

## CANADA

### The applications

#### 1. The number of applications

Canada is a Federal nation and there is a Central Authority in each Province and Territory.<sup>1</sup> According to the Central Authorities in Canada, they received 36 incoming return and 8 incoming access applications in 1999, making a total of 44 incoming applications. Additionally, they made 49 outgoing return and 10 outgoing access applications in that year. Altogether, therefore, the Central Authorities in Canada handled 103 new applications in 1999.<sup>2</sup>

The following tables show which Provincial and Territorial Central Authorities received these applications. There were no incoming or outgoing applications in 1999, in the Provinces of New Brunswick, Newfoundland, Prince Edward Island or the Northwest Territories.

#### (a) Incoming return applications

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> |

#### (b) Incoming access applications

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 tables above show that Quebec received the most applications with 14, all of which were return applications. Alberta received the second most applications with 10, 5 of which were for access and 5 of which were for return, which is unusual given

<sup>1</sup> The Province of Alberta has in fact designated 2 Central Authorities. Nunavut only came into existence as a separate Canadian Territory in April 1999 and had not designated a Central Authority during 1999.

<sup>2</sup> There was also one application outgoing from the Yukon Territory but it is unclear whether this application was commenced in 1999 or 2000. It has not been included in the above figure.

that the global ratio of access to return applications is just 17%. British Columbia and Ontario each received 8 applications in total.

## 2. The Contracting States which made the applications

### (a) *Incoming return 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> |

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

### (b) *Incoming access 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.

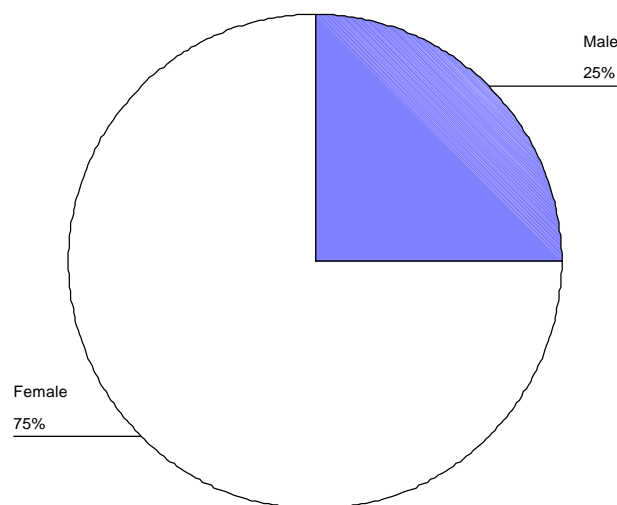
## The taking person / respondent

### 3. The gender of the taking person / respondent

#### (a) *Incoming return applications*

Gender of the Taking Person

|              | Number    | Percent    |
|--------------|-----------|------------|
| Male         | 9         | 25         |
| Female       | 27        | 75         |
| <b>Total</b> | <b>36</b> | <b>100</b> |

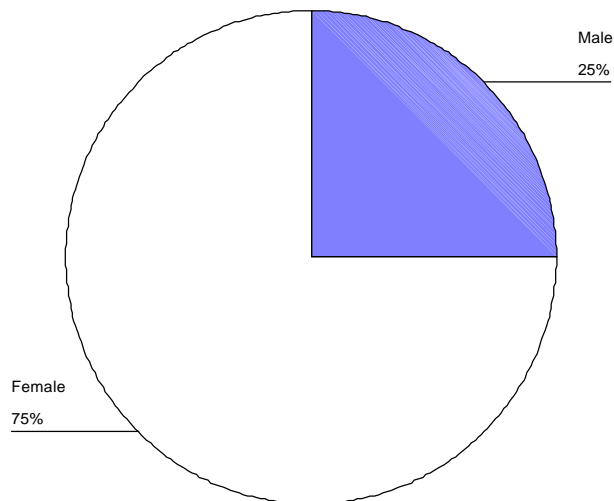


The proportion of female taking persons involved in incoming return applications to Canada at 75% was marginally higher than the global norm of 69%. However, the proportion of female taking persons did vary from one Contracting State to another, the single applications from Austria, Belgium, Mexico and Portugal involved male taking persons. Conversely, in applications from the USA, 91% of taking persons were female.

#### (b) *Incoming access applications*

Gender of the Respondent

|              | Number   | Percent    |
|--------------|----------|------------|
| Male         | 2        | 25         |
| Female       | 6        | 75         |
| <b>Total</b> | <b>8</b> | <b>100</b> |



At 75%, the proportion of female respondents was lower than the global norm of 86%, but was identical to the proportion of female taking persons in return application made to Canada.

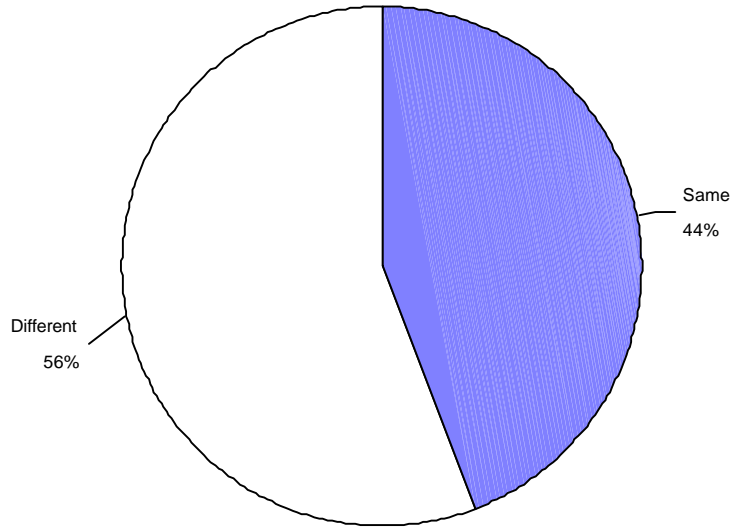
#### 4. The nationality of the taking person / respondent

##### (a) *Incoming return applications*<sup>3</sup>

###### Taking Person Same Nationality as Requested State

|                       | Number    | Percent    |
|-----------------------|-----------|------------|
| Same Nationality      | 15        | 44         |
| Different Nationality | 19        | 56         |
| <b>Total</b>          | <b>34</b> | <b>100</b> |

<sup>3</sup> Additionally there were two applications in which the nationality of the taking person was not stated.

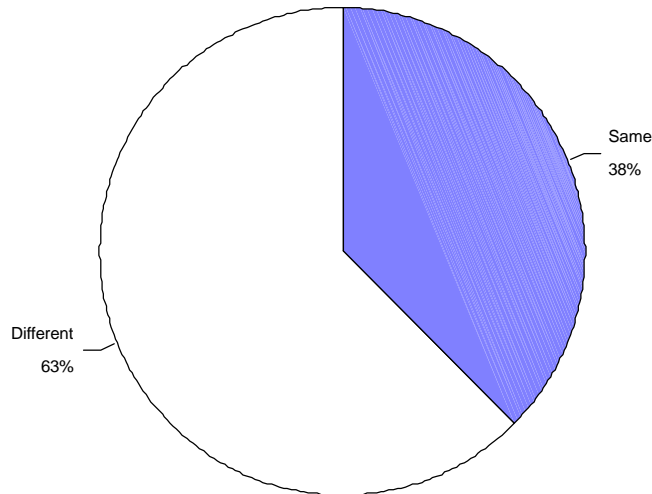


The table and chart above show that 44% of taking persons had Canadian nationality, which was similar to the global norm of 52% of taking persons having the nationality of the requested State.

**(b) Incoming access applications**

**Respondent Same Nationality as the Requested State**

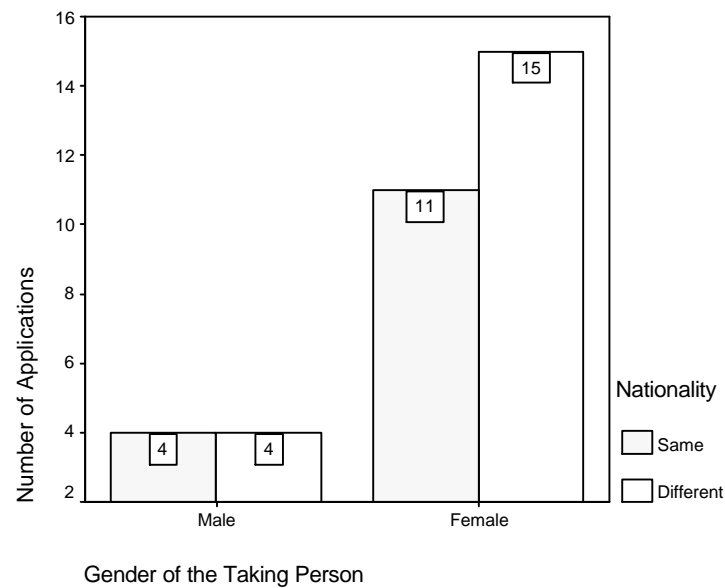
|                       | Number   | Percent    |
|-----------------------|----------|------------|
| Same Nationality      | 3        | 38         |
| Different Nationality | 5        | 63         |
| <b>Total</b>          | <b>8</b> | <b>100</b> |



The proportion of respondents having the nationality of the State to which they took the child was similar to the global norm of 40%.

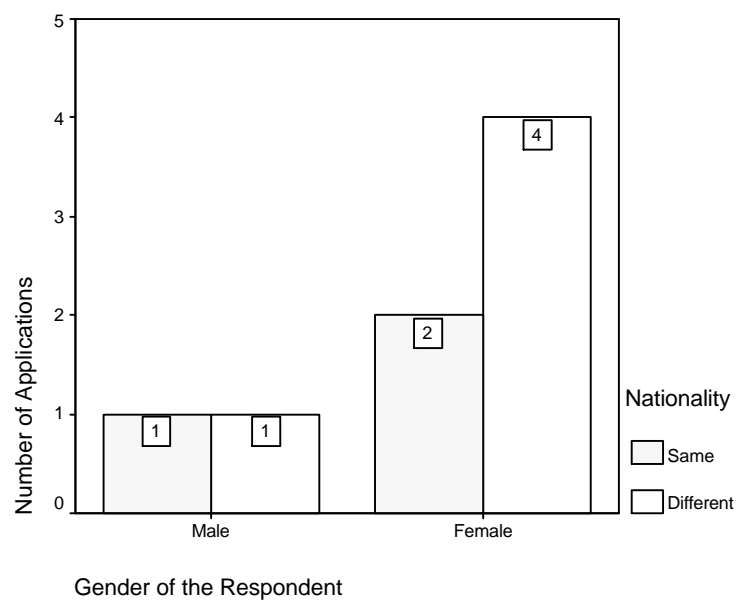
## 5. The Gender and nationality of the taking person / respondent combined

### (a) Incoming return applications



There was an equal number of male taking persons who were Canadian and non-Canadian nationals. Female taking persons were marginally more likely to be non-Canadian nationals. This is different to the global norm where 53% of male and 52% of female taking persons were nationals of the requested State.

### (b) Incoming access applications



As with return applications, there were an equal number of male taking persons who were Canadian nationals and non-Canadian nationals, and female taking persons were marginally more likely to be non-Canadian nationals. Globally, 38% of males and 40% of females had the nationality of the requested State.

## The children

### 6. The total number of children

There were 50 children involved in the 36 return applications and at least<sup>4</sup> 9 children involved in the 9 access applications. Altogether, therefore, at least 59 children were involved in new incoming applications received by Canada in 1999.

### 7. Single children or sibling groups

#### (a) Incoming return applications

Single Child or Sibling Group

|               | Number    | Percent    |
|---------------|-----------|------------|
| Single Child  | 23        | 64         |
| Sibling Group | 13        | 36         |
| <b>Total</b>  | <b>36</b> | <b>100</b> |

Number of Children

|              | Number    | Percent    |
|--------------|-----------|------------|
| 1 Child      | 23        | 64         |
| 2 Children   | 12        | 33         |
| 3 Children   | 1         | 3          |
| <b>Total</b> | <b>36</b> | <b>100</b> |

The number of applications involving single children was similar to the global norm of 63%. Also, like the global norm the vast majority of applications, involved no more than 1 or 2 children.

#### (b) Incoming access applications

Single Child or Sibling Group

|               | Number   | Percent    |
|---------------|----------|------------|
| Single Child  | 7        | 88         |
| Sibling Group | 1        | 13         |
| <b>Total</b>  | <b>8</b> | <b>100</b> |

88% of access applications involved a single child, which is higher than the global norm of 69%. The other application involved a sibling group, but the number of siblings was not stated.

<sup>4</sup> One application involved a sibling group and therefore at least 2 children, but the exact number was not stated.

## 8. The age of the children

### (a) *Incoming return applications*

Age of the Children

|              | Number    | Percent    |
|--------------|-----------|------------|
| 0-4 years    | 19        | 38         |
| 5-9 years    | 23        | 46         |
| 10-16 years  | 8         | 16         |
| <b>Total</b> | <b>50</b> | <b>100</b> |

The proportion of children in each age category was similar to the global norms.

### (b) *Incoming access applications*<sup>5</sup>

Age of the Children

|              | Number   | Percent    |
|--------------|----------|------------|
| 0-4 years    | 3        | 38         |
| 5-9 years    | 4        | 50         |
| 10-16 years  | 1        | 13         |
| <b>Total</b> | <b>8</b> | <b>100</b> |

There were proportionally more younger children involved in access applications to Canada than the global norms. Globally, 21% of children were aged between 0 and 4 years and 30% of children were aged over 10 years.

## 9. The gender of the children

### (a) *Incoming return applications*

Gender of the Children

|              | Number    | Percent    |
|--------------|-----------|------------|
| Male         | 24        | 48         |
| Female       | 26        | 52         |
| <b>Total</b> | <b>50</b> | <b>100</b> |

48% of children involved in applications to Canada were males compared with a global norm of 53%.

<sup>5</sup> The ages of all except one of the children in the sibling group were not stated.



**(b) Incoming access applications<sup>6</sup>****Gender of the Children**

|              | Number   | Percent    |
|--------------|----------|------------|
| Male         | 5        | 71         |
| Female       | 2        | 29         |
| <b>Total</b> | <b>7</b> | <b>100</b> |

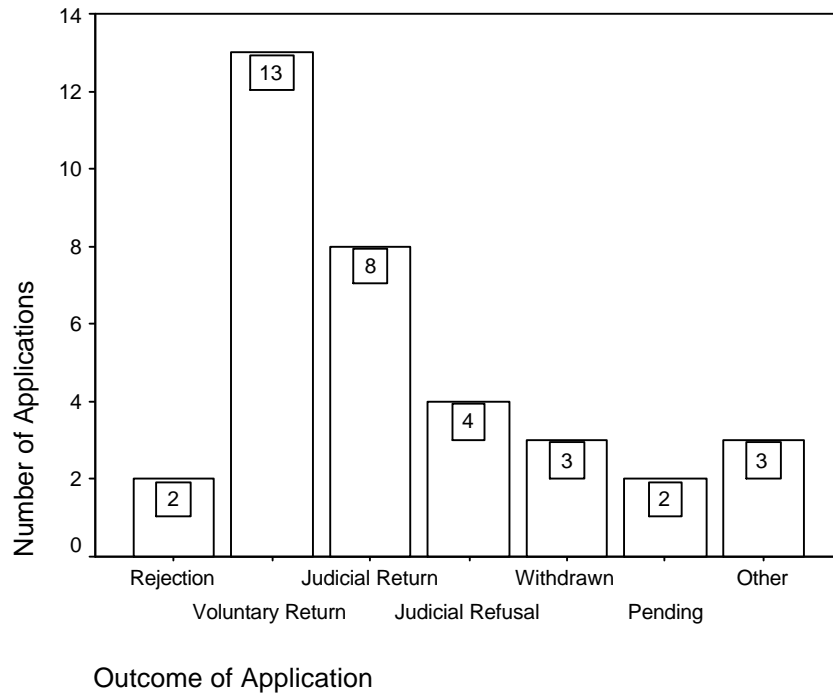
Proportionally, there were significantly more male children involved in access applications than the global norm of 50%.

**The outcomes****10. Overall outcomes****(a) Incoming return applications<sup>7</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> |

<sup>6</sup> The genders of all the children involved in the sibling group application were not stated.

<sup>7</sup> Additionally the outcome for one application received by Alberta was not stated.



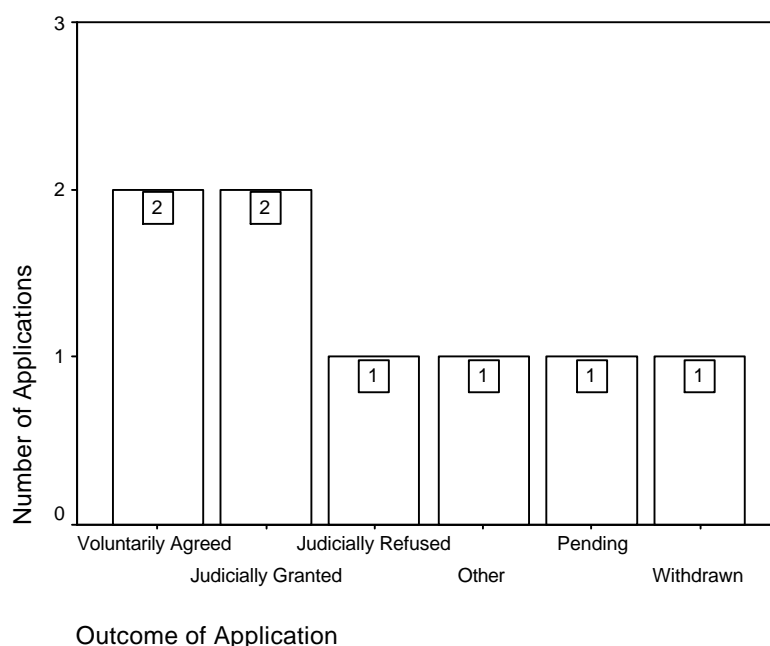
Analysing Canada as a whole, the table and chart above show that there were many voluntary returns from Canada. Indeed, these accounted for 37% of all applications, which is over twice the global norm of 18%. Judicial returns accounted for 23%, which is lower than the global norm of 32%. Given the high number of voluntary returns, the overall return rate was still 60% which is higher than the global norm of 50%. Of the 12 cases which went to court, 66% resulted in an order for return, whereas globally, 74% of all court cases resulted in return orders. The rejection and withdrawal rates at 6% and 9% respectively are below the global norms of 11% and 14%. The two pending cases were both cases received by Quebec and were pending as at June 2001.<sup>8</sup>

**(b) Incoming access applications**

**Outcome of the 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> |

<sup>8</sup> One of these cases has since been withdrawn.



Two of the applications resulted in access being granted by the courts and two applications resulted in voluntarily agreed access. Consequently, 50% of applications ended with access being granted or agreed. This compares favourably with the global norm of 43%. In one application access was judicially refused and one application was withdrawn. One application was still pending at 30<sup>th</sup> June 2001, although access had been granted pending the court hearing.

### 11. Overall outcomes by Province and Territory

As Canada is a Federal nation with different Central Authorities handling applications, the outcomes from each Province and Territory have been considered. The Province of Alberta has designated two Central Authorities, however, these have been considered together for the purpose of the analysis below.

#### (a) Incoming return applications

| Count            | Outcome of Application |                  |                 |                  |           |          |          | Total     |
|------------------|------------------------|------------------|-----------------|------------------|-----------|----------|----------|-----------|
|                  | Rejection              | Voluntary Return | Judicial Return | Judicial Refusal | Withdrawn | 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. 50% 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 norm of 50%. In British Columbia, 2 of the 3 applications that went to court, were refused.

**(b) Incoming access applications**

| Count            | Outcome of the Application |                           |                           |          |          |           | Total    |
|------------------|----------------------------|---------------------------|---------------------------|----------|----------|-----------|----------|
|                  | Access Voluntarily Agreed  | Access Judicially Granted | Access Judicially Refused | Other    | Pending  | Withdrawn |          |
| 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 3 of the 5 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.

**12. The reasons for rejection**

**(a) Incoming return applications**

Both applications, were rejected because the child was not located. The overall rejection rate in applications to Canada was just 6%, which was lower than the global norm of 10%.

**13. The reasons for judicial refusal**

**(a) Incoming return applications**

**Reason for Judicial Refusal**

|   | Number   | Percent    |
|---|----------|------------|
| Child Not Habitually Resident in Requesting State | 1        | 25         |
| Article 12  | 1        | 25         |
| Child's Objections                                | 1        | 25         |
| Other   | 1        | 25         |
| <b>Total</b>                                      | <b>4</b> | <b>100</b> |

The reasons for refusal were diverse, each refusal being based on a different reason. The refusals have not been analysed by Province and Territory as the numbers were small.

#### 14. The reasons for judicial refusal and the gender of the taking person

##### (a) Incoming return applications

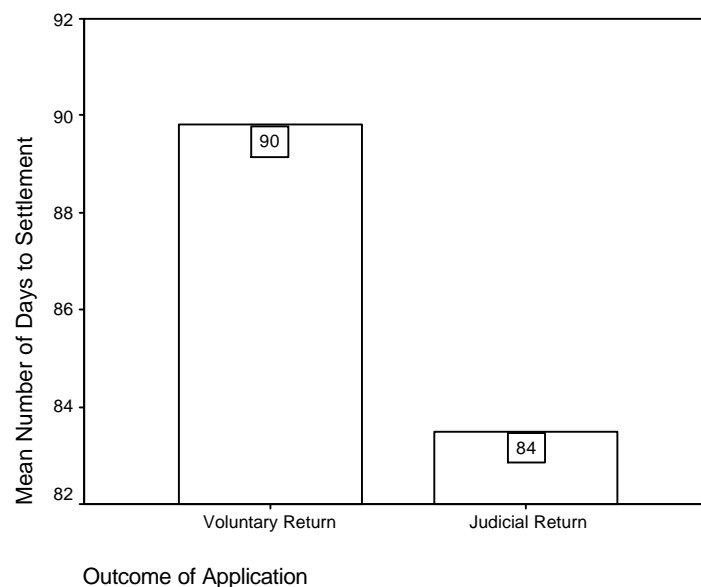
| Count   |            | Gender of the Taking Person |          | Total    |
|---|------------|-----------------------------|----------|----------|
|   |            | Male                        | Female   |          |
| Child Not Habitually Resident in Requesting State | Article 12 |                             | 1        | 1        |
| Child's Objections                                | Other      | 1                           | 1        | 1        |
| <b>Total</b>                                      |            | <b>2</b>                    | <b>2</b> | <b>4</b> |

The table above shows that in 2 of the 4 applications which were refused, the gender of the taking person was male. This was a high proportion considering that only 25% of applications involved male taking persons. Of the 9 applications involving male taking persons, 2 ended in judicial refusal.

#### Speed

#### 15. The time between application and outcome

##### (a) Incoming return applications<sup>9</sup>



<sup>9</sup> The Province of British Columbia was given different forms and therefore the figures for speed were not included in the above analysis.

Judicial returns from Canada at 84 days, were concluded faster than the global mean of 107 days. Voluntary returns were slightly slower at 90 days as opposed to a global mean of 84 days. Timing was only available for 1 of the judicial refusals, and this case was concluded in 309 days. This is considerably slower than the global norm of 147 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>        |

The table above shows the number of cases for which we had information regarding time, the mean and median average number of days to final outcome and the minimum and maximum number of days. This gives a more informative picture of the system in Canada.

### **(b) Incoming access applications**

The voluntary agreement was reached within 0 – 6 weeks of application.

#### **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> |

Compared with the global norms, access applications to Canada were resolved quickly.

## **16. Speed by Province and Territory**

### **(a) Incoming return applications**

#### **(i) British Columbia<sup>10</sup>**

The following tables show the timings in the applications received by British Columbia. The tables suggest that British Columbia is relatively quick. No application took over 6 months although, one application was still pending.

<sup>10</sup> The Province of British Columbia received different forms, and therefore speed in these cases had to be analysed differently.

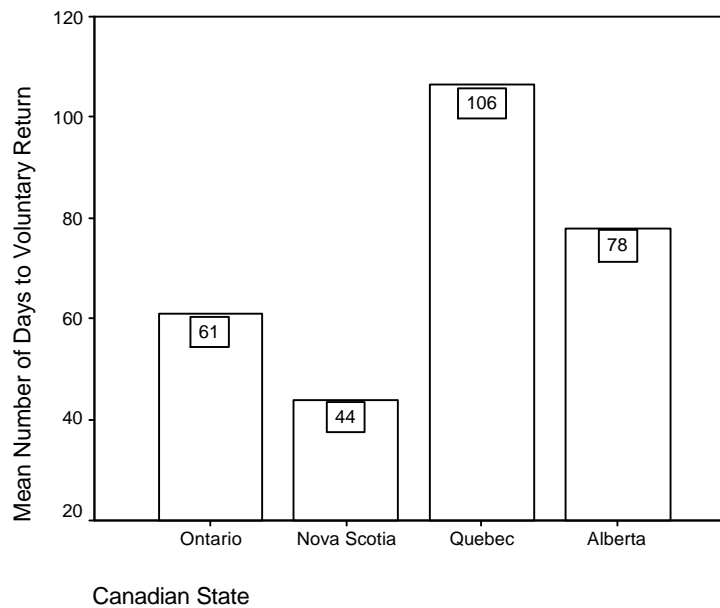
### Timing to Voluntary Settlement

|               | Number   | Percent    |
|---------------|----------|------------|
| 0-6 weeks     | 0        | 0          |
| 6-12 weeks    | 1        | 50         |
| 3-6 months    | 1        | 50         |
| Over 6 months | 0        | 0          |
| <b>Total</b>  | <b>2</b> | <b>100</b> |

### Timing to Judicial Decision

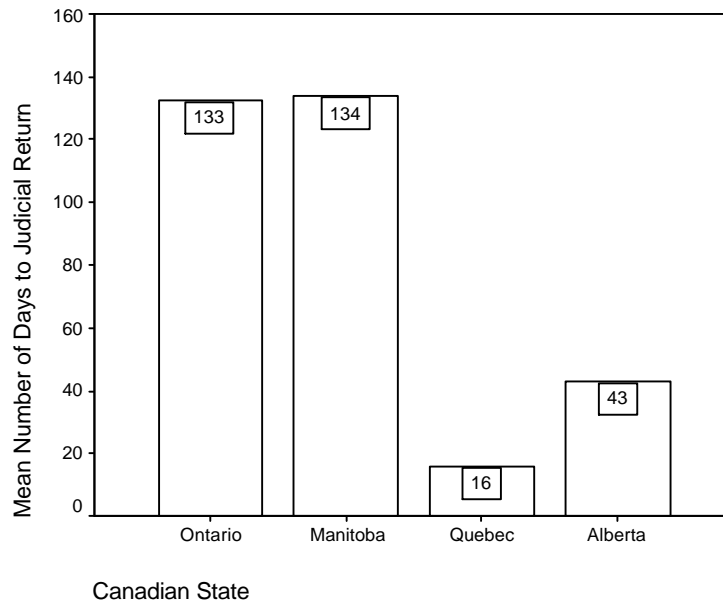
|               | Number   | Percent    |
|---------------|----------|------------|
| 0-6 weeks     | 1        | 33         |
| 6-12 weeks    | 2        | 67         |
| 3-6 months    | 0        | 0          |
| Over 6 months | 0        | 0          |
| <b>Total</b>  | <b>3</b> | <b>100</b> |

### (ii) Voluntary returns



The chart above shows the mean average number of days taken to reach a voluntary return in all of the relevant Provinces. Nova Scotia, Ontario and Alberta were quicker than the global mean of 84 days. However, the number of voluntary returns in these Provinces was small, the figure stated for Alberta and Nova Scotia applied to one case and the figure stated for Ontario applied to two cases. Conversely, in Quebec, there were 7 cases which resulted in a voluntary return.

**(iii) Judicial returns and refusals**



The above chart shows the mean number of days to judicial return in each of the relevant Provinces. Quebec and Alberta both made judicial returns in less time than the global mean of 107 days. The figure stated for Quebec referred to a single case but the figure stated for Alberta applied to three cases. The mean average time for the three judicial returns made by Alberta was just one day slower than the six-week target implied in Article 11(2) of the Convention. The one judicial decision made by Manitoba was an appealed decision, and one of the two judicial decisions made by Ontario was also reached after an appeal. This may go some way to accounting for the time taken by these two Provinces in making judicial returns.

The timing for judicial refusals was only stated in one application from Quebec. This case took 309 days to reach a conclusion.

**17. Appeals**

**(a) Incoming return applications**

Two applications for return were judicially granted upon an appeal, one in Manitoba and the other in Ontario. The decisions were concluded in 192 days and 134 days respectively. Globally, judicial returns on appeal took a mean average of 208 days from application to final outcome.