

THE GLOBAL CUSTODY BATTLE

By Malcolm Brown

Melissa Hawach's reported snatching of her children from a Lebanese car park 10 days ago has thrown her into a personal and legal no-man's-land that has rewarded some, shattered others and always been difficult.

If she gets the children back to Canada, she is protected. Should her estranged Lebanese-Australian husband, Joseph, go there, or to Australia, from where he can be extradited to Canada, he is likely to be jailed for abduction. If Melissa is apprehended in Lebanon, she would almost certainly lose custody of her daughters, Hannah, 5, and Cedar, 3, because under Lebanese law the father has an automatic right to custody. Her liability for a videotape in which she allegedly told her children to go with her "friends" when they arrived would be examined. Even if cleared of that, custody would still go to the father and she would be unlikely to get the girls out of the country.

The Hague Convention on the Civil Aspects of International Child Abduction, which came into force in Australia in 1987, states custody cases in mixed jurisdictions should be brought by a court in the country where the child habitually resides – in this case, Canada. But Lebanon is not a signatory to the convention.

The agony following the break-up of a mixed marriage has been repeated many times. Before Melissa, there was an American Betty Mahmoody, who married an Iranian but found a supposed visit to Iran in 1984 put her into a virtual prison, from which she eventually escaped with her daughter, Mahtob. [Depicted in the movie, *Not Without My Daughter*] The Australian Jacqueline Gillespie - now Pascal - 12 years married to a Malaysian prince, Raja Bahrin, and mother of two children, split with Raja in 1992 after he took a second wife. She took the children to Australia and won full custody in the Australian Family Court. He took them back, de ed extradition proceedings to return him to Australia and Gillespie's efforts to snatch the children failed.

In the period from July 1988 to June 1995 there were 294 abductions from Australia, according to Senate figures.



Melissa, a Canadian, met Joseph Hawach in Australia and married him in 1999. They went to live in Canada, where the children were born, but the couple later broke up. This year Melissa allowed Joseph to take the children to Australia on a three-week visit. The children were not returned. They ended up in Lebanon with their father. Melissa obtained a decision in a Canadian court awarding her custody. A warrant was issued in Canada for the arrest of Joseph on two counts of abduction. But Lebanon has no extradition treaty with Canada.

Joseph's extended family in Sydney told Melissa she would see the girls only if she returned to live in Sydney, gave her husband full custody of the children and had the Canadian charges dropped. Melissa went to Lebanon, accompanied by her father and an adviser supplied by the Missing Children Society of Canada, to attempt to argue her case before the courts. Her advice was that the process would be protracted. How a team was put together to help Melissa seize her children on December 20 is a mystery, although a Canadian private inquiry agent, John Slater, was very active on her behalf.

The future of an Australian, Brian Corrigan, and a New Zealander, David Pemberton, detained in Lebanon over Melissa's kidnapping of her daughters is unclear. They have been charged under Lebanese law, and the Australian Department of Foreign Affairs and Trade is preparing local legal representation. The likely fate of Melissa, should she be detained in Lebanon, is to be deported.

Questions

1. What are the nationalities of the mother, Melissa, her husband, Joseph, and their two children?
2. Where did the mother and the father reside after their marriage separation?
3. How does the law of Canada and Lebanon differ on which parent should have custody of the children?
4. Which international convention was developed to solve custody issues in situations of mixed marriages?
5. Is Australia a signatory to that convention?
6. What would the outcome be if the rules of that convention were applied?
7. Why has it not been applied?
8. Why did the mother put a team together to seize her children and take them to Canada?
9. Do you think these actions should lead to kidnapping charges being brought against the mother and/or against the father or neither?
10. If you were a Judge, how would you make a decision in this case? What do you think would be the best outcome for both parents and the children?