

BETWEEN: R.C.B. as litigation guardian of EKV, CEV, CIV and LRV
Plaintiff

10 AND: THE HONORABLE JUSTICE COLIN JAMES FORREST,
ONE OF THE JUDGES OF THE
FAMILY COURT OF AUSTRALIA
First Defendant

DIRECTOR GENERAL,
DEPARTMENT OF COMMUNITIES
(CHILD SAFETY AND DISABILITY SERVICE)
Second Defendant



LKG
Third Defendant

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Fourth Defendant

FOURTH DEFENDANTS SUBMISSIONS

Part I: Certification for Publication

30 1. I certify that this submission is in a form suitable for publication on the internet.

Part II: Statement of Issues

2. The Fourth Defendant (the father of the children) adopts the Second Defendant's Statement of Issues.

Part III: Section 78B of the *Judiciary Act* 1903(Cth) Notices

40 3. Notices were served by the Plaintiff on 24 May 2012. The Fourth Defendant does not consider any further notices are required pursuant to section 78B of the *Judiciary Act* 1903(Cth).

Part IV: Citations

50 4. The Fourth Defendant accepts the judgments listed at paragraph 4 of the Second Defendant's Submissions as relevant to the determination of the issue before the Court.

5. The Fourth Defendant also considers *Garning & Director General, Department of Communities, Child Safety and Disability* [2012] FAMCF 35 (9 March 2012) relevant to these proceedings.

Part V: Material Facts

- 10 6. The Fourth Defendant adopts the ‘Statement of Relevant Facts’ as contained in the Submissions of the Second Defendant.
7. In addition, the father came to Australia in May 2012, in order to assist in obtaining the return of his children to Italy.
8. Pending the resolution of these proceedings, the father has resided in Brisbane and has been reunited with his children pursuant to the orders of Murphy J of 6 July 2012. The children currently reside with the mother on the Sunshine Coast. The father has been granted unsupervised access to the children on alternate weekends.

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Part VI: Fourth Defendant’s Argument

9. The Fourth Defendant adopts the argument of the Second Defendant generally and the submissions of the Intervening Parties on the issue of the validity of s68L(3) of the Family Law Act 1975 (Cth).

10. A useful summary of the facts is contained in the first two paragraphs of the judgment of Forrest J of the 16 May 2012.

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11. In addition, the Fourth Defendant makes submission as follows:

- (a.) The children were wrongfully removed from Italy within the meaning of the Convention.
- (b.) The determination of custody and access rights are, by the Convention reserved to the habitual residence of the children.
- (c.) Any decision under the Convention is not to be taken as a determination on the merits of any custody issue.

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12. Contrary to the submission of the Third Defendant (paragraph 9 of her submission), the Convention proceedings concern returning or not returning the children to the jurisdiction of their habitual residence, not in which country or with whom they shall live.

13. In proceedings under the Convention, there must be a discretion to order independent representation whenever there is a risk that the child’s views may not be properly represented to the Court.

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14. The important issue is for the Court to be informed as reliably as possible of the child's view. This was done in this case through the reports of a psychologist and also a Counselor's report ordered by the First Defendant pursuant to Regulation 26 of the *Family Law (Child Abduction Regulations)*.

15. Forrest J considered the children's objection and exercised his discretion accordingly.

10 16. In our submission, separate legal representation may be appropriate in some cases, but in this case would have added nothing.

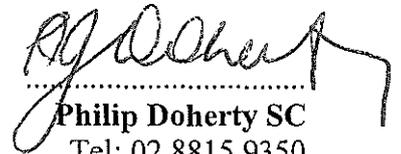
17. The orders of Forrest J should stand.

Part VII: Orders

18. The Proceedings should be dismissed with costs.

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Dated; 25 July 2012



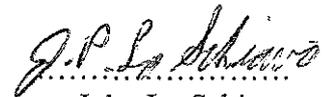
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Part VIII: Estimate of Time

19. The oral argument on behalf of the Fourth Defendant is estimated to take 1.5 hours.