

Dunmore v. Mehralian *Supreme Court of Canada* *Background*

Defence for Children International (DCI)- Canada and the Centre for Refugee Children have intervened in the case of *Dunmore v. Mehralian*, a case under the *Children's Law Reform Act*, which was heard by the Supreme Court of Canada on December 9th, 2024.

At issue in the case was the determination of the 'habitual residence' of a child who resided both in Canada and in a country that is not a signatory to the Hague Convention on International Child Abduction. This case had the potential to produce harmful precedent for vulnerable children in Canada particularly those touched by an immigration process.

The position of DCI – Canada before the Supreme Court was that the habitual residence analysis undertaken by the Court must take into account the reality of the child, and be consistent with a child's human rights under the *Child Convention on the Rights of the Child*, the *Hague Convention*, and the *Canadian Charter of Rights and Freedoms*.

Defence for Children International (DCI-Canada) and the Centre for Refugee Children (CRC) intervened in the case. They were well represented by Fareen Jamal and Fadwa Yehia of Jamal Family Law Professional Corporation before the Supreme Court of Canada when the case was heard on December 9th, 2024.

A copy of the decision can be found here: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20773/index.do?q=dunmore>.

Key Takeaways From The Decision

"A child resides where they are 'at home'" [para 6, para 68-69]

"The guiding principle in determining if the child was residing in a place is whether the child was at home there, not whether the parents had a settled intention to reside in the place." [para 6]

"... to the extent possible, the voice of the child and their own views on the connections they have formed ... ought to be considered. [para 66]

“The determination of where a child resided must remain sufficiently flexible to adapt to the varied and very real circumstances of migrant children. It is significant in this respect that citizenship is but one factor to consider, among many, in determining whether a child is habitually resident, and it alone is insufficient to demonstrate that a child was habitually resident.” [para 72]

A shared intention approach thus wrongly takes the focus away from objective factors, such as where the child lived, and gives undue priority to the parents’ subjective views. It treats children as “passive recipients of their parents’ decisions”, when the better view is that they are “people with a part to play in their own lives” [para 59]

Defence For Children International - Canada

DCI-Canada is the Canadian section of a global movement promoting and protecting the rights of children and youth. Its core activity is to provide education about the United Nations Convention on the Rights of the Child (UNCRC) and to work toward full implementation of the UNCRC in Canada and across the world. Our vision is that children, as human beings, are able to pursue a life in which they can enjoy their human rights with dignity, in a just and responsible society.

Centre For Refugee Children

CRC provide settlement services and legal support to refugee and migrant children in Ontario. Our vision is an immigration system in Canada and a settlement landscape in Ontario where children’s rights are upheld, children’s voices are amplified and valued, and the needs of all children are met through access to the opportunities and supports they require.