

**RULES OF THE PROVINCIAL COURT OF NEWFOUNDLAND AND LARADOR
IN FAMILY PROCEEDINGS, 2007**

**PRACTICE NOTE - DIRECTION
P.N. (PC) No. 2015-04**

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The following Practice Memorandum was filed with the Director of Corporate Services and is published under the authority of Rule 17.01 of the Provincial Court Family Rules, 2007, NLR 28/07 (Rules of Court).

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

BACKGROUND

The 1980 Hague Convention on the Civil Aspects of International Child Abduction (“the Hague Convention”) is continued in force pursuant to section 54 of the *Children’s Law Act* RSNL1990 cC-13.

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.

Article 11 of the Hague Convention provides in part that the judicial or administrative authorities of contracting states shall act expeditiously in proceedings for the return of children.

Each province and territory of Canada has a Central Authority with responsibilities pursuant to the Hague Convention.

The Canadian Judicial Council and the Canadian Council of Chief Judges have established a national network of contact judges to ensure that interjurisdictional cases of parental child abduction are dealt with expeditiously;

The Canadian Judicial Council and the Canadian Council of Chief Judges have recommended that courts across Canada establish protocols to expedite the handling of interjurisdictional child abduction cases, including limited judicial communications;

The Attorney General for Newfoundland and Labrador has appointed a designate to carry out the responsibilities of the Central Authority in this Province;

A Judge appointed by the Chief Judge will serve as the Contact Judge for the Provincial Court of Newfoundland and Labrador;

To ensure that applications for return of children (return applications) under the 1980 Hague Convention are dealt with expeditiously, the following procedural protocol has been developed by this Court:

PROCEDURE

Court Administrators:

1. Court Administrators will be advised by the Chief Judge of the names and contact information of the Central Authority and the Contact Judges for this Province.
2. Court Administrators will advise the Central Authority and the Contact Judge for both the Provincial Court and the Supreme Court of Newfoundland and Labrador (Supreme Court) of all intended or initiated proceedings for the return of a child pursuant to the Hague Convention (return applications) which they become aware of.

Central Authority and Contact Judge(s):

3. The Chief Judge will ask the Central Authority to advise the Contact Judge of intended or initiated return applications in this Province of which s/he has notice.
4. The Contact Judge for the Provincial Court shall advise the Central Authority and the Contact Judge for the Supreme Court of intended or initiated return applications in this Province of which s/he has notice.

Application:

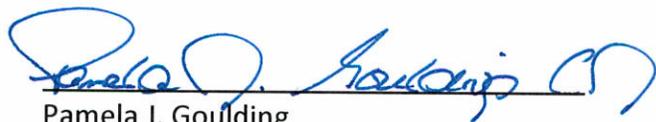
5. Where the Court has notice of the alleged wrongful removal or retention of a child, the Court shall not deal with the merits of rights of custody until a return application has been determined, unless a return application has not been filed within a reasonable time after such notice has been given to the Court.
6. When a return application first comes before the Court, the presiding judge will undertake responsibility for:
 - (a) establishing appropriate timelines for the filing and service of future materials, and
 - (b) setting the application down for a hearing,

In carrying out these responsibilities, the presiding judge will have regard to the requirement for an expeditious determination of the matter.

7. (a) A return application shall be commenced in the Court as an originating application and the existing Rules of Court with respect to evidence and procedure will apply subject to a response having to be filed within seven (7) days of service and as may be otherwise ordered by the presiding judge in consultation with the Contact Judge, if deemed necessary.
 - (b) Applications shall be accompanied by affidavit evidence which shall contain:
 - (i) information concerning the identity of the applicant, the child and the person or persons alleged to have removed or retained the child;
 - (ii) where available, the date of birth of the child;
 - (iii) the grounds upon which the applicant's claim for return of the child is based;
 - (iv) all available information relating to the whereabouts of the child and the identity of the person in whose care the child is presumed to be.
 - (c) The application may be accompanied or supplemented by:
 - (i) an authenticated copy of any relevant decision or agreement pertaining to custody and/or access of the child;
 - (ii) a certificate or an affidavit emanating from a Central Authority, competent authority or other qualified person where the child habitually resides setting out the relevant law of that jurisdiction; and
 - (iii) any other relevant document.

- (d) The person with whom the child is presumed to be shall be personally served with notice of the application. If timely service cannot be effected, an application for substituted service may be made to the Court in accordance with the Rules of Court.
 - (e) Any party, including a left-behind parent, may appear by way of telephone or videoconference where appropriate facilities are available. The Contact Judge will refer the Central Authority to the appropriate Court Administrator who will then facilitate such arrangements for the participation of the left-behind parent.
 - (f) There shall be no requirement for a referral to Family Justice Services or a pre-hearing conference for return applications. This does not however preclude such referrals and meetings.
 - (g) Presiding judges shall keep the Contact Judge and the Central Authority apprised of the progress of return applications.
 - (h) Applications shall be dealt with expeditiously and except in extraordinary circumstances, decisions shall be rendered within six (6) weeks of the filing of the return application.
 - (i) Unless the order is signed when a judge decides on the merits of the application for return, an appointment shall be made to meet with the same judge to have the order signed within 24 hours of a decision being rendered.
8. A judge hearing an application may initiate direct communication with a judge of a contracting state where it is alleged that a child habitually resides subject to such communication being limited to logistical issues and the exchange of information deemed necessary.
9. The Court shall deal with applications for a stay of proceedings expeditiously.

Authorized by:



Pamela J. Goulding
Chief Judge
Provincial Court of Newfoundland and Labrador



Wilma MacInnis
Director of Corporate Services
Provincial Court of Newfoundland and Labrador