

IV – Other Actions

In the event that your child has been abducted to a country that is not a party to the Hague Convention, it is possible for you to take other actions both in Canada and abroad that could lead to the return of your child. (Some of these actions may also be relevant if the abduction has been to a Hague Convention country.) In Canada, the civil justice system can be used to reinforce your custody rights and, if appropriate, the criminal justice system can be used to initiate criminal action against the abductor. It may be possible to take similar actions in the other country. As every situation is unique, it is important for you to seek legal and other professional advice and guidance before taking specific action.

A. Using the Civil Justice System

Once you have obtained a custody order from the appropriate Canadian court, the next step is to decide whether or not you wish to use the justice system in the country to which your child has been abducted.

The Consular Operations and Emergency Services Division can provide you with general information on the legal system of that country, customs and practices as they relate to parental rights and the experience of other persons in seeking to use that country's justice system to have an abducted child returned.

It is important to remember that neither the case officer nor consular personnel overseas can provide authoritative advice and guidance on the laws of a foreign country or on what might be the most appropriate legal action to take. For that, you will need to retain a lawyer in that country who is knowledgeable and experienced in dealing with custody cases involving foreigners. Canadian officials in Ottawa and at Canadian diplomatic or consular missions can provide you with a list of lawyers who speak English or French, who may be experienced in parental child abduction or family law and who may have represented Canadians in circumstances similar to yours. However, as this lawyer will be working for you, it is most important that you and only you make the selection. If you decide to undertake legal action in the other country, it may be necessary for you to be there in person at some stage of the proceedings.

Lawyers' fees vary widely from country to country and could be in excess of what would be paid in Canada. Therefore, you should be very direct in making arrangements for legal representation in another country and ensure that the arrangements are in writing and you fully understand what the lawyer will and will not do, when it will be done and at what cost. If necessary, Canadian consular officers can assist with translation and provide guidance. Canadian consular officers can maintain contact with your lawyer to obtain status reports on what is happening and verify that your rights, as provided for by the laws of that country, are respected.

Your lawyer will advise you on the information and documentation that will be required in order to represent you within that country's justice system. In addition to providing a certified copy of your custody order, it may be necessary to provide copies of your marriage and/or separation documents, along with relevant provincial/territorial and federal laws relating to custody and child abductions. The Department of Foreign Affairs can authenticate these documents before they are sent. Your Canadian lawyer can assist you in gathering this material and having it delivered to your lawyer in the foreign country.