

PRACTICE DIRECTION # 16

PROCEDURAL PROTOCOL FOR THE HANDLING OF RETURN APPLICATIONS UNDER THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, SUPREME COURT OF THE NORTHWEST TERRITORIES

Preamble

- 1) The *1980 Hague Convention on the Civil Aspects of International Child Abduction* (“the *1980 Hague Convention*”) became the law in the Northwest Territories on June 17, 1987 pursuant to section 3 of the *International Child Abduction Act*, R.S.N.W.T. 1988, c.I-5.
- 2) Article 1 of the *1980 Hague Convention* provides the following objectives:
 - 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) Article 11 of the *1980 Hague Convention* provides in part as follows:

The judicial or administrative authorities of contracting states shall act expeditiously in proceedings for the return of children.
- 4) Article 6 of the *1980 Hague Convention* provides that each contracting state shall designate a Central Authority to discharge the duties imposed by the *Convention*. The Minister of Justice, Government of the Northwest Territories, fulfills the responsibilities of Central Authority pursuant to the *1980 Hague Convention* for the Northwest Territories.
- 5) To ensure that return applications under the *1980 Hague Convention* are dealt with expeditiously, the attached procedural protocol has been developed by the Supreme Court of the Northwest Territories.

PROCEDURAL PROTOCOL

- 1) Article 16 of the *1980 Hague Convention*¹ provides that where a court has notice of the

¹Article 16 of the *1980 Hague Convention* provides: After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained

alleged wrongful removal or retention of a child, the Court shall not deal with the merits of rights of custody until an application for return pursuant to the Convention ("return application") has been determined, unless a return application is not filed within a reasonable time after notice is given to the Court.

- 2) The Senior Judge of the Supreme Court of the Northwest Territories will ask the Northwest Territories Central Authority to advise him or her when they intend to initiate a return application.
- 3) Notice as contemplated under Article 16 may be provided by the Central Authority filing a Hague Convention Notice in the form annexed hereto as Schedule "A", notifying the Court of the case. The filing of a Hague Convention Notice 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.
- 4) Article 29 of the *1980 Hague Convention*² allows persons to bring return applications directly, rather than through the Central Authority. The Central Authority is to be notified of direct applications.
- 5)
 - (a) A return application, whether brought directly or through the Central Authority, will be commenced in the Court by originating notice (Form 4) and the existing Rules of Court, with respect to notice, service, evidence and procedure will apply.
 - (b) Where the Applicant or Central Authority seeks to abridge time or to proceed on an urgent or without notice basis, the Court may permit this where the circumstances warrant proceeding in this way.
 - (c) When the return application first comes before the Court, the presiding judge or another judge of the Court, as the case may be, will undertake the responsibility of:
 - (i) establishing appropriate timelines for the filing and service of further materials; and
 - (ii) setting the application down for hearing


shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

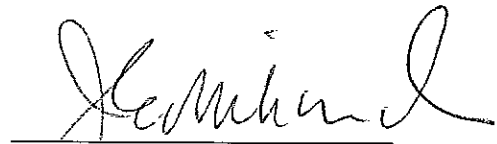
²Article 29 of the *1980 Hague Convention* provides: This Convention shall not preclude any person, institution or body who claims there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

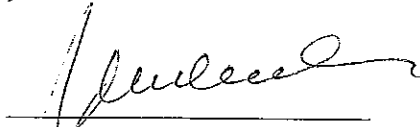
and in carrying out these responsibilities will have regard to the requirement for an expeditious determination of the matter. The Clerk of the Court is to be advised that return applications pursuant to the *1980 Hague Convention* are to be given priority in scheduling.


- (d) Any party, including a left-behind parent, may appear by way of telephone conference or video conference where appropriate and where facilities are available. The Central Authority will facilitate any such arrangements for the participation of the left-behind parent.
- 6) The formal order resulting from the return application should be taken out within 24 hours of the decision being rendered.
- 7) The Central Authority is to be notified of the commencement of any Court proceedings in the Northwest Territories respecting custody or private guardianship of, or access to, a child who is the subject of a Hague Convention Notice or a return application, until such time as the return application is determined by the Court.
- 8) The responsibility for notifying the Central Authority regarding the commencement of applications described in paragraphs 4) and 7) above rests 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.

Adopted by the Judges of the Supreme Court of the Northwest Territories on January 13, 2009.


Justice J.Z. Vertes


Justice J.E. Richard


Justice V.A. Schuler


Justice L.A. Charbonneau


Justice D.M. Cooper

Schedule A

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

A..B.C.

Applicant

- and -

D.E.F.

Respondent

HAGUE CONVENTION NOTICE

TO: The Clerk of the Court

I require you to:

1. TAKE NOTICE that the Applicant, A.B.C., alleges that the Respondent, D.E.F., is wrongfully retaining the children, X and Y, habitual residents of Panama, in Yellowknife, NWT, Canada, within the meaning of Article 3 of the Hague *Convention on the Civil Aspects of International Child Abduction*.
2. TAKE NOTICE that a request for return of the children to their place of habitual residence pursuant to the provisions of The Hague *Convention on the Civil Aspects of International Child Abduction* has been received by the Central Authority for the Northwest Territories. The request is being processed and it is anticipated that proceedings will be brought in the Supreme Court of the NWT, seeking an Order for the children's return to their habitual residence.

3. TAKE NOTICE that, pursuant to Article 16 of the said *Convention*, the judicial or administrative authorities of the Northwest Territories “shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this *Convention* or unless an application under this *Convention* is not lodged within a reasonable time following receipt of the notice.”

Department of Justice
Government of the NWT
Counsel for the Central Authority
For the Northwest Territories

Per: _____
Counsel

Notes:

1. Where there is no open court file dealing with custody of the child(ren), the Applicant in the Hague Convention Notice will be the parent who alleges wrongful retention of the child(ren).
2. Where there is an open court file dealing with custody of the child(ren), the Hague Convention Notice is to be filed in that action with the style of cause in that action.

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NORTHWEST TERRITORIES

BETWEEN:

A..B.C.

Applicant

- and -

D.E.F.

Respondent

HAGUE CONVENTION NOTICE
