

SUPREME COURT OF YUKON

PRACTICE DIRECTION
FAMILY-5

Interjurisdictional Child Abduction

Application

This Practice Direction applies to international custody disputes and to proceedings under the *Children's Law Act* with respect to extra-territorial custody issues.

Background

- 1) The *International Child Abduction (Hague Convention) Act*, S.Y. 2008, c. 5 imports the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* ("the 1980 Hague Convention") into Yukon law.
- 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 Department of Justice of the Government of Yukon is the Central Authority for the Yukon, pursuant to s. 3 of the *International Child Abduction (Hague Convention) Act*. The Legal Services Branch of the Yukon Department of Justice fulfills the responsibilities of the Central Authority under this practice direction.
- 5) To ensure that return applications under the *1980 Hague Convention* are dealt with expeditiously, the following procedural protocol has been developed by the Court.

Procedure

- 1) Article 16 of the *1980 Hague Convention*¹ 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* (“return application”) has been determined, unless a return application is not filed within a reasonable time after notice is given to the Court.
- 2) Yukon’s Central Authority shall notify the Court when it has received notice of a return application.
- 3) Notice as contemplated under Article 16 may be provided by the Central Authority filing a Requisition notifying the Court of the case. The filing of a Requisition 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 a person to make a return application directly, rather than through the Central Authority. A person making such an application shall serve the application on the Legal Services Branch of the Yukon Department of Justice.
- 5)
 - (a) The return application shall be commenced in the Court as a Petition and the *Rules of Court* with respect to notice, service, evidence, and procedure will apply.
 - (b) Where the circumstances warrant, the Court may permit an applicant or the Central Authority to commence an application by filing a requisition on a without notice basis, or with an abridgement of time.
 - (c) When the return application first comes before the Court, the presiding judge 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

¹ 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.*

² 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.*

and in carrying out these responsibilities will have regard to the requirement for an expeditious determination of the matter.

- (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 arrangement for the participation of the left-behind parent.
- 6) Where notice of a return application has been given to the Court, any party seeking custody or private guardianship of, or access to, the child, shall serve all documents on the Legal Services Branch of the Yukon Department of Justice, until the return application has been finally determined by the Court.
- 7) Where this Court has notice of a pending return application in another contracting state, any party seeking custody or private guardianship of, or access to, the child, shall serve all documents on the Legal Services Branch of the Yukon Department of Justice.
- 8) Unless the order is signed when the judge decides on the return application, 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 may be considered at that time.

Veale J.
January 15, 2016