

Think of the Children

Japan's prejudiced legal system encourages desperate parents to abduct their own kids.

Kevin Buckland, Metropolis Magazine, January 26, 2006.

On November 26, 2004, Canadian Murray Wood kissed his 10-year-old son and 7-year-old daughter goodbye at Vancouver International Airport. His Japanese ex-wife was taking the kids on a 12-day trip to Tokyo to visit a sick relative. He didn't know it at the time, but none of them would be coming back.

Wood, who had been granted sole custody by a British Columbia court 17 months earlier, realized something was wrong when a check his ex-wife had given him for overdue child maintenance bounced. His fears were confirmed when he went to her apartment: It was empty, the phone disconnected, with back rent owing.

It wasn't the first time his ex-wife had disappeared with their kids. Three years earlier, shortly after they separated, she had done the same thing. But Wood got a court order, and she returned the children.

Wood was aware of the risk of abduction when he allowed his ex-wife to take the children again. As sole custodian he could have prevented the trip, but he wanted them to go. "I did everything I could to make them feel proud of both their Japanese and Canadian heritage," he explains, "including regular trips to visit Japan."

Wood knew his ex-wife's family and he knew where his children would be staying. "I always thought, 'What if she kept them there?'" he says. "But I always thought, I'll just go and get them back. It's Japan!"

In order for the trip to take place, Wood went to court to get the necessary order, specifying the departure and return dates. The order prohibited Wood's ex-wife from pursuing custody anywhere other than the province of British Columbia. With her consent, the order was entered into law the day before she left for Japan with the children.

More than one year later, Wood has seen his son and daughter only once, briefly, inside a Japanese courthouse. Shortly after Wood's ex-wife arrived in Japan, she applied for custody of the children, in direct violation of the British Columbia court order. In July 2005, a Japanese court transferred custody of the children to her.

Japan, unlike Canada and 74 other countries worldwide, is not a signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The convention works to ensure the prompt return of abducted children to their country of habitual residence. It does so by compelling its signatories to respect the custodial rights of the left-behind parent.

If Japan were a signatory, the Japanese court would have been obliged to acknowledge Wood as having sole custody of the children and order their return to Canada. Instead, as is almost always the case in Japan, the court ordered a new hearing so that it could decide custody itself, which is exactly what the Hague Convention seeks to avoid. In the process, the Japanese court also disregarded a January 2005 British Columbia court order calling for the immediate return of Wood's children, as well as a warrant for his ex-wife's arrest on two counts of abduction.

Wood's case is far from unique. Foreign Affairs Canada says it is currently dealing with more than 900 known cases of child abduction, child custody and family distress around the world. Twenty-one of those cases are in Japan. The US State Department says it is engaged with about 1,100 families seeking the return of children abducted or retained abroad. Japan ranks first among East Asian countries in the number of active abduction cases that it handles.

The numbers are growing. Globalization means that there are more international marriages and more international divorces, exposing children to international custody battles. This may be especially true for Japan, where the government wants to attract more workers from overseas.

Cases of parental child abduction seldom find their way into the headlines. It's rare to see a story like that of Elian Gonzales, the 5-year-old Cuban boy whose mother died bringing him to the US in 2000, but who was ultimately returned to his father in Cuba. The dramatic escapade, with deep political undercurrents, captured the imagination of the media and the general public. But the truth is that all parental child abductions, whether or not we hear about them, are personal tragedies.

The stories we do hear about, like those of Murray Wood and Juan Miguel Gonzalez, are usually of left-behind fathers—70 percent of parental child abductions are perpetrated by mothers—but this is not always the case.

On January 18, 2003, Yamila Castellanos' Japanese husband abducted their 2-year-old daughter from Cuba to Japan. He allegedly forged Castellanos' signature to obtain a divorce and is now married to a Japanese woman. He has denied Castellanos any access to her child, even though she had legal custody. For the past two years, Castellanos has been fighting a losing battle in the Japanese courts. And she encountered another setback at the end of last year, when she was denied the visa extension needed to stay and continue her struggle to see her daughter.

Japan has a reputation as a haven for its nationals who abduct their children. Even as it pursues a permanent seat on the United Nations Security Council, Japan is one of only a handful of developed countries that has not signed the Hague Convention, which seeks "to protect children internationally from the harmful effects of their wrongful removal or retention."

"Parental child abduction is not an act of love," stresses Annette Marie Eddie-Callagain,

an American lawyer who has been in private practice in Okinawa since 1995. “Eighty percent of parental abduction cases are motivated by revenge, and children become little pawns in the process.”

Parental child abduction has been labeled a form of abuse because of the long-term psychological and emotional trauma suffered by children taken from or denied access to one of their parents.

According to Jim McRae, a US-trained clinical psychologist who has practiced in Japan since 1983, symptoms can vary widely by age and situation, but abducted children invariably experience issues of identity and of trust.

McRae says it’s difficult for children to establish bonds with anyone after being betrayed by the people closest to them, their parents. And when children are suddenly forced to give up half their family, it is unnerving.

“There’s the whole question of identity confusion,” says McRae. “Who am I? What was so bad about my Canadian identity that we had to run away from it and never talk about it again? Why is that so bad? What does that say about me?”

McRae adds that if children are abducted to Japan but don’t look Japanese or can’t speak the language, they are more likely to be bullied. If they don’t have a sense of pride in the other half of their identity, they are less capable of defending themselves, both externally and internally.

Wood says his children neither look fully Japanese nor speak the language well. They went to Japan “psychologically prepared for a 12-day trip,” he says. “They thought they would be returning to the life that they had always known. Instead they were kept in Japan and have been denied all contact with virtually everyone and everything they have ever known. The only parent they have to talk to is the one who abducted them, and the children will be well aware that their mother doesn’t want to hear anything about their roots in Canada. They will be left to deny their loss and to try to hide the psychological scars that loss of identity is inflicting upon them.”

More than 25 years after the Hague Convention was completed, Japan’s Ministry for Foreign Affairs says that it is still studying the document. At a recent conference on child abduction held at the Canadian Embassy in Tokyo, a spokesman said the Ministry wasn’t opposed to the convention, but that “at present there is not enough support from Japanese nationals.”

Hans van Loon, Secretary General of the Hague Convention on Private International Law, says that Japan’s failure to accede “will, inevitably, adversely affect Japanese parents and Japanese children abroad. Absent an effective remedy for children wrongfully removed to Japan, authorities of other countries will be increasingly reluctant to attribute custody or access rights to Japanese citizens in situations presenting a risk of international abduction.”

Already the US states of California, Tennessee and Texas have enacted measures to restrict visitation and relocation rights to countries that are not in line with international standards.

Yuko Nishitani, an associate professor at Tohoku University and director of the Hague Academy of International Law, says that the real reason Japan has not signed the Hague Convention is that no enforcement mechanism exists in the country. Signing the convention would expose these flaws.

According to van Loon, “Japanese civil law stresses that in cases where custody cannot be reached by agreement between the parents, the Japanese Family Court will resolve the issue based on the best interest of the child. However, compliance with Family Court rulings is essentially voluntary, which renders any ruling unenforceable unless both parents agree.”

So even if the courts find that your child should be returned to you, there is essentially nothing they can do to make it happen. The police are reluctant to get involved because it’s a private family matter. In fact, according to a press statement released by US Assistant Secretary of Consular Affairs Maura Harty, parental kidnapping isn’t even considered a crime in Japan.

What this means is that parental child abductors can feel confident that they will go unpunished, whether they abduct their children from abroad or here at home.

In November 1992, David Brian Thomas came home from work to an empty house. His wife had moved in with her sister and taken their 2-year-old son with her. She and her family then forged Thomas’ signature on a document to have the child adopted by her parents. Thomas took the matter to court. He won. His wife’s family sought a divorce, but Thomas won again. Because he is still legally married, he should have access to his son. But he hasn’t seen the boy—who is now 15—since April 1993. “The court says yes, I have rights to see my son, but there’s no method in Japan of enforcement,” says Thomas. “Technically I have won, but I have lost.”

Major reforms are needed before Japan can implement the Hague Convention. A strong, pro-active central authority, an authoritative, efficient court system, and the enforcement of court orders by local authorities are all imperative, according to van Loon.

More difficult will be changing minds. After a divorce in Japan, children are traditionally placed in the care of only one half of the family and cut off from the other half. McRae says that the rationale is that it protects children by eliminating confusion about who is and who is not family. “In Japan, being a member of the family is important,” he explains, “not the individual relationship of both parents with the child.”

When Prime Minister Junichiro Koizumi divorced his wife, she was pregnant with their third child. Although Koizumi has custody of the two eldest children, he has never met the third. When Koizumi’s father died, his ex-wife and that son came to the funeral but were turned away; they were no longer part of the family.

McRae says that this way of thinking is on the wane as society becomes more individually oriented. He welcomes the shift, noting that he has never spoken to another clinical psychologist who thought it benefited children to be denied access to one of their parents.

Japanese family courts have historically favored the mother in custody hearings, although Koizumi's case is an exception. But there seems to be another, stronger bias at work in the courts, one without exceptions.

"No foreign parent has ever been able to retrieve children abducted to Japan," Wood says. "Despite talk of conciliatory processes guided by the best interest of the children, the Japanese courts always award custody to the Japanese parent. This is a huge injustice."

In January 2005, Wood applied to a Japanese district court to have his children returned to him, a process that should have been quick and straightforward—the law was very clear. However, as the case inexplicably dragged on for months, Wood's ex-wife made her application for custody. On May 16, 2005, the very day Wood's case was finally to be heard, the family court transferred custody to her. Wood lost a later appeal and the Supreme Court refused to hear his case.

High legal costs and low success rates point emphatically to the importance of prevention. The US Department of State recommends parents who feel their children are vulnerable to abduction seek legal advice and be cautious before allowing them to travel abroad with the other parent. For parents who want the best for their children, denying them access to half of their family is a painful decision to have to make because it can inflict harm akin to the crime they seek to avoid.

Wood has made five more applications that are now in front of the Supreme Court, and a decision is expected any day now. But his lawyers have not encouraged him to be optimistic. Hundreds of hours and millions of yen spent fighting to get his children back, and Wood has nothing. "We have encountered setback after setback," he says, "but we will never give up."