

COURT OF QUEEN'S BENCH OF ALBERTA

FAMILY LAW PRACTICE NOTE "6"

INTERNATIONAL CHILD ABDUCTION - HAGUE CONVENTION

EFFECTIVE MARCH 1, 2011

I. Preamble

1. *The 1980 Hague Convention on the Civil Aspects of International Child Abduction* (the "Hague Convention") became law in Alberta on February 1, 1987, pursuant to the *International Child Abduction Act*, R.S.A. 2000, c. I-4.
2. The objectives of the Hague Convention are:
 - (a) to secure the prompt return of children wrongfully removed to or retained in any contracting state; and
 - (b) to ensure that rights of custody and of access under the law of one contracting state are effectively respected in the other contracting states.
3. The Hague Convention requires that any applications for the return of a child must be handled using the most expeditious proceedings available.
4. The Family Law Branch of Alberta Justice fulfills the responsibilities of the Alberta Central Authority pursuant to the Hague Convention.
5. A Canadian Network of Contact Judges (the "Network") was established to deal with issues of inter-jurisdictional parental child abduction and inter-jurisdictional cases of child custody. The Network reports to the Family Law Subcommittee of the Canadian Judicial Council. The Network has asked each court to set up a pool of specially trained judges to deal with inter-jurisdictional custody and parental child abduction cases, including applications pursuant to the Hague Convention.
6. To ensure that return applications under the Hague Convention are dealt with expeditiously, the Court of Queen's Bench in Alberta approved a Procedural Protocol on May 28, 2008. The Procedural Protocol is the basis of this Practice Note.

II. PROCEDURAL PROTOCOL

7. The Chief Justice of the Court of Queen's Bench will ask the Alberta Central Authority to advise him, or his designate, as well as the Chief Judge of the Provincial Court of Alberta, or her designate, when it receives an application under the Hague Convention for the return of a child who has been wrongfully removed to or retained in the Province of Alberta ("Notice of Return Application"). Upon receiving this Notice from the Central

Authority, the Chief Justice or his designate will ensure that a copy of the Notice of Return Application is filed with the Clerk's Office.

8. Article 16 of the Hague Convention provides that where a court has notice of a wrongful removal or retention of a child, the court shall not proceed on the substantive issues regarding custody or access regardless of where the return application is brought, i.e. regardless of whether the child is removed to or retained in Alberta until the return application has been determined.
9. The filing of a Notice of Return Application will be sufficient to open a court file where no file exists. This would subsequently be followed in the normal course by the filing of a return application.
10. The return application will be commenced in the court as an Application under the existing file or, where there is no existing file, then under the file opened by the Clerk. The Rules of Court with respect to notice, service, evidence and procedure will apply, with regard to the Hague Convention's requirements for ensuring expediency and priority.
11. Article 29 of the Hague Convention allows persons to bring return applications to the court directly, rather than through the Central Authority. The Central Authority is to be notified of direct return applications.
12. The Central Authority is to be notified of the commencement of any court proceedings in Alberta respecting custody or private guardianship of, or access to, a child who is the subject of a Notice of Return Application or of a return application in another jurisdiction, until such time as the return application is determined.
13. The responsibility for notifying the Central Authority regarding the commencement of applications described in paragraphs 11 and 12 is with the party bringing the application. The court must be satisfied that the Central Authority has been notified of such an application before proceeding to consider it on the merits.
14. This Practice Note is to be modified where appropriate and where necessary to apply to proceedings to enforce child protection orders under *The Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12.