



Return Our Children Home Canada
Advocacy, Support, Education and Networking
for Canadian Seeking Parents
<http://www.returnourchildrenhome.ca>

Canadian Abducted Children Calls To Action

Introduction	1
References	2
Transparency	3
Definitions	3
Annual Report	4
Communication	5
Prevention	6
Exit Control	6
Education	6
Action	6
In cases involving Hague Convention signatories	6
In cases involving both Hague and non-Hague countries	7
Support	8
Before an abduction	8
Public Education	8
After an abduction	9
During a resolution	10
After a resolution	10

Introduction

We parents of Canadian abducted children call on the Government of Canada to enact concrete changes to resolve existing cases of international parental child abduction and prevent those to come. We make these calls in support of the wellbeing of our children, whose fundamental rights are violated. These rights are enshrined in the United Nations Convention on the Rights of the Child and other human rights instruments recognized by Canada and around the world.

We have encountered the same major impediments in seeking the return of our children that have been raised before the Canadian government for decades. Many of these can be solved but have not.

Because of a lack of effective remedies, including from the Canadian government, some of us have not held our children for years. Some of us do not know where they are living or whether they are happy and healthy. In most cases our children were abducted to places with diminished access to education, health care, and opportunity. In all cases the act of abduction has severely limited our childrens' access to family, culture, community, and mobility.

Canada recognizes Parental Child Abduction in sections 282 and 283 of the Criminal Code. The Public Prosecution Service of Canada states of victims: "Although children may not be in physical danger, their lives are nevertheless greatly disrupted. They are deprived by the abducting parent of security, stability and continuity in their lives. [...] [U]nilateral actions by one parent that affect lawful care and control rights of the other parent respecting the child will not be tolerated. Such actions have a detrimental effect on the well-being of the children involved."

Our children were abducted internationally and all inquiries to the Canadian government are directed to Global Affairs Canada. We accept that Global Affairs Canada is the primary agency in Canadian government engagement in our cases but we do not accept that other agencies are not fundamental.

We accept that there are limits to what Canada can undertake in foreign territory, but we do not accept that Canada is working to the limit of its abilities.

We submit these calls to the Canadian government in expectation of an ambitious response, the establishment of ongoing collective communication with seeking parents, and a timeline with concrete commitments. We commit to supporting the Canadian government in this process.

References

This document refers to the following resources:

- **Goldman Act:** This refers to the American legislation titled "H.R. 3212 (ENR) - Sean and David Goldman International Child Abduction Prevention and Return Act of 2014", available at: <https://www.govinfo.gov/app/details/BILLS-113hr3212enr/>
- **FAIT Committee Report:** This refers to Report 4 to the 36th Parliament by the Standing Committee on Foreign Affairs and International Trade (FAIT), tabled April 1998, available at: <https://www.ourcommons.ca/DocumentViewer/en/36-1/FAIT/report-4>
- **Response to FAIT Committee Report:** This is the Canadian government's response to the FAIT Committee Report (above), published in 1998 and available at: <https://www.justice.gc.ca/eng/rp-pr/cp-pm/cr-rc/ica-eie/index.html>

We ask that the Canadian government provide an update to its 1998 Response to the FAIT Committee Report. Many of the challenges faced by parents now are the same as those identified then. Some were to be addressed by government commitments that are currently unmet; other measures were refused by the government and the underlying difficulties have continued for seeking parents in the decades since.

Transparency

Definitions

We call on the Government of Canada to adopt clear definitions related to parental abduction cases for use in communication with parents and setting policy, including the following:

- **We ask that the Government of Canada adopt a clear definition of “Overdue Case”** equivalent to that established in the Goldman Act, quoted below:
 - (A) In general.--Subject to subparagraph (B), the term “unresolved abduction case” means an abduction case that remains unresolved for a period that exceeds 12 months after the date on which the completed application for return of the child is submitted for determination to the judicial or administrative authority, as applicable, in the country in which the child is located.
 - (B) Resolution of case.--An abduction case shall be considered to be resolved if--
 - (i) the child is returned to the country of habitual residence, pursuant to the Hague Abduction Convention or other appropriate bilateral procedures, if applicable;
 - (ii) the judicial or administrative branch, as applicable, of the government of the country in which the child is located has implemented, and is complying with, the provisions of the Hague Abduction Convention or other bilateral procedures, as applicable;
 - (iii) the left-behind parent reaches a voluntary arrangement with the other parent;
 - (iv) the left-behind parent submits a written withdrawal of the application or the request for assistance to the Department of State;
 - (v) the left-behind parent cannot be located for 1 year despite the documented efforts of the Department of State to locate the parent; or
 - (vi) the child or left-behind parent is deceased.

- **We ask that the Government of Canada adopt clear definitions of “Pattern of Noncompliance” and “Persistent Failure”** equivalent to those established in the Goldman act, quoted below:
 - (A) In general.--The term “pattern of noncompliance” means the persistent failure--
 - (i) of a Convention country to implement and abide by provisions of the Hague Abduction Convention;
 - (ii) of a non-Convention country to abide by bilateral procedures that have been established between the United States and such country; or
 - (iii) of a non-Convention country to work with the Central Authority of the United States to resolve abduction cases.

(B) Persistent failure.--Persistent failure under subparagraph (A) may be evidenced in a given country by the presence of 1 or more of the following criteria:

(i) Thirty percent or more of the total abduction cases in such country are unresolved abduction cases.

(ii) The Central Authority regularly fails to fulfill its responsibilities pursuant to--

(I) the Hague Abduction Convention; or

(II) any bilateral procedures between the United States and such country.

(iii) The judicial or administrative branch, as applicable, of the national government of a Convention country or a bilateral procedures country fails to regularly implement and comply with the provisions of the Hague Abduction Convention or bilateral procedures, as applicable.

(iv) Law enforcement authorities regularly fail to enforce return orders or determinations of rights of access rendered by the judicial or administrative authorities of the government of the country in abduction cases.

- **We ask that the Government of Canada use these terms, with reference to their definitions if necessary, when communicating about these cases.**

Annual Report

The FAIT Committee Report, in Recommendation 1, calls for the establishment of a set of “consistent and informed data”. For several years the RCMP published an annual report including statistics on international parental abduction; these statistics (available at <https://publications.gc.ca/site/eng/9.505903/publication.html>) seem to have ceased publication after 2008 with the retirement of the report’s author.

The Government of Canada’s response to the FAIT Committee Report outlined the complexities of collecting statistics and stated that “the government will try to set up a system for recording data on international child abduction.” 23 year later, that commitment appears to be unmet.

The same lack of information in the United States motivated the authors of the Goldman Act to include concrete details for the public, regular reporting of international parental abduction cases and their outcomes.

We ask that the Government of Canada publish annual statistics on international child abductions, informed by approach taken by the Goldman Act in Section 101, and including at least the following:

- Case totals for abductions to and from Canada, including the other jurisdiction (country) involved;
- The proportion of those cases that remain overdue;

- Identification of countries demonstrating a pattern of non-compliance or persistent failure.
- Thresholds for reporting as outlined in the Goldman Act should be adjusted for Canada's relative population or eliminated where thresholds would limit the report's effectiveness.

Communication

The single most frequent frustration identified by seeking parents of abducted Canadian children is the lack of transparency and poor communication they have experienced when seeking the help of Global Affairs Canada.

We ask that the Government of Canada include the seeking parent as a first-class participant in discussions involving their child. The seeking parent is central to all aspects of their child's case and it is paramount that they be well informed. If they are not privy to information, or information comes to them incompletely or with a delay, it harms their ability to seek their child's return. "Nihil de nobis, sine nobis" (Nothing about us without us).

When seeking parents cannot be included as first-class participants, we ask the Government of Canada to inform them proactively and promptly of developments in their child's cases, in as much detail as possible, including transparency about limiting the parent's inclusion.

We ask that the Government of Canada make a clear, regular line of communication available to a seeking parent including a guideline for acceptable time to response by telephone and email.

We ask that the Government of Canada meet its obligations to respond in a timely fashion to Access to Information and Privacy requests. Several members of our community report that their ATIP requests, which per legislation must be answered within 30 days, may take closer to a year for a response.

In response to the FAIT Report's Recommendation 14, the Government of Canada states:

The Government of Canada will continue to look for opportunities to discuss issues of mutual concern with all governmental and non-governmental agencies interested in international child abduction. Among other events, another conference co-sponsored by the Department of Foreign Affairs and International Trade and International Social Services dealing with parental child abduction is already being planned for November of this year. The government will consider the possibility of establishing an annual conference.

We reiterate the FAIT Committee Report's recommendation that the Government of Canada establish an annual conference.

We ask that the Government of Canada include representation from the seeking parent community in its periodic conferences and meetings on the subject of family abductions.

Prevention

Exit Control

Many of the challenges in effective prevention of an international parental abduction stem from Canada's lack of exit border controls. **We ask Canada to reconsider its policy against border exit controls.** Nonetheless, there are other measures that may help to mitigate the risk of international parental abduction, outlined below.

We call on Canada to ensure that travel consent letters are checked during travel. Many of our children were taken out of Canada, or from there to a harbouring country, without an appropriate travel consent letter. This was raised in the FAIT Committee Report in Recommendation 12 and elsewhere but has not been resolved.

We call on Canada to work with airlines to ensure that the issuance of tickets can be used as an effective early warning of a potential abduction. This was raised in the FAIT Committee Report but in our experience has not been effective.

Education

We call on Canada to educate family law judges about the real risks of parental abduction, and effective measures to prevent it. This was raised in the FAIT Committee Report in Recommendation 12 but more must be done.

We call on Canada to educate law enforcement about the real risks of parental abduction, and effective measures to prevent it, with a goal of rapid, effective response to that risk. This was raised in the FAIT Committee Report in Recommendation 5 but more must be done.

Action

In cases involving Hague Convention signatories

Members of our community have first-hand experience with the failures of the Hague Convention, particularly around delays, costs, and the failure of the harbouring country's legal system to protect our childrens' rights.

Because the Hague Convention is the preferred international mechanism for resolving parental abduction cases, seeking parents are directed to it by Global Affairs Canada, law enforcement,

and other Canadian systems, in spite of the convention's known limitations, rather than using other mechanisms that may be more effective.

Because the Hague Convention is a civil legal instrument, and the harbouring jurisdiction may not recognize parental abduction as a criminal matter, accessing the Canadian criminal justice system (and thus extradition, Interpol, etc.) may cause the harbouring country to deny a return under Article 13(b).

We ask Canada to recognize that the Hague Convention in the hands of a non-compliant nation, or even a compliant nation without a criminal designation for parental abduction, deprives the applicant (and their child) of rights and options, rather than protecting them.

Several of our community members have experienced the non-compliance of a harbouring country. It does not appear that Canada has a plan to protect our children in these cases.

We ask that Canada develop and publish a plan for responding to non-compliance or excessive delays in Hague cases.

Many of these same issues were raised in the FAIT Committee Report more than 20 years ago, yet remain unresolved.

We ask that Canada finally bring the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation into force. This was raised as a positive action in the FAIT Committee Report, but has not yet taken place.

In cases involving both Hague and non-Hague countries

We ask that Canada treat and resource International Parental Child Abduction cases as human rights matters in need of urgent, high-priority action. If the Global Affairs Canada Family Unit is not equipped to do this effectively, we ask that these cases be administered elsewhere.

We ask that Canada publish and adopt an escalating series of measures, informed by those in Section 202 of the Goldman Act, for resolving overdue cases in harbouring countries. In particular, the measures considered by the Goldman Act include:

- “(1) a demarche;
- (2) an official public statement detailing unresolved cases;
- (3) a public condemnation;
- (4) a delay or cancellation of 1 or more bilateral working, official, or state visits;
- (5) the withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n);
- (6) the withdrawal, limitation, or suspension of United States security assistance in accordance with section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304);

(7) the withdrawal, limitation, or suspension of assistance to the central government of a country pursuant to chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.; relating to the Economic Support Fund); and
(8) a formal request to the foreign country concerned to extradite an individual who is engaged in abduction and who has been formally accused of, charged with, or convicted of an extraditable offense.”

We ask that Canada engage international organizations such as the United Nations High Commissioner for Human Rights (UNHCHR), Inter-American Court of Human Rights, European Court of Human Rights, etc., in pursuit of international support for resolving overdue cases. This was suggested (but seemingly not implemented) in the Government’s response to the FAIT Committee Report:

“Canada could also make use of the UNCRC to support its representations on behalf of Canadian residents deprived of their right of access to their children in some countries.”

We ask that Canada make available to the seeking parent a clear, fact-based statement of Canada’s position on the abduction, in order that the parent can advocate effectively.

We ask that Canada recognize that another country’s judicial system’s decision not to return an abducted child, or its inability to render a decision for a prolonged period of time, may not adequately address the human rights issue or end Canada’s responsibility to act.

We ask that Canada adopt an activist stance in favour of protecting the human rights of abducted Canadian children and their seeking parents, family and community.

Support

Before an abduction

Public Education

While the Global Affairs Canada publication “International Child Abduction: A Guidebook for Left-Behind Parents” provides useful information, it does not adequately communicate the experiences of parents facing long unresolved cases. This risks giving a false sense of security e.g. in the case of a potential abduction to a Hague signatory country.

We ask that Canada amend its public resources on International Parental Abduction to include information on patterns of non-compliance and regions of risk.

After an abduction

The financial burden of pursuing the return of an abducted child are extremely high and generally entirely borne by the seeking parent. This forces the seeking parent to make difficult decisions about which strategies to choose and how far to pursue them, and threatens their financial future regardless of the outcome.

We ask that Canada make the direct costs for pursuing the international restitution of their abducted child tax deductible.

We ask that Canada establish co-funding opportunities for funding direct costs related to the return of abducted children. This was requested in the FAIT report's Recommendation 13 and rejected in the government's response:

“This Recommendation would thus require new funding and new or modified legal aid agreements with the provinces and territories. Since at this time, no new funding is identifiable, it would not be feasible to engage the provinces and territories in discussions to establish a cost-shared fund for expenses related to travel and legal services in international child abduction cases.”

The financial burden for the seeking parent is **prohibitive and inequitable**, particularly for mothers and/or immigrants who statistically earn less. The majority of our community falls into at least one of these categories.

We ask that Canada state clearly what legal resources are available to parents pursuing the return of their children from Canada. Our community includes parents for whom relative costs of adequate legal support compared to their home economy is prohibitive, and they struggle to find entries into the legal system.

We ask that Canada work to establish a home for victims of parental abduction in the Victims Abroad Program.

We ask that Canada work with provincial resources such as the Crime Victim's Assistance Program (CVAP) to make funded, professional, informed counseling services available to seeking parents.

We ask that Canada document any on-the-ground resources that may be available in the harbouring country and their mandates, such as RCMP liaison, consular services, etc.

We ask that Canada expand these on-the-ground supports to include additional services that the government does not currently provide:

- **Canadian representatives to attend or perform wellbeing checks;** these can adversely affect the seeking parent by favouring the abducted child's new environment. Supervision and independent witness may defuse this risk.

We ask that Canada make document translation and legalization services available to seeking parents when required. The cost for these services during a prolonged case can be tens of thousands of Canadian dollars.

During a resolution

We ask that Canada provide negotiation services in support of an amicable resolution of an abduction, recognizing that these processes resemble hostage negotiations in their imbalance of power.

After a resolution

We ask that Canada work with provincial resources to ensure that funded, specialized counseling is available for both parents and children after a return.

Recognizing the burden already faced by a parent who has brought their children home, and the likelihood of a return to the family law system to resolve outstanding issues, **we ask that Canada coordinate with provincial programs to establish ongoing financial support for legal processes arising after a return.**

Document History

This document was written by Return Our Children Home Canada, a community of parents whose Canadian children were abducted internationally. Return Our Children Home Canada was formed in 2021, arising from an informal network that had already been in existence for several years.

In February 2021 we wrote to the Honourable Marc Garneau, then serving as the Minister of Foreign Affairs. This letter introduced the organization, made specific requests for information from Global Affairs Canada, and asked for a contact for further communication. In March 2021 we received a response from Kathy Bunka, Director of Consular Policy and Programs with Global Affairs Canada. This response was general in nature, did not provide responses to the questions we had asked of the Minister and was sent from a “no-reply” email account. We were able to identify an institutional email address but Ms. Bunka did not respond to a further inquiry sent in May 2021.

In June 2021 we wrote to the Honourable Bob Rae, P.C., C.C., O.Ont., Q.C., as Canada’s ambassador to the United Nations. We again introduced our organization and requested a brief meeting with Mr. Rae. Mr. Rae responded in October 2021 expressing his sympathies and inviting us to share policy ideas with Ms. Bunka, but did not respond to our request to meet.

The initial revision of this document was delivered to the Honourable Mélanie Joly, Minister of Foreign Affairs; Kathy Bunka, Director of Consular Policy and Programs, Global Affairs Canada;

the Honourable Bob Rae, P.C., C.C., O.Ont., Q.C., Canada's ambassador to the United Nations; the Standing Committee on Foreign Affairs and International Development; Prime Minister Justin Trudeau; and others.

Revisions

- 1.0: Initial publication (December 2021)

Contact

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