



Department of Justice  
Canada

Ministère de la Justice  
Canada

# abduction: stealing children



Canada

Dexter is six years old. His parents have just separated. Dexter lives with his father in a suburb of Toronto. One day, Dexter's mother picks him up for a visit. Dexter and his mother disappear. His father is frantic. Three months later, he learns that Dexter is in Nova Scotia. His mother has applied for legal custody of Dexter there. Dexter's father plans to get Dexter home any way he can. He wants to seek custody in an Ontario court.

Every year, 10,000 Dexters are shifted from one place to another and from one parent to another in battles over custody. Often, this leads to child stealing, or abduction of the child, by one or both parents.

### **WHY HAVE A NEW LAW?**

The new law attempts to stop this practice. It accepts that children have rights. They have the right to security, stability, and continuity in their lives. The law protects children from their own parents.

Before, it was hard to prosecute parents for abduction. If there was no court order for custody, no charge could be laid. If the parents had custody orders from different courts, again there could be no charge. The new law puts the child first, and says that abduction of children by their parents is a crime.

### **WHAT LAW APPLIES TO NON-PARENTS?**

Two abduction laws apply to non-parents. It is an offence for anyone to take an unmarried person under sixteen years of age from the parent without authority or consent. This law protects girls and boys. The penalty is up to five years in jail. There is more protection for children under fourteen years. It is a crime for anyone to take or keep a child of this age away from his or her parents. To entice, hide, receive or keep the child, are all forms of this offence. The penalty is up to ten years imprisonment.

### **WHAT LAW APPLIES TO PARENTS?**

New laws now apply to parents and guardians of children under fourteen years. If a custody order

made by any court in Canada gives care to one parent, the other cannot take or keep the child. If Dexter's mother obtained a custody order in Nova Scotia, it would be illegal for his father to take him back without first getting a new custody order.

Where no court order exists, the non-custodial parent cannot take the child from the parent with whom the child lives. What Dexter's mother did is now a crime. If the Crown (the prosecutor) consents, the police could charge the mother and issue a warrant for her arrest.

In both cases, the penalty could be summary, up to six months in jail or a fine. It could also be up to ten years in jail.

## **WHAT IF.....**

### **THE PARENT OR GUARDIAN CONSENTS?**

If the parent or guardian agrees to the taking of the child, there is no offence. The accused must prove the consent.

### **THE CHILD IS TAKEN TO PROTECT HIM OR HER FROM HARM?**

If the child is in immediate danger, this is a justification for taking the child. The accused must prove to the court that there was a danger of harm.

### **THE CHILD CONSENTED TO, OR SUGGESTED THE ABDUCTION?**

A child cannot consent to be abducted because the new law says that a child under the relevant age cannot give a valid consent.

## **IF YOUR CHILD IS ABDUCTED, WHAT CAN BE DONE?**

### **Report to the Police**

The new laws give the police the power to lay charges against parents. A missing persons report can be filed. Charges can be laid. A warrant for the arrest of the accused parent can

be issued. If the accused parent has left the country, an application to have him or her brought back can be made.

### **Help from a Lawyer**

Custody of children is dealt with by the laws of each province. A lawyer will be needed to start any court action for custody. A lawyer may also be able to help you to locate your child, and have him or her brought back. In some provinces, special powers under provincial laws make this easier.

### **Self-Help Groups**

There are self-help groups of parents who know first hand about child abduction. They can tell you about:

- emergency procedures;
- ways to locate your child;
- new laws; and
- experienced lawyers.

They also provide counselling to help you cope. The yellow pages or your local police may be able to give you information about such groups.

## **INTERNATIONAL TRENDS**

The trend in Canada and in other countries is to get tough with parents who abduct their children. Courts are not tending to make conflicting custody orders. Countries are making laws that are alike. Greater international cooperation is making it easier to locate and return children. The new law is consistent with this trend.

For more information contact:

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