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## 1. GENERAL BACKGROUND

Canada is a Federal nation comprising 10 Provinces and 3 Territories.<sup>1</sup> With the exception of Quebec, all Provinces and Territories operate a Common Law jurisdiction.<sup>2</sup> In Quebec the law is codified and continues to be influenced by the French Legal System, particularly in the area of civil matters.<sup>3</sup> The Federal Government has the constitutional power to sign and negotiate international treaties and dependent on the subject matter, an international treaty may be implemented at either Federal or Provincial level.

### 1.1 IMPLEMENTATION OF THE CONVENTION

Canada was one of the three original ratifying States bringing the 1980 Hague Convention on the Civil Aspects of International Child Abduction into force in 1983. However, as family law in Canada falls within the constitutional jurisdiction of the Provinces and Territories the Convention had to be implemented at a Provincial level and this was completed throughout Canada by 1 April 1988. Some jurisdictions implemented the Convention by including it into existing legislation while others created separate Acts.<sup>4</sup> Quebec is distinctive in that its implementing legislation, just like Australia, has effectively re-written the Convention. Quebec's legislation has expanded the definition of wrongful removal or retention to include cases where custody, or modification of rights of custody, proceedings have been instigated in Quebec or other requesting States and the removal or retention would prevent the execution of the decision to be rendered.<sup>5</sup>

### 1.2 OTHER CONTRACTING STATES ACCEPTED BY CANADA

Canada, as a member State of the Hague Conference ratified the Convention and as with all Contracting States Canada must accept all ratifications. Nevertheless, under Article 38, non-Member States may accede to the Conven-

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<sup>1</sup> Nunavut, the third Territory came into existence at the beginning of April 1999.

<sup>2</sup> Preliminary National Report – Canada. Presented at International Child Custody, A Common Law Judicial Conference, Washington, DC, 17-21 September 2000. (Hereafter 'Preliminary National Report for Canada').

<sup>3</sup> Hutchinson, A; Roberts, R and Setright, H. *International Parental Child Abduction Family Law* 1998, pp. 70-76.

<sup>4</sup> See table on next page.

<sup>5</sup> Bailey, M. *Canada's Implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction* (2000) 33 N.Y.U.J. INT'L L. & POL. 17, p. 19.

Province / Territory	Legislation	Date of Entry into Force
Alberta	International Child Abduction Act 1986	1 February 1987
British Columbia	Family Relations Act 1996	1 December 1983
Manitoba	The Child Custody Enforcement Act 1987	1 December 1983
New Brunswick	International Child Abduction Act 1982	1 December 1983
Newfoundland	An Act Respecting the Law of Children 1990	1 October 1984
Nova Scotia	Child Abduction Act 1989	1 May 1984
Northwest Territories	International Child Abduction Act 1988	1 April 1988
Nunavut	International Child Abduction Act 1988 <sup>6</sup>	1 April 1999
Ontario	Children's Law Reform Act 1990	1 December 1983
Prince Edward Island	Custody Jurisdiction and Enforcement Act 1988	1 May 1986
Quebec	An Act Respecting the Civil Aspects of Interprovincial Child Abduction 1993	1 January 1985
Saskatchewan	The International Child Abduction Act 1986	1 November 1986
Yukon Territory	Children's Act 1986	1 February 1985

tion and Contracting States are not obliged to accept accessions. In 1998, The Standing Committee on Foreign Affairs and International Trade reviewed Canada's methods of dealing with international child abduction, and recommended that Canada be active in trying to widen the network of countries that are signatories to the Convention.<sup>7</sup> In the Government's Response to the Standing Committee's Report,<sup>8</sup> they agreed that every effort should be made to promote adherence to the Hague Convention. Generally, Canadian policy has been to accept accessions, indeed the Department of Foreign Affairs and International Trade (DFAIT) regularly requests missions to make representations to countries encouraging them to become parties to the Convention. Prior to accepting accessions the Department of Justice and the Federal Central Authority request information from geographic, legal and consular areas of the DFAIT. As of 1 January 2002, the last accessions accepted by Canada were on 1 January 2001, when Canada accepted six Contracting States.<sup>9</sup>

For a full list of all States for whom the Convention is in force with Canada, and the dates that the Convention entered into force for the relevant States, see the Appendix.

### 1.3 BILATERAL AGREEMENTS WITH NON-CONVENTION STATES

While encouraging States to become parties to the Convention remains Canada's preferred way of managing child abduction issues,<sup>10</sup> nevertheless, it is recognised that there are certain countries, particularly those operating under Shari'a law, who are unlikely to accede to the Convention.

<sup>6</sup> The laws of the Northwest Territories in force on 1 April 1999 apply in Nunavut. Nunavut Act, S.C., ch. 28, ss3, 29 (1993).

<sup>7</sup> See <http://www.sen.parl.gc.ca/lpearson/htmlfiles/hill/v15abduct-e.htm>

<sup>8</sup> <http://www.canada.justice.gc.ca/en/dept/pub/ica/report4.html>

<sup>9</sup> Namely, Belarus, Costa Rica, Fiji, The Republic of Moldova, Paraguay and Turkmenistan.

<sup>10</sup> See the Canadian response to the questionnaire concerning the practical operation of the Convention and views on possible recommendations, sent out by the Permanent Bureau of the Hague Conference prior to the Fourth Special Commission, p. 29. (Hereafter 'Canadian Response to Hague Questionnaire').

To date, Canada has negotiated two bilateral agreements with Arab countries, and may negotiate a further agreement with Jordan.<sup>11</sup> In November 1997 Canada signed a treaty with Egypt<sup>12</sup> under which they set up a Joint Consultative Commission to discuss cases. This came into force on 1 October 1999 and has been used as a model for a similar agreement between Australia and Egypt. Canada and Lebanon<sup>13</sup> signed an agreement on 13 April 2000 but as of November 2001, this agreement had not yet entered into force.

The Government's Response to the Standing Committee's Report states that it may be more productive to concentrate on encouraging compliance with existing multilateral treaties which impose obligations on Contracting States, such as the United Nations Convention on the Rights of the Child. Canada has said that the 1996 Hague Child Protection Convention may also be "worth taking into consideration in the near future".<sup>14</sup> Indeed, the Federal Department of Justice in collaboration with the Provinces and Territories has established a Working Group to draft a uniform implementation Act for this, and another Convention, on the International Protection of Adults.<sup>15</sup>

#### **1.4 CONVENTION NOT APPLICABLE TO INTERNAL ABDUCTIONS**

Abductions between Provinces and Territories within Canada are not dealt with under the Convention. Where a child has been wrongfully removed or retained in another Canadian Province or Territory the jurisdiction of the Divorce Act applies, as a custody order made pursuant to that Act is enforceable throughout Canada. In the absence of a custody order or where an order does not result from application of the Divorce Act, the left-behind parent may try to have the custody judgment recognised and executed by contacting the competent court of the Province or Territory of refuge. Some Provinces have adopted legislation making it possible for a child who has been wrongfully removed or retained in those Provinces to be returned.<sup>16</sup> A leading organisation specialising in issues relating to missing children, estimates that 90% of parental abductions are in fact international.<sup>17</sup>

## **2. THE ADMINISTRATIVE AND JUDICIAL BODIES DESIGNATED UNDER THE CONVENTION**

### **2.1 CENTRAL AUTHORITIES**

There is a Federal Central Authority and Central Authorities for each Province and Territory. The Federal Central Authority is located in Ottawa, Ontario based in the Justice Legal Service unit of the DFAIT. The Federal Central

<sup>11</sup> Ibid.

<sup>12</sup> Agreement between the Government of Canada and the Government of the Arab Republic of Egypt regarding Cooperation on Consular Elements of Family Matters.

<sup>13</sup> Agreement between the Government of Canada and the Government of the Lebanese Republic Regarding Cooperation of a Humanitarian Nature.

<sup>14</sup> See <http://www.canada.justice.gc.ca/en/dept/pub/ica/report4.html>

<sup>15</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 18.

<sup>16</sup> See <http://www.justice.gouv.qc.ca/special/anglais/eie-a/inter-removal-a.htm>

<sup>17</sup> Missing Children Society of Canada – [http://www.mcsc.ca/parent\\_resources/parental\\_abductions.asp](http://www.mcsc.ca/parent_resources/parental_abductions.asp)

Authority provides assistance to the Provincial Central Authorities,<sup>18</sup> works with other Canadian and foreign authorities involved in missing and abducted children matters, co-ordinates public education and training and deals with the collection of statistics.<sup>19</sup> It does not however deal directly with Convention applications, unless the precise whereabouts of the child are unknown. There is one lawyer and one support person working in the Federal Central Authority who are part of an in-house legal team which serves the Department. Consequently, only a fraction of their time is dedicated to the function of Federal Central Authority. Generally, applications should be made directly to the relevant Provincial or Territorial Central Authority where the child is thought to be. The relevant contact details are set out below.

**THE FEDERAL CENTRAL AUTHORITY**

Justice Legal Services (JUS)  
Department of Foreign Affairs  
Lester B. Pearson Building  
Tower C, 7<sup>th</sup> Floor  
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<sup>18</sup> International Child Abductions – A Manual for Parents [http://www.voyage.gc.ca/Consular-e/Publications/child\\_abductions-e.htm#1](http://www.voyage.gc.ca/Consular-e/Publications/child_abductions-e.htm#1) (Hereafter 'A Manual for Parents').

<sup>19</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 14.

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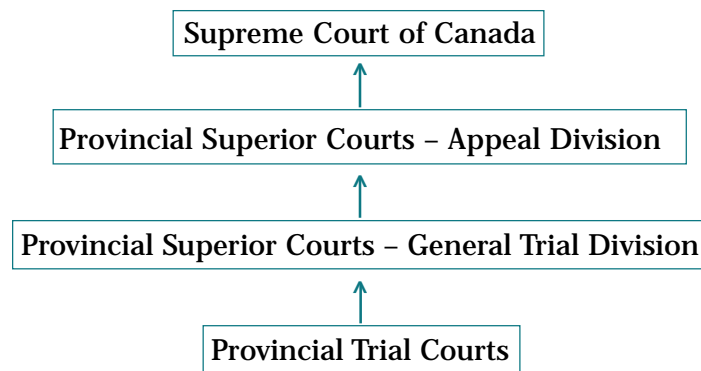
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**2.2 COURTS AND JUDGES EMPOWERED TO HEAR CONVENTION CASES**

In all areas except Nunavut,<sup>20</sup> courts are organised into a four-tier structure. The first level of courts are the Provincial Trial Courts. These are generally divided into different divisions, including a family division. The second level of courts are the Superior Courts – General Trial Division. These courts have a general jurisdiction and are not limited to hearing issues over which the Province or Territory has legislative jurisdiction.<sup>21</sup> The third level of courts are the Superior Courts – Appeals Division. Two of these courts function as the courts of appeal for the two Federal Territories in northern Canada, namely the Yukon Territory and the Northwest Territories.<sup>22</sup> As such they are likely to have the same role in relation to Nunavut. The final tier in the Canadian court structure is the Supreme Court of Canada. This is a general court of appeal from all other Canadian courts. Appeals are heard by this court only if leave is granted.

In the Common Law Provinces, the Provincial Trial Court is limited in the matters which it can hear and the value of any claims. Superior Courts have unlimited monetary and substantive jurisdiction. Some Provinces have created a unified Family System at Superior Court level in an attempt to simplify the existing court system.<sup>23</sup>

<sup>20</sup> The Nunavut Court of Justice, established 1 April 1999, is a single level trial Court including both Provincial and Superior trial court jurisdictions. See Preliminary National Report for Canada, op. cit., n. 2, p. 2, n. 4.

<sup>21</sup> In this respect, the courts are different to the State courts in the United States of America.

<sup>22</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 3.

<sup>23</sup> See for example Manitoba and Saskatchewan, post at p. 7.



In Canada most Convention cases are heard by Federally appointed judges in the Superior Court who are required by law to have been a member of a Provincial or Territorial bar for at least 10 years.<sup>24</sup> As there is no specialised court to deal with Convention cases either at a Federal Level or within the Provinces and Territories, it has been suggested that, “most judges have neither experience with nor a detailed knowledge of the Convention”.<sup>25</sup>

The number of judges who may hear a Convention application varies depending on the Province or Territory:

In Manitoba, cases are heard at first instance in the Family Division of the court of Queen’s Bench, which is a Province-wide unified family court. There are 14 judges in the Family Division (including the Associate Chief Justice). On occasions, judges from the General Division also rotate into the Family Division and hear family cases.

In Saskatchewan, the Family Law Division of the Court of Queen’s Bench has exclusive jurisdiction in family matters. There are 40 judges of the Queen’s Bench and 9 in the Court of Appeal.

In Quebec, the Superior Court has jurisdiction to hear return applications. There are 150 judges in the court which sits in 36 locations. The Court of Appeal sits in Quebec City and Montreal, there are 23 judges in this court who hear appeals from the Superior Court. While in theory a large number of judges can hear Convention applications, in practice, 85% of applications are heard in Montreal, thus reducing the number of judges who hear cases.

In Alberta, there is one level of court with jurisdiction at first instance to hear applications for return. In the area covered by the Central Authority based in Edmonton, there are about 40-45 judges. Conversely, in Ontario, there are two levels of court that can hear applications at first instance. These are the Ontario Court of Justice and the Superior Court of Justice.<sup>26</sup> Usually, cases are brought in the lower court.

In New Brunswick there are 24 judges empowered to hear Convention applications and in the Northwest Territories cases are heard in the Supreme Court of the Northwest Territories, and there are 3 judges in this court. There are 85 judges in the Province of British Columbia and although there is no formal concentration of judges for Convention cases, there is de facto specialisation.

### **3. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR RETURN**

#### **3.1 LOCATING THE CHILD**

Many missing children’s organisations in Canada offer advice on how to search for missing children.<sup>27</sup> Advice includes telephoning relatives and compiling relevant information about the child including photographs. Additionally, it is

<sup>24</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 3.

<sup>25</sup> See Bailey, op. cit., n. 5, p. 22.

<sup>26</sup> Information in this and previous paragraphs relies heavily upon, Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 9.

<sup>27</sup> See the Missing Children’s Network-<http://www.missingchildren.ca> and the Missing Children Society of Canada-<http://www.mcsc.ca>

essential that the local police are contacted. The applicant can also ask the Canadian police to enter the child's name on the Canadian Police Information Centre (CPIC) computer system which allows police throughout Canada to have access to information about the child. It is also possible to request that information be put on the National Crime Information Center (NCIC) computer which operates in the USA, if it is thought that the child may be taken to the USA.<sup>28</sup>

As the Hague Convention offers a civil remedy, some Canadian judges prefer not to introduce criminal charges. Nevertheless, in relation to locating the child, often criminal charges are helpful as they facilitate finding the child. Once the child is located, the law enforcement agency informs the Central Authority, at this stage criminal charges may well be dropped.

### 3.2 CENTRAL AUTHORITIES PROCEDURE

If the whereabouts of the child are known applications may be made either to the Federal Central Authority who will forward it to the relevant Provincial or Territorial Central Authority or directly to the Provincial or Territorial Central Authority. If the child's specific whereabouts are not known but the child is known to be in Canada, the application must be made to the Federal Central Authority. The practice of the Central Authority varies from one Province and Territory to another.

All Central Authorities will accept applications in either of the official languages of the Hague Conference, namely, English and French. However, the Central Authority of Quebec has made a reservation subject to Article 24 (2) stating that any applications not already in English, must be translated into French.<sup>29</sup>

After evaluating the risk of a potential removal from the jurisdiction, some Central Authorities send letters to the abducting parent suggesting a voluntary return of the child. Other Central Authorities initiate contact with bodies such as the police who may be involved in bringing about voluntary resolutions, while others rely on counsel or the parents themselves to negotiate an amicable agreement.<sup>30</sup>

In British Columbia, and Manitoba, the Central Authorities will attempt to arrange for a voluntary return if appropriate.<sup>31</sup>

### 3.3 LEGAL REPRESENTATION

In most Provinces and Territories, applicants are represented in court by private lawyers. Conversely, in Manitoba the Central Authority represents applicants in its capacity as Crown Counsel for the Minister of Justice. Unlike private Counsel, Crown Counsel has a greater obligation to the court and will identify issues, if applicable, that may impact on the court's decision to order a child's return. Alternatively, applicants can retain their own private lawyer, but unlike Crown Counsel the applicant would have to pay for the services of a private lawyer.

<sup>28</sup> A Manual for Parents, op. cit., n. 18.

<sup>29</sup> <http://www.hcch.net/e/status/stat28e.html>

<sup>30</sup> Information taken from Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 3.

<sup>31</sup> *International Child Abduction – A Guide for Parents and Practitioners*. Compiled by Jennifer Degeling and Nan Levett November 2001. (Hereafter 'International Child Abduction – A Guide for Parents and Practitioners').



In New Brunswick, the Central Authority is the head office of the Public Prosecutions branch of the Department of Justice. Staff lawyers from the office represent the applicant in incoming applications. In outgoing applications, the lawyers acting for the Central Authority prepare the application and supporting documentation for the indigent parents. Alternatively, private counsel can be obtained.

In Quebec, the Central Authority does not represent applicant parents but the Attorney General will intervene in all return applications before the courts. A prosecutor is therefore always present at the hearing, but essentially plays the role of *amicus curiae*, as a neutral and exclusive representative of the Central Authority of Quebec.

### 3.4 COSTS AND LEGAL AID

All Canadian Provinces and Territories, with the exception of Manitoba, made a reservation to Article 26 of the Convention.<sup>32</sup> In the other Provinces and Territories, Canada will only assume costs in so far as they are covered by the system of legal aid in the relevant Province or Territory. If a person is not eligible for legal aid they may be able to obtain a lawyer on a reduced or contingency fee basis.

In British Columbia, means-tested legal aid is available if the applicant would be eligible for such legal aid in his or her own jurisdiction. Similarly, in Ontario legal aid will normally be granted if the applicant is eligible in their home jurisdiction. An application should be made for the Ontario Legal Aid Plan through the Ministry of the Attorney General. Where an application is not successful, the Ministry will arrange for the applicant to enter into a retainer with a private lawyer. Delays have been noted with regard to seeking legal aid in Ontario because applicants must provide a letter from the legal aid authority in their home jurisdiction stating that they qualify in that jurisdiction, and provide undertakings.<sup>33</sup>

Applications for legal aid in Quebec should be made to the Quebec Central Authority which will then forward them to the regional legal aid corporation which has territorial jurisdiction to determine whether the applicant is eligible. Where an application for legal aid is unsuccessful, the Central Authority will provide the applicant with a telephone number of the referral service of the Bar Association which will provide the names of lawyers who are able to represent the applicant.

If an applicant in Alberta is eligible for legal aid, the Central Authority will forward the application to the Legal Aid Board who will appoint a legal aid lawyer. In Nova Scotia, legal aid is available to those who meet the criteria in Nova Scotia.<sup>34</sup>

<sup>32</sup> <http://www.hcch.net/e/status/stat28e.html>

<sup>33</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 3.

<sup>34</sup> International Child Abduction – A Guide for Parents and Practitioners, op. cit., n. 31.

### 3.5 LEGAL PROCEEDINGS

Convention cases are usually heard in summary applications by affidavit evidence,<sup>35</sup> but if necessary, there may be an oral hearing, for example if an Article 13 defence has been raised.<sup>36</sup> The rules of evidence are found in the Provincial or Territorial legislation or court rules. The judge or the lawyer can ensure that the court proceedings are expedited.

In Quebec, Article 34 of the Civil Code requires that the court gives the child an opportunity to be heard in matters affecting the interests of that child, where his or her age and power of discernment permit it, but whether this applies to a Convention application is still to be decided. If an Article 13 defence has been raised, the judge may order a psychological evaluation of the child.<sup>37</sup> If the child has raised objections to returning the court may appoint a legally aided lawyer to represent the child.<sup>38</sup> The burden of proof for a defence is the balance of probabilities.<sup>39</sup> A court date is usually set for between four and six weeks after the request for the return has been served upon the abductor. In appeal cases, the appellant has 30 days after the first instance decision to make notice of appeal. In cases where children have been placed with the Youth Protection Agency to prevent a new abduction, cases can reach court in two to three weeks or even less.<sup>40</sup> Generally in Quebec, most cases are heard in Montreal and delays may be longer there due to a backlog of cases.

In New Brunswick, urgent matters such as child abduction can be heard within 1 to 10 days depending on the judicial district and relevant notice requirements. Appeal cases in New Brunswick are also expedited and are usually heard within three months.<sup>41</sup>

In Alberta, where the applicant fears further abduction, they should consider what interim arrangements can be made for the child. The court can make an ex parte order directing the Central Authority to take charge of the child, however, Provincial child welfare legislation requires there to be protection grounds for taking the child into care and it is arguable that the court actually has no jurisdiction to make such orders. In British Columbia, once the lawyer receives the application it is filed in court and action is commenced by filing a Writ of Summons and Statement of Claim or by Petition in the Supreme Court of British Columbia. If there is a danger that the abductor will abscond with the child, they will not be given notice of the hearing. In other cases the abducting parent will be served and will have six days to respond unless under the Supreme Court Rules, “short notice” has been granted. Urgent orders can also be obtained to take the child into care until the matter is heard.

If voluntary resolution has failed, the Central Authority in Manitoba files a Notice of Application in the Court of Queen’s Bench. The hearing takes the form of oral argument by counsel on the written material which has been filed. Appeals

<sup>35</sup> See *Snetzko v Snetzko* (1996), 23 R.F.K. (4<sup>th</sup>) 448 (Gen. Div) at para 21 – cited in Preliminary National Report for Canada, op. cit., n. 2, p. 6, n. 10.

<sup>36</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 10.

<sup>37</sup> See sections 414 ss. of the Code of Civil Procedure.

<sup>38</sup> See sections 394.1 to 394.5 of the Code of Civil Procedure.

<sup>39</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 12.

<sup>40</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 6.

<sup>41</sup> Ibid.

are made to the Manitoba Court of Appeal. Usually, the applicant is not required to attend the court hearing, but it may be deemed necessary in certain circumstances.

In Nova Scotia, hearing dates can often be organised within two days on an emergency basis. Otherwise, it may take between six and eight weeks depending on the location of the court. The Rules of Court in Nova Scotia allow evidence to be given in affidavit form, but applicants may be required to attend the court hearing. The abductor will also be given notice of the hearing unless there is a fear of further abduction.

In Ontario, hearings are heard in the court nearest to the child's residence. An application under the Convention can be heard at one of two court levels. Usually applications are brought in the Ontario Court of Justice, which is the lower court, but as such it has simplified procedures. Judges of this court are also more accustomed to the need to schedule summary hearings on an urgent basis where appropriate. Notice may be given to the abductor, save, where there is a fear of a further abduction. The required notice is between 4 and 10 days depending on the level of court, and it is not uncommon for the abductor to then seek an adjournment at the hearing in order to prepare a case. In these circumstances, the child may be taken into the care of the Ontario welfare authorities if it is felt that protection is needed for the child.

In Saskatchewan, there is a summary procedure and a case can be decided in chambers on the basis of affidavit evidence. Counsel appear for the parties in such a hearing and the parties may not need to be present themselves. Notice is given to the abductor, only where there is no fear of further abduction and the child may be taken into care during the hearings if it is considered that the child may be in danger.<sup>42</sup>

### 3.6 APPEALS

Decisions on Convention cases can be appealed by either party. In most Provinces and Territories, the appellant parent must file an appeal within 30 days of the judgment being delivered. In New Brunswick appeals are heard within three months but if the matter is urgent, they can be heard sooner than this. In other jurisdictions an appeal may take 12 to 18 months.<sup>43</sup> In Manitoba there is an expedited appeal track. For appeals to Quebec the appellant parent has 30 days after the decision to make notice of appeal. In theory each party has to provide the court with its formal factum and a date for the hearing is set. In practice the parties agree to proceed without formal factums being filed, this allows the Chief Justice to form a special panel of the Court as soon as the parties are ready to proceed.<sup>44</sup> Only two Convention cases have been heard in the Supreme Court of Canada.<sup>45</sup>

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<sup>42</sup> Information in this and previous paragraphs heavily relies upon International Child Abduction – A Guide for Parents and Practitioners, op. cit., n. 31.

<sup>43</sup> Canadian Response to Hague Questionnaire, op. cit. n. 10, p. 10.

<sup>44</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 6.

<sup>45</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 10.

### 3.7 ENFORCEMENT OF ORDERS

Courts often aim to get the left-behind parent to court so that if return is ordered it can be immediately executed. There may however be financial problems involved in getting the left-behind parent to the relevant Canadian court.

To assist the effective enforcement of orders, the court can include a clause in the order enlisting the assistance of the police with the return of the child.<sup>46</sup> Parents can also agree to undertakings and in the leading case of *Thomson v Thomson*<sup>47</sup> the Supreme Court of Canada endorsed the use of undertakings in Convention cases.<sup>48</sup> Some Canadian Central Authorities include a list of possible undertakings in the information package distributed to parents or their lawyers.<sup>49</sup>

Undertakings that have been accepted by the courts include: the left-behind parent agreeing to pay the travel costs of the abductor and child; the left-behind parent being required to obtain housing for the abductor and child; or the left-behind parent being required not to enforce outstanding warrants for the abductor's arrest.<sup>50</sup> If it is anticipated that there will be objections to return some Central Authorities request that an applicant consider any undertakings he or she may be prepared to give.<sup>51</sup> However, it is important to note that many of these undertakings or terms imposed by judges are not enforceable in the requesting State.<sup>52</sup>

In Quebec, as the Central Authority is always represented during Convention proceedings, judges may request the assistance of the Central Authority in enforcing return orders. The judge may authorise the Central Authority to coordinate the return of the child, either with the help of the police or with the Director of Youth Protection.<sup>53</sup> The Central Authority, also ensures that departures from the jurisdiction are effected without incident. The Central Authority can make the necessary arrangements for the child to obtain a passport.<sup>54</sup> According to Quebec and Manitoba, parents normally return once they have exhausted their legal options in Canada.<sup>55</sup>

In Quebec penalties for non-compliance with a court order can include, contempt of court with a fine not exceeding \$5,000 or a maximum of one year in prison.<sup>56</sup> Where a parent is trying to flee because they do not wish to return the child as decreed in the court decision it is possible to utilise criminal charges either for parental child abduction, or for breach of an order.<sup>57</sup>

In common law jurisdictions, the most common method of enforcement is civil contempt of court for which the penalties include fines and imprisonment. Once a person is found to be in contempt, other orders may be made. These include imprisonment, fines or costs, stays of action, supervised access or suspension of maintenance payments and any other order deemed necessary by the judge.<sup>58</sup>

<sup>46</sup> Bailey, op. cit., n. 5, p. 26, n. 38.

<sup>47</sup> *Thomson v Thomson* (1994) 6 R.F.L. (4<sup>th</sup>) (S.C.C.).

<sup>48</sup> See Bailey, op. cit., n. 5, p. 38.

<sup>49</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 17.

<sup>50</sup> Bailey, op. cit., n. 5, pp. 39-40.

<sup>51</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 12.

<sup>52</sup> Bailey, op. cit., n. 5, p. 40.

<sup>53</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 9.

<sup>54</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 12.

<sup>55</sup> *Ibid.*

<sup>56</sup> See Article 51 of the Quebec Civil Code of Procedure.

<sup>57</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 10.

<sup>58</sup> See McPhail, J. *Enforcement Options for Custody & Access Breaches*, Manitoba Department of Justice, p. 26 – cited in Preliminary National Report for Canada, op. cit., n. 2, p. 10, n. 17.

The Central Authority may take several measures to enforce a court order including:

- Arranging appropriate travel documentation.
- Contacting a foreign Embassy / government.
- Involving parents and child protection agencies to ensure that the order is enforced without causing any unnecessary further disruption to the child.<sup>59</sup>

## **4. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR ACCESS**

### **4.1 CENTRAL AUTHORITY PROCEDURE**

The role of the Central Authority in access applications is usually to provide general information and refer the applicant to a lawyer to seek legal advice. In Quebec however, the Central Authority provides information and offers advice. The Central Authority for Quebec will contact custodial parents, either by telephone or by letter and try to negotiate an amicable settlement with regards to access rights. The Central Authority has also drawn up a draft agreement for the parents.<sup>60</sup> The Central Authority can organise specialised and supervised access and the taking of a passport if there is a fear of abduction.

In Manitoba, the Central Authority will liaise with the Central Authority of the relevant foreign jurisdiction and assist the parent in obtaining legal counsel.<sup>61</sup> In addition, the Central Authority may appear in court as *amicus curiae*.<sup>62</sup> Free mediation, conciliation counselling and parent education programmes are offered by the Family Conciliation Services within the Department of Family Services.<sup>63</sup>

### **4.2 LEGAL REPRESENTATION AND LEGAL AID**

In New Brunswick, the Central Authority will assist in the institution of proceedings. In other Provinces and Territories, the Central Authorities refer the applicant to legal counsel.

Legal aid for access applications is available if eligibility requirements are met, except in Ontario where legal aid is not available for access applications. Conversely, in New Brunswick, legal advice and representation is provided free of charge by the Attorney General of New Brunswick through the services of Crown counsel in the Department of Justice.<sup>64</sup> Alternatively, Central Authorities provide names of lawyers with Convention expertise.

### **4.3 ENFORCEMENT OF ORDERS**

With the exception of Nova Scotia all Provinces and Territories have provisions regarding the unilateral recognition and enforcement of foreign and extra-provincial access orders, these provisions include mechanisms for superceding or varying such orders where appropriate.<sup>65</sup>

<sup>59</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 9.

<sup>60</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 22.

<sup>61</sup> Ibid., p. 6.

<sup>62</sup> Preliminary National Report for Canada, op. cit., n. 2.

<sup>63</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 22.

<sup>64</sup> Ibid., p. 21.

<sup>65</sup> Bailey, op. cit., n. 5, p. 41.

In Manitoba, there are a variety of mechanisms to enforce an access order under the Child Custody Enforcement Act 1987.<sup>66</sup> These include, agency assistance to locate, apprehend and deliver a child to a specific person,<sup>67</sup> the transfer of property, or payment of support, to a trustee,<sup>68</sup> posting of bonds<sup>69</sup> and the delivering of passports and other travel documents to the court.<sup>70</sup>

Where access has been ordered or agreed, the Central Authority of New Brunswick will assist in ensuring that the terms of the agreement or order are met. The Central Authority for Quebec also attempts to ensure enforcement of orders and agreements by contacting parents and attempting to persuade them to keep the terms of the relevant agreement or order. Intervention by the Central Authority for Quebec is always done with the best interests of the child in mind. In other Provinces and Territories, the Central Authorities refer the applicant to legal counsel for the purpose of ensuring enforcement of orders and agreements.

## 5. OPERATING THE CONVENTION – OUTGOING APPLICATIONS FOR RETURN

### 5.1 PREVENTING THE REMOVAL OF THE CHILD FROM THE JURISDICTION

#### 5.1.1 CIVIL LAW

Canada has established the “Our Missing Children” programme. This involves four Federal government departments: the Royal Canadian Mounted Police (RCMP) – Missing Children’s Registry; Canada Customs and Revenue Agency – International Project Return; Citizenship and Immigration Canada; and the Department of Foreign Affairs and International Trade. The partnership acts as the Canadian national clearinghouse for locating and returning missing and abducted children.<sup>71</sup> The prevention of the illegal movement of children across borders is included in its mandate. In Convention cases the “Our Missing Children” programme works in conjunction with the Canadian Central Authorities. There are also many missing children’s organisations which offer advice to parents on how to prevent abductions if they fear that their child may be in danger. (See post at 6.2).

All Canadian Customs and Immigration Officers have received special training to identify an abduction in progress at both an airport and at a border crossing into the USA. The Customs and Immigration officers have access to information regarding missing children and their abducting parents through the work of the Missing Children’s Registry. The Registry, which was established in 1986, maintains a file for each missing child and data can be entered onto the Canadian Police Information Centre (CPIC) database, as well as the American National Criminal Information Center (NCIC) database.

<sup>66</sup> The Child Custody and Enforcement Act 1987 C 360.

<sup>67</sup> The Child Custody and Enforcement Act 1987 s 9 (1) (e).

<sup>68</sup> The Child Custody and Enforcement Act 1987 s 10 (3) (a) and (b).

<sup>69</sup> The Child Custody and Enforcement Act 1987 s 10 (3) (c).

<sup>70</sup> The Child Custody and Enforcement Act 1987 s 10 (3) (d).

<sup>71</sup> See <http://www.ourmissingchildren.ca/en/about/index.html>



Not surprisingly, due to their geographical proximity, a significant proportion of abductions from Canada are to the USA. Research on all cases commenced in 1999<sup>72</sup> showed that 25 of the 49 outgoing cases from Canada were to the USA.<sup>73</sup> Travel between Canada and the United States is an essential freedom and therefore there is no comprehensive system in place to stop an abductor and child leaving Canada for the USA or vice versa. It is the act of entering the other country which is a controlled process requiring identification papers, and, the RCMP can fax copies of an apprehension order to the USA Immigration and Naturalisation Service who will then issue them quickly to immigration, customs and border patrol officers on the USA side.<sup>74</sup>

In several jurisdictions, it is expressly provided that a court, if satisfied that a person prohibited by court order or agreement from removing a child from the Province or Territory proposes to remove a child, may make an order requiring a person to:

- Transfer property to a trustee to be held subject to terms and conditions.
- Make any child support payments to a trustee.
- Post a bond payable to the applicant.
- Deliver the person's passport, the child's passport or other travel documents.<sup>75</sup>

There are also court orders which can be obtained in Canadian courts in an effort to prevent abductions. A concerned party may go to court and request that an order be made to try and prevent an abduction. The following orders can be requested:

- A judgment / agreement for sole custody of the child, this order must be precise.
- An order that access is to be supervised.
- The inclusion in a court order or agreement of a prohibition against removal of a child from a Province or Territory.
- The requirement that the person removing the child from a jurisdiction either post a bond that will be forfeited in the case of an abduction; or transfer property to a trustee to be held subject to terms and conditions; and / or hand over his / her passport and the child's passport or other travel documents to a third party for safekeeping.<sup>76</sup>

It is also possible to control the issuing of a passport. A parent can request that their child's name be added to a Passport Control list if there is suspicion that abduction is possible.<sup>77</sup> An applicant should contact any passport office in Canada or if abroad, the nearest Canadian diplomatic or consular mission. They will then be notified if a request for passport services is made for the child.<sup>78</sup> The Canadian Passport Office is located at the following address, (contact details for regional offices are available in the telephone directory):

<sup>72</sup> See Preliminary Document No. 3 *A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, drawn up by Professor Nigel Lowe, Sarah Armstrong and Anest Mathias and available at <http://www.hcch.net/e/conventions/reports28e.html> (Hereafter 'Preliminary Document No. 3').

<sup>73</sup> See further at post 7.1.1.

<sup>74</sup> Preliminary National Report for Canada, op. cit., n. 2.

<sup>75</sup> See Bailey, op. cit., n. 5, p. 23, n. 26.

<sup>76</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 7.

<sup>77</sup> Ibid., p. 8.

<sup>78</sup> A Manual for Parents, op. cit., n. 18.

The Passport Office  
Ottawa  
Ontario  
K1A 0G3  
Tel: 1 800 567 6768 or +1 (819) 994 3500  
Fax: +1 (819) 953 5856

Where the child has dual nationality the parent or their lawyer may send a certified copy of the custody / access order to the Embassy or Consulate of the other country and request that no passport be delivered to the child.<sup>79</sup> There is no obligation for other States to refuse passport applications from their own citizens, but they may co-operate if informed of the reasons.

#### 5.1.2 CRIMINAL LAW

Sections 282 and 283 of the Criminal Code of Canada<sup>80</sup> criminalize parental abduction of a child under the age of 14 years. Section 282 applies where there is a Canadian custody order and section 283 applies where there is no such order. The maximum custodial penalty is 10 years imprisonment.<sup>81</sup> Uniform model charging guidelines have also been developed and approved by Federal / Provincial / Territorial justice ministers in an attempt to ensure a more consistent approach to parental child abduction across all Provinces and Territories.<sup>82</sup> Criminal justice may however be administered in a slightly different way from one Province and Territory to another. In child abduction cases, some Provinces require authorisation from the Crown Prosecutor, before proceedings can be set in motion, while in others, proceedings can be initiated by police themselves.<sup>83</sup>

A law enforcement officer may only stop someone if they have an arrest warrant or a court order to recover the child, this may be in the form of an “apprehension” or a “pick up” order. The apprehension order enables provisions of the custody order, such as the prohibition to remove the child from the jurisdiction, to be enforced. If this order is issued properly and the information is passed to the RCMP at the airport quickly enough, the RCMP has the power to stop the abductor and pick up the child.

#### 5.2 CENTRAL AUTHORITIES PROCEDURE

A practical guide for parents is available on the Internet directing them as to what they should do if their child is abducted.<sup>84</sup> This advises that the first step a parent should take, if they are aware of the child’s location, is to contact their local Central Authority. The relevant Central Authority will help to complete the file and will forward the completed application to the Central Authority of the relevant foreign State. The Central Authority may also try to consider various potential defences which may be raised to aid the left-behind parent in considering what may come if the case goes to court.

<sup>79</sup> Preliminary National Report for Canada, op. cit., n. 2, p. 8.

<sup>80</sup> Criminal Code of Canada R.S. 1985, c. C-46.

<sup>81</sup> Criminal Code of Canada R.S. 1985, c. C-46 at s 282 (1) (a) and 283 (1) (a).

<sup>82</sup> The Family Law Committee and the Coordinating Committee of Senior Officials in Criminal Law has just completed a revision of the 1990 Model Parental Child Abduction Charging Guidelines.

<sup>83</sup> A Manual for Parents, op. cit., n. 18.

<sup>84</sup> Ibid.

### 5.3 PROTECTION AND ASSISTANCE ON RETURN

If necessary, the Central Authorities will notify child protection agencies of the child's return.<sup>85</sup> The Central Authorities role in protecting the child on return to Canada, is limited to referring parents to appropriate services. The Province of Manitoba has produced a free information booklet<sup>86</sup> which provides information on the law and a wide range of services available in Manitoba. This booklet is widely available at government and community organisations' offices as well as legal aid offices and spousal abuse shelters. The first edition is also available on the Internet.<sup>87</sup> There is also a Federal / Provincial / Territorial Family Law Committee's Inventory of Government-based Services that Support the Making and Enforcement of Custody and Access Decisions which is available on the Federal Justice Canada web site.<sup>88</sup>

### 5.4 COSTS AND LEGAL AID

Each Province and Territory has its own rules regarding legal aid criteria, and in 1998 The Standing Committee on Foreign Affairs and International Trade recommended<sup>89</sup> "that the federal Minister of Justice undertake discussions with provincial and territorial ministers responsible for justice to establish a cost-shared fund for expenses related to travel and legal services to assist parents in need whose children have been parentally abducted from Canada and taken across international borders". In the Governments response,<sup>90</sup> they "agree[d] that the lack of resources on the part of many custodial parents to deal with the financial aspects of international child abduction is a serious issue needing attention". However, the Government concluded that as the recommendation would "require new funding and new or modified legal aid agreements with the provinces and territories", and as no such new funding is available, "it would not be feasible to engage the provinces and territories in discussions to establish a cost-shared fund for expenses related to travel and legal services in international child abduction cases".

Legal aid, where available, does not cover the costs of repatriation of the child. The RCMP's Missing Children's Registry offers a programme called the Travel Reunification Program,<sup>91</sup> which has been operating since 1991. This is designed to help parents or guardians who cannot afford to pay to have their children returned to Canada. Transport and accommodation may be provided by Air Canada, Canadian Airlines International, Via Rail and Choice Hotels Canada Inc. The application for assistance must come from the Provincial or Territorial Central Authority, investigating police department or the Consular Operations and Emergency Services Division. The requesting authority must assess the financial status of the family to determine whether transportation should be provided. A parent or guardian will not be sent overseas unless all the legal steps have been taken for the return of the child to Canada and the local authorities are co-operating in the return.<sup>92</sup>

<sup>85</sup> Canadian Response to Hague Questionnaire, op. cit., n. 10, p. 19.

<sup>86</sup> Family Law in Manitoba, 1999.

<sup>87</sup> <http://www.gov.mb.ca/justice/family/family.html>

<sup>88</sup> <http://canada.justice.gc.ca/en/ps/cca/invent/main.htm>

<sup>89</sup> See <http://www.sen.parl.gc.ca/lpearson/htmlfiles/hill/v15abduct-e.htm>

<sup>90</sup> See <http://www.canada.justice.gc.ca/en/dept/pub/ica/report4.html>

<sup>91</sup> For more information see <http://www.ourmissingchildren.ca/en/about/travel.html>

<sup>92</sup> A Manual for Parents, op. cit., n. 18.

## 6. AWARENESS OF THE CONVENTION

### 6.1 EDUCATION OF CENTRAL AUTHORITIES, THE JUDICIARY AND PRACTITIONERS

It has been suggested that there may be some problems in Canada relating to insufficient training of those involved in Convention cases, especially in areas of Canada where cases are rare.<sup>93</sup> However, this is not true throughout Canada, in Manitoba for example, it is suggested<sup>94</sup> that the justices of the Family Division are familiar with the existence of the Convention and its provisions. Many Family Division judges have participated in legal education programmes related to the Convention, or have reviewed the materials for these programmes. There is no liaison judge with regards to the Convention in Canada.

An annual training conference is held by the “Our Missing Children” programme. This conference is held for law enforcement and other relevant agencies. The Federal Central Authority is actively involved with this conference. There are also regular training sessions for consular officers and staff abroad held by the Department of Foreign Affairs and International Trade. The RCMP’s Missing Children’s Registry also provides training to police agencies, including a specialised two-day workshop on child abduction which was run 12 times in 1998.<sup>95</sup>

In Quebec, the Central Authority together with the Quebec region of the RCMP and the Missing Children’s Network Canada, give information sessions to detectives with the Montreal Police. These include information on how to proceed when a parent makes a complaint for a missing child and also details the operation of the Hague Convention. In Manitoba also, the Central Authority provide information for law enforcement officers about child abduction issues and participate in RCMP training sessions.<sup>96</sup>

### 6.2 INFORMATION AND SUPPORT PROVIDED TO THE GENERAL PUBLIC

Bailey suggests<sup>97</sup> that more important than educating the judiciary, is the education of the general public and family lawyers to address the issue of potential child abductions. All Central Authorities provide information for all parties involved in abduction. Some Central Authorities forward a kit to parties, which details the application of the Convention. There are also a number of informative web sites on issues relating to international child abduction, both at a Federal and Provincial level:

*[http://www.voyage.dfait-maeci.gc.ca/consular/child\\_abductions-e.htm](http://www.voyage.dfait-maeci.gc.ca/consular/child_abductions-e.htm)*

*<http://www.gov.mb.ca/justice/family/family.htm>*

*<http://www.justice.gouv.qc.ca>*

*<http://www.ourmissingchildren.ca>*

*<http://www.rcmp-grc.gc.ca>*

<sup>93</sup> Bailey, op. cit., n. 5, p. 22.

<sup>94</sup> Preliminary National Report for Canada, op. cit., n. 2, pp. 13 and 14.

<sup>95</sup> See <http://www.canada.justice.gc.ca/en/dept/pub/ica/report4.html>

<sup>96</sup> Information in this paragraph taken from Preliminary National Report for Canada, op. cit., n. 2, p. 13.

<sup>97</sup> Bailey, op. cit., n. 5.

There are a number of non-profit making organisations which operate in the field of parental child abduction. These organisations aim to inform parents about the risks of abduction and thus assist in prevention, as well as supporting parents post abduction.

Child Find Canada: <http://www.childfind.ca>

Missing Children Society of Canada: <http://www.mcsc.ca>

The Missing Children's Network: <http://www.missingchildren.ca>

## 7. THE CONVENTION IN PRACTICE – A STATISTICAL ANALYSIS OF APPLICATIONS IN 1999<sup>98</sup>

The Central Authorities in Canada handled a total of 103 applications in 1999. Canada was the seventh busiest Convention jurisdiction in that year, in terms of the number of applications handled by the Central Authorities.<sup>99</sup>

Incoming return applications	36
Outgoing return applications	49
Incoming access applications	8
Outgoing access applications	10
<b>Total number of applications</b>	<b>103</b>

### 7.1 INCOMING APPLICATIONS FOR RETURN

#### 7.1.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
USA	11	31
France	5	14
UK-England and Wales	5	14
Netherlands	3	8
Germany	2	6
Hungary	2	6
Austria	1	3
Belgium	1	3
China-Hong Kong	1	3
Ireland	1	3
Israel	1	3
Italy	1	3
Portugal	1	3
Mexico	1	3
<b>Total</b>	<b>36</b>	<b>~100</b>

<sup>98</sup> The following analysis is based on Preliminary Document No. 3, op. cit., n. 72.

<sup>99</sup> The USA, England and Wales, Germany, Australia, France and Italy each received more applications in that year.

Almost a third of applications for return, 31%, came from the USA, the nearest geographical State to Canada.

The table below shows which Provincial and Territorial Central Authorities received the applications. There were no incoming or outgoing applications in 1999, in the Provinces of New Brunswick, Newfoundland, Prince Edward Island, Nunavut, the Northwest Territories or Yukon.

Canadian State Which Received the Application		
	Number of Applications	Percent
Quebec	14	39
Ontario	7	19
British Columbia	6	17
Alberta	5	14
Saskatchewan	2	6
Manitoba	1	3
Nova Scotia	1	3
<b>Total</b>	<b>36</b>	<b>~100</b>

The chart above shows that Quebec received twice as many applications for return than any other single Province. The majority of applications were received by Quebec, Ontario, British Colombia and Alberta.

#### 7.1.2 THE OUTCOMES OF THE APPLICATIONS<sup>100</sup>

Outcome of Application		
	Number	Percent
Rejection	2	6
Voluntary Return	13	37
Judicial Return	8	23
Judicial Refusal	4	11
Withdrawn	3	9
Pending	2	6
Other	3	9
<b>Total</b>	<b>35</b>	<b>~100</b>

More applications resulted in a voluntary return than in any other single outcome. Indeed at 37% of all applications, the proportion of voluntary returns was well above the global average of 18%. Conversely, there were proportionally fewer judicial returns at 23% than the global average of 32%. Nevertheless, the overall return rate from the jurisdiction was 60% which is above the global average of 50%. Judicial refusals at 11% were identical to the global average of 11%, and of the 12 cases which went to court just 67% resulted in a return being ordered compared with a global figure of 74%. The rejection rate at 6% is below the global average of 11%. Three cases were withdrawn and two cases, 6% of applications, were still pending as at 30 June 2001, however this is below the global average of 9%.

<sup>100</sup> Additionally, in one application, the outcome was not stated.

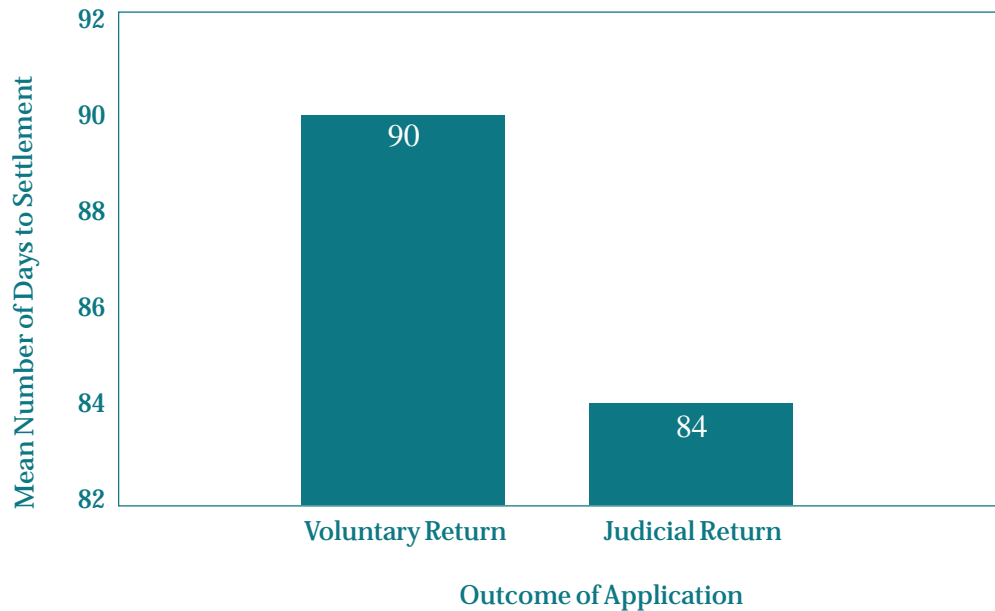


The table below shows the outcomes as divided by Province and Territory.

	Outcome of Application							Total
	Rejection	Voluntary Return	Judicial Return	Judicial Refusal	Withdrawal	Pending	Other	
Ontario		2	2		1		2	7
British Columbia		2	1	2			1	6
Manitoba			1					1
Nova Scotia		1						1
Quebec	1	7	1	1	2	2		14
Saskatchewan	1			1				2
Alberta		1	3					4
<b>Total</b>	<b>2</b>	<b>13</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>35</b>

The table above shows that all applications to Alberta resulted in a return either voluntarily or judicially. Conversely, the two applications to Saskatchewan were either rejected or refused. Fifty percent of applications to Quebec resulted in voluntarily return, while there was just one judicial return. Consequently, the overall return rate in applications to Quebec was 57%, which is higher than the global average of 50%. In British Columbia, two of the three applications that went to court, were refused.

### 7.1.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION



Timing was available for six of the eight cases which concluded with a judicial return. The mean average length of time from application to final outcome in these 6 cases was 84 days. This is significantly faster than the global average for judicial returns of 107 days. Timing was available on 11 of the 13 voluntary returns and these were concluded in a mean average of 90 days, which is marginally slower than the global average of 84 days. Timing was only available for one of the judicial refusals, which was concluded after 309 days, compared with a global average of 147 days. Timing for returns both voluntary and judicial, is relatively quick. It is to be noted that two cases were still pending as at 30 June 2001.

The table below shows the minimum and maximum number of days taken to reach each of the two outcomes, in addition to the mean and median number of days.

Outcome of Application		
	Voluntary Return	Judicial Return
Mean	90	84
Median	78	75
Minimum	6	10
Maximum	289	192
<b>Number of Cases</b>	<b>11</b>	<b>6</b>

## 7.2 INCOMING APPLICATIONS FOR ACCESS

### 7.2.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
Switzerland	2	25
UK-England and Wales	2	25
Germany	1	13
Italy	1	13
Portugal	1	13
USA	1	13
<b>Total</b>	<b>8</b>	<b>~100</b>

As the table above shows, the pattern of access applications is different from those for return. Only one application came from the USA.

The table below shows the number of applications received by individual Provinces and Territories.

Canadian State Which Received the Application		
	Number of Applications	Percent
Alberta	5	63
British Columbia	2	25
Ontario	1	13
<b>Total</b>	<b>8</b>	<b>~100</b>

The proportion of return to access applications in Canada was similar to the global average with less than 20% of applications being for access. Surprisingly, Quebec received no applications for access, despite receiving 14 applications for return. The other three Territories which received significant numbers of return applications also received access applications. Interestingly Alberta received as many applications for access as for return.

## 7.2.2 THE OUTCOMES OF THE APPLICATIONS

Outcome of Application		
	Number	Percent
Rejection by the Central Authority	0	0
Access Voluntarily Agreed	2	25
Access Judicially Granted	2	25
Access Judicially Refused	1	13
Other	1	13
Pending	1	13
Withdrawn	1	13
<b>Total</b>	<b>8</b>	<b>~100</b>

One application was withdrawn and in another access had been granted pending the court hearing. One case resulted in an outcome labelled as “other”. In two applications, access was refused and in the remaining four, access was granted or agreed.

The table below shows the outcomes of the access applications by the individual Provinces and Territories which received the applications.

Outcome of Application							
	Access Voluntarily Agreed	Access Judicially Granted	Access Judicially Refused	Other	Pending	Withdrawal	Total
Ontario				1			1
British Columbia	1		1				2
Alberta	1	2			1	1	5
<b>Total</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>8</b>

Alberta was the sole Province with a significant number of access applications. In three of the five cases, access was either agreed voluntarily or granted by a court order, while in the fourth, access had been granted pending the court hearing. The fifth case was withdrawn.

## 7.2.3 THE TIME BETWEEN APPLICATION TO FINAL CONCLUSION

Timing to Judicial Decision		
	Number	Percent
0-6 weeks	1	33
6-12 weeks	1	33
3-6 months	0	0
Over 6 months	1	33
<b>Total</b>	<b>3</b>	<b>~100</b>

Time was known for one of the cases where access was voluntarily agreed and this was reached within six weeks of the application. The chart above shows the time taken for three of the decisions which reached a final conclusion in court. Compared with global averages, access applications in Canada were resolved relatively quickly, nevertheless, numbers are small making meaningful analysis difficult.

## 8. CONCLUSIONS

Canada manages a large number of cases on an annual basis and as one of the original three ratifying States, it is vastly experienced. The system in Canada appears to operate relatively efficiently. However, being a Federal nation, the diversity of different procedures and mechanisms across the different Provinces and Territories can appear to be confusing at any rate to outside observers. In researching the procedures of the Central Authorities, the courts and the legal aid provisions, it has on occasions been difficult to understand all the systems. Nevertheless, we have heard no criticisms from foreign Central Authorities applying to Canada.

Although only Manitoba has not made a reservation to Article 26 (3) there is no uniformity between the other Provinces and Territories regarding eligibility for legal aid. This may cause confusion to the applicant and the foreign Central Authorities. It appears that some Provinces have adopted the criteria that a person may only be eligible for legal aid in that Province if they would be eligible for legal aid in their home State.<sup>101</sup> Consequently, applicants particularly from the USA and also poorer nations, may be unable to seek legal aid assistance to pursue a case in Canada while applicants from nations which have efficient legal aid systems may be eligible. This seems a confusing and discriminatory policy. Nevertheless, the fact that Manitoba has not made a reservation to Article 26 is to be noted.

The Travel Reunification Program provides free travel and free accommodation for left-behind parents seeking the return of their children to Canada. This is an excellent resource and could profitably be used as a model for other Contracting States.

While the number of judges and courts empowered to hear Convention cases throughout Canada is relatively large, some Provinces have attempted to confine applications to particular areas or judges. While this is generally recognised to be a good practice, allowing for experience to develop amongst judges and practitioners alike, it is also to be noted that in Quebec, 85% of cases are heard in courts in Montreal, which has led to a backlog of cases and thus delays.

Delegates representing Canada take an active role at conferences and meetings and Canadian Internet sites offer useful information and support for those involved in missing children cases. Canada has also produced useful booklets and publications notably, *International Child Abduction – A Manual for Parents*.<sup>102</sup>

Canada has negotiated bilateral agreements with countries not parties to the Convention. These agreements have been used as a model by other Contracting States such as Australia. Canada also has a policy of encouraging further accessions to the Convention where appropriate.

Law enforcement agencies in Canada receive training to help them to recognise potential cases of abduction. The use of computer systems such as the Canadian Police Information Centre and the ability to access the National Crime Information Center in the USA also aids officers to locate missing children

<sup>101</sup> Namely, British Columbia and Ontario.

<sup>102</sup> Available at: [http://www.voyage.gc.ca/Consular-e/Publications/child\\_abductions-e.htm#1](http://www.voyage.gc.ca/Consular-e/Publications/child_abductions-e.htm#1)

and prevent the removal of children from the jurisdiction. The “Our Missing Children” Programme which brings together officers from four Federal agencies is also a useful source both for training those involved in international child abduction and for co-ordinating efforts to locate and return children.

Research conducted into cases commencing in 1999,<sup>103</sup> shows that Canada handles Convention cases efficiently. At 60%, the overall return rate in applications to Canada is well above the global average of 50%. However, while the overall judicial refusal rate at 11% is identical to the global average, the proportion of court cases which ended in return as opposed to refusal was below the global average. Cases resulting in voluntary return and judicial return were handled relatively quickly, however information on the time taken for judicial refusals was generally not available and there were two cases which were still pending at 30 June 2001.

Overall assessment of how Canada is operating the Convention is difficult given that each Province and Territory has different procedures in place. Nevertheless, the operation of the Convention across the State as a whole appears efficient and relatively expeditious. The Travel Reunification Program is an important asset to left-behind parents although legal aid provisions for parents applying to Canada are somewhat confusing and with the exception of Manitoba there is a reservation to Article 26. Web sites and publications produced by organisations and authorities in Canada are useful for parents and practitioners alike, and in general those operating the Convention in Canada appear well informed with regards to the nature and operation of the Convention.

## 9. SUMMARY OF CONCERNS

- With the exception of Manitoba all Provinces and Territories made a reservation to Article 26.
- Legal aid in British Columbia and Ontario is only available if applicants would be entitled to legal aid in their own jurisdictions.
- Legal aid is only available in Nova Scotia to applicants who are resident in Nova Scotia.
- In many areas of Canada Convention cases are very rare and there is a lack of expertise in these areas.
- As applications are made to the relevant Province or Territory procedures differ from one area to another, which may cause confusion and potential difficulties if a child is moved from one area of Canada to another.

## 10. SUMMARY OF GOOD PRACTICES

- Canadian customs and immigration officers receive training to identify abductions in progress.
- Information about missing children can be entered onto the Canadian Police Information Centre computer and the National Crime Information Center computer in the USA. This allows law enforcement officers across the two States to have access to the information.

<sup>103</sup> See Preliminary Document No. 3, op. cit., n. 72.

- The “Our Missing Children” Programme brings together four Federal agencies to co-operate and co-ordinate in missing children cases.
- The Travel Reunification Program offers free accommodation and travel for left-behind parents seeking the return of children.
- The Department of Foreign Affairs and International Trade provide training sessions for consular staff working abroad.
- Some Provinces have a unified family court system to simplify procedures in family cases.
- With the exception of Quebec, no Provinces made reservations to Article 24.
- Manitoba did not make a reservation to Article 26.
- The Province of New Brunswick provides free legal representation in access cases.
- The system appears to operate relatively expeditiously.
- There are many useful web sites providing information to all those involved in international child abduction.
- There are several non-profit making organisations which operate in the field of international child abduction.

## APPENDIX

As at 1 January 2002, the Convention is in force between the following 58 Contracting States and Canada.

<b>Contracting State</b>	<b>Entry into Force</b>
ARGENTINA	1 JUNE 1991
AUSTRALIA	1 JANUARY 1887
AUSTRIA	1 OCTOBER 1988
BAHAMAS	1 AUGUST 1995
BELARUS	1 JANUARY 2001
BELGIUM	1 MAY 1999
BELIZE	1 SEPTEMBER 1991
BOSNIA AND HERZEGOVINA	1 DECEMBER 1991
BURKINA FASO	1 OCTOBER 1993
CHILE	1 AUGUST 1995
CHINA-HONG KONG SPECIAL ADMINISTRATIVE REGION	1 SEPTEMBER 1997
CHINA-MACAU SPECIAL ADMINISTRATIVE REGION	1 MARCH 1999
COLOMBIA	1 DECEMBER 1997
COSTA RICA	1 JANUARY 2001
CROATIA	1 DECEMBER 1991
CYPRUS	1 JANUARY 1998
CZECH REPUBLIC	1 MARCH 1998
DENMARK	1 JULY 1991
ECUADOR	1 DECEMBER 1993
FIJI	1 JANUARY 2001
FINLAND	1 AUGUST 1994
FORMER YUGOSLAV REPUBLIC OF MACEDONIA	1 DECEMBER 1991
FRANCE	1 DECEMBER 1983
GEORGIA	1 NOVEMBER 1999
GERMANY	1 DECEMBER 1990
GREECE	1 JUNE 1993



HONDURAS	1 AUGUST 1995
HUNGARY	1 APRIL 1998
ICELAND	1 DECEMBER 1997
IRELAND	1 OCTOBER 1991
ISRAEL	1 DECEMBER 1991
ITALY	1 MAY 1995
LUXEMBOURG	1 JANUARY 1987
MAURITIUS	1 AUGUST 1995
MEXICO	1 JULY 1992
REPUBLIC OF MOLDOVA	1 JANUARY 2001
MONACO	1 JUNE 1995
NETHERLANDS	1 SEPTEMBER 1990
NEW ZEALAND	1 JULY 1992
NORWAY	1 APRIL 1989
PANAMA	1 AUGUST 1995
PARAGUAY	1 JANUARY 2001
POLAND	1 FEBRUARY 1994
PORTUGAL	1 DECEMBER 1983
ROMANIA	1 JUNE 1995
SAINT KITTS AND NEVIS	1 AUGUST 1995
SLOVAKIA	1 FEBRUARY 2001
SLOVENIA	1 AUGUST 1995
SOUTH AFRICA	1 MAY 1999
SPAIN	1 SEPTEMBER 1987
SWEDEN	1 JUNE 1989
SWITZERLAND	1 JANUARY 1984
TURKEY	1 AUGUST 2000
TURKMENISTAN	1 JANUARY 2001
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	1 AUGUST 1986
UNITED KINGDOM-BERMUDA	1 MARCH 1999
UNITED KINGDOM-CAYMAN ISLANDS	1 AUGUST 1998
UNITED KINGDOM-FALKLAND ISLANDS	1 JUNE 1998
UNITED KINGDOM-ISLE OF MAN	1 SEPTEMBER 1991
UNITED KINGDOM-MONTSERRAT	1 MARCH 1999
UNITED STATES OF AMERICA	1 JULY 1988
VENEZUELA	1 JANUARY 1997
YUGOSLAVIA	1 DECEMBER 1991
ZIMBABWE	1 JANUARY 1998



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