

JUDICIAL COORDINATION OF CONCURRENT PROCEEDINGS IN DOMESTIC VIOLENCE CASES

The Honourable Donna Martinson¹

Introduction

When there are allegations of domestic violence in family relationships, it is not uncommon to find that there are concurrent judicial proceedings: criminal cases, family cases, child protection cases and sometimes immigration cases. Even if there is only one existing proceeding, there is always the potential that another proceeding will be commenced at any time.

Significant problems can arise as a result of the existence of concurrent proceedings when each proceeds in isolation, and with little or no information about either the existence of, or what is happening in, other proceedings. This can lead to a fractured approach to the making of decisions that affect the same parents and children. Inconsistent approaches and inconsistent orders can increase the risk of harm to victims of domestic violence, including children.

Dealing with concurrent proceedings can cause delay and increase conflict, exacerbating and escalating the harmful consequences of the violent behaviour experienced, particularly by the children. There can be an ineffective use of valuable and limited resources that can assist families. The requirement to take the time, energy and resources, including financial resources, required to participate in multiple proceedings can discourage people from using the courts and undermine confidence in the justice system.

All participants in the administration of justice, including the police, probation services, child protection services, and lawyers, have a role to play in ensuring that there is a coordinated approach to multiple issues relating to individual families. With respect to judges, there is a role for communication and coordination between or among the courts involved in the concurrent proceedings at the judicial administration level, for the purposes of sharing information, when it is appropriate to do so. In addition, there is a

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role for communication between/among the judges dealing with cases involving a specific family.

Such communication occurs now in cross-border family law cases in which there are concurrent proceedings involving the same parents and children. It happens between judges in different provinces/territories and between Canadian judges and those in other countries. The communication may or may not involve a joint hearing. Each court within a province or territory has a designated judge who facilitates the communication, following broad guidelines and specific processes. The purpose of such communication between judges is to manage each case so that decisions can be made, or agreements reached, in a manner that is consistent, fair, cost effective, and timely for the parents and children involved.

In my respectful view such an approach can be equally effective when there are concurrent proceedings dealing with the same parents and children within a jurisdiction. While the nature of the individual proceedings may be different, and it is important to maintain the integrity of the individual processes, the goals of the communication are the same as they are in cross-border cases. Judicial communication within a jurisdiction can help achieve effective solutions that can ensure the integrity of the way the court systems as a whole impact upon the family in question. The Honourable Judge Rosemary Gallagher² puts it so well when she says: “A broader view of the meaning of integrity of the processes can lead to the ongoing integrity of the family itself...”

This paper expands upon these points, focusing on criminal and family proceedings, by considering these topics:

- I. Direct Judicial Communications
 - A. What is Direct Judicial Communication
 - B. Direct Judicial Communication in Cross-Border Cases
 - C. How Judges Communicate with a Judge in Another Jurisdiction
 - D. Judicial Decisions on Judicial Communication

- II. Coordinating/Harmonizing Family and Criminal Proceedings within a Province
 - A. The Problems that Arise when there are Concurrent Proceedings
 - B. The Nature of the Proceedings:
 1. The Similarities
 2. The Differences
 - C. The Benefits of Coordination and Judicial Communication
 - D. Views of Others on Communication and Coordination in Concurrent Family/Criminal Domestic Violence Cases

² A Judge of the British Columbia Provincial Court, in communications with the writer, with thanks.

I. Direct Judicial Communication in Cross Border Cases

A. What is Direct Judicial Communication?

Direct Judicial Communication arises in cases where there are concurrent proceedings in different jurisdictions with the same parties. It involves communication between judges, with the knowledge of the parties, sometimes in a joint hearing - with the parties and their counsel present - for the purpose of coordinating and harmonizing the proceedings so that a resolution of all the outstanding issues can be reached in a just, timely and cost effective way. The communications do not relate to the merits of each case, and there are safeguards in place to ensure that the processes are fair and do not interfere with the judicial independence of either Court.

B. Direct Judicial Communication in Cross-Border Cases

In Canada direct judicial communication has been primarily used in cross-border litigation. Rule 86 of the Nova Scotia Supreme Court *Civil Procedure Rules* governs judicial communication in cross-border cases in that province and is found at Appendix A. It is a comprehensive rule that provides for both joint conferences and joint hearings. It is not limited to family law cases. An educational note to the Rule says it “will be particularly useful in multi-jurisdictional class proceedings under R.68, cross-border insolvency cases, and applications under the *Hague Convention* for the return of abducted children.”³

The British Columbia Supreme Court has had in place since 2004 guidelines for such communication: *Guidelines Applicable to Court to Court Communication in Cross-Border Cases*.⁴ They provide that 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 jurisdictions: Guideline 2. They were developed in the context of bankruptcy and insolvency litigation and used regularly in those cases. They, however, apply to all cross-border cases.

In relation to cross-border child abduction cases, the Canadian Judicial Council, which approved the establishment of the Canadian Network of Contact Judges, gave the Network the mandate to consider the concept of judicial networking and collaboration in cases of child abduction and custody. That Network, chaired by Justice Robyn Moglove Diamond of the Manitoba Court of Queen’s Bench, is made up of trial judges representing every provincial and territorial superior court in Canada.

³ Found in the Nova Scotia Barrister’s Society Annotated Civil Rules.

⁴ See the Court’s website at www.courts.gov.bc.ca.

The Canadian Network has developed Guidelines for direct communication between courts, both within Canada, and internationally. A copy of these Guidelines is attached at Appendix B. (For further information about the Canadian Network, see Justice Diamond's August paper, *International Child Protection: Canadian Judicial Initiatives*⁵) Similar work is being done by Provincial Courts.

The Canadian approach to direct judicial communication in child abduction cases follows international guidelines developed over time by Special Commissions convened by the Hague Conference on Private International Law. For example, in January of 2009 a Joint Conference of the European Commission and The Hague Conference on Private International Law was held in Brussels on the topic of direct judicial communication on family law matters and the development of judicial networks. As a result of that joint conference, the Hague Conference published an edition of its *Judge's Newsletter* that has as its focus "Direct Judicial Communications on Family Law Matters".⁶ In January 2012, at the 6th Meeting of the Special Commission in the Hague, the Commission continued to support the ongoing use of judicial communication.⁷

C. How To Communicate with a Judge in another Jurisdiction

In April 2011, the Canadian Network of Contact Judges issued a document entitled "How to Communicate with a Judge in Another Jurisdiction" explaining the system of Canadian Network Judges and Liaison Judges who oversee cross-border child abduction cases. It sets out and recommends a step-by-step procedure to be followed, in both international judicial communication, and communication within Canada.

All communication is done through the court's Network Judge. The suggested approach uses Manitoba and British Columbia as an example. It recommends the following procedure in cases where a judge wants to contact a judge in another court:

Manitoba Judge to a British Columbia Judge

- a) The Manitoba Judge should email the Court's Network Judge.
- b) If the Court in British Columbia is known, the Manitoba Network Judge will forward the email request to that Court's Network Judge, who will forward it to the British Columbia judge hearing the case.

⁵ Prepared for the International Family Justice Judicial Conference, Hong Kong, August 28-31, 2012.

⁶ Volume XV/Autumn 2009, The Judges' Newsletter, Hague Convention on Private International Law, Special Focus, Direct Judicial Communications on Family Matters and the Development of Judicial Networks.

⁷ Madam Justice Robyn Diamond, *International Child Protection: Canadian Judicial Initiatives*, prepared for the International Family Justice Judicial Conference, Hong Kong, August 28-31, 2012.

- c) If the Court in British Columbia is not known, the Manitoba Network Judge will contact his/her equivalent in British Columbia, who will determine which Court is the correct court and who is dealing with the case, and direct the email accordingly.
- d) If there is no file yet, the Network Judge in British Columbia will determine who should respond to the call.
- e) The British Columbia Judge will then contact the Manitoba Judge.

For incoming requests from a judge in another jurisdiction, all such requests come through the receiving court's network judge:

Incoming Calls – A Judge in another Jurisdiction Wanting to Communicate with a Manitoba Judge

All incoming requests, whether from another province or territory, or another country, should come to a judge of a court in a Canadian province or territory through that Court's Network Judge. Once the judge receives such a request, he or she can contact the judge in the other jurisdiction directly.

D. Judicial Decisions on Judicial Communication

In a case between the state of Oregon and the province of British Columbia, *Hoole v. Hoole*, 2008 BCSC 1248, an Oregon judge contacted the British Columbia Supreme Court with a request to communicate with the judge dealing with the case. A Master of the British Columbia Supreme Court had granted a without notice interim sole custody order to the father, Mr. Hoole, after Ms. Hoole took their 4 year old son for a vacation to her parent's home in Oregon, with his permission, and then did not return with the child. The parents and child had been living together in British Columbia since the child's birth. Ms. Hoole obtained an emergency order in Oregon. The case was referred to the Contact Judge.⁸

The British Columbia court applied the approach taken by the Canadian Network of contact judges and its own Guidelines, and engaged in a joint hearing with the Oregon Court. The Court made these observations about the benefits of doing so, including obtaining relevant information, providing for effective case management, and encouraging amicable resolutions:

[21] ...There is a recognition that judicial communication should not be for the purpose of considering the merits of the case. Instead, it can provide judges with the relevant information needed to make necessary decisions, such as making informed decisions on jurisdiction, including the location of the place of habitual residence. It can also assist judges in obtaining information about the custody

⁸ I was British Columbia's Contact Judge at that time.

laws of the other jurisdiction, which is needed to determine whether a removal or retention was wrongful.

[22] Communication can also make case management more efficient, thereby facilitating expedited procedures to return the child to his or her habitual residence, where appropriate. It can assist in obtaining, when ordered, the prompt and safe return of the child, by the use of various mechanisms such as undertakings to be done by the parents and the making of identical orders in each jurisdiction to ensure enforcement (mirror orders).

[23] Such communication has been found to be useful in encouraging a parent to agree to voluntarily return a child and in encouraging a more amicable resolution of the parents' dispute. In this case, as a result of this Court's communication with Judge Hochman, the parties agreed upon jurisdiction and a voluntary return. They also ultimately agreed upon an interim custody arrangement and no further court hearing was necessary.

The Court found that by communicating directly judges are fulfilling their mandate to cooperate to facilitate the prompt and safe return of children:

[24] Direct judicial communication may initially seem counter-intuitive to some. The need for communicating must, however, be assessed in the context of the significant and often irreparable harm that is caused to children who are abducted. A prompt return can lessen that harm. By communicating directly between judges, courts are fulfilling their mandate under The **Hague Convention**, or its equivalent, to cooperate to facilitate the prompt and safe return of children. Cooperation between courts in this manner sends the important message to potential child abductors that courts will not tolerate child abduction and, when appropriate, will act immediately to restore children to the country from which they were abducted.

The Court concluded that direct judicial communication does not interfere with the judicial independence of either court:

[25] Direct judicial communication does not interfere with the judicial independence of either court. The communication does not involve a judge of one country making decisions which are within the jurisdiction of the other judge. Rather, it leads to the making of fair, impartial, timely, and well-informed decisions by the judge who should be making the decision, applying the laws of that judge's jurisdiction. The communication in this case allowed Judge Hochman to make an informed decision as required based on the laws of Oregon.

There have been other cases of direct judicial communication in child custody cases, both before and after the decision in *Hoole*.⁹ An example is the decision of Justice Kruzick in *Campbell v. Campbell*, 2010 CarswellOnt 5908. Justice Kruzick, a Judge of the Ontario Superior Court of Justice, communicated with a judge in Utah, saying:

There is a recognition that judicial communication should not be for the purpose of considering the merits of the case. Instead, it can provide judges with the relevant information needed to make necessary decisions, such as making informed decisions on questions of jurisdiction, including the location of the place of habitual residence. It can also assist judges in obtaining information about the custody laws of the other jurisdiction, which is needed to determine whether a removal or retention was wrongful.

Another example is a communication by Justice Maher, of the Saskatchewan Court of Queen's Bench and an Arizona Judge. It took place on February 16, 2011, and related to a decision Justice Maher had to make relating to undertakings, after he ordered the return of the child to Arizona. He described what he did this way:¹⁰

[4] On February 16, 2011, I arranged a conference call with Judge McCoy of the Phoenix, Arizona Family Court. Judge McCoy is the presiding judge in Phoenix, Arizona on an application made by the respondent father before the Arizona Court. Judge McCoy had before him the respondent (father) and his counsel, Ken Winsberg. I had before me the petitioner (mother); her counsel, Ms. Funk and Mr. Little; and the respondent (father's) Saskatchewan counsel, Ms. T. Hackl.

[5] I received submissions from counsel on the time lines for return of the mother and child to Arizona. Judge McCoy confirmed to me that he would set this matter to come before him at 11:00 a.m. February 28, 2011 at his Phoenix Court facility.

The British Columbia Provincial Court communicated directly with the District Court of Colorado in *N.B. v. L.E.*,¹¹ a child custody case in which the convenient forum was at issue. Judge B.K. Davis of the British Columbia court and Judge Laff of the Colorado District court engaged in an open court discussion on the issue. Judge Davis ultimately concluded that British Columbia was the convenient forum. In doing so, he spoke about the advantages of the process in avoiding a multiplicity of hearings and court orders in child custody cases:¹²

I cannot leave these reasons without expressing my appreciation for the manner in which this was handled by the Honourable Judge Laff from the Denver District Court, Second Judicial district in Denver Colorado. This procedure was unknown

⁹ See *Canadian Judicial Initiatives Respecting the Handling of Inter-Jurisdictional Cases of Child Abduction: An Update*, footnote 2.

¹⁰ M.C.S. v. H.V.L. 2011 SKQB 79.

¹¹ 2009 BCPC 0395.

¹² At para. 57.

to me until I read the decision of [the Judge] in **Hoole v. Hoole**, [citation given]. The ability to avoid multiplicity of hearings and court orders is such an advantage to child custody proceedings. I can see little disadvantage utilising such a procedure. (emphasis mine)

The Canadian approach to direct judicial communication in child custody cases has also received international support. The Chief Justice of the Australian Family Court, Diana Bryant, said of the British Columbia judgment in **Hoole**:¹³

... [the] Judgment in *Hoole v. Hoole* [2008] BCSC 1248 is considered particularly noteworthy for its forceful and cogent articulation of the advantages of direct judicial communication. As [the Court] stated, “By communicating directly between judges, courts are fulfilling their mandate under the Hague Convention, or its equivalent, to co-operate to facilitate the prompt and safe return of children. [Judicial communication] leads to the making of fair, impartial, timely, and well-informed decisions by the judge who should be making the decision, applying the laws of that judge’s jurisdiction.”

One Canadian appellate court raised the question of using direct judicial communication in a commercial case. The Alberta Court of Appeal, in a cross-border case involving the enforcement of an Arizona judgment, referred to **Hoole** and the BC Guidelines:¹⁴

...We also raise for consideration whether the issue here would qualify as one that might be resolved through direct judicial communication between the affected courts along the lines of the judicial cooperation now being demonstrated between courts in cases involving child custody, and bankruptcy and insolvency: see **Hoole v. Hoole**, 2008 BCSC 1248. See also **Guidelines Applicable to Court to Court Communications in Cross-Border Cases** (*Guidelines*), developed by the American Law Institute. These *Guidelines* were adopted by the British Columbia Supreme Court in 2004 and are posted on its website at www.courts.gov.bc.ca.

Direct judicial communication is now being used to coordinate and harmonize proceedings when class proceedings on the same issue arise between or among provinces.

¹³ The Honourable Diana Bryant, Chief Justice of Australia, *Direct Judicial Communications in 2010, What Can we Expect? The Judge’s Newsletter*, Volume XV/Autumn 2009, footnote 3, p. 172 at 173.

¹⁴ *Magellan v. Miller*, 2009 ABCA 124 at 129.

II. Coordinating/Harmonizing Family and Criminal Cases within a Province or Territory

A. Problems that can Arise when there are Concurrent Proceedings Within a Jurisdiction

As part of the program development for this course, the National Judicial Institute (NJI) conducted a community consultation in Vancouver, B.C.¹⁵ The purpose of the consultation was to obtain information about how courts can most effectively deal with domestic violence cases, from the perspective of people and organizations which deal with the issue of violence against women as part of their daily work. Information was provided about concurrent proceedings and their impact; they were described as often creating a “dangerous disconnect”.¹⁶ Obtaining information in this way is an aspect of the NJI’s programming known as the three pillars approach; programming is led by judges, and informed by (1) judges, (2) academics and legal professionals, and (3) other community members.

The Consultation was conducted in collaboration with Dr. Margaret Jackson, Director of the FREDA Centre, a centre for research on violence against women and children operated within the School of Criminology at Simon Fraser University and Dr. Catherine

¹⁵ The Honourable Donna Martinson, National Judicial Institute Domestic Violence Program Development for Judges, April 2012 British Columbia Community Consultation, fredacentre.com

¹⁶ The participants were: Shabna Ali, Executive Director, BC Society of Transition Houses; Shashi Assanand, Executive Director, Vancouver Lower Mainland Multicultural Family Support Services Society; Dr. Darcie Bennett, Executive Director, Pivot Legal Society; Roberta Ellis, Executive VP Human Resources, Work Place BC; Anastasia Gaisenok, Justice Education Society of BC, We Can End Violence Coalition of BC; the Honourable Kirsti Gill, Retired British Columbia Supreme Court Judge; Ishama Harris, Vancouver Rape Relief and Women’s Shelter; Pat Kelln, President, Pacific Dawn – Disabled Women’s Advocate; Hilla Kerner, Vancouver Rape Relief and Women’s Shelter and Women’s Equality and Security Coalition; Dalya Israel, Women against Violence against Women; Angela MacDougall, Executive Director, Battered Women’s Support Services; Tracy Porteous, Executive Director, Ending Violence Association of BC; Wendy Potter, Sexual Assault Service, BC Women’s Hospital and Health Centre; Shahnaz Rahman, Family Law Director, Westcoast LEAF (met separately with Kasari Govender, Executive Director and Laura Track, legal counsel, Westcoast LEAF); and Gisela Ruebsaat, Legal Counsel, Community Coordination for Women’s Safety, Ending Violence Association of BC. I met individually with most of the participants through the month of April and corresponded with the others. Dr. Darcie Bennett, the Executive Director of the Pivot Legal Society, arranged to have me and Dr. Jackson attend a meeting of the “Jane Doe Advocates”, a group of front line service providers from each of the organizations identified above, who meet monthly to discuss common issues and concerns. The consultation culminated in a Formal Round Table Discussion involving all of the people listed above. It was organized by Simon Fraser University, Faculty of Arts and Social Science, Department of Gender, Sexuality and Women’s Studies in cooperation with Dr. Jackson and the FREDA Centre, and chaired by Dr. Murray.

Murray, Chair of the Department of Gender, Sexuality and Women's Studies at Simon Fraser University. Dr. Jackson and Dr. Murray assisted in identifying the participants. This section of the paper provides the results of the Consultation relating to concurrent proceedings. The first seven sections deal with issues directly related to concurrent proceedings. Section 8 considers comments relating to the broader issue of risk assessment, and its impact when there are concurrent proceedings.

1. Coordination of Concurrent Proceedings – a Key Issue for Women

Lack of coordination with respect to court proceedings taking place at the same time (concurrent proceedings) is a significant concern for women in violent relationships. For one family there can be up to four legal proceedings taking place at the same time: criminal, family, child protection and immigration (which is often overlooked).

2. A “Dangerous Disconnect” – Increasing Risk for Women and Children

There is a “dangerous disconnect” between or among proceedings that can put women and children at greater risk of future violence.

- There is no or almost no coordination or sharing of information between/among the courts, especially about factors relating to the risk of future violence.
- Often no information is given to one court about the existence of proceedings in another and judges are therefore unaware of the other proceeding(s); there is:
 - no institutional sharing of information;
 - no or few inquiries by the court in individual proceedings about the existence of other proceedings or their status; and
 - little or no information provided by the parties to the court in individual proceedings about other proceedings; information that is provided may not be accurate.
 - B.C.'s new ***Family Law Act***, which comes into force on March 18, 2013, requires the parties in cases involving parenting issues to provide the court with information about “any civil or criminal proceeding relevant to the safety, security or well-being of the child or other family member” (s. 37(2)(j)); this is a significant first step.

- Lack of coordination leads to inconsistencies and gaps in orders relating to contact.
 - Criminal courts order no contact, child protection authorities say the children will be apprehended if there is contact and family court focusses on the view that contact is in the best interests of children and grants unsupervised access.
 - There is little or no coordination with respect to the length of time a particular order is in effect, often leaving gaps.
 - The inconsistencies and gaps at best cause confusion about contact and at worst provide the opportunity for continued abuse.
- When there are concurrent proceedings, criminal cases are often given priority which can cause significant delay and adversely affect a timely resolution in other proceedings.
- For immigrant women, especially those without status, immigration proceedings can add yet another layer of complexity; Judges often are not aware of the immigration consequences of orders that they make.
- The more processes that are in place, the longer it takes and the more stressful it becomes, financially and emotionally; this disadvantages women further as they generally have less time and less money than men.
 - Women are required to “tell their stories” over and over, often to a series of judges both among and within proceedings.
 - Women can feel forced to “drop” charges because they “can’t do it any more”, especially while taking care of children.
 - The more often women are required to be in the same place as their partners, the more opportunities there are for abusive behaviour.
- The more processes that are in place, with the increased stresses, the more conflict may escalate, which can result in an increased risk of harm to women and children.

3. Inaccessibility of Legal Advice Exacerbates the Problem

Lack of legal advice at all stages of the process is a significant concern.

- Many women, especially marginalized women, cannot afford a lawyer and are not eligible for legal aid.
- Male partners often have more money for a lawyer.
- Male partners get legal assistance for criminal proceedings,
- Without legal counsel it is even more difficult to navigate through concurrent proceedings, let alone deal with one proceeding.
- Front line support people without formal legal training end up giving legal advice.

4. Litigation Harassment and Abuse

Litigation harassment and abuse can be a significant problem.

- Concerns, which can escalate the conflict and increase the risk of harm, include:
 - the continuation of controlling behaviour;
 - emotional and financial stress; and
 - delay.
- When there is only one court proceeding these problems increase when several judges deal with one case.
- The problems created are compounded when there are concurrent, unconnected proceedings.

5. Disconnects in Other Parts of the Family Justice System

In addition to the lack of coordination between/among court proceedings women also experience a lack of coordination between or among other parts of the justice system such as police, crown counsel, probation services and the like.

- Problems are even more acute in rural areas.
 - There is limited access to judges, who “drop in”, resulting in several judges dealing with cases, and delay.
 - When both family and criminal cases are on the court list in some rural areas, criminal cases are usually given priority; often there is not enough time for both proceedings to be heard so the family case is adjourned.

6. Added Challenges for Particularly Marginalized/Vulnerable Women

While dealing with concurrent proceedings, women may also face a myriad of other issues which makes them even more vulnerable and less able to access justice; they may:

- face combinations of disadvantage, such as:
 - living in poverty, with all its consequences - disadvantages that disproportionately impact upon women; and
 - being one or more of the following:
 - an aboriginal woman;
 - a racialized woman;
 - a women with disabilities;
 - a senior woman;
 - an immigrant/refugee woman, and
 - a sexual minority.
- in addition to multiple court proceedings, have to deal with many other social and economic challenges, which can also include administrative challenges, such as obtaining:
 - an adequate standard of living, which includes access to accessible, adequate day care;
 - social assistance when required;
 - appropriate affordable housing;
 - adequate health care;
 - access to education; and
 - access to mental health support for challenges caused or contributed to by the violence.
 - For example, the Battered Women’s Support Services in Vancouver gets about 10,000 requests for services per year and about 80% deal with an “intersectional matrix of legal issues”; around 40% are immigrant women, 25% aboriginal women and the rest, “the rest of us.”

7. Barriers to Access to Justice – Reinforcing/Reproducing Gender Inequality

All of these barriers to access to justice:

- contribute to the already existing problem that many women are unwilling to report abuse to authorities,
- create a “staggering burden” for women; and

- “reinforce/reproduce” gender inequality in the courts.

8. Risk Assessment

Those participating in the consultation also raised the broader issue of risk assessment. They noted that there are a number of problems, even when there are not concurrent proceedings. Concurrent proceedings make matters even more complex. Here are the points they made:

- There is often either no or a limited assessment of either the nature and extent of the violence or the risk of future harm:
 - Judges need to be informed about the dynamics of domestic violence and its consequences in order to properly assess risk.
 - There can be gaps in the information needed to effectively assess risk
 - This problem is exacerbated when several different judges deal with a particular case.
 - A standardized approach would be beneficial.
 - It is difficult to make appropriate decisions about sentencing in criminal cases and contact in civil cases without an understanding of the nature and extent of the violence and the risk of future violence.
 - In custody cases, granting unsupervised access without such assessments has the potential effect of “giving the court’s stamp of approval” to abuse of children.
- Risk is particularly acute for women with disabilities, who are often unable to protect themselves.

B. The Nature of the Proceedings

In this section I consider some of the similarities between and the differences between family and criminal proceedings. It is not a scholarly analysis; the suggestions are meant to provide some initial ideas which can be used as a framework within which to consider how coordination and communication might work when there are concurrent proceedings within a jurisdiction.

1. Similarities:

There are similarities between the proceedings such as these:

a. Both involve the same people

- The person accused of violent behaviour and the alleged victim are the same.
- Each may be a witness in each case.

b. Most Cases are resolved eventually by agreement

- In criminal cases there is a guilty plea or other resolution though often closer to the end than the beginning of the processes.
- In family cases there is a consent order

c. Fair and timely dispute resolution is a goal

- In each, case management is an appropriate tool
- In each an objective of the process is to resolve the proceedings in a fair and timely fashion, whether by agreement or at a trial
- In each judges want the trial, if there is one, to be focused and effective

d. Safety and risk assessment are relevant

- In each, an assessment of risk to deal with safety concerns takes place both in the initial stages (bail and interim orders) and at the final resolution (sentence when appropriate, and “final” order stage).

e. Participation of children in the process

- Article 12 of the ***United Nations Convention on the Rights of the Child*** gives children the right to participate in proceedings that affect them if they are capable of forming their own views
- In family proceedings this right is well recognized in Canada, though the way it is implemented continues to be discussed
- Children can be witnesses in both
- In criminal proceedings, at a sentencing hearing

- victims of crime have a right to be heard through a victim impact statement; in domestic violence cases, children are often harmed by the violence and are thus victims for this purpose, and
- s. 723(2) of the *Criminal Code* says that the court shall hear any relevant evidence presented by the prosecutor or the offender. Evidence about whether a child was, or was not harmed as a result of the assault may well be relevant.

f. Each may have a professional report which recommends a resolution

- In criminal cases, if there is a conviction, there may be a pre-sentence report.
- In family cases, there may be a parenting assessment.

g. Each may make use of services within the community

- In criminal cases, various programs and counselling options may be recommended.
- In family cases, various programs and counselling options may also be recommended.

2. Differences

There are also differences between the proceedings that must be considered. They include the following:

a. Nature and Purpose of the Proceedings

Criminal	Family
-state instituted proceedings vs. an accused person -broader public interest -important to avoid wrongful convictions -sentencing focuses on public protection, deterrence, (general and specific) and denunciation -narrow focus on whether a particular offence(s) can be proven	-proceedings are instituted by one or both partners -more private in nature (though there is a public interest aspect) -has a broad focus on the best interests of children and allegations of violence are one of many factors

b. Constitutionally protected rights

Criminal	Family
-is the right to be presumed innocent, and the right against self-incrimination (right to	-those protections are not at play -is at best a limited right to counsel

remain silent) -the person's liberty may be at stake -is a right to counsel when liberty is at stake.	
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c. Burden of Proof

Criminal	Family
-proof beyond a reasonable doubt	-proof on a balance of probabilities

d. Evidentiary and other Principles

Criminal	Family
-evidentiary principles strictly construed and applied eg. experts, hearsay -strict disclosure principles apply to the Crown	-may be a more relaxed application of evidentiary principles, (though there are different views as to whether this is appropriate) -disclosure rules may differ from those in the criminal process

e. Pre-trial dispute resolution processes

Criminal	Family
-need agreement before an accused person participates in a process specifically aimed at reaching an agreement because of the presumption of innocence, the right to remain silent and the criminal burden of proof (though efforts at case management generally would not require consent) -role of therapeutic justice approach is becoming more and more significant; judge can be proactive in encouraging an effective resolution)	-can be mandatory requirements to participate in settlement proceedings; -judges can and should encourage early resolution

f. Consequences of conduct; things judges can do

Criminal	Family
-sentencing principles in the Criminal Code -purpose of the sentence includes a	-the resolution is more private in nature -may be a broader range of options -if there is a consent order in a custody

broader public interest -if there is a guilty plea, there are limited circumstances in which a judge will not accept, or set aside that plea	case the judge still has the obligation to ensure, before signing the consent order, that the result is in the best interests of the child(ren).
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C. Benefits of Judicial Cooperation and Communication

My respectful view, which I stated in *Hoole*, is that the principles relating to direct judicial communication apply between different courts within a province when the courts have concurrent jurisdiction:

[26]... [The principles] also apply to situations like that found in British Columbia, where different courts within a province have concurrent jurisdiction; the Provincial Court of British Columbia and the Supreme Court of British Columbia each have jurisdiction in custody cases.

I have suggested elsewhere that there should be regular use of direct judicial communication in cases where there are allegations of domestic violence leading to concurrent criminal, family, and sometimes child protection proceedings within one jurisdiction. Doing so results in more effective, timely proceedings, with better results for families, and particularly for children: *One Assault Allegation, Two Courts: Can we do a Better Job of Coordinating the Family and Criminal Proceedings?*¹⁷

I consider here some benefits of judicial cooperation and communication. I then suggest some reasons why an accused person may wish to participate in judicial dispute resolution processes.

1. Generally

Judicial cooperation and communication can:

- provide a holistic approach to the issues facing the family
- assist in providing a timely resolution
- provide a consistent approach to safety and risk assessment effectively in the short (bail/interim) and longer term
- in a dispute resolution meeting:
 - facilitate early resolutions by giving the judge, parties, lawyers, the opportunity to canvass solutions that would work within the framework of both systems

¹⁷ Prepared for the National Judicial Institute Conference, *Managing the Domestic Violence Family Case*, Quebec City, November 16 – 19, 2010.

- where there is not agreement, narrow and focus the issues (by agreement in family law, and admissions in criminal law) and
- set timely hearings on unresolved issues.

The coordination/harmonization is not just concerned with information sharing; that kind of sharing may be accomplished in other ways such as by information sharing protocols between courts. Rather, a major goal of the communication is to use the information to achieve a resolution that is comprehensive and effective, and yet addresses the different purposes of and maintains the integrity of each separate proceeding. The benefits are significant and the harm that could be caused by not trying is even more significant.

I had the opportunity to consider judicial communication in Kelowna when I was a judge of the Supreme Court. The Court was faced with an interim motion for custody by the mother, an order for no contact, and an order allowing her to leave the province. The father was accused of sexually interfering with a young child and faced a criminal trial in the Provincial Court. The issue was delay in the criminal proceeding. The family was in chaos; this child and another child were experiencing significant difficulties. Counsel advised the Court that because of the backlog in dealing with criminal cases in the Provincial Court, the trial could not be heard for many months, notwithstanding the important issues at stake.

The fact that the criminal proceedings were ongoing created significant problems in the family law proceeding. It was important that both proceedings concluded in a timely way. With the agreement of counsel, I contacted the local Administrative Judge of the Provincial Court to see if an early trial date could be obtained. The Administrative Judge immediately scheduled a Judicial Case Conference in her Court to do just that. A timely trial date was obtained.

2. The Position of an Accused Person at a Dispute Resolution Conference

While an accused person may be required to attend a joint case management conference, s/he may well not be required to participate in pretrial resolution discussions because of the right against self-incrimination (right to remain silent); consent may be required. However, there are some benefits to participation. The accused person can:

- deal with two processes at once in a timely coordinated way;
- devise a plan that could be advanced as part of a guilty plea with the support of crown counsel;
- get the sentencing benefits of a guilty plea, one that the court would likely recognize is in the best interests of the other spouse and the children;
- improve on an ongoing basis the relationship with the spouse and children; and

- actively participate in devising a resolution that is effective rather than having one imposed on him (her).

D Views of Others on Communication and Coordination in Concurrent Family/Criminal Domestic Violence Cases

This section contains a non-exhaustive list of the observation of others about the role of communication and coordination.

1. The Toronto Integrated Domestic Violence Court

The Ontario Court of Justice has not only identified the concerns that arise when there are concurrent proceedings, but has taken the bold step of creating an Integrated Domestic Violence Court. That Court has concluded that “the system in its current form is not providing families with a coherent and comprehensive response to their problems when family and domestic violence issues coincide”. Justice Geraldine Waldman explains why:¹⁸

Domestic violence or partner abuse is well recognized as a serious and complex issue. The response of the justice system, both family and criminal, is complicated by the fact that domestic violence often gives rise to myriad inter-related family problems involving safety and family separation. Legal proceedings are further complicated by the fact that criminal and family cases occur separately. The two courts operate as independent silos with virtually no sharing of information between them and very little ability to communicate...The courts must rely on the litigants to provide necessary information. The family court judge has no independent means of obtaining a copy of a bail or probation order to ensure that the terms of a custody or access order does not conflict with the bail or probation terms. Family and child protection cases are often delayed by the progress of the criminal justice system. Families are in some cases precluded from attending counseling because of no contact terms in bail and probation orders. In some cases, litigants are reluctant to address certain important issues in the family case because of the potential impact on their testimony at the criminal trial.

2. The Federal Department of Justice

In 2009 the Department of Justice convened a conference called a Justice Symposium on Family Violence: the Intersection of Family and Criminal Justice System Responses. The Deputy Minister of Justice, in opening remarks, emphasized the need to address the issues that arise when there are concurrent family and criminal proceedings.

¹⁸ Toronto Integrated Domestic Violence Court Pilot Project, Managing the Domestic Violence Case, National Judicial Institute Conference, Quebec City, November 17-19, 2010.

After stating that much has been done in enhancing criminal justice responses, the Deputy Minister said:¹⁹

The family and criminal justice systems, however, continue to operate very much in separate silos. For those families, having to access and understand both systems at the same time, the challenges remain significant.

Dr. Peter Jaffe spoke at this conference, focusing on Ontario Death Review Reports. In his PowerPoint presentation, under the heading *Implications for Courts and Communities*, he considers the importance for judges of having all relevant information:

Judges are only as good as the information they have (e.g. family and criminal court coordination).

There is now a Federal – Provincial – Territorial Working Group in which government representatives from the federal government and from across Canada have embarked upon a long term project involving the examination of issues related to the intersection of different justice system responses to family violence.

3. The Canadian Network of Contact Judges

One approach to judicial communication within a province or territory would be to use the frame work developed by the Canadian Network of Contact Judges, described above. Justice Robyn Diamond considers this to be an important issue, not only when there are concurrent criminal, family and child protection proceedings, but also when two courts within a province have concurrent jurisdiction in family law cases. She has placed the question of judicial communication within a province or territory on the agenda for the Network's February 2013 annual meeting. The discussion will include ways that the Network Judges might play a role in such communication.

4. The National Judicial Institute

The NJI's Handbook for Judges: *Problem Solving in Canadian Courts – A Guide to Therapeutic Justice*, published in September 2011, endorses the use of communication between courts:²⁰

A problem solving approach also recognizes the need for timely and effective communication between different courts.

Kate Kehoe, Senior Advisor with the NJI, in *The Intersection of Criminal and Family Proceedings in Domestic Violence Cases*, emphasizes the importance of coordination between criminal proceedings and child protection proceedings. After setting out the

¹⁹ Talking Points for the Deputy Minister, February 26, 2009.

²⁰ NJI Judicial Library, at page 12. See: nji.ca

many problems that arise in the absence of such communications, she suggests the use of a joint settlement conference.²¹

One solution might be joint settlement conferencing where the judges and parties in both the family and criminal proceedings come together to find a solution that works for the family while protecting the child and meeting the goals of the criminal justice system. Absent that, pretrial discussions could consider the impact of the criminal proceedings on the family court proceedings with input from child protection authorities, counsel for the parents and counsel for the child in the family proceeding, where appropriate.

5. The United Nations

The UN Updated Model on strategies and practical measures to “combat” violence against women²² calls on States to take into account the importance of linking and harmonizing criminal law with other areas of the law, such as family law, divorce and issues of child custody, labor, health laws and immigration law. The Model says that there has been an increasing recognition of the need to ensure that civil law does not create situations which make women more vulnerable to violence. Some examples include adopting custody codes that articulate “safety first” as the controlling legal principle in custody and visitation cases involving domestic or sexual violence or stalking and policies to prevent victims from bearing the primary economic burden of violence against women.

6. Coordination Steps Within Provinces/Territories

I have used British Columbia as an example. Other jurisdictions are taking similar steps.

The B.C. government created in March 2012 a Provincial Office of Domestic Violence, which is responsible for ensuring that all provincial policies, programs and services related to domestic violence are effective and delivered in a comprehensive and unified way across government. Doing so happened, at least in part, because of the recommendations found in a Recent Death Review Report by BC’s Children’s Representative, Mary Ellen Turpel, released March 1, 2012, called *Honouring Kaitlynne, May and Cordon; Make their Voices Heard*. The Report, in a very compelling way, recommends better coordination between the criminal and family justice systems.²³

The Provincial Office of Domestic Violence released its first report in September 2012 called *Taking Action on Domestic Violence in British Columbia*. The report includes

²¹ Ms. Kate Kehoe, paper prepared for the NJI Program, *Managing the Domestic Violence Criminal Case*, Toronto, Ontario, Fall, 2008.

²² See the International Centre for Criminal Law Reform Briefing note at <http://www.icclr.law.ubc.ca>. The Centre is located at the Faculty of Law, University of British Columbia.

²³ <http://www.crvawc.ca/documents/SchoenbornReportFINAL%20Feb%2027.pdf>

specific recommendations for “building a comprehensive and coordinated systemic approach.”²⁴

The End Violence Association of British Columbia has an ongoing Community Coordination for Women’s Safety Committee that brings together on a regular basis different sectors in a community to ensure that all services work together as effectively as possible.

7. Coordination benefits and challenges

Dr. Linda Neilson, in June 2012, released a report entitled *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems*.²⁵ The report, prepared for the federal Department of Justice, is designed to assist lawyers in dealing with these complex cases. While a review of her report is beyond the scope of this paper, it is helpful in considering some of the legal and other challenges that arise when efforts are made to share information between or among courts.

²⁴ <http://www.gov.bc.ca/mcf>

²⁵ <http://www.crvawc.ca/documents/final%202012%20footnotes%20July%20For%20Western%20Final%20report%20for%20Justice.pdf>

Appendix A
Nova Scotia Civil Procedure Rule 86

Rule 86 - Judicial Communication Across Borders

• **86.01 - Scope of Rule 86**

This Rule allows both of the following:

- (a) communications between the Supreme Court of Nova Scotia and a court in another jurisdiction to assist either or both courts with the just determination of a claim or enforcement of a remedy;
- (b) coordination and harmonization of a proceeding with a proceeding before a court in another jurisdiction, if the other court agrees and the two proceedings are, despite formal differences, related by common issues or parties.

• **86.02 - Motion for joint communications or hearings**

- (1) A party may make a motion that a judge request a court in another jurisdiction to engage in communications, hold a joint conference in related proceedings, or hold a joint hearing in related proceedings.
- (2) A judge may convene a conference with the parties, under Rule 26 Conference, to consider requesting or responding to a request for communications, holding a joint conference in related proceedings, or holding a joint hearing with a court in another jurisdiction in related proceedings.

• **86.03 - Organizing communications, or joint conferences or hearings**

- (1) A judge may authorize the prothonotary, or a member of the judge's staff, to do any of the following:
 - (a) respond to a request from an authorized representative of a court in another jurisdiction for communications with the Supreme Court of Nova Scotia;
 - (b) make a request to a representative of a court in another jurisdiction for communications;
 - (c) provide copies of court documents to the other court;
 - (d) organize a conference of a judge of the court with a judge, or other judicial official, of the other court;

- (e) give notice of a joint conference to parties in either jurisdiction, in the manner required of a party under Rule 31 - Notice, or as directed by the judge;
 - (f) organize, and give notice of, a joint hearing in related proceedings;
 - (g) do anything else to assist with communication or coordination by the courts;
- (2) A judge may direct a party, or an officer of the court such as a receiver or a referee, to do any of the following:
- (a) cooperate with the prothonotary, or a member of the judge's staff, to organize communications between the courts;
 - (b) provide technical services for a joint conference, or a joint hearing;
 - (c) provide copies of court documents to the other court;
 - (d) file documents with the other court;
 - (e) assist a party before the other court, or the court itself, in obtaining evidence;
 - (f) give notice, make disclosure, or provide copies of court documents to a person who is a party before the other court;
 - (g) do anything else to assist with communication or coordination by the courts.
- (3) A judge may communicate directly with a judge, other judicial official, or a representative of the other court to organize communications between the courts.
- (4) A judge who makes a direct communication under Rule 86.03(3) must either include the parties in the communication or report to the parties afterward.

• **86.04 - Joint conference**

- (1) A judge may appoint a time and date for the judge to be available for a conference held jointly with a judge or other judicial official of another court.
- (2) A conference that is organized to assist the just determination of a claim or the enforcement of a remedy in a proceeding before the Supreme Court of Nova Scotia or to coordinate or harmonize related proceedings must include the parties to the Nova Scotia proceeding, except a party who chooses not to participate, who has become disentitled to notice, or who a judge determines must be excluded.
- (3) The joint conference may be held by teleconference.
- (4) The provisions of Rule 26 - Conference about what a judge may do at a conference, and recording the conference, apply to a joint conference.

- **86.05 - Joint hearing**

- (1) A judge may appoint a time, date, and place for the judge and the parties to a Nova Scotia proceeding to be available for a hearing conducted jointly with a judge or other judicial official of another court and the parties to a proceeding in the other jurisdiction.
- (2) A joint hearing may be held by teleconference, with the judge in Nova Scotia sitting in a courtroom and with a court reporter recording and logging the hearing.
- (3) A joint hearing may be held by joint sitting, but if the joint sitting is in the other jurisdiction the hearing must be accessible by the public in Nova Scotia.
- (4) A joint hearing conducted with a judge of the Supreme Court of Nova Scotia sitting in another jurisdiction is taken to be accessible by the public in Nova Scotia, if all of the following apply:
 - (a) the hearing is transmitted to a courtroom in Nova Scotia, as with a teleconference;
 - (b) the courtroom is open to the public;
 - (c) the joint hearing is recorded and logged in the same way as any hearing in a courtroom.

- **86.06 - Conduct of joint hearing by teleconference**

- (1) A judge may set the terms for the conduct of a joint hearing by teleconference in consultation with the judge or other judicial official in the other jurisdiction.
- (2) The consultation may be by conference.
- (3) The terms may be set by approving an order of the other court stating the terms, or making an order that sets the terms subject to the approval of the other court.
- (4) The terms must cover each of the following subjects:
 - (a) simultaneous transmission of the proceedings to each court;
 - (b) transmission of such quality that a witness is as good as present in the other courtroom, if credibility is in issue;
 - (c) simultaneous introduction of duplicate exhibits or a system for transmitting images of exhibits in one courtroom to the other;
 - (d) simultaneous delivery or filing of court documents, such as a brief or an affidavit;
 - (e) who is to pay for transmission services that are not provided by the court;

- (f) joint rulings on issues of evidence or procedure, and exclusion from consideration by the judge of the Supreme Court of Nova Scotia of evidence ruled to be inadmissible in Nova Scotia but ruled to be admissible by the judge in the other jurisdiction;
- (g) whether submissions by a person who is a party in one jurisdiction, and not the other, are to be made during the joint hearing or separate from it;
- (h) communications between the judges, or the judge and a judicial official, to coordinate the joint hearing, to resolve procedural or administrative issues, or to provide coordinated orders;
- (i) any circumstances in which the judges, or the judge and the judicial official, may communicate without notice to, or participation by, the parties.

- **86.07 - Translation and interpretation**

A judge who makes an order under this Rule 86 for communications, a conference, or a hearing that involves uses of a language not understood by the judge, counsel, or a party may make an order on terms similar to those permitted by Rule 48 - Translation, Interpretation, and Assistance.

- **86.08 - Foreign law**

- (1) A judge who participates in a joint hearing may accept the guidance of the other judge, or the judicial official, about the laws of and practices in the other jurisdiction, unless a party successfully objects.
- (2) The provisions of Rule 54 - Supplementary Rules of Evidence about proof of the law of another province or a territory, and proof of the law of a foreign state, apply on a joint hearing.

N.S. Gaz. Pt. 1, [12/16/2009](#)

- **86.09 - Temporary standing**

- (1) A judge may permit a person who is not a party to a Nova Scotia proceeding but who is a party to a proceeding in another jurisdiction, or an officer of the other court such as a receiver or referee, to be heard by the judge on a specified issue.
- (2) A person does not submit to the jurisdiction of the court only by appearing, with permission, to be heard on a specified issue.

- **86.10 - Lifting stay of proceeding**

A judge may except from a stay of proceedings a related proceeding in another jurisdiction that is the subject of mutual communication, a joint conference, or a joint hearing.

- **86.11 - Variation and withdrawal**

A judge may vary a direction, withdraw a direction, or withdraw an approval after giving reasonable notice to the court in the other jurisdiction.

Appendix B

RECOMMENDED PRACTICES FOR COURT-TO-COURT JUDICIAL COMMUNICATIONS

Background

The Canadian Judicial Council, which has approved the establishment of the Canadian Network of Contact Judges, has given the Network the mandate to explore the concept of judicial networking and collaboration in cases of child abduction and custody. The following checklist sets out the Network's recommendations for such practices.

INITIATING CONTACT WITH FOREIGN COURTS

A. *Due process and transparency*

1. Every judge engaging in direct judicial communication must respect the law in his or her jurisdiction.
2. Notification of the Parties about communication
 - a) The parties and/or counsel involved should be notified in advance if possible of the nature of the proposed communication provided that such notice does not unduly delay the process.
3. Record of the communication
 - a) Judges involved in a particular communication should keep a record of what was discussed preferably using a recording device or court reporter.
 - b) The record should be available to the parties and the judge in the other jurisdiction if requested.
 - c) Any correspondence, emails or other written communication between judges should be preserved for the record.
4. Participation of the parties
 - a) If both judges involved in the communication agree, the parties or their representative may be permitted to be present during the communication.
 - b) If both judges involved in the communication agree to permit one party or representative to be present, then the other party or representative should be permitted to be present.

- c) Unless it would unduly delay the process, parties or their representative would be encouraged to be present for example via conference call facility.
- d) If both judges involved in the communication agree, the parties or their representative may be permitted to speak during the communication.
- e) If the judges involved in the communication agree to permit one party or representative to speak, then the other party or representative should be permitted a chance to answer.
- f) Consideration may be given to allow counsel to submit a question or provide information relating to the proposed communication.

5. Language

- a) Because of the necessity for clarity and precision, where there are language differences, and where interpretation is needed, professional interpreters are preferred.

6. Consensus or Arrangement

- a) Confirmation of any consensus or arrangements reached as between judges should be confirmed in writing and made available to the parties.

B. Nature of the request to communicate

1. Is there a question of foreign (interprovincial or international) law or procedure to discuss with a judge in the foreign jurisdiction?
 - a) Is there a case pending before the foreign court?
 - b) If so, is there a need to speak with the judge who actually handled portions of the case, or will any judge in the foreign jurisdiction suffice?
 - c) If no case is pending, consider the difficulty in finding a judge with whom to communicate in the foreign jurisdiction. In this instance, if there is a Network judge consider contacting that judge.
2. **Avoid** discussions with the foreign judge about the merits of the case.
3. Can the question be answered or dealt with by the Central Authority in your jurisdiction or the Central Authority in the foreign jurisdiction? If it can, consider having the Central Authority address the issue or obtain the information.
4. Specific examples of questions of foreign law or procedure that may arise include:
 - a) scheduling of the case in the foreign jurisdiction:
 - i) making of interim orders, e.g. support, protection orders;
 - ii) availability of expedited hearings;
 - b) availability of protective orders for the child or other parent;

- c) can the foreign court accept and enforce undertakings offered by the parties in your jurisdiction;
- d) is the foreign court willing to entertain a mirror order (same order in both jurisdictions) if the parties are in agreement;
- e) are criminal charges pending in the foreign jurisdiction against an abducting parent;
- f) can the abducting parent return to the foreign jurisdiction if an order is made returning the child;
- g) what services are available to the family or the child upon the return of the child;
- h) logistics of returning the child.

C. *Setting up the communication and initiating the contact*

1. Where appropriate, invite the parties or their representative to make submissions as to whether there should be court-to-court communications and the nature of the communications;
2. If the initiating judge decides such communication should be made in interprovincial or territorial matters they may do so by:
 - a) contacting the judge directly; or
 - b) contacting the Network judge in their jurisdiction who will assist in facilitating communication between the initiating judge and the appropriate judge in the other jurisdiction.
3. If it is an international matter, the initiating judge should consider contacting either their local Network judge or one of the two Canadian International Liaison judges who will assist in facilitating communication between the initiating judge and the appropriate judge in the other country.
4. The initial communication should be in writing (fax or e-mail) and should identify:
 - a) the initiating judge;
 - b) the nature of the case (with due regard to confidentiality concerns);
 - c) the issue on which communication is sought;
 - d) whether further documents should be exchanged;
 - e) when the communication should occur (with due regard to time differences);
 - f) any specific questions which the initiating judge would like answered;

- g) any other pertinent matters.
5. Unless the initiating judge decides otherwise, all written communications should be copied to the parties or their representative.
 6. If the other jurisdiction is not English/French speaking, the initiating judge should make their best efforts to have the initial communication appropriately translated.

