

**The 1980 Hague Convention on the Civil Aspects of International Child Abduction
(Hague Convention)**

**RECOMMENDED PRACTICES FOR
COURT-TO-COURT JUDICIAL COMMUNICATIONS**

Background:

The Canadian Judicial Council, which has approved the establishment of the Canadian Network of Contact Judges, has given the Network the mandate to explore the concept of judicial networking and collaboration in cases of child abduction and custody. The following checklist sets out the Network's recommendations for such practices.

Checklist:

INITIATING CONTACT WITH FOREIGN COURTS

- A. Due process and transparency
1. Every judge engaging in direct judicial communication must respect the law in his or her jurisdiction.
 2. Notification of the Parties about communication
 - a) The parties and/or counsel involved should be notified in advance if possible of the nature of the proposed communication, provided that such notice does not unduly delay the process.
 3. Record of the communication
 - a) Judges involved in a particular communication should keep a record of what was discussed preferably using a recording device or court reporter.
 - b) The record should be available to the parties and the judge in the other jurisdiction if requested.
 - c) Any correspondence, emails or other written communication between judges should be preserved for the record.

4. Participation of the parties

- a) If both judges involved in the communication agree, the parties or their representative may be permitted to be present during the communication.
- b) If both judges involved in the communication agree to permit one party or representative to be present, then the other party or representative should be permitted to be present.
- c) Unless it would unduly delay the process) parties or their representative would be encouraged to be present (e.g. via conference call facility).
- d) If both judges involved in the communication agree, the parties or their representative may be permitted to speak during the communication.
- e) If the judges involved in the communication agree to permit one party or representative to speak, then the other party or representative should be permitted a chance to answer.
- f) Consideration may be given to allow counsel to submit a question or provide information relating to the proposed communication.

5. Language

- a) Because of the necessity for clarity and precision, where there are language differences, and where interpretation is needed, professional interpreters are preferred.

6. Consensus or Arrangement

- a) Confirmation of any consensus or arrangements reached as between judges should be confirmed in writing and made available to the parties.

B. Nature of the request to communicate

- 1. Is there a question of foreign (interprovincial or international) law or procedure to discuss with a judge in the foreign jurisdiction?
 - a) Is there a case pending before the foreign court?

- b) If so, is there a need to speak with the judge who actually handled portions of the case, or will any judge in the foreign jurisdiction suffice?
 - c) If no case is pending, consider the difficulty in finding a judge with whom to communicate in the foreign jurisdiction. In this instance, if there is a Network judge consider contacting that judge.
2. Avoid discussions with the foreign judge about the merits of the case.
3. Can the question be answered or dealt with by the Central Authority in your jurisdiction or the Central Authority in the foreign jurisdiction? If it can, consider having the Central Authority address the issue or obtain the information.
4. Specific examples of questions of foreign law or procedure that may arise include:
- a) scheduling of the case in the foreign jurisdiction:
 - i) making of interim orders, e.g. support, protection orders;
 - ii) availability of expedited hearings;
 - b) availability of protective orders for the child or other parent;
 - c) can the foreign court accept and enforce undertakings offered by the parties in your jurisdiction;
 - d) is the foreign court willing to entertain a mirror order (same order in both jurisdictions) if the parties are in agreement;
 - e) are criminal charges pending in the foreign jurisdiction against an abducting parent;
 - f) can the abducting parent return to the foreign jurisdiction if an order is made returning the child;
 - g) what services are available to the family or the child upon the return of the child;
 - h) logistics of returning the child.

C. Setting up the communication and initiating the contact

1. Where appropriate, invite the parties or their representative to make submissions as to whether there should be court-to-court communications and the nature of the communications;
2. If the initiating judge decides such communication should be made in interprovincial or territorial matters, they may do so by:
 - a) contacting the judge directly; or
 - b) contacting the Network judge in their jurisdiction who will assist in facilitating communication between the initiating judge and the appropriate judge in the other jurisdiction.
3. If it is an international matter, the initiating judge should consider contacting either their local Network judge or one of the two Canadian International Liaison judges who will assist in facilitating communication between the initiating judge and the appropriate judge in the other country.
4. The initial communication should be in writing (fax or e-mail) and should identify:
 - a) the initiating judge;
 - b) the nature of the case (with due regard to confidentiality concerns);
 - c) the issue on which communication is sought;
 - d) whether further documents should be exchanged;
 - e) when the communication should occur (with due regard to time differences);
 - f) any specific questions which the initiating judge would like answered;
 - g) any other pertinent matters.
5. Unless the initiating judge decides otherwise, all written communications should be copied to the parties or their representative.
6. If the other jurisdiction is not English/French speaking, the initiating judge should make their best efforts to have the initial communication appropriately translated.