

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

**ALBERTA COURT OF QUEEN'S BENCH**

---

**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.
6. 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.
7. To ensure that return applications under the Hague Convention are dealt with expeditiously, the attached procedural protocol has been developed by the Court of Queen's Bench in Alberta.

**II. PROCEDURAL PROTOCOL**

8. 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”).

9. Upon receiving this Notice from the Central Authority, the Chief Justice or his designate will ensure that a copy of the Notice is filed with the Clerk’s Office.
10. Article 16 of the Hague Convention<sup>1</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 (the “Return Application”) has been determined, unless a return application is not filed within a reasonable time after notice is given to the Court.
11. Once Notice has been given under Article 16, 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.
12. The filing of a Notice by the Central Authority 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.
13. The return application will be commenced in the Court as a Notice of Motion under the existing file or, where there is no existing file, then the file opened by the Clerk (see above). The existing Rules of Court with respect to notice, service, evidence and procedure will apply, with regard to the Convention’s requirements for ensuring expediency and priority.
14. Article 29<sup>2</sup> 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 applications.

---

<sup>1</sup> Article 16: “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.”

<sup>2</sup>Article 29: “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.”

15. 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 given under Article 16 or of a return application in another jurisdiction, until such time as the return application is determined.
16. The responsibility for notifying the Central Authority regarding the commencement of applications described in sections 14 and 15 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.
17. This protocol 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.

**APPROVED BY**

**THE COUNCIL OF THE COURT OF QUEEN'S BENCH IN ALBERTA**

**ON MAY 28, 2008**