



THE PROVINCIAL COURT
OF BRITISH COLUMBIA

Effective Date: *17 May 2021*

FAM 04

PRACTICE DIRECTION

PROCEDURAL PROTOCOL - RETURN APPLICATIONS UNDER THE *1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION*

Summary

The *1980 Hague Convention on the Civil Aspects of International Child Abduction* (the “*1980 Hague Convention*”) became the law in British Columbia on December 1, 1983 pursuant to Part 4 of the *Family Relations Act*. The *Family Law Act*, in force since March 18, 2013, incorporates the *1980 Hague Convention* in section 80, Part 4 (Care of and Time with Children).

Background

Article 1 of the *1980 Hague Convention* provides the following objectives:

- to secure the prompt return of children wrongfully removed to or retained in any contracting state; and
- to ensure that rights of custody and of access under the law of one contracting state are effectively respected in the other contracting states.

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.

The Legal Services Branch of the British Columbia Ministry of Justice exercises the responsibilities of the Central Authority pursuant to the *1980 Hague Convention* for British Columbia.

The Hague Special Commission recommended that Contracting States should actively encourage international judicial co-operation, including the attendance of judges at judicial conferences by exchanging ideas and communications with foreign judges or by exploring the possibilities of direct communication on specific cases (with accepted safeguards).

To ensure that return applications under the *1980 Hague Convention* are dealt with expeditiously and that proper safeguards are in place for direct judicial communication the following procedural protocol has been adopted by the Provincial Court of British Columbia (the “Court”).

Procedural Protocol

A: Handling Return Applications

1. The Chief Judge of the Provincial Court of British Columbia will ask British Columbia’s Central Authority to notify the Chief Judge or one of the Associate Chief Judges of the Court when it becomes aware of an impending application in the Provincial Court for the return of a child pursuant to the *1980 Hague Convention*. Where practicable, the Chief Judge or the Associate Chief Judge will assign one of the judges designated to deal with *1980 Hague Convention* matters.
2. Article 16 of the *1980 Hague Convention* 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 *1980 Hague Convention* (a “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 of the *1980 Hague Convention* is invoked and the Court receives a letter from the Central Authority giving notice of an alleged wrongful removal or retention of a child, the letter will be filed in the registry where there are ongoing court proceedings respecting guardianship, parenting, or custody of that child. If there are no ongoing proceedings and no court file exists, a general Provincial Court file will be opened. The Central Authority will also be then notified that there are no ongoing court proceedings. The Central Authority will notify the Court of the status of any impending or actual return application in the Supreme Court.
4. Article 29 of the *1980 Hague Convention* allows persons to bring return applications directly, rather than through the Central Authority. In that event the Court will open a file. The Central Authority is to be notified by the Court of a direct application.
5. The Central Authority is to be notified by the applicant of the commencement of, and any steps taken in, any court proceedings respecting guardianship, parenting, or custody of a child who is the subject of an Article 16 notice or a return application, until such time as the return application is determined by the Court.
6. The return application will be commenced by Application. While the *Provincial Court Family Rules* with respect to notice, service, evidence and procedure will apply, the presiding judge will

use his or her case management authority to expedite the process as appropriate and as is consistent with the summary nature of the process.

7. Where the applicant seeks to abridge time or to proceed on an urgent or without notice basis, the Court may permit this where appropriate.
8. When the return application first comes before the Court, the presiding judge will undertake the responsibility of:
 - a. establishing appropriate timelines for the filing and service of further materials; and,
 - b. setting the application down for hearing;and, in carrying out these responsibilities, will have regard to the requirement for an expeditious determination of the matter. The Judicial Case Manager shall give priority to return applications in the setting of times.
9. Any party, including a left-behind parent, may appear by way of telephone conference or video conference where the assigned Judge considers it appropriate and where facilities for such conferences are available. The Central Authority will facilitate any such arrangements for the participation of the left-behind parent.
10. No family settlement conference will be required for return applications.
11. Any order by the Court will be prepared by the Court Registry, unless the presiding Judge directs otherwise. Unless the order is signed when the presiding judge decides on the return application, at that time a further appearance will be scheduled before the same judge to have the order signed, to take place within 24 hours of the decision being rendered. Any request for a stay of the order may be considered at that time.
12. The Court Registry will provide the Central Authority with a copy of the entered order, along with the reasons for judgment, if transcribed.
13. This protocol shall apply, subject to such modifications as the presiding judge considers necessary, to proceedings to enforce orders respecting parenting time and parenting responsibilities under Part 4 of the *Family Law Act*.

B: Judicial Cooperation and Communication

Judicial cooperation and communication is recommended where appropriate and with the following safeguards:

- a. Communications are to be limited to logistical issues and the exchange of information;
- b. Parties are to be notified in advance of the nature of the proposed communication;
- c. Records are to be kept of the communications;
- d. There is to be confirmation of any agreement reached in writing; and

- e. The parties or their representatives are to be present in certain cases, for example via conference call facilities.

History of Practice Direction

- Original practice direction dated June 12, 2009.
- Amended practice direction dated February 23, 2015 (changes to wording and formatting only).
- January 8, 2020: Housekeeping update to remove “duration” section as contained information duplicated in “History of Practice Direction” section.
- May 17, 2021: Authority statement amended to be consistent with the new *Provincial Court Family Rules* that came into force May 17, 2021, in A.10. reference to “family case conference” changed to “family settlement conference” .

I make this practice direction pursuant to my authority under the *Provincial Court Act*, R.S.B.C. 1996, c. 379, and the *Provincial Court Family Rules*, B.C. Reg. 120/2020.

Melissa Gillespie
Chief Judge
Provincial Court of British Columbia