

CHILD ABDUCTIONS, PREVENTION, ENFORCEMENT OF COURT ORDERS AND LOCATING CHILDREN

MAX BLITT Q.C.

Prevention

1. **Vulnerability to an abduction:**
 - Relationship has broken down
 - Other parent has family or ties to another country
 - Permission is being sought by the other parent to travel to another country
 - Potentially abducting parent may be from a country that requires the father's permission to enable the children and / or the wife to travel
 - Previous abductions or threats of abduction
 - Lack of financial ties to present jurisdiction
 - Planning activities consistent with departure from jurisdiction
 - Wealth – ability to live in foreign jurisdiction
 - Poverty – lack of reasons to stay in present jurisdiction
 - Transferable employment skills – skills unaffected by country of residence
 - False but honest belief that child has been abused or neglected
 - Strong disagreements about custody and visitation
 - High levels of anger and distrust
 - Inability to cooperate over care of children
 - Elevated levels of psychological distress
2. **Familiarize with the laws and customs relating to women and children in the foreign country:**
 - Contact Consular Affairs Ottawa
 - Visit websites such as Reunite: <http://www.reunite.org/> in the UK and the Hague website Child Abduction Section: http://www.hcch.net/index_en.php?act=text.display&tid=21
 - Consult with experienced Canadian Counsel and Counsel in the foreign jurisdiction
3. **Additional Precautions:**
 - Supervised Access-clear and detailed provisions preferably by a respected and competent Agency
 - Prohibition on travel without the consent of both parents or Order of the Court [note obiter in S.C.C. in *Thompson* versus position taken by U.S.S.C. in *Abbott*]
 - Custodial Parent has the sole right to determine the child's residence
 - Surrender of all passport or travel documents in the name of the child and potential abducting parent
 - Reference to Hague Convention if the other country is a signatory
 - Place the child on a Passport Alert or Control List – pursuant to a Court Ordered Restriction on travel with the child
 - Police Enforcement Clause

IT IS HEREBY ORDERED THAT:

A Peace Officer [if under the Divorce Act add “having jurisdiction anywhere in Canada”] shall assist in any way possible, to ensure

compliance with this Order. If a party or any other person on their behalf breaches any term of this Order a Peace Officer shall provide assistance to ensure compliance with this Order. Assistance shall include, but not be limited to the return of the child [ren] to the Father / Mother.

If a party does not obey this Order, after being shown a copy of same, a Peace Officer may do such lawful acts as may be necessary to give effect to its terms, including if necessary, arresting, detaining and bringing the party, at the earliest possible time, before a Judge of this Court.

- Custodial Parent has authority to apply for the child's passport without the other parent's permission
 - Non-Custodial Parent to notify the custodial parent of any change of address
4. In the event that an abduction is in progress or has occurred, follow these steps:
- (a) Secure an emergency court order preventing the removal of the child from Alberta, Canada
 - (b) Contact law enforcement immediately. Ask that the authority immediately enter the name of the child on Canadian Police Information Center Computers (CPIC)
 - (c) Amber Alert – authorities can create this alert
 - Contact Airport Police and the Airlines (Airline Corporate Security Officer)
 - Contact Vital Statistics about the risk of abduction to request that they not issue a Certified Copy of the child's birth certificate
 - Risk of access – suspend access, or ask court to impose supervised access, with no overnight stays, all access times to be adhered to, with no extensions. Also avoid visits before a weekend or public holiday when there would be difficulty securing a lawyer or assistance of a judge. If an older child is involved, insist that he or she have a cell phone
 - Any hint of the children having their photos taken by the other parent, should result in a suspension of access immediately

“Draft clearly Worded Orders:”

IT IS HEREBY ORDERED:

The child JOHN DOE Born December 20, 2008 (the “child”) shall be returned to Alberta.

It is declared that at the time of the removal from Alberta, the child's habitual residence was (and continues to be) in the Province of Alberta and that the removal from Alberta and the retention in Mexico both were (and are) *prima facie* wrongful.

The child shall be permitted to travel, without the consent of the Respondent, to Canada.

The Applicant shall be authorized to complete any forms necessary for travel to Canada in his/her personal capacity and on behalf of

the Respondent including the securing of a Passport for the child to enable the Applicant and the child to travel to Canada.

The Applicant is hereby granted interim sole custody and primary care of the child, which shall be under the supervision of[Agency] or of the Alberta Central Authority and its nominees.

After the return of the child to Alberta, neither the Applicant nor the Respondent shall remove the child from the Province of Alberta without Order of the Court and the Applicant shall, at all times, keep the Central Authority informed of the child's and the Applicant's residence in Alberta.

The Respondent shall be entitled to attend in this jurisdiction to contest the terms of this Order, and to challenge any of the material filed with the Court in support of the within Order, to apply to amend, vary, or strike out the within Order upon five clear days notice.

5. **Where to Look for help**
- **Contact the Alberta Central Authority**
 - **Government Departments publish helpful advice, some of which is on the internet. The UK, US, Australia, New Zealand and Canada have government websites that provide information about child protection:**
 - **Parents in England & Wales should look at the UK Government website www.gov.uk/return-or-contact-abducted-child**
 - **Parents in Australia will find that part of the website of the Commonwealth Attorney-General's Department that deals with international family law and children to be well written and very helpful (www.ag.gov.au/childabduction)**
 - **In the United States of America, the Office of Juvenile Justice and Delinquency Prevention have produced a *Family Resource Guide on International Parental kidnapping*, available at www.ncjrs.gov/pdffiles1/ojdp/215476.pdf. The Guide has a particularly good section on preventing international parental kidnapping**
 - **In New Zealand, parents should look at the websites www.safetravel.govt.nz/children/childabductions and www.passports.govt.nz/Preventing-Children-Being-Taken-from-New-Zeland.**
 - **In Canada, the Department of Foreign Affairs and International Trade has published *International Child Abductions: A Guidebook for Left-Behind Parents* available on-line at http://travel.gc.ca/travelling/publications/international-child=abductions?_ga=1.157636915.1494447376**
 - **Reunite International (www.reunite.org) provides on-line Child Abduction Prevention Guides for England and Wales, Scotland, Northern Ireland Greece, and Spain. (<http://www.reunite.org/pages/prevention.asp>).**

Page 315 International Movement of Children, Law, Practice and Procedure, 2nd Ed. Lowe, Everall and Nicholls, Lexis Nexis 2016.

6. **Practical Precautions:**
- **Secure the child's passport and birth certificate**

- **Have two color passport sized photos of each child with the names, date of birth and the date of the photo on the back**
- **Secure a photograph of the potential abductor, again with name, date of birth and date of photo on the back**
- **The custodian or residential parent should keep their own passport safe along with a copy of the birth certificate, marriage certificate, and certified copies of court orders**
- **Advise the children's schools of any concerns about abduction**
- **Advise the Canadian Passport issuing authority not to issue a passport for any child under 16 without the custodial parent's consent**
- **In Canada add the child's information to the Passport Programs Systems Lookout List which will alert the passport program staff to secure additional follow-up when processing an application for the passport of the child**
- **While our courts cannot obligate a foreign consulate or embassy to comply with an order not to issue a passport, our court could ask a foreign embassy or consulate not to do so tactfully:**

AND THE COURT OF QUEEN'S BENCH OF ALBERTA RESPECTFULLY REQUESTS THAT THE CENTRAL AUTHORITY OF _____ (Country) in Calgary or (Vancouver or Ottawa) and its Consulates in Canada assist the Court in protecting child (X) by declining to issue child (X) with a passport or any other form of travel document and to inform the Alberta Central Authority forthwith upon the Father/Mother (or any other person) applying for any of the aforesaid documents.

- 7. Institute Legal Proceedings**
- **Based on the level of threat of abduction, will determine if the court relief should be sought with or without notice.**
 - **Pending the granting of a non-removal order by the court, the application itself may be enough to confer "rights of custody" on the court to support an application for the children's return under the Hague Convention**
 - **Seek an order to prevent the child being abducted and/or to locate and recover the child. Keep the language simple as the order may have to be translated. Police assistance at this stage is essential**
 - **Ask that the potential abductor's name be placed on a Watch List with Canada Border Services Agency ("CBSA"), if it is suspected the person's entry into Alberta will be to abduct a child**
 - **Secure notarized agreements in the foreign country (giving effect to the Alberta Order) or secure sworn declarations by those the child is to visit such that the child will be permitted to return at the end of the visit. For example, a visit to a Muslim country, would require the parties that the child is to visit to provide sworn declarations on the Koran before a Sharia Court that they will permit the return of the child**
 - **Require a bond or security. For example, secure a charge over property of the potential abducting parent, or secure a specific amount of cash or a bond that would be pledged pending the return of the child to cover the cost to secure the return of an abducted child**

8. Enforcement

If there is a prohibition on leaving the jurisdiction, no passport will issue provided the Order is given to the Passport Office

- **Chasing Orders – domestically and internationally. This is an order requiring the return of the child to the jurisdiction he/she was taken from**
- **If the Risk of abduction is imminent, order law enforcement to pick the child up and place with the Central Authority**
- **If parent suspects the non-custodial parent will abduct, contact police who can then contact Canada Border Services to act**
- **Canada Border Services officers pay extra attention to children entering Canada – do the children have a valid reason to accompany adult travelers**
- **Criminal Code:**

S. 282 Abduction in contravention of a Canadian custody order – child under 16

S. 283 Abduction where there is no custody order or a foreign order [model charging guidelines for police and prosecutors – child under 16

http://www.justice.alberta.ca/programs_services/criminal_prosecutor/Pages/parental_child_abduction.aspx

- **If the child is already outside of Canada, Canada Border Services / RCMP / Police will work with International Authorities such as Interpol**
- **Extradition though rarely used may be available**
- **Canada does not use an exit control system [Japan, Australia and South Africa do] so it must rely upon partner agencies nationally and internationally once information has been received that an abduction may have taken place**
- **US Department of Homeland Security could place the abducted child on their system [National Crime Information Center Computer-NCIC, which the FBI or local law enforcement can access] if child is going via the US which will prevent the child's departure**
- **If the child has been removed to Alberta, order that the police have access to the information regarding the whereabouts (hotel, residence or other lodging) of the abducting parent and child from Canada Border Services and Canada Immigration**
- **Courts and law enforcement must be vigilant to allegations of Domestic Violence by the left behind parent**

A spouse can obtain a civil restraining order to keep the abusive spouse away

A Peace Bond can be secured under the Criminal Code

Emergency intervention orders [in some jurisdictions] issued over the phone to safeguard the abused spouse and children following police intervention

Courts will consider the existence of family violence to determine if parental custody or access to the children is in their best interests

The Child Welfare authorities can become involved to protect a child if family violence leads to a concern that the children are not safe with the parent (s)

- **Undertakings are useful in securing the safe return of the abducting parent and child if there is a Domestic Violence concern**

The Applicant pays for the Respondent and child to travel to the country where the child habitually resides;

The Applicant makes appropriate housing arrangements for the Respondent and the child in the country where the child habitually resides;

The applicant pay the living expenses or spousal and child support for the respondent and child in the country where the child habitually resides (recognizing the absconding parent, although acting wrongfully, will have economic needs that must be met in the short term);

The Applicant commence an application to determine the custodial rights of the child(ren) immediately, if it has not already been commenced. If such a proceeding has been commenced that the applicant arrange an immediate court date;

The Applicant not assume custody of the child if he or she obtained a custody order from the court in the child's habitual residence after the wrongful removal or retention or a return to the pre abduction status quo custodial arrangements;

An order that the Applicant have no contact with the respondent if the Respondent returns to the country of the child's habitual residence;

An order that the Applicant have no contact with the child except through an order of the court in the child's habitual residence;

Provisions that neither party molest, annoy or harass the other parent;

Provisions that a parent refrain from the use of physical discipline, alcohol or drug use while the child is in the care of the parent;

A provision to temporarily stay the enforcement for the return of the child pending completion of the child's school year or the ability of the absconding parent to make travel arrangements;

If the Applicant has caused criminal proceedings against the Respondent, that those proceedings be abandoned prior to the return of the Respondent to the country of habitual residence;

The Court or a neutral party retain all the passports of the Applicant, Respondent and child(ren) pending the conclusion of the custody proceedings in the country of habitual residence and the children not be removed from the jurisdiction of the court of habitual residence.

- **Immigration issues may arise for the abducting parent and child to return to Canada-in Canada can seek Minister's Permit, in the US the abducting parent can utilize the "Parole" authorization**
- **Only the Federal Court of Canada has the jurisdiction to authorize Passport Canada to act, although the writer has utilized QB Orders to positive effect with the Passport Office**
- **Judges need to be encouraged and supported to network and communicate**

Locating Children - Part I

9. **Police / RCMP investigate as soon as the left behind parent can report the abduction**
 - **Investigators will utilize a number of sources to locate abducted children**
 - a. **Contact Abductor's family**
 - b. **Abductor's former employer [pay check may be forwarded] and friends**
 - c. **School records of the abducted child – has the abducting parent requested the records to be forwarded to enable enrolment elsewhere**
 - d. **Day Care- did the abducting parent tell the care provider the child would no longer be attending as they were moving to.....**
 - e. **Abducting Parent a member of a Professional Association – require licensing or certification**
 - f. **Federal Support Attachment Programs-access to tax information to garnishee tax refunds**

- g. **Court Records** may reveal the names of individuals that have helped the abductor in prior court proceedings
- h. **Child Protection Records**-prior investigations and involvement
- i. **Domestic Violence Shelters**-has there been prior Domestic Violence that may affect the investigation
- j. **Probation**-was the abductor on Probation and indicated a contemplated move
- k. **Motor Vehicle Searches**-address registration change
- l. **Vital Statistics**-Abductor attempts to secure a birth certificate for the child
- m. **Transportation Companies** – buses, trains involved in the abductor's travel
- n. **Travel Agents**
- o. **Post Office**-change of address
- p. **Subscriptions to Magazines**-address change
- q. **Financial Institutions**-monies withdrawn or transferred, loan payments made from abroad [bank could save envelope with the postmark at police request]
- r. **Credit Cards**-abductor has left in haste and has used the card to travel abroad
- s. **Telephone Records**-long distance charges may reveal where the abductor is travelling
- t. **Medical Records**-abductor has asked for records to be transferred as child may have a medical condition
- u. **Veterinarian**-did abductor take the family pet to appease the child and a subsequent request for the vet's records
- v. **Canada Revenue Agency**-address change given by the abductor
- w. **UI, Child Tax Credits, Welfare**-are the benefits being cashed abroad, or locally by a friend and sent on to the abductor
- x. **Insurance Company**-benefits being claimed and sent abroad
- **Use of Posters / Flyers**
- **Media**

10. **Locating Children – Part II**

- **Under Article 7(a) of the Hague Convention it sets out the obligation upon the Central Authorities (Alberta) to assist in locating the whereabouts of an abducted child:**
 - a. **Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.**
 - b. **In particular, either directly or through any intermediary, they shall take all appropriate measures -**
 - c. **to discover the whereabouts of a child who has been wrongfully removed or retained.**
- **Article 8 of the Hague Convention goes on to state:**
- **Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.**
- **The application shall contain -**

- d. **all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.**
- **The Alberta Central Authority has provided a Country profile dated April 14, 2011 to the Hague Conference regarding child abduction/protection of children. That profile provides in part:**

In determining the child's whereabouts, the Alberta Central Authority requires:

- a. **Information from the Applicant as to why it is believed the child is in Alberta**
- b. **Mechanisms or sources of information to discover the whereabouts of the child that the Alberta Central Authority will use include:**

- **Private location services:**
- **Police**
- **Court orders to compel the production of information on the whereabouts of the child.**

https://assets.hcch.net/upload/abduct2011cp_ca-ale.pdf

- **The Alberta Court of Queen's Bench Procedural Protocol for the Handling of Return Applications under the 1980 Hague Convention On The Civil Aspects of International Child Abduction has provided a website that outlines the procedure for the handling of a Hague Convention Application with the court.**
- **Criminal charges can be very helpful in terms of locating children. If charges are laid for child abduction, the police can assist in investigating the whereabouts of the child.**
- **Interpol can be accessed through the RCMP.**
- **Interpol can provide international assistance in locating an abducted child.**
- **The Royal Canadian Mounted Police also operates the Missing Children's Registry which can be helpful in accessing information to locate an abducted child.**
- **Non-Governmental Organizations which are not for profit are also of great assistance.**
- **The Missing Children's Society of Canada ("MCSC") employs former Police Officers and former Canada Border Services individuals that have an excellent record in locating missing children. Their website is as follows:**

<https://mcsc.ca/>

- **A left behind parent can also contact Child Welfare Authorities, if it is believed that the abducted child is at risk. In that instance, Child**

Welfare Authorities can apprehend the child, and enlist the assistance of the police to, if necessary, enter a residence:

Child Youth & Family Enhancement Act, R.S.A. 2000, c C-12, s. 19

11. Under the Alberta Court of Queen's Bench *parens patriae* power, the court can order the disclosure of information by third parties such as:

- **Telephone companies;**
- **Banks;**
- **Credit card companies;**
- **Airlines;**
- **Schools;**
- **Health Authorities;**

to assist in the search for an abducted child. Failure to disclose information about the whereabouts of an abducted child would constitute contempt of court leading to penalties that the court can impose.

12. Extradition will only have effect with those countries where there is a treaty with Canada. Extradition only obligates the return of the abductor, but it is quite likely that if the abductor is returned they would be accompanied by the abducted child.

13. Foreign Embassies may assist the left behind parent by putting a parent of an abducted child in touch with the appropriate authorities in the foreign state where the child has been abducted to.