LEGAL BULLETIN

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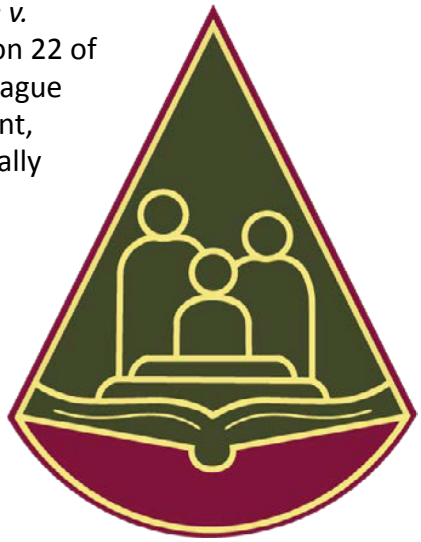
Habitual Residence for Jurisdictional Purposes under the Children's Law Reform Act: Dunmore v Mehralian, 2025 SCC 20

Introduction

This bulletin examines the Supreme Court of Canada (SCC) decision in *Dunmore v. Mehralian*[1], focusing on the interpretation of "habitually resident" under section 22 of the Ontario Children's Law Reform Act (CLRA)[2] for children not subject to the Hague Convention.[3] The Appellant, Michael Paul Dunmore (Father), and the Respondent, Raha Mehralian (Mother), married in 2015, had a history of moving internationally due to the Father's employment, residing in Oman from April 2018 until March 2020. They traveled to Ontario in March 2020[4], and their child was born there in December 2020, following delays caused by the COVID-19 pandemic.[5] They separated in Ontario in May 2021 following an allegation of domestic violence. The Father returned to Oman and commenced a divorce and custody proceeding there. The Mother subsequently commenced a family law proceeding in Ontario. The Father sought the child's return to Oman, arguing the Ontario court lacked jurisdiction to make a parenting order.[6]



This case is significant because the Court considered the reality of intimate partner violence in defining "habitual residence" under Ontario's *Children's Law Reform Act.*

The Statutory Ground for Jurisdiction

A court may only make a parenting order under Part III of the CLRA if it has jurisdiction.[7] The primary ground for establishing jurisdiction, set out in s. 22(1)(a), is that the child is "habitually resident in Ontario at the commencement of the application for the order".[8] The CLRA expressly defines "habitually resident" in s. 22(2) and (3).[9] Section 22(2) provides that habitual residence can be established in three circumstances, including where the child last resided with both parents.[10] Section 22(3) prevents habitual residence from being altered by the unilateral removal or withholding of a child without consent.[11] In this case, the relevant date for establishing habitual residence was May 30, 2021, when the child was last residing with both parents before separation.[12]

[1] 2025 SCC 20.
[2] RSO 1990, c C.12.
[3] Can TS 1983 No 35.
[4] Ibid at paras 5, 52, 162.
[5] Ibid at paras 5, 53, 163.
[6] Ibid at paras 7, 64.
[7] Ibid at paras 9, 32.
[8] Ibid at para 9.
[9] Ibid at paras 10, 78, 157.
[10] Ibid at paras 10, 81.
[11] Ibid at paras 11, 82.
[12] Ibid at paras 11, 42, 140.

Interpretation of "Reside": Rejection of Shared Parental Intention

The dispute centered on the meaning of the word "resided" in s. 22(2).[13] The Father argued that "resided" required a "settled intention" shared by both parents.[14] He contended that the child's habitual residence was Oman, the last place the family lived together with mutual settled intention.[15] The majority of the SCC rejected this shared parental intention approach.[16] The majority noted that adopting this approach would wrongly shift the focus away from objective facts toward parents' subjective views and make the scheme vulnerable to manipulation, particularly in cases involving allegations of family violence.[17] Moreover, because family violence can undermine a victim's autonomy and ability to freely express their intention, it could be difficult for judges to find a genuinely shared parental intention to reside in a specific location.

The Guiding Principle: The "At Home" Standard

The majority held that "reside" means where a child is "at home". A child is at home in a place they are living rather than one in which they are merely visiting or sojourning.[18] The analysis must be factual and contextual, focusing on the child's life and circumstances, and judges should look to "all relevant links and circumstances", including the presence of family violence.[19] The motion judge, whose decision was affirmed by the SCC, applied this objective standard and found that the family was residing in Ontario on May 30, 2021.[20] The motion judge's factual findings, which the SCC found no basis to interfere with, noted that the parties flew to Toronto on one-way tickets, secured a long-term rental apartment, and purchased furniture, all of which supported the conclusion that they were residing in Ontario.[21] The Father obtained an Ontario health card and a job with a Toronto firm, and he had expressed a preference for being in Canada rather than signing a contract with an Omani firm.[22] Furthermore, the child, who was very young, had significant links to the jurisdiction, having spent the majority of his life in Ontario where he had extended family.[23] These factors supported the motion judge's conclusion that the child resided and was habitually resident in Ontario.[24] The Father's appeal, which sought an order returning the child to Oman, was therefore dismissed.[25]

[13] Ibid at paras 12, 86.
[14] Ibid at paras 48, 100.
[15] Ibid at para 105.
[16] Ibid at paras 14, 52.
[17] Ibid at paras 15, 57
[18] Ibid at paras 16, 62.
[19] Ibid at paras 17, 68.
[20] Ibid at paras 7, 57
[21] Ibid at paras 59, 148.
[22] Ibid at paras 58-59, 149.
[23] Ibid at paras 81, 150.
[24] Ibid at paras 57, 150.
[25] Ibid at paras 7, 96.

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