

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF  
THE 1980 CONVENTION**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

<b>Name of State or territorial unit:<sup>1</sup></b>	CANADA
	<p>Canada's responses are based on input provided by the federal Central Authority and the Central Authorities for the Canadian provinces and territories. The responses that do not reference one or more provinces or territory apply to Canada as a whole. Input was also provided, where necessary, by Global Affairs Canada and the Family, Children and Youth Section of Justice Canada. The Section of Justice Canada responsible for Canadian policy relating to issues covered by the Questionnaire coordinated this work and provided direction, as necessary, on the questions involving broader Canadian policy considerations.</p> <p>The responses were shared with the Canadian representatives to the International Hague Network of Judges who provided their views where they felt it was appropriate to do so. These views were then taken into account to further inform Canada's responses to the Questionnaire.</p>
<i>For follow-up purposes</i> Name of contact person:	<p>Names and contact information for the Canadian CAs are available on the Hague Conference website. Marie Riendeau, Counsel, Department of Justice Canada; +1 613 941-4039; marie.riendeau@justice.gc.ca</p>
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**PART I: RECENT DEVELOPMENTS<sup>2</sup>**

**1. Recent developments in your State**

1.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of international child abduction. Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

- No  
 Yes, please specify:

<sup>1</sup> The term "State" in this Questionnaire includes a territorial unit, where relevant.

<sup>2</sup> This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction and international child protection which have occurred in your State since the Sixth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior to* the 2011 / 2012 Special Commission, please provide such information here.

In Canada, the only significant developments regarding legislation or procedural rules occurred for the province of Quebec. The Quebec Code of Civil Procedure was amended in January 2016 notably to reduce delays on appeal and to ensure that the return order shall be enforceable notwithstanding any appeal. See articles 374 and 660 of the Code of Civil Procedure. <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-25.01>

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities<sup>3</sup> in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

British-Columbia decisions (4):

*Johnson v. Jessel*, 2012 BCCA 393 – in an Article 15 hearing, the application judge held that the interim order obtained by the mother, granting her sole custody and guardianship, did not entitle her to leave Canada with the children without the consent of the father or the BC court. On appeal to the BC Court of Appeal, the mother’s appeal was dismissed. A non-removal clause is not required to preserve the court’s jurisdiction over the question of the right to remove the children from the jurisdiction. Because the order was interim, the BC court was actually exercising its custody rights at the time of the removal, which was therefore wrongful within the meaning of the Convention.

*Rey v. Getta*, 2013 BCCA 369 – appeal by the TP on the issue of the children’s habitual residence. Appeal dismissed. The application judge noted there was a “profound difference between the parties on some of the facts”. The Court of Appeal held the judge had not misapprehended the evidence, failed to consider relevant evidence, or considered irrelevant factors. In finding Florida was the children’s habitual residence, the judge relied in large part on four undisputed pieces of evidence: (1) legal proceedings concerning a lease of premises at which the father stipulated the family would reside with the children and that he was a resident of the county and state; (2) medical records relating to the children; (3) custody proceedings commenced by the father in Florida in which he deposed that Florida was the children’s residence; and (4) enrollment of the children in pre-school or school in 2012 and 2013/2014.

*Sampley v. Sampley*, 2015 BCCA 113 – the application judge ordered the child’s return to the US, contingent upon the satisfaction of numerous conditions, and made other orders including for support and custody. The TP appealed the return order and the LBP cross-appealed the conditional, custody and support orders. The TP’s appeal was dismissed. The child was habitually resident in the US. The evidence supports that the father did not acquiesce to the child remaining in Canada. The allegations of domestic abuse are not sufficiently serious to refuse the child’s return – the US courts can properly address that issue. The fact that the Montana courts have not yet taken jurisdiction of the matter does not mean that no US court will. The mother’s residency status in the US is irrelevant to these proceedings. The LBP’s cross-appeal was allowed except in relation to the costs order. There was no basis for the judge to make any of the conditional, custody or support orders.

*GAGR v. TDW*, 2013 BCSC 586 – In considering the child’s objection exception, the court summarized the proper approach to the exercise of discretion under Article 13 as including: (1) While courts are increasingly encouraged to take account of the views of children, that does not mean that their views are determinative or even presumptively so; (2) The question as to whether a child has reached an age and degree of maturity where it is appropriate to take her views into account must be determined based on all of the evidence. The relevant evidence will include the nature, strength, and reasons for the child’s objection; (3) A child’s views should only be regarded if they are authentically her own. If the views have been influenced by someone else, or are based solely on a desire to stay with the abducting parent, then they should be given little weight; (4) The exercise of discretion may take into account

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<sup>3</sup> The term “relevant authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of States Parties such “authorities” will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

the child's welfare; (5) The policy considerations underlying the Convention are an important factor in the exercise of discretion; (6) The older the child, the more weight her objections are likely to carry; however, there is no minimum age at which the objections can be taken into account; (7) A child's views can prevail even where the circumstances are not exceptional.

#### Québec decisions (6)

Family law - 1222, 2012 QCCA 21, INCADAT 1158 C.A. (appeal allowed, family law - 111848, 2011 QCCS 2828)

Wrongful removal of two children by the mother from the United States to Quebec: The Court of Appeal found that the father acted in an odious, vile manner by moving his mistress into the house, but that that did not mean that he agreed to a permanent removal. He was [translation] "proactive whenever appropriate and tried to regain custody". Also, the concerns regarding the children's diet were exaggerated and could not be based on tentative factual findings to apply the grave risk exception.

The Court stated that the best interests of the child coincided with the child's return to his or her habitual place of residence and that it is therefore this narrower scope that must be ascribed to the notion of interest of the child when applying the Act. The effective application of the Hague Convention depends on close cooperation because Quebec has recognized that the state where the child has his or her habitual residence is in the best position to determine custody rights.

Family law - 131963, 2013 QCCA 1248 C.A. (appeal dismissed, family law - 133844, 2013 QCCS 6784)

Wrongful removal of a child by the mother from Italy to Quebec: The judge erred by mathematically calculating how much time the child had spent in Quebec and in Italy, finding that the child's habitual place of residence was in Quebec. The evidence instead demonstrated that the child had been continuously living in Italy, that she had been receiving medical care there for her medical condition, that she had participated in a summer camp in Rome before her removal and that she had been registered in a Roman school for the year 2012-2013.

In the judge's opinion, the father's violence toward the woman and the child, still present during such times, had reached a very disturbing level. It is true that judges, in their analysis of the application of this exception, must not attach too much weight to violence between spouses. This is not the case, however, when the violence creates an intolerable situation for the child, like in this matter, and there is a fear, objectively, that no order will remedy the situation and ensure the child's safety.

Family law - 141610, 2014 QCCS 3144 C.S.

Wrongful removal of two children by the mother from France to Quebec: Having decided that it was useful to put in place measures to protect the mother before ordering the return of the children, the court contacted the French judge, a member of the International Hague Network of Judges. A telephone meeting took place on the third day of the hearing in the presence of counsel, who had added their questions to the court's questions. During the call, the French judge suggested that the French Central Authority would be in a position to answer their questions. The Quebec Central Authority therefore sent a letter with the questions from counsel and the court. The letter and the reply letter from the French Central Authority are attached to the judgment.

Family law - 15751, 2015 QCCA 638 C.A. (appeal dismissed, family law - 142965, 2004 QCCS 5693)

Wrongful removal of two children by the mother from Spain to Quebec: Neither the Act (nor the Convention) addresses undertakings. This concerns the creation of a judge-made law, which the courts, including the Supreme Court of Canada, almost unanimously recognize the value of, to the extent that the undertakings uphold the spirit of the Act. The issue is at

the discretion of the judge hearing the return application and is not automatic because each case turns upon its own facts.

Obtaining mirror orders is not always possible and inevitably leads to delays and costs for the parent who was the victim of a wrongful removal. It involves, in each case, seeing what is possible, and necessary. It was also held that the interest of the children requires that they finish their school year before returning to Spain, so their return is delayed by three months.

Family law - 161254, 2016 QCCA 910 C.A. (appeal dismissed, family law – 16584, 2016 QCCS 1133)

Wrongful retention of a child from Venezuela by the father:

During a visit to Quebec, the six-year-old child told her father that she had participated in sexual activities with neighbourhood children, including an 11-year-old male cousin, several times. The issue here is the mother's attitude because the judge found that she had an adequate and proactive attitude, in particular regarding her efforts to initiate communication with the parents of the cousin and other family members to make further inquiries into what had happened. The mother was not considered an abuser, was not indifferent to the allegations and stated that she was ready to intervene to rectify the situation, if need be. The court cannot conclude that a danger exists, even if the alleged facts can be characterized as sexual games.

The father agreed that the mother would have custody of X in Venezuela. He also purchased the property in which the child and mother were living. It is difficult to accept his allegations that the child suffers from hunger there and lives in unsanitary conditions. This finding is consistent with the objectives of the Convention. Without this limitation, children from countries less advantaged and stable than Canada would not be able to benefit from protection under the Convention.

K.L. c. C.B., March 31, 2017, 200-09-009429-165, C.A. (appeal dismissed, family law - 163158, 2016 QCCS 6366 C.S.)

Wrongful retention of two children from the United States by the mother: The children's stay in Maryland was relatively short: approximately 69 days for Y and 85 days for X. The trial judge apparently failed to consider the reality of the children and focused entirely on the parents' intention. Certain member states focus their analysis on either the parents' intention or the child's situation. Others try instead to adopt a combined approach. All circumstances must be considered and there must be an attempt to identify a set of factors that point in one direction rather than another. In this case, the judge had to consider that the mother's intention was conditional on many factors and that only five weeks had elapsed when she informed the father of her intention to return to Quebec.

The father presented the mother with the parenting plan he had prepared after a parents' meeting, where the return was discussed in the presence of the paternal grandfather. The court was of the opinion that by requiring the father to sign on an agreement after the date of the wrongful retention, he had acquiesced to the long-term removal of the children because, according to the agreement, the children would attend Quebec schools for the 2016–2017 school year.

Manitoba decisions (3)

Cohen v. Cohen, 2013 MBQB 292

This case involved a jurisdictional dispute between Florida and Manitoba. The left behind father in Florida, USA, was seeking return of three children from Manitoba, Canada. There were concurrent custody proceedings before the Florida court. There was conflicting evidence about interpretation of the relevant Florida law and which court had jurisdiction. In light of

the jurisdictional dispute, the Judge in the requested state organized judicial communication through the International Hague Network of Judges. The case includes detailed information about recommended practices for court to court judicial communication.

Garcia Perez v. Polet, 2014 MBQB 151 and  
Garcia Perez v. Polet, 2014 MBCA 82

The Queen's Bench (lower court) decision concerns a 6 year old child who was abducted from Hawaii, US, to Winnipeg, Canada in March 2013 by her paternal grandparents. Her mother who was found to have aided and abetted the abduction came to Winnipeg weeks later, after the return proceedings had already commenced. The court granted a return order on June 28, 2013. However, mother and child were denied entry into the US because they (Canadians) had overstayed their 6 month US visitor's visas when they initially relocated to Hawaii (2010 to 2013).

Applications were made for mother and child to get US immigrant visas to facilitate re-entry to the US. In anticipation of the possibility that the child's visa might be granted before the mother's, the mother applied to court to essentially reopen the return order. She argued that the child would suffer a grave risk of harm if she was allowed to return to the US without her mother. The court held that serious emotional or physiological harm or an intolerable situation would not be created for the child if she were sent back to Hawaii without her mother, her primary caregiver. The court also determined that the child (now 8) was not of a sufficient age and maturity such that her wishes ought to be considered. The court also denied the mother's request for a stay of its order.

The mother's appeal of the denial of the stay was dismissed by the appeal court.

Callicutt v. Callicutt, 2014 MBQB 144

The left behind father was seeking return of his 4 year old twins from Winnipeg, Canada to Guam. The court found that the father had physically and emotionally abused the mother and children and manipulated the mother in relinquishing a protection order that she had in Guam. The court was satisfied that if the children are returned to Guam the mother and the children would be placed at a grave risk of physical or physiological harm or in an intolerable situation. The court was not satisfied that any undertakings would protect the mother and children from the father given the long standing pattern of domestic violence in the case, nor lessen the grave risk to the children. The court was satisfied that the exception in Article 13b was satisfied and refused to grant a return order.

Saskatchewan decision (1)

Bacic v. Ivakic 2017 SKCA 23

Court of Appeal decision rendered in March 2017 regarding Articles 5, 12 and 13 of the Convention. The return was denied based on Article 12 of the Convention. After noting that the applicant had commenced his proceedings more than a year after the child was removed, the Court of Appeal upheld the two stage process set out by the House of Lords in *Re M. (F.C.)* and another (F.C.)(Children)(F.C.), [2007] UKHL 55. The Court states that "settled" should be given its plain and ordinary meaning, and should have regard for all of the relevant circumstances bearing on the child's life, taking into account the child's age. "Overall, the question is whether the child's connections with the new environment are characterized by security and stability. The second stage involves determining whether the child should none-the-less be returned in order to further the goals of the Convention. In this case, the court concluded that there were no compelling reasons to order the child's return now that she had been settled.

Ontario decisions (2)

A.M.R.I. v. K.E.R. 2011 ONCA 417

This was a Court of Appeal decision in a case involving Ontario and Mexico. The child came to Ontario to visit her aunt and claimed refugee status, citing abuse from her mother. An order for the return of the child was made on an uncontested basis, without notice to the child or her aunt. The father, who claimed to have been late served with the return application, appealed the order on the basis that it conflicts with federal immigration legislation on non-refoulement (which prevents the removal of a refugee from Canada to a

country where they would be at risk of persecution, torture, or cruel and unusual treatment or punishment).

The Court of Appeal held that there was no conflict between the Convention and the refugee legislation because the non-refoulement provision in the refugee legislation did not apply to return orders under the Convention. The Convention provides for the adequate protection of children through Article 13(b) of the Convention. The court ultimately set the return order aside, however, on the basis that the lower court failed to consider whether any of the exceptions to the return order applied. The Court of Appeal held that a refugee child's rights under the Canadian Charter of Rights and Freedoms are engaged where a party is seeking their involuntary return, and therefore the child had a right to notice and an opportunity to be heard in the application for her return.

*Balev v. Baggott* 2016 ONCA 680

In this case, the children travelled from Germany to Ontario with their mother for an "educational exchange". The father authorized the mother's travel with the children in a consent, which provided for their return after approximately 1.5 years. The mother failed to return with the children after the period of time in the consent elapsed. The trial in the Superior Court of Justice resulted in an order that the children be returned to Germany. An appeal to the Divisional Court resulted in a reversal of that order, with the court finding that the habitual residence changed during the consensual period based on the unilateral actions of the mother.

A second appeal was brought to the Ontario Court of Appeal. There, the court accepted the trial judge's decision and ordered the return of the children. The court held that the consent had not been overridden by the unilateral actions of the mother to change the residence of the children, which would render most travel consents effectively meaningless. The court did retain the possibility that there could be a circumstance where a "consensual time-limited stay is so long that it becomes time-limited in name only and the child's habitual residence has changed."

Note: Leave to appeal to the Supreme Court of Canada was granted on April 27, 2017.

1.3 Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child abduction.

In 2013 Global Affairs Canada created a Vulnerable Children's Consular Unit to enhance Canada's consular policy and operational interventions in all children's cases, including cases of international child abductions.

No other significant developments.

## 2. **Issues of compliance**

2.1 Are there any States Parties to the 1980 Convention with whom you are having particular challenges in achieving successful co-operation? Please specify the challenges you have encountered and, in particular, whether the problems appear to be systemic.

No

Yes, please specify:

Achieving successful cooperation is difficult with some States.

For outgoing cases specifically, the main challenges are: unexplained delays in obtaining an acknowledgement of receipt for an application and/or in obtaining responses to queries regarding its status; at times, considerable delays in locating a child, in the court process or in the enforcement of a return order.

For incoming cases specifically, the main challenges are: documents that are not accompanied by a proper translation as required under article 24 of the 1980 Convention; difficulties in obtaining information on the applicable law or the court system.

For both incoming and outgoing cases: difficulties include the lack of updated contact information for the Central Authorities.

These difficulties and challenges mostly appear to be systemic, due to the lack of sufficient resources or because some Central Authorities take a "hands off" approach resulting in a reactive rather than proactive approach in relation to files. However, in some states,



Central Authorities also appear to have a limited or inaccurate understanding of their duties under the Convention.

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

- No  
 Yes, please specify:

Some States have legal remedies/recourses which have the effect of staying Hague applications or putting them aside, pending determination of that remedy/recourse. This often results in negating the effectiveness of the Convention. Canada strongly feels that where such remedies/recourses are invoked, the competent authorities should be required to take all reasonable steps to ensure that the matter is treated expeditiously.

In one state, the courts establish the eligibility of left-behind parents to legal aid. The court decided that the request did not have a chance of success and refused legal aid without hearing the case on the return.

In one or more states, when the taking-parent files a complaint with social services in the state where the child is taken or retained, that court (not designated to hear a return application) may place the child with the TP creating considerable delays and making the case more complex.

## PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION

### 3. The role and functions of Central Authorities designated under the 1980 Convention<sup>4</sup>

*In general*

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

- No  
 Yes, please specify:

The nature of this multilateral treaty contemplates some difficulties arising from time differences across the world and differing interpretations of the Convention. Canada works closely within the framework of the treaty provisions themselves to facilitate communications and on occasion will work in collaboration with its foreign ministry to overcome any difficulties. Examples of practical difficulties encountered by Canada include the use of different modes of communication where some countries insist on using fax or regular mail instead of e-mail; the repeated failure of some States to respond to emails or letters requesting information or assistance for a specific file; differences in approach to article 15 across States party; some countries continue to send documentation in original languages without requisite translations. Difficulties also arise where the Central Authorities are unable to communicate in either French or English in the treatment and follow-up of an application. In some instances, we have also encountered difficulties where a foreign Central Authority insists on communicating only via diplomatic channels rather than directly from one Central Authority to another, as contemplated by the Convention.

Canada would reiterate that cooperation amongst States Party is still needed to enhance respect for the judicial pronouncements made with respect to protective measures, such as the deposit of passports or other travel documents with the court or with the applicant's solicitor; this will increase the likelihood that the principles of the Hague Convention are respected.

3.2 Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?

- No  
 Yes, please specify:

For outgoing cases, certain requested States do not have effective means to locate children and provide only limited assistance to the left-behind parent seeking legal

<sup>4</sup> See also Section 5 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

representation. In addition, they do not share information on the determination of return applications and/or on deadlines to appeal a non-return decision in a timely and efficient manner. This consequently delays the determination of return applications. Furthermore, certain States do not ensure that the contact information for their Central Authority is updated on the website of the Hague Conference.

3.3 Has your Central Authority encountered any challenges with the application of any of the 1980 Convention provisions? If so, please specify.

- No  
 Yes, please specify:  
 Please insert text here

#### *Legal aid and representation*

3.4 Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)-(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States you have dealt with?

- No  
 Yes, please specify:

For incoming cases, the measures taken by Canadian CAs to assist parents seeking legal representation through legal aid or private counsel do not cause notable delays in the return process. There may be delays however, for example, where a parent is slow in making arrangements to hire a lawyer or in completing the proper forms and documentation to support their application for legal aid. There may also be some delays when the matter arises in the smaller centres where lawyers may be less familiar with the Convention or where a parent appeals the determination that they are not eligible for legal aid.

For outgoing cases, see response to question 3.5.

3.5 Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?<sup>5</sup>

- No  
 Yes, please specify:

On outgoing cases, some requested States provide very little or no information to assist parents in locating qualified legal counsel to represent them in a Hague application. Some other States where the Central Authority may be willing to assist a parent seeking legal counsel take significant time to do so. Difficulties have arisen locating counsel in a specific geographic area or locating counsel having experience in the area of family law who is able to appear in the relevant court or who will accept to work pro bono or for a reduced-fee. Applicants should be aware that in some States pro bono does not necessarily mean free. Finally, in a few cases, the requested State had identified only "lawyer mediators" where the left-behind parents had perceived mediation as futile and a means for the taking parent to delay. We also note that where a State does not provide legal aid or legal assistance at a reduced-fee left-behind parents may often be unable to apply for the return of their abducted children.

#### *Locating the child*

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<sup>5</sup> See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter referred to as the "[Conclusions and Recommendations of the 2006 Special Commission](#)") and paragraphs 32 to 34 of the "[Conclusions and Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#)" (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings").



3.6 Has your Central Authority encountered any challenges with locating children in cases involving the 1980 Convention, either as a requesting or requested State?

No

Yes, please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

Having clear information about systems to locate children has been more difficult for Canada as a requesting State than as a requested State. As a requesting State, Canada has encountered situations where the obligations of the requested Central Authorities (CA's) in carrying out Article 7(a) to discover the whereabouts of children is not understood. There is a continual need to emphasize that even though Article 7(a) would not usually be carried out directly by CA's, the CA's are expected to carry out and support their obligation by creating the necessary domestic linkages within their country with law enforcement officials or other authorities who may be of assistance in locating children who are the subject of Hague Convention applications from a requesting State. We also note that where Interpol becomes relevant in locating children, the response time from some countries is very slow.

As a requested State, Canada relies heavily on good linkages with other domestic authorities who are in a position to facilitate or investigate the whereabouts of children who are subjects of incoming Hague Convention applications. For example, Canada's Our Missing Children/Nos enfants disparus program is a good model of a collaboration involving the safety of children and their right not to be deprived of their family environment. The program involves the Royal Canadian Mounted Police, Global Affairs Canada, the Canada Border Services Agency and the Department of Justice.

3.7 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)?

No

Yes, please share any good practice on this matter:

Central Authorities (CA's) work regularly with external agencies in order to locate children, such as police, the Royal Canadian Mounted Police (RCMP) through its National Center for Missing Persons and Unidentified Remains, the Canada Border Services Agency (CBSA), education and child protection agencies and non-governmental organizations. Requests from Canadian CA's to locate children are made to the RCMP, which in turn contacts CBSA to determine whether the child and parent have entered Canada. With the information obtained from CBSA, the RCMP may then contact other agencies and conduct an investigation to locate the missing child.

Where appropriate, the RCMP publishes photos of missing children to the website [www.canadasmissing.ca](http://www.canadasmissing.ca), and works in partnership with CBSA and Passport Canada to issue border alerts and passport alerts.

CA's in Canada are supported in their efforts by various legislative provisions that facilitate the proper operation of the Hague Convention throughout Canada. For example, demand and search powers are available under provincial and territorial legislation in Canada which allows CA's to obtain information under the control of persons or public bodies within their respective jurisdictions to assist in locating missing children. See for example section 7 of Saskatchewan's International Child Abduction Act, 1996 (S.S. 1996, c. I-10.11). This might include for example, databanks for driver's licenses, health benefits, and utility companies.

The federal government is also authorized under certain circumstances to release information under federal legislation (Family Orders and Agreements Enforcement Assistance Act) to assist in locating a child.

Some/most provincial/territorial (PT's) jurisdictions within Canada have legislation which authorizes a peace officer or child protection worker to apprehend and deliver a child to a person specified by the court, and/or to enter premises and search for the child when a party's custody rights under a court order have been denied.

Some PTs have legislation which ensures that, once the child is located, his or her address is provided to the court rather than to the CA in Canada or the parent in the other

country. This ensures that, if any domestic violence concerns exist, the court can determine how best to deal with them.

*Information exchange, training and networking of Central Authorities*

3.8 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?<sup>6</sup>

No

Yes, please specify:

Canada has made itself available to other Central Authorities through e-mail exchanges, teleconferences, videoconferences and face to face meetings where feasible. The exchanges vary based on factors such as the level of basic knowledge that a recipient Central Authority has about the Convention, the length of time that a State has been party to it, and the mode through which the exchanges have occurred. Canada recognized the value of this knowledge sharing practice as an opportunity to develop a closer working rapport with certain States, to clarify how Canada has implemented and successfully operates the Convention and to have a constructive exchange on best practices under the Convention.

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

No

Yes, please specify:

Canada has organized and participated in various networking initiatives between Central Authorities (CA's). Within the federal structure of Canada, where there are 13 provincial/territorial CA's who are responsible for Hague Convention applications in their jurisdictions, and one Federal CA with overall operational interest in supporting and assisting the operation of the Convention, all of the CA's discuss and exchange ideas, procedures and good practices through quarterly conference calls. From time to time, in-person meetings of Canadian CA's are convened where feasible. Throughout these initiatives, other important stakeholders such as those who lead on Hague policy matters, law enforcement, border, passport and immigration officials are also invited to participate.

In 2013, Canada developed, organized and hosted a unique trilateral gathering of the CA's from Canada, the US and Mexico, given their regional proximity to each other and the number of cross-border cases between the 3 states. This provided an opportunity to have a more detailed exchange on operational practices and unique aspects of the respective legal systems that apply in the processing of Hague Convention applications. The methodology for this meeting was developed by all 3 States and included a pre-exchange of questions on various important topics covering roles of CA's as both requesting and requested States.

In 2015, Canada hosted a visit from the Japanese CA where there was a fruitful and constructive exchange on the implementation and operation of the Hague Convention, and some specific operational issues of interest to both sides. This laid the groundwork for Canada's participation in a Regional Seminar in 2016 hosted by Japan.

In 2016, Canada organized and hosted 3 national meetings involving 1) Canadian CA's, 2) Canadian CA's and the Judicial Committee on Inter-Jurisdictional Child Protection which is chaired by one of Canada's International Hague Network Judges, and 3) Canadian CA's and the US CA. Each meeting was distinct; however they were organized on consecutive days to benefit from the fact that all Canadian CA's would be present in one region of Canada.

Each meeting was an opportunity to exchange good practice and to learn about the roles and responsibilities of the provincial/territorial CA's within Canada and the US CA counterpart and in the case of the meeting between the Canadian CA's and the Canadian judges, a second unique opportunity for Canadian CA's to meet with judges (the first such meeting took place in February 2008) to discuss the Hague Child Abduction Convention including appropriate ways for judges and CA's to interact around this Convention, while ensuring utmost respect and deference to the principle of judicial independence.

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<sup>6</sup> Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

Canada continues to explore and embrace opportunities to meet with other CA's using whatever means are feasible and cost-effective (e.g. participated in a videoconference with the Colombian CA in 2016).

Canada also participated in the 2nd Inter-American Meeting on International Child Abduction that was held in Panama in 2017.

#### Statistics<sup>7</sup>

3.10 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

The few jurisdictions in Canada that do not submit statistics through INCASTAT are those that have not had active files.

#### Prompt handling of cases

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

No

Yes, please specify:

Here are a few examples of mechanisms that Canadian Central Authorities use to ensure the prompt handling of cases:

all Hague abduction cases are prioritised over non-Hague work;

reduce the need for original documents as much as possible;

follow-up regularly on each case and promptly provide any relevant information to the requesting Central Authority;

liaise with courts as necessary to ensure prompt handling of cases;

ensure back-up is available where official primarily assigned to Hague cases is away.

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

For incoming cases, delays may be due to:  
difficulties in locating the taking parent and/or child;  
incomplete information is provided in the return application, especially where the requesting Central Authority or the left-behind parent does not respond promptly to requests for additional information.

#### 4. **Court proceedings & promptness**

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, concentration of jurisdiction)?<sup>8</sup>

Yes

No, please indicate if such arrangements are being contemplated:

Canadian provinces and territories have not « concentrated jurisdiction » per se or have any plans to do so. However, in most jurisdictions, only one court is designated to hear Hague applications and judges hearing such matters are usually experts in family law. In one jurisdiction, applications are heard by the same judge.

4.2 Does your State have mechanisms in place to handle return decisions within six weeks (*e.g.*, production of summary evidence, limitation of appeals, swift enforcement)?

No

Yes, please explain:

<sup>7</sup> See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*, note 5).

<sup>8</sup> See, *The Judges' Newsletter* on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

Jurisdictions in Canada have mechanisms to expedite the treatment of Hague applications, even though, as a rule, cases are resolved in more than the 6-week period. While such mechanisms may vary from one jurisdiction to another, they include the following:

- the development by courts of "protocols", rules of court, bench books and practice directives;
- trial coordinators prioritizing hearings on return applications (trial and appeals level)
- the use of judicial case management
- the use of affidavit evidence in some jurisdictions
- in one jurisdiction, possibility of out-of-court testimony for witnesses other than the parents
- use of teleconferencing and videoconferencing
- include specific provisions and short timelines for actual return of the child as part of the return order.

4.3 If your response to the previous question is No, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?

- No, please explain:  
Please insert text here
- Yes, please explain:  
Please insert text here

4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

- Delays in the handling of return applications have typically been a result of the following:
- (1) complexity of cases
  - (2) Requiring oral evidence instead of affidavit evidence
  - (3) Court-based scheduling delays based on caseload volumes
  - (4) Interim motions that slow down the process of reaching a final hearing
  - (5) Difficulty in obtaining information from the other jurisdiction (i.e. from the left behind parent, the other Central Authority, etc.).

4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (e.g., prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

- No, please explain:  
Please insert text here
- Yes, please explain:  
Canadian courts are authorized to make interim orders to prevent the removal of the child from the jurisdiction and to minimize harm to the child, and do so in appropriate cases where requested by the left behind parent. However, in some jurisdictions, courts safeguard the passport, restrict movement of the taking parent and child, and allow interim access to the left behind parent in all cases.

4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

- Yes
- No, please explain:

4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

- Yes
- No, please explain:  
N/A

4.8 Please comment upon any cases (whether your State was the requesting or requested State), in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of

the child's safe return. What was the specific purpose of the communication? What was the outcome?

In an outgoing case, the left behind parent's counsel in Canada requested judicial communication to ascertain the reason for delay in the hearing of the return application in the requested state. The court in the requested state refused to participate in judicial communication, saying that the case was too far along for judicial communication to be valuable. The return application and a subsequent appeal were both unsuccessful.

A Canadian judge requested judicial communication in an incoming case where custody and access proceedings were ongoing in the requesting state. The court of the requesting state would not respond to the Canadian judge's request for judicial communication to explore the history of the custody/access proceeding in the requesting state. The case eventually settled when the parties reconciled.

In another Canadian case, one child was with the mother in another State and one child was in Canada with the father. Both parties commenced custody proceedings in their "home" jurisdiction and return applications in the other jurisdiction. Initially, the judge from the other jurisdiction requested judicial communication. The Canadian judge made significant attempts at judicial communication with the other judge, but was not successful because that judge failed to respond. The outgoing return application was dismissed and is being appealed. The incoming return application is still proceeding.

In an incoming case, the Canadian judge wanted judicial communication to get information about whether there were civil or criminal proceedings in the State of habitual residence, whether mirror orders are possible, what protection could be put in place for mother and children upon return, how long before the court can hear a motion for custody, if taking parent is not returning, what can be put in place to protect the children, and what measures can be put in place to prevent an abduction to another non-signatory country. Instead of facilitating judicial communication, the requesting state referred the Canadian judge to the Central Authority in the requesting state for answers.

A few judges in requested States hearing a Hague application made contact in writing with a Canadian liaison judge to obtain information about:

Whether Canada would take jurisdiction if the child was returned, whether mirror orders are possible and the consequences for a returning taking parent if there is a warrant for their arrest. Each of these requests was answered in a timely manner by the Canadian liaison judge.

In an incoming return case there were concurrent custody proceedings before the court in the children's habitual residence. There was conflicting evidence about interpretation of the foreign law and which court had jurisdiction. Judicial communication was initiated by the Canadian judge. Ultimately, after a lengthy discussion between the judges in the presence of the parties and counsel (by phone and in person, as the case may be) it was concluded that as a preliminary step, the requesting court would determine whether it would have jurisdiction over custody if the requested court ordered the children to be returned. After the requesting court decided it would have jurisdiction to decide custody, the case was resolved without a further hearing in the requested state's court.

## **5. Ensuring the safe return of children<sup>9</sup>**

### *Methods for ensuring the safe return of children*<sup>10</sup>

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings<sup>11</sup> regarding the safe return of children are implemented?

<sup>9</sup> See **Art. 7(2) h** of the 1980 Convention.

<sup>10</sup> Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

<sup>11</sup> See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra*. note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5).at paras 39-43.

Possibility for the Central Authority to ask the prosecutor to suspend the warrant for the arrest of the taking-parent. That way both parents will be able to participate in the custody proceedings and the disruption to the child will be minimized.

Highlighting that Canadian law permits both parents to participate in custody proceedings after the return of the child;

Providing information on legal aid services available upon return of the taking parent;

Including specific provisions in a Canadian return order to facilitate the return of the child to the requesting State and to minimize the risk of re-abduction;

Encouraging, where appropriate, that parents seek mirror orders and orders containing undertakings;

Advising other states, on request, of services and protective measures available in the Canadian jurisdiction;

Alerting child protection authorities of cases where children may be at risk on return to the Canadian jurisdiction;

Offering mediation, where appropriate and available;

Offering victim services to children returned to Canada including counselling, where required and available;

Providing assistance, where required, to facilitate entry into Canada of the child and accompanying parent in accordance with immigration legislation.

Involving authorities (e.g. to monitor arrival in habitual residence to avoid re-abduction and prevent taking parent from going into hiding with child

Seeking assistance, where necessary, from Consular officers in Canada or abroad.

5.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

The practices may vary from one jurisdiction to another in Canada. The Central Authorities may consider one or more of the following: contacting the Central Authority in the requesting State to ensure that child protection services in that State are notified; seeking the assistance of the parties' lawyers in the requesting State; engaging local child protection services (directly or, where appropriate, with the assistance of Canadian consular officials abroad) to communicate with child protection services in the requesting State; discussing possible options with the parents or their lawyers.

5.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns?

Courts in Canada may impose undertakings on either parent requiring, for example, that they contact child protection authorities in the requesting State. The courts rely on the parents themselves to take appropriate steps to ensure that such undertakings are respected. In some jurisdictions, courts may also request mirror orders or safe harbour orders. If specific child protection concerns have been raised, the Central Authority in some Canadian jurisdictions may request their child protection authorities to convey these concerns to their counterparts in the requesting State. In some jurisdictions, the Central Authority recommends to the court to request the assistance, in the return orders, of the competent authorities of the habitual residence to intervene upon the return of the child.



*Use of the 1996 Convention to ensure a safe return*

5.4 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**), in providing for their recognition by operation of law (**Art. 23**), and in communicating information relevant to the protection of the child (**Art. 34**)?

No

Yes, please explain:

Canada is considering the implementation of the 1996 Convention. As part of this analysis, we are notably considering the fact that the 1996 Convention is intended to reinforce and to complement the 1980 Convention. We are therefore taking into account the jurisdictional rules for urgent protective measures and the provisions on the recognition of orders and on the sharing of information.

*Protection of primary carer*

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State? Please explain and provide case examples where possible.

In the context of a return application, the taking parent's concerns would likely have been raised in the course of the proceedings under the 13 b) exception. If the court were to reject the exception and order the child's return, it may direct that some measures be taken to address or alleviate the taking parent's concerns and thus facilitate his or her return, assuming the taking parent decides to return. These measures may include the court designating another person to escort the child back, preferably a person that is known to the child, such as a grandparent, an aunt, or an uncle, or ordering that the taking parent return on a different flight. In addition to such measures directed by the Court, Central Authorities in Canada could help the parent make connections with services (including legal services) in the other country for example, to obtain a peace bond or to call upon child welfare services to provide support.

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

As a requested state, the court in Canada would not be in a position to impose measures in the other country. However, they may use undertakings, such as: the left behind parent must allow the taking parent and child to have sole occupancy, the left behind parent is only entitled to certain specified access on certain conditions until access has been decided by the requesting state's court.

*Post-return information*

5.7 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

It is not within the role of the Central Authorities under article 7 of the 1980 Convention to monitor the effectiveness of measures following the return of a child to their jurisdiction. In those jurisdictions where family law files are confidential, the Central Authorities may not have access to them. In addition, in most if not all Canadian jurisdictions, legislation would prohibit or strictly limit their ability to gather personal information regarding a child and his or her parents in such circumstances.

Canada would not support a recommendation that States party should cooperate within the framework of the 1980 Convention to provide each other with follow-up information. Such a recommendation would go beyond the scope of this Convention and the specific duties of the Central Authorities. Canada trusts authorities in requesting States to look after the children once they are returned to the requesting States.

5.8 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for requesting a report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

No  
 Yes, please explain:

In Canada's view, Article 32 does not establish a jurisdictional rule. It provides for possible cooperation between Contracting States to the 1996 Convention.

We anticipate that Central Authorities in Canada (assuming Canada becomes party to the 1996 Convention) would consider using Article 32 to request a report on the child's situation only where such information would be needed to make a decision (take a measure of protection) in regard to the child in Canada. Such application would be consistent with the wording of Article 32. It is not anticipated that Canadian Central Authorities would use Article 32 to request information as a matter of course to follow-up on a child's situation after his or her return to the State of habitual residence. In this regard, Canadian authorities are very mindful of the need to respect the child and the parents' right to privacy regarding personal and family matters. We should also add that Canadian authorities would very likely not have the authority under domestic law to even request or collect information on the child or his or her parents for such purpose.

## 6. **Voluntary agreements and mediation**

6.1 How does your Central Authority (either directly or through any intermediary) take, or is it considering taking, appropriate steps under **Article 7-(c)** to secure the voluntary return of the child or to bring about an amicable resolution of the issues? Please explain:

Central Authorities can take a variety of approaches to encourage a voluntary return. With the consent of the left behind parent, many Central Authorities contact the taking parent or their lawyer, either by letter or by telephone, to discuss or encourage a voluntary return. Some Central Authorities offer free mediation to the parent to attempt to work out arrangements with the other parent.

6.2 In what ways have you used the "Guide to Good Practice on Mediation"<sup>12</sup> for the purpose of implementing the 1980 Convention in your State? Please explain:

Central Authorities contributed to the formation of the Guide to Good Practice on Mediation by responding to questionnaires and reviewing the draft Guide. Canadian Central Authorities have observed how Central Authorities in other States have used mediation in these files, which has led to discussions amongst Central Authorities in Canada about the range of cases which might benefit from mediation. There are currently more Canadian jurisdictions offering mediation to Hague applicants than there were before the Guide was developed.

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?<sup>13</sup>

No, please explain:

<sup>12</sup> Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

<sup>13</sup> As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

Please insert text here

Yes, please explain:

Providing information on and directing parents to mediation services in cases that fall under the 1980 Convention is the responsibility of the designated Central Authorities. The establishment of a Central Contact Point is called for in the Principles for the Establishment of Mediation Structures in the Context of the Malta Process (which cover cases involving States with legal systems based on, or influenced by, Shari'a law where the 1980 Convention does not apply).

For the designation of Canada's Central Contact Point, see response to question 12.2 b).

## 7. **Preventive measures**

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?<sup>14</sup>

No

Yes, please describe:

While Canada has taken steps to advance the development of a recommended model travel form, it has not done so under the auspices of the International Civil Aviation Organization. Canada recognizes that in the area of international child abduction, it is important for parties to consider working out in advance, issues related to the travel of their children across borders and that such discussions may culminate in various written forms. This advance discussion may minimize the risk of one of them wrongfully retaining their child or children.

To assist parents, Canada published information notably about the use of Consent Letters and a suggested template for such. (<https://travel.gc.ca/docs/child/consent-letter-2123.pdf>)

That said, it is important to keep in mind that the mere existence of a letter of consent does not prevent a wrongful removal or retention of a child and it does not guarantee the return of a child or children who are subject to a Hague Convention application or proceeding. For example, a taking parent who has wrongfully retained their child in another country may oppose an application for the return under the Hague Child Abduction Convention on the basis that such return would pose a grave risk of harm to the child or place them in an intolerable situation. The court hearing the matter would decide the application based on all of the relevant circumstances, in light of all of the provisions of the Convention, including the grave risk of harm exception. In this type of situation, the existence of a letter of consent would not necessarily be relevant and it would not likely be the determinative factor.

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

Yes

No, please explain:

As stated in Question 7.1, given the limited value of any particular model travel form, we believe that the resources of the Hague Conference could be directed to higher priority objectives.

## 8. **The Guide to Good Practice under the 1980 Convention**

8.1 In what ways have you used the Parts of the Guide to Good Practice<sup>15</sup> to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

a. Part I on Central Authority Practice. Please explain:

All Canadian jurisdictions had implemented the Convention before the Guide was developed. It is a useful tool for seeing the range of good practices utilised by various Central Authorities.

<sup>14</sup> See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

<sup>15</sup> All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Guides to Good Practice".

Work on the development of the various parts of the Guide and the review of draft versions have been useful in reviewing existing domestic practices and procedures. The checklist on incoming and outgoing applications that appears in Part 1 of the Guide is regularly used in at least one Canadian jurisdiction. The jurisdictions that handle only a few applications turn to the Guide for direction when new situations arise. Central Authorities in Canada may also refer to the Guide in their communications with other States where issues regarding the operation of the Convention are raised. When presenting a Hague return application in court, the Guide is also a helpful tool to illustrate and clarify the scope and processes under the Convention. Finally, the Guide is used when preparing speaking materials on the Convention.

- b. Part II on Implementing Measures. Please explain:  
As above
- c. Part III on Preventive Measures. Please explain:  
As above. Most Canadian Central Authorities have had a variety of preventative measures in place prior to the Guide.
- d. Part IV on Enforcement. Please explain:  
As above. Most Canadian Central Authorities have had a variety of enforcement mechanisms in place prior to the Guide.

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

All Canadian Central Authorities are aware of the resources on the Hague website, including the Guide to Good Practice. The website of the Justice Ministry of Québec provides a link to the Guide. When the Guide was being developed, Canadian Central Authorities discussed the responses to the questionnaires during regular conference calls.

8.3 Do you have any other comments about any Part of the Guide to Good Practice?

It is a very useful Guide for States newly implementing the Convention and those countries who only deal with Hague cases occasionally.

## **9. Publicity and debate concerning the 1980 Convention**

9.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national parliament or its equivalent?

No

Yes, please indicate the outcome of this debate or discussion, if any:

(a) There is ongoing media interest in 1980 Convention cases where Canada is involved. It is always a challenge to ensure that the messaging in relation to the operation of the Hague Convention is accurate and is not inadvertently dramatized against the context of the emotional fact patterns that tend to be associated with these cases and against the sometimes tragic results. Canada recognizes the need to promote responsible and educational messaging about the 1980 Hague Abduction Convention and is attuned to every opportunity to do so.

(b) In 2014, the Standing Senate Committee on Human Rights conducted a study on "international mechanisms toward improving cooperation in the settlement of cross-border family disputes, including Canada's actions to encourage universal adherence to and compliance with the Hague Abductions Convention, and to strengthen cooperation with non-Hague State Parties with the purpose of upholding children's best interests". This study involved hearing a variety of stakeholders to discuss the issue of international child abductions, and the role of the 1980 Convention and other international mechanisms in resolving these disputes.

The resulting report (<https://sencanada.ca/Content/SEN/Committee/412/ridr/rep/rep13jul15-e.pdf>) covered a broad range of issues including the need to improve consistency in the interpretation and application of the 1980 Convention globally, Canada's role in the Malta Process and the

Working Party on Mediation, and increasing awareness of the Convention generally. The Report has been tabled by the Standing Committee but has not been formally adopted by the Senate.

9.2 By what methods does your State disseminate information to the public about the 1980 Convention?

There are numerous methods undertaken by Canadian Central Authorities to disseminate information to the public, NGOs and legal practitioners about the 1980 Convention. Some examples of modes of dissemination include seminars, pamphlets, media, and websites. In addition, Canadian Central Authorities collaborate, where feasible, with others who disseminate information about the Convention with a view to broadening the reach of consistent and accurate messaging.

Canada also publishes online information about the 1980 Hague Convention. The federal Government has issued a guidebook for left-behind parents and various provincial and territorial governments have informational webpages. Dissemination of information is also undertaken through Canada's Our Missing Children Program and participation in various training seminars. Some recent examples include training that was provided at a Justice Canada Conference on the intersection of the Hague Convention and immigration law, a joint Justice Canada/Global Affairs Canada Knowledge Exchange involving both government officials and NGO's, and a presentation to a national family law conference on the prevention and responses to cross-jurisdictional child abduction.

<p><b>PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION</b></p>
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**10. Transfrontier access / contact<sup>16</sup>**

10.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access?

- No  
 Yes, please explain:

There have been no significant developments in this area in Canada.

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

There have been no significant developments in this area in Canada.

10.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:

- a. the granting or maintaining of access rights;  
 Legal aid, pro bono, or affordable legal representation may not be available to non-custodial parents which creates a hardship for some Convention applicants. Some States have no means of enforcing access orders. Mediation is offered in some States but does not result in an enforceable agreement. Meaningful access is not provided for under the law of some States.
- b. the effective exercise of rights of access; and  
 see response to (a).
- c. the restriction or termination of access rights.  
 See response to (a), in addition, we note that, in some States, domestic legislation does not allow for the establishment of access rights for a non-custodial parent and/or for

<sup>16</sup> See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra.* note 5) at paras 1.7.1 to 1.7.3.

the effective enforcement of their existing access rights. This is an issue of considerable concern for Canada as this effectively results in children being denied their right to maintaining personal relations and direct contact with both parents on a regular basis, even where such relations or contacts would not be contrary to the child's best interests. We understand that this may not be due to a lack of cooperation between Central Authorities, but it is an important problem that must be noted.

Please provide case examples where possible.

In one country, parents who have taken part in mediation/ADR have at best been able to negotiate an agreement that is vague and imprecise in its terms. Further, there are no means of enforcing the agreement under the laws of the State.

10.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"<sup>17</sup> to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

The Guide includes useful practical information. It may be referred to when drafting letters to custodial parents on behalf of applicant access parents or in discussions with Central Authorities in other States. Even with this excellent resource, however, trans-frontier contact cases are more challenging to manage than return cases. In practice, in many instances, custodial parents have fairly easily frustrated the other parents' attempts to exercise access to the children.

It is important to emphasize the general principle, set out in 1.1 of the Guide, that regular contact with both parents should be promoted unless it is shown to be contrary to the interests of the child. In general, a child's extracurricular activities and general routine should not be used to avoid or exclude meaningful contact with the access parent.

## **11. International family relocation**<sup>18</sup>

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

British Columbia: sections 65 to 71 of the Family Law Act, SBC 2011, c. 25, require notice of a proposed change in the location of the residence of a child or child's guardian which can reasonably be expected to have a significant impact on the child's relationship with a guardian or other person having a significant role in the child's life. The factors that a court should and should not consider on an application to relocate are also specified in the Act.

Nova Scotia: ss. 18d to 18h of the Maintenance and Custody Act, RSNS, chap 160, 1989, as amended (these amendments have received Royal Assent but have yet to be proclaimed), require notice of a proposed change in the location of the residence of a child, or of a child's parent or guardian, which can reasonably be expected to significantly impact the child's relationship with a parent or guardian or person who has an order for contact time with the child. The factors the court shall be guided by in the relocation of the child, and in determining the best interests of the child, are specified under these provisions. The court may vary a previous order for custody or parenting time under the Act upon being satisfied the child's needs or circumstances have changed as a result of the order authorizing or prohibiting the relocation of a child.

## **PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES**

<sup>17</sup> Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Guides to Good Practice".

<sup>18</sup> See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. 1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."



## 12. **Non-Convention cases and non-Convention States**

12.1 Are there any States that you would particularly like to see become a State Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States? Please explain:

Canada encourages all States that are not party to the 1980 Convention to consider putting into place the basic requirements of the Convention (i.e. setting-up a functioning Central Authority and, where necessary in their State, adopting legislation giving effect to the Convention) and becoming party to it. Canada is not in a position to consider acceptance of a State's accession before full legal and operational effect has been given to the Convention in that State.

In particular, Canada would encourage Egypt, Lebanon, Saudi Arabia, India and China to consider becoming party to the Convention.

Steps to promote: Work should continue through the Malta Process and the Working Party on Mediation to engage non-convention states with legal systems based on or influenced by Shari'a law. In addition, with the support of the Permanent Bureau, States party should be encouraged to develop a collaborative approach in developing advocacy initiatives to promote the benefits of the Convention to non-party States.

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

Canada would welcome the participation of members of the Working Party (Egypt, Jordan, India, Malaysia and Senegal). Canada would further welcome the participation of the following non-party States engaged in the Malta Process (Bahrain, Kenya, Iran, Qatar, United Arab Emirates and Indonesia).

*The "Malta Process"*<sup>19</sup>

12.2 In relation to the "Malta Process":

- a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?<sup>20</sup>

Canada supports encouraging parents to use mediation, where appropriate, to resolve disputes over parental responsibilities, custody and access. As co-chair of the Working Party on Mediation of the Malta Process, Canada actively participated in the development of the Principles, as an important first step to facilitate access to mediation services in cases involving States party to the Hague Conventions and non-Party States of Islamic legal tradition. Canada strongly supports promoting the Principles and, in particular, the designation of a Central Contact Point by those States that have not yet done so. We also strongly support promoting the use of the Principles to assist parents in identifying mediation services and obtaining legal information to help them resolve their disputes.

- b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address cross-border family disputes over children involving States that are not a Party to the 1980 and 1996 Hague Conventions?

No  
 Yes, please explain:

<sup>19</sup> The "Malta Process" is a dialogue between certain States Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

<sup>20</sup> The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

Canada has designated its Central Contact Point (CCP). The Minister of Justice and Attorney General (through the office responsible for the Federal Central Authority function for the 1980 Convention) for incoming cases to Canada and Global Affairs Canada (Vulnerable Children's Consular Unit) for outgoing cases.

For incoming cases, Canada's CCP will direct parents to existing Justice Canada resources such as the Inventory of Government-Based Family Justice Services and a 1-888 Justice Canada Family Law Information Line to identify mediation services that may be available to them.

c. What is your view as to the future of the "Malta Process"?

Decisions regarding the future of the Malta Process must be fully discussed and agreed to at the Council on General Affairs and Policy in light of the Conference's mandate and priorities. In this regard, we refer to the conclusions and recommendations made by Council in regard to Malta Process at its annual meeting in March 2017. That said, as previously stated, Canada recognizes the importance and the benefits of the continued dialogue between party and non-party States of Islamic legal tradition, and the progress made via the Working Party on Mediation.

**PART VI: TRAINING AND EDUCATION AND  
THE TOOLS, SERVICES AND SUPPORT PROVIDED  
BY THE PERMANENT BUREAU**

**13. Training and education**

13.1 Can you give details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had?

There have been numerous training sessions within Canada since the 2011 Special Commission. Here are a few examples:

2016 – Federal Government Workshop on Intersecting Issues on Family and Immigration Law – where the 1980 Convention was discussed.

2016 – Federation of Law Societies of Canada: National Family Law Program included session on Prevention and Responses to Cross-Jurisdiction Removal and Retention of children – where the 1980 Convention was discussed.

Training sessions for law enforcement officers organized by Canada's National Centre for Missing Persons and Unidentified Remains program. Such sessions facilitate building relationships and sharing information, which is extremely helpful in enforcing return orders, locating parents and children, etc.

Training programs offered to consular and political officers, both in Canada and abroad.

Various training sessions for the members of the private Bars, judiciary, and other agencies and authorities that cooperate domestically in the overall delivery of Canada's international legal obligations under the 1980 treaty.

Lectures at the law schools have been helpful in introducing law students to the issues related to parental child abduction.

**14. The tools, services and support provided by the Permanent Bureau**

*In general*

14.1 Please comment or state your reflections on the specific tools, services and support provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

a. The Country Profile available under the Child Abduction Section.

The Country Profiles, when completed and current, are valuable resources for Central Authorities, and stakeholders. The Country Profiles facilitate easy and efficient access to information about processes and resources of the other State Party involved in an international child abduction, potentially facilitating more expeditious processing of cases. Unfortunately, not all State Parties have provided Country Profiles. It would be especially helpful if new State Parties would complete a Country Profile as soon as possible following

their accession to or ratification of the 1980 Convention. It would also be helpful if they were available in French or English.

- b. INCADAT (the international child abduction database, available at < [www.incadat.com](http://www.incadat.com) >).

Incadat is a helpful tool. However, it is not comprehensive. Generally, Canadian courts refer to reported decisions rendered in Canada before turning to foreign cases reported in Incadat.

- c. *The Judges' Newsletter* on International Child Protection - the publication of the Hague Conference on Private International Law which is available online for free;<sup>21</sup> It is useful and informative.

- d. The specialised "Child Abduction Section" of the Hague Conference website (< [www.hcch.net](http://www.hcch.net) >);

This is a practical and user-friendly feature of the Hague Conference's website. It facilitates searches on the Convention and provides relevant links. Central Authorities and other stakeholders (e.g. lawyers) in Canada use it regularly.

- e. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);<sup>22</sup>

Since the 2011 Special Commission the Permanent Bureau has made some technical changes to INCASTAT. The new feature which allows data to be entered on an ongoing basis and the automated reminders may result in increased use of INCASTAT.

Though in the past, INCASTAT was not used by all Canadian jurisdictions, usage may increase as a result of the technical improvements and co ordination efforts by the federal Central Authority.

INCASTAT should be reviewed to make it more relevant. Some of the questions and proposed answers could be reworded and questions could be added to better reflect the application process and the operational realities of typical 1980 Hague Convention cases so that the data leads to more meaningful conclusions.

It is not clear how the INCASTAT statistics are being used by the Permanent Bureau.

- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.<sup>23</sup> Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

Canada generally supports the provision of cost-effective assistance and training on the 1980 and 1996 Conventions within existing resources and in light of the organisation's work programme and priorities as determined by the Council on General Affairs and Policy. While the methods/mechanisms proposed in the question may present benefits, they require considerable human and financial resources (i.e. to travel and attend such activities). We would therefore encourage the Permanent Bureau to also explore developing more cost-effective ways of providing assistance and training, for example through webinars that could be accessed by stakeholders via the Hague Conference's website at any time and at a relatively small cost. Canada would be open to contributing to the development of the content of such webinars.

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<sup>21</sup> Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

<sup>22</sup> Further information is available via the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "INCASTAT".

<sup>23</sup> Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);<sup>24</sup>

This question focuses on assistance with the practical operation of the Convention(s) and therefore on assistance to States that are already party to the instrument(s). Encouraging broader ratification of or accession to the Convention(s) is a separate issue. That said, we think it is critical to impress upon any State considering becoming a party the need to properly and fully implement the instrument(s), including by adopting procedural rules that will facilitate the expeditious treatment of Hague applications and the effective return of children.

- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;

This should remain one of the main functions of the Permanent Bureau. However, to be able to do so, States party Parties must regularly update the contact information for their Central Authorities. We think the Permanent Bureau should send regular reminders to States.

- i. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges

The Permanent Bureau should also support communications among the Network Judges by maintaining their contact information in a confidential database and inviting for regular updates of such information.

We do not see a role for the Permanent Bureau in actual communications as it is within the exclusive discretion of individual judges to determine if and when to communicate with one another. We also feel that Network Judges could rely on one another to provide information or guidance on their roles as contact judges and on the use of direct judicial communications. In Canada's view, this was the main purpose of establishing the International Hague Network of Judges.

We also do not see a role for the Permanent Bureau in supporting communications between Network Judges and Central Authorities. As per 1.6.4 of the Conclusions and Recommendations of the 2006 Special Commission, adopted again in the Conclusions and Recommendations of the 2011 Special Commission (see number 67): "The Special Commission recognises that, having regard to the principle of the separation of powers, the relationship between judges and Central Authorities can take different forms." We would support judges sharing their experiences regarding such communications with other Network Judges and Central Authorities doing the same with other Central Authorities.

These views do not preclude the Permanent Bureau from "supporting communications" among Network Judges and among Network Judges and Central Authorities by inviting them to participate in activities such as seminars and conferences that provide important opportunities to share experiences more broadly.

#### *Other*

#### 14.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;

The Special Commission should remain the principal multilateral mechanism to review and to improve the operation of the Convention. In addition, consideration should be given to setting up information sessions or group sessions to reinforce the Guide to Good Practice on a regular basis. Such sessions or group discussions could be held in the margins of the Special Commission or between Special Commission meetings (possibly by way of videoconferences and/or at the regional level).

- b. To assist States in meeting their Convention obligations; and

States party to the 1980 Convention are responsible for ensuring the proper interpretation and application of the 1980 Convention via their administrative and judicial organs. To assist them, consideration should be given to twinning Central Authorities within

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<sup>24</sup> Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

a region for mentoring purposes. Assistance should also be provided to them, as suggested above, by the development of webinars on the practical operation of the Convention.

States might also be encouraged to strategically identify small-scale networking opportunity to discuss issues, share information about their legal systems (going beyond the Country Profile Form) and problem-solve to improve how their mutual Hague cases are managed. This might be of particular interest for States located in the same region or that have a shared border. The Regional Offices could facilitate such opportunities.

- c. To evaluate whether serious violations of Convention obligations have occurred?

The authorities of the States involved are the best placed to evaluate whether serious violations of the Convention have occurred. If a State is not meeting its obligations, it is up to the other State party to raise the issue through its Central Authority. If the problem is systemic, it is likely that a number of States will have encountered similar difficulties. States having a common interest could then work together and with the non-compliant State in resolving the problem.

<b>PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS</b>
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### **15. Views on priorities and recommendations for the Special Commission**

15.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

We would especially like to focus on the means/mechanisms to facilitate the actual return of children and the enforcement of return orders, including undue delays associated with this. In our experience, some States' challenges with these issues greatly impact the effectiveness of the Convention and, in turn, the level of predictability and of legal certainty for children and their families.

We would also like to discuss the use of preconditions (usually in the form of undertakings) in return orders where such use exceeds the scope of the Convention and/or contradicts the underlying principles.

We look forward to the discussions on the draft Guide to Good Practice on Article 13(1)b).

In light of the Malta IV Conclusions and Recommendations (para 22 b)), we would like non-Contracting States invited to participate in the Special Commission as observers to report on steps they have taken or will be taking to join the 1980 Convention.

15.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

We believe proposals for particular recommendations should emanate from the actual discussions during the Special Commission.

### **16. Any other matters**

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.

Please insert text here