

## PARENTAL ABDUCTIONS: PREVENTION AND RECOMMENDATIONS

Canadian families are eagerly anticipating the pleasure of enjoying a well-deserved vacation. However, COVID-19 continues to disrupt our lives and we are far from an eventual return to normal. At this time, in order to ensure the safety and well-being of its citizens, the Canadian Government is recommending that any non-essential travels abroad to be avoided.



Since the outbreak of the pandemic, we have observed a decrease in the number of cases of missing children. However, we continue to receive dozens of calls a week from anxious parents who have concerns or questions regarding a possible abduction by the other parent or a family member. **Did you know that every year, more than 300 Canadian children become victims of a family abduction?** Taken from family, home, and friends by a parent or other family member, they are thrust into a life of uncertainty and isolation.

Travelling with your child should be a happy occasion for all the members of your family. In order to maintain a harmonious relationship with the other parent and in order to ensure the safety and well-being of your children, it is important that both parents respect the pre-determined court judgments or existing guidelines. This includes respecting each other's rights of access and custodial agreements (as stipulated in your respective court judgements). If there are any disagreements or issues concerning the rights of access or traveling with the other parent, The Missing Children's Network strongly recommends that you contact your family lawyer and inquire about your rights and how to proceed, if you feel that the other parent is violating them.

Sadly, some parents do not respect the other parent's access rights and leave with their children without the other parent's consent. This can cause the situation to escalate and can potentially result in criminal charges being laid as stipulated in the Criminal Code under articles 282 and 283:

<https://laws-lois.justice.gc.ca/eng/acts/C-46/section-283.html>



Over the years, the Missing Children's Network has had the opportunity to work alongside various professionals when dealing with parental abduction cases. These professionals include: law enforcement, government agencies, other missing children organizations and, of course family lawyers. One of those lawyers is Me Howard Barza, a very good friend of the Network. He has kindly shared some of his recommendations for families traveling with their children:

"I always advise parents in a divorce or custody case to ensure that any court agreement or judgment contains a clause specifying that neither party has the right to remove the child (or children), even temporarily, from the province of Quebec without obtaining the written consent of the other parent. We normally add that the consent may not be unreasonably withheld, for example, a parent wishing to take the child to Disneyland or to visit his grandparents in Vermont. I also advise a clause whereby the parent who is travelling with the child to provide details of their itinerary.

However, the situation becomes problematic when one of parties has no permanent roots in Quebec, has acted irresponsibly in the past and now wishes to travel to the country of their birth outside of North America. If there is even the slightest doubt as to whether the parent would return the child, I would advise a client to not consent to such travel and submit the matter to the Courts for adjudication if necessary.

Moreover, if a parent wishes to travel with a child to a country such as Yemen, Afghanistan or Saudi Arabia which are non-signatories of the International Hague Convention (**explained below**), I would not allow such travel. In case of doubt, I would advise you to consult with the Missing Children's Network for verification of which countries are bound by this treaty. The 1980 international treaty entitled, *The Hague Convention on the Civil Aspects of International Child Abduction*, was adopted in order to secure the prompt return of children wrongfully removed and taken to another country that is a signatory of the treaty. Wrongful removal essentially signifies that one party violated the custody rights awarded to the other party by a decision of a court.

The law applies to children under the age of 16 who were residing in one country on a regular or "habitual" basis prior to their illegal removal by one of their parents. The application to return a child illegally removed from Quebec must be undertaken within one year.

If this illegal abduction were to occur, there is an institution in Quebec (which is signatory of this international treaty) known as the Central Authority which is entitled to legally enforce the original custody decision in the country to which the child has been illegally retained. The goal is to have the child returned to the custodial parent.

It is possible, in virtue of article 13 of the Treaty, for the other party to contest the return of the child. In exceptional circumstances, they could argue that to do so would expose the child to grave risk, including psychological or physical harm. The child, if sufficiently mature according to a court, may also object to returning to the other parent. This however is problematic and may occasion a debate regarding parental alienation, which regrettably manifests itself frequently in contested custody cases.

In all cases I would suggest consulting with an attorney prior to concluding any agreement pertaining to the custody of your children.”

Howard Barza attorney/avocat with over 35 years of experience working as a family lawyer and more specifically parental abduction cases.

If you have any questions or concerns, the Missing Children's Network is here to help and can provide you with assistance and support. For more information, please contact our offices at 514 843-4333 or toll-free 1 888 692-4676.

