Court of King's Bench of Alberta

# FAMILY LAW PRACTICE NOTE 6

# INTERNATIONAL CHILD ABDUCTION – HAGUE CONVENTION

**Effective July 1, 2022**

## Preamble

1. The *Hague Convention on the Civil Aspects of International Child Abduction (Concluded 25 October 1980),* (the "*Hague Convention*") became law in Alberta on February 1, 1987, pursuant to section 2 of the *International Child Abduction Act*, RSA 2000, c I-4. The *Hague Convention* is an international treaty entered into by Canada and other sovereign countries ("Contracting States").

2. Article 1 of the *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 5 of the *Hague Convention* defines "rights of custody" to include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, and defines "rights of access" to include the right to take a child for a limited period of time to a place other than the child's habitual residence.

4. Article 6 of the *Hague Convention* requires that each Contracting State must designate a Central Authority that is responsible for discharging certain duties under the *Hague Convention*, including receiving and assisting with applications for the return of children who have been wrongfully removed to or retained in a Contracting State. In Canada, in addition to a federal Central Authority, each province and territory has a Central Authority. Alberta Justice fulfills the responsibilities of the Central Authority pursuant to the *Hague Convention* for Alberta.

5. Where a child, habitually resident in a country that is a signatory to the *Hague Convention*, has been wrongfully removed from that country to Canada or unlawfully retained in Canada, a person with rights of custody to the child may make an application in Canada to have the child returned.

6. Article 11 of the *Hague Convention* requires each Contracting State to act expeditiously in proceedings for the return of children. If a court has not determined an application for the return of a child within six weeks from the date the Originating Application is filed, the Central Authority has the right to ask the court for reasons.

7. The Canadian Judicial Council has established the Judicial Committee on Inter-jurisdictional Child Protection ("JCICP") to deal with issues of inter-jurisdictional parental child abduction and inter-jurisdictional child custody cases. The JCICP's role covers both international and inter-provincial/territorial child abduction. The JCICP is led by a member of the Canadian Judicial Council and is comprised of one representative from each province and territory of Canada.

8. The Chief Justice of the Court has appointed a Hague Justice who represents the Court at the JCICP and serves as a case management justice for files in Alberta that engage the *Hague Convention*. The Chief Justice has appointed a second Hague Justice who shares these case-management responsibilities. One Hague Justice is responsible for all *Hague Convention* matters in Wetaskiwin Judicial Centre and North, and the other Hague Justice is responsible for all *Hague Convention* matters in Red Deer Judicial Centre and South.

9. This Practice Note is to ensure that return applications to the Court of King's Bench of Alberta under the *Hague Convention* are dealt with expeditiously.

**Procedural Protocol**

10. Applications pursuant to the *Hague Convention* are to be:

a. dealt with expeditiously and given priority on the setting of times; and

b. assigned to the appropriate Hague Justice to case manage.

11. Pursuant to Article 8 of the *Hague Convention*, any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may seek the assistance of the Central Authority in securing the return of the child by submitting a Request for Return to the Central Authority.

12. When it becomes aware of an impending application in Alberta for the return of a child that meets the criteria under the Convention, the Central Authority shall file with the court notice pursuant to Article 16 of the *Hague Convention* (the "Article 16 Notice") and provide a copy of the Article 16 Notice to the appropriate Hague Justice.

13. Where a court receives an Article 16 Notice, it shall not decide on the merits of the rights of custody until an application for return under the *Hague Convention* has been determined, unless that return application is not made within a reasonable time after the court receives notice.

14. Where an Article 16 Notice has been filed, the Clerk's office shall notify the Central Authority of the commencement of any proceedings respecting rights of custody or private guardianship of, or access to, or contact with the child who is the subject of the Request for Return until such time as the application for return is determined by the court.

15. Neither an Article 16 Notice, nor seeking the assistance of the Central Authority for return of the child pursuant to Article 8, acts as an application to the court for return of the child. The party seeking a court order directing the return of the child must file an

Originating Application (Form 7) pursuant to Rule 3.8 of the Alberta *Rules of Court* clearly identifying it as an application for return of the child pursuant to the *Hague Convention*, and must provide a filed copy of the Originating Application and supporting affidavit(s) to the Central Authority and to the Hague Justice.

16. Pursuant to Article 29, an application for return of the child may also be made directly to the court. Such applications must be made by Originating Application (Form 7) pursuant to Rule 3.8 of the Alberta *Rules of Court* clearly identifying it as an application for return of the child pursuant to the *Hague Convention*, and a filed copy of the Originating Application and supporting affidavit(s) must be provided by the applicant to the Central Authority and to the Hague Justice.

17. Filing either by the Central Authority of an Article 16 Notice, or filing of an Originating Application pursuant to Article 29, acts as a stay of proceedings in the Provincial Court and the Court of King's Bench of any existing rights of custody applications regarding the child named in the Article 16 Notice or in the Originating Application.

18. Where an Article 16 Notice or an Originating Application pursuant to Article 29 is filed, the Clerk's office shall:

a. perform a province-wide search for any existing Provincial Court or Court of King's Bench custody, access/contact, or parenting actions involving the child named;

b. if a Court of King's Bench file exists, assign the same file number to the Article 16 Notice or Originating Application and notify the Central Authority of the existing file;

c. if such a King's Bench file does not exist, assign a new file number to the Article 16 Notice or Originating Application;

d. provide a copy of the Article 16 Notice or Originating Application to the appropriate Hague Justice who shall ensure, in the case of an Originating Application, that a filed copy has been provided to the Central Authority;

e. notify all Judicial Centres in Alberta for both the Provincial Court and the Court of King's Bench that the merits of rights of custody regarding the child named may not be determined by the court until the related return application has been finally decided. Upon receipt of this notification, the clerk's office in each Judicial Centre will prominently mark the file and update the computer systems to alert courts about the effect of the application for return of the child.

19. All applications for return of a child under the *Hague Convention* will be case managed by the Hague Justice to identify the issues in dispute, identify agreed and undisputed facts, establish appropriate timelines for the filing and service of materials, consider alternative dispute resolution, set the matter down for the hearing, conduct any required interjurisdictional judicial communication, and determine any other interim matters pending the hearing. An Originating Application that has been filed returnable in Chambers shall be

adjourned *sine die* and the parties directed to schedule a case management meeting with the Hague Justice.

20. The trial coordinator will coordinate with the Hague Justice to set the matter for hearing in priority to other special chambers and short trial matters. An order resulting from an Originating Application should be provided to the presiding justice, signed and entered expeditiously.

21. Upon determination of the Originating Application by the court, the applicant shall provide the Central Authority with a copy of the order entered and the reasons for the decision, if in writing or if transcribed.

22. This Practice Note 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*, RSA 2000, c C-12.

23. Family Law Practice Note 2 (Family Law Regular and Special Chambers) does not apply to applications pursuant to the Hague Convention.

**APPROVED BY**

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

**ON JUNE 1, 2022**