

A custody order issued by a Canadian court has no binding legal force beyond the borders of Canada. Nevertheless, such an order could be persuasive in support of any legal action that you undertake. Courts in other countries must, as they do in Canada, decide child custody cases on the basis of their own domestic laws. This may give an advantage to the person who has abducted the child if the abduction is to the country of her or his nationality or origin. You could also be disadvantaged if the country has a legal tradition in deciding custody cases on the basis of gender. If custody is given to the abducting parent in another country, you should make every effort to have the court specify your access rights. Some countries, even if they award custody to you or provide for access for you, will not permit the child to leave without the consent of the other parent.

Your chances of having your Canadian custody order recognized and enforced in another country are subject to all of these factors and conditions. While it may appear that the "deck is stacked against you," it is important to accept that recourse to the courts of another country may be the only hope for the safe return of your child. Remember that each country is unique and you will have to decide whether or not to proceed with legal action.

B. The Criminal Justice System

Parental abduction is a criminal offence under Sections 282 and 283 of the Criminal Code of Canada. In many situations, the criminal justice system can prove to be a very useful instrument in locating and recovering a child, especially when the person suspected of perpetrating the abduction has not yet left Canadian soil or is on the verge of doing so.

Since it is a provincial responsibility, criminal justice may be administered in a slightly different way from one province to another. Thus, in the abduction of children, some provinces require authorization from the Crown Prosecutor before proceedings can be set in motion, while in others, proceedings can be initiated by the police themselves.

Use of the Criminal Code makes it easier for the police to search for and locate a child. An arrest warrant is generally issued, often improving co-operation between the police services both nationally and internationally. If necessary, an extradition request may be made if there is a treaty with the country in which the fugitive has been located.

While it is important to report the abduction of a child to the police as soon as possible, your complaint will not necessarily result in child abduction charges. Whether at the level of the police, the Crown Attorney's Office or the federal Department of Justice, which is responsible for extradition questions, these decisions are made in accordance with the particular circumstances of each situation and the possible repercussions on the return and protection of the child, which is the primary objective.

Extradition may prove to be of no value in cases of international abduction. There is no guarantee that the child will be returned by foreign authorities even if they should permit the extradition of the alleged abductor. When threatened with extradition, some abducting parents in other countries have hidden the child or have gone into hiding themselves with the child.

Not all countries regard abduction by one of the parents as a criminal act. The Consular Operations and Emergency Services Division can provide information on the criminal justice system in the country in question, and on whether or not it is likely to cooperate in parental child abduction cases.