

Criminal Code

extra-provincial custody orders by all Canadian provinces. To date, eight provinces have adopted the uniform extra-provincial custody orders enforcement act. The aim of this act is to prevent abduction across jurisdictional boundaries.

In August, 1977, the then minister of justice presented a paper on international abduction of children by parents at the commonwealth law ministers meeting, aimed at emphasizing the importance of the growing social and legal problem and developing co-operation amongst commonwealth countries in the enforcement of foreign custody orders and the return of abducted children.

The commonwealth law ministers agreed that concrete early action was required and that examination should be divided to greater co-operation in the enforcement of custody orders. The law ministers were also conscious of the potential for the commonwealth to use its collective influence in other bodies such as The Hague conference on private international law so as to take a lead in developing this law to the benefit of the world community.

As a result of Canadian representations, the matter of international abduction of children by a parent was placed on the agenda for consideration by The Hague conference on private international law which was held in October 1980. A special commission on kidnapping established by the conference, and in which the Department of Justice participated, met in March and November of 1979. A provisional draft convention on the civil aspects of international child abduction was prepared by the special commission and was discussed and adopted at the October meeting.

I am pleased to note that on October 25, 1980, Canada, France, Greece and Switzerland became signatories to the convention. The convention is designed to solve the problem of international abductions by the imposition of jurisdictional rules which require civil courts to decline to hear the merits of custody applications and to restore the children to the proper court. It covers the situation where no court order is in existence and the situation where the child is retained in breach of permitted access. We are hopeful that the provinces will move quickly to put legislation in place implementing the provisions of the convention so that Canada may become a party. Enforcement rules would then be effective for the return of children abducted across international borders.

The proposed amendment to the Criminal Code by specifically criminalizing parental child abduction will clearly announce to the international community Canada's appreciation of the significance of the problem and our resolve in meeting it.

As we become aware of an increase in these unfortunate happenings—as I have in my riding—and as the government works toward a resolution of these problems as evidenced by what has been accomplished, the message is clear that we must strive to put an end to child abduction both interprovincially and internationally. We must also work toward the return of these children to their accustomed environment and established custodian so that they may look forward to a safe and secure future.

Some hon. Members: Hear, hear!

Mr. W. Kenneth Robinson (Etobicoke-Lakeshore): Mr. Speaker, indeed I am pleased at the opportunity to once again speak on this very important matter. At the outset I should like to congratulate the hon. member for Surrey-White Rock-North Delta (Mr. Friesen) for bringing this matter before the House once again. I recall that he did so through Bill C-221 in 1977, and so I remember speaking on the bill at that time. I know he feels somewhat frustrated in the bill not going before the standing committee for further consideration, but perhaps he will be happy in the thought that it will probably be considered carefully in the Criminal Code amendment which I hope will come before the House shortly.

I welcome the opportunity to address this important question. The abduction of children by a parent, often in defiance of the court order, is a growing social and legal problem in Canada. The abduction of a child by a parent can occur in several situations—removal of a child upon marriage breakdown or after, contrary to a court order, and so on. My colleagues have adequately addressed this question. I merely want to put a few more points on the record. The current law, section 250 of the Criminal Code states the following:

Everyone who, with intent to deprive a parent or guardian or any other person who has lawful care of a child under the age of 14 years of the possession of that child, or with intent to steal anything on or about the person of such a child unlawfully, (a) takes or entices away or detains the child or (b) receives or harbours the child, is guilty of an indictable offence and is liable to imprisonment for ten years.

The section has caused major problems, for example, in the "good faith" defence. This defence has been used historically as a legal excuse for parents who abduct their children in the honest belief that they are entitled to custody whether or not they are legally so entitled.

I should like to address the specific question of how the government would deal with this problem. Government initiatives would propose to abolish the good faith defence. There would be a defence based upon the other parent's consent to the removal of the child or on the court's conclusion that the removal was essential for the child's welfare.

The court would not be entitled to find the removal was essential for the child's welfare simply because the abducting parent is subsequently successful in obtaining a custody order over the child in his favour.

Also, the government proposes to create two new separate indictable offences—one in section 250.1(a) for abducting a child in violation of the terms of the court order, and another in section 250.1(b) for abducting a child with the intent to deprive the other parent of the possession of the child where no court order exists. These would be punishable by up to five years and two years of imprisonment respectively. Section 250.1(b) is designed to meet the situation where the removal of the child takes place after marriage breakdown, contrary to a formal written agreement by removing the child from the established custodial parent and the removal of the child after marriage breakdown contrary to a formal written agreement