



SUPREME COURT OF BRITISH COLUMBIA

Effective Date: 2021/03/01

Number: FPD - 16

Title:

Practice Direction

Return Applications under the *1980 Hague Convention on the Civil Aspects of International Child Abduction* - Procedural Requirements

Summary:

The *1980 Hague Convention on the Civil Aspects of International Child Abduction* became the law in British Columbia on December 1, 1983 pursuant to Part 4 of the *Family Relations Act* and continues to be law pursuant to section 80 of the *Family Law Act*. This Practice Direction describes the procedural protocol which the court has adopted to ensure that return applications are dealt with expeditiously.

Direction:

1. This Practice Direction replaces FPD 9 which is rescinded.
2. Return applications brought pursuant to the *1980 Hague Convention on the Civil Aspects of International Child Abduction* must adhere to the procedural protocol attached as Schedule A and available on the court's website at the following link:

[https://bccourts.ca/supreme_court/practice_and_procedure/practice_directions/family/FPD - 16 Return Applications pursuant to 1980 Hague Protocol - Schedule A March 1, 2021.pdf](https://bccourts.ca/supreme_court/practice_and_procedure/practice_directions/family/FPD-16_Return_Applications_pursuant_to_1980_Hague_Protocol_-_Schedule_A_March_1,_2021.pdf)

Chief Justice C. E. Hinkson

SCHEDULE A

Procedural Protocol for the Handling of Return Applications under the *1980 Hague Convention on the Civil Aspects of International Child Abduction*

Preamble

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* and continues to be law pursuant to section 80 of the *Family Law Act*.

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.¹

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 the Attorney General exercises the responsibilities of Central Authority pursuant to the *1980 Hague Convention* for British Columbia.

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 British Columbia.

Procedural Protocol

1. The Chief Justice of the Supreme Court of British Columbia will ask British Columbia's Central Authority to notify the Chief Justice or the Associate Chief Justice when it becomes aware of an impending application for the return of a child pursuant to the *1980 Hague Convention*. Where practicable, the Chief Justice or the Associate Chief Justice will assign one of the judges designated to deal with *1980 Hague Convention* matters.

¹ Article 5 of the *1980 Hague Convention* provides:

For the purposes of this Convention -

- a) "rights of custody" shall 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;
- b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

2. Article 16 of the *1980 Hague Convention*² 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 the “rights of custody and access” 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 is invoked and the Supreme Court of British Columbia 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 is an ongoing proceeding respecting the “rights of custody and access” of that child. Where there are no ongoing proceedings and no court file exists, the letter giving notice under Article 16 will be sufficient to open a court file. In the normal course, the filing of a return application would follow the notice.
4. Article 29 of the *1980 Hague Convention*³ allows persons to bring return applications directly, rather than through the Central Authority. The Central Authority is to be notified by the applicant 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 the “rights of custody and access” 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 petition. While the Supreme Court 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 Supreme Court of British Columbia Court may permit this where appropriate.
8. When the return application first comes before the Supreme Court of British Columbia, the presiding judge will undertake the responsibility of:
 - a. establishing appropriate timelines for the filing and service of further materials; and

² 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.

³ 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.

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 trial coordinator is to be advised that return applications are to be given priority on the setting of times.

9. 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 arrangements for the participation of the left-behind parent.
10. No judicial case conference will be required for return applications.
11. 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 applicant 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 regarding parenting arrangements under Part 4 of the *Family Law Act*.