

Skeleton Affidavit

**AFFIDAVIT OF [_____] IN RELATION TO APPLICABLE NEW ZEALAND
LAW IN RELATION TO APPLICATION IN ACCORDANCE WITH THE HAGUE
CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD
ABDUCTION FOR RETURN OF CHILD/REN TAKEN FROM NEW ZEALAND**

REQUESTING CENTRAL AUTHORITY OR APPLICANT: New Zealand Central Authority [_____] [“___”] of [____], [_____].

REQUESTED AUTHORITY: [_____]

I, [____], Barrister of the High Court in New Zealand, swear:

1. I am a Barrister and Solicitor in [_____] and have [___] years' experience practising in family law in New Zealand.
2. I have knowledge of New Zealand family law and the Hague Convention [if you have specific expertise, have appeared in a reported decision, presented seminars, published articles, etc this should be inserted here].
3. I make this affidavit for use in proceedings pursuant to the Hague Convention on the Civil Aspects of International Child Abduction between [_____] [“___”] and [_____] in relation to his/her/their child/ren:
 - (a) [_____] [“___”] born [_____] now aged [_____] months old;
 - (b) [_____] [“___”] born [_____] now aged [_____] months old; and
4. I have been appointed to act for [_____] at the request of the New Zealand Central Authority. She/He is the mother/father of the child/ren referred to above.
5. I have read [_____] evidence. He/She has alleged that the abovenamed child/ren have been wrongfully removed from New Zealand by their father/mother and are being retained in [_____] in breach of his/her rights of custody in relation to each of the child/ren and in breach of his/her right to determine the place of the child/ren's residence.

New Zealand Law

6. The Care of Children Act 2004 (“the Act”) is the Act which defines parents’ rights and responsibilities in relation to their children. It came into effect on 1 July 2005.
7. New Zealand translated the Convention provisions into sections of the Care of Children Act 2004. Those parts of the Convention derived from Articles 3 and 5 have been translated into s 97. Other relevant sections include ss 15 and 16, the sections defining guardianship rights in this jurisdiction and how those rights are exercised. Copies of the relevant sections are **annexed**. (Attach extracts from published copies of sections and make sure have used current version).¹
8. The cumulative effect of these sections is that if a parent enjoys rights of guardianship then he/she will have rights of custody pursuant to the Convention.

Law as applicable to this application

Example paragraphs

9. In this case the applicant, [_____] has rights of custody by virtue of the fact that he is a guardian of a child pursuant to s 17. This is because he was living together with the respondent, [_____] , in the nature of marriage at the time the child was born

or
10. Pursuant to s 15 and s 16 of the Care of Children Act 2004, the mother and father as joint guardians have rights and responsibilities in respect of the child which role includes the role of providing day-to-day care and the right to determine the child’s place of residence.

or
11. Although the mother had a parenting order in her favour it did not extinguish the father’s rights. He continued to exercise a day-to-day care role and his right to determine the child’s place of residence was unaffected by the court order.

¹ If you copy type the sections there is a risk of typographical errors.

12. The applicant father has sworn an affidavit in support of his application for return of the children. In that affidavit it is his evidence that at the time the child was removed from New Zealand and retained in [_____]:
- (a) The child/ren was habitually resident in New Zealand.
 - (b) He had a parenting order (or agreement) in his favour providing him with the right to day-to-day care of the child/ren on [_____] days and was, in fact, providing that care.
 - (c) He was a guardian pursuant s 17 and thus had the right to determine place of residence.
 - (d) He had not relinquished his rights of custody. He had agreed to the child/ren travelling to [_____] but had not agreed to him/her remaining in the care of [_____] beyond that period.
 - (e) He did not consent to the child/ren's removal from his day to day care nor to his retention in [_____].

Conclusion (possible example)

13. The applicant is permitted to seek the return of the child/ren to New Zealand as his evidence establishes the jurisdiction or the requirements necessary for the making of the application pursuant to s 102 of the Care of Children Act 2004 in that :
- (a) The child/ren has/have been removed from [_____] and retained in [_____], and
 - (b) The child/ren was removed from [_____] and retained in [_____] a breach of his rights of custody in respect of the child/ren within the meaning of Article 3 of the Hague Convention, and
 - (c) At the time of the child/ren's removal from [_____] and retention in [_____] the applicant was exercising his rights of custody, and

- (d) The child/ren was habitually resident in New Zealand immediately being removed and retained in [_____].

[_____]

SWORN at [_____] this day of [_____] 20__ before me:

A Solicitor of the High Court of New Zealand