justice system. It is also important that there be evidence-based evaluation of such reforms.