

**Annexes** - Doc. préél. No 6  
**Appendices** - Prel. Doc. No 6

août / August 2002

## **A P P E N D I C E S**

### **LES MÉCANISMES PRATIQUES POUR FACILITER LA COMMUNICATION INTERNATIONALE DIRECTE ENTRE AUTORITÉS JUDICIAIRES DANS LE CADRE DE LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS**

#### **Rapport Préliminaire**

établi par Philippe Lortie, Premier Secrétaire

\* \* \*

### **PRACTICAL MECHANISMS FOR FACILITATING DIRECT INTERNATIONAL JUDICIAL COMMUNICATIONS IN THE CONTEXT OF THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

#### **Preliminary Report**

drawn up by Philippe Lortie, First Secretary

*Document préliminaire No 6 d'août 2002  
à l'intention de la Commission spéciale de septembre / octobre 2002*

*Preliminary Document No 6 of August 2002  
for the attention of the Special commission of September / October 2002*

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**DIRECT JUDICIAL COMMUNICATIONS**

(texte original anglais ; non-disponible en français)  
(original text in English; not available in French)

**APPENDIX A  
(English)**

**Direct Judicial Communications**

"Judge McElyea", this is Mr Justice Gillen, a judge of the Family Division of the High Court in Northern Ireland. I am sitting to hear a case brought before me under the Hague Convention and which it is alleged is one of child abduction. It involves three children, namely ... .., ... .. and ....

The applicant is ... and the respondent is ....

The children are currently in Northern Ireland having been removed from the USA on the 9<sup>th</sup> day of February 2001.

I understand that you have dealt with this case and have made a number of determinations in relation to the children and in particular an Order of 19 March 2001.

**Counsel on each side is with me and can hear all of our conversation. I must emphasise that I do not wish to discuss the merits of the case at all and I intend to confine our communication entirely to procedural issues and the exchange of information. The parties, through their counsel and solicitors, have been notified in advance of the nature of the proposed communication and a record will be kept by a court official of our communication now.**

One proposal, and one possible resolution of this case, is that the children be returned to Georgia, USA provided a number of undertakings can be given to ....

The concern that I wish to raise with you is the effect of your Order of the 19<sup>th</sup> of March 2001. The Order reads, *inter alia*:

*Therefore, based on the evidence and findings of the Court as stated above, the Court finds that the Defendant has wilfully removed the minor children of the parties: ... .., **date of birth ..... 1994**; ... .., **date of birth ....., 1997**; and ... .., **date of birth ..... 1999**; from the jurisdiction of this Court without written permission of the Plaintiff in violation to the above cited Standing Order. The Court finds the Defendant to be in contempt of this Court's Order cited above.*

*Therefore the Court orders as follows: **That the Sheriff of Cherokee County, Georgia, his lawful deputies or any other law enforcement officer to arrest the Defendant and incarcerate the Defendant in the common jail in Cherokee County, Georgia, until such time as the Defendant has purged herself of this contempt as provided for below.***

*The Defendant may purge herself of this contempt by returning the minor children of the parties: ... .., **date of birth ..... 1994**; ... .., **date of birth ..... 1997**; and ... .., **date of birth ..... 1999**; to the custody of the Plaintiff.*

- 1) Can you tell me that if this woman returns the children to the custody of Peter, subject to agreed visitation rights, pursuant to an order made by this Court, she can be assured that she will not be subject to contempt proceedings on foot of the Order which you made and in particular, on foot of any breach that has been occasioned as a result of her taking the children out of the jurisdiction to Northern Ireland?
- 2) Can you tell me how quickly an application for variation of the Custody Order can be issued by her and heard in Georgia? Can such an application be afforded priority status given that the application has a Hague Convention context?

**DIRECT JUDICIAL COMMUNICATION BETWEEN  
THE HONOURABLE MR JUSTICE GILLEN AND  
THE HONOURABLE ELLEN MCELYEA,  
ASSISTANT SUPERIOR COURT JUDGE**

(texte original anglais ; non-disponible en français)  
(original text in English; not available in French)

**APPENDIX B  
(English)**

**Direct Judicial Communication  
Between the Honourable Mr Justice Gillen and  
the Honourable Ellen McElyea, Assistant Superior Court Judge  
Cherokee County, State of Georgia, United States of America  
on the 26th April 2001 at 3.00 Pm**

Mr Justice Gillen commenced by reading from a prepared document, a copy of which is appended to this note. Judge McElyea, answering the two queries, said:

1. The defendant would not be subject to any further civil sanction provided the children are returned in accordance with the Order.
2. The Judge could not ensure that the defendant would not be subject to criminal proceedings for interfering with custody. Interfering with custody is a felony in the State of Georgia that could be prosecuted by a Law Enforcement Agency in Georgia.
3. She could be prosecuted as a result of Mr ... seeking a Citizen's Warrant.

The Judge added that whilst "she did not want anyone to rely on this" she thought it only a remote possibility of prosecution by the Law Enforcement Agency without Mr ..... initiating it. However, she furnished the Court with the name of the local Sheriff, namely Roger Garrison, whose telephone number is ..... On the question of a date for hearing, Mr Justice Gillen made it clear that whilst the application contemplated by the defendant in the United States of America would not be a Hague Convention application, it did have a Hague Convention context, given these current proceedings in Northern Ireland.

Judge McElyea indicated that based on her caseload and schedule, and anticipating a lengthy hearing, the matter was unlikely to be listed before mid-June, although she would attempt to afford a measure of urgency to the case.

**MEMORANDUM - CONVENTION DE LA HAYE  
COOPERATION JUDICIAIRE**

(français et anglais)

\* \* \*

**MEMORANDUM RE HAGUE CONVENTION  
JUDICIAL COOPERATION**

(French & English)

**Mémoire - Convention de La Haye - Coopération judiciaire**

**SNJ** et **SV** parents de **AV** né(e) le 22 mai 1991 et **JMJV** né(e) le 30 octobre 1995.

La famille a vécu en Nouvelle-Zélande jusqu'en décembre 1998. L'épouse a emmené les enfants en Australie en décembre 1998. Le père a rendu visite aux enfants en Australie en décembre 1999, et la mère affirme qu'ils s'étaient accordés sur le fait que l'enfant aîné A passerait les vacances scolaires d'avril en Nouvelle-Zélande, avec son père, et qu'il retournerait ensuite en Australie le 25 avril 2000. Cet enfant n'est pas retourné en Australie depuis, et vit avec son père en Nouvelle-Zélande.

Le 4 juillet 2000, la mère a entamé une procédure devant le Tribunal de la famille d'Australie, afin d'obtenir un droit de visite, et le bénéfice d'une décision lui accordant à elle seule le droit de garde. 21 août : examen de la demande. Entre temps, elle a déposé une demande auprès du tribunal en vue d'obtenir une décision provisoire lui accordant la garde des enfants.

Le 20 juillet 2000, il a été ordonné que les enfants résident avec la mère et leur garde lui a été conférée jusqu'à nouvel ordre. En outre, il a été décidé que le père devait entreprendre les démarches nécessaires pour renvoyer l'enfant A au plus tard le 3 août 2000.

A la réception de la demande de l'Autorité centrale de Nouvelle-Zélande, l'Autorité centrale de l'état de Victoria a entamé une procédure en application de la Convention de La Haye devant le Tribunal de la famille de Melbourne, la demande ayant été déposée le 16 août et devant être examinée le 21 août 2000. Cette procédure tendait à obtenir le retour de l'enfant J vers la Nouvelle-Zélande.

En même temps que sa demande de retour en application de la Convention de La Haye concernant le cadet, le père a entamé une procédure devant le tribunal de district de Whangarei, ex parte, pour obtenir la garde de l'aîné. Cette procédure a donné naissance à une procédure en Nouvelle-Zélande, sur demande de l'Autorité centrale du Commonwealth australien, tendant à obtenir le retour de l'aîné en Australie, conformément aux dispositions de la Convention de La Haye.

Il semblerait que certaines questions procédurales quant au délai de traitement aient été réglées en Nouvelle-Zélande, accordant ainsi au père quelque 42 jours pour déposer son dossier.

Dans la mesure où, d'une part, une procédure relative à la garde des deux enfants et une procédure en application de la Convention de La Haye concernant le cadet étaient en cours en Australie, et, d'autre part, une procédure relative à la garde de l'aîné et une procédure en application de la Convention de La Haye concernant l'aîné étaient en cours également en Nouvelle-Zélande, l'Autorité centrale a estimé qu'il était approprié de déterminer si, dans cette affaire, il était ou non nécessaire qu'une liaison soit effectuée entre les tribunaux, afin de « mettre de l'ordre » dans les procédures.

Les parties se sont mises d'accord sur le fait que les procédures en Nouvelle-Zélande devraient être traitées avant celles entamées en Australie, mais il ressort des quelques discussions ce matin que des inquiétudes portent sur l'enchaînement des événements qui pourraient faire en sorte que les mêmes questions soient portées devant les deux tribunaux.

Les questions australiennes m'ont été communiquées ce matin. Mme Treyvaud était présente au nom de l'Autorité centrale d'Etat, et M. Nicholson était présent pour le compte de la mère. Je leur ai indiqué mon souhait de discuter avec le juge Mahony, Juge principal du Tribunal de la famille de Nouvelle-Zélande, si les parties ne s'y opposaient pas. J'ai également indiqué que je limiterai la discussion aux questions relatives à la procédure, et que je ne soulèverai pas les questions de substance. En outre, j'ai précisé que j'enregistrerai la discussion et que je fournirai des copies de mes notes aux parties concernées. En dernier lieu, j'ai indiqué que je n'entreprendrai aucune démarche en ce sens sans le consentement du père ou de son représentant légal.

J'ai ensuite reçu un fax de l'avocat de B en Nouvelle-Zélande, adressé au *Solicitor* du Gouvernement de Victoria comme suit :

- « 1. Merci pour votre téléphone de ce matin.  
2. Nous pouvons confirmer que nous agissons pour le compte de M. V, et que celui-ci consent à une coopération judiciaire entre les tribunaux de Nouvelle-Zélande et d'Australie, concernant les demandes croisées.  
3. Veuillez nous contacter si vous nécessitez de plus amples informations, et merci pour votre aide.

[signé]

EP

Senior Associate »

J'ai maintenant eu l'occasion de m'entretenir avec le juge Mahony. Par le jeu du hasard, le juge Mahony doit siéger à Whangarei le lundi 6 novembre. Son Honneur a indiqué qu'il se renseignerait sur l'état de la procédure et ferait en sorte d'assurer une audition d'ici la fin du mois. Son Honneur est conscient que les dispositions de la Convention indiquent que la procédure doit être rapide et ne pas excéder six mois après la date d'introduction de la procédure. Il précise qu'il me recontactera la semaine prochaine, dès qu'il sera en mesure d'estimer la durée de traitement de la procédure en Nouvelle-Zélande. J'attends ses futurs conseils.

**Memorandum Re Hague Convention Judicial Cooperation<sup>1</sup>**

**SNJ** and **SV** are the parents of  
**AV** born 22 May 1991 and **JMJV** born 30 October 1995.

Until December 1998 the family lived together in New Zealand. It appears the wife unilaterally moved with the children to Australia in December 1998. The father visited the children in Australia in December 1999 and the mother asserts that an agreement was reached that the elder child A. should spend the April school holidays in New Zealand with her father and then be returned to Australia by 25 April 2000. That child has not been returned and remains in New Zealand with the father.

On 4 July 2000 the mother commenced proceedings in the Family Court of Australia at its Dandenong Registry seeking a residence order in her favour and an order that she have the sole responsibility for the day-to-day care, welfare and development of the children. That application was returnable on 21 August. At the same time she issued a Form 8 application seeking interim orders relating to the said children.

On 20 July 2000 orders were made by Judicial Registrar Nikakis that until further order the children reside with the wife and that she have the sole responsibility for their daily welfare, care and development. It was further ordered *inter alia* that the father make all necessary preparations for the return of the child A. from New Zealand departing no later than 3 August 2000.

On receipt of a request from the New Zealand Central Authority, the State Central Authority for Victoria, being the Department of Human Services, commenced proceedings under the Hague Convention in the Family Court of Australia at Melbourne by application issued 16 August 2000 and returnable on 21 August 2000. Those proceedings sought the return of the child J to New Zealand.

Simultaneously with his request for a return under the Hague Convention with respect to the younger child, the father commenced proceedings in the District Court of Whangarei on an ex parte basis seeking an order that he be granted custody of the elder child. Those proceeding in turn have generated proceedings in New Zealand brought at the request of the Australian Commonwealth Central Authority for the return of the elder child to Australia pursuant to the provisions of the Hague Convention.

Apparently some directions may have been made in New Zealand regarding the timetable for the conduct of those proceedings, which directions include allowing the husband some 42 days to file his material.

Given that there were pending in Australia residence proceedings concerning both children and Hague Convention proceedings concerning the youngest child, and given that there were pending in New Zealand residence proceedings concerning the oldest child and a Hague Convention application concerning the oldest child, the Central Authority thought it appropriate that the matter be listed for mention in Australia to determine whether or not some liaison ought or could take place between the two courts to provide for the orderly disposition of the proceedings.

The parties have agreed that the New Zealand proceedings should be completed prior to the Australian proceedings but it would appear from some discussions this morning that there is concern as to the timetabling of events which might lead to the matters being dragged on in both courts.

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<sup>1</sup> Justice Joseph Kay, Judges' Newsletter, Vol. III / Autumn 2001, *supra*, note 80, at p. 22-24.

The Australian matters were fixed for mention before me this morning. Ms Treyvaud appeared on behalf of the State Central Authority and Mr Nicholson appeared on behalf of the mother. I indicated to them that I would be willing to discuss the matter with Judge Mahony, the Principal Family Court Judge of New Zealand if all the parties had no objection to me so doing. I also indicated that I would limit the discussion to matters concerning procedure and that I would not discuss any matters of substance. I further indicated that I would diarise the discussion and make copies of my notes available to all parties concerned. Finally, I indicated that I would take no steps in respect of any such discussions without the consent being forthcoming from the father or his practitioner.

The matter was then stood down and a fax was forthcoming from B. Lawyers in New Zealand addressed to the Victoria Government Solicitor. which reads as follows:

1. Thank you for your phone call earlier today.
2. We can confirm that we act for Mr V., and that he consents to judicial cooperation between the New Zealand and Australian Courts in respect of the cross applications.
3. Please contact us if you require any further detail, and thank you for your assistance.

[signed]

EP

Senior Associate"

I have now had the opportunity of having a discussion with Judge Mahony. As coincidence would have it, next Monday 6 November Judge Mahony is sitting in Whangarei. His Honour indicated that he would make enquiries as to the state of the proceedings and endeavour to ensure that a hearing could take place by the end of this month. His Honour is conscious of the Convention provisions that indicate that it is appropriate that proceedings move expeditiously and by implication be completed within six weeks from the time of their institution. His Honour indicated that he would contact me again next week as soon as he is in a position to report back on the likely pace of the New Zealand proceedings. I await his further advises.

**ILLINOIS STATE NO. 750 ILCS 35**

(texte original anglais ; non-disponible en français)  
(original text in English; not available in French)

**Illinois State No. 750 ILCS 35***Section 7. Simultaneous Proceedings in Other States*

(a) A court of this state shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under Section 10 and shall consult the child custody registry established under Section 17 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with Sections 20 through 23 of this Act. If a court of this state has made a custody judgment before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the most appropriate forum.

*Section 8. Inconvenient Forum*

(a) A court which has jurisdiction under this Act to make an initial or modification judgment may decline to exercise its jurisdiction any time before making a judgment if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

[...]

(d) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the most appropriate court and that a forum will be available to the parties.

*Section 24. International Application*

The general policies of this Act extend to the international area [...].

**UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)**

(texte original anglais ; non-disponible en français)  
(original text in English; not available in French)

**APPENDIX E  
(English)**

**Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**

Following are some relevant extracts from the draft Bill and prefatory notes and comments by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

*Section 110. Communication between Courts<sup>2</sup>*

(a) A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act].

(b) Communications between courts that affect the substantive rights of a party must be made in a manner that allows the parties to participate, or allows the parties to present jurisdictions facts and legal arguments to the courts, before a final determination is made as to which forum is appropriate. A record must be made of those communications between courts. The record may consist of notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum of other electronic communications between the courts, or a memorandum made by one of more courts after the communication.

(c) Communications between courts on schedules, calendars, court records, and other matters that do not affect the substantive rights of the parties may occur without informing the parties. A record need not be made of those communications.

*Section 204. Temporary Emergency Jurisdiction<sup>3</sup>*

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

[...]

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<sup>2</sup> Comment by NCCUSL: "This section emphasizes the role of judicial communications under the Act. It contains the authorization for a court to communicate concerning any proceeding arising under this Act. This includes communication with foreign tribunals and tribal courts. Communication can occur in many different ways such as by telephonic conference and by on-line or other electronic communication and recognizes that there will be increasing use of modern communication techniques.

Language has been added to emphasize the role of the parties in the communication process. If the communication between the court involves relatively inconsequential concerns such as scheduling, calendars or consultation on other minor matters, the communication can occur without the parties being informed or participating. Included within this type of communication would be matters of cooperation between courts under Section 112.

However, on all matters which could affect the parties' substantive rights, a court must communicate with another court in a manner which allows the parties to participate or to present jurisdictional facts and arguments. In particular this includes communications that are required under Section 204 (Emergency Jurisdiction), Section 206 (Simultaneous Proceedings), Section 207 (Forum Non Conveniens), and Section 305 (Simultaneous Proceedings). In any event, a record of the communication must be made. No particular form of communication is required to inform the parties that a communication between courts is scheduled. An informal communication is sufficient.

The purpose of this section is to regularize the communication process between courts. It preserves the flexibility necessary to accommodate busy judicial schedules while including protection for the parties against unauthorized *ex parte* communications. A full discussion of the problem can be found in *State ex rel Grape v. Zach*, 524 N.W.2d 788 (Neb. 1994)."

<sup>3</sup> Comment by NCCUSL: "The communication between courts is to be accomplished in accordance with Section 110. The communication under this section affects the substantive rights of the parties and therefore the provisions of that section on participation of parties and making of the record are applicable."

(d) A court of this state that has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced, or a child-custody determination has been made, by a court of a state having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced, or a child-custody determination has been made by a court of another state under a statute similar to this section shall immediately communicate with the court of that state. The purpose of the communication is to resolve the emergency and protect the safety of the parties and the child.

*Section 206. Simultaneous Proceedings<sup>4</sup>*

(a) Except as otherwise provided in Section 204, a court of this state may not exercise its jurisdiction under this [section] if at that time of the commencement of the proceedings a proceeding concerning the custody of the child had been previously commenced in a court of another state having jurisdiction substantially in conformity with this [Act], unless the proceeding is stayed by the court of the other State because a court of this State is a more convenient forum under Section 207.

(b) Except as otherwise provided in Section 204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with this [Act], the court of this state shall stay its proceedings and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this [Act] does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) Proceed with the modification under conditions it considers appropriate.

*Section 306. Simultaneous Proceedings*

If a proceeding for enforcement under this [section] has been or is commenced in this State and a court of this State determines that a proceeding to modify the determination has been commenced in another State having jurisdiction to modify the determination under [section] 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

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<sup>4</sup> Comment by NCCUSL: "Under this Act, the simultaneous proceedings problem will arise only when there is no home state and more than one significant connection state. For those cases this section retains the "first in time" rule of the UCCJA. Subsection (b) retains the UCCJA's policy favoring judicial communication. Communication between courts is required when it is determined that a proceeding has been commenced in another state. The communication is governed by Section 110. It is a communication that affects the substantive rights of the parties."

**GUIDELINES APPLICABLE TO COURT-TO-COURT  
COMMUNICATIONS IN CROSS-BORDER CASES**

(texte original anglais ; non-disponible en français)  
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**The American Law Institute**

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**TRANSNATIONAL INSOLVENCY PROJECT**

**PRINCIPLES OF COOPERATION IN TRANSNATIONAL  
INSOLVENCY CASES AMONG THE MEMBERS OF THE  
NORTH AMERICAN FREE TRADE AGREEMENT**

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**Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases**

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Submitted by the Council to the Members of The American Law Institute  
For Discussion at the Seventy-Seventh Annual Meeting  
On May 15, 16,17 and 18, 2000

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**Amended - February 12, 2001**

**Guidelines  
Applicable to Court-to-Court Communications  
In Cross-Border Cases**

***Introduction***

One of the most essential elements of Cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channelling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

The Guidelines at this time contemplate application only between Canada and the United States, because of the very different rules governing communications with Principles of Cooperation courts and among courts in Mexico. Nonetheless, a Mexican Court might choose to adopt some or all these Guidelines for communications by a *sindico* with foreign administrators or courts.

A court intending to employ the Guidelines - in whole or part, with or without modifications - should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adoption Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication, with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

### **Guideline 1**

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guidelines 8(d) with regard to the application and implementation of the Guidelines.

### **Guideline 2**

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

### **Guideline 3**

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

### **Guideline 4**

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

### **Guideline 5**

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning *ex parte* communications.

### **Guideline 6**

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgements, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means in which case Guideline 7 shall apply.

### **Guideline 7**

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court.
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Courts may consider as appropriate.
- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

### **Guideline 8**

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronics means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate;
- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representatives of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

### **Guideline 9**

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.
- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7 (b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.
- (e) Subject to Guideline 7 (b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or non-substantive matters relating to the joint hearing.

### **Guideline 10**

The Court should, except upon proper objection on valid grounds and then only, to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

### **Guideline 11**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

### **Guideline 12**

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List, which may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

### **Guideline 13**

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

### **Guideline 14**

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

### **Guideline 15**

A court may communicate with a Court in another jurisdiction or with an authorized Representative of such a Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonising proceedings before it with proceedings in the other jurisdiction regardless of the form of proceedings before it and before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

### **Guideline 16**

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Courts should give the other Courts involved reasonable notice of its intention to do so.

### **Guideline 17**

Arrangements contemplated under these guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any parties of any of their substantive rights and claims or a diminution of the effect of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.