

The ISFL Family Letter
Spring, 2012

Published by the International Society of Family Law by Prof. Margaret F. Brinig, Editor, the Family Letter: Newsletter of the ISFL, Notre Dame Law School, Notre Dame Indiana 46556

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REPORT OF THE PRESIDENT:

The ISFL continues to go from strength to strength. In June this year, a North American regional ISFL conference will be held at the University of Iowa on June 15-16. Next year it is planned to hold regional ISFL conferences in New York (end of May) and in Seoul (early October).

The Executive Council met in Reggio Emilia in northern Italy in April, hosted by Prof. Maria Donata Panforti. The day before the Executive Council meeting, members of the Council also participated in a one day symposium entitled "Parents and Children - An Evolving Relationship" with a particular focus on international adoption.

The Executive Council welcomed a new member from China, Prof. Chen Wei, together with two of her younger colleagues who took part in the symposium. Prof. Chen Wei is one of China's leading family law scholars and has a special interest in comparative family law.

The Council spent considerable time at this meeting discussing ways to encourage involvement in the Society by younger family law scholars and those in developing countries. As a result of these discussions, the Council has decided to offer a free, three-year, non-voting membership for all graduate students studying for research

degrees in family law. This will provide access to the Society's website and newsletter. Details will soon appear on the website. I would encourage your graduate students to take advantage of this offer and to sign up for membership. The Council has also made provision for a limited number of scholarships for family law scholars from developing nations to assist them to attend the next World Conference in Brazil in 2014.

On behalf of the ISFL, Profs. Rhona Schuz (Israel) and Merle Weiner (USA) attended the second part of the Sixth Special Committee meeting of the Hague Conference on the operation of the 1980 and 1996 Hague Conventions, which took place in January 2012. Their report is contained elsewhere in this newsletter.

In previous newsletters, a list of the publications of members of the ISFL has been compiled by our colleague, Prof. Laurence Nolan, who acted as Associate Editor. Laurence retired in November last year after many years of teaching at Howard University School of Law. We thank her for the many contributions she made to the Society and wish her well in her retirement.

Prof. Patrick Parkinson
University of Sydney, Australia

REPORT OF THE SECRETARY-GENERAL:

Dear Colleagues,

As the President noted in his report, Professor Laurence Nolan, who had for some years compiled a publications list for the newsletter, has recently retired. We are all grateful to Professor Nolan for her efforts and accomplishments. And, thanks to new Executive Council member Ursula Basset, the publications list will not be lost. Professor Basset has agreed to take on the list as of the next issue of the newsletter. Please send publication notices (yours and others that you think will be generally of interest to Society members) to Professor Basset at ucbasset@yahoo.com.

At its recent meeting, the Executive Council also considered the issue of paid publication advertisements in the newsletter or through sale of the mailing list and rejected both possibilities. Instead, all publications of interest to Society members will be listed in the "Publication Notices" section of the newsletter free of charge if a timely notification is submitted to Professor Basset.

With respect to notices of upcoming conferences and meetings, the Council decided to maintain our current policy of

publicizing these in the newsletter if they are of interest to the general membership, but avoiding e-mail notices between newsletters. Thus, if you have a conference that you'd like to note in the newsletter, please submit information to the editor as soon as possible to ensure that the information can be published in a timely manner.

You'll also want to begin planning well in advance for the next World Conference in Brazil. The location of the conference has now been changed from Sao Paolo to Recife. Recife is on the Atlantic coast; there are numerous flights from Europe and North America. The conference will take place August 6-1, 2014. It's not too soon to put it on your calendar!

In order to encourage participation in the Conference by scholars from developing nations, who often lack institutional support for conference attendance, the Executive Council has approved a budget of up to 20,000€ for individual funding awards. Awards will be competitive; applicants must submit a presentation proposal, budget, and other supporting documentation. More information will be available as the Conference itself comes closer.

Marsha Garrison

REPORT OF THE TREASURER:

Dear colleagues,

In the past months, many of you have paid the (annual) fees. Colleagues who don't have an e-mail address will receive a letter from me next summer. If you did not send me your e-mail address, please do it now. Again I had to delete a number of the members because they did not pay their fees for some years. Soon the members who have

paid their fees for the year 2012 (etc.) will receive the International Survey of Family Law 2012 Edition. If you don't receive a copy, please let me know by e-mail (a.p.vanderlinden@uu.nl). In case you still have to pay for this year (and some members for more years) please send me a (printed) filled in Subscription Form by e-mail as soon as possible.

If you wish to be deleted as a member, which I hope you don't, send me a letter before the end of November 2012, otherwise you have to pay your membership dues for the year 2013. Some members think that they just can pay for one year and that's it. But again: when you are a member, you have to inform me about finishing your membership.

When your address will be changed, please sent me your new full new address and preferably also your e-mail address. We try to keep the membership list updated and with your help we can succeed in that. If you change your address or if you want to be deleted as member, please send me a message as soon as possible, but before the end of November 2012.

Some countries have more specialists in the field of Family and Juvenile Law than the ISFL has members. So, I challenge you to invite at least one colleague to become a member of our Society. You will find the Subscription Form at the ISFL-site. When you cannot find the Form, ask me. It would be nice to have at least 1000 members from all over the World.

We do have the possibility to pay for 5 years. Many members choose for this opportunity, which will save you and the ISFL costs.

In all cases you write me, please do it by using your computer or typewriter. As I wrote before I can't always read your handwriting and especially to your Bank data this gives me a lot of work.

Be a faithful member of the Society and be always keen on the best interest of families and the children who belongs to these families.

Best regards to all!

Adriaan P. van der Linden

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REPORT ON THE INTERNATIONAL SURVEY OF FAMILY LAW:

Work on the 2012 edition of the Survey is progressing well. The publishers have received 24 chapters from a wide range of countries. For the first time in recent memory, this includes chapters from Botswana and Macedonia. This year's book should be published on schedule in July. The General Editor is very happy to hear from people interested in contributing to the 2013 edition.

Investigations are being undertaken as to whether and how the Survey might be listed in the Index to Legal Periodicals and other similar indices.

Any inquiries should be directed to the General Editor, Bill Atkin, Professor of Law at Wellington, New Zealand:

bill.atkin@vuw.ac.nz

REPORT OF THE NEWSLETTER EDITOR:

Please continue to send me short articles dealing with developments in your country that might be of interest to ISFL members. This is particularly useful in the times, like the present, between World Congresses.

Many of you kindly send me updates of changes to your email addresses. This is very important, since otherwise not only will you miss the Family Letter, but also other notices that the Board asks me to send out increasingly often.

When you get these notices, please do not reply to me but to the address indicated in the notice. The most important place to send changes of address is to Adriaan van der Linden, our Treasurer, though I will forward him your notes about address changes that are sent to me.

The instructions for reaching the membership directory on the ISFL website are again included below, in Lynn's notes.

Margaret F. Brinig, Editor
The Family Letter
mbrinig@nd.ed

NOTES ABOUT THE ISFL WEBSITE:

To enter the secure portion of the website, including the membership directory, use the following information:

Username: ISFL

Password: ISFL2006

The ISFL website at <http://www.law2.byu.edu/isfl/index.php> has been updated and revised in the following ways:

First, we have activated the "award plaque" and entitled it "In Appreciation for Exceptional Service to the International Society for Family Law" and put a link for it on the ISFL homepage. The first five recipients are now listed on the digital award plaque.

Second, a new feature has been installed on the ISFL Website. It is entitled "ISFL "Developments Blog and Comments Forum" and the link to it is on the front page (left) of

the ISFL website homepage at <http://www.law2.byu.edu/isfl/>. It is intended to provide a place for ISFL members to post "blog entries" describing interesting new developments in family law in their state, nation, region, or internationally relating to family law subjects in which they have an interest (marriage, adoption, etc.). ISFL members may post "comments" about the blog entries posted by other ISFL members. So this "Developments Blog and Comments Forum" can function like an old bulletin board in your law school building where people could post newspaper clippings, announcements, drafts or summaries of recent legislation, copies or summaries of recent case opinions, and others can react to those postings by adding comments. There is even an entry for ISFL Business where items relating to the ISFL organization can be posted.

Many of our students (the next generation of family law scholars, judges and lawyers) are

very attuned to using such electronic blogs and making such electronic postings and comments. So this will be a way for ISFL member-scholars to begin to get familiar with such technology and to communicate with the rising generation of upcoming family law scholars through technology with which they are very comfortable.

The ISFL Developments Blog and Comment Forum includes simple instructions on how to post an entry are quite simple are included at the "Developments Blog and Comments Forum" at the first page. I invite all members of the ISFL to post an entry on the Developments Blog and to make a comment on someone else's posting on the Comments Forum.

Finally, feedback about suggested corrections and improvements in the ISFL website are welcome. Send such comments

by email to Lynn Wardle at WARDLEL@law.byu.edu.

I invite you to check out these website changes, and to let me know of any significant corrections that need to be made.

Lynn D. Wardle
ISFL Website Editor

The American Association of Law Schools, Family Law Section Website is also available at <http://www.nd.edu/~ndlaw/faculty/brinig/aals/>.

Section members have provided material, but more suggestions would be welcome, including links, class materials, exams you don't mind being generally available, or anything else you'd like to supply. You may write her at mbrinig@nd.edu, and may attach electronic versions of any submissions.

CONFERENCES AND CALL FOR PAPERS:

**Save the Date!
2014 World
Congress
Recife, Brazil, 6-9
August, 2014**

REPORTS ON CONFERENCES:

**International Society of Family Law
North American Regional Conference**
*Sustaining Families: Global and Local
Perspectives*
June 14-16, 2012
University of Iowa College of Law
Iowa City, Iowa

Further details are available at:
http://www.law.uiowa.edu/news-events/familylaw_conference.php

OTHER CONFERENCES OF INTEREST

AFCC is the Association of Family and Conciliation Courts – the premier interdisciplinary and international membership association for professionals dedicated to the resolution of family conflict. AFCC members include the leading practitioners, researchers, teachers and policymakers in the family court arena. Membership in AFCC includes a subscription to the Family Court Review, an interdisciplinary family law journal published quarterly in cooperation with The Center for Children, Families and the Law at Hofstra University School of Law and Wiley-Blackwell.

The AFCC 49th Annual Conference, Attachment, Brain Science and Children of Divorce: The ABCDs of Child Development for Family Law will be held June 6-9, 2012 at the Hyatt Regency Chicago. This year's conference has received unprecedented interest and has sold out early with more than 1200 attending. Like so many issues family practitioners face, the topic of attachment is a difficult one, yet crucial to explore. Much of the discussion that will take place in Chicago began in the July 2011 Family Court Review, a special issue titled "Attachment Theory, Separation, and Divorce: Forging Coherent Understandings for Family Law."

Faculty includes: Allan Shore, PhD, David Geffen School of Medicine, UCLA; Carole George, PhD, Mills College; Andrew Schepard, JD, Hofstra University School of Law; Jennifer McIntosh, PhD, Family Transitions, Australia; Robert Emery, PhD, University of Virginia; Federal Magistrate Tom Altobelli, Sydney, Australia; Kathryn

Kuehnle, PhD, Tampa, FL; Joan B. Kelly, PhD, Corte Madera, CA; and Barbara Jo Fidler, Toronto, ON.

We hope you will consider attending an upcoming AFCC event or becoming a member. Please visit our website www.afccnet.org to learn more about the organization and upcoming events; subscribe to the free monthly AFCC eNEWS for the latest information on conferences, trainings and continuing education opportunities as well as practice tips, research updates and interviews with leading practitioners.

The International Family Justice Judicial Conference 2012

For Common Law/Commonwealth jurisdictions

Dates: 29-31 August 2012

Venue: Shatin Hyatt Hotel, Shatin, Hong Kong SAR

Theme: The Role of Common Law in the Future Development of International Family Justice

Further details are available from IFJJC@judiciary.gov.hk

**Best Regards,
Bebe Pui Ying Chu**

We in South Africa have an annual family law colloquium which will this year be held on 20 and 21 September in Port Elizabeth near the garden route. The colloquium is meant to serve as a forum where we can get to know one another as well as to share information on the research activities of colleagues. There is no restriction on the subjects that may be discussed and related issues from indigenous law to succession law are typically included. There is no formal policy pertaining to the medium of language but experience shows that English is used predominantly (\pm 95% of all presentations). Included in the proceedings is a nice conference dinner at one of the better restaurants in the area.

If any colleague wants to attend he or she will be most welcome to contact me so that I can include him or her on the distribution list.

Kind regards

Robbie Robinson

Robbie.Robinson@nwu.ac.za.

Report on the Second Part of the Sixth Special Commission at the Hague on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention

We had the privilege of representing the ISFL, which has observer status at meetings of the Hague Conference on Private International Law, at the second part of the Sixth Special Commission Meeting on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention. The second part of the Special Commission meeting took place in January 2012.

This Special Commission meeting was broken into two parts primarily so that the question of the desirability and feasibility of a protocol to the 1980 Convention could be discussed at the second part of the meeting. However, the possibility of a protocol was eliminated prior to the start of the meeting because States' responses to a questionnaire and conversations with the Permanent Bureau showed that there was no consensus on the desirability of a protocol. Therefore, discussion of a potential protocol was removed from the agenda before the session commenced.

Accordingly, most of the meeting was devoted to discussions about the possibility of soft law tools and further work in relation to specific subjects, the most notable of which were the following: cross-border recognition and enforcement of agreements resulting from mediation; direct judicial communications; treatment of allegations of domestic violence in cases under the 1980 Convention; international relocation; and, the services provided by the Permanent Bureau of the Hague Conference. Helpful preliminary documents in relation to all of these issues were prepared by the legal staff of the Permanent Bureau and are available at http://www.hcch.net/index_en.php?act=progress.listing&cat=7.

In relation to mediation, there was a general consensus on the need to ensure recognition of agreements made between parties in cross-border disputes involving children, whether those agreements were reached through mediation or other means. Whilst Preliminary Document 13 outlined possible jurisdiction, recognition, and enforcement problems in relation to such agreements, most of the delegates who participated in the discussion stated that they had not encountered such problems. Accordingly,

the Commission recommended setting up an Expert Group to carry out further exploratory research that would identify the extent and nature of the problems and evaluate the benefit of a new instrument in this area.

The discussion in relation to direct judicial communications concerned mainly the view expressed by some countries that there was a need for a legal basis for such judicial communications. Most of those who participated in the discussion took the view that this was primarily an issue for domestic law and did not justify a separate international legal instrument. However, support existed for including an appropriate provision in some future relevant Hague Convention. Both the liaison judges in attendance as well as some others expressed support for expanding the network of liaison judges.

The discussion on domestic violence was based on the proposals put forward at the first part of the Special Commission meeting. However, in contrast to those proposals, the recommendation that was adopted was not limited to domestic violence. Rather, the remit of the suggested Working Group would be to develop a Guide to Good Practice in relation to the interpretation and application of the defense in Article 13(1)(b) of the Convention generally. This outcome emerged despite the fact that a number of participants urged that the recommendation be restricted to domestic violence. In particular, Professor Merle Weiner explained that domestic violence should be dealt with separately because domestic violence was a distinct issue that differed from other circumstances in which the grave risk of harm defense was raised and involved considerations broader than merely the interpretation of Article 13(1)(b). Furthermore, whilst many delegates stated expressly that the Working

Group should include experts in the dynamics of domestic violence, the recommendation refers more neutrally to "cross-disciplinary experts." It is indeed to be hoped that those responsible for setting up the working group will remember that it is primarily designed to consider the special issues that arise when the taking parent is fleeing from domestic violence and will appoint appropriately qualified experts. A colloquy at the concluding session between the Swiss delegate and the chairman, Justice Jacques Chamberland, suggested that the Guide to Good Practice was to be "comprehensive."

The discussion on international relocation revealed that there was no consensus on the need for an international instrument in this area or for further work by the Hague Conference in relation to this topic. Whilst some delegates expressed the desirability of more uniformity in this area, others disagreed. The shortcomings of the Washington Declaration, which had resulted from an international judicial conference co-organized by the Hague Conference and the International Center for Missing and Exploited Children in 2010, were also noted. In the end, the Special Commission recommended further study of the different approaches countries employ as well as the importance of countries ratifying or acceding to the 1996 Convention.

In the discussion on the services provided by the Permanent Bureau, much appreciation was expressed for the work done by the Bureau in providing support throughout the world in relation to the operation of the 1980 and 1996 Conventions. However, there was a consensus that the Bureau should not extend its role to monitoring compliance with the Convention but should remain neutral. In this respect, Merle Weiner commented that the *amicus curiae* brief submitted by the Bureau in the US Supreme

Court case of *Abbott v Abbott* on behalf of the petitioner appeared to deviate from the policy of neutrality.

The Permanent Bureau reported on informal discussions that they had had with the International Civil Aviation Organization about the development of a standardized consent form for international travel with children. Despite the potential usefulness of standardizing the form for countries that currently require written consent, delegates expressed concern that endorsement of such a project might be seen as approving the requirement for written consent in principle. Thus, it was decided that the project should be dropped.

Some concerns were expressed about the quality of INCADAT, the database containing summaries of cases under the 1980 Convention and commentaries thereon. Professor Carol Bruch referred to inaccuracies and the dependence on summaries written by anonymous correspondents, whose credentials could not be verified. In this context, Dr. Rhona Schuz suggested that wherever possible the full text of the decision should be provided, which could then be translated by interested readers. Professor Peter MeEleavy, the INCADAT Legal Consultant, explained that changes were being made to address the concerns expressed, but that these depended on the resources available.

RECENT PUBLICATIONS OF NOTE BY ISFL MEMBERS:

(Compiled for this issue only by Margaret Brinig)

1. Family Law in General: History; Theories; Overviews

Bea Verschraegen, The Right to Private and Family Life, the Right to Marry and to

Finally, it is worth mentioning that we benefitted during the meeting from several events that were unique to this meeting. In particular, Professor Carol Bruch gave an informative lunchtime presentation on the damaging effect of separating infants from primary caretakers to whom they were attached, including reference to recent brain research showing how stressful events impaired normal development of parts of the brain. The presentation shed light on such issues as the harm children may experience when abducted from a primary caregiver as well as the harm children may face when returned unaccompanied by a primary caregiver or when returned into foster care.

We would like to thank the ISFL Executive for giving us the opportunity to represent the ISFL at this meeting.

Rhona Schuz and Merle Weiner

Volume 5 of the *Family in Law Review*, the journal of the Center for the Rights of the Child and the Family at Sha'arei Mishpat Law School, has now been published. This volume includes papers given at the 2009 ISFL Israel Regional Conference, which was co-convened by myself, Professor Shahar Lifshitz of Bar Ilan University and Professor Lynn Wardle. A flyer advertising the volume is included on the ISFL website.

Rhona Schuz, schuz@mishpat.ac.il.

Found a Family, and the prohibition of Discrimination, in Boele-Woelki/Fuchs (eds), *Legal Recognition of Same-Sex Relationships in Europe* (2012) pp 255-270

Lynn Wardle, The Boundaries of Belonging: Allegiance, Purpose, and the Definition of Marriage, 25 *Brigham Young University Journal of Public Law* 287 (2011)

2. Before/Creation of Spousal or Quasi-Spousal Relations

3. Before/Creation of Parent-Child or Similar Relations

4. Spousal Relations in the Ongoing Family or Similar Relations

5. Parent-Child Relations in the Ongoing Family or Similar Relations

Margaret F. Brinig, Can Law Shape the Development of Unconditional Love in Children? In *Best Love of the Child* (with Steven L. Nock), 317-46 Timothy P. Jackson, ed., Eerdman's, 2011.

6. Termination/Post-Relations of Spouses & Quasi-Spouses

Marsha Garrison, What's Fair in Divorce Property Distribution: Cross-National Perspectives from Survey Evidence, 72 *Louisiana Law Review* 57 (2011)

Patrick Parkinson, "Another Inconvenient Truth: Fragile Families and the Looming Financial Crisis for the Welfare State" (2011) 45 *Family Law Quarterly* 329-352.

7. Termination/Post-Relations of Parents and Children

Judith Cashmore, and *Patrick Parkinson*, "Reasons for Disputes in High-Conflict Families", (2011) 17 *Journal of Family Studies* 186-203.

Judith Cashmore and *Patrick Parkinson*, "Parenting arrangements for young children: Messages from research" (2011) 25 *Australian Journal of Family Law* 236-257.

NOTE: The Newsletter will publish notices of recent publications dealing with family law topics if the following information—Name of author, title of article or chapter, title of book or journal in which it is published, the volume and pages, the year of publication (and if the title of the article, chapter and/or book or journal is not in English a translation of the same into English - so that the entry can be placed in the appropriate category)—is sent to Prof. Ursula Basset, ucbasset@yahoo.com.

OTHER PUBLICATION NOTES:

Bea Verschraegen. Private International Law (2012, Manz publ.; in German) 286 pp.

Fifty Years in Family Law - Essays for Stephen Cretney (ed. By Chris Barton and Rebecca Probert, Intersentia, 2012)
(includes contributions by ISFL members Andrew Bainham, Nigel Lowe, Gillian Douglas, John Eekelaar, Ruth Deech, and Sanford Katz)

Patrick Parkinson, Australian Family Law in Context:
Patrick Parkinson, Australian Family Law in Context: Commentary and Materials, 5th ed 2012

Personal Notices:

The Council of Legal Education, consisting of the Caribbean regional Chief Justices, Attorneys-General, representatives of the Bar Councils, the law schools and the Faculty of Law, is the body responsible for training lawyers in the Caribbean through Council's three law schools - the Norman Manley Law School in Jamaica, the Hugh Wooding Law School in Trinidad and Tobago and the Eugene Dupuch Law School in The Bahamas. On March 29, 2012, in commemoration of the Council's 40th anniversary, *Hazel Thompson-Ahye* was awarded its Smokey Joe Award for Outstanding Service to the Council Of Legal Education. Hazel recently resigned her position as Senior Tutor at the Eugene

Dupuch Law School in The Bahamas. She served the Council for 25 years, first at the Hugh Wooding Law School as an Associate Tutor for one year, then for fourteen years as Director of the Legal Aid Clinic. In 2002, she was appointed Senior Tutor at the Eugene Dupuch Law School in The Bahamas with responsibility for the academic programme and for teaching first Family Law Practice and Procedure and Evidence and more recently, Family Law Practice and Procedure and the Law of Evidence. She returns to Trinidad and Tobago at the conclusion of this academic year.

Bea Verschraegen was elected this spring to the American Law Institute.