

Submission to the Seventh Session of the Standing Senate Committee on Human  
Rights

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Submitted by the Office of the Provincial Advocate for Children and Youth of Ontario

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The Office of the Provincial Advocate for Children and Youth thanks the Standing Senate Committee on Human Rights for this opportunity to share our thoughts about international mechanisms to improve cooperation in the settlement of cross-border family disputes, and Canada's actions to encourage adherence to the *Hague Child Abduction Convention* and strengthen cooperation with non-signatory States Parties to the Hague Convention to uphold the best interests of children.

Based on estimates reported to the Vulnerable Children's Unit at Consular Affairs the number of parental child abductions from Canada has increased from 50 in 2009 to 69 in 2013.

For the purposes of my submission, the term 'best interest of the child' is used within the context of Article 3 of the *United Nations Convention on the Rights of the Child (UNCRC)*.<sup>1</sup>

The *Child Abduction Convention* was signed by 91 States Parties and applies to children up to the age of 16. The *Convention* is intended to protect children from wrongful removals or wrongful retentions, more commonly referred to as parental abductions.

A 2008 international comprehensive study on *Hague Convention* cases noted an overall decrease in cases before Canadian authorities compared to 2003. In this study it was noted that Canada's ability to return children from Canada was faster than other countries and that the rate of return – 59% - was higher than the global average of 46%. Though this rate is encouraging, 41% of parents are still waiting for the return of their children and this is of great concern to our Office. With this said, Canada dealt with 113 applications that were related to outgoing and incoming *Hague Convention* return applications.

Even before becoming a signatory to the 1989 *UNCRC*, Canada had taken steps to strengthen its role domestically and internationally in the area of child rights. This commitment is demonstrated in its role as a party to the 1983 *Child Abduction Convention*.<sup>2</sup> We are aware that the Department of Justice is working with provincial and territorial partners to explore Canada's potential

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<sup>1</sup> *Article 3, UNCRC:*

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

<sup>2</sup> Canada has been a party to the Child Abduction Convention since 1983.

implementation of the *Convention on the Protection of Children* and the *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*. With this said, we remain somewhat critical of Canada's efforts as they relate to abducted children based on this country's laissez-faire efforts to implement the *UNCRC*. Canada has not performed particularly well in its role as a protector of child rights, domestically. The CRC noted in its final comments that "the lack of national legislation has resulted in fragmentation and inconsistencies in the implementation of child rights across Canada with children in similar situations being subject to disparities in the fulfillment of their rights dependent on the province or territory they live in".<sup>3</sup> These same concerns have been raised time and again by parents in Canada who have been left behind in cases of child abduction.<sup>4</sup>

Like International Social Services (ISS) The Hague Convention talks about not just child abduction and wrongful removal, it also talks about wrongful retention of a child in another country. Our Office has been involved directly in at least one case where wrongful retention has happened.

*John was born in Canada. At age 12, and a Canadian citizen, John's parents separated. His Mother left Canada and returned to her country of origin with John which was Jamaica. John's Mother a year later wanted John to return to Canada to live with a family friend. John wanted this as well. John's Father refused to cooperate and give John a passport. John was stuck for over a year before we became involved.*

This case clearly demonstrates the gap which exists which could be filled by using the Convention as a lens to interpret the *Hague Convention* providing children with a central role and strong voice in decisions concerning their lives.

Once a child is in another country, they are party to its laws and culture. In such cases there is a need to consider the realities of cultural difference that can divide parents and leave children feeling confused and caught in a complicated cultural tug of war they may not understand.

The complexity of family matters that result when one parent abducts their children and takes them to another country cannot be underestimated. However, the fact remains that children are rights holders and are not the "property" owned by their parents. This point is at the heart of the *UNCRC*. While viewed largely as a family law issue and private matter, it is ultimately a child rights issue. But as we are seeing in the face of a global landscape where cultural and diplomatic efforts are thwarted by values and belief systems that may sit in opposition, implementing family law and child rights gets complicated. Culture, faith, geography and international interpretations of treaty law, such as those

<sup>3</sup> Concluding observations (10), CRC , 3<sup>rd</sup> and 4<sup>th</sup> Periodic Review of Canada, 2012.

<sup>4</sup> Testimony to Senate Committee on Human Rights, April 7, 2014 of Stephen Watkins, Gergeley Mezo, Cesar Caetano (<http://www.ichapeau.ca/testimonials/ichapeau-testimonial-for-canadian-standing-senate-committee-of-human-rights-april-7-2014/#.U2deFP3iwds>)

advanced through the *Hague Convention*, can move from the local nature of a family /marital breakdown to international diplomacy efforts that focus on parents and nation state policy rather than the rights of the child. In nations where the Hague Convention is not in place and where there is the additional factor of dual citizenship held by the taking parent, Canada can do only so much to bridge the divide - even when a Hague Convention signatory state is involved. It is in this place of cultural tension and conflicting state policy that the best interest of children must become of central concern.

Specifically to the application of the CRC and the *Hague Convention*, Canada can do better. Canada's average time for getting a case to court is 54 days and then another 69 days to act on the results. That's not as good as the 14 days and 48 days in the United Kingdom. As with all matters impacting children, especially those associated with child abduction and the *Hague Convention*, immediacy of action is of the essence. The longer it takes the less likely it is that the child will be returned to the parent left behind. As the International Centre for Exploited and Missing Children has noted, these delays are used to argue in the courts that the child has adapted, assimilated and is settling in the non-habitual country of residence.

### **Overview of existing tools in place**

As has been acknowledged by those who have presented before us, the intersection of child rights and culture is a growing factor in these cases. The clash of culture and beliefs underpin a significant element of the barriers faced in mediating these parental abduction cases. It is in this place that the ability of children to exercise their rights - specifically their views and perspectives - must take on increased importance.

It is in this place that the work of our office and our commitment to advocate for children in Ontario becomes relevant to these discussions.

Through this submission we will speak to three areas of focus:

1. Increased congruence between provincial, federal and international laws and treaty law, with the intention of bringing a consistent and unified cross-jurisdictional focus to interventions and legal efforts tied to addressing parental abductions;
2. The role of the CRC to address broader cross-border issues regarding parental responsibility, custody, access and child protection and;
3. Expanded FPT advocacy efforts linked to partnering in the work of the Vulnerable Children's Consulate specific to the best interest of children directly involved in these situations.

## **Congruence**

International mechanisms of cooperation must be tied to real dialogue and mediation, so that human solutions to institutional barriers can be sought and mediated between both Hague and non-Hague states. As the process mediating outcomes in the best interest of the child continue, efforts must be made to ensure that the child's perspective and feelings are considered equally and factored into discussions of culture and domestic policy as these matters play out in the courts. To this end, the voice of children must be central in determining an outcome that is in their best interest. The *UNCRC* has been ratified by a greater number of states than the *Hague Convention* and could perhaps bring increased focus to the role and rights of the child in these matters. Further, there is a need to standardize the age of childhood to 18 years, to bring it in line with the language of the *UNCRC*.

## **Jurisdictional boundaries domestically**

While children and parents are citizens of countries, they are not owned by the state, they are members of a family and a local community and, as such, there is a delicate balance tied to advocacy that must be considered. Canada can advocate on behalf of the parent left behind in view of the life and culture the child has been removed from, but there is also a need for Canada to consider how to best advocate for the child and their best interests that is anchored in the perspective of the child rather than the interests of the parent and or state. At the heart of these cases is a delicate balance between family, culture, the role of the state and thoughts and feelings of the child. At this point it appears that the needs and rights of the child are at best caught in the middle, and at worst, lost in the struggles between parents and state bodies. This is not to say that Canada should avoid advocating on behalf of parents, but who advocates on behalf our most vulnerable citizens, the children directly involved in abduction matters.

It is in this place that provincial and territorial advocacy bodies have the potential to partner and work with organizations like international Social Services (ISS), the Vulnerable Children's Unit and provincial authorities to co-ordinate a child-centered approach in these matters.

## **Policy**

Canada must move to ratify the *Child Protection Convention*. A generation of children has lost the opportunity to benefit from this complementary provision to the *Hague Convention*. We do not think it is appropriate that Canada has failed to embrace the opportunity to support a provision that has the potential to help child abductees to be returned to their parent who has been left behind.

In line with the recommendation made by the CRC, there is need for a national strategy tied to children's rights and a comprehensive monitoring mechanism.<sup>5</sup> Through a comprehensive strategy and centralized monitoring Canada can more effectively and consistently ensure the best interests of child abductees are protected.

A formal review and assessment of training and education efforts with respect to policing and Crown Attorneys is needed along with coherent messaging and training tied to parent child abductions. While the number of cases is relatively low, the pain and impact felt by families and children involved in these cases cannot be underestimated. An independent review of efforts in this area may provide insight into how to strengthen and improve the knowledge and approaches of the courts and policing across provincial and territorial sectors.

Overall, there is a need for increased accountability, transparency and non-judgmental approaches when balancing international conventions and domestic policy. Canada must remain open to working with non-party nations in a way that respects social, political and cultural differences and focuses on bridging divides without judging the manner in which another culture supports the parenting relationships of its people.

## **CRC Mechanisms**

The issue of parent abduction should be added to the listing of measures that countries are required to report on. This will require provincial and territorial bodies to report on efforts tied to child abduction and place increased international focus on Canada and party nation states to ensure parent child abduction matters become part of the evolving nature of child rights issues and state party implementation strategies.

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<sup>5</sup> Concluding observations (11) CRC, 3<sup>rd</sup> and 4<sup>th</sup> Periodic Review of Canada, 2012- the Committee strongly recommends that the State party adopt a national strategy that provides a comprehensive implementation framework for the federal, provincial and territorial levels of government spelling out as is appropriate the priorities, targets and respective responsibilities for the overall realization of the Convention and that will enable the provinces and territories to adopt accordingly their own specific plans and strategies. The Committee further recommends that the State party allocate adequate human, technical and financial resources for the implementation, monitoring and evaluation of this comprehensive strategy and related provincial and territorial plans. In this context, the Committee encourages the State party to establish a coordinated monitoring mechanism that would enable the submission and review of progress reports by all provinces and territories. It also recommends that children and civil society be consulted.

## **Advocacy and Outreach**

In the absence of national policy or a national children's strategy, there is a need for a coordinated advocacy framework to ensure the best interests of children remain central in matters tied to parent child abduction. There is the potential for provincial and territorial advocacy bodies to expand their work to include advocacy efforts associated with this group of children. Additionally, there is an opportunity to increase the focus on the urgency for Canada to move forward with the development of a national strategy for children and the need for a national children's commissioner.

To that end, there are Provincial Advocate bodies in each of the provinces where the predominant number of abductions are based, Ontario, British Columbia, Quebec and British Columbia. Each of these Advocates are members of a national body called the Canadian Council of Child and Youth Advocates (CCCYA). There is the potential for these provincially-based child advocacy bodies to enter into existing partnerships with Non-Governmental Organizations, and provincial, territorial and national bodies working to return abducted children to their homes of habitual residence.

The nature of efforts undertaken by Provincial and Territorial Advocacy bodies could include, but are not limited to, outreach and education efforts within the areas of their mandate and direct advocacy efforts for the children who have been abducted. As part of this work the CCCYA could work to develop a memorandum of agreement between its provincial and territorial bodies to facilitate cross provincial partnership and targeted outreach to the Vulnerable Children's Unit at Consular Affairs, International Social Services, NGOs and provincial and territorial policing and child welfare bodies.

## **Final Thoughts**

While the path forward is complicated and moves beyond the already complex nature of family law, there are opportunities to strengthen the knowledge systems players possess with respect to parent child abduction and the role of the *UNCRC* and the *Hague Convention* in matters that are otherwise seen as private family issues. The Advocate's Office cannot begin to step into the complexities of navigating local, territorial or national policy outside of the country. However, we believe strongly that as one of the most diverse countries in the world, Canada can and must do more to bridge the nature of family and culture within our local, provincial and national borders. International communities exist here in all our provinces and territories. More must be done to strengthen the knowledge and cross cultural communication that happens within our local communities as a protective factor for children who have the potential to be abducted by parents.

Many cultural communities retain strong ties to their pre-settlement countries. Perhaps there is an opportunity to work in partnership with these communities to bring increased focus to the rights of children in these situations and, where possible, build or expand communication bridges between communities settled here and communities back home that will ensure that the best interests of children remain central in these very complex and complicated family matters.

We would like to thank you for this opportunity to share our thoughts with the Committee. As your work moves forward, we remain hopeful that provincial and territorial advocacy bodies can play a role in ensuring the rights and best interests of this group of children is acknowledged and protected.