

ADOPTION

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**QUESTIONNAIRE SUR L'ENLÈVEMENT, LA VENTE ET LA TRAITE D'ENFANTS ET
SUR CERTAINS ASPECTS DU FONCTIONNEMENT PRATIQUE DE LA CONVENTION
DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION DES ENFANTS ET LA
COOPÉRATION EN MATIÈRE D'ADOPTION INTERNATIONALE**

établi par le Bureau Permanent

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**QUESTIONNAIRE ON THE ABDUCTION, SALE OF, OR TRAFFIC IN CHILDREN AND
SOME ASPECTS OF THE PRACTICAL OPERATION OF THE HAGUE CONVENTION
OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN
RESPECT OF INTERCOUNTRY ADOPTION**

drawn up by the Permanent Bureau

*Document préliminaire No 4 d'avril 2010 à l'intention de la
Commission spéciale de juin 2010 sur le fonctionnement pratique de la
Convention de La Haye du 29 mai 1993 sur la protection des enfants et
la coopération en matière d'adoption internationale*

*Preliminary Document No 4 of April 2010 for the attention of the
Special Commission of June 2010 on the practical operation of the
Hague Convention of 29 May 1993 on Protection of Children and
Co-operation in Respect of Intercountry Adoption*

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Introduction

The Permanent Bureau is currently preparing the Third Meeting of the Special Commission to review the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, which is to be held in The Hague from 17 to 25 June 2010. It is intended that the Special Commission will provide the opportunity for State Parties to the Convention (as well as States which are considering or preparing for ratification or accession) to exchange information and experiences on the operation of the Convention, to compare practices, and to consider any difficulties in respect of the implementation and practical operation of the Convention.

The first day of the Special Commission will be devoted to examining issues of abduction, sale and traffic in children in the context of adoption. One object of this special day is to identify some agreed practices to manage cases where such abuses have occurred in the adoption procedure. The majority of the questions in this short questionnaire are concerned with this topic.

In order to make the maximum use of the time available at the Special Commission, the Permanent Bureau is gathering this information with a view to its circulation for use by the Special Commission. *We would be very grateful for your co-operation in this exercise, and we hope that you will be able to send us your replies to this Questionnaire by 14 May 2010.*

This Questionnaire is now available on the Hague Conference website at < www.hcch.net > under "work in progress" then "intercountry adoption".

NAME OF STATE OR ORGANISATION: CANADA

A. QUESTIONS ON ABDUCTION SALE AND TRAFFIC IN CHILDREN IN THE CONTEXT OF ADOPTION

Preventive measures

1. Please indicate the laws (including criminal sanctions), measures and procedures in place in your State to prevent the abduction, sale and traffic in children within your intercountry adoption programmes. Please also provide details of who these laws, etc apply to (accredited bodies, adoptive parents, orphanage directors, etc).

FEDERAL GOVERNMENT

Canada is a federal state in which legislative jurisdiction is divided between the federal Parliament and the provincial and territorial legislatures. The federal government is responsible for the criminal law and the Criminal Code applies uniformly across Canada. The provinces and territories are responsible for the administration of justice including the investigation and prosecution of most criminal offences in Canada.

Canada's Criminal Code includes three separate offences which prohibit: (1) trafficking in persons for any exploitative purpose; (2) the receiving of a financial or material benefit from trafficking in persons; and, (3) the withholding or destroying of travel or identity documents in order to facilitate trafficking in persons (sections 279.01-279.04). The Immigration and Refugee Protection Act also includes a trafficking in persons offence which applies to cases involving trafficking of persons into Canada (section 118). In addition, Canada's Criminal Code includes offences dealing with the abduction of children (sections 281-283).

BRITISH COLUMBIA ("BC")

Prospective adoptive parents who do not obtain the approval of a director or an accredited adoption agency before a child who is not a resident of British Columbia is brought into the province for adoption commits an offence and is liable to a fine of up to \$5 000. Such approvals are given only where a number of conditions are met, including that the consents have been obtained as required in the jurisdiction in which the child is resident.

BC also prohibits a person from giving, receiving or agreeing to give or receive any payment or reward, whether directly or indirectly (a) to procure or assist in procuring a child for the purposes of adoption in or outside British Columbia, or (b) to place or arrange the placement of a child for the purposes of adoption in or outside British Columbia. A person who contravenes this section commits an offence and is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.

ALBERTA

Alberta prohibits giving or receiving, or agreeing to give or receive any payment or reward, whether direct or indirect to procure or assist in procuring or to place or facilitate the placement of a child for the purposes of an adoption in or outside Alberta. Any person and any officer or employee of a corporation who contravenes this rule is guilty of an offence and liable to a fine of not more than \$10 000 and in default of payment to imprisonment for a term not exceeding 6 months.

SASKATCHEWAN

In Saskatchewan, the laws governing Intercountry Adoption include the Hague Convention as well as The Adoption Act, 1998 and The Adoption Regulations,

2003. The Adoption Act has a provision in it that addresses the matter of payments, unauthorized placements and penalties. The penalty includes a fine up to \$10,000 and/or one year imprisonment.

ONTARIO

Intercountry adoptions by Ontario residents finalized in the child's country of origin are governed by the Intercountry Adoption Act, 1998 ("the Act"). Intercountry adoptions finalized in Ontario are governed by the Child and Family Services Act. The Private and International Adoption Unit of the Ministry of Children and Youth Services, Ontario, Canada, is the Central adoption authority under the Hague Convention. The Ministry licenses adoption agencies to facilitate intercountry adoptions on behalf of the residents of Ontario.

The legislation applies to all parties involved in international adoption, including prospective adoptive parents and adoption agencies.

Section 5 of the Act provides before a person who is habitually resident in Ontario leaves Ontario for the purpose of an intercountry adoption, he or she must apply to a licensee, obtain an adoption homestudy assessing the person's eligibility and suitability to adopt and obtain the approval of the Ministry Director based on the homestudy.

Section 8 provides that only a licensee or Ministry Director may facilitate an intercountry adoption.

Section 19 provides that:

No person shall give, receive or agree to give or receive a payment or reward of any kind in connection with an intercountry adoption or proposed intercountry adoption, except for,

- (a) the expenses of a licensee that belong to a prescribed class, or such other expenses as are approved by a Director;
- (b) the expenses of a person referred to in subsection 5 (3) that belong to a prescribed class;
- (c) the expenses of a Director that belong to a prescribed class; and
- (d) proper legal fees and disbursements. 1998, c. 29, s. 19.

A person who contravenes section 19 is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for not more than three years, or to both.

Section 20 provides that a person who contravenes section 5 is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for not more than two years, or to both. As well, section 20 provides that a person who contravenes subsection 8 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for each day on which the offence continues or to imprisonment for not more than one year, or to both.

The Child and Family Services Act provides that only a licensee or a children's aid society may place a child for adoption. Before the child is placed by a licensee with prospective adoptive parents, the homestudy must be reviewed and the placement approved by a Ministry Director. The Child and Family Services Act also prohibits giving or receiving a payment in connection with an adoption except for the prescribed expenses of a licensee. Contravention of this prohibition is an offence punishable by a fine of not more than \$25,000 or by imprisonment for a term of not more than three years, or to both.

QUÉBEC

Youth Protection Act, R.S.Q., c. P-34.1, s. 135 et seq.

Under legislation in Québec, whether the placement or the adoption takes place in Québec or elsewhere and whether or not the child is domiciled in Québec, no person may give, receive or offer or agree to give or receive, directly or indirectly, a payment or a benefit either for giving or obtaining a consent to adoption, for finding a placement or contributing to a placement with a view to adoption or for obtaining the adoption of a child. It is also prohibited to cause to enter or contribute towards causing to enter Québec a child domiciled outside Québec with a view to adoption of the child, to place or contribute to the placement of a child with a view to the child's adoption or contribute to the child's adoption or to adopt a child in contravention of applicable laws.

The legislation also prohibits anyone from falsely representing himself to be a certified organization or falsely lead to the belief that an organization is certified by the competent Minister for the purposes of the provisions respecting adoption of a child domiciled outside Québec.

Finally, persons who assist another person in committing an offence or who, by encouragement, advice or consent, or by an authorization or an order, induces another person to commit an aforementioned offence, is guilty of an offence. The same applies to any person who attempts to commit an offence under any of those sections.

These provisions apply to natural and legal persons and the fine ranges from \$10,000 to \$200,000 and, for each subsequent conviction, the amounts of the fines are doubled.

NEW BRUNSWICK

In New Brunswick, the laws governing Intercountry Adoption include the Hague Convention as well as The Intercountry Adoption Act and the New Brunswick Regulation 2008-154 under the Intercountry Adoption Act (O.C.2008-550). Section 52(1) of the Intercountry Adoption Act addresses the matter of payments, unauthorized placements and penalties. Section 52 (2) states that proceedings for an offense committed under this section may be commenced at any time within six years after the alleged violation.

NOVA SCOTIA

In Nova Scotia, the laws respecting intercountry adoption are the Intercountry Adoption Act, 1998 and the Hague Convention. The Intercountry Adoption Act is simply enabling legislation for the implementation of the Hague Convention and contains no specific provisions in the Intercountry Adoption Act to prevent the abduction, sale and traffic in children.

PRINCE EDWARD ISLAND

The following laws apply to all staff of the department, adoptive parents, birth parents, adopted persons, Licensed Agents and private practice social workers authorized under the Adoption Act, and any other person involved in international adoptions in our province.

Section 55 of the Adoption Act, R.S.P.E.I. 1988, Cap. A-4.1 states that "Any person who gives or receives, or agrees to give or receive, any payment or reward, either directly or indirectly, to procure or assist in procuring a child for the purposes of placement or adoption is guilty of an offence and is liable to a fine not exceeding \$20,000 or imprisonment for a term not exceeding one year." Subsection (2) states that "Subsection (1) does not preclude (a) reimbursement for reasonable costs incurred: (b) a fee for service charged by the Director (of Child Welfare) or, with the Director's approval or authorization in regulations, by a person authorized to make a placement: or fees charged by a barrister, solicitor

or attorney within the range considered by the Council of the Law Society of Prince Edward Island to be reasonable for such legal services". Section 56.1 states "In relation to an intercountry adoption other than the one to which the Intercountry Adoption (Hague Convention) Act, R.S.P.E.I. 1988, Cap I-4.1 applies, the court may waive or modify any requirements imposed by this Act".

NORTHWEST TERRITORIES

Every person, other than the Director, who gives or receives payment or reward, directly or indirectly, to procure or assist in procuring a child for adoption is guilty of an offence and liable to a fine not exceeding \$10,000, to imprisonment for a term not exceeding one year or to both. Exceptions include: fees payable or costs, charges and expenses incurred under this Act; proper fees, expenses and disbursements to a lawyer in respect to adoption; proper fees, expenses and disbursements to medical practitioner or nurse for medical examination in respect to adoption.

2. Please provide details of any specific measures taken to prevent solicitation (*e.g.*, through inducements of consent) of children for adoption (Arts 8 and 29 of the 1993 Hague Convention).

BRITISH COLUMBIA ("BC")

The fees relative to the adoption process are monitored by the BC Central Authority who has responsibility for preventing improper financial gain. However, the monitoring of fees is limited to what the adoptive parents pay to BC licensed adoption agencies, and do not necessarily take into account the fees paid to facilitators in foreign jurisdictions. Where possible, the BC Central Authority may rely on the assistance of federal officials at Canadian missions abroad to determine whether there are indications of solicitation of children for adoption.

Legislation in BC also prohibits a person from publishing or causing to be published in any form or by any means an advertisement dealing with the placement or adoption of a child.

ALBERTA

In Alberta, the publication in any form or by any means of an advertisement dealing with the adoption of a child is prohibited. A person who contravenes this rule is guilty of an offence and liable to a fine of not more than \$2500 and in default of payment to imprisonment for a term not exceeding one month.

SASKATCHEWAN

Saskatchewan has a range of safeguards in place. Firstly, there is the restriction of no person being able to "advertise" themselves i.e. market themselves to anyone. This means that for example, no adoptive applicants would be able to influence birth parents by posting something on the internet or in a newspaper etc. Section 32 addresses "Advertising" .

Secondly, Section 27 (1) and (4) titled "International Adoptions" addresses the requirement that all adoptive applicants cannot move forward with an intercountry adoption plan without meeting with the director and seeking approval of the case plan. If the Ministry is concerned about the plan, we have the ability to investigate and impose any terms or conditions as required, either at the stage of the application process, or if there are unusual or exceptional developments later on in the process.

Thirdly, all homestudy assessments conducted for the purposes of an adoption plan are not provided directly to the applicants, but rather, they review and sign off on the assessment report and this material then becomes the possession of

the Ministry. Section 29.4 directs the handling of information related to adoption. This provision has been particularly useful for ensuring that homestudy assessment reports are not misused and do not fall into the possession of people who may use them to influence birth parents or other parties. The provision has the discretion of being flexible or more restrictive.

Fourthly, for intercountry adoption plans where the order of adoption is directed by the child's country of origin to have the child's adoption plan finalized in the receiving country/jurisdiction, Saskatchewan has a provision in Section 16 (13) that directs the disclosure in court of all fees related to adoption.

ONTARIO

Ontario acts mostly as a receiving country. As such, we have no direct means to ensure that a consent has been properly obtained in a foreign jurisdiction. Any information regarding irregularities, improper consents and fraudulent documentation in a foreign jurisdiction is further evaluated and discussed. If required, the Federal Central Authority facilitates communications between the provincial and territorial Central Authorities as well as other federal officials to discuss a possible pan Canadian approach.

QUÉBEC

All proposed adoptions must be pre-authorized by the Central Authority.

NEW BRUNSWICK

Section 50(1) of the Intercountry Adoption Act prohibits advertisement in any form or by any means concerning the placement or adoption of a child. Section 50(3) states that proceedings regarding an offense committed under this section may be commenced at any time within six years after the alleged violation.

NOVA SCOTIA

There are no specific measures to prevent solicitation of children for adoption in Nova Scotia's Intercountry Adoption Act.

PRINCE EDWARD ISLAND

See response to question 1.

NORTHWEST TERRITORIES

The law prohibits advertisement soliciting a child for adoption or for the purpose of finding adoptive parents in any form and by any means.

Consents

3. Please provide details of the measures you have in place, as a country of origin or a receiving country:
 - a. to ensure that consents have been properly obtained in accordance with Article 4;

BRITISH COLUMBIA ("BC")

The licensed agencies in BC are accountable for doing due diligence to ensure that the facilitators with whom they work in the countries of origin are reputable. However, they have little ability to monitor or follow-up with the performance of the facilitators.

Where possible, the BC Central Authority may rely on the assistance of federal officials at Canadian missions located in the countries of origin where there are concerns that consents have not been obtained in accordance with Article 4 of the

Convention.

QUÉBEC

As a receiving authority we ensure the quality and validity of the consent to adoption. We share with our partners in Quebec and elsewhere how important it is to obtain free informed consent to adoption from birth parents.

NEW BRUNSWICK

In Intercountry adoptions, as a receiving State, we rely on the Central Authority in the State of origin for assurances of the validity of the consents. We may also refer to officials of the Canadian mission for assistance in obtaining additional information where necessary.

NOVA SCOTIA

As a receiving country, we are dependent on authorities in the country of origin to ensure that consents have been properly obtained. Where warranted, we may also refer to Government of Canada officials assigned to the State of origin for additional information.

NORTHWEST TERRITORIES

In Intercountry adoptions, as a receiving State, we rely on the Central Authority in the State of origin for assurances of the validity of the consents.

- b. to ensure that birth parents and others understand the consequences of giving consent to an adoption;

See responses provided to question 3 a)

- c. to verify the identity of the person giving consent.

See responses provided to question 3 a)

Document integrity

4. Please provide details of the measures you have in place to prevent the use of fraudulent, or improperly issued, documentation in the adoption process.

FEDERAL GOVERNMENT (Department of Citizenship, Immigration and Multiculturalism Canada)

Officers who process immigrant visa applications and citizenship applications fully examine the adoption documentation presented to them with a view to detecting fraudulent or improperly issued documentation. In situations where the validity or genuineness of documents is suspect, officers may seek confirmation from the issuing authority as to whether they are fraudulent, fraudulently obtained or genuine. Depending on the evidence available, the application for the adopted child may be refused.

BRITISH COLUMBIA ("BC")

Information or concerns related to fraudulent or improperly issued documentation are discussed regularly with federal and provincial counterparts. Rarely, but on occasion, BC and its Central Authority counterparts in Canada have placed a moratorium on adoptions from a country of origin where concerns warrant this response.

ALBERTA

As a receiving country, we ensure that documents which form the adoptive families' dossier are valid and properly issued.

SASKATCHEWAN

Firstly, we license and train practitioners to conduct homestudy reports for prospective adoptive applicants pursuing adoption. This group has strict rules about containment of information including not allowing prospective adoptive parents to have a copy of the home study report. Hence, this report is not subject to improper and inappropriate use.

Secondly, all intercountry adoption materials, where the child's plan, at the direction of the originating country, is to have the adoption finalized in the court of Saskatchewan, will be served on the Director pursuant to Section 16 (16) and (17) for review 30 days prior to the matter being heard in court. If the consent process was conducted in another country, Saskatchewan officials must rely on the child's originating country's officials for assurance of document integrity.

ONTARIO

As stated above, Ontario does not have means to verify that all adoption documentation from the foreign jurisdiction is genuine.

Ontario holds licensed adoption agencies, as accredited bodies, accountable for ensuring that the adoption process follows the legislative requirements of Ontario, the foreign jurisdiction as well as the Hague Convention. We rely on federal officials in Canadian missions abroad to assist us in determining whether the adoption is in the best interests of the child and whether the adoption process lacks evidence of child trafficking and undue gain.

QUÉBEC

The Secrétariat à l'adoption internationale reviews and meticulously verifies the documents submitted to it before issuing the authorisations required.

NEW BRUNSWICK

In NB, private practitioners are licensed social workers who are trained to conduct homestudy reports for prospective adoptive applicants pursuing adoption. They review all documentation and the provincial Central Authority reviews all documents before the prospective adoptive parents' dossier is sent.

If the consent process was conducted in another country, New Brunswick officials rely on the child's originating country's officials for assurance of document integrity.

NOVA SCOTIA

We license and train private practitioners to conduct home study reports for prospective adoptive applicants pursuing adoption. The reports must be approved and signed off by the Manager of Adoption Services and accompanied by a provincial approval letter from the Central Authority.

PRINCE EDWARD ISLAND

As a Central Authority whose province neither licenses nor supervises international adoption agencies, we insist on sending all documents directly to the country of origin, as opposed to having the agency send the documents. This is done after the documents have been translated, notarized and authenticated by the agency and returned to us. This is our way of ensuring that the documents we are responsible for are received by the designated government authority. Through this process, we hope to ensure that there will be no tampering nor improper usage of these critical and confidential documents.

Assistance and co-operation

5. Please provide details if you have experienced any difficulties in obtaining assistance or co-operation from other States or Central Authorities regarding:
 - a. the elimination of practices that may lead to abduction, sale or traffic in children in the context of adoption;

BRITISH COLUMBIA ("BC")

In some instances, the BC Central Authority has had difficulty in obtaining assistance from some countries of origin in eliminating these practises, especially in non-Hague States. This difficulty appears related to infrastructures in the State of origin, rather than to a lack of willingness to co-operate. Receiving countries should consider providing assistance to States of origin in addressing these concerns.

Specific concerns that have arisen relate to suspected fraudulent documentation, forged or uninformed consents, inducement to relinquish and improper financial gain. Concerns have also arisen over the "production" of new born infants for the purposes of intercountry adoption.

ALBERTA

In some States of origin, it is difficult to obtain responses to our inquiries from their Central Authorities.

SASKATCHEWAN, NEW BRUNSWICK and NOVA SCOTIA

We have identified difficulties with States of origin or their Central Authorities not taking corrective actions or suspending operations, despite the fact that serious concerns have been raised.

ONTARIO

Any communication with other States or Central Authorities regarding elimination of practices that may lead to abduction, sale or traffic in children is facilitated by the Federal Central Authority and federal officials at Canadian missions abroad.

QUÉBEC

The biggest difficulty with respect to the co-operation of Central Authorities is that no network of professionals working for Central Authorities is being developed. This makes maintaining regular communication and sharing general and specific information more difficult.

- b. specific concerns relating to the abduction, sale , or traffic in children in the context of adoption.

BRITISH COLUMBIA ("BC"), ONTARIO and QUÉBEC

See response to question 5 a).

SASKATCHEWAN and NOVA SCOTIA

To date, have not had to address specifically a State or Central Authority directly regarding to the abduction, sale or traffic of children in the context of adoption.

Good Practice

6. Please provide details of any examples where your State has worked in co-operation with other States in order to eliminate practices relating to the abduction, sale or traffic in children in the context of adoption.

FEDERAL GOVERNMENT (CENTRAL AUTHORITY - Intercountry Adoption Services)

The Federal Central Authority maintains regular contacts with Central Authorities of other receiving countries to share information on common concerns regarding adoption practices and on issues pertaining to immigration/citizenship. It also coordinates discussions between Central Authorities within Canada on such issues.

Similarly, federal officials at Canadian missions abroad liaise with their counterparts of other States on matters that may affect the abduction, sale or traffic in children.

SASKATCHEWAN, NEW BRUNSWICK and NOVA SCOTIA

Cooperation between Central Authorities in Canada on common issues of concern is coordinated by the Federal Central Authority. This has led to decisions on common practices and, in a few instances, the establishment of moratoria.

ONTARIO

Under the bilateral agreement between Canada and Vietnam, Ontario has worked in cooperation with Vietnamese government concerning adoptions from Vietnam for the purpose of eliminating practices relating to the abduction, sale or traffic in children.

Any other forms of cooperation with other states to eliminate practices leading to abduction, sale or traffick in children are facilitated by the Federal Central Authority.

QUÉBEC

The Secrétariat à l'adoption internationale participated in a concerted effort with other Central Authorities to share their collective concerns with a given State.

7. Are there any particular measures preventing the abduction, sale or traffic in children in intercountry adoption (e.g., good practices) that you would like to bring to the attention of other States?

SASKATCHEWAN, NEW BRUNSWICK , NOVA SCOTIA and PRINCE EDWARD ISLAND

This is a difficult area to ensure precise compliance as no authority can monitor every last move that occurs with parties involved with adoption planning. There are no particular measures to recommend, other than it is essential that officials acting in the capacity of planning and decision-making for children accept and embrace the laws, ethics and best practices of supporting children in their best interests. A clearly defined, transparent process is critical.

ONTARIO

Ontario requires that licensed adoption agencies, as accredited bodies, be accountable for ensuring that the adoption process follows the legislative requirements of the foreign jurisdiction as well as the Hague Convention. The Intercountry Adoption Act, 1998 also prohibits giving or receiving a payment in

connection with intercountry adoption except for the prescribed expenses outlined in Section 19 of the Act. Contravention of this prohibition is an offence punishable by a fine of not more than \$25,000 or by imprisonment for not more than three years, or both.

QUÉBEC

Everyday measures can be taken to prevent abduction and sale of and traffic in children: the States can abstain from exerting undue pressure, and the States must respect the number of children eligible for adoption in a given State of origin and determine accordingly the number of accredited bodies able to work in that area and an adequate number of adoption files to submit.

Raising and dealing with concerns or individual cases

8. If a concern or case about the possible abduction, sale or traffic of an adopted child is raised with your Central Authority:
 - a. What measures and / or procedures are in place in your State for considering this concern?

BRITISH COLUMBIA ("BC")

If this concern is raised prior to the child's admission to Canada, the BC Central Authority would request the assistance of federal officials at Canadian missions abroad to confirm the veracity of the concern and to communicate the results of their investigation. If the BC Central Authority is satisfied that child abduction, sale or trafficking had occurred, it would not approve the adoption process. If concerns are raised after the child has been admitted to BC, the matter should be reported to local law enforcement authorities who would take responsibility for investigating.

ALBERTA, SASKATCHEWAN, NEW BRUNSWICK, NOVA SCOTIA and NORTHWEST TERRITORIES

Would communicate with the Federal Central Authority to determine if other provinces and territories have been experiencing similar concerns and also to request that they seek current information from federal officials on site in the country of origin. If the concern has not been addressed by the originating country in a satisfactory manner, we would raise the matter with other Central Authorities in Canada and decide on a possible coordinated position.

ONTARIO

As the ministry has no means to verify the validity of documentation produced in foreign jurisdictions, we would initially inquire with the licensed adoption agency who is responsible for facilitating the specific adoption, for their report. The concern of alleged abduction, sale or traffic of an adopted child along with the reporting documentation would then be shared with the Federal Central Authority, and further assistance may be sought from federal officials at Canadian missions abroad.

QUÉBEC

Our Central Authority would examine the situation in collaboration with its partners, make verifications and finally make a decision.

- b. Please provide details of the body / bodies within your State which would be responsible for considering and / or investigating this concern.

BRITISH COLUMBIA ("BC")

The BC Central Authority would ask that Government of Canada officials in the

country of origin to assist. If the child has already been admitted to BC, the local law enforcement agency would investigate.

SASKATCHEWAN, ONTARIO, NEW BRUNSWICK and NORTHWEST TERRITORIES

See response to Question 8a).

QUÉBEC

The Central Authority in collaboration with its partners in intercountry adoption.

NOVA SCOTIA

The Central Authority would be responsible for considering and/or investigating any concerns but would need to utilize the assistance of the Federal Central Authority and Canadian officials in the originating country.

- c. What sort of assistance (*e.g.*, access to records, mediation, counselling), if any, would be available to (a) the adoptee (b) birth parents, or (c) adoptive parents in individual cases?

BRITISH COLUMBIA ("BC")

In the receiving country, adoptees and adoptive parents could access services through any of the licensed adoption agencies, adoption support groups or other professionals. They would also be entitled to access their file information with the licensed adoption agency (the adoptee could not access his or her information until they reach the age of majority).

SASKATCHEWAN

The Ministry provides some assistance in problem-solving procedural matters that may have arisen as unique circumstances in a particular adoption case matter on behalf of the adoptive parents. The Ministry has a legal obligation to preserve all intercountry adoption records permanently and will provide post adoption services upon request related to accessing any documents on the file. There are no services available to birth parents who reside in another jurisdiction. Counselling services for either the adoptee or adoptive parents are not offered by the Ministry once the adoption order is finalized.

ONTARIO

- a/ Adopted persons who were adopted in Ontario, may ask for their adoption records, including identifying information, once they have turned 18 years of age. Ontario residents who were adopted in other jurisdictions may request non-identifying information related to their adoptions.
- b/ During the adoption process, counselling is available at all times to birth parents, in Ontario, through their adoption counsellor and other professionals available on a case-by-case basis, by referral. Once the adoption is completed the birth parents can make private arrangements for counselling, if needed.
- c/ During the adoption process, counselling is available at all times to the prospective adoptive applicants through their adoption practitioner as well as the facilitating agency and other professionals available on a case-by-case basis, by referral. Once the adoption is completed the adoptive parents as well as the child can make private arrangements for counselling through a variety of community resources or other professionals.

QUÉBEC

Our Central Authority would ensure that the adoptive parents had access to

information, and if required, counselling would be provided. The adoptee would meet with a professional, and counselling and support would be provided to him or her.

NEW BRUNSWICK

Any request for information pertaining to an adoption must be made to the Minister of Social Development as the Ministry has a legal obligation to preserve all intercountry adoption records permanently and if the Minister is satisfied that all persons who will be directly affected by the release of information have consented to its release and there are no compelling reason in the public interest to refuse. There is some counselling services for either the adoptee or adoptive parents offered by Post Adoption Services through the Ministry.

NOVA SCOTIA

Nova Scotia can provide assistance to adoptees and adoptive parents in individual cases but has no ability to assist birth parents in originating countries. The provincial Department has an obligation to preserve all intercountry adoption records for 120 years and will access those records on the request of the adoptee. Counselling services for either the adoptee or adoptive parent are not provided directly by the Minister once the adoption is granted; rather, these services are offered in the community, both publicly and privately.

PRINCE EDWARD ISLAND

All records are maintained and secured by Adoption Services. Post Adoption Services are provided by authorized social workers to adult adoptees, birth family members and adoptive parents, who are seeking information and /or contact with each other.

NORTHWEST TERRITORIES

The Registrar would provide access to the file. The NWT would cooperate with investigations and would comply with the court and/or police requests.

General

9. Are you aware of any cases of the abduction, sale or traffic in children within your intercountry adoption programmes? Please also provide details of any sanctions or penalties applied if such cases were prosecuted successfully.

FEDERAL GOVERNMENT (Department of Citizenship, Immigration and Multiculturalism Canada)

Where such activities pertaining to an adoption case are brought to the attention of officials of the Department of Citizenship, Immigration and Multiculturalism Canada, immigration or citizenship applications are not approved.

BRITISH COLUMBIA ("BC")

There have been a small number of cases where these concerns have been communicated to the BC Central Authority. In one case, it became evident that an older child adopted and admitted to BC had birth family in her country of origin willing to parent her and unaware of her whereabouts. Other cases regarding very young infants have been suspect due to the ages of the babies and questionable documentation. There have been a limited number of incidents where the local law enforcement authorities have been notified and investigated a child's entry to BC under fraudulent documents.

SASKATCHEWAN, QUÉBEC, NEW BRUNSWICK and NORTHWEST TERRITORIES

No

NOVA SCOTIA

No, but concerns may arise where there is limited governmental oversight or poorly defined processes for intercountry adoption exists.

PRINCE EDWARD ISLAND

No, however concerns may arise regarding the authenticity of documents from non-Hague States, as we have no means to verify them.

10. Have you suspended, or restricted, an intercountry adoption programme due to concerns regarding the possible abduction, sale or traffic in children?

Over the years, there have been a few instances where the suspension of intercountry adoption programmes have been supported by all the jurisdictions in Canada. In addition, some Canadian jurisdictions have individually suspended intercountry adoption with certain States.

11. Have you suspended, or restricted, or taken any action, in respect of an adoption accredited body (Art. 11) or an approved (non-accredited) person (Art. 22(2)) or an institution, due to concerns regarding the possible abduction, sale or traffic in children?

BRITISH COLUMBIA ("BC"), NOVA SCOTIA, PRINCE EDWARD ISLAND and NORTHWEST TERRITORIES

No

SASKATCHEWAN

We have withdrawn or refused to conduct business with agencies who could not provide credible documentation, or, there were concerns raised, moreso with unusual fees requested to be paid by the adoptive parents to an agency.

ONTARIO

Ontario has restricted actions of Ontario licensed adoption agencies with respect to their facilitation of intercountry adoptions from specific countries, or regions within countries, based on concerns and information received regarding possible fraudulent documentation, abduction, sale or traffic in children.

12. Are private or independent adoptions permitted by your State? Define what is meant in your State by "private" or "independent" adoptions.

BRITISH COLUMBIA ("BC") SASKATCHEWAN, NEW BRUNSWICK, PRINCE EDWARD ISLAND and NORTHWEST TERRITORIES

Not with regard to intercountry adoption.

ALBERTA

Not with regard to Adoptions governed by the Hague Convention.

ONTARIO

Ontario legislation does not provide a definition of private or independent adoption. Under Ontario's Child and Family Services Act, R.S.O 1990, children can be placed for adoption in Ontario by a children's aid society or a licensee. Children's aid societies are public child welfare agencies which have adoption as part of their mandate. A licensee is an individual or an agency licensed by the ministry to place children for private adoption.

QUÉBEC and NOVA SCOTIA

No

13. What measures are taken in your State to ensure that the process of matching is carried out by a properly qualified and independent authority?

BRITISH COLUMBIA ("BC")

The BC Central Authority formally requests information on a child proposed for adoption to a prospective BC adoptive family. It relies on the licensed adoption agencies to obtain and review the information and to determine with the adoptive family whether they have the skills and abilities to meet the child's needs. This is the matching process from BC's end. The licensed agencies rely on their facilitators and/or central authority contacts in the countries of origin to make appropriate matches.

ONTARIO

For international adoptions, a Ministry director must approve the homestudy of the adoptive parents and in a Hague Convention adoption, also approve the child proposal. The director may only approve a child being placed outside of Canada where special circumstances justify the placement.

QUÉBEC

This responsibility is usually reserved for the State of origin. The Secrétariat à l'adoption internationale always verifies that the proposal corresponds to the psychosocial assessment of the adoptive parents.

NEW BRUNSWICK

In New Brunswick, with respect to intercountry adoptions, the Central Authority approves the match before the child proposal is presented to the prospective adoptive parents. If there are questions, then the Central authority will go back to the referring source to collect more information or further clarification.

NOVA SCOTIA

Child welfare or child placing agencies are responsible for matching in accordance with provincial standards and policies.

NORTHWEST TERRITORIES

Under the Hague Convention, the State of origin is responsible for the matching process. Under the Adoption Act of the Northwest Territories, the Minister or the authorized public authority or accredited body reviews the match.

B. QUESTIONS ON THE PRACTICAL OPERATION OF THE CONVENTION

Difficulties related to international mobility

14. When foreign prospective adoptive parents are habitually resident in your State and wish to adopt a child from another State (*i.e.*, intercountry adoption), is this permitted and if so, what special requirements are imposed?

FEDERAL GOVERNMENT (Department of Citizenship, Immigration and Multiculturalism Canada)

Adoptive parents must either be citizens or permanent residents of Canada to apply for immigration or citizenship status for a child whom they have adopted or intend to adopt by way of an intercountry adoption. These requirements apply uniformly throughout Canada.

BRITISH COLUMBIA ("BC")

If prospective adoptive parents are considered permanent residents according to BC's Adoption Act and Regulation, they may apply to adopt a child from another State. All of the requirements applicable to any other prospective adoptive parent under the Adoption Act would apply.

ALBERTA

Yes, if they reside and work in Alberta. The requirements of the Hague Convention are imposed.

SASKATCHEWAN

It depends on the status of the foreign adoptive parents. If the adoptive parents do not have Canadian citizenship but do have permanent resident status, or landed immigrant status, and can demonstrate their intent for reasonable residency, they may be able to receive services in intercountry adoption, depending on the child's originating country's requirements. If the adoptive parents had intentions of relocating as soon as they receive a child, we would recommend they relocate to their proposed location as soon as possible and undertake services there, or require a credible explanation of their proposed plan before approved.

ONTARIO

Any person who is habitually resident in Ontario may utilize the process under the Intercountry Adoption Act, 1998 to adopt a child from another State. The applicants would be required to obtain a homestudy, apply to a licensee and obtain the approval of the Ministry Director.

QUÉBEC

Yes, such intercountry adoption is permitted. Proof of residence and immigrant status are required. In a situation where the adoptive parents do not hold immigrant status, the Central Authority of the State of nationality of the adopting parent may be asked to intervene.

NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND and NORTHWEST TERRITORIES

Adoptive applicants have to be a resident of the province and have landed immigrant status or Canadian citizenship.

15. When foreign prospective adoptive parents are habitually resident in your State and wish to adopt a child from your State (*i.e.*, national adoption), is this permitted and if so, what special requirements are imposed?

BRITISH COLUMBIA ("BC"), ALBERTA, NEW BRUNSWICK, NOVA SCOTIA and PRINCE EDWARD ISLAND

Yes

SASKATCHEWAN

If the foreign prospective adoptive parents were not Canadian citizens, but rather, had status of permanent resident or landed immigration status, and they wished to adopt a child from our jurisdiction, we would have to clearly understand their intention. If they had met a specific child, or the birth parents wish to place with them, we would have to determine whether it is in the child's best interests based on the best interests clause in the adoption legislation. If the adoptive parents did not have a special connection with an adoption plan but rather wanted to adopt a Saskatchewan child resident, we would likely counsel them in delaying their adoption application until citizenship was fully established and granted. If there was some insistence on their part, after consulting with legal

counsel, we may approve the application depending on their outlined intentions for ongoing future residency i.e. do they intend to return to their originating country or another country and why? We regard it as in the best interests of a Saskatchewan-born child to conduct planning for the child that allows residency permanently where possible in their originating jurisdiction.

ONTARIO

If prospective adoptive parents are residents of Ontario they may adopt domestically. Their adoption would fall under the legislative requirements of the Child and Family Services Act, R.S.O. 1990. They could apply to adopt through a public adoption authority - a children's aid society - or apply to adopt privately through an adoption licensee. In both cases the adoptive applicants must first be assessed as suitable and eligible to adopt through the completion of a homestudy assessment conducted by either a children's aid society's social worker or by an approved adoption practitioner.

QUÉBEC

Yes, that type of adoption is possible. The future adoptive parents have the same obligations as future adoptive parents from Québec. They must, however, maintain a rather long period of residence to allow the child to form bonds and become integrated. They also have to live in Québec until the adoption process is complete.

NORTHWEST TERRITORIES

Each person who petitions to adopt a child under our legislation must be ordinarily resident in the Territories so a foreign prospective adoptive parent may petition to adopt. In practice, we are careful about the placement of children in the Northwest Territories for adoption outside of the Territories, given the special geographical and cultural consideration of our region.

State of origin question

16. How do you treat the adoption of a child in your State by prospective adoptive parents who have the nationality of your State but who are habitually resident in the receiving State? Does it make any difference if the child is related to the prospective adoptive parents?

N/A

Receiving State question

17. How do you treat the adoption of a child in the State of origin by prospective adoptive parents who have the nationality of that State but who are habitually resident in your State? Does it make any difference if the child is related to the prospective adoptive parents?

BRITISH COLUMBIA ("BC")

Adopting from Hague countries of origin: If adoptive parents meet BC's definition of "resident" under the Adoption Act, and if the child is adopted by these parents in the country of origin, the BC Central Authority will require an approved home study. The adoptive parents would be required to work with one of BC's licensed adoption agencies to complete the assessment. This would apply whether the child is related or not related to the adoptive parents.

Adopting from non-Hague countries of origin: If adoptive parents meet BC's definition of "resident" under the Adoption Act, and if the child is adopted in the country of origin and is related to the adoptive parents, no home study is

required. The BC Central Authority would issue a letter for Canadian immigration or citizenship purposes once in receipt of a Decree of Guardianship Order from the country of origin. If the adoptive parents are unrelated to the child, the Department of Citizenship, Immigration and Multiculturalism Canada would require a home study prior to the child being admitted to Canada. One of the BC licensed adoption agencies would need to complete this assessment for the adoptive parents.

SASKATCHEWAN and NEW BRUNSWICK

The child must be legally eligible for adoption in the originating State and compliance with the legal obligations that adhere must occur. Being a relative of the child does not automatically mean an adoption should occur. They need to follow the same Intercountry procedures as others.

ONTARIO

Ontario's Intercountry Adoption Act, 1998 outlines the legislative requirements that must be met by the residents of Ontario pursuing an intercountry adoption where an adoption is to be finalized in a foreign jurisdiction (see #14). The Act applies to Ontario residents, regardless of their nationality, who are adopting a related or unrelated child through intercountry adoption. It does not make any difference if the child is related to the prospective adoptive parents.

QUÉBEC

That type of adoption is treated as an intercountry adoption. It is subject to the procedures in the 1993 Hague Convention if it is in effect in both States.

NORTHWEST TERRITORIES

The Northwest Territories do not support foreign prospective parents who are habitually resident in our State for intercountry adoption.

Certificate of conformity (Art. 23)

18. Is your State experiencing any difficulties concerning the certificate of conformity which must be issued in accordance with Article 23 when the adoption is completed?

BRITISH COLUMBIA ("BC"), SASKATCHEWAN, ONTARIO, NEW BRUNSWICK, NOVA SCOTIA, and PRINCE EDWARD ISLAND

No

QUÉBEC

When the adoption decree is rendered in Québec, the certificate of conformity [called a certificate of compliance in Québec] is issued by the Court of Québec, Youth Division. As hearings take place in various parts of Québec, the Secrétariat à l'adoption internationale must send out reminders to ensure that certificates of conformity are issued.

NORTHWEST TERRITORIES

Yes, there have been instances where a certificate of conformity has not been provided by an originating country.

19. What problems occur when a certificate is not delivered or is incomplete? What solutions does your State apply in such cases?

SASKATCHEWAN and NEW BRUNSWICK

The certificate is a requirement. We have never had to address one not delivered nor incomplete.

QUÉBEC

If a certificate is not compliant, discussions can be undertaken with the Central Authority of the State of origin, or the certificate can be submitted to the Court of Québec, Youth Division, on the initiative of the Minister of Health and Social Services of Québec.

PRINCE EDWARD ISLAND

If we have not received a copy of the order from the country of origin, we ask for a copy either from the licensed adoption agency which facilitated the adoption, or from the parents.

NORTHWEST TERRITORIES

There have been no significant consequences from the certificate of conformity not being provided.

Receiving State question

20. Does your State require any formal procedure for the recognition of an adoption decree that was made in a State of origin?

BRITISH COLUMBIA ("BC"), SASKATCHEWAN, ONTARIO, NEW BRUNSWICK, NOVA SCOTIA and NORTHWEST TERRITORIES

No

QUÉBEC

If the State of origin is a party to the 1993 Hague Convention and it

- (a) renders an adoption decree: the certificate of conformity issued by that State will be served on the Registrar of Civil Status in order to register the child;
- (b) Gives the child to the adoptive parents: the adoption will be completed in Québec courts and a certificate of conformity will be issued.

If the State of origin is not a member of the 1993 Hague Convention and it

- (a) renders an adoption decree: an application will be made to the Court for it to recognize the adoption decree rendered abroad;
- (b) gives the child to the adoptive parents: the adoption will be completed in Québec courts.

Co-operation or development aid projects in the State of origin

State of origin Questions

NB: The 2009 Questionnaire on Accreditation (Prel. Doc. No 1) at Section K (questions 71-73) also dealt with this issue. States which completed that Questionnaire could refer to their responses to avoid repetition here.

21. Is it mandatory in your State for receiving States to undertake co-operation or development aid projects as a condition for engaging in intercountry adoptions?

N/A

22. Who chooses or initiates co-operation or development aid projects? What involvement, if any, do the authorities in the State of origin have with the projects?

N/A

23. Can you provide examples of good and bad practices?

N/A

The practical operation of the Convention and related challenges

24. Please indicate what are the main challenges (*e.g.*, problems, abuses) faced by your State for the effective implementation and operation of the Convention.

BRITISH COLUMBIA ("BC")

Main challenges: absence of direct monitoring by the BC Central Authority in the countries of origin/lack of full social medical history of the children/pressures from adoptive parents to continue adoptions.

ALBERTA and NORTHWEST TERRITORIES

The main problem is the limited ability of some States to carry out their duties under the Convention.

SASKATCHEWAN, NEW BRUNSWICK and NOVA SCOTIA

As a Hague jurisdiction within Canada, we have no problems as a Receiving State implementing the requirements of the Hague Convention as it relates to our responsibilities. The main challenge is the difficulty to verify concerns especially regarding certain practices in non Hague countries.

ONTARIO

For international adoptions finalized in the child's country of origin, from other Hague Countries, Ontario has not experienced problems in managing the appropriate approvals between the 2 countries.

There have been some technical challenges with respect to intercountry adoptions completed in Ontario. In particular, the domestic legislation, the Child and Family Services Act, R.S.O. 1990 distinguishes between relative and non-relative adoptions but the Hague Convention does not.

PRINCE EDWARD ISLAND

Validation of documents ensuring the child is legally free for adoption, ensuring that adoptive parents give fully informed consents and are not misled by facilitating agencies.

25. Do you have any other comments about the operation of the Convention?

GOVERNMENT OF CANADA (Department of Citizenship, Immigration and Multiculturalism Canada)

More assistance should be available to States that want to develop better safeguards to protect the best interests of the child.

BRITISH COLUMBIA ("BC")

Comprehensive reports regarding intercountry adoption practice and structures in foreign countries would provide valuable insight. Providing support to countries of origin in developing stronger systems would also be of assistance.

SASKATCHEWAN

When countries sign on to the Hague Convention, and struggle with the implementation and/or ongoing delivery of the requirements, perhaps there could be a list of accredited professionals (from across the world) on the Hague website that could be contracted as experts by the country for assistance in

specialized or generalized service delivery matters/issues.

The Hague Convention as it exists is overall a good working document.

NOVA SCOTIA

As a condition of implementing the Hague Convention, we would suggest that the detailed information on the processes and the players involved be posted on the Hague website for reference by all States parties.

Surrogacy and intercountry adoption

26. Have you experienced any problems concerning the interplay between the 1993 Hague Convention and cross-border surrogacy arrangements?

GOVERNMENT OF CANADA (Department of Citizenship, Immigration and Multiculturalism Canada)

This is an area in which we have recently begun to see cases. They do have the potential to be more complex because the practices with respect to surrogacy differ among countries. In some countries the birth certificate bears the names of the persons who will parent the child as opposed to the surrogate (birth) mother.

BRITISH COLUMBIA ("BC")

There has been at least one situation in BC involving surrogacy and intercountry adoption queries. It is an area that has the potential to be extremely complicated

ALBERTA

Yes

SASKATCHEWAN, NOVA SCOTIA, PRINCE EDWARD ISLAND and NORTHWEST TERRITORIES

No.