

Juin / June 2009



**Groupe de travail sur la médiation dans le cadre du processus de Malte  
Questionnaire**

*établi par le Bureau Permanent*

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**Working Party on Mediation in the Context of the Malta Process  
Questionnaire**

*drawn up by the Permanent Bureau*

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**Identification**

**CANADA**

In Canada, matters relating to the custody of and access to children fall mainly under the authority of the provinces and territories.<sup>1</sup> This includes the range of mediation services available to parents as well as the applicable rules. The following is a compilation of the information provided by provincial and territorial officials in regard to their respective jurisdictions.<sup>2</sup> It should be noted that the nature and extent of family mediation services, including the persons or organisations that provide such services may vary from one jurisdiction to the other.

At the federal level (central government), some assistance may in some instances be provided to left-behind parents in the non-Hague cases (i.e. where the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* is not applicable) through the Consular Services and Emergency Management Branch of the Department of Foreign Affairs and International Trade. Information about this form of assistance also appears below.

**Federal Government**

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**British Columbia**

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**Alberta**

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Aspects of International Child Abduction*  
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<sup>1</sup> British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut.

<sup>2</sup> This document will be updated shortly to include responses from Nova Scotia and the Yukon.

### Saskatchewan

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### Manitoba

Name of contact person: Janet Sigurdson, Crown Counsel  
 Name of Authority / Office: Manitoba Justice, Family Law Branch (Manitoba child abduction contact under the *Convention on the Civil Aspects of International Child Abduction*)  
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### Ontario

Name of contact person: Shane Foulds, Counsel  
 Name of Authority / Office: Central Authority, Ontario - *Convention on the Civil Aspects of International Child Abduction*  
 Telephone number: (416) 240-2484  
 E-mail address: [shane.foulds@ontario.ca](mailto:shane.foulds@ontario.ca)

### Québec

Name of contact person: Lorraine Filion  
 Name of Authority / Office: Family Mediation Service Centre jeunesse de Montréal, Associated with the Superior Court of Montreal  
 Telephone number: (514) 393-2286  
 E-mail address: [lorfilion@yahoo.ca](mailto:lorfilion@yahoo.ca)

Name of contact person: Pierre Tanguay  
 Name of Authority / Office: Direction des Orientations et Politiques Ministère de la Justice du Québec  
 Telephone number: (418) 646-5580 ext.: 20197  
 E-mail address: [ptanguay@justice.gouv.qc.ca](mailto:ptanguay@justice.gouv.qc.ca)

Name of contact person: France Rémillard  
 Name of Authority / Office: Central Authority, Québec/ Justice Québec  
*Convention on the Civil Aspects of International Child Abduction.*  
 Telephone number: (418) 644-7153  
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**New Brunswick**

Name of contact person: Catherine Berryman  
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**Nova Scotia**

Name of contact person: Will be provided shortly  
 Name of Authority / Office: \_\_\_\_\_  
 Telephone number: \_\_\_\_\_  
 E-mail address: \_\_\_\_\_

**Prince Edward Island**

Name of contact person: Loretta Coady MacAulay  
 Name of Authority / Office: Central Authority, Prince Edward Island – *Convention on the Civil Aspects of International Child Abduction*  
 Telephone number: (902) 368-4886  
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**Newfoundland and Labrador**

Name of contact person: Brian Furey, Manager, Family Litigation Unit  
 Name of Authority / Office: Department of Justice  
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**Northwest Territories**

Name of contact person: Mike Reddy  
 Name of Authority / Office: Policy and Planning/Department of Justice  
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 E-mail address: [mike\\_c\\_reddy@gov.nt.ca](mailto:mike_c_reddy@gov.nt.ca)

**Yukon**

Name of contact person: \_\_\_Will be provided shortly\_\_\_  
 Name of Authority / Office: \_\_\_\_\_  
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### Nunavut

Name of contact person: Lorraine Land  
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The Permanent Bureau kindly requests responses to the Questionnaire to be sent to < secretariat@hcch.net > by 20 July 2009 at the latest.

I – EXISTING STRUCTURES	
<p>1. Are there existing mediation services / structures in your country for <b>international</b> family disputes involving children?</p>	<p><input checked="" type="checkbox"/> No (Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut)</p> <p><u>New Brunswick:</u>            Although the Province of New Brunswick discontinued the court-based mediation model, collaborative law is thriving, especially in the urban centres of the province. Collaborative law is a specific form of mediation utilizing highly competent lawyers who are well trained in Alternate Dispute resolution.</p> <p>Additionally, the Department of Social Development, which offers child protection and welfare services, has initiated a child protection mediation model which can be of assistance in some cases.</p> <p><input type="checkbox"/> Yes (British Columbia, Alberta, Saskatchewan, Manitoba, Québec)</p>
<p>2. If so, are the mediation services / structures provided:</p> <p>a) within the judicial or administrative system?</p>	<p><input checked="" type="checkbox"/> No (Ontario)</p> <p><input checked="" type="checkbox"/> Yes. Please specify:</p> <p><u>British Columbia:</u>            Provided by the British Colombia Ministry of Attorney General.</p> <p><u>Alberta:</u>            Provided by the Alberta Ministry of Justice (offices in Calgary and Edmonton).</p> <p><u>Saskatchewan:</u>            Upon receipt of a Hague application (Abduction Convention), the Central Authority may refer</p>

	<p>the parties to a government mediator in appropriate circumstances. Parties can also contact private mediators who practice in family law. Private mediators charge for their services.</p> <p><u>Manitoba:</u> Manitoba Department of Family Services &amp; Housing, Family Conciliation Branch</p> <p><u>Québec:</u> The Family Mediation Service comes under the Centre jeunesse de Montréal. It is associated with the Superior Court of the judicial district of Montreal to offer efficient services to families as well as to judges and lawyers.</p>
<p>b) by NGOs?</p>	<p><input checked="" type="checkbox"/> No (Alberta, Saskatchewan, Manitoba, Ontario, Québec)</p> <p><input type="checkbox"/> Yes. Please name them and give details of the services they provide: ..... .....</p>
<p>3. If there are mediation services / structures in your country for <b>international</b> family disputes, how can parties to such disputes access mediation?</p>	<p><input checked="" type="checkbox"/> The parties can apply to participate in mediation services. (Alberta, Saskatchewan, Manitoba, Québec)</p> <p><input checked="" type="checkbox"/> A referral to mediation by a judicial or administrative authority is possible. (British Columbia, Saskatchewan, Manitoba, Québec)</p> <p><input checked="" type="checkbox"/> Other. Please specify:</p> <p><u>Québec:</u> The Family Mediation Service also receives requests regarding transborder access rights directly from Central Authorities of other States (Abduction Convention), foreign Consuls and ISS (International Social Service).</p>

## II – SCENARIO – CURRENT APPROACH IN NON-HAGUE CONVENTION CASES

How would the following scenario currently be approached in your country?

Parents with shared custody of their minor child split up, and one parent takes the child to your country with the intention of settling there without the permission and contrary to the wishes of the other parent. The left-behind parent would like the child to be returned or to have regular contact with the child. (The Hague Child Abduction Convention is not in force between the States involved.)

1. What course of action would currently be recommended to the left-behind parent in your country (being that to which the child has been taken) in such a situation?

Please specify:

Federal Government (Consular services):

It would be recommended that the left-behind parent who is not a Canadian citizen contact competent authorities in his country of residence (for example, local police), his/her State's Embassy in Canada and Interpol. It would also be recommended that he/she retain legal counsel in his/her country and in Canada.

British Columbia:

Obtain Court order; seek to enforce any existing order; refer to their Embassy; refer to criminal justice system; refer to British Columbia legal counsel.

Alberta:

The parent would have to bring an application pursuant Alberta legislation or attempt to resolve the matter by mediation. Parent could be referred to Alberta Justice Mediation Services.

Saskatchewan:

Parent would be advised to seek legal advice from private counsel in Saskatchewan. It would also be suggested that he/she contact the police.

Manitoba:

Manitoba Justice would facilitate contact with Canadian Consular Affairs, Royal Canadian Mounted Police National Missing Children Services, law enforcement, Family Conciliation (mediation), as applicable.

The left behind parent would also be advised of possibility of seeking custody/contact/return order in child's habitual residence and retaining counsel in Manitoba to make application under Manitoba's Child Custody Enforcement Act

(<http://web2.gov.mb.ca/laws/statutes/ccsm/c280e.php>) for enforcement of the extra-provincial order.

Ontario:

It is imperative that the left-behind parent retain private legal counsel immediately as there is domestic provincial law that would apply to this scenario.

Québec:

The parent could call upon a lawyer or the Family Mediation Service.

	<p><u>New Brunswick:</u> The left-behind party would be informed of the collaborative law process that could be of assistance. Diplomatic and state officials in some cases could be involved to try to demystify and promote resolution.</p> <p><u>Prince Edward Island:</u> Would refer to Legal Aid in Prince Edward Island and would provide legal representation if left behind parent qualified for Legal Aid.</p> <p><u>Newfoundland and Labrador:</u> Parent would be advised to seek legal advice in Newfoundland and Labrador.</p> <p><u>Northwest Territories:</u> As the Abduction Convention does not apply, the left-behind parent would be advised to retain legal counsel in the Northwest Territories in order to obtain advice on how to seek the child's return or have regular contact with the child.</p> <p><u>Nunavut:</u> Legal Counsel knowledgeable of the laws of Nunavut and of mediation could be identified for the party to retain directly, or this service could be provided by the Government of Nunavut in circumstances considered to be appropriate.</p>
<p>2. Would your country, being that to which the child has been taken, assist the left-behind parent in any way?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes, by facilitating contact with information-giving bodies (Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Newfoundland and Labrador)</p> <p><input checked="" type="checkbox"/> Yes, by referring the left-behind parent to existing mediation services for international family disputes (Alberta, Saskatchewan, Manitoba, Québec, New Brunswick)</p> <p><input checked="" type="checkbox"/> Yes, by giving legal advice (Alberta, Québec, Newfoundland and Labrador)</p> <p><input checked="" type="checkbox"/> Yes, by giving practical assistance to the parent (British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Northwest Territories)</p> <p><input checked="" type="checkbox"/> Yes, by taking other measures. Please specify:</p> <p><u>British Colombia:</u> Possibly refer parent to their country's Embassy in Canada; would address this on a case-by-case basis. Currently, few such cases/requests are received.</p> <p><u>Manitoba:</u> Discussing with local law enforcement possibility of</p>



	<p>conducting “child welfare check”.</p> <p><u>Ontario:</u> Providing contact information for the Law Society of Upper Canada (Ontario Bar association) so the left-behind parent could retain independent legal advice.</p> <p><u>Nunavut:</u> Legal Counsel knowledgeable of the laws of Nunavut and of mediation could be identified for the party to retain directly, or this service could be provided by the Government of Nunavut in circumstances considered to be appropriate.</p>
<p>3. Does a central contact point exist in your country for such cases?</p>	<p><input checked="" type="checkbox"/> No (British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nunavut)</p> <p>Many jurisdictions also indicated that the provincial or territorial Central Authority under the Abduction Hague could assist by provide relevant information to the parent under this scenario.</p> <p><u>Québec:</u> The parent could call upon his ministry of Foreign Affairs to request assistance from the Embassy of his State located in Canada.</p> <p><input type="checkbox"/> Yes. Please specify:</p>
<p>4. Are there NGOs in your country that help parents in such situations?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. Please specify:</p> <p>Child Find Canada (see list of offices) <a href="http://www.childfind.ca/provoffice.php">http://www.childfind.ca/provoffice.php</a></p> <p>The Missing Children Society of Canada <a href="http://www.mcsc.ca">http://www.mcsc.ca</a></p> <p>Canadian Centre for Child Protection, Inc. <a href="http://www.protectchildren.ca/app/en/">http://www.protectchildren.ca/app/en/</a></p> <p><u>Québec:</u> Associations made up of separated fathers have referred a few fathers to the Family Mediation Service. The <i>Association internationale francophone des intervenants</i> (AIFI, an international NGO) can also refer parents or professionals to family mediators in private practice or within the public service.</p> <p><i>Enfant-Retour</i> is the only Québec organisation whose mandate is to assist families searching for missing children and to raise awareness to reduce the number of child abductions. The International Social Service also assists parents in re-establishing contact with their children.</p>

5. If you were to identify the main problems that the left-behind parent might have to face in your country (being that to which the child has been taken) with her / his wish to have contact with the child / to have the child returned, what would they be?

- Lack of specific structures for international family disputes ([British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Prince Edward Island, Newfoundland and Labrador, Northwest Territories](#))
- Inefficiency of existing structures ([New Brunswick](#))
- Lengthy processes under the existing structures ([Manitoba, Ontario, Québec, New Brunswick, Nunavut](#))
- Language problems ([Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nunavut](#))
- Legal obstacles to agreed solutions ([New Brunswick, Newfoundland and Labrador](#))
- Problems because of parallel asylum procedures regarding the other parent and child ([Québec, Newfoundland and Labrador](#))
- Difficulties in obtaining information on your legal system ([Québec](#))
- Problems locating the child within your country ([Alberta, Manitoba, Québec, Newfoundland and Labrador](#))

Québec:

When the Hague Abduction Convention does not apply, it may be more difficult for the parent to obtain the cooperation from police officials to locate the child or to obtain an address except where a request for assistance has been made by police officials of the State where the child resided.

- High costs of available mediation services ([Saskatchewan, New Brunswick, Nunavut](#))

- Other. Please specify:

British Columbia:

Little or no legal aid available.

Manitoba:

Possible lack of cooperation from abducting parent.

Québec:

Lack of information on existing services; important reticence and resistance in legal and social communities for international or at distance family mediation; lack of cooperation by one of the parents.

Nunavut:

Mediation on this topic, other than by a qualified lawyer engaged for the purpose, is most likely not available on

	<p>any basis. It may be difficult or impossible to quickly locate and retain such lawyer, with or without assistance from government officials.</p>
<p><b>III – EXISTING RULES / LEGISLATION ON FAMILY MEDIATION</b></p>	
<p>Is family mediation regulated in your country?</p>	<p><input checked="" type="checkbox"/> No. (Alberta, Saskatchewan, Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut)</p> <p><u>Northwest Territories:</u> The Court has the ability to appoint a mediator to mediate any matter dealing with a family law issue under the Northwest Territories <i>Family Law Act</i>, the <i>Children's Law Act</i>, or the <i>Child and Family Services Act</i>.</p> <p><input type="checkbox"/> Yes, there is general legislation on mediation, which also applies to family mediation. Please specify: ..... .....</p> <p><input checked="" type="checkbox"/> Yes, there is specific legislation on family mediation. Please specify:</p> <p><u>British Columbia:</u> <i>Legal Profession Act</i>, SBC 1998, c.9; and Professional Conduct Handbook.</p> <p><u>Québec:</u> Articles 814.3 to 814.14, 815.2 to 815.3 and 827.2 to 827.4 of the <i>Code of Civil Procedure</i> and <i>the Regulation respecting Family Mediation</i>, L.R.C., c. C-25, a.827.3. (For more information on Québec's family mediation regime, consult the Ministère de la Justice of Québec website, <a href="http://www.justice.gouv.qc.ca/english/accueil.asp">http://www.justice.gouv.qc.ca/english/accueil.asp</a>.) The current statute however limits the exercise of international family mediation or mediation at distance where a significant distance separates the parties' places of residence.</p> <p><input checked="" type="checkbox"/> Other. Please specify:</p> <p><u>Manitoba:</u> Under Manitoba's <i>Court of Queen's Bench Act</i> (<a href="http://web2.gov.mb.ca/laws/statutes/ccsm/c280e.php">http://web2.gov.mb.ca/laws/statutes/ccsm/c280e.php</a>) mediators who mediate under the auspices of Family Conciliation (a branch of the Department of Family Services and Housing) are appointed as "designated mediators" by Manitoba's Minister of Justice (see s. 41). <i>The Court of Queen's Bench Act</i> also includes provisions about court referrals to mediation (s. 47) and confidentiality of mediation (s. 48).</p>
<p><b>IV - ADDITIONAL REMARKS</b></p>	
<p>Further remarks or questions:</p>	<p><u>Federal Government:</u> As a measure aimed at promoting the resolution of</p>

	<p>conflicts, it would be desirable to also examine the possibility of involving community groups as “facilitators” to assist parents in settling their disputes.</p> <p><u>Québec:</u> The following measures should be considered in order to promote international family mediation or mediation at distance:</p> <ul style="list-style-type: none"><li>• Publicise its value, its limits and requirements; create a list of accredited or trained mediators; develop complementary training for practising family mediators; adopt an ethics code for international family mediators or at distance mediators; undertake an exploratory research to acquire knowledge about mediation at distance.</li><li>• Review existing legislation to lift obstacles to family mediation at distance and to promote its development; notably assess the possibility of requiring that parents who are in a conflict situation receive information on family mediation before the matter is heard before the court.</li></ul>
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Thank you.