

FAMILY CROWN SERVICES OPERATIONAL MANUAL

CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION	New	Office of the Attorney General / Family Crown Services	Policy 33
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**CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION
(HAGUE CONVENTION)**

1.1 Introduction

The Hague Conference on Private International Law (or HCCH, for Hague Conference/Conférence de la Haye) is the preeminent organization in private international law. It is located in The Hague, Netherlands. Since 1893, HCCH has developed and serviced Conventions, i.e. international treaties, which respond to global needs in the areas of international protection of children, family and property matters; international legal co-operation and litigation; and international commercial and financial law.

Canada became a Member State of the Hague Conference on October 7, 1968.

In 1980, HCCH developed the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention). The 1980 Hague Convention does not deal with the merits of custody and access. It deals with children who were wrongfully removed from their country of habitual residence or wrongfully retained in another country and the prompt return of these children to their place of habitual residence where a court of competent jurisdiction can deal with the merits of custody and access.

The Attorney General of New Brunswick is the Central Authority for the province under the provisions of the Hague Convention which was enacted in New Brunswick as the *International Child Abduction Act*.

The Attorney General has designated the Assistant Deputy Attorney General of Family Crown Services to carry out the functions of Central Authority under the *International Child Abduction Act*. From time to time, the Assistant Deputy Attorney General may delegate the functions of Central Authority. Family Crown Counsel acts as agent of the Attorney General in processing Requests for return of children or Requests for facilitation of access.

1.2 Nature of involvement

Unless otherwise specified, the Assistant Deputy Attorney General of Family Crown Services or his / her delegate shall act as the designate Central Authority for the Province of New Brunswick and shall deal with all communication with Central Authorities of other Contracting States.

Family Crown Counsel is the agent and designate of the Attorney General and will appear as counsel on incoming Requests for return of the child. Family Crown Counsel will prepare the Request for return of the child in outgoing Hague matters.

Together, Assistant Deputy Attorney General of Family Crown Services or his / her delegate shall carry out all obligations under article 7 of the Hague Convention.

Family Crown Counsel has no relationship with the parties to the application.

1.3 Incoming requests from a member state

The Assistant Deputy Attorney General of Family Crown Services or his / her delegate will receive a Request for the return of the child from the Central Authority of a member state. The Assistant Deputy Attorney General of Family Crown Services or his / her delegate may choose to screen the incoming request or may assign it to Family Crown Counsel to screen the case and to litigate the application.

1.3.1 Screening an incoming request

The Assistant Deputy Attorney General of Family Crown Services or his / her delegate must determine that the following criteria have been met:

- the Requesting state is a contracting state under the Hague Convention. This can be checked at www.HCCH.net;
- the Requesting state has been accepted by Canada. This can be checked at www.HCCH.net;
- there is evidence that the Requesting state was the habitual place of residence of the child at the time of the wrongful removal or wrongful retention of the child. Please refer to article 3 of the Hague Convention;
- there is evidence that the child was removed from the child's habitual place of residence in breach of custody rights. Please refer to article 3 of the Hague Convention;
- the child is under the age of 16. Please refer to article 4 of the Hague Convention;
- the child has been located in New Brunswick.

1.3.2 The child is not in New Brunswick (article 9 of the Hague Convention)

If the child is not in New Brunswick, but has been located in another contracting state, Assistant Deputy Attorney General of Family Crown Services or his / her delegate shall forward the Request for the return of the child to that contracting state.

If the Child is not in New Brunswick and has not been identified elsewhere, the Assistant Deputy Attorney General of Family Crown Services or his / her delegate shall return the Request for the return of the child to the requesting state.

1.3.3 Filing a Notice of Application if the child has been located in New Brunswick

Family Crown Counsel shall prepare and sign a Notice of Application requesting the return of the child. Family Crown Counsel will clearly indicate that he / she is acting as agent for the Central Authority of New Brunswick. The application should contain a request for an abridgement of time given that Article 11 of the Hague Convention requires that a decision be reached within 6 weeks of the commencement of proceedings. Family Crown Counsel should also request provisional measures to prevent further harm to the child or prejudice to interested parties.

Family Crown Counsel shall also prepare a requisition pursuant to article 16 of the Hague Convention requesting that the court not hear any private application for custody and access with respect to the child until the court deals with the application for the return of the child.

Family Crown Counsel shall file the Notice of Application and the supporting documentation received from the requesting state and shall arrange service of the respondent by the Sheriff's Office.

1.3.4 Voluntary return

Family Crown Counsel shall attempt to determine whether the voluntary return of the child or an amical resolution is possible.

1.3.5 Preparation for the hearing

Family Crown Counsel shall prepare a Pre-Hearing Brief outlining the purpose of the Hague Convention in light of the most recent case laws on the subject, the facts relating to the age and habitual residence of the child, the rights of custody, the wrongful removal or retention of the child which constitutes the breach of the custody rights and the request that Article 12 of the Hague Convention be applied to return the child to his habitual residence.

Family Crown Counsel must remember that the merits of custody and access are not pertinent in a Hague application.

Family Crown Counsel should prepare for contra arguments by the respondent with respect to the aforementioned elements.

Family Crown Counsel should be aware that the available defences differ depending on whether the wrongful removal or wrongful retention was less than a year prior to filing the Notice of Application or a year or more prior to its filing. Family Crown Counsel should refer to Articles 12 and 13 of the Hague Convention as well previous pre-hearing briefs on the subject.

1.3.6 Attendance at the hearing

Family Crown Counsel shall appear at the hearing of the application and shall inform the court that he / she is appearing as agent of the Attorney General. Family Crown Counsel can examine and cross-examine witnesses as applicable to ensure that all pertinent information is adduced into evidence.

Family Crown Counsel can make submissions to the court with respect to the facts presented to the court and their applicability to the criteria for the return of the child.

Family Crown Counsel should be prepared to speak to the plan for the return of the child and a transition plan pending the return of the child.

Family Crown Counsel shall prepare the various orders as directed by the court.

1.3.7 Liaison with Foreign Affairs, the Federal Central Authority, Our Missing Children, Interpol, Canada Border Services Agency and NCO Agencies

Family Crown Counsel may have contact with Foreign Affairs, the Federal Central Authority, Our Missing Children, RCMP, Interpol, Canada Border Services Agency, the Minister of Social Development and NCO Agencies as needed to locate the child, prepare for trial and effect the return of the child.

1.4 Outgoing Applications

1.4.1 Screening outgoing Requests for the return of the child

The Assistant Deputy Attorney General of Family Crown Services or his / her delegate will assign outgoing Requests for the return of the child to Family Crown Counsel who shall meet with left behind parent residing in New Brunswick to gather information for the preparation of the Request for the return of the child. Family Crown Counsel shall clearly identify that he / she is acting as agent for the Attorney General in his / her role as Central Authority for New Brunswick.

Family Crown Counsel shall screen the information to ensure that the criteria are met:

- the foreign state is a contracting state under the Hague Convention. This can be checked at www.HCCH.net;
- the foreign contracting state has been accepted by Canada. This can be checked at www.HCCH.net;
- there is evidence that New Brunswick was the habitual place of residence of the child at the time of the wrongful removal or wrongful retention of the child. Please refer to article 3 of the Hague Convention;
- there is evidence that the child was removed from New Brunswick in breach of custody rights. Please refer to article 3 of the Hague Convention;
- the child is under the age of 16. Please refer to article 4 of the Hague Convention; and
- there is reason to believe that the child is in the foreign contracting state.

1.4.2 Processing the Request for the return of the child

Family Crown Counsel will ask the left-behind parent to prepare the Request for the return of the child and meet with the left behind parent to review it and take his / her signature. Family Crown Counsel will reiterate that he / she does not represent the left behind parent.

Family Crown Counsel shall submit the completed Request for the return of the child and supporting documentation to the Assistant Deputy Attorney General of Family Crown Services or his / her delegate for onward transmission to the foreign contracting state.

Family Crown Services does not provide legal representation at hearings in the foreign contracting state.

1.4.3 Pending resolution of the matter

Family Crown Counsel may have contact with Foreign Affairs, the Federal Central Authority, Our Missing Children, RCMP, Interpol, Canada Border Services Agency, the Department of Social Development and NCO Agencies as needed to effect the return of the child.

Family Crown Counsel shall provide the left behind parent with periodic updates on the status of the Request for the return of the child.

1.5 Requests for facilitation of access

Family Crown Counsel will attempt to direct parties to mediation or collaborative law services.

1.6 Areas outside the mandate of Family Crown Counsel

Family Crown Counsel shall not:

- represent the left behind parent;
- provide legal advice to any party to a Hague application; or
- become involved in a hearing on the merits of custody or access.

1.7 Related documents

International Child Abduction Act, S.N.B. 2011, c. 175
Policy 3 – Organization and Mandate
Policy 8 - Litigating under Interjurisdictional Legislation