

Connecting judges in a connected world

Parenting disputes are particularly complicated when families have ties to multiple jurisdictions. A fairly straightforward dispute about custody or a parenting schedule may be exacerbated by a battle about which court has authority to determine the children's fate. Where families have ties to more than one place a dispute may quickly escalate if either parent sees an advantage in commencing a claim in a particular jurisdiction. As a federal state, Canada has thirteen provincial and territorial jurisdictions. With global mobility many parents have close ties to jurisdictions abroad, including fifty potential jurisdictions in the country next door.

Early resolution of the jurisdictional question may well allow the parents to focus on the real issues – where the children should live and how they should be parented. Quick determinations of jurisdictional disputes may also deter parents from a rush to court to try to gain an advantage. In the United States there is a very developed practice of family court judges consulting with their counterpart when there are competing custody and access claims in two states. Within Canada that practice also exists but is not as widely used as it could, and perhaps should, be in Ontario.

The Canadian Judicial Council has approved a network of contact judges in the various provinces and territories. The Canadian Network of Contact Judges exists and has established a protocol for handling these cases within Canada and internationally. Where a parenting dispute arises, the published guidelines provide for transparent communication between judges in both jurisdictions. With notice to both parents, the judges make contact initially in written form by email or fax. Joint case conferences can be held by telephone or video conferencing. A record can be kept of all these communications and, if there is a language issue, court interpreters can be used. The judges can address issues from the mundane to the serious – scheduling, interim orders, mirror orders, the enforcement of undertakings, available services in each jurisdiction, the actual logistics of returning a child. All these issues can be dealt with between the judges with the parties present. This process may facilitate an agreement by removing barriers to communication and access to this information. If the parties cannot enter into a consensus on any issue, even procedural issues, then the courts will still need to address the jurisdictional claims in accordance with their respective law and practices. Following such a protocol would greatly reduce cases that proceed in that manner.