

Why we're powerless to get back abducted children

DAPHNE BRAMHAM VANCOUVER SUN (March 15, 2005)

Murray Wood had no idea last November when he kissed 10-year-old Takara and seven-year-old Manami goodbye at Vancouver International Airport that his ex-wife was abducting them.

That doesn't mean the Richmond elementary school teacher didn't take every possible precaution to ensure that Takara and Manami were only going for a couple of weeks to see their dying grandfather.

Wood had sought and was granted sole custody nearly nine months earlier. Ayako Maniwa-Wood not only didn't contest sole custody, she didn't even bother showing up for the 2 1/2-day trial.

The day before the children left — Nov. 26 — the B.C. Supreme Court issued an order instructing Maniwa-Wood to ensure their safe return on Dec. 9 and “not commence any application for custody, guardianship or access in any other jurisdiction other than the province of British Columbia.”

One might think — as Wood did — that even if the children were abducted, it would be a simple matter to get them back.

It isn't. Unlike Canada, Japan has never signed the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Japan doesn't recognize other countries' child custody orders and judges will not simply return children to their custodial parents. Instead, they order full hearings and trials.

It also doesn't recognize other judgments such as the Dec. 14 B.C. Supreme Court decision ordering the immediate return of Takara and Manami.

And Japan doesn't recognize the warrant for Maniwa-Wood's arrest on two counts of abduction.

The twist is that if Wood went to Japan and got his children to the airport, he would almost certainly be arrested and charged with abduction.

In the nearly four months since they left, Wood hasn't heard from Takara, Manami or their mother. Staff at the Canadian Embassy in Tokyo, however, met with Maniwa-Wood and she confirmed that she has no intention of sending them home.

The story is far from unique.

Every year, about 400 Canadian born children are abducted by a foreign-born parent and taken to the parent's country of birth. The numbers have remained relatively constant over the past decade, but are almost certainly going to rise along with the frequency of intermarriage between foreign-born immigrants and native-born Canadians.

And what is worrying is that the overwhelming number of immigrants to Canada come from countries that haven't signed the Hague convention.

Seven of the top 10 source countries for immigrants — China, India, South Korea,

Philippines, Taiwan, Iran and Pakistan — have all refused to sign.

Murray Wood believed the best care for his two children would be to share their custody with his ex-wife. He hasn't seen them since November

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Like most stories of parental abductions, this one began with love.

Murray Wood went to Japan to teach English as a second language in the early 1990s. He met a nurse named Ayako Maniwa and before he returned to Vancouver in 1993, they were married.

It was three months before Ayako's Canadian immigration papers were in order and she was able to join him in Vancouver. But within a year, their first child, Alexander Takara, was born. After their daughter, Manami Sheona, was born in January 1997, Maniwa-Wood suffered from severe depression.

Wood became the primary caregiver, taking the children to and from daycare, preparing the meals and doing the other household chores when he wasn't working full-time as a teacher in Richmond.

When Manami was about 18 months old, Maniwa-Wood went to work as a flight attendant. It meant that she was away about half the time and they hired a live-in nanny to care for the children.

But their marriage was disintegrating. In late 2001, the couple got an in-house separation. It didn't work. Wood moved out a few months later and within days, Maniwa-Wood had disappeared with the children. Wood got a court order and his wife returned with the children. A week later, they went to court and agreed on an interim joint custody arrangement.

Wood had decided on joint custody against his lawyer's advice that he sue for sole custody. Wood contended then — and he still does — that children deserve both parents in their lives. Now, as then, Wood believes that it is particularly important for biracial-bicultural children to know both sides of their family, their traditions and language. It's also why he took them to Japanese school every Saturday up until their abduction last November. And it's why he agreed to their annual visits with their grandparents in Japan, including the one from which they haven't returned.

The joint custody arrangement never worked out. It requires cooperation and Wood said his estranged wife refused to provide him with a copy of her work schedule. She'd drop the children off with him without warning or drop by his house and take them.

He said she told him she hated him — in front of Takara and Manami. On his birthday in 2002, she bought a kitten for the children to give to their father, knowing that Wood is allergic to cats.

For two years, Wood tried to make joint custody work, spending thousands of dollars as lawyers negotiated different arrangements that were written down and then ignored.

Finally in February 2004, after Maniwa-Wood hadn't seen the children for six weeks, Wood went to B.C. Supreme Court seeking sole custody.

Maniwa-Wood didn't show up the first day. Justice Sherman Hood adjourned the trial for half a day to ensure that she had received notification. When she didn't show up the next day, the judge went ahead. Almost hourly, Wood or his lawyer tried to contact Maniwa-Wood. She responded to the e-mails only in Japanese (Wood doesn't speak or read the language) and she never showed up.

In his written reasons, Hood called Maniwa-Wood obstructive and erratic, concluding that "her injurious misconduct in relation to the children must come to an end."

The judge was convinced that Wood had always been the children's primary caregiver and is "a good, loving and caring father who is only interested in what is in the best interests of the children."

Hood also noted that Wood's partner Brett Whitelaw — who like Wood is a teacher in Richmond — has "a positive and caring relationship with the children who respect her."

With custody settled, Wood immediately filed for divorce which was granted on Aug. 16. Maniwa-Wood said she wanted to take the children to visit her dying father. She suggested a chaperone go along. Wood countered that he would take the children to Japan. She refused.

Their divorce certificate was issued Nov. 5. Four days later, Maniwa-Wood told Takara and Manami they were going to Japan with her. It was news to Wood.

Wood wasn't opposed to them going.

"The children had been going at least once a year to Japan [to visit their grandparents] and I always thought, 'What if she kept them there?' Wood said in an interview. "But I always thought, 'I'll just go and get them back. It's Japan.' "

And certainly Wood didn't want his ex-wife blaming him if the children didn't see their grandfather one last time. So, Wood went back to court for an order setting out the terms and dates of the visit.

"It's ironic that [to prepare them for the trip] we talked about how important it is to say goodbye and to remember good things about the people once they're gone," says Brett Whitelaw who has been living with Wood and his children since June 2003.

The first indication that Wood and Whitelaw had that something was seriously wrong came when he tried to cash the first of four cheques his ex-wife handed him at the airport.

She owed him more than \$5,000 in overdue child maintenance payments.

The cheque bounced. The account had been closed.

Wood and Whitelaw went to Maniwa-Wood's apartment. It was empty and back rent was owing. The phone had been disconnected.

Wood called his lawyer. He called Foreign Affairs in Ottawa.

At midnight on Dec. 9 — the day the children were due back and also Wood's birthday — Steven Chapman called from the Canadian Embassy in Tokyo. Chapman had spoken to Maniwa-Wood, who confirmed she had no intention of returning the children and was planning to go to court in Japan to get custody of Takara and Manami.

The embassy is increasingly involved in child abductions. It is actively involved in 12 cases this year — a 50-per-cent increase from last year.

But Wood and Whitelaw have heard nothing from Takara, Manami or their mother since Nov. 27 — nothing at Christmas, nothing after sending flowers to Manami for her eighth birthday in January.

They e-mail often, phone, send cards and get no response. They have a website with photos and a note to the children about how to e-mail or phone them.

They keep their sadness in check by keeping busy. They have hired Wilf Wakely, a Canadian lawyer and former diplomat who lives in Japan, as a consultant to help them through the Japanese legal system as well as a Japanese lawyer.

They stay in touch with the Canadian Embassy, local police and people who might be able to help at organizations like the Missing Children Society of Canada. They search the Internet for any shred of information that might help.

They remain positive that the children will return. But a sadness prevails in the quiet of their home. They worry about how Takara and Manami are coping in Japanese schools with their limited language skills. They worry about them being singled out and bullied.

Like hundreds of other Canadian children abducted by a parent, Takara and Manami are pawns in a cruel game that has little to do with them and everything to do with their parents wanting to hurt each other.

The damage inflicted on them is exacerbated by distance and by time wasted when countries refuse to recognize foreign custody orders and insist on retrying each case.

In 2003, National Missing Children Services reported 358 cases of children abducted by a parent and taken from Canada — 12 were in B.C. and involved 14 children.

That same year, 494 foreignborn children were abducted by Canadian parents and brought here. And that's just a minuscule portion of the number of abducted children worldwide.

It was Canada's concern for children's best interests that led Canadian officials in 1976 to propose an international treaty that would discourage parents from abducting their children and moving them to a different country in hopes of getting a different outcome. That idea became the Hague Convention in 1980.

Keith Farquhar, an international law professor at the University of B.C., says the convention is more a statement of optimism than a well-enforced treaty. But Barbara Snider, the international case director for the Missing Children Society of Canada, says most children taken to so-called Hague countries are returned even though it isn't always as easy as it should be.

Even Hague countries — Germany being one of the worst — are often slow to return children, Snider says, because the convention allows courts to overrule foreign custody orders if it's deemed in the best interests of the child.

But Snider says that in non-Hague countries, getting children returned is almost impossible and Japan is one of the worst.

Wood and Whitelaw know that. But their Japanese lawyers are optimistic that this time it might be different. They are trying to arrange a meeting with Maniwa-Wood's lawyer in the next few weeks. The best outcome would be if Maniwa-Wood agreed to send the children home.

But if she doesn't, Wood's lawyers will ask a Japanese court to accept the Canadian custody order and not re-try the case.

Wood's lawyers and Snider say it may succeed this time because Wood had sole custody before Maniwa-Wood abducted the children and he, his lawyer and the judge all documented the many measures taken to ensure that his ex-wife had every opportunity to be heard at all the court proceedings.

Still it's a very long shot. Similar cases have failed in the past.

Masashi Sakata, a Japanese Supreme Court judge and visiting scholar at UBC, favours Japan signing the Hague Convention as soon as possible. But he said that's a cultural and

political problem, not one for judges.

“It is a question of sovereignty,” he said. “It is not that the B.C. Supreme Court order isn’t valued in Japan, it’s because there is a national border . . . It is really an irritating and annoying problem but it is quite natural.”

Sakata said even though a Japanese judge would be interested in the B.C. judge’s written decision, “it doesn’t bind the decision.” It’s likely, he concluded, that a Japanese judge will want to hear the case all over again.

But even if the Japanese courts were to honour Wood’s custody order, it may be months before Takara and Manami come home. Enforcement is a whole other problem.

While the penalties for refusal to comply with Japanese custody orders include fines and even imprisonment, forcible removals of children are rare.

“I know several Japanese women whose Japanese husbands have disobeyed a court order and taken their children,” Mark Smith, who runs the Child Rights Network of Japan (<http://www.crnjapan.com/en>), said in an e-mail.

“The courts will not correct the situation. Return of a child is essentially voluntary.”

But let’s assume that things go smoothly and Takara and Manami are home soon. There will be lots of hugs, tears, parties and presents. But then what?

Will Takara and Manami ever be able to overcome the hurt and fear of their abduction?

And who can ever possibly be able to explain why politicians think sovereignty is more important than protecting innocent children like them and thousands of others from being used as pawns by vindictive, retributive parents?

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