

# OUTSIDE 1980 HAGUE CONVENTION

## **Japan remains safe haven for parental abductions**

By MASAMI ITO  
Staff writer

Murray Wood's two children left Canada for Japan with his Japanese ex-wife in November 2004 to visit their gravely ill grandfather for a few weeks.

His children, however, have not been returned, and remain in Japan with their mother.

Since then, Wood has been engaged in a custody battle in Japan, and argues that his ex-wife's actions violate the 1980 Hague Convention on Civil Aspects of International Child Abduction.

The convention states that children removed or retained from a contracting state by a parent without the other's permission must be returned promptly to the original country of residence. It also says custody rights should be resolved in the original country.

So far, 75 countries, including Canada, the United States, Britain and China, are signatories, but not Japan.

Wood was granted sole custody of the children by the Supreme Court of British Columbia in February 2004. He agreed to let the children visit their sick grandfather with a court order stating that his ex-wife must return the children by Dec. 9, 2004.

But when they did not return, Wood said he went to his ex-wife's apartment, only to find it empty and the phone disconnected.

Last February, Wood filed with the Saitama District Court to seek habeas corpus over the children. But a few months later, his ex-wife filed for their custody with the Saitama Family Court.

The district court, and later the Supreme Court, rejected Wood's request. And despite the Canadian court's custody ruling, the family court, and later the Tokyo High Court, both gave his ex-wife custody of the children, claiming they are in Japan in line with their own wishes and were not being held against their will.

Wood has appealed to the Supreme Court for nullification of the custody ruling.

"I think that the family court (in Japan) is fundamentally flawed," he said, arguing that the court believes "that the best thing for the kids is to only have one family and that it is not good for the kids to be confused by having two families. That is fundamentally wrong."

In early December, a symposium on international child abduction and the Hague Convention was held at the Canadian Embassy in Tokyo, where diplomats, legal experts and foreign parents, including Wood, who are estranged from their children shared their experiences and views on the issue.

One panelist, Annette Marie Eddie-Callagain, an American lawyer based in Okinawa,

criticized Japan for becoming a "safe haven" for child abduction.

"If a child is abducted to Japan -- Japan as one of the non-Hague countries -- getting children returned is almost impossible," she said.

She stressed that parents should take such steps as taking down the personal information of the other parent, including their passport number, social security and driver's license; getting the phone numbers of their relatives, friends and business associates and making note of their children's physical appearance, including photographs and fingerprints.

Such information is vital when trying to locate an abducted child, the lawyer said.

"Parental abduction is not an act of love," Eddie-Callagain said. "Eighty percent of parental abduction cases (worldwide) are motivated by revenge, and the children become little pawns."

The Canadian Embassy said it is presently dealing with 21 cases of child abduction, while the figure for the British Embassy was about five. The U.S. Embassy said it is aware of 20 children who have been abducted to Japan.

But the founder of Children's Rights Network of Japan, a group of people whose children have been abducted by a Japanese parent, said he believes the number is much larger, pointing out that he hears of a new case every other week of abduction to Japan from the U.S. alone, estimating that there are about 25 new cases every year.

He added that he has never heard of a foreigner winning custody over a child in Japan.

"As a foreigner, I believe that there is discrimination against non-Japanese in the family court system," he said. "And all of the people who have tried ended up using hundreds of thousands of dollars" only to lose, he added.

CRN Japan, established in 2003, now has about 125 members.

"We wanted to pressure Japan into making changes," he said. "Sometimes 'gaiatsu' (foreign pressure) is the only thing that is effective in Japan. . . . (I hope) that foreign governments will be able to apply enough pressure to start some change."

Jun Yokoyama, a professor at Hitotsubashi University specializing in international private law, stressed the need for Japan to sign the Hague Convention.

He observed that it was probably not necessary for Japan to join the Hague Convention when it took effect in 1980 because of the low number of international marriages at the time.

According to Health, Labor and Welfare Ministry data, in 1980, there were only 7,261 Japanese-foreigner couples in the country. In 2004, however, the number saw more than a five-fold increase to 39,511.

Yokoyama argued that Japan's joining the Hague Convention "is important especially for people living in Japan," because there are actually quite a few children who are taken away from Japan to other countries -- even more than those abducted to Japan. Most of the former cases never surface, however, because when a child is abducted to another country, it becomes an issue to be resolved there, he added.

"In reality, there are a lot of disadvantages for residents of Japan without the Hague

Convention," Yokoyama said.

Japan is a signatory to the United Nations Convention on the Rights of the Child, which states that "a child shall not be separated from his or her parents against their will."

The U.N. convention, however, is a general treaty on children's rights, while the Hague Convention has the authority to place obligations on signatory countries to force governments into compliance, Yokoyama explained.

"Without the Hague Convention, international child abduction becomes a lawless area," Yokoyama said. "Those who abduct their children become the winners."

He also pointed out that in cases of international abduction, speed is vital. If the court proceedings take too long, like in Wood's case, children become attached to their new country, Yokoyama said.

"Children will be unable to communicate with the other parent (in their original language)," he reckoned. "Therefore, when the court makes a judgment on the child's welfare, it won't hand the child over to the (foreign) parent because the child will not even be able to communicate with (the foreign parent)."

In other words, Yokoyama said, the longer the abductor draws out the court sessions, the higher the likelihood of winning custody of the child.

Over the past year, Wood had only one opportunity to see his children -- a 15-minute interview at the Saitama courthouse in May. But in all of the confusion, his son refused to see him, while his daughter came out for a brief moment, looking uncertain and uncomfortable, he recalled.

"It was terrible," Wood said. "My children are my life. . . . And I want to re-establish our relationship."

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