

## **PRACTICE NOTE 40**

### **Hague Convention Protocol**

#### **PROCEDURAL PROTOCOL FOR THE HANDLING OF RETURN APPLICATIONS UNDER THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION PRINCE EDWARD ISLAND SUPREME COURT - FAMILY DIVISION**

#### **Preamble**

- 1) The *1980 Hague Convention on the Civil Aspects of International Child Abduction* ("the *1980 Hague Convention*") became the law in Prince Edward Island pursuant to s-s. 28(2) of the ***Custody Jurisdiction and Enforcement Act***.
- 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*<sup>1</sup> provides in part as follows:

The judicial or administrative authorities of contracting states shall act expeditiously in proceedings for the return of children.
- 4) The Minister of Justice and Public Safety and Attorney General, through Loretta Coady MacAulay, Manager of the Family Law Centre, fulfills the responsibilities of Central Authority pursuant to the *1980 Hague Convention* for Prince Edward Island.
- 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 Prince Edward Island.

#### **PROCEDURAL PROTOCOL**

- 1) The Chief Justice of the Supreme Court of Prince Edward Island will ask Prince Edward Island's Central Authority to advise Justice Cheverie, or in his absence, the Chief Justice, when it becomes aware of an intent to initiate proceedings in Prince Edward Island for the return of a child pursuant to the *1980 Hague Convention on the Civil Aspects of International Child Abduction* ("the *1980 Hague Convention*").

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<sup>1</sup>Schedule to *Custody Jurisdiction and Enforcement Act* R.S.P.E.I. 1988, Cap. C-33

- 2) Article 16 of the *1980 Hague Convention*<sup>2</sup> provides that where a court has notice of the 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.
- 3) When Article 16 is invoked and the Supreme Court of Prince Edward Island receives notice of an alleged wrongful removal or retention on the filing of a return application, notice as contemplated under Article 16 may also be provided by the Central Authority filing a requisition notifying the court of the case. The filing of a Requisition giving notice under Article 16 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)(a) The return application will be commenced in the court as a Notice of Application (Form 14E) and the existing Rules of Court, with respect to notice and service under Rule 38, and evidence and procedure, will apply.
- (b) Where the Applicant 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 stand-by judge, as the case may be, will undertake the responsibility of:
  - (i) establishing appropriate time lines for the filing and service of further materials; and
  - (ii) setting the application down for hearingand in carrying out these responsibilities will have regard to the requirement for an expeditious determination of the matter. The trial coordinator has been advised that return applications pursuant to the *1980 Hague Convention* are to be given priority on the setting of times.
- (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, through the Minister of Justice and Public Safety and Attorney General, will facilitate any such arrangements for the participation of the left behind parent.

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<sup>2</sup>Article 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 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.

- 5) Unless the order is signed when the judge decides on the Application for Return, at that time an appointment should be made to meet with the same judge to have the order signed. This should take place within 24 hours of the decision being rendered. Any request for a stay of the order could be considered at that time.
- 6) Article 29 of the *1980 Hague Convention*<sup>3</sup> allows persons to bring return applications directly, rather than through the Central Authority. The Central Authority is to be notified of direct applications.
- 7) The Central Authority is to be notified of the commencement of any court proceedings respecting custody or private guardianship of, or access to, a child who is the subject of a Requisition giving notice as contemplated by Article 16 or a return application, until such time as the return application is determined by the Court.

March 18, 2011

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<sup>3</sup>Article 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.

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